



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Strasbourg, 3 octobre/October 2005  
Etude/Study No 287/2004

Diffusion restreinte/Restricted  
CDL-EL(2004)011  
Bil.

**COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**  
**(COMMISSION DE VENISE)**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPONSES AU**  
**QUESTIONNAIRE SUR L'USAGE DU REFERENDUM**

**REPLIES TO THE**  
**QUESTIONNAIRE ON THE USE OF REFERENDUMS**

**TABLE DES MATIERES / TABLE OF CONTENTS**

	<u>Page</u>
ALBANIE / ALBANIA .....	3
ANDORRE / ANDORRA .....	10
ARMENIE / ARMENIA .....	14
AUTRICHE / AUSTRIA .....	32
AZERBAIDJAN / AZERBAIJAN .....	45
BELGIQUE / BELGIUM .....	53
BULGARIE / BULGARIA .....	59
CROATIE / CROATIA .....	66
CHYPRE / CYPRUS .....	74
CZECH REPUBLIC / REPUBLIQUE TCHEQUE .....	79
DANEMARK / DENMARK .....	101
ESTONIE / ESTONIA .....	106
FINLANDE / FINLAND .....	118
FRANCE .....	123
GEORGIE / GEORGIA .....	140
GRECE / GREECE .....	146
HUNGARY / HONGRIE .....	156
IRLANDE / IRELAND .....	171
ITALIE / ITALY .....	186
LETTONIE / LATVIA .....	191
LITUANIE / LITHUANIA .....	201
LUXEMBOURG .....	211
MALTE / MALTA .....	224
PAYS-BAS / NETHERLANDS .....	237
NORVEGE / NORWAY .....	250
POLOGNE / POLAND .....	257
PORTUGAL .....	263
FEDERATION DE RUSSIE / RUSSIAN FEDERATION .....	271
ESPAGNE / SPAIN .....	276
SUEDE/SWEDEN .....	286
SWITZERLAND / SUISSE .....	298
“L’EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE”/ .....	304
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” .....	304
TURQUIE / TURKEY .....	320

## **ALBANIE / ALBANIA**

### **I - Référendums nationaux**

#### **A - Quel fondement juridique?**

1. Le référendum est prévue par la constitution albanaise.
2. La Constitution, dans l'Article 150 paragraphe 3, statue que les principes et les procédures pour le déroulement du référendum ainsi que sa validité sont prévues par la loi. Le Code Eléctoral comprend aussi des dispositions sur le référendum national et local.

#### **B - Quel est le type du référendum? Qui décide?**

1. Il n'y a pas de référendum obligatoire.

Aucun texte n'est soumis automatiquement au référendum, ni avant ni après son adoption par le Parlement.

2.
  - a. Le référendum peut être organisé à la demande d'une autorité.
  - b. L'organisation d'un référendum peut être décidée seulement par le Parlement quand il s'agit d'un problème ou d'un projet de loi d'une importance particulière, ou par le Président de la République, quand le référendum pour un problème particulièrement important est requis par 50.000 citoyens ayant droit de vote.
3.
  - a. 50.000 électeurs enregistrés dans le Registre National des Electeurs ont droit à un référendum général pour l'abrogation d'une loi. Ils peuvent aussi demander au Président de la République l'organisation d'un référendum pour une question particulièrement importante.

La demande pour le commencement de la procédure est présentée à la Commission Centrale Electorale (CCE) par un groupe initiateur d'au moins 12 électeurs.

Les papiers standard avec les signatures requises sont déposés près de la CCE qui vérifie les signatures et la régularités des documents d'identification des électeurs.

- b. Les électeurs ont le droit de présenter une demande de référendum abrogatif sur un texte déjà adopté par le Parlement, mais il n'ont pas le droit de proposer un texte nouveau.
4. La présentation d'un texte au vote populaire doit être soumise à l'accord d'autres organes dans deux cas:

- a. si au moins 50.000 électeurs demandent au Président de la République l'organisation du référendum sur une question particulièrement importante. Dans ce cas c'est le Président qui décide d'accepter ou de ne pas accepter la demande de la fraction du corp électoral.
  - b. si le Conseil des Ministres propose l'organisation d'un référendum sur une question ou un projet de loi d'un intérêt particulier, la décision est du ressort du Parlement.
5. Aucune des options mentionnées dans ce point n'est prévue par la Constitution ou par la loi.

### **C - Contenu**

#### *1. Types d'actes soumis au référendum*

Le référendum est prévu pour modifier la Constitution dans deux cas:

- a. si une majorité de deux tiers de tous les députés décide que la modification de la Constitution soit votée directement par référendum;
- b. si un cinquième des députés demandent que soit soumise au référendum une modification de la Constitution, approuvée par les deux tiers des députés au Parlement.

#### *2. Matières sur lesquelles peut porter le référendum*

En dehors du référendum constitutionnel, la Constitution prévoit le référendum pour l'abrogation d'une loi ou pour une question particulièrement importante, sans précisions ultérieures.

Sont exclues du référendum les questions concernant l'intégrité territoriale de la République d'Albanie, la limitation des droits et des libertés fondamentales de l'homme, le budget, les taxes et les obligations financières de l'Etat, l'imposition ou la révocation de l'état d'urgence, la déclaration de guerre ou de la paix, l'amnistie.

### **D - La forme du texte soumis au référendum (la validité formelle)**

#### *1. En ce qui concerne la forme possible du texte soumis au référendum:*

- la demande pour un référendum constitutionnel doit inclure le texte du projet pour l'amendement ou les amendements de la Constitution.

- pour l'abrogation d'une loi en vigueur la demande pour un référendum doit inclure les raisons pour lesquelles doit être abrogée la loi ou une partie de la loi. La demande pour l'abrogation d'une partie de la loi peut être acceptée seulement si l'autre partie de la loi est autosuffisante.

La demande pour le commencement des procédures du référendum pour une question particulièrement importante doit poser clairement cette question ainsi que la position des initiateurs sur cette question.

2. Ni la Constitution ni la loi ne contiennent des dispositions particulières sur les problèmes mentionnés dans ce point.

### **E - Limites matérielles du référendum (la validité matérielle)**

La réponse à cette question est incluse dans la réponse à la question formulée au paragraphe C, point 2.

### **F - Campagne / propagande / financement et votation**

1. En ce qui concerne la campagne et la propagande, la loi prévoit seulement que pendant les campagnes pour un référendum général (national) la Radiotélévision Publique met à la disposition des partis politiques qui soutiennent chaque alternative un minutage égal jusqu'à un maximum de trois heures.

2. La loi ne prévoit aucune disposition pour le financement des référendums.

3. *Votation*

a. Les opérations électorales se déroulent dans un seul jour.

b. Il n'y a pas de décalage horaire entre les différents centres de vote.

c. La participation au référendum n'est pas obligatoire.

d. Dans un référendum est considérée gagnante l'alternative qui a recueilli la majorité des votes valables, mais pas moins d'un tiers du nombre des électeurs enregistrés dans le Registre National des électeurs. La loi ne prévoit pas une participation minimale qui puisse conditionner la validité du référendum.

### **G - Les effets du référendum**

1. Le référendum national est toujours décisionnel.

2. En cas de succès du référendum abrogatif, le Parlement évidemment peut approuver un nouveau texte de la loi abrogée, mais il n'est pas obligé de le faire, selon les dispositions en vigueur.

3. Si le référendum porte sur un texte déjà adopté par une autorité:

- il est suspensif si un amendement constitutionnel approuvé par le Parlement doit être soumis au référendum selon la requête d'au moins un cinquième des députés.

- il est abrogatif si le référendum porte sur une loi en vigueur.

## **H - Parallélisme des formes et normes prévoyant le référendum**

1. Une disposition acceptée/refusée par référendum ne peut pas être révisée/introduite par une procédure excluant le référendum.
2. Une norme constitutionnelle prévoyant la possibilité d'organiser un référendum peut être révisée par une procédure excluant le référendum seulement si cette procédure est approuvée par une majorité de deux tiers au Parlement, tandis que dans le cas d'une norme législative la procédure excluant le référendum doit être approuvée par une majorité des trois cinquièmes.

## **I - Règles particulières relatives à l'initiative populaire**

1. Il n'y a aucun délais pour la récolte des signatures.
2. Les 12 membres du groupe initiateur du référendum (voire la réponse au point 3 du paragraphe B) sont autorisés à organiser la récolte des signatures.
3. La vérification des signatures est du ressort de la Commission Centrale Electorale, mais la loi se fournit pas d'explication sur la manière de cette vérification.
4. La Commission Centrale Eléctorale statue seulement sur l'acceptation ou non de la demande pour un référendum, en se basant uniquement sur la régularité des documents présentés.

## **J - Contrôle juridictionnel**

1. En ce qui concerne le référendum général (national) un contrôle d'office est exercé *a priori* par la Cour Constitutionnelle.
2. La Cour Constitutionnelle décide sur la constitutionnalité des questions posées pour le référendum. Elle décide aussi si la requête pour l'abrogation d'une partie de la loi peut être acceptée, en contrôlant si existe l'autosuffisance de l'autre partie de la loi. Elle vérifie aussi si la demande pour le référendum concernant une question particulièrement importante est formulée d'une façon claire, complète et sans équivoques et d'une telle manière que les électeurs puissent répondre "oui" ou "non".
3. Le Code Eléctoral prévoit seulement le contrôle juridictionnel des résultat des élections par Collège Electoral de la Cour d'Appel de Tirane, mais paradoxalement il ignore la possibilité d'un contrôle pareil sur les résultats du référendum.

## **K - Les expériences de référendum**

1. Depuis l'approbation de la Constitution albanaise par le référendum national du 28 novembre 1998, aucun référendum n'a été organisé.

## **II - Référendums régionaux ou locaux**

### **A - Quel fondement juridique?**

1. Le référendum local est prévu par la Constitution.
2. Le Code Eléctoral aussi prévoit le référendum local.
3. Les dispositions des entités ne prévoient pas le référendum.
4. Le référendum est possible pour une question d'administration locale.

### **A1 - Au niveau**

1. de région.
2. de commune ou municipalité.
3. Pour des questions d'administration locale dans les niveaux mentionnés ci-dessus.

### **B - Quel est le type de référendum? Qui décide?**

1. Le référendum local est obligatoire dans le cas de modification des limites territoriales. Dans ce cas, la décision finale est du ressort du Parlement qui approuve la loi sur la division administrative de la République.
2. Dans le cas mentionné ci-dessus le référendum est organisé par le Gouvernement.
3. 10 pour cent des électeurs dans la circonscription d'une commune ou d'une municipalité ou 20.000 d'entre eux, quel que soit le nombre plus petit, ont droit au référendum au niveau respectif. Un nombre de conseils municipales ou communales, qui représentent au moins le tiers de la population d'une région, ont droit aussi à demander un référendum pour une question d'administration locale au niveau régional.
4. En ce qui concerne l'intervention des autorités centrales ou locales, la loi se limite à statuer que pour les référendums locaux sont appliqués, pour autant que ça est possible ou nécessaire, les dispositions prévues pour le référendum général.

### **C - Contenu**

- Le référendum ne peut pas porter sur la sécession.
- Le référendum peut porter sur une modification des limites territoriales.
- Le référendum peut porter sur une question de l'administration locale.

### **D - La forme du texte soumis au référendum (la validité formelle)**

La loi statue que la demande pour le commencement des procédures du référendum pour une question particulièrement importante doit expliquer clairement cette question ainsi que la position des initiateurs sur cette question. Cette requête de la loi concerne aussi le référendum local.

### **E - Limites matérielles du référendum (la validité matérielle)**

- Le référendum local peut porter seulement sur la modification des limites territoriales ainsi que sur une question d'importance particulière.

- On peut présumer que le référendum local est exclu si le texte proposé est contraire à la Constitution, aux normes du droit international obligatoires pour la République d'Albanie et à la loi, bien que les dispositions sur le référendum local ne s'expriment pas sur ce problème.

1. La loi ne prévoit aucune disposition sur la campagne et la propagande pour le référendum local.
2. Les opérations électorales se déroulent dans un seul jour.
3. Il n'y a pas de décalage entre les différents centres de vote.
4. La participation au référendum n'est pas obligatoire.
5. Dans le référendum est considérée gagnante l'alternative qui a recueilli la majorité des votes valables mais pas moins d'un tiers du nombre des électeurs de l'unité territoriale concernée. Il n'y a pas de dispositions pour une participation minimale.

### **G - Les effets du référendum.**

1. Le référendum local est décisionnel s'il porte sur une question particulière importante.
2. Il est consultatif s'il porte sur la modification des limites territoriales.

### **H - Parallélisme des formes normes prévoyant le référendum**

La loi ne prévoit aucune disposition sur ce problème.

### **J - Règles particulières relatives à l'initiative populaire**

1. Il n'y a aucun délai pour la récolte des signatures
2. Les 12 membres du groupe initiateur du référendum sont autorisés à organiser la récolte des signatures.
3. La vérification des signatures est du ressort de la Commission Centrale Électorale, mais la loi ne fournit pas d'explication sur la manière de cette vérification.
4. Aucune autorité n'est autorisée à vérifier les vices résultant du contenu de la question. La Commission Électorale Centrale statue sur l'acceptation ou non de la demande pour le référendum, en se basant uniquement sur la régularité des documents présentés.

### **J - Contrôle juridictionnel**

La loi ne prévoit pas un contrôle juridictionnel concernant le référendum local.



### **K - Les expériences de référendum**

Aucun référendum local n'a eu lieu en Albanie

### **III - Avenir du référendum**

Une réforme du référendum n'est pas prévue pour le moment.

Partant des réponses données aux questions posées on peut constater que dans le Code Electoral albanais (dans la partie concernant les référendums nationaux et locaux) il y a beaucoup de lacunes qui doivent être remplies le plus tôt possible.

## **ANDORRE / ANDORRA**

### **I - Référendums nationaux**

#### **A - Quel fondement juridique?**

1. Le référendum est prévu par la Constitution (Articles 76 et 106).
2. Il est aussi prévu par la loi qualifiée relative au régime électoral (Articles 76 à 82).

#### **B - Quel est le type de référendum? Qui décide?**

1. Le référendum est obligatoire pour réviser la Constitution après accord du Conseil général (le Parlement) à la majorité des deux tiers sur le projet de révision.
2.
  - a. Le chef du gouvernement, avec l'accord de la majorité du Conseil général peut demander l'organisation d'un référendum sur une question d'ordre politique ;
  - b. La décision d'organiser un référendum et la convocation des électeurs sont prises par les co-princes (chef de l'Etat) avec le contreseing du chef de Gouvernement ou le syndic général (président du Conseil général) qui en prennent la responsabilité politique (Article 45 de la Constitution). Ces décisions sont obligatoires s'il s'agit de ratifier un projet de révision de la Constitution adopté par le Conseil général à la majorité des deux tiers.
3.
  - a. Non.
  - b. Non.
4. Oui.

La loi qualifiée distingue le référendum portant sur une réforme constitutionnelle et le référendum de consultation.

Le premier exige l'accord du Conseil général à la majorité des deux tiers; les co-princes ne peuvent s'y opposer.

Le second suppose l'accord du Conseil général (à la majorité simple) du chef de Gouvernement et des co-princes ; mais le chef de gouvernement en en prenant la responsabilité politique, les co-princes ne peuvent s'y opposer.

5. Une fois que le Conseil général a donné son accord il ne peut modifier le texte soumis au référendum ni en proposer un autre.

### **C - Contenu**

1. Le référendum est nécessaire pour modifier la Constitution. Il n'est pas nécessaire pour adhérer à une organisation internationale.
2. Il peut porter soit sur la révision de la Constitution (référendum de réforme constitutionnelle) soit sur "toute question d'ordre politique" (référendum de consultation).

### **D - La forme du texte soumis au référendum (la validité formelle)**

Le référendum de réforme constitutionnelle ne peut porter que sur un texte. Sur toute autre question ni la Constitution ni la loi qualifiée n'impose une forme quelconque; celle-ci est donc librement choisie par les autorités qui décident le référendum.

### **E - Limites matérielles du référendum ( la validité matérielle)**

Le référendum de réforme constitutionnelle n'est soumis à aucune limite.

Le référendum de consultation sur une question d'ordre politique "ne peut porter sur une proposition contraire à la Constitution et notamment contraire à des accords internationaux (Article 3 de la Constitution).

### **F - Campagne/propagande/financement et votation**

1. Les textes ne précisent rien.
2. Idem.
- 3
  - a. Idem.
  - b. Non.
  - c. Non.
  - d. Pas de quorum.

### **G - Les effets du référendum**

1. Le référendum portant sur la réforme de la Constitution porte sur une décision. Le référendum de consultation a les effets que précisent ses organisateurs; les textes n'imposent rien.
2. Non s'il s'agit d'un référendum portant sur la réforme de la Constitution. Pour les autres référendums les textes n'imposent rien.
3. Idem.

### **H - Parallélisme des formes et normes prévoyant le référendum**

1. Non.

2. Oui s'il s'agit d'une norme constitutionnelle qu'une autre norme constitutionnelle peut toujours modifier, non s'il s'agit d'une autre norme puisque le référendum est prévu par la Constitution.

### **I - Règles particulières relatives à l'initiative populaire**

L'initiative populaire ne peut permettre le référendum. Les questions 1., 2., 3., 4. sont donc sans objet.

### **J - Contrôle juridictionnel**

1. Oui comme pour toute autre décision . le contrôle ne peut avoir lieu d'office.
2. Les cas d'ouverture de recours sont les mêmes que pour toute autre décision, notamment en cas de conflit entre organes constitutionnels (Article 103 de la Constitution).
3. Oui.
4. Le recours d'"empora" est ouvert aux personnes qui ont un intérêt légitime mis en cause par les dispositions d'un acte du Conseil général n'ayant pas force de loi (Article 102 de la Constitution).

### **K - Les expériences de référendum**

1. Un seul référendum a été organisé; il portait sur l'adoption de la Constitution.
2. Le Conseil général et les co-princes.
3. Aucun.
4. Un seul.
5. Aucun.
6. Non.
7. Non.
8. Sans objet.

## **II - Référendums régionaux et locaux**

Sans objet : le référendum n'est prévu qu'à l'échelon national.

### **III - Avenir du référendum**

1. Non.
2. Sans objet.
3. Idem.

## **ARMENIE / ARMENIA**

### **I - National referendums**

#### **A - Legal basis**

1. *Is provision made for referendums in the Constitution?*

Article 2 of the Constitution of the Republic of Armenia enshrines, that the people exercise their power through ... referenda.

Article 111 of the Constitution determines the order of adoption of the Constitution and its amendments. According to this Article, "The Constitution shall be adopted or amended by referendum which may be initiated by the President of the Republic or the National Assembly. The President of the Republic shall call a referendum upon the request or agreement of the majority of the Deputies of the National Assembly".

Article 112 of the Constitution provides for the opportunity to adopt laws through referendum. According to this Article, "Laws may be submitted to a referendum upon the request of the National Assembly or the Government in accordance with Article 111 of the Constitution.

According to Article 113, "A proposed legislation submitted to a referendum shall be considered to have been passed if it receives more than fifty percent of the votes, but not less than one third of the number of registered voters".

2. *If not, does the law provide for the use of referendums? On what matters?*

Is not applicable.

#### **B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

According to Article 111 of the Constitution, the adoption of the Constitution or its amendments is possible only through a referendum. Moreover, the President of the Republic is obliged to submit to a referendum a draft Constitution or draft constitutional amendments reintroduced by at least two thirds of the total number of Deputies of the National Assembly.

Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?

No.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

A referendum on adoption of the Constitution or amendments to it is called by the President of the Republic through the initiative or consent of the National Assembly.

The President calls a referendum on adoption of a law through the initiative of the National Assembly or the Government, moreover, the suggestion of the Government must receive the approval of the National Assembly.

3. *Referendums held at the request of part of the electorate*

a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

No.

b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

Is not applicable.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

The initiative to call a referendum on adoption of the Constitution or amendments to it may be carried by the President or the National Assembly. If such an initiative is carried by the National Assembly, then the latter, after expressing its consent to the Draft Constitution or Draft amendments to it, submits the Draft to the President for the latter to call a referendum.

The initiative to call a referendum on adoption of a law may be carried by the National Assembly or the Government. If such an initiative is carried by the National Assembly, then

the latter, after expressing its consent to the Draft law, submits the Draft to the President for the latter to call a referendum. If such an initiative is carried by the Government, then the President submits the Draft to the National Assembly. The National Assembly adopts a decision expressing its consent to call a referendum on the Draft law submitted by the President.

#### 5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*

According to the legislation of the RA, in order to call a referendum it is always necessary to have either the initiative or the consent of the National Assembly. When the President of the Republic submits back to the National Assembly the Draft Constitution or Draft amendments to it, with his/her objections and suggestions, requesting a re-examination, the National Assembly reintroduces its draft by at least two thirds of the total number of Deputies of the National Assembly to the President in order for the latter to call a referendum. Moreover, the National Assembly determines a period, during which the President must call a referendum.

Likewise, when the President of the Republic submits back to the National Assembly the Draft law, with his/her objections and suggestions, requesting a re-examination, the National Assembly reintroduces its draft law by at least two thirds of the total number of Deputies of the National Assembly to the President in order for the latter to call a referendum. The National Assembly determines a period, during which the President must call a referendum.

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

Only a single draft may be submitted for a referendum. The legislation of the RA does not provide for an opportunity to submit more than one draft at the same time.

*- Is it entitled only to give its opinion?*

The legislation of the RA does not provide for the National Assembly to express an opinion as such on the referendum. If the notion "opinion" within the context of the questionnaire means the consent of the National Assembly expressed concerning the Draft Constitution or amendments to it (when the initiative is carried by the National Assembly) or the adoption of a decision expressing its consent to call a referendum on the Draft submitted by the President, then may be interpreted, that the National Assembly give its opinion on the suggestion.

In regard to a referendum on adoption of a law, likewise, if the notion "opinion" within the context of the questionnaire means the consent of the National Assembly expressed concerning the Draft law, (when the initiative is carried by the National Assembly) or the adoption of a decision expressing its consent to call a referendum on the Draft submitted by the President (when the initiative is carried by the Government), then may be interpreted, that the National Assembly give its opinion on the suggestion.



*- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*

Once again, if the notion "opinion" within the context of the questionnaire means the consent of the National Assembly expressed concerning the Draft Constitution or amendments to it or the draft law or the adoption of a decision expressing its consent to call a referendum on the Draft submitted by the President, then according to the Article 54 paragraph 1 of the law on the "Rules of procedure of the National Assembly" changes to the Constitution, the Draft Constitution or the Amendments to it or the draft law shall be included in the agenda of the regular series of sessions within a period of 40 days after having been circulated. The Draft is considered to be in circulation if it is sent by the Chairman of the National Assembly to the Government and to the National Assembly staff and Standing Committees, appointing a Lead Committee (all Lead Committees) from the Standing Committees.

*- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

The legislation of the RA does not classify the questions submitted to a referendum into a principle proposal or generally-worded proposal, since drafts submitted to a referendum are whole texts, meaning they are specifically worded.

### **C - Content**

#### *1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

*Is a referendum mandatory in the case of a constitutional amendment?*

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

No. The referendum is called also for an adoption of a new Constitution or a law.

According to Article 111 of the Constitution of the RA, amendments to the Constitution are carried out only through a referendum.

The above-mentioned are all those issues, that involve a referendum (i.e., adoption of a new Constitution or amendments to it and of laws). The question of membership to the European Union or to other international organizations is solved through international treaties.

Therefore, there is no need for a referendum. Moreover, it is not possible, due to the existing legislation, to conduct a referendum in regard to this issue.

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

The referendum is the only means by which an adoption of the Constitution and amendments to it is possible. It is not permitted to conduct a referendum concerning the same issue within one year after the publication of the results of the referendum.

Article 4 of the law on Referendum exhaustively determines the scope of the issues, which cannot be submitted to a referendum. That is the following issues cannot be submitted to a referendum:

- a. amending Articles 1, 2 and 114 of the Constitution,
- b. extending or reducing the term of powers of acting President and National Assembly, state and local self-governing bodies,
- c. concerning human and citizen rights, freedoms and obligations, the abolition or restriction of the constitutional guarantees of their implementation, as well as issues under exclusive jurisdiction of state and local self-governing bodies.

**D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

According to legislation of the RA, the text of the Constitution or amendments to it is submitted for a referendum, namely the specifically-worded draft.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*

- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

The issues submitted for a referendum must conform to the requirements mentioned in points a-e. That is:

- a. The unity of form of the draft must be insured, namely the unified text of the draft is submitted for a referendum. It cannot be combined with a generally-worded proposal or a question of principle.
- b. The unity of content must be insured, namely the whole text of the law, the proposed or amendments to the existing one is submitted for a referendum.
- c. The unity of rank must be insured. Each referendum may be conducted in regard to a single draft of legal act. If the referendum is conducted concerning the draft of Constitution or amendments to it, then simultaneously an issue of adoption of a law cannot be submitted for the same referendum.
- d. The referendum is conducted only in regard to a single issue.
- e. The question must be simple, that is the electorate for or against the issue submitted for a referendum.

#### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

It is not possible to prevent the submission of such text for a referendum, as the legislation of the RA does not provide for a preventive constitutional control over draft laws submitted for a referendum, which should make an opportunity to reveal its conformity or non-conformity with the existing Constitution, as well as with the rules of International law. The legislation of the RA does not provide also for conducting preventive control over the Draft Constitution or amendments to it, in order to reveal its conformity or non-conformity with the rules of International law.

#### **F - Campaigning, funding and voting**

##### *1. Campaigning*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

The draft submitting for a referendum must be published in the mass media established by the state bodies, as well as in the "Official Gazette of the Republic of Armenia", within 30 days before the day of a referendum. There is no requirement to publish explanatory documents.

- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*

Is not applicable.

- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

The participation of the political parties in the campaigning for or against the referendum text, is not restricted. The political parties, as well as the citizens and non-governmental entities (with the exception of benevolent and regional organizations, foreign citizens and organization, persons serving in army) have equal opportunity to campaign for or against the referendum text. The state and local self-government bodies and their employees, while conducting their duties, as well as the members of the Constitutional Court, judges and employees of law-implementing bodies in any circumstance have no right to conduct a campaign.

- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*

The legislation does not require the public media to allocate equal time to supporters and opponents of the text.

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

The legislation does not require the private media to give equal conditions to supporters and opponents of the text, but the supporters and opponents have equal rights and unjustified rejection of the private media to make advertisements may be challenged in a judicial manner.

## 2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

Persons, who are entitled to conduct a campaign, may establish an appropriate fund for financing of the campaign ("fund of campaign"). The fund consists of personal financial means, voluntary payments of citizens and legal entities. The state and local self-government bodies, budgetary entities, foreign citizens and legal entities, stateless persons, benevolent, religious, international organizations and international non-governmental movements have no right to make payments to the fund. The Central bank, where the fund means are gathered in the special account, in three-day frequency gives an information on the financial acts of the funds.

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

Is not applicable.

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

The voting take place in one day.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

Such a situation is not possible in the Republic of Armenia.

- c. *Is it compulsory for all voters to cast a vote?*

The participation in the referendum is right and not an obligation. the electors are free to vote or not to vote.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

In order for the adoption of the issue submitted for a referendum the votes of more than half of the participants of the voting for the text are required. Besides, this number of votes cannot be less than 1/3 of the total number of citizens included in voters' lists. If the mentioned number of votes is not insured, the issue submitted to the referendum is considered not adopted.

**G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The voters vote for or against the draft of legal act submitted for a referendum. The draft, which has gathered votes in a number determined by law, is considered adopted and enters into force from the moment of an official publication.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

No.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- *suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

- *resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*
- *abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

The referendums provided for by the legislation of the RA cannot be suspensive or resolutive referendums.

In regard to abrogative referenda, if a new Constitution, amendments to it or a new law is adopted through a referendum, then it leads to the lose of legal force of previous constitution, the law regulating the same relations, and it must be mentioned about it in the final provisions of the drafts of the Constitution, amendments to it or a law.

### **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

If the question concerns to the constitutional norm, then it cannot be adopted by a procedure, other than the referendum.

According to Article 36, paragraph 2 of the law on "Referendum", the law adopted through a referendum may be amended only through a referendum and in this case also it is not possible to apply a procedure, other than the referendum.

In regard to a law, which has been submitted for a referendum, but not adopted through it, may be adopted also by the National Assembly.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

As it is mentioned in A-1 point, the Constitution of the RA provides for provisions permitting a referendum in Articles 4, 111, 112 and 113.

Taking into consideration, that the Constitution can be amended only through a referendum, these constitutional norms permitting a referendum may be revised or amended only through a referendum. In regard to norms of laws, concerning referenda, they can be revised or amended by the body adopted them.

### **I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*

Is not applicable.

2. *Who is entitled to collect signatures?*

Is not applicable.

3. *How are signatures checked?*

Is not applicable.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

Is not applicable.

### **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

The referendum is called by the President of the Republic by the adoption of a decree. The decree of the President on calling of a referendum (the law-implementing practice of the Republic does not recognize the opportunity for the adoption by the President of a decree not to call a referendum) may be challenged in the Constitutional Court (the decree may be challenge by the President and at least 1/3 of the Deputies of the National Assembly), if it contradicts to the Constitution.

In regard to popular initiatives, see point I.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

The Constitutional Court decides on the issue of constitutionality of the President's decree on calling of a referendum, proceeding from the following factors:

1. the form of the legal act;
2. the time when the act was adopted, as well as whether it was signed, made public and implemented in compliance with established procedures;
3. the content of the legal act;
4. the necessity of protection and free exercise of human rights and freedoms enshrined in the Constitution, the grounds and frames of their permissible restriction;
5. the principle of separation of powers as enshrined in the Constitution;
6. the permissible limits of powers of state bodies and public officials,
7. the necessity of ensuring direct application of the Constitution.

3. *Are the results of referendums subject to judicial review?*

Yes, according to Article 100, paragraph 3 of the Constitution and Article 35 paragraph 5 of the law on “ Referendum”, the results of the referendum may be challenged in the Constitutional Court.

4. *Who may lodge an appeal?*

The results of a referendum may be challenged in the Constitutional Court by the President of the Republic or at least 1/3 of the Deputies of the National Assembly.

**K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*
2. *On whose initiative has each referendum been held?*
3. *Have any referendums been invalid because of a low turnout?*
4. *In how many referendums has the electorate voted yes?*
5. *In how many referendums has the electorate voted no?*
6. *Can any of the results be largely accounted for by factors unrelated to the question?*
7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*
8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

Since the adoption of the Constitution of the RA in 1995, July 5, one referendum on the amendments of the Constitution has been conducted, the initiative of which came from the President of the Republic.

**II - Regional or local referendums**

**A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

The Constitution does not provide for any direct norm on the local referendum, but the constitutional norm, that “the people exercise their power through ... a referendum” permits to provide for a local referendum by law.

2. *If there are no constitutional provisions, does national law allow local referendums?*

The law on “Local referendum” adopted by the National Assembly of the RA regulates the relations concerning the conduct of local referendum.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

Is not applicable.

4. *On what matters is it possible to call a referendum?*

The local referendum may be called on issues, which according to the Constitution or the law are under the jurisdiction of the bodies of local self-government, excepting the following issues:



- a. which according to the Constitution or the laws, are under the exclusive jurisdiction of the bodies of local self-government,
- b. concerning human and citizens' rights, freedoms and their duties, as well as the abolition or restriction of constitutional guarantees insuring their realization,
- c. concerning the powers of the bodies of local self-government delegated them by the state bodies,
- d. concerning the recruitment of the staff of the District Administrator,
- e. concerning the adoption of the budget of the District or changes to it, as well as the implementation of the District's financial obligations and changes to them,
- f. concerning the alienation of the District's property,
- g. concerning the implementation of emergency and urgent measures insuring the health and security of the population,
- h. causing damage to the monuments of history, culture and nature (see, Article 5, part 2 of the law on "Local referendum").

**A1 - At what level?**

1. *Federate states?*

Is not applicable (The administrative territorial units of the Republic of Armenia are the provinces and districts. Provinces shall include urban and rural districts.)

2. *Provinces? Regions?*

No.

3. *Lower levels? Districts?*

Yes.

4. *Municipalities?*

Yes.

5. *On what matters?*

See II A-4.

6. *May national or federal authorities intervene, and in what conditions?*

No (in exception of judicial bodies).

**B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

1. *Mandatory referendums*

The Constitution does not provide for a mandatory local referendum.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

The local referendum is called by the Council of Elders of the given District. If the District has not formed yet, the local referendum is called by the decision of the Head of the Province, which includes the given District.

3. *Referendums held at the request of part of the electorate*

a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

According to the law on "Local referendum", the persons, who are entitled to participate in a referendum, may initiate a local referendum. In order to support the initiative for conduction of a local referendum, the initiative group, registered in the manner described by law, gathers the signatures of the persons, who are entitled to participate in the referendum. The number of the signatures necessary for calling a referendum must not be less, than 5 percent of the total number of persons, entitled to participate in a local referendum.

The validity of the signatures is verified by the elective verification of the not less, than 2 percent of the total number of signatures, necessary of calling a referendum. The Province commission of the referendum, within 7 days after receive of the official papers, verifies their legality, as well as the validity of the signatures. In order to conduct the mentioned verification, the Province commission of the referendum may decide to establish working groups with participation of the employees of the staff of the commission, specialists and experts involved in the work of the commission, the opinion of which may be taken as a basis to declare the signatures invalid (see, Article 9 of the law on "Local referendum").

b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

No. The local referendum cannot concern the issues already adopted by the National Assembly.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

Yes. The local government always is called by the Council of Elders of the District, in its initiative, or in initiative of the District Administrator or initiative group (popular initiative).

#### 5. *Role of Parliament*

The Parliament does not participate in the process of initiation or calling of a local referendum.

### **C - Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other subjects permitted?*

The local referendum cannot relate to issues on secede from the State or geographical boundaries. The local referendum may be called only the issues, which, according to the Constitution and laws are under the jurisdiction of the local self-government bodies, in exception of issues, determined by the law (see II A-4).

### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

1. According to legislation of the RA, the draft text of the local self-government body act is submitted for a referendum, namely the specifically-worded draft.
2. The issues submitted for a referendum must conform to the requirements mentioned in points a-e. That is:
  - a. The unity of form the draft must be insured, namely the unified text of the draft is submitted for a referendum. It cannot be combined with a generally-worded proposal or a question of principle.
  - b. The unity of content must be insured, namely the whole text of the local self-government act is submitted for a referendum.
  - c. The unity of rank must be insured.
  - d. Each referendum may be conducted in regard to a single issue (adoption of a single act)
  - e. According to Article 5 of the law on " Local referendum" the question must be simple, in order to make it possible for the electorate to give a concrete answer.

**E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

According to Article 20 of the law on “Legal acts”, the acts adopted through a local referendum must not contradict the Constitution of the Republic of Armenia, the laws of the RA, the decisions of the Government having the force of a law, the decisions of the National Assembly of the RA, the decrees and orders of the President of the RA, the decisions of the Government of the RA, the decisions of the Head of the Government, the decisions of the Council of the Central bank, the decisions of the Central Electoral Commission, the orders of the Ministers of the RA, the decisions of the Heads of the Provinces and the Mayor of Yerevan city, international treaties of the RA.

**F - Campaigning and voting**

*Reply to the same questions as in I-F.*

1. *Campaigning*

- a. The decision to call a local referendum, as well as the draft of the decision, normative act submitted for the referendum must be officially published 45 days before the voting day. The legislation does not provide for mandatory publication of explanatory documents.
- b. Is not applicable.
- c. According to Article 22, part 1 of the law on “Local referendum”, persons entitled to participate in the local referendum have a right to campaign through means and manners not prohibited by law. Though the political parties are not within this scope, taking into consideration, that they are not included in the scope of the entities, the conduction of campaign by which is prohibited, it may be concluded, that the political parties may participate in the campaign through their representatives residing in the given community. The state and local self-government bodies and their employees, while conducting their duties, as well as the members of the Constitutional Court, judges and employees of law-implementing bodies in any circumstance have no right to conduct a campaign.
- d. The legislation does not require the public media to allocate equal time to supporters and opponents of the text.
- e. The legislation does not require the private media to give equal conditions to supporters and opponents of the text, but the supporters and opponents have equal rights and unjustified rejection of the private media to make advertisements may be challenged in a judicial manner.

2. *Funding*

- a. According to Article 23 of the law on “Local referendum”, the initiative group may open bank united account in order to finance the campaign (hereafter – campaign account). The initiative group is prohibited to make expenses from other sources for the campaign. The citizens of the RA, as well as the legal entities registered in the RA (in exception of organization, whose capital has more than 30 percent of international participation) may make payments to the campaign account. The size of the campaign account is not restricted by law. The campaign can be started from the day of calling the referendum: the campaign finishes a day before the voting.
- b. The financing from private sources for gathering signatures is not provided by law, meanwhile such financing is not prohibited, namely, it is permitted. The expenses on the gathering of signatures are not compensated from the campaign account.

3. *Voting*

- a. The voting take place on one day.
- b. Such a situation is not possible in the Republic of Armenia.
- c. The participation in the referendum is right and not an obligation. The electors are free to vote or not to vote.
- d. In order for the adoption of the issue submitted for a referendum the votes of more than half of the participants of the voting for the text are required. Besides, this number of votes cannot be less than 1/3 of the total number of electors registered in the given Destrict. If the mentioned number of votes is not insured, the issue submitted to the referendum is considered not adopted.

**G - Effects of referendums**

*Reply to the same questions as in I-G.*

1. The electors are required to vote for or against the act of the local self-government body. The draft, which has gathered votes in a number determined by law, in considered adopted and enters into force from the moment of an official publication.
2. No.
3. The referendums provided for by the legislation of the RA cannot be suspensive or resolatory referendums.

In regard to abrogative referendum, taking into consideration the fact, that the existence of the decision of the head of the community or ---- on the issue submitted to the referendum cannot prevent the calling of a referendum on the same issue, the act adopted through a referendum on that issue may lead to the lose of the legal force the mentioned decision.

**H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

1. The acts (decisions) adopted through a local referendum are amended only through a referendum. The decision not adopted in result of the referendum may be adopted by the appropriate body of self-government, which has power to adopt such a decision.
2. The constitutional norm permitting a referendum may be revised or amended only through a referendum. The law on "Local referendum" and other legal norms, concerning referenda, can be revised or amended by the body adopted them.

**I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

1. The maximum period for gathering signatures is 30 days after receive of official papers for that purpose.
2. The right to gather signatures belongs to the initiative group for the conduct of the referendum, registered by the Province commission of the referendum. The initiative group may be formed by at least 5 citizens.
3. The Province commission of the referendum, within 7 days after receive of the official papers from the initiative group, verifies their legality, as well as the validity of the signatures.

In order to conduct the mentioned verification, the Province commission of the referendum may decide to establish working groups with participation of the employees of the staff of the commission, specialists and experts involved in the work of the commission, the opinion of which may be taken as a basis to declare the signatures invalid. The validity of the signatures is verified by the elective verification of the not less, than 2 percent of the total number of signatures, necessary of calling a referendum.

4. If the draft decision proposed for submitting for a referendum does not in conformity with the requirements of the law on "Local referendum", then the Province commission of the referendum, on the proposal or consent of the initiative group, before the adoption of a decision on the registration of the initiative group, may change the wording of that draft, remaining unchanged its content.

**J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

1. As it has been mentioned, the local referendum is called by a decision of the Council of Elders of the given District. If the District has not formed yet, the local referendum is called by the decision of the Head of the Province, which includes the given District. The decision to call a local referendum or not to call may be challenged in the general courts.

2. According to Article 18, paragraph 4 of the law on “Local referendum”, the disputes concerning the results of local referendum are under the jurisdiction of general courts.

3. The law on “Local referendum” does not specify the scope of persons, who may challenge the results of local referendum.

### **K - Experiences of referendums**

1. *Have there been many local referendums?*

A local referendum has never been conducted.

2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

Is not applicable.

### **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

2. *If so, for what reason?*

3. *If so, what is the general tendency of this reform?*

Such changing is not conducted.

## AUTRICHE / AUSTRIA

### I - National referendums

#### A - Legal basis

1. *Is provision made for referendums in the Constitution?*

Yes. The Austrian “Federal Constitutional Law” (“Bundes-Verfassungsgesetz”, hereinafter “FCL”) provides two forms of national (federal) referendums: firstly, the binding referendum (“Volksabstimmung”; Articles 45 and 46 FCL) and secondly, the consultative referendum (“Volksbefragung”; Article 49.b FCL).

2. *If not, does the law provide for the use of referendums? On what matters?*

#### B - What type of referendum may be used? Who decides?

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

Any total revision of the Federal Constitution shall upon conclusion of the parliamentary procedure but before its authentication by the Federal President be submitted to a referendum by the entire nation (Article 44 paragraph 3 FCL; “mandatory binding referendum”).

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

1. “Facultative binding referendums”:

- Any enactment or bill of the National Council (“Gesetzesbeschluss”) shall be submitted to a referendum if the National Council so resolves or if the majority of its members so demands (Article 43 FCL)
- Any partial revision of the Federal Constitution shall be submitted to a referendum if one third of the members of the National Council or of the Federal Council so demands (Article 44 paragraph 3 FCL).

2. “Recall referendum”: Before expiry of his six-year-term of office the *Federal President can be deposed* by referendum on demand of the “Federal Assembly”



(National Council and Federal Council) by a two-thirds-majority (Article 60 paragraph 6 FCL).

3. “Consultative referendum”: A consultative referendum on a matter of fundamental and overall national importance for whose settlement the federal legislature is competent must take place if the National Council votes it by reason of a motion from its members or from the Federal Government (Article 49.b paragraph 1 FCL).

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters’ signatures checked?*

No.

- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

Every motion by 100.000 voters or by one sixth each of the voters in three *Länder* (“*Volksbegehren*”, popular initiative) must be submitted by the Federal electoral board to the National Council for action. This popular initiative must concern a matter to be settled by Federal law and can be put forward in the form of a draft law (Article 41 paragraph 2 FCL), but it cannot request the hold of a referendum.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

No.

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the overnment reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*

No.

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

No.

*- Is it entitled only to give its opinion?*

No.

*- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*

No.

*- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

No.

### **C - Content**

#### *1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

No. See B-2.

*Is a referendum mandatory in the case of a constitutional amendment?*

Only in case of a *total revision* of the Federal Constitution the referendum is mandatory (see B-1). In others cases it is facultative (see B-2).

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

1. Recall of the Federal President before expiry of his six-year-term (see B-2).
2. Referendums on the accession to international organisations are only mandatory if the effects of the accession can be considered as a total revision of the Federal Constitution (e.g. the Constitutional Law of 1994 concerning the accession of Austria to the EU was considered as a total revision of the Federal Constitution which made it necessary to submit it to a mandatory referendum; see also B-1). Facultative referendums on this matter are possible in accordance with the above cited constitutional provisions (see B-2).
3. Any matter of fundamental and overall national importance for whose settlement the federal legislature is competent (see B-2).

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

See B-1 and B-2. Referendums for other than the mentioned matters are not provided.

Elections and matters subject to a decision by a court or an administrative authority cannot be topic of a consultative referendum (Article 49.b paragraph 1 FCL).

**D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

*- a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*

*- repeal of an existing provision?*

*- a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*

*- a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

1. The “Binding Referendum Act” of 1972 (“Volksabstimmungsgesetz”, hereinafter “BRA”) provides in his paragraph 9 that the text of binding referendums must always be formulated by a *concrete question*: either “Shall the bill of parliament concerning ... come into legal force?” (concerning referendums according to Articles 43 and 44 paragraph 3 FCL) or “Shall the Federal President be deposed?” (concerning referendums according to Article 60 paragraph 6 FCL). In both cases the voters have to answer alternatively with “Yes” or “No”.

2. A motion for a consultative referendum must include a proposal for the formulation of the question to be basically put in the consultative referendum. This must consist either of a question to be answered with “Yes” or “No” or of two alternative solutions (Article 49.b paragraph 2 FCL).

2. *Do questions submitted to referendum have to respect:*

a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*

See D-1.

- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*

See D-1.

- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*

See D-1.

- d. *Does the vote have to be on a single question or can it be on several different ones?*

The BRA of 1972 and the “Consultative Referendum Act” of 1989 (“Volksbefragungsgesetz”, hereinafter CRA) provide respectively that two or more referendums on different matters/questions can be hold on the same day.

- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

See D-1.

### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

No.

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

Neither the Federal Constitution nor other legal provisions require explicitly that information to the voters has to be provided by the State authorities. Although, the Order of the Federal President (or its constitutional deputy) to hold a binding referendum has not only to fix the referendum day but also to provide the full text of the bill being submitted to referendum. This order has to be published in the “Federal Law Gazette” (see paragraphs 1 and 2 of the BRA).

- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to*

*provide a balanced presentation of the authorities' views and their opponents' views?*

- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

In accordance with the jurisdiction of the Austrian Constitutional Court (“Verfassungsgerichtshof”) based on the principles of freedom of expression and of a free democratic decision-making process (as part of the principle of free elections) guaranteed by the Federal Constitution and the European Human Rights Convention (e.g. decision VfSlg. 13.839/1994), campaigning for or against a referendum text must not be restricted by massive non-objective or disproportionate propaganda of public authorities influencing intentionally or quasi-intentionally the decision-making process of the electorate. All public institutions and authorities have to inform the public concerning the referendum in a neutral way. Although - as well as all citizens - the government, the members of parliament and the political parties may campaign for their own views in favour or against a certain referendum and to make a recommendation to the electorate as far as they respect the principle of a free decision-making process.

- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*

According to the legal provisions on public broadcasting (i.e. the “Federal Constitutional Law on the protection of the independence of public broadcasting” of 1974 and the “Federal Act on the Austria Broadcasting Corporation ORF” of 2001), the Austrian Broadcasting Corporation “ORF” is obliged to ensure objective and impartial information to the public and the diversity of opinion.

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

Private broadcasting or radio corporations are also obliged to the principles of objectivity and diversity of opinion (see the 2001 Acts on Private Radio and on Private Television). According to the jurisdiction of the Constitutional Court (see above c.), the State authorities have to protect and to ensure a fair and free decision-making process in and by private media providing the voters with information on a certain referendum.

## 2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

There are no explicit legal provisions on this particular matter. In accordance with the mentioned jurisdiction of the Constitutional Court the government and members of parliament may campaign for their own views even by the moderate use of public funds as long as this does not constitute an excessive non-objective information.

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

The voting takes place on one day (see paragraph 2 BRA and paragraph 2 CRA).

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

- c. *Is it compulsory for all voters to cast a vote?*

No.

- d. *Quorum : For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

No.

### **G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

Concerning binding referendums on a bill of parliament or on the recall of the Federal President, the electorate is always asked for a decision. If the electorate decides in favour of a bill submitted to the referendum, the bill can finally be enacted as an Act of Parliament approved by the people. Rejection by the referendum of the deposition of the Federal President holds good as a re-election and entails automatically the dissolution of the National Council (Article 60 paragraph 6 FCL). Concerning consultative referendums the electorate is asked for an opinion which does not bind the Federal Parliament. For the referendum the absolute majority of the validly cast votes is decisive (Article 45 paragraph 1 and Article 49.b paragraph 3 FCL).

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

No.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- *suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

- *resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

- *abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

See above G-1. If the electorate decides against a bill submitted to the referendum, it cannot be enacted. In this case the Federal Parliament could only approve a new bill on the same matter, but which has to be submitted to a referendum as well.

### **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

Only in case of facultative binding and consultative referendums.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

The constitutional provisions on referendums could be revised by a Federal Constitutional Law that requires a two-thirds-majority in the National Council (Article 44 paragraph 1 FCL). The abolition of the mandatory binding referendum in case of a total revision of the Federal Constitution ruled by Article 44 paragraph 3 FCL might be considered *per se* as a total revision affecting the democratic principle of the Federal Constitution (Article 1 FCL) which would require to submit the bill on this matter to a mandatory referendum.

### **I - Specific rules on popular initiatives**

There are no rules on this point on federal level as there is no possibility for such initiatives. Some provincial constitutions provide for popular initiatives (see below II.H.).

1. *What is the time-limit for collecting signatures?*

--

2. *Who is entitled to collect signatures?*

--

3. *How are signatures checked?*

--

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

**J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

No.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

No.

3. *Are the results of referendums subject to judicial review?*

Yes. It exists a right to appeal to the Constitutional Court against the final results of a binding or consultative referendum alleging a procedural failure in accordance with paragraph 14 BRA and paragraph 16 CRA respectively.

4. *Who may lodge an appeal?*

A certain number of voters. The concrete number of voters varies between 100 and 500, depending on the *Land* where the appealing voters live.

**K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

1. November 5, 1978: facultative binding referendum concerning the bill on the *peaceful exploitation of nuclear energy* (nuclear power station of Zwentendorf) in accordance with Article 43 FCL: 50,5% against the bill.

2. June 12, 1994: mandatory binding referendum concerning the Federal *Constitutional Law on the accession of Austria to the European Union* in accordance with Article 44 paragraph 3 FCL (total revision of the Federal Constitution): 66,6% in favour of the accession.

2. *On whose initiative has each referendum been held?*

- 1978 referendum: majority of members of the National Council (Article 43 FCL).
- 1994 referendum: majority of members of the National Council (Article 44 paragraph 3 FCL).

3. *Have any referendums been invalid because of a low turnout?*

No.



4. *In how many referendums has the electorate voted yes?*

One.

5. *In how many referendums has the electorate voted no?*

One.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

No.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Yes.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

Yes. The constitutions of all nine *Länder* provide for the possibility to hold regional or local referendums.

4. *On what matters is it possible to call a referendum?*

### **A1 - At what level?**

1. *Federate states?*

Yes (*Länder*).

2. *Provinces? Regions?*

3. *Lower levels? Districts?*

4. *Municipalities?*

Yes (*Gemeinden*).

5. *On what matters?*

Generally, it is possible to call a regional referendum on a bill adopted by the parliament of the *Land* (“Landtag”). Local referendums are generally reserved for matters of fundamental local interest or decisions of the Municipal Council.

6. *May national or federal authorities intervene, and in what conditions?*

No.

**B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

There exists a great variety of provisions amongst the *Länder* because of their constitutional autonomy guaranteed by the Federal Constitution. Generally, all *Länder* provide facultative binding and consultative referendums at regional and local level. In two *Länder* (Salzburg, Vorarlberg) mandatory binding referendums are required in case of a total revision of the constitution of the *Land*. Regional Referendums can either be called by the *Landtag* or a certain number of its members, or at the request of a specified number of voters or municipalities. Local Referendums can either be called by the Municipal Council or at request of a specified number of voters.

**C - Content**

*Reply to the same questions as in I-C.*

Generally, any bill adopted by the *Landtag* can be submitted to a regional binding referendum. Some *Länder* (e.g. Burgenland, Vienna) provide regional consultative referendums. Local (binding or consultative) referendums are generally reserved for matters of fundamental local interest or decisions of the Municipal Council. In some *Länder* (e.g. Salzburg, Tyrol) local referendums are provided to recall the directly elected mayor of a municipality.

In particular:

- *Can a referendum be held on a proposal to secede from the State?*

No.

- *Can it relate to geographical boundaries?*

In some *Länder* only in case of municipal boundaries.

- *Are any other subjects permitted?*

**D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

There is a great variety of provisions amongst the nine *Länder*.

### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

The provisions of the *Länder* on regional and local referendums must not be contrary to the Federal Constitution (Article 99 FCL).

### **F - Campaigning and voting**

*Reply to the same questions as in I-F.*

There is a great variety of provisions amongst the nine *Länder*. Generally there exist, however, corresponding or similar rules at regional and local level. See above I-F: The jurisdiction of the Austrian Constitutional Court on this matter must also be taken into account by the legislation of the *Länder*.

### **G - Effects of referendums**

*Reply to the same questions as in I-G.*

There is a great variety of provisions amongst the nine *Länder*.

### **H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

There is a great variety of provisions amongst the nine *Länder*.

### **I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

There is a great variety of provisions amongst the nine *Länder*.

### **J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

There is a great variety of provisions amongst the nine *Länder*.

### **K - Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

### **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

*Actually, the "Austrian Convention" ("Österreich-Konvent") is discussing a sweeping reform of the Federal Constitution and, inter alia, a future reform of the existing means of direct democratic participation at national level.*

2. *If so, for what reason?*

3. *If so, what is the general tendency of this reform?*

To improve and to enlarge the means of direct democratic participation in matters of federal legislation.

## AZERBAIDJAN / AZERBAIJAN

### I - National referendums

#### A - Legal basis

1. *Is provision made for referendums in the Constitution?*

Yes. There is a specific provision in the Constitution (Article 3) titled "Issues resolved by referendum".

#### B - What type of referendum may be used? Who decides?

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

No.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

A referendum may be called either the President or by the Milli Mejlis (the Parliament of Azerbaijan).

3. *Referendums held at the request of part of the electorate*

a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

No. But at least 300.000 voters may apply to the President or the Parliament of Azerbaijan with a view of making a proposal to call for a referendum.

b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

Yes.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

No.

5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*

No.

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

No.

*- Is it entitled only to give its opinion?*

No.

*- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*

No.

*- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

No.

**C - Content**

1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

No.

*Is a referendum mandatory in the case of a constitutional amendment?*

Yes.

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

Any matter save for the ones specifically referred to in Article 3 of the Constitution (see below) may be put on a referendum.

Possible, but not necessary.

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

No.

Yes: the Constitution (Article 3) specifies the issues, which: I - may be resolved only by a referendum: 1. constitutional amendments and 2. alteration of the State borders; II - may not be put on a referendum: 1. Taxation and state budget; 2. Amnesty and pardon; 3. Election, appointment or approval of the officials, whose election, appointment or approval falls within the competence of respectively the legislative and (or) executive bodies”.

**D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

Any of the forms referred to in this question (there is no specific provision about that).

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*

There is no specific provision about that.

- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*

There is no specific provision about that.

- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*

There is no specific provision about that.

- d. *Does the vote have to be on a single question or can it be on several different ones?*

It can be on several different questions.

- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

There is no specific provision about that.

**E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

*- to international law or some of its rules*

There is no explicit provision about that.

*- to the Constitution or some of its rules*

There is no explicit provision about that.

*- to other overriding legal rules*

There is no explicit provision about that.

**F - Campaigning, funding and voting***1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

Yes, but only the text.

- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*

It is not provided.

- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

No.

Any citizens or groups of citizens.

No.

- d. Are the public media required to allocate equal time to supporters and opponents of the text?*

Yes.



- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

Yes.

2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

Yes.

Yes.

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

Yes.

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

On one day.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

It is not the case in Azerbaijan.

- c. *Is it compulsory for all voters to cast a vote?*

No.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

Yes (absolute majority of the voters who participated in the referendum.

Yes not less than 25% of the registered voters).

**G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

For a decision.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

Yes.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

Resolatory.

#### **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

No.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

No.

#### **I - Specific rules on popular initiatives**

No popular initiatives are provided for in the Azerbaijani legislation.

#### **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

No.

No. But, according to the Constitution, “the Constitutional Court shall give its opinion with respect to amendments to the Constitution that are proposed by the Milli Mejlis or the President (Article 153).

No.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

There is no specific provision about that.

3. *Are the results of referendums subject to judicial review?*

No.

4. *Who may lodge an appeal?*

See reply to J-1.

**K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

Only one (2002): on constitutional amendments.

2. *On whose initiative has each referendum been held?*

On the initiative of the President of Azerbaijan.

3. *Have any referendums been invalid because of a low turnout?*

No.

4. *In how many referendums has the electorate voted yes?*

In that referendum the electorate voted yes.

5. *In how many referendums has the electorate voted no?*

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

Yes.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

Yes.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

Yes.

**II - Regional or local referendums**

**A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

No.

2. *If there are no constitutional provisions, does national law allow local referendums?*

No.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

No.

4. *On what matters is it possible to call a referendum?*

No possibility.

### **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

No.

2. *If so, for what reason?*

3. *If so, what is the general tendency of this reform?*

## **BELGIQUE / BELGIUM**

### **I - Référendums nationaux**

Aucune disposition de la Constitution belge ne traite du référendum à l'échelon fédéral qu'il s'agisse du référendum décisionnel ou du référendum consultatif.

En ce qui concerne le référendum décisionnel, la doctrine s'accorde pour dire qu'une révision de la Constitution est nécessaire si l'on souhaite introduire un tel procédé en droit belge à quelque niveau que ce soit et quel que soit le type d'acte. Cette position unanime de la doctrine ne se retrouve pas en matière de référendum consultatif (ou consultation populaire). D'aucuns estiment en effet que l'on peut, dès à présent, sans révision préalable de la Constitution, y recourir pour autant que le législateur fédéral adopte une disposition dans ce sens. Cette opinion est toutefois minoritaire.

En pratique, un seul référendum, dont la constitutionnalité a par ailleurs été vivement critiquée, s'est tenu en Belgique à l'échelle nationale : la consultation populaire au sujet de la question royale du 12 mars 1950. Le législateur avait en effet décidé de consulter les électeurs sur l'opportunité de permettre au roi Léopold III de reprendre l'exercice de ses pouvoirs constitutionnels. La participation à cette consultation populaire qui était réservée aux seuls belges était obligatoire. Elle a donné lieu au résultat suivant : 57,68% des électeurs se sont prononcés en faveur de la reprise par le roi de l'exercice de ses pouvoirs. Toutefois, les résultats étaient fort contrastés selon les régions. Le pourcentage de "oui" s'élevait à 72,2% en Flandre, à 48,16% à Bruxelles et à 42% en Wallonie. Cette expérience n'a pu que conduire à une très grande prudence dans la suite quant à l'éventualité de l'instauration de référendums ou de consultations populaires à l'échelon national (fédéral).

De même, le mécanisme de l'initiative populaire, procédé de démocratie directe permettant à une fraction de la population de soumettre une proposition de révision de la Constitution au parlement ou de déposer une proposition de texte législatif ou réglementaire n'existe pas en droit belge, à l'exception des règles particulières prévues pour les communes et les provinces (cf. infra). Ce mécanisme est en effet inconciliable avec les textes qui régissent l'initiative en matière de révision de la Constitution et l'initiative en matière législative et, plus généralement, avec le caractère essentiellement représentatif du régime prévu par la Constitution belge.

## **II - Référendums régionaux ou locaux**

### **A - Quel fondement juridique?**

Dans un premier temps, c'est par le biais de dispositions législatives que la consultation populaire a émergé en droit belge. Ce mécanisme a en effet été instauré au niveau communal et provincial respectivement par la loi du 10 avril 1995 complétant la nouvelle loi communale par des dispositions relatives à la consultation populaire communale et la loi du 25 juin 1997 modifiant la loi provinciale.

Depuis le 12 mars 1999, ce procédé de démocratie directe est consacré par l'Article 41 de la Constitution qui stipule ce qui suit :

« Les matières d'intérêt communal ou provincial peuvent faire l'objet d'une consultation populaire dans la commune ou la province concernée. La loi règle les modalités et l'organisation de la consultation populaire ».

Au niveau des Communautés et Régions, aucun texte ne traite du référendum décisionnel ou consultatif. La situation juridique est donc similaire à celle qui existe au niveau fédéral. Il convient toutefois de noter que la Constitution est, depuis le mois d'avril 2003, ouverte à révision en vue de l'insertion d'un nouvel Article permettant aux Régions d'instituer et d'organiser une consultation populaire dans les matières qui relèvent de leurs compétences.

### **B - Quel est le type de référendum?**

#### *1. Référendum obligatoire*

Au niveau communal, le texte de la loi ne prévoit pas de référendum obligatoire. Il prévoit que la consultation populaire peut être organisée par le conseil communal, soit d'initiative, soit à la demande d'une fraction de la population. Toutefois, lorsque la demande de la population est soutenue par un nombre suffisant de signatures, le conseil communal est en principe tenu d'organiser la consultation populaire demandée.

Dans la première hypothèse, l'initiative émane du conseil communal seul, sans que l'accord d'une autre autorité soit requis. Ce n'est qu'au niveau de la mise en œuvre de la consultation populaire que l'intervention d'un autre organe communal, le collège des bourgmestre et échevins, est prévue.

Dans la seconde hypothèse, la loi exige que l'initiative soit soutenue par un certain pourcentage de la population qui varie en fonction de la taille de la commune. Le taux fixé est dégressif. Le collège des bourgmestre et échevins est donc astreint à vérifier la validité des différentes signatures afin de s'assurer que le nombre de signatures valables, c'est-à-dire de signatures émises par des personnes répondant aux différentes conditions posées par la loi, est atteint.

## 2. *Référendum à la demande d'une autorité*

Au niveau provincial, le régime est mutatis mutandis identique à celui qui vient d'être décrit.

### **C - Contenu**

En vertu de l'Article 41 de la Constitution, les consultations populaires ne peuvent porter que sur des matières d'intérêt communal lorsqu'elles sont organisées au niveau communal et sur des matières d'intérêt provincial lorsqu'elles le sont au niveau provincial. Les textes de loi respectifs précisent ce qu'il y a lieu d'entendre par matières d'intérêt communal et provincial.

En outre, tant la loi communale que la loi provinciale excluent de la consultation populaire les questions de personnes ainsi que les questions relatives aux comptes, budgets, taxes et rétributions.

Par ailleurs, dans la mesure où cette compétence est dévolue à la loi par l'Article 7 de la Constitution, les consultations populaires ne peuvent porter sur une modification des limites territoriales des provinces ou des communes.

### **D - Validité formelle**

Que ce soit au niveau communal ou provincial, sont soumises au référendum des « questions de principe » selon la terminologie usitée dans le présent questionnaire. Ces questions doivent être formulées de manière à ce qu'il puisse y être répondu par oui ou non (voy. art. 327 de la loi du 10 avril 1995 complétant la nouvelle loi communale par des dispositions relatives à la consultation populaire communale, M.B. 21/04/1995 et art. 140-10 de la loi du 25 juin 1997 modifiant la loi provinciale, M.B. 05/07/1997).

### **E - Validité matérielle**

Dans la mesure où sont seules soumises au référendum des questions de principe, cette rubrique n'appelle pas directement de réponse.

Toutefois, il est clair que la question posée sous forme de "question de principe" doit rester dans le cadre que la loi communale ou la loi provinciale lui assigne, notamment porter sur les questions d'intérêt communal ou provincial. Si tel n'est pas le cas, l'autorité de tutelle peut intervenir et/ou des recours juridictionnels sont ouverts (cf. infra).

### **F - Propagande et votation**

Il est prévu dans les textes de loi que les administrations communale et provinciale mettent à la disposition des habitants une brochure présentant le sujet de la consultation populaire de manière objective. C'est l'administration qui est chargée de sa rédaction sous la coordination du

collège échevinal. Outre cette présentation objective, la brochure doit comporter, d'une part, la ou les questions sur lesquelles les habitants vont être consultés et, d'autre part, le cas échéant, la note motivée déposée par la population avec la demande de consultation populaire.

Tous les habitants de la commune, ressortissants belges ou étrangers, âgés de 16 ans ou plus sont invités à participer. Leur participation n'est toutefois pas obligatoire.

Ces règles s'éloignent de celles qui régissent en général les élections, tant en ce qui concerne l'âge requis (en principe 18 ans) que la nationalité (non exigée pour les consultations) et la participation au scrutin (ici facultative alors qu'elle est en règle obligatoire pour les élections).

Cependant, il n'est procédé au dépouillement des résultats que si le quorum de participation fixé par les lois respectives, à savoir, au niveau provincial, 10% des habitants de la province et, au niveau communal, entre 10 et 20% des habitants de la commune, est atteint. Les opérations électorales se réalisent en un seul jour, le dimanche entre 8 heures et 13 heures.

Afin d'éviter des interférences entre scrutins différents, les consultations ne peuvent être organisées au cours des seize mois qui précèdent les élections communales ou provinciales. En outre, les consultations communales ou provinciales ne peuvent être organisées au cours des quarante jours qui précèdent l'élection directe de la Chambre des représentants, du Sénat, des Conseils de Région ou de Communauté et du Parlement européen.

Les habitants de la commune ou de la province ne peuvent être consultés qu'une seule fois par semestre et six fois au plus par législature communale ou provinciale. Au cours de la période qui s'étend d'un renouvellement des conseils communaux ou provinciaux à l'autre, il ne peut être organisé qu'une seule consultation sur le même sujet.

Notons enfin que la problématique de la propagande n'est abordée ni dans les textes de loi ni dans les travaux parlementaires y relatifs.

### **G - Les effets du référendum**

Le droit positif belge ne connaît à l'heure actuelle que le référendum consultatif. Les habitants du Royaume sont donc uniquement invités à formuler un avis sur une question donnée portant sur des intérêts communaux ou provinciaux. Une fois cet avis recueilli, le pouvoir décisionnel du conseil communal ou provincial reste intact. Ces derniers doivent toutefois prendre le soin de motiver les décisions qu'ils prennent relativement à des questions qui ont fait l'objet d'une consultation populaire.



### **H - Parallélisme des formes et normes prévoyant le référendum**

Dans la mesure où la Belgique ne connaît pas, dans l'état actuel du droit, le référendum décisionnel, cette rubrique n'appelle pas de réponse.

### **I - Règles particulières relatives à l'initiative populaire**

L'initiative populaire n'existe qu'au niveau des communes et des provinces. Si le nombre de signatures requises est atteint, la consultation doit en principe être organisée.

Le contrôle de la validité des signatures repose sur l'organe exécutif (collège des bourgmestre et échevins ou députation permanente). Dès le contrôle achevé, le collège des bourgmestre et échevins ou la députation permanente doit inscrire le point à l'ordre du jour soit du conseil communal soit du conseil provincial, à moins que ces conseils ne soient manifestement pas compétents. En cas de doute, c'est au conseil concerné de trancher.

### **J - Contrôle juridictionnel**

La décision des conseils communaux ou provinciaux d'organiser ou de ne pas organiser une consultation populaire est soumise au contrôle juridictionnel ordinaire.

Toute personne justifiant d'un intérêt peut dès lors introduire contre ces décisions un recours en suspension et/ou en annulation devant le Conseil d'Etat pour violation des formes substantielles ou prescrites à peine de nullité ainsi que pour excès ou détournement de pouvoir.

Il faut également noter que ces décisions sont en outre soumises au contrôle des autorités de tutelle.

### **K - Les expériences de référendum**

Des référendums consultatifs ont été organisés uniquement à l'échelle communale. Ils sont toutefois assez peu nombreux et portent le plus souvent sur des objets très concrets, tels des problèmes de parking, d'implantation de bâtiment, etc.

## **III - Avenir du référendum**

Les législations qui organisent le référendum dans les communes et les provinces ne font pas actuellement l'objet d'une réforme. Toutefois, une révision de l'Article 41 de la Constitution est actuellement à l'étude. Le constituant envisage en effet de régionaliser cette matière qui jusqu'ici est réglée par une loi fédérale.

En outre, comme nous l'avons indiqué ci-avant, la Constitution est ouverte à révision en vue de permettre aux Régions d'instituer et d'organiser une

consultation populaire dans les matières qui relèvent de leurs compétences. Par ailleurs, plusieurs propositions de loi, décret et ordonnance visant à instaurer le référendum au niveau fédéral et régional ont été déposées devant les diverses assemblées parlementaires.

Ces divers projets de réforme vont essentiellement dans le sens de la mise en place de référendums consultatifs plutôt que décisionnels.

## **BULGARIE / BULGARIA**

### **I - Référendums nationaux**

#### **A - Quel est le fondement juridique?**

1. Oui. L'Article 42 de la Constitution bulgare stipule que les citoyens ayant l'âge de 18 ans, à l'exception de ceux qui sont mis sous la tutelle et ceux qui purgent une peine privative de liberté, ont le droit de participer à des référendums dont l'organisation et les modalités à suivre sont réglementées par la Loi sur les consultations populaires (publiée dans le J.O. No 100/1996, amendée J.O. No 69/99).

2. L'Article 5 de la Loi sur la consultation populaire stipule que ne peuvent être réglées par référendum les questions relatives à la modification de la Constitution, aux pouvoirs de la Grande Assemblée nationale, au budget de l'Etat et aux impôts, aux compétences des organes judiciaires, aux pouvoirs de la Cour constitutionnelle et autres questions pour le règlement desquelles des modalités spéciales sont prévues par la loi. Sur toutes les autres questions d'importance nationale il est possible d'organiser des référendums. La Constitution ne contient pas de restrictions à ce sujet.

#### **B - Quel est le type de référendum? Qui décide?**

##### *1. Référendum obligatoire*

Il n'y a pas de référendums obligatoires.

La Constitution bulgare ne contient pas de dispositions imposant l'exigence de soumettre au référendum certains textes avant ou après leur adoption par l'Assemblée nationale.

##### *2. Référendum à la demande d'une autorité*

- a. Oui, Le référendum peut être organisé à la demande d'une autorité. Dans l'Article 6 de la Loi sur la consultation populaire sont énumérées les autorités qui le droit de soumettre des propositions en ce sens. Ces autorités sont: au moins un quart des députés, le Conseil des ministres et le Président de la République. En même temps l'Article 7 de la même loi qui dispose notamment que toute proposition relative à l'organisation d'un référendum doit être approuvée par le Parlement.
- b. Quant à l'autorité qui décide de l'organisation d'un référendum, il faut dire que cette question est réglementée par l'Article 84, p. 5 de la Constitution qui dispose que la décision de l'organisation de référendum national est prise par l'Assemblée nationale. Une fois la décision de l'Assemblée nationale prise, le Président de la République fixe la date du référendum (Article 98, p.1 de la Constitution).

3. *Référendum à la demande d'une fraction du corps électoral*

- a. Les électeurs ne peuvent pas exiger l'organisation d'un référendum.
- b. Une demande de référendum ne peut pas porter sur un texte déjà adopté par le Parlement.

4. *Procédure impliquant plusieurs autorités*

Une telle procédure n'existe pas. Conformément à l'Article 84, p. 5 de la Constitution bulgare l'Assemblée nationale se prononce sur toute proposition de référendum faite auprès d'elle.

5. *Rôle du Parlement*

Le rôle de l'Assemblée nationale en matière d'organisation de référendum est défini dans l'Article 84, p. 5 de la Constitution aux termes duquel l'Assemblée nationale décide de l'organisation d'un référendum sur la base d'une proposition concrète faite auprès d'elle.

### **C - Contenu**

1. *Types d'actes soumis au référendum*

La Constitution ne peut être modifiée par voie de référendum et donc le référendum à cette fin n'est ni prévu ni nécessaire.

2. *Les matières sur lesquelles peut porter le référendum* sont définies dans l'Article 5 de la Loi sur la consultation populaire. Conformément à cette disposition ne peuvent être réglées par référendum les questions relatives à la modification de la Constitution, aux pouvoirs de la Grande Assemblée nationale, au budget de l'Etat et aux impôts, aux compétences des organes judiciaires, aux pouvoirs de la Cour constitutionnelle et autres questions pour le règlement desquelles des modalités spéciales sont prévues par la loi. Sur toutes les autres questions d'importance nationale il est possible d'organiser des référendums. La Constitution ne contient pas de restrictions à ce sujet.

### **D - La forme du texte soumis au référendum (la validité formelle)**

1. *Quelle est la forme possible d'un texte soumis au référendum ?  
Soumettre des questions auxquelles il faut répondre par «oui» ou «non».*

2. Oui.

### **E - Limites matérielles du référendum (la validité matérielle)**

Voir la réponse G-2.

Oui.

## **F - Campagne /propagande/ financement et votation**

### *1. Campagne et propagande*

- a. - b. Une fois posée la question sur laquelle porte le référendum, les électeurs ne reçoivent de note explicative.
- c. La Loi sur la consultation populaire ne contient pas de règles pour la participation à la campagne politique relative à l'organisation du référendum. Il n'y a pas de limitations pour la participation des partis politiques et des organisations non gouvernementales à cette campagne.
- d. Les médias publics sont tenus de réserver une place égale aux partisans et aux adversaires du texte proposé.
- e. Cette exigence est valable aussi pour les médias privés.

Conformément à l'Article 7, al. 3 de la Loi sur la consultation populaire, la décision de l'Assemblée nationale sur l'organisation d'un référendum définit aussi les modalités de son déroulement et de la campagne qui le précède conformément au principe de l'égalité.

### *2. Financement*

- a. - b. Il n'y a pas qu'une seule disposition législative en matière de financement qui stipule notamment stipule que les frais d'organisation d'un référendum national sont assumées par le budget de l'Etat.

### *3. Votation*

- a. Les opérations électorales sont réalisées en un seul jour.
- b. Il n'y a pas de décalage horaire entre les différents centres de vote.
- c. La participation de chaque électeur n'est pas obligatoire.
- d. La consultation est considérée valable, en présence de deux conditions: avoir obtenu la participation au référendum de plus de 50% des inscrits et avoir obtenu les votes favorables de plus de la moitié des bulletins valides.

## **G - Les effets du référendum**

Toutes les questions posées sous cette rubrique sont réglementées par deux dispositions de la Loi sur la consultation populaire, à savoir :

L'Article 3 qui stipule que les questions qui font l'objet d'un référendum ne sont pas soumises à la suite à une approbation ou confirmation sauf si la loi n'en prévoit autrement.

L'Article 18, al. 3 qui dispose que l'Assemblée nationale adopte les actes qui sont nécessaires à l'exécution de la décision de référendum national.

## **H - Parallélisme des formes et normes prévoyant le référendum**

1. Une disposition acceptée/rejetée par référendum ne peut pas être révisée/introduite par une procédure excluant le référendum.
2. La révision d'une norme constitutionnelle prévoyant la possibilité d'organiser un référendum est soumise aux règles générales de la révision de la Constitution. La révision d'une norme législative en la matière doit respecter de son côté les règles en vigueur pour la révision des lois par l'Assemblée nationale.

## **I - Règles particulières relative à l'initiative populaire**

1. - 4. Les électeurs n'ont pas le droit à l'initiative en matière d'organisation de référendum.

## **J - Contrôle juridictionnel**

1. - 4. La décision de l'Assemblée nationale d'approuver ou de rejeter la tenue d'un référendum est susceptible de contrôle de constitutionnalité de la part de la Cour constitutionnelle comme d'ailleurs tous les autres actes de l'Assemblée nationale. Quant à la légalité des résultats du référendum elle peut être contestée par les ayants droit de proposer la tenue de référendum. Le recours est alors porté devant la Cour suprême administrative.

## **K - Les expériences de référendum**

1. - 8. Depuis l'entrée en vigueur de la nouvelle Constitution en 1991, aucun référendum n'a été organisé dans le pays. Il n'y a pas eu d'événements qui ait suscité un intérêt très vif au sein de l'opinion publique.

## **II - Référendums régionaux ou locaux**

### **A - Quel fondement juridique?**

1. L'Article 12 de la Constitution de la République de Bulgarie accorde aux citoyens le droit de participer à des référendums sans préciser s'il s'agit de référendums nationaux ou locaux.
2. Il y a en effet une loi, la loi sur la consultation populaire, qui permet de recourir au référendum.
3. La République de Bulgarie est un Etat unitaire. Un référendum local peut être organisé au niveau des communes, des régions, des mairies ou d'une localité.
4. Le référendum local porte seulement sur des questions d'importance locale relevant de la compétence des organes d'autogestion locale et dont le règlement par voie de référendum est expressément prévu par la loi.

**A1 - A quel niveau?**

1. La République de Bulgarie est un Etat unitaire.
2. Non.
3. Non.
4. Au niveau des communes, des mairies ou d'une localité.
5. Voir la réponse II-A-4 ci-dessus.
6. Non.

**B - Quel est le type de référendum? Qui décide?**

1. Il n'y a pas de référendums obligatoires. Il n'y a pas de questions qui soient obligatoirement soumises au référendum.
2. Quant à la demande d'une autorité au niveau local on recourt à l'application de l'article 22 de la Loi sur la consultation populaire le droit d'initiative pour l'organisation d'un référendum local au niveau de la municipalité ont:
  1. au moins un quart des inscrits,
  2. au moins un quart des conseillers municipaux,
  3. le maire de la municipalité,
  4. le gouverneur de la région.

Le droit d'initiative pour l'organisation d'un référendum local au niveau de l'arrondissement ont:

1. au moins un quart des inscrits,
2. le maire de l'arrondissement,
3. le maire de la municipalité.

Le droit d'initiative pour l'organisation d'un référendum local au niveau de la mairie ou de la localité ont:

1. au moins un quart des inscrits de la mairie ou de la localité,
2. au moins un quart des conseillers municipaux,
3. le maire de la mairie,
4. le maire de la municipalité.

La demande d'organisation du référendum local est soumise par écrit au président du conseil communal qui doit en informer les conseillers communaux et fixer la date de la séance pour son examen.

Au cas où la demande d'organisation d'un référendum local serait faite par plus de la moitié des inscrits, le conseil communal ne peut pas refuser l'organisation du référendum.

### **C - Contenu**

1. Sont soumis aux référendums locaux aussi les décisions du conseil municipal portant sur:

- des contrats d'emprunts avec les banques ou autres institutions financières;
- des ventes, concessions, baux ou contrats de rente de biens municipaux de valeur considérable ou d'importance particulière pour la municipalité;
- la construction de bâtiments, d'ouvrages d'infrastructure ou autres équipements pour les besoins de la municipalité et les investissements pour lesquels ne peuvent être procurés par les recettes ordinaires de la municipalité.

Le référendum local ne peut pas porter sur la sécession, ni sur une modification des limites territoriales.

### **D - La forme du texte soumis au référendum (la validité formelle)**

Voir les réponses I-D.

### **E - Limites matérielles du référendum (la validité matérielle)**

Voir les réponses II-A-4 et II-C-1.

### **F - Propagande/propagande financement et votation**

La décision par laquelle le conseil municipal se prononce sur la proposition d'organisation de référendum contient quelques éléments, à savoir: la date exacte de la votation, qui est fixée au plus tôt un mois avant et au plus tard deux mois après la prise de la décision de son organisation, la définition précise de la question que les électeurs doivent accepter ou rejeter, la procédure et les modalités à suivre pendant la campagne électorale qui doit se dérouler suivant le principe de l'égalité, ainsi que la question relative au financement du référendum.

### **G - Les effets du référendum**

La consultation est considérée valable à condition que plus de 50% des inscrits ont participé. La proposition est acceptée à condition que plus de la moitié des bulletins valides à été favorable.

La légalité du référendum peut être contestée par les autorités ayant le droit d'initiative populaire. Le recours est porté dans ce cas devant le tribunal départemental.

L'exécution de la décision du référendum revient au maire de la mairie.



### **H - Parallélisme des formes et normes prévoyant le référendum**

1. Une disposition acceptée/rejetée par référendum ne peut pas être révisée/introduite par une procédure excluant le référendum?
2. La révision d'une norme constitutionnelle prévoyant la possibilité d'organiser un référendum est soumise aux règles générales de la révision de la Constitution. La révision d'une norme législative en la matière doit respecter de son côté les règles en vigueur pour la révision des lois par l'Assemblée nationale.

### **I - Règles particulières relatives à l'initiative populaire**

Les électeurs n'ont pas droit d'initiative en matière d'organisation de référendum.

### **J - Contrôle**

La légalité des résultats des référendums locaux peut être contestée par les ayants droits de soumettre des propositions en matière d'organisation de référendums locaux. Le recours est porté devant le tribunal départemental respectif

### **K - Les expériences de référendum**

1. Depuis l'entrée en vigueur de la nouvelle Constitution pas mal de référendums locaux ont été organisés.
2. A tous les niveaux.

## **III - Avenir du référendum**

A l'étape actuelle n'est pas prévu de réforme de référendum.

## **CROATIE / CROATIA**

### **I - National referendums**

#### **A - Legal basis**

1. The following Articles of the Constitution are directly connected with referendums: Article 80 (line 9); Article 86 (paragraphs 1, 2, 3, 4, 5 and 6); Article 97 (line 2); Article 128 (line 9) and Article 141 (paragraphs 4 and 5).

2. On grounds of the constitutional provisions, which provide – inter alia – that a law on referendums shall be passed, the Act on referendum and other forms of personal participation in matters of state government and local and regional self-government (published in “Narodne novine” 33/96, 92/01) was passed (hereafter referred to as “the Act”). The Act has 68 Articles. Article 8 has subArticles from “a” to “h”.

(Matters that might be put on a referendum are dealt with later).

While the Constitution deals with national referendums only, which are binding, the Act also contains provisions about referendums on local and regional levels which can be binding and consultative (Article 57 of the Act).

(The Act uses the term “state referendum” for “national” referendum. In Croatian the term “obligatory” referendum sometimes is used in a sense of a binding referendum, and not a referendum that must be called.)

#### **B - What type of referendum may be used ? Who decides?**

1. *Mandatory referendums* : The provision of Art. 141 paragraph 4 of the Constitution provides that “any decision concerning the association of the Republic of Croatia shall be made on a referendum by a majority vote of the total number of electors in the State”. According to Article 86 paragraph 3 of the Constitution, the Parliament (Hrvatski sabor) shall call a referendum on the issues set out in paragraphs 1 and 2 of that Article when requested to do so by ten percent of all voters in the Republic of Croatia. (The issues being : a proposal for the amendment of the Constitution, a bill or any other issue within the competence of the Parliament, and a proposal for the amendment of the Constitution or any other issue which the President of the Republic considers to be important for the independence, unity and existence of the Republic of Croatia.)

2. *Referendums called by an authority*

- a. Yes, referendums can be called by authorities.
- b. The Croatian Parliament and the President of the Republic in case of national referendums. Local and regional referendums are called by representative

bodies of units of local and regional self-government. The government of the Republic may call consultative referendums at the local and regional level.

3. *Referendums held at the request of part of the electorate*

- a. As in already mentioned Article 86 paragraph 3 of the Constitution, ten percent of all voters in the Republic of Croatia may demand that referendum be called. Article 8.f paragraph 2 of the Act prescribes that an organisational committee (appointed by voters) checks the legality of the referendum procedure, which means that it checks the lists of signatures and ascertains the number of voters who expressed the need to have a referendum (also Article 8.g of the Act).

(According to Article 8.e of the Act, a voter writes in the first empty line of a list of voters his/her name, family name, identification number and signs the list. Since Article 8.e of the Act prescribes that a voter may sign the list only in one place, it can be concluded that checking signatures might mean checking this fact too. The matter of illiterate voters is solved in such a way that an illiterate voter may come to the referendum with a literate person who will circle the solution which the voter chooses.)

- b. A request for a referendum can be related to a text already adopted by Parliament and a new text may be put forward by popular initiative.

4. *Procedures involving more than one authority*

According to Article 86 paragraph 2 of the Constitution the President of the Republic may, at the proposal of the Government and with the counter-signature of the Prime Minister, call a referendum on a proposal for the amendment of the Constitution or any other issue which he considers to be important for the independence, unity and existence of the Republic of Croatia. The wording is: “may ... call”, not “shall ... call”, therefore, without their consent, there is no call for a referendum. But where a referendum is requested by ten percent of all voters, the Parliament “shall call a referendum”. Parliament or its members do not have to agree to that. As regards an alternative proposal to the one before Parliament, yes.

5. *Role of Parliament*

Parliament cannot oppose the holding of referendum, but it may later take a decision that is contrary to the decision of a referendum. State bodies and local and regional self-government bodies may not regulate a matter contrary to a decision reached on referendum for one year from the day on which referendum was held (Article 8 paragraph 2 of the Act). Moreover, for six months after a referendum has been held, another referendum on the same issue may not be called (Article 8 paragraphs 2 and 3 of the Act).

According to paragraph 4 of Article 8, paragraph 2 does not apply in cases where a referendum is called on the initiative of ten percent of all voters and where a state referendum is called in connection with a decision concerning the association of Croatia into alliances with other states. The Act does not expressly answer other questions under the title “Role of Parliament”.

**C - Content***1. Types of acts submitted to referendum*

No, not only on proposals for constitutional amendments.

No, not mandatory in the case of a constitutional amendment.

A referendum may be called on “any issue” within the competence of the Croatian Parliament, and on “any issue” which the President of the Republic considers to be important... Article 141 of the Constitution (under the title “Association and Secession”) states, among other conditions, that any decision concerning the association of the Republic of Croatia shall be made on a referendum by a majority vote of the total number of electors in the State.

*2. Matters to which referendums may relate*

No, they are not reserved for particular matters.

Matters of association and secession are to be put to a referendum by force of the Constitution. Article 141, paragraph 2 excludes this situation : “It is prohibited to initiate any procedure for the association of the Republic of Croatia into alliances with other states if such association leads, or might lead, to renewal of a South Slav state community or to any Balkan state form of any kind.”

**D - Form of the text submitted to referendum (formal validity)**

1.-2. a., b., c. Texts submitted to a referendum may take any form mentioned in the questionnaire.

According to Article 8.b of the Act, the issue to be submitted to referendum has to be “clearly formulated”; according to provisions of Article 33 of the Act, the issue or proposal on the voting ballot must be formulated in such a way that the voter can, without any doubt, decide whether he/she is “FOR” or “AGAINST” the proposal (On the voting ballot, the voter circles word “FOR” or “AGAINST” the proposal, and where there are more proposals, then the ordinal number of the proposal is encircled).

d. Not only on a single question, the vote can be on several questions.

e. Yes, the question (questions) have to be clear and suggestion-free.

**E - Substantive limits on referendums (substantive validity)**

There is no express provision on the prohibition of a referendum, but Article 141 paragraph 2 cited above prohibits the initiation of “any procedure for the association of the Republic of Croatia into alliances with other states if such association leads, or might lead, to renewal of a South Slav state community or to any Balkan state form of any kind”. The constitutional provision of Article 128 line 9 states that the Constitutional Court shall “supervise the constitutionality and legality of ... national referendums ...”. While doing so, the Court would certainly bear in mind international, constitutional and other legal rules.

## **F - Campaigning, funding and voting**

### *1. Campaigning*

- a. Yes, Article 9 of the Act prescribes that a decision by which a referendum is called must state reasons.
- b. There are no direct answers to the questions in the Act. It can be interpreted in a way that whoever calls a referendum draws up the explanatory documents. In a case where the voters demand the calling of a referendum, the decision about their political wish is worded by the “organisational committee”. Participation of political parties and authorities is not expressly stated. Public or private media are not expressly required to allocate equal time to supporters and opponents of the text.

### *2. Funding*

- a., b. Part VI of the Act deals with costs of holding referendums but does not regulate the phase before the referendum. For instance, it does expressly prohibit the use of budgetary means in the period preceding the vote to support one of the solutions. According to Article 47, the cost of national and consultative referendums are covered by the state budget. Costs of regional and local referendums are covered by the units of the territory for which the referendum is called. There are no provisions which answer the other questions.

### *3. Voting*

- a. Voting takes place on one day, between 7.00 a.m. to 7.00 p.m. (Article 36 of the Act).
- b. There is no such time-lag in the country. Local referendum bodies ascertain results of voting and send their reports (no later than 48 hours after voting is finished) to the State commission of the results of the referendum. That commission reports the total results to the body which has called the referendum and to the media and public in general.
- c. No, it is not compulsory to cast a vote (Article 7 of the Act).
- d. A decision is passed by the majority of voters who voted ; minimum turnout : the majority of the total number of voters, unless otherwise stated by the Constitution (Article 6 of the Act). In the case of Article 141 paragraph 4, it is a “majority vote of the total number of electors in the State”.

## **G - Effects of referendums**

1. National referendums are binding ; local and regional referendums are binding but may also be consultative.

2. A decision adopted on a referendum is not a regulation per se, it is formulated in such a way that it asks for an answer either “for it” (or “yes”) or “against it (or “no”). The competent body has to transform that decision into a law passed by the Parliament or decision passed by local and regional bodies. State bodies and local and regional self-government bodies may not regulate a matter contrary to a decision reached on referendum for one year from the day on which referendum was held. Moreover, for six months after a referendum has been held another referendum on the same issue may not be called (Article 8 paragraphs 2 and 3 of the Act). According to paragraph 4 of Article 8, paragraph 2 does not apply in cases where a referendum is called on the initiative of ten percent of all voters and where a state referendum is called in connection with a decision concerning the association of Croatia into alliances with other states. The Act does expressly answer other questions under the title “Role of Parliament” in item B.5.

### **H - Parallelism of procedures and rules on referendums**

1.-2. Yes, but not before one year has passed (Article 8 of the Act).

### **I - Specific rules on popular initiatives**

1. Time-limit for collecting signatures is 15 days (Article 8.b paragraph 2, line 2).
2. Organisational committee founded by voters.
3. Checking of signatures is done by the organisational committee (see B.3).
4. Article 8.h of the Act : Croatian Parliament, upon receiving a demand to hold a referendum may apply within 30 days to the Constitutional Court to ascertain whether the referendum question or the way in which voters expressed their need for referendum is in conformity with the Constitution and the Act. Where the Court finds that either issue is not in accordance with Constitution or law, a referendum shall not be called. (It is interesting to note that very recently a case was submitted to the Constitutional Court challenging the constitutionality of Article 8.h of the Act.)

### **J - Judicial review**

1. There is no automatic judicial review. The implementation of the Act so far does not give material to answer the question.
2. As in H-4.
3. The constitutionality and legality of national and local and regional referendums is reviewed by the State Commission for Referendums and the Constitutional Court of the Republic of Croatia (Article 49 of the Act). The State Commission is appointed by the Croatian Parliament, the members are chosen from among judges of the Supreme Court and other distinguished lawyers.
4. Any voter may lodge an appeal with the State Commission within 48 hours after the close of voting. Against the decision of the State Commission, a voter has a right to appeal to the Constitutional Court, also within 48 hours, and the Court must deliver its decision within 48 hours (Articles 50, 52 and 56 of the Act).

## **K - Experiences of referendums**

1-8. No national referendum took place after May 19, 1991. Not enough data is available at the moment to reply to the questionnaire (Compared to a number of local referendums which were held in former Yugoslavia, today's referendums are very rare). The documentation of the Constitutional Court has registered several cases in which a consultative referendum about boundaries of regions (županije) was held and voters acted under the impression that their voting was binding for the legislator. There was also a case in which the applicants claimed that a change of Parliament with two houses to a Parliament with one house had to be put to a national referendum.

## **II - Regional or local referendums**

### **A - Legal basis**

1. No, but the Constitution says that a law on referendums shall be passed (Article 86 paragraph 6). The Act regulates regional and local referendums.
- 2.-3. Yes.
4. Local referendums may be called on any matter within the competence of local or regional government (Article 4 paragraph 2 of the Act).

### **A1 - At what level?**

1.-5. The levels are : municipalities, towns and regions. All provisions concerning the competence of the State Commission and Constitutional Court apply to national and local referendums. The Government of the Republic may call consultative referendums at the local and regional levels.

### **B - What type of referendum can be held? Who decides?**

1.-2. There is no mandatory referendum. Referendums are called by representative bodies of local and regional units. Referendums at the request of part of the electorate are not held at the local and regional levels.

### **C - Content**

Regional and local referendums can be called only on issues which fall within the competence of regional and local authorities. Geographical boundaries of regions, towns or municipalities may be a referendum issue in consultative referendums, but these boundaries are determined by laws of the State Parliament, which is not obliged to follow opinion of voters.

### **D - Form of the text submitted to referendum (formal validity)**

As regards the form of the text submitted to referendum, the closest answer would be a concrete proposal, so that the voter can decide whether he or she is "for it" or "against it" (Article 33 of the Act). There are not enough elements in the legal provisions for a more

detailed answer, considering the cases in which they were applied. The vote may concern not only a single question, but it can also be on several issues.

### **E - Substantive limits on referendums**

According to Article 8.h of the Act, where the Constitutional Court finds that a question put on a referendum is not in accordance with the Constitution and laws, a referendum shall not be called.

### **F - Campaigning (funding) and voting**

#### *1. Campaigning*

- a. Article 9 of the Act prescribes that the decision by which a referendum is called has to state reasons for it.
- b., e. The organisational committee of a body that calls a referendum draws up an explanatory document. There are no express provisions concerning other questions about the role of political parties in campaigning. The Act does not expressly require the allocation of equal time for supporters and opponents of the text and does not mention the behaviour of any media in the matter.

As regards funding Part VI of the Act deals with the costs of referendums. According to Article 47, the cost of national and consultative referendums are covered by the state budget. Costs of regional and local referendums are covered by units of the territory for which the referendum is called. There are no provisions that answer the other questions.

#### *3. Voting*

- a. Voting takes place in one day.
- b. No, it is not possible to know the results of other voting centers until the total results are made public.
- c. No, it is not compulsory for all voters to cast a vote.
- d. Quorum is regulated as in a national referendum : a majority of voters, where a majority of the total number of voters vote.

### **G - Effects of referendums**

1. Regional and local referendums can be consultative or binding.

2.-3. The provisions of the Act and its implementation do not form a basis for substantially answering these questions.

### **H - Parallelism of procedures and rules on referendums**

1.-2. Yes, after a set time - one year - a competent body may pass a legal act or decision whose contents are contrary to a decision of a referendum.



### **I - Specific rules on popular initiatives**

A popular initiative is regulated only in connection with a national referendum.

### **J - Judicial review**

Constitutionality and legality of national, local and regional referendums is reviewed by the State Commission and the Constitutional Court.

### **K - Experiences of referendums**

The documentation of the Constitutional Court has registered several cases in which a consultative referendum about boundaries of regions (županija) was held, and voters acted under the impression that their voting was binding for the legislator.

## **III - The future of referendums**

1.-3. No reform is expected. As already stated, very recently a case challenging the constitutionality of Article 8.h was lodged with the Constitutional Court.

## **CHYPRE / CYPRUS**

### **I - National Rereferendums**

#### **A - Legal basis**

1. No.
2. A law, namely the Referendums Law of 1989 (206/1989) provides for the use of referendums. The matters on which a referendum may be called are particularly important matters of public interest.

#### **B - What type of referendum may be used? Who decides?**

1. No.
2.
  - a. Yes.
    - b. Referendums are called by a decision of the House of Representatives (Parliament) which is taken following a relevant proposal by the Council of Ministers.
      - a. No. As already indicated referendums are called by a decision of Parliament. This means by a simple majority of Parliament.
      - b. Yes. If a such a proposal is made by the Council of Ministers and is adopted by Parliament (a simple majority). A new text cannot be put forward by popular initiative.
3. The decision to submit a text to popular vote must have the approval of two bodies namely the Council of Ministers and Parliament.

The Head of State or the Head of the Government has no power to instigate a referendum.

However under s. 3(3) of the above Law the decision of Parliament is forwarded to the President of the Republic (Head of State) for promulgation by publication of the decision in the Official Gazette of the Republic, as provided in Article 52 of the Constitution.

Therefore Article 52, which runs as follows, comes into play:

“The President and the Vice-President of the Republic shall, within fifteen days of the transmission to their respective offices of any law or decision of the House of Representatives, promulgate by publication in the official Gazette of the Republic such law or decision unless in the meantime they exercise, separately or conjointly, as the case may be, their right of veto as in Article 50 provided or their right of return as in Article 51 provided or their right of reference to the Supreme Constitutional Court as in Articles 140

and 141 provided or in the case of the Budget their right of recourse to the Supreme Constitutional Court as in Article 138 provided.”

A referendum cannot be requested by part of the electorate.

A referendum cannot be based on a popular initiative putting forward an alternative proposal to the one before Parliament.

4. Role of Parliament. Under s. 3(1) of the above quoted law “the referendum is called by a decision of Parliament which is taken following a relevant proposal of the Council of Ministers”. Under s. 3(2) the proposal of the Council of Ministers for the calling of a referendum is submitted to Parliament following a decision of the Council of Ministers which acts *ex proprio motu* on matters, which under the Constitution, belong to the Executive Power, and upon a proposal of Parliament, on matters which belong to the Legislative Power, so long as the Council of Ministers agrees with such a proposal.

The role of Parliament is as delineated in the aforequoted provisions of the law. Thereunder Parliament cannot oppose the holding of a referendum by adopting a counter proposal on the same matter, nor can it submit a counter proposal to popular vote. Parliament is only entitled to accept or reject the proposal of the Council of Ministers. There is no time limit for Parliament to give its opinion. Parliament is not required to adopt a (new) piece of legislation.

### **C - Context**

1. Referendums are not held only on proposals for constitutional amendments.

A referendum is not mandatory in the case of constitutional amendments.

As already indicated a referendum is called on particularly important matters of public interest.

2. Referendums are reserved for particularly important matters of public interest.

### **D - Form of the text submitted to referendum (formal validity)**

1. The form of the text submitted to referendum depends exclusively on the wording of the proposal of the Council of Ministers.

2. There is no provision in the above Law regarding the matters specified in question D-2.

### **E - Substantive limits on referendums (substantive validity)**

There is no provision in the relevant law regarding the matters specified in question E. However, under Article 169 of the Constitution international treaties acceded to by the Republic have superior force to any Municipal Law and under Article 179 of the Constitution, the Constitution is the Supreme Law of the Land.

**F - Campaigning, funding and voting**

The aforesaid Law does not make provision with regard to the matters indicated in the question. The only provision is the one of section 4 which runs as follows:

“In the decision of Parliament calling a referendum there is specified the matter to which the referendum relates in the form of a question, which can be answered positively or negatively, there is fixed the date of the referendum and generally there is mentioned every other detail necessary for the holding of the referendum.”

Regarding campaigning the freedom of expression is guaranteed by the Constitution. Therefore campaigning cannot be restricted to political parties. Every private individual or group of persons are entitled to take part.

The operation of public media as well as that of private media is governed by Law. Thereunder public and private media are bound to allocate equal time to supporters and opponents of the text. There are special provisions regarding allocation of time to political parties and private individuals.

**2. *Funding***

There is no provision in the relevant Law for the matters specified in the question.

**3. *Voting***

- a. Voting takes place on one day.
- b. No.
- c. No.
- d. A simple majority is sufficient.

**G - Effects of referendums**

1. The electorate is simply asked to answer “Yes” or “No”.

There is no provision in the law regarding question G-2 and 3.

**H - Parallelism of procedures and rules on referendums**

1. The law does not make provision on the matters specified in the question. Whether the provision can be revised or adopted by a procedure which does not allow a referendum it depends exclusively on the nature and content of the provision. If it is a matter which, under the Constitution, falls within the competence of the executive it can be resolved by the executive. If it falls within the competence of Parliament it can be resolved by Parliament.

2. There is no constitutional provision which allows referendums. The legislative, same as all legislative provisions, can be revised by Parliament.

### **I - Specific Rules on popular initiatives**

The relevant law does not contain provisions regarding the matters specified in the question.

#### **J - Judicial review**

1. There is no provision in the Law regarding the matters specified in the question. Under the existing legal regime there is no right of direct appeal to the Court against a decision to hold or not to hold a referendum. Nor is there automatic judicial review. Judicial review can take place only at the instance of the President of the Republic as provided in Article 52 of the Constitution (quoted at p. 2 ante).

2. As already indicated judicial review is possible only at the initiative of the President of the Republic on the ground that the decision to hold a referendum “is repugnant to or inconsistent with any provision of the Constitution”.

3. The results of referendums are not subject to judicial review.

4. ---

#### **K - Experience of referendums**

1. The only referendum that has been held was the one held on April 24, 2004 for the purpose of a decision by Greek-Cypriots and Turkish-Cypriots whether they accept or reject the recent plan of the General-Secretary of the United Nations, dated March 31, 2004, as the solution of the Cyprus problem.

2. The above referendum was held at the initiative of the President of the Republic.

3. No.

4. The Greek-Cypriot electorate voted “No”, the Turkish-Cypriot electorate voted “Yes”.

5. See answer to question 4.

6. In the case of the Greek-Cypriot electorate the result was due to the provisions of the

7. Plan of the General-Secretary.

8. No.

9. No.

### **II - Regional or local referendums**

#### **A - Legal basis**

There is no provision in the Constitution or in the relevant law for local referendums.

**A1 - At what level?**

There is no provision in the Constitution or in the relevant Law on the issues specified in the question.

The answer to B, C, D, E, F, G, H, I, J and K is the same as the one in A-1 above.

**III - The future of referendums**

1. No.
2. ---
3. ---

## **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

### **Introduction**

#### **The Referendum in the Czech Republic**

##### **Constitutional and legal definition of the referendum in the Czech Republic**

In the Czech Republic the referendum is currently the only decisive form of direct democracy and administration of matters in the public and self-government interests. There are two ways in which a referendum can be held in the Czech Republic: a referendum as a form of exercise of state power and a referendum as an exercise of the right to self-government.

##### **The referendum as a form of exercise of state power**

The fundamental constitutional provision in this area is Article 2(2) of the Constitution, according to which a Constitutional Law can determine when the people exercise state power directly. The Constitution of the Czech Republic, namely Act No 1/1993 Coll., abrogated in its Article 112(2) all Constitutional Laws amending the Constitution of the Czech and Slovak Federal Republic or the Constitutional Laws on the Czechoslovak Federation. This abrogated Constitutional Law No 327/1991 Coll. on the referendum. Procedural Act No 490/1991 Coll. on referendums, which was passed in its entirety into the legislation of the Czech Republic, in the sense of Article 1(1) of Constitutional Law No 4/1993 Coll., cannot be applied because its application presupposes the existence of a Constitutional Law on the referendum, which the Czech Republic still lacks (see below).

No Constitutional Law on the referendum has been passed since the establishment of an independent Czech Republic, despite several legislative attempts. Only the Constitutional Law on the referendum on the accession of the Czech Republic to the EU (Act No 515/2002 Coll.) has been passed. This Constitutional Law was linked to an ordinary Act which regulated the procedure a 'European' referendum, Act No 114/2003 Coll. on holding the referendum on the accession of the Czech Republic to the EU.

This type of referendum has not been used during the existence of the independent Czech state, save for a special referendum on the accession of the Czech Republic to the European Union in 2003, which however was governed by special provisions (see above).

##### **The referendum as an exercise of the right to self-government**

The Constitution of the Czech Republic neither envisages nor regulates the existence of the local referendum as a form of the direct exercise of state power. The constitutional basis of this type of exercise of the right to self-government, which gives communities the right to participate in the administration of public affairs and the right to freely elect their representatives, is Article 21(1) of the Charter of Fundamental Rights and Freedoms, Act No 2/1993 Coll. The referendum as a type of exercise of the right to self-government is regulated by a new Act, No 22/2004 Coll. on local referendums, amending certain laws. This Act is referred to in Article 60 of Act No 128/2000 Coll. on municipalities. The Act on local referendums has the legal force of an ordinary rather than a Constitutional Law.

This type of referendum is used as appropriate in the Czech Republic, in particular on such matters as territorial planning, urban transport and nuclear waste disposal sites.

The answers given in this questionnaire were based on the valid regulations applicable to this institute in the legislation of the Czech Republic as of 31.12.2004.

## **I - National referendums**

### **A - Legal basis**

#### *1. Is provision made for referendums in the Constitution?*

The Constitution of the Czech Republic provides for referendums in Article 2(2), Article 10a(2), Article 62(1) and Article 87(1)(l) and (m).

**Article 2(2)** provides that:

A Constitutional Law may define instances when the people directly exercise state power.

**Article 10a(2)** provides that:

Ratification of the international treaty mentioned in paragraph 1 requires the consent of Parliament, unless a Constitutional Law states that ratification requires consent given **in a referendum**.

**Article 62(1)** provides that:

The President of the Republic calls a referendum on the accession of the Czech Republic to the European Union.

According to **Article 87(1)(l) and m)**:

The Constitutional Court decides:

- on a remedy against the decision of the President of the Republic not to call a referendum on the accession of the Czech Republic to the European Union,
- whether the procedure followed in the referendum on the accession of the Czech Republic to the European Union is in conformity with the Constitutional Law on the referendum on the accession of the Czech Republic to the European Union and the law promulgated to implement it.

The Charter of Fundamental Rights and Freedoms regulates the referendum in Article 21(1) as follows:

Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives.



2. *If not, does the law provide for the use of referendums? On what matters?*

It does not follow from the Constitution what can be the object of an exercise of state power by the people in the form of direct democracy. As a rule, these are in the first place questions of legislative and executive power. The administration of justice by the people is not possible as it would go against the spirit of the Constitution.

**B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

The general regulation of this type of referendum is absent. A mandatory referendum was held in the Czech Republic on 13 and 14 June 2003 according to Constitutional Law No 515/2002 Coll. on the referendum on the accession of the Czech Republic to the EU, and only on the specific matter of the accession of the Czech Republic to the EU.

Since Czech legislation lacks a general regulation of referendums, the question cannot be answered (“not regulated”).

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes.

No general provision regulating referendums has yet been passed.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

According to Act No 515/2002 Coll. on the referendum on the accession of the Czech Republic to the EU, amending Constitutional Law No 1/1993 Coll., the Constitution of the Czech Republic, as amended by subsequent Constitutional Laws. According to Article 2 of this Act, the President of the Republic calls a referendum (by decision of the President to call a referendum according to Article 4 of Act No 114/2003 Coll., as published in the Collection of Laws) within 30 days after the signature of the Treaty on the Accession of the Czech Republic to the European Union, so that it is held within a period starting on the thirtieth day and ending on the sixtieth day after the announcement.

A repeated referendum is possible according to Article 3 and Article 4 of Act No 515/2002 Coll. if the accession of the Czech Republic to the EU is not approved according to Article 2. A proposal to call a referendum on the matter can be made by the Government or jointly by at least two fifths of deputies or jointly by at least two fifths of senators. A proposal to call a repeated referendum is made by the President of the Republic, who calls a repeated referendum within 30 days of the day the proposal was made, so that it is held not later than 90

days after the day when the proposal was made; otherwise he decides, within the same time limit, not to call a referendum.

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

Not regulated.

- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

Not regulated.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

Act No 515/2002 Coll. on the accession of the Czech Republic to the EU does not treat this question.

Not regulated.

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament – or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

Not regulated.

5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

*- Is it entitled only to give its opinion?*

*- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*

*- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

Not regulated.

## **C - Content**

### *1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?  
Is a referendum mandatory in the case of a constitutional amendment?*

.Not regulated.

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

A referendum on the accession of the Czech Republic to the EU was held in the Czech Republic on 13 and 14 June 2003 on the basis of Act No 515/2002 Coll. Article 1 of this Act states that the accession of the Czech Republic to the EU can be only decided by a referendum.

### *2. Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

Not regulated.

## **D - Form of the text submitted to referendum (formal validity)**

### *1. What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the Constitution to introduce a presidential system of government?”)?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

In connection with the accession the Czech Republic to the EU this question was submitted to a referendum: “Do you agree to the Czech Republic becoming a Member State of the European Union according to the Treaty on the Accession of the Czech Republic to the European Union?” Here it is “a question of principle”.

Not regulated.

### *2. Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the*

*various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*

- c. unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. Does the vote have to be on a single question or can it be on several different ones?*
- e. Does the question (or do the questions) have to be clear and suggestion-free?*

Not regulated.

### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- to international law or some of its rules;*
- to the Constitution or some of its rules;*
- to other overriding legal rules.*

Not regulated.

Limits may be placed on fundamental rights only by law - i.e. a fundamental right cannot be limited by a decision taken in a referendum. Likewise, duties may be imposed only by law (Article 2(4) of the Constitution, Article 4(1) and (2) of the Charter of Fundamental Rights and Freedoms).

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

In the referendum on the accession of the Czech Republic to the EU according to Article 1 of Act No 114/2003 on referendums, the Treaty on the Accession of the Czech Republic to the EU must be made accessible to everyone for viewing at municipal council offices, which are registry offices, at least 21 days before a referendum is held. According to Article 21 of the same Act, the council leader must publicize in the usual manner, at least 15 days before a referendum is held, a notice of the time and place of the referendum.

- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*
- d. Are the public media required to allocate equal time to supporters and opponents of the text?*

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

Not regulated.

2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*
- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so, on what conditions?*

Not regulated.

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

The referendum on the accession of the Czech Republic to EU took place over two days.

- b. *If there is a large time lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

No, it is not possible. Act No 114/2003 Coll. on referendum regulates in particular checks and vote counts by a constituency commission, the State Election Commission, a district council, or a designated office. The Act further regulates the procedure followed to count the votes, designates persons who may be present when the record is made and delivered to the Czech Statistical Office, and finally, the record made by the State Election Commission of the result of the vote in the referendum.

- c. *Is it compulsory for all voters to cast a vote?*

Not regulated.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

For the referendum on the accession of the Czech Republic to the EU, Act No 515/2002 Coll. did not require any minimum turnout of registered voters for the result of the referendum to be valid. It was concluded that the accession of the Czech Republic to the EU would be approved in the referendum if the question for the referendum was answered affirmatively by a majority of the voters.

**G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The referendum on the accession of the Czech Republic to the EU was a “binding referendum” and the electorate was asked for a decision, not an opinion.

Act No 515/2002 Coll. on the referendum on the accession of the Czech Republic to the EU provides that the announced result of the referendum which approved the accession of the Czech Republic to the EU supplanted the consent of Parliament for the ratification of the Treaty on the Accession of the Czech Republic to the EU.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*
3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- *suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

- *resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

- *abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

Not regulated.

**H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*
2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

Not regulated.

**I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*
2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

Not regulated.

## **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

Act No 182/1993 Coll. on the Constitutional Court provides in Article 11(2)(f) and (g) as follows:

The Constitutional Court decides in plenary session:

- On a remedy against a decision of the President of the Republic not to call a referendum on the accession of the Czech Republic to the European Union according to Article 87(1)(l);
- Whether the procedure followed in the referendum on the accession of the Czech Republic to the EU conforms to the Constitutional Law on the referendum on the accession of the Czech Republic to the EU and the law passed to implement it according to Article 87(1)(m) of the Constitution.
- The same text is in Article 87(1)(l) and (m) of the Constitution.

Act No 114/2003 Coll. provides in Article 35, which regulates judicial reviews:

The scope and conditions for a judicial review of a decision of the President of the Republic not to call a referendum on the accession of the Czech Republic to the EU, and a judicial review of the legality and constitutionality of the procedure followed in the referendum, as well as further rules of procedure in these matters are laid down in a special provision, namely Act No 182/1993 Coll. on the Constitutional Court. Article 125a and subsequent regulates the procedure followed if a referendum is not called. The Constitutional Court either upholds the proposal and then rules that the President is obliged to call a referendum, or confirms the decision of the President of the Republic and dismisses the proposal. It further regulates the procedure if an illegal procedure is followed in the referendum – here a petition may be lodged by every citizen entitled to vote in the referendum, no later than 10 days after the day on which voting ends in the referendum. The Constitutional Court rules whether the procedure was or was not in conformity with the Act on referendum on the accession of the Czech Republic to the EU and the Act for its implementation and whether an ascertained divergence could have affected the result. If it was not in conformity, it will not announce the result of the referendum and the President must call a referendum again. If it was in conformity, it turns down the petition.

Around 30 constitutional complaints have been filed with the Constitutional Court of the Czech Republic concerning the judicial review of the legality and constitutionality of the procedure followed in the referendum on the accession of the Czech Republic to the EU. Most constitutional complaints were dismissed as groundless or for lack of jurisdiction of the Constitutional Court of the Czech Republic. The other constitutional complaints have been dropped.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

In the event that a referendum is not called or the procedure followed in a referendum is illegal.

3. *Are the results of referendums subject to judicial review?*
4. *Who may lodge an appeal?*

Not regulated.

### **K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

Only one referendum was held at national level since the promulgation of Act No 1/1993 Coll., and that on the accession of the Czech Republic to the EU, in 2003.

2. *On whose initiative has each referendum been held?*

Not regulated.

3. *Have any referendums been invalid because of a low turnout?*

Not regulated.

4. *In how many referendums has the electorate voted yes?*

In only one referendum, and that on the accession of the Czech Republic to the EU.

5. *In how many referendums has the electorate voted no?*

In none.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

Not regulated.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

Not regulated.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

Not regulated.



## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

The Constitution of the Czech Republic has no provision for local referendums, but the local referendum is an expression of the application of Article 100(1), which gives citizens the right to self-government.

The constitutional basis of this form is laid down in Article 21(1) of the Charter of Fundamental Rights and Freedoms, which is part of the constitutional order of the Czech Republic. This article gives citizens the right to participate directly in public administration. Local referendums are only regulated at the level in the Act.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Local referendums are envisaged in the Act on Municipalities No 128/2000 Coll. in Article 19(4) and Article 21(1) in connection with mergers of municipalities, annexation of a municipality, or separation of part of a municipality. Local referendums are generally regulated by Act No 22/2004 Coll. on local referendums.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

The holding of local referendums is only regulated by Act No 22/2004 Coll. on local referendums, and Act No 128/2000 Coll. on municipalities, which mentions the possibility of holding a local referendum in some of its provisions.

4. *On what matters is it possible to call a referendum?*

Act No 22/2004 Coll. on local referendums states in Article 6 that people decide in a local referendum about matters under the sovereign competence of a municipality or statutory town. What can be regarded as a matter under sovereign competence is defined in Act No 128/2000 Coll. on municipalities in Article 35. These are matters in the interests of the municipality and inhabitants of the municipality, unless the law entrusts them to districts or unless the transferred competence of bodies of a municipality is concerned or competence entrusted by a special provision to administrative authorities as the exercise of state administration, and matters entrusted to the sovereign competence of a municipality by the Act. Nevertheless, it does not cover all areas of self-government.

This involves the creation of conditions for the development of social care, satisfying the needs of its citizens such as housing, protection and the promotion of health, transport and communications, information needs, upbringing and education, overall cultural development, and maintenance of public order.

Local referendums have been held in the Czech Republic on such matters as the relocation of the main railway station, the construction of wind-powered power plants, the location of a storage facility for spent nuclear fuel, the protection of territorial environmental limits against

efforts to expand coal mining, the construction of roads and the construction of a shopping centre.

### **A1 - At what level?**

1. *Federate states?*

A local referendum cannot be held at this level.

2. *Provinces? Regions?*

A local referendum cannot be held at this level – the exception is the capital Prague, which is a municipality and district, and Act No 22/2004 Coll. on local referendums, which expressly mentions Prague. Act No 129/2000 Coll. on municipalities does not provide for holding local referendums at district level.

3. *Lower levels? Districts?*

A local referendum cannot be held at this level.

4. *Municipalities?*

Yes, it is only possible to hold a local referendum at this level. Act No 22/2004 Coll. on local referendums regulates in Article 1 local referendums held only at local level, that is at the level of municipalities, urban districts or districts of statutory towns, and the capital Prague and its districts.

5. *On what matters?*

See A- 4.

6. *May national or federal authorities intervene, and in what conditions?*

If a local referendum is held, national authorities cannot intervene because it is not a question of state administration but self-government.

### **B - What time of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

Not regulated.

**A mandatory local referendum** must be held according to Act No 128/2000 Coll. on municipalities in the event of the separation of part of a municipality, when the separation must

be approved in a local referendum by citizens living in the territory of that part of the municipality that wishes to separate and, according to Act No 131/2000 Coll. on the capital Prague, if an urban district is to be separated from Prague.

**A facultative local referendum** may be held according to Act No 128/2000 Coll. on municipalities, which provides in Article 19 that an agreement on the merger of municipalities or the annexation of a municipality can be concluded on the basis of a decision of the councils of the municipalities concerned, unless a proposal is made within 30 days of the publication of this decision to hold a local referendum on this matter. If a proposal is made to conclude such an agreement it requires an affirmative decision by a local referendum held in the community in which the proposal to hold it was made. The procedure is similar under Act No 131/2000 Coll. on the capital Prague if urban districts are to be merged or a district is to be annexed.

Furthermore, we can differentiate local referendums as **ratification** - a referendum in which a certain question under the sovereign competence of a municipality is decided with final effect. According to the Act, this may be for example a decision whether a municipality is to construct a nursing home. Another type is a **consultative** referendum, whose outcome is the standpoint of a municipality on a certain question. These are questions on which a municipality has the right to comment within its sovereign competence but not make a decision on, such as the standpoint of a municipality on the construction of a nuclear waste storage facility.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes, they can.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

Article 8(1)(a) of Act No 22/2004 on local referendums provides that a local referendum is held if a municipal council or a statutory town council so resolves.

3. *Referendums held at the request of part of the electorate*

a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

Yes, a local referendum is held if a preparatory committee - at least 3 authorized persons (who have the right to elect the council members) - proposes that a local referendum be held and the municipal council or statutory town decides to call it.

Such a proposal can be made if supported by a certain number of signatures of authorized voters in the municipality, its part or in a statutory town, e.g. up to 3,000 inhabitants - 30% of authorized persons. (Article 8(1)(b) of the Act on Local Referendums)

The signatures are checked together with the proposal to hold a local referendum submitted to the municipal council or urban district.

Every signature sheet must contain a notice for authorized persons who wish to support the proposal with their signatures that signing several times, misrepresentation or having the proposal signed by an unauthorized person will be treated as an infraction for which they can be fined up to 3,000 Czech crowns.

- b. *Can a request for a referendum relate to a text already adopted by Parliament?  
Can a new text be put forward by popular initiative?*

A local referendum can only decide on matters under the sovereign competence of a municipality or statutory town.

Czech legislation does not provide for popular initiatives.

#### 4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

If a proposal to call a local referendum is made by a preparatory committee, the requisites of the proposal are examined by the municipal council, urban district council, the Prague City Council, or the council of a statutory town, and it decides whether to call it.

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

Parliament has no authority to intervene in a local referendum as it lies solely within the municipality's competence within the framework of self-government.

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

Czech legislation does not provide for popular initiatives.

#### 5. *Role of Parliament*

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit and counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded, what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

Parliament cannot intervene in the self-governing competence of a municipality.

A local referendum only concerns matters of self-government.

### **C - Content**

*Reply to the same questions as in I-C.*

#### *1. Types of act submitted to referendum*

Are referendums held only on proposals for constitutional amendments?

Not regulated.

*Is a referendum mandatory in the case of a constitutional amendment?*

Not regulated.

*On what other types of measure can a referendum be called? In particular, is a referendum necessary or possible for accession to the European Union or international organisations?*

A local referendum can only be held on the sovereign competence of a municipality (see A-4 and C-1).

#### *2. Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

Yes, local referendums are reserved for matters of self-government (see A-4).

Yes, under the Act on local referendums No 22/2004 Coll. a local referendum is mandatory in the event of separation of part of a municipality or urban district.

The Act on local referendums No 22/2004 Coll. states in Article 7 which matters are excluded from referendums. Local referendums cannot be held on the budget of a municipality or local charges; if a question put to it is contrary to law; if a decision in a local referendum could be contrary to law; on the approval, change or cancellation of a municipality by-law; on the election or dismissal of a council leader or mayor; on the setting up and dissolving of bodies of a municipality or statutory town; and others.

*In particular:*

*- Can a referendum be held on a proposal to secede from the State?*

A local referendum can be held on a merger or annexation of a municipality or separation of part of a municipality. A local referendum cannot be held on the matter of separation from the State.

*- Can it relate to geographical boundaries?*

No, a local referendum cannot relate to geographical boundaries.

- *Are any other subjects permitted?*

Yes, see A-4.

**D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

According to Article 8(3) of Act No 22/2004 Coll. on local referendums, a text submitted to a local referendum must be clearly formulated so that it can be answered with the word “yes” or the word “no”. The form can be “*a question of principle*”, but also “*a concrete proposal*”.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*

Not regulated.

- d. *Does the vote have to be on a single question or can it be on several different ones?*

The Act provides for several different questions being put to referendum (Article 33(1)(e) of Act No 22/2004 Coll. on local referendums).

- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

Yes, the question (questions) must be clear so that it or they can be answered with the word “yes” or “no”.

### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

*Is a referendum prohibited if the text put forward is contrary:*

- to international law or some of its rules;*
- to the Constitution or some of its rules;*
- to other overriding legal rules.*

Yes, a referendum cannot be held if a question put to a local referendum is contrary to law or if the decision could be contrary to law (Article 7(d) of Act No 22/2004 Coll. on local referendums).

### **F - Campaigning, funding and voting**

*Reply to the same questions as in I-F.*

#### *1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

Yes, the council leader of a municipality is obliged to publish a notice of the time and place of the local referendum together with the addresses of the voting centres, the questions to be decided and further information, in the manner usual at the location in question (e.g. on an official notice board), (Article 31 of Act No 22/2004 Coll. on local referendums).

- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*

Act No 22/2004 Coll. on local referendums does not regulate these questions.

- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

Campaigning is regulated by Act No 22/2004 Coll. on local referendums in Article 32, but it does not restrict the campaigning of political parties. A mayor can reserve a billboard to present the question or questions at least 10 days before the referendum is held. Campaigning is prohibited on the day of a local referendum in the voting centre.

- d. Are the public media required to allocate equal time to supporters and opponents of the text?*

Not regulated.

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

Not regulated.

2. *Funding*

- a. *Is the use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

Yes, the costs of local referendums and the costs of furnishing voting centres are paid by the municipality or statutory town from its budget. If a local referendum is held at the proposal of a preparatory committee the costs of the activities of the preparatory committee, those for obtaining signatures of authorized persons and the costs of campaigning are excluded. (Article 51 of Act No 22/2004 Coll. on local referendums)

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so, on what conditions?*

Czech legislation does not regulate popular initiatives.

3. *Voting*

- a. *Does voting take place on one day or over and number of days?*

In general, voting in a local referendum takes place on one day. If it takes place at the same time as elections (to a municipal council, district council, one of the chambers of Parliament), it takes place at the time of the election, that is over two days.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

It is not possible since Act No 22/2004 Coll. on local referendums in Article 26 prohibits the disclosure of information. The members of the commission and persons authorized to be present in the room where the commission counts the votes must not disclose any information about the results of the vote until the record of the vote is drawn up and signed by all the members of the commission present.

- c. *Is it compulsory for all voters to cast a vote?*

Not regulated.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

According to Act No 22/2004 Coll. on local referendums, the participation of at least one half of registered voters is necessary for the result of the referendum to be valid.



A decision in a local referendum is binding if it has obtained the votes of at least one half of the registered voters taking part in the local referendum.

Concerning the separation of part of a municipality, the merger of municipalities or the annexation of a municipality to another municipality, the Act requires the agreement of at least one half of all registered voters.

### **G - Effects of referendum**

*Reply to the same questions as in I-G.*

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

In local referendums the electorate is always asked for a decision by answering the question with a “yes” or a “no”. A decision in a local referendum is binding upon the municipal and statutory town councils and the bodies of the municipality and statutory town (Article 49 of Act No 22/2004 Coll. on local referendums). A decision taken in a local local referendum can be changed only by a new referendum, which can be called after 24 months.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

The formal aspect of the proposal to call a local referendum is reviewed, i.e. whether it has the statutory requisites. It must contain an estimate of the costs of the local referendum and those of putting into effect the decision taken in such a local referendum and a method for their payment from the budget of the municipality or statutory town. The proposal to call a local referendum, together with the signature sheet attached to it, is reviewed by the municipal council or the council of the statutory town. A correct proposal is submitted to the municipal council or the council of the statutory town for discussion. The council resolves whether or not to call a local referendum and displays the decision on the notice board. The council may decide on a matter proposed for a local referendum without calling a local referendum if the preparatory committee agrees to it; otherwise it calls the local referendum.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- *suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*
- *resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*
- *abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

Not regulated.

**H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*
2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

The Act on local referendums provides for calling a local referendum on matters of local self-government.

**I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

1. *What is the time limit for collecting signatures?*
2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

Not regulated.

Czech legislation does not regulate popular initiatives.

**J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

Yes, it possible to appeal to a court against a decision to hold or not to hold a local referendum. There is no provision for automatic judicial review. Act No 22/2004 Coll. on local referendums allows the preparatory committee according to Article 57(1)(b) to appeal to a court if the council has not decided on a proposal of the preparatory committee to call a local referendum or decided not to call a referendum because a local referendum cannot be called on a proposed text.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

An example is a referendum is on a matter on which a local referendum may not be held; the preparatory committee does not agree to the appeal of a municipal council or town hall to

remedy defects in the proposal to call a referendum (Article 57 of Act No 22/2004 Coll. on local referendums)

About 10 constitutional complaints have been filed with the Constitutional Court concerning local referendums, and most have been dismissed for being groundless or outside the jurisdiction of the Constitutional Court.

3. *Are the results of referendums subject to judicial review?*

Yes, this is regulated in Article 58 Act No 22/2004 Coll. on local referendums.

A petition to have the voting or the outcome of a local referendum declared invalid can be lodged with a court by any authorized person or by the preparatory committee if they believe that a provision of this Act has been breached as to affect its outcome, a local referendum has been held on a matter that is not under the sovereign competence of a municipality or statutory town, or a local referendum has been held on a matter on which a local referendum may not be held (Code of Administrative Procedure).

4. *Who may lodge an appeal?*

An appeal may be lodged by any registered voter or by the preparatory committee.

### **K - Experiences of referendums**

1. *Have there been many local referendums?*

The local referendum has been used to a reasonable extent in the Czech Republic.

2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

A local referendum is held at local (municipal) level.

### **III - Future of referendums**

1. *Is the referendum system currently being reformed?*

There is a draft Act on the Referendum (National), but this has not yet been approved since the establishment of the Czech Republic in 1993.

A new Act on Local Referendums No 22/2004 Coll. was passed by Parliament in 2003 and supplanted the provisions of Act No 298/1992 Coll. on local referendums.

2. *If so, for what reason?*

The new legal regulation of local referendums has brought changes as far as the decision-making procedure for calling a local referendum at municipal bodies is concerned. It also extends the questions on which a local referendum cannot be called, regulates in more detail

the conditions for the binding effect of a decision taken in a local referendum for the municipal council, and alters the regulation of court protection if the municipal council to which a proposal to call local referendums or within whose competence it is to decide to call a local referendum fails to accept the proposal or fails to call a local referendum even though all the legal conditions are satisfied.

3. *If so, what is the general tendency of this reform?*

De lege ferenda, Act No 22/2004 Coll. on local referendums but also the Act on Districts No 129/2000 Coll., should embody the right of the citizens of a district to vote in a district referendum, because the district, as a higher self-governing unit, is based on the same constitutional principle as a municipality, has important competences and also exercises self-government. An exception, when the Act allows a local referendum at district level, is the capital Prague.

At the present time, (after the Constitutional Law on the referendum on the accession of the Czech Republic to the EU) a Constitutional Law on a referendum on the Treaty Establishing a Constitution for Europe is being prepared, but this Constitutional Law will again concern only one referendum on a special problem.

De lege ferenda it will be also be necessary to consider the relationship between the institute of local referendum and European law. This is not regulated by the established practice of the European Court of Justice or by the European Communities. For the moment it is up to the national laws of EU Member States to decide which model and form of regulation of local referendums they have chosen or will choose.

## **DANEMARK / DENMARK**

### **I - National referenda**

#### **A - Legal basis**

In the Constitutional Act, provisions are made for referenda in Article 20, Article 29, Article 42 and Article 88. Article 20 concerns delegation of powers to international authorities, Article 29 concerns the right to vote at Folketing (parliament) elections and the age qualification for suffrage, Article 42 concerns referenda in connection with the passing of bills, and Article 88 concerns referenda in connection with the passing of bills for the purposes of new constitutional provisions.

Besides the referenda mentioned in the Constitutional Act, it is possible to arrange consultative referenda. However, there is no general statutory legislation providing for consultative referenda.

#### **B - What type of referendum may be used? Who decides?**

Pursuant to Article 20, Article 29, Article 42 and Article 88 of the Constitutional Act referenda are mandatory if the conditions of the provision in question are met.

According to Article 20(2) of the Constitutional Act a majority of five-sixths of the members of the Folketing shall be required for the passing of a bill for the purposes of delegation of powers vested in the authorities of the realm under the constitution to international authorities. If this majority is not obtained, whereas the majority required for the passing of ordinary bills is obtained, and if the government maintains it, the bill shall be submitted to the electorate for approval or rejection in accordance with the rules for referenda laid down in Article 42.

According to Article 29(2) of the Constitutional Act a bill passed by the Folketing for the purpose of alteration in the age qualification for suffrage shall receive the royal assent only when the provision on the alteration in the age qualification for suffrage has been put to a referendum which has not resulted in the rejection of the provision. For the provision to be rejected at the referendum a majority of the electors taking part in the voting, however, not less than thirty percent of all persons entitled to vote, shall have voted against the bill.

According to Article 42 of the Constitutional Act one-third of the members of the Folketing may within three weekdays from the final passing of a bill request that the bill be subjected to a referendum. Where a referendum on a bill has been requested the Folketing may within a period of five weekdays from the final passing of the bill resolve that the bill shall be withdrawn.

Normally a bill may receive the royal assent only after the three weekdays mentioned, or in case of a request for a referendum only after a referendum by which the bill has.

However, according to Article 42(7) a bill that may be subjected to a referendum may, in an emergency, receive the royal assent immediately after it has been passed, provided that the bill contains a provision to that effect. Where under the rules of Article 42(1) one-third of the members of the Folketing request a referendum on the bill or on the act to which the royal assent has been given, such referendum shall be held in accordance with the rules in Article 42. Where the act is rejected by the referendum, an announcement to that effect shall be made by the prime minister without undue delay and not later than fourteen days after the referendum was held. From the date of such announcement the act shall become ineffective.

According to Article 88 when the Folketing passes a bill for the purposes of a new constitutional provision, and the Government wishes to proceed the matter, writs shall be issued for the general elections. If the bill is passed unamended by the Folketing assembling after the election, the bill shall within six months after its final passing be submitted to the electors for approval or rejection by direct voting. If a majority of the persons taking part in the voting, and at least 40 percent of the electorate has voted in favour of the bill, and if the bill receives the royal assent it shall form an integral part of the Constitutional Act.

There are no laws providing for the calling of referenda by members of the electorate.

### **C - Content**

According to Article 88 of the Constitutional Act a referendum is mandatory for the passing of a bill for the purpose of a new constitutional provision.

According to Article 20 of the Constitutional Act which concerns the delegation to international authorities (e.g. the European Union) of powers vested in the authorities of the realm, referenda are mandatory, if a majority of five-sixths of the members of the Folketing is not obtained, whereas the majority required for the passing of ordinary bills is obtained, and the Government maintains the bill.

According to Article 42 of the Constitutional Act one-third of the members of the Folketing can call for a referendum on a bill passed by the Folketing. Article 42(6) of the Constitutional Act excludes finance bills, supplementary appropriation bills, provisional appropriation bills, government loan bills, civil servant (amendment) bills, salaries and pensions bills, naturalization bills, expropriation bills, taxation (direct and indirect) bills, bills introduced for the purpose of discharging existing treaty obligations and certain bills concerning the sovereign from being submitted to a referendum according to Article 42.

### **D - Form of the text submitted to referendum (formal validity)**

### **E - Substantive limits on referenda (substantive validity)**

The provisions of the Constitutional Act concerning referenda are all related to the passing of bills.

It is a ground rule that any statutory law, and therefore also any bill, must respect the constitution. This does, however, not apply to bills for the purpose of amending the Constitutional Act.

There are no provisions of the Constitutional Act requiring that bills respect international law, but in practice they do.

#### **F - Campaigning, funding and voting**

#### **G - Effects of referenda**

Referenda according to Article 20, Article 29, Article 42, Article 42 and Article 88 of the Constitutional Act are binding referenda (see item B).

Besides the referenda mentioned in the Constitutional Act, it is possible to arrange consultative referenda. However, there is no general statutory legislation providing for consultative referenda.

#### **H - Parallelism of procedures and rules on referenda**

According to Article 3 the legislative power is vested in the King (the Government) and the Folketing conjointly. Thus, the Government and the Folketing has the right to revise or repeal a statutory act. The legislative procedure only requires a referendum under the conditions laid down in Article 20, Article 29(2), Article 42 and Article 88 of the Constitutional Act (see item B).

#### **I - Specific rules on popular initiatives**

There are no laws providing for the calling of referenda by members of the electorate.

#### **J - Judicial review**

In the Constitutional Act there are no specific provisions prescribing a general right to appeal to a court of justice against a decision to hold or not to hold a referendum but a person who has requisite legal interest in a case may appeal to the courts for a judicial review of the law-making process.

#### **K - Experiences of referenda**

Since 1915 the following referenda have been held according to provisions of the Constitutional Acts:

1920: Referendum according to Article 93 of the 1915 Constitutional Act on a bill for the purpose of a new constitutional act approved by the electorate by 96.9 percent of the votes cast (representing 47.6 percent of the electorate).

1939: Referendum according to Article 94 of the 1920 Constitutional Act on a bill for the purpose of a new constitutional act rejected. 91.9 percent of the votes cast were in favour of the bill but since the yes-votes only represented 44.5 percent of the entire electorate the bill was rejected.

1953: Referendum according to Article 94 of the 1920 Constitutional Act on a bill for the purpose of a new constitutional act approved by the electorate by 78.8 percent of the votes cast (representing 45.8 percent of the electorate).

1953: Referendum according to Article 29(2) of the 1953 Constitutional Act (which is still in force) concerning the age qualification for suffrage. 57.1 percent of the votes cast were in favour of 23 years.

1961: Referendum according to Article 29(2) of the Constitutional Act on a bill lowering the age qualification for suffrage to 21 years approved by the electorate by 55.0 percent of the votes cast.

1963: Referendum according to Article 42 of the Constitutional Act on four bills concerning a property law reform rejected by the electorate by 57.4 to 61.6 percent of the votes cast (representing 41.5 to 44.5 percent of the electorate).

1969: Referendum according to Article 29(2) of the Constitutional Act on a bill lowering the age qualification for suffrage to 18 years rejected by the electorate by 78.6 percent of the votes cast (representing 49.8 percent of the electorate).

1971: Referendum according to Article 29(2) of the Constitutional Act on a bill lowering the age qualification for suffrage to 20 years approved by the electorate by 56.5 percent of the votes cast.

1972: Referendum according to Article 20 of the Constitutional Act on a bill for the purpose of accession to the European Community approved by the electorate by 63.3 percent of the votes cast.

1978: Referendum according to Article 29(2) of the Constitutional Act on a bill lowering the age qualification for suffrage to 18 years approved by the electorate by 53.8 percent of the votes cast.

1992: Referendum according to Article 20 of the Constitutional Act on a bill for the purpose of accession to the European Union (the Maastricht Treaty) rejected by the electorate by 50.7 percent of the votes cast (representing 41.7 percent of the electorate).

1993: Referendum according to Article 20 of the Constitutional Act on a bill for the purpose of accession to the European Union (the Maastricht Treaty and the Edinburgh decision) approved by the electorate by 56.7 percent of the votes cast.

1998: Referendum according to Article 20 of the Constitutional Act on a bill for the purpose of adoption of the Amsterdam Treaty approved by the electorate by 55.1 percent of the votes cast.

2000: Referendum according to Article 20 of the Constitutional Act on a bill for the purpose of accession to the Economic and monetary union of the EU rejected by the electorate by 53.2 percent of the votes cast (representing 46.1 percent of the electorate).

None of the referenda mentioned were been invalid because of low turn out.



## **II - Regional or local referenda**

In the Constitutional Act there are no provisions providing for local referenda.

Through time some consultative local referenda have been held based on statutory acts or the decision of a municipal council. Neither the electorate of municipality nor a minority of the members of a municipal council can bindingly request for a local referendum to be held.

## **III - The future of referenda**

The referendum system is not currently under reform.

## **ESTONIE / ESTONIA**

### **I - National referendums**

#### **A - Legal basis**

1. *Is provision made for referendums in the Constitution?*

The following two Articles of the constitution are the most relevant:

"§ 105. The Riigikogu has the right to submit a bill or other national issue to a referendum. The decision of the people shall be made by a majority of the participants in the voting. A law which is passed by a referendum shall promptly be proclaimed by the President of the Republic. The decision of the referendum shall be binding on all state institutions. If a bill which is submitted to a referendum does not receive a majority of votes in favour, the President of the Republic shall declare extraordinary elections to the Riigikogu.

§ 106. Issues regarding the budget, taxation, financial obligations of the state, ratification and denunciation of international treaties, the declaration or termination of a state of emergency, or national defence shall not be submitted to a referendum. The procedure for holding a referendum shall be provided by the Referendum Act."

In addition, a few other Articles mention the referendum in other contexts (see later).

2. *If not, does the law provide for the use of referendums? On what matters?*

#### **B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

There is one instance of the mandatory referendum. Article 162 of the constitution provides: "Chapter I "General Provisions" and Chapter XV "Amendment of the Constitution" of the Constitution may be amended only by a referendum."

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes. The parliament (Riigikogu) may call a referendum.

- b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

The parliament (Riigikogu) may call a referendum. A simple majority vote (more members voting for than against) is normally required. For a few laws explicitly mentioned in the Article 104 of the constitution (e.g. electoral laws, citizenship act), more than half of the members of the parliament have to vote for a referendum (i.e. at least 51 members out of 101 total).

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

No. The electorate may not call for a referendum.

- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

*- Is it entitled only to give its opinion?*

*- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*

*- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

**C - Content***1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

No. Ordinary bills and other questions may also be submitted.

*Is a referendum mandatory in the case of a constitutional amendment?*

Three parts of the constitution can be changed only via referendum:

- The first chapter (main principles),
- Chapter 15 (Amendment procedure to the constitution) and
- The Act Supplementing the Constitution (this was adopted in a referendum in 2003 authorising the accession to the EU).

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

All laws and all other national issues may be submitted, except (Article 106 of the constitution): "Issues regarding the budget, taxation, financial obligations of the state, ratification and denunciation of international treaties, the declaration or termination of a state of emergency, or national defence".

It is not clear whether referendum was strictly necessary to join the EU. As Article 1 of the constitution provides for the inalienable sovereignty of Estonia, and this provision can only be amended via a constitution, it was argued that a referendum was necessary.

In any case, a referendum was organized. Although Article 106 does not allow for referenda on ratification of international treaties, it may still take place when accession to EU or other international organizations is considered if the question put to a referendum is worded as a "national issue" or as a constitutional amendment.

*2. Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

See previous question.

**D - Form of the text submitted to referendum (formal validity)***1. What form may the text submitted to referendum take:*

*- a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*

*- repeal of an existing provision?*

*- a question of principle (for example: "are you in favour of amending the constitution to introduce a presidential system of government?")?, or*

*- a concrete proposal, not presented in the form of a specific provision and known as a "generally-worded proposal" (for example: "Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?")?*

The Referendum Act provides that when a bill or a specific provision of the bill is put to a referendum (including a bill for constitutional amendment), the whole text of a bill (or a specific provision of the bill) is submitted. This may also take a form of a repeal of an existing provision (the question put to the referendum may then be worded something like "Article 34 of the ... Act is repealed.")

The constitution also allows for the submission of "national issues" to a referendum. In this case, a concrete question has to be worded which allows for answering "yes" or "no". No more specific provisions regarding the form of the question have been adopted.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*
- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

No statutory guidelines in this respect have been adopted. There is no provision prohibiting voting on different issues at the same referendum.

### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- to international law or some of its rules;*
- to the Constitution or some of its rules;*
- to other overriding legal rules.*

The referendum is prohibited, if the bill submitted to a referendum is unconstitutional. This most probably includes international law and other overriding legal rules (although there has been no clear decision on the issue). The referendum is also prohibited if the procedures for submitting questions to a referendum had been seriously violated.

In order to stop the referendum from going forward, the Supreme Court has to find a violation of the constitution or procedures mentioned in the previous paragraph. There are two ways of issues reaching the supreme court:

- The decision of the parliament to call a referendum violates someone's rights: this person may go to the court;
- The Legal Chancellor (an independent official, also fulfilling ombudsman functions) may initiate proceedings in the Supreme Court on its own initiative.

## **F - Campaigning, funding and voting**

### *1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*
- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*
- d. Are the public media required to allocate equal time to supporters and opponents of the text?*
- e. What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

The text of the question/draft bill has to be published in the Official Gazette. No other questions have been regulated. The regulations on media do not provide for allocation of equal time.

### *2. Funding*

- a. Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

The public funding of campaigns is not expressly prohibited or prescribed. During the referendum on EU accession, public funds were in fact allocated both to the pro- and anti-EU groups. The government may provide objective information, but nothing explicitly stops it from advocating a certain position. The parties do not receive specific funding for campaigning on a referendum, but only general contributions for carrying on its activities.

- b. Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

Privately-funded collection of signatures is allowed, but on national level this does not have any legal consequence. Such signature collection is a purely political activity. On the local government level, collection of a required amount of signatures forces the local council to discuss the raised issue (but not more).

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

There is one designated "main" voting day. However, a vote may be cast during pre-voting time 4-13 days prior to the main voting day (all voting stations are open 4-6 days prior to voting day, designated voting stations 9-13 days prior to the main voting day; one cannot vote on the previous weekend). In addition, e-voting starting from 2005 is allowed 4-6 days prior to the voting day. Absentee ballots abroad are cast during even a longer time period.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

No results may be published before all stations have closed.

- c. *Is it compulsory for all voters to cast a vote?*

No.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

There is no quorum required. A decision is made by a majority of the participants in the voting.

**G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The decisions are strictly binding.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

If the referendum is on a "national issue", the parliament may be required to adopt legislation to implement it.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

N/A.

**H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

This has not been explicitly regulated. According to the constitution, the laws passed by a referendum do not possess higher force than ordinary laws and thus may be revised by ordinary legislation.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

Only the constitutional provision requiring referendums when amending certain sections of the constitution may be amended only via a referendum. All other provisions of the constitution regulating referendums may be revised by the parliament under ordinary constitutional amendment procedure.

**I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*
2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

No popular initiatives on the national level in Estonia.

**J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

See answer to E.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*
3. *Are the results of referendums subject to judicial review?*

Appeals may be lodged if voting procedures have been breached. If the breach may have significantly influenced the voting result, the vote may be declared invalid. It is also possible to declare vote invalid in certain parts of the country, and hold a new referendum only in those parts of the country (in the rest of the country, votes cast in the main referendum will be valid). The final result will then be declared only after the new referendum has been held.



4. *Who may lodge an appeal?*

Anyone whose rights have been breached. The Electoral Commission may declare the vote invalid also on its own initiative.

**K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

One referendum has been held, on amending the constitution (regarding the accession to the EU).

A note: it was actually a referendum where a question whether Estonia should join EU was submitted alongside with the constitutional amendment. There was a speculation that such a question should be inadmissible.

2. *On whose initiative has each referendum been held?*

The Riigikogu.

3. *Have any referendums been invalid because of a low turnout?*

No.

4. *In how many referendums has the electorate voted yes?*

One.

5. *In how many referendums has the electorate voted no?*

None.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

No.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

No.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

N/A.

## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

No.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Yes. Local Governments Act allows for both local popular initiatives as well as non-binding local referenda.

However, the details of the local referenda are wholly unregulated. There are no provisions regarding electoral councils, voting procedures, appeals etc. Each local government wishing to hold a local referendum has to work out its own procedures and allocate staff for holding referenda.

Therefore, most questions below cannot be answered at all (there are not central provisions, there is not even information on how many local governments have adopted specific procedures for local referenda). Below, only some specific issues are addressed.

It must also be borne in mind that the local referenda are non-binding.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

N/A.

4. *On what matters is it possible to call a referendum?*

On any "local issue." The local government may not hold referenda, even non-binding, on national issues.

### **A1 - At what level?**

1. *Federate states?*

N/A.

2. *Provinces? Regions?*

N/A.

3. *Lower levels? Districts?*

N/A.

4. *Municipalities?*

Yes.

5. *On what matters?*

Local issues.

6. *May national or federal authorities intervene, and in what conditions?*

In the beginning of the 1990s, the legal chancellor applied for and the Supreme Court invalidated local non-binding referenda in North-Eastern Estonia where the question whether the region should be granted autonomy. The County Governor (an administrative unit supervising local governments) may appeal the decision to hold a local referendum in court before the referendum takes place.

### **B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

The question has not been regulated in the law. Usually, the local council decides on the issue. County governor can then intervene if the decision is illegal (i.e., violates procedural rules or is of national issue).

The referenda are non-binding.

### **C - Content**

*Reply to the same questions as in I-C.*

Only local issues may be put to the referendum

*In particular:*

*- Can a referendum be held on a proposal to secede from the State?*

No.

*- Can it relate to geographical boundaries?*

It can relate to the merger or separation of the local governments. In fact, this has been the most frequent reason for local referenda so far.

*- Are any other subjects permitted?*

### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

**E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

**F - Campaigning and voting**

*Reply to the same questions as in I-F.*

**G - Effects of referendums**

*Reply to the same questions as in I-G.*

**H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

**I - Specific rules on popular initiatives**

Signatures from at least one per cent of the population of the local government (but no less than five signatures - some local authorities have less than 500 inhabitants) have to be collected in order to present a draft legal act to the local council or local government.

1. *What is the time-limit for collecting signatures?*

No time limit has been legislated.

2. *Who is entitled to collect signatures?*

Anyone.

3. *How are signatures checked?*

No procedures are foreseen.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

As the popular initiative forces only the local council (or city government) to discuss the issue, the respective body may adopt any changes to the question or draft act presented.

**J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

## **K - Experiences of referendums**

1. *Have there been many local referendums?*

There is no official registry of local referendums. In fact, one cannot be sure what can be counted as a local referendum I.e., Tallinn, the capital, organized a questioning of its residents regarding planning in a historic district of the central Tallinn, with just a few "voting stations" in a couple of supermarkets and a "turnout" of less than 3%. Sometimes, the opinion of the voters is asked even with open-ended questions yet the procedure is called a "rahvaküsitlus" (the same as if it were a local referendum). Most of the referendums have concerned the merging of local governments. There must be at least tens of local referenda.

2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

All at the municipal level.

## **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

No. Currently no such plans are discussed. Occasionally, there are calls for more referendums and popular initiatives, but at the moment, no serious discussions take place.

2. *If so, for what reason?*
3. *If so, what is the general tendency of this reform?*

## **FINLANDE / FINLAND**

### **I - National referendums**

#### **A - Legal basis**

1. Yes. According to Article 53 of the Constitution

(1) The decision to organise a consultative referendum is made by an Act, which shall contain provisions on the time of the referendum and on the choices to be presented to the voters.

(2) Provisions concerning the conduct of a referendum are laid down by an Act.

#### **B - What type of referendum may be used? Who decides?**

1. The Constitution does not recognise any mandatory referendums.

2. The decision on organising a referendum is made through a Parliamentary Act (Article 53.1 of the Constitution). Legislative initiative belongs to, first, the government, and, secondly, to Members of Parliament in their individual capacity (Article 70 of the Constitution).

3. There are no provisions on referendums held at the request of the electorate.

4. If the Act on holding a referendum is issued on the initiative of the government, all the principal constitutional bodies - the Parliament, the Council of the State and the President - are involved. In normal cases, the President decides on the submittal of a governmental bill to the Parliament (Article 58 of the Constitution); she is, however, ultimately bound by the proposal of the Council of the State. An Act approved by the Parliament must be confirmed by the President. If, however, she refuses to confirm the Act, it enters into force without confirmation, if the Parliament re-approves it. (Article 77 of the Constitution). If the Act is passed on the initiative of a Member of Parliament, the President has a similar position in the procedure of confirmation.

5. See the answer to the preceding question.

#### **C - Content**

1.-2. The Constitution recognises no mandatory referendums nor does it lay down any criteria for the issues on which a referendum can be held.

#### **D - Form of the text submitted to referendum**

1.-2. There are no general provisions on the form of the text to be submitted to a referendum or on the formulation of the questions posed to the electorate. According to Article 53 of the

Constitution, the law through which the decision on organising a referendum is made must include provisions on the alternatives presented to the voters.

### **E - Substantive limits on the referendum**

There are no provisions on such limitations.

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

There are no general provisions on campaigning; the issue is left to be regulated by the Act through which the decision on the referendum is made. According to Article 8 of the Act on the referendum concerning Finland's accession to the European union (1994), the Council of State approved the contents of an information sheet which explained the contents of the Treaty of Accession and what the referendum was about. The Act also included a provision stating that the information sheet was to be sent to all the voters and also otherwise distributed. There was no explicit requirement of the neutrality of the information, although this, in practice, was the starting-point. Campaigning was not restricted to political parties.

The role of authorities was supposed to be only that of providing information. The state broadcasting company was expected to respect neutrality during the campaign, although the Act did not include any explicit provisions on the matter. The requirement of neutrality is based on the internal regulations of the company.

#### *2. Funding*

Again, there are no general provisions. Article 8 of the Act on the referendum concerning Finland's accession to the European Union laid down that the state budget should include funds which were to be distributed to support equally the spreading of information about the two alternatives and their consequences.

#### *3. Voting*

According to the Act on the procedure to be observed in consultative referendums (1987), referendums are held either in connection with national elections or separately. This is decided through the Act on the referendum in question. If the former alternative is chosen, voting will take place on two days. There is no obligation to vote, nor any *quorum* provisions.

### **G - Effects of referendums**

Article 53 of the Constitution recognises only consultative referendums.

### **H - Parallelism of procedures and rules on referendums**

1. Yes, because all referendums are of a consultative character.
2. Yes, because there is no requirement of mandatory constitutional referendums.

**I - Specific rules on popular initiatives**

Popular initiatives are not provided for by the Constitution (or other legislation).

**J - Judicial review**

There are no specific rules on judicial review concerning either the decision to hold a referendum (the decision is made in the form of Act of Parliament) or the result of the referendum.

**K - Experiences of referendums**

1. There have been two referendums: the first one in 1932 on repealing the Prohibition Act of 1919 and the second one in 1994 on Finland's accession to the European Union. A specific provision on consultative referendums was added to the Constitution only in 1987.
2. Both referendums were held on the basis of an Act of Parliament, approved on the initiative of the Government.
3. No.
4. Two.
5. None.
6. No.
7. No.
8. ---.

**II - Regional or local referendums****A - Legal basis**

1. No.
2. Article 30 of the Act on Municipalities from 1995 includes provisions on referendums at the level of municipalities. In addition, a separate Act from 1990 regulates the procedure to be observed in such referendums.
3. No.
4. Article 30(1) of the Act on Municipalities provides that any issue falling to the competence of the municipality can be submitted to a referendum.

**A1 - At what level**

At the level of municipalities, on any matter falling to their competence.



**B - What type of referendum can be held? Who decided?**

Only consultative municipal referendums are possible. The decision is taken by the Council of the Municipality. According to Article 31 of the Act on Municipalities, five percent of the electorate can submit an initiative to the council. The initiative is not binding.

**C - Content**

A consultative referendum can be held on any issue falling to the competence the municipality. This regards even issues where the final decision is taken by the state and where the municipality only has an initiative or the right to be heard; the fusion of municipalities, for instance.

**D - Form of the text submitted to referendum (formal validity)**

According to Article 3(2) of the Act regulating the procedure to be observed in consultative municipal referendums, the Council of Municipality decides on the topic of the referendum and on the choices to be presented to the voters. The voter must always have the possibility to reject all the alternatives presented.

**E - Substantive limits on referendums (substantive validity)**

The issue must fall into the competence of the Municipality.

**F - Campaigning, funding and voting**

There are no express provisions on campaigning or funding either in the Act on Municipalities or in the Act regulating the procedure.

According to the latter Act, voting takes place on one Sunday. There is no obligation to vote, nor any *quorum* provisions.

**G-H**

The Act on Municipalities only allows for consultative referendums.

**I - Specific rules on popular initiatives**

According to Article 4 of the Act regulating the procedure, the popular initiative shall specify the issue to be submitted to a referendum. Those joining the initiative shall assure that they are inhabitants of the municipality, entitled to vote. Underneath their personal signature, they have to state clearly their name, occupation and address.

**J - Judicial review**

The decision of the Council of Municipality to hold or, in case of a popular initiative, not to hold a referendum can be appealed to a State administrative court according to the general provision of the Act on Municipalities. The decision of the Central Electoral Board on the confirmation of the result cannot be appealed (Article 13 of the Act regulating the procedure).

### **K - Experiences of referendums**

Municipal referendums are common in connection with proposed fusions of municipalities. Referendums on other issues are rarer but do occur.

### **III - The future of referendums**

There are no plans of reforming the referendum system.

## FRANCE

### I - Référendums nationaux

#### A - Quel fondement juridique?

1. *Le référendum est-il prévu par la Constitution?*

Oui, deux dispositions le prévoient :

Article 11 : « Le Président de la République, sur proposition du Gouvernement pendant la durée des sessions ou sur proposition conjointe des deux assemblées, publiées au Journal Officiel, peut soumettre au référendum tout projet de loi portant sur l'organisation des pouvoirs publics, sur des réformes relatives à la politique économique ou sociale de la nation et aux services publics qui y concourent, ou tendant à autoriser la ratification d'un traité qui, sans être contraire à la Constitution, aurait des incidences sur le fonctionnement des institutions.

Lorsque le référendum est organisé sur proposition du Gouvernement, celui-ci fait, devant chaque assemblée, une déclaration qui est suivie d'un débat.

Lorsque le référendum a conclu à l'adoption du projet de loi, le Président de la République promulgue la loi dans les quinze jours qui suivent la proclamation des résultats de la consultation. »

Article 89 : « L'initiative de la révision de la Constitution appartient concurremment au Président de la République sur proposition du Premier Ministre et aux membres du Parlement.

Le projet ou la proposition de révision doit être voté par les deux assemblées en termes identiques. La révision est définitive après avoir été approuvée par référendum.

Toutefois, le projet de révision n'est pas présenté au référendum lorsque le Président de la République décide de le soumettre au Parlement convoqué en Congrès ; dans ce cas, le projet de révision n'est approuvé que s'il réunit la majorité des trois cinquièmes des suffrages exprimés. Le bureau du Congrès est celui de l'Assemblée Nationale. »

2. *A défaut de dispositions constitutionnelles la loi permet-elle de recourir au référendum? En quelles matières?*

Les référendums nationaux ne peuvent être organisés sans base constitutionnelle.

**B - Quel est le type de référendum? Qui décide?***1. Référendum obligatoire*

Le référendum est-il exigé par la Constitution, qui dispose que certains textes sont soumis automatiquement au référendum avant ou après leur adoption par le Parlement?

Il n'y a pas d'obligation pour les référendums de l'Article 11.

Pour une révision de la Constitution, le Président de la République, s'il choisit la voie du Congrès, n'est pas tenu d'organiser un référendum. Depuis les débuts de la Ve République, deux seulement des 17 révisions constitutionnelles ont fait l'objet d'un référendum.

Le référendum n'est obligatoire que dans l'hypothèse d'une révision constitutionnelle d'initiative parlementaire.

*2. Référendum à la demande d'une autorité**a. Le référendum peut-il être organisé à la demande d'une autorité?*

Oui (Article 11), à la demande du Gouvernement ou des deux assemblées.

*b. Si oui, qui peut décider l'organisation d'un référendum? Le chef de l'Etat, le Gouvernement, le Parlement, une fraction du Parlement, des entités territoriales?*

Dans le cas de l'Article 11, c'est le Président de la République sur proposition du Gouvernement ou proposition conjointe des deux Assemblées. La décision du Président de la République est prise sans contreseing ministériel (Article 19).

Dans le cas de l'Article 89, c'est soit le Président de la République, sur proposition du Premier ministre, soit le Parlement.

*3. Référendum à la demande d'une fraction du corps électoral*

Non, aucune disposition constitutionnelle ne le permet.

*a. Un certain nombre d'électeurs peut-il exiger l'organisation d'un référendum?*

Dans ce cas, quel est le pourcentage des électeurs exigé pour valider la proposition ? Comment sont vérifiées les signatures des électeurs ?

*b. Une demande de référendum peut-elle porter sur un texte déjà adopté par le Parlement? Une initiative populaire peut-elle proposer un texte nouveau?*

#### 4. *Procédure impliquant plusieurs autorités*

*Est-il prévu que la présentation d'un texte au vote populaire est soumise à l'accord de plusieurs organes ?*

Dans le cas de l'Article 11, c'est une décision du Président de la République sur proposition du Gouvernement ou des deux Assemblées.

Dans le cas de la révision constitutionnelle (Article 89), l'initiative de celle-ci appartient soit au Président de la République, sur proposition du Premier ministre (projet de révision), soit aux membres du Parlement (proposition de révision). Elle doit être approuvée par les deux chambres, puis selon les cas, par référendum ou par le Congrès.

*Par exemple :*

*Si le référendum est proposé par le chef de l'Etat, faut-il une proposition du Gouvernement ou de l'une ou des deux chambres du Parlement ? Le chef de l'Etat ou le chef du Gouvernement peuvent-ils refuser la proposition ?*

Aucune divergence ne s'est produite jusqu'à maintenant entre le Président de la République et le Gouvernement sur l'opportunité d'un référendum. La proposition a donc un caractère formel. Il est même arrivé que le Président annonce un référendum, avant la proposition du Gouvernement

Dans le cas de la révision (Article 89), le cas s'est produit (en 1973) d'un projet de révision, portant sur la réduction du mandat présidentiel de sept à cinq ans, approuvé par les deux chambres en termes identiques mais n'ayant pas abouti.

*Si le référendum est demandé par une fraction du corps électoral, faut-il l'accord du Parlement/d'une fraction du Parlement ?*

Sans objet.

*Le référendum peut-il être fondé sur une initiative populaire présentant une proposition alternative à un projet retenu par le Parlement ?*

Sans objet.

#### 5. *Rôle du Parlement*

*- Peut-il s'opposer à l'organisation d'un référendum en adoptant un contre-projet portant sur le même objet ? Dans quel délai ? Une majorité spéciale est-elle requise ?*

*- Peut-il soumettre un contre-projet au peuple simultanément au premier texte proposé ?*

*- Peut-il donner uniquement son avis ?*

*- Un délai est-il fixé pour que le Parlement prenne position et, si celui-ci n'est pas respecté, quelles en sont les conséquences ?*

*- En cas de référendum portant sur une question de principe/une proposition non formulée/abrogatif (voir paragraphe suivant), doit-il adopter un (nouveau) texte juridique ?*

Deux hypothèses :

Dans le cas de la révision constitutionnelle, l'approbation parlementaire est nécessaire : si la loi constitutionnelle n'est pas approuvée dans les mêmes termes par les deux assemblées, le référendum ne peut pas être organisé.

Dans le cas de l'Article 11, la seule obligation de l'Exécutif est de tenir un débat devant chaque assemblée.

### **C - Contenu**

#### *1. Types d'actes soumis au référendum*

*Le référendum est-il prévu seulement pour modifier la Constitution?*

Non, d'autres cas sont prévus par l'Article 11 (cf. texte supra).

*Un référendum est-il nécessaire pour modifier la Constitution?*

Non, il n'est pas nécessaire si le Président de la République décide de soumettre au Congrès la loi de révision votée dans les mêmes termes par les deux assemblées.

*Sur quels autres types d'actes le référendum peut-il intervenir ? En particulier, le référendum est-il nécessaire ou possible pour l'adhésion à l'Union européenne ou à une organisation internationale?*

L'Article 11 prévoit trois domaines :

- l'organisation des pouvoirs publics ;
- les réformes relatives à la politique économique et sociale et aux services publics qui y concourent ;
- la ratification d'un traité non contraire à la Constitution mais susceptible d'influencer le fonctionnement des institutions.

Les Traités communautaires sont, le plus souvent, susceptibles d'être soumis à référendum.

Pour l'adhésion initiale à la CEE, la question ne s'est pas posée, la France ayant adhéré dès le début aux structures européennes, avant l'actuelle Constitution.

#### *2. Matières sur lesquelles peut porter le référendum*

*Le référendum est-il réservé à certaines matières? Certaines matières sont-elles soumises obligatoirement au référendum ou, au contraire, exclues du référendum?*

L'Article 89 permet (initiative présidentielle) ou impose (initiative parlementaire) de soumettre au référendum toute révision constitutionnelle.

L'Article 11 prévoit trois domaines :

- l'organisation des pouvoirs publics ;

- les réformes relatives à la politique économique et sociale et aux services publics qui y concourent ;
- la ratification d'un traité non contraire à la Constitution mais susceptible d'influencer le fonctionnement des institutions.

Au total, le domaine possible du référendum est vaste.

#### **D - La forme du texte soumis au référendum (la validité formelle)**

##### *1. Quelle est la forme possible du texte soumis au référendum?*

- un *projet rédigé* de texte constitutionnel, légal ou autre
- l'*abrogation* d'un texte en vigueur
- une *question de principe* (par exemple : « êtes-vous en faveur d'un amendement de la Constitution visant à introduire un système présidentiel ? ») ou
- une *proposition concrète* qui n'est pas présentée sous la forme de dispositions spécifiques, dite "*proposition non-formulée*" (par exemple : «êtes-vous en faveur d'un amendement de la Constitution réduisant le nombre de sièges du Parlement de 300 à 200 ? »).

C'est un texte de loi, soit un projet de loi constitutionnelle, soit un projet de loi ordinaire (lequel peut consister à autoriser la ratification d'un traité) ; en aucun cas, ce ne peut être une question de principe.

##### *2. Les questions soumises au référendum doivent-elle respecter :*

- a. *l'unité de la forme* (une même question ne doit pas combiner un projet rédigé et une proposition non formulée ou une question de principe) ;
- b. *l'unité de la matière* (sous réserve du cas de révision totale d'un texte, il doit exister un rapport intrinsèque entre les différentes parties de chaque question soumise au vote, afin de garantir la liberté de vote de l'électeur, qui ne doit pas être appelé à accepter ou rejeter en bloc des dispositions sans lien entre elles) ;
- c. *l'unité de rang* : une même question ne doit pas porter simultanément sur la Constitution et un acte normatif inférieur.
- d. Le vote doit-il porter sur une seule question ou peut-elle porter sur plusieurs ?
- e. La ou les questions doivent-elles être claires et non suggestives ?

Il n'existe pas d'encadrement tel que celui que suggèrent ces questions.

La jurisprudence du Conseil constitutionnel sur la loyauté des consultations va cependant dans le sens d'une question unique et claire. La question posée « doit satisfaire à la double exigence de loyauté et de clarté de la consultation » et « ne doit comporter d'équivoque » ni sur le sens de la question posée, ni la portée de la consultation (décision n° 87-226 DC du 26 juin 1987, cons. 7 et 9, statut de la Nouvelle-Calédonie ; n° 2000-428 DC du 4 mai 2000, consultation de la population de Mayotte sur son avenir statutaire).

### **E - Limites matérielles du référendum (la validité matérielle)**

*Le référendum est-il exclu si le texte proposé est contraire :*

- *au droit international ou à certaines de ses normes*
- *à la Constitution ou à certaines de ses normes*
- *à d'autres normes de droit supérieur*

Les conditions de fond et de forme fixées par chacun des Articles 11 et 89, comme les domaines respectifs des ces deux Articles doivent être respectées. Bien que cette question ait longtemps donné lieu à des réponses incertaines, on peut maintenant invoquer trois séries de considérations, correspondant à autant de jurisprudences complémentaires successives.

Pour ce qui concerne la période précédant le référendum, le Conseil constitutionnel s'est récemment reconnu compétent pour statuer sur un décret de convocation des électeurs (décision Hauchemaille du 25 juillet 2000).

Pour la période postérieure au référendum, le peuple s'étant prononcé, toute contestation devient impossible. Cette jurisprudence a été dégagée très tôt, dès 1962 à propos du projet prévoyant l'élection du Président de la République au suffrage universel (cf. décision 62-20 DC du 6 novembre 1962) et confirmée en 1992 (cf. décision n° 92-313 DC du 23 septembre 1992 relative à la loi autorisant la ratification du traité sur l'Union européenne).

Enfin le Conseil d'Etat a eu l'occasion de compléter cette jurisprudence (Assemblée, M. Sarran, M. Levacher et autres, 30 oct. 1998) en se prononçant sur la notion de référendum au sens de l'Article 60 de la Constitution, qui dispose que le Conseil constitutionnel veille à la régularité des opérations de référendum, et de l'Article 46 de l'ordonnance du 7 novembre 1958 portant loi organique, qui prévoit la consultation du Conseil constitutionnel sur l'organisation des opérations de référendum.

Le Conseil d'Etat a ainsi jugé qu'il résultait de ces Articles, rapprochés avec l'Article 3 de la Constitution, que « seuls les référendums par lesquels le peuple français exerce sa souveraineté, soit en matière législative dans les cas prévus par l'Article 11 de la Constitution, soit en matière constitutionnelle comme le prévoit l'Article 89, sont soumis au contrôle du Conseil constitutionnel. »

On peut noter qu'à cette occasion, l'Assemblée du contentieux a confirmé la position prise par les formations administratives du Conseil d'Etat selon laquelle l'Article 11 ne peut être utilisé pour modifier la Constitution.

### **F - Campagne/propagande/financement et votation**

#### *1. Campagne et propagande*

- a. *Les autorités sont-elles tenues de fournir une information objective, notamment par la remise du texte et d'une notice explicative aux électeurs?*

Ce n'est pas une obligation explicite, mais l'usage suivi depuis 1958 conduit, de fait, à une réponse positive.



- b. *Si une notice explicative est prévue, qui la rédige ? Les formations politiques peuvent-elles participer à la rédaction de cette notice ? La notice explicative doit-elle présenter le point de vue des autorités et celui des personnes ayant un point de vue opposé, de manière équilibrée?*

Jusqu'à présent, c'est le Gouvernement qui rédige la notice explicative. Rien n'oblige à la compléter, mais rien ne l'interdit non plus.

Le Conseil constitutionnel examine le projet de notice, comme tous les actes préparatoires au référendum.

- a. *La propagande pour ou contre le texte proposé est-elle réservée aux partis politiques? Dans le cas contraire, qui peut participer à cette propagande? Les autorités (nationales, régionales, locales) peuvent-elles faire campagne?*

Normalement, seuls peuvent s'exprimer à la radio et à la télévision les partis politiques, avec deux catégories : ceux représentés au Parlement et ceux dont, compte tenu de la nature de la question posée, la participation paraît justifiée. Par exemple, pour le référendum sur la Nouvelle-Calédonie en 1988, a été prévue une représentation particulière des partis de Nouvelle-Calédonie.

- b. *Les médias publics sont-ils tenus de réserver une place égale aux partisans et aux adversaires du texte proposé?*

La formule usitée est « une place équitable » de façon à éviter des situations concrètes insolubles que le mot égalité suggère mathématiquement.

- c. *Qu'en est-il des médias privés? Les conditions financières ou autres de la publicité radio-télévisée sont-elles égales pour les partisans et les adversaires du projet?*

Les médias sont tenus de rendre compte équitablement, qu'ils soient publics ou privés. Les conditions d'égalité ne portent que sur les émissions prises en charge intégralement par l'Etat. La campagne officielle ne coûte donc rien aux partis ; en revanche, le reste (réunions, tracts, etc.) est à leur charge exclusive.

## 2. *Financement*

- a. *L'utilisation de fonds publics en faveur ou en défaveur d'un projet soumis au référendum est-elle autorisée? Dans quelle mesure? Est-elle exclue pendant la période précédant le vote?*

Il n'existe pas d'encadrement du financement d'une campagne référendaire. La question pourrait cependant être soulevée dans un proche avenir par certaines formations politiques soucieuses d'accéder aux fonds publics pour financer une campagne.

- b. *La rémunération de la collecte des signatures pour les initiatives populaires par des fonds privés est-elle autorisée, et à quelles conditions?*

Sans objet.

3. *Votation*

- a. *Les opérations électorales sont-elles réalisées en un seul jour ou sur plusieurs?*

En un seul.

- b. *S'il y a un décalage horaire important entre les différents centres de vote, les résultats de certains d'entre eux peuvent-ils être connus avant la clôture des opérations des autres centres?*

En droit, non. Dans la pratique, il est bien difficile de l'empêcher. La question est cependant à l'étude.

- c. *La participation de chaque électeur est-elle obligatoire?*

Non.

- d. *Quorum : Pour que la consultation soit valable, doit-elle avoir recueilli un certain pourcentage de votants par rapport au nombre des inscrits? Ou faut-il une participation minimale?*

Non, rien de tel n'est prévu.

**G - Les effets du référendum**

1. *Quels sont les effets du référendum? Est-il demandé aux électeurs un simple avis (référendum consultatif)? Ou une décision (référendum décisionnel)?*

Le référendum national a toujours une portée décisionnelle.

2. *Le référendum oblige-t-il à prendre d'autres décisions (voir point B.5) ?*

Généralement, oui. Une réponse positive au référendum se conclut par la promulgation de la loi constitutionnelle ou ordinaire correspondant au projet ou par la ratification d'un traité.

Cette transformation du droit positif emporte le plus souvent toute une chaîne de conséquences. Par exemple, le référendum sur le statut de la Nouvelle-Calédonie de 1988 a entraîné une refonte complète du droit local.

3. *Si le référendum porte sur un texte déjà adopté par une autorité, est-il :*

- *suspensif : le texte ne peut entrer en vigueur tant qu'il n'a pas été approuvé par les électeurs ou qu'une demande de référendum n'a pas eu lieu dans le délai prévu par la Constitution ou par la loi ;*

Est en effet « suspendue » une révision constitutionnelle adoptée par les deux chambres, mais non ratifiée par la voie référendaire ou par celle du Congrès.

*- résolutoire : le texte cesse d'être en vigueur suite à un vote négatif/en l'absence de vote positif intervenant dans un certain délai après son adoption;*

Non, pas de cas entrant dans cette hypothèse.

*- abrogatif : l'acceptation du référendum conduit à l'abrogation d'une disposition en vigueur.*

Dans le cas où le texte soumis à référendum abroge des dispositions existantes du droit positif.

### **H - Parallélisme des formes et normes prévoyant le référendum**

1. *Une disposition acceptée/refusée par référendum peut-elle être révisée/introduite par une procédure excluant le référendum*

Oui. Par exemple, le statut de 1988 de la Nouvelle-Calédonie, approuvé par référendum national, a été substantiellement modifié en 1999 par une loi organique.

2. *Une norme constitutionnelle ou législative prévoyant la possibilité d'organiser un référendum peut-elle être révisée par une procédure excluant le référendum?*

Oui. On peut en théorie concevoir que l'Article 89 (qui mentionne le référendum comme procédé de révision constitutionnelle) soit modifié par le Congrès.

### **I - Règles particulières relatives à l'initiative populaire**

Sans objet.

1. *Quels sont les délais pour la récolte des signatures?*

2. *Qui est autorisé à récolter les signatures?*

3. *Comment la vérification des signatures s'effectue-t-elle?*

4. *Une autorité est-elle autorisée à rectifier les vices résultant du contenu de la question? (Exemples : en matière de validité formelle, de caractère obscur, trompeur ou suggestif de la question)*

### **J - Contrôle juridictionnel**

1. *La décision d'organiser ou de ne pas organiser un référendum peut-elle faire l'objet d'un recours devant une juridiction? Ou un contrôle judiciaire est-il exercé d'office? Ce contrôle concerne-t-il en particulier l'aboutissement des initiatives populaires?*

En principe oui, mais le contrôle porte sur la procédure quand il s'agit d'un référendum national. Toutefois, la jurisprudence Hauchemaille (25 juillet 2000) permettrait, au travers du décret de convocation des électeurs, lequel comprend en annexe le texte de la question posée, un contrôle au fond sur la constitutionnalité de la procédure.

Le juge judiciaire n'est compétent que pour l'inscription sur les listes électorales et le juge administratif pour les actes administratifs préparatoires (décisions du Conseil Supérieur de l'Audiovisuel sur la campagne audiovisuelle etc.).

2. *Dans l'affirmative, quels sont les cas où le juge peut s'opposer à la tenue d'un référendum (violation de l'unité de la forme, de l'unité de la matière, absence de clarté de la question, etc.)?*

Jusqu'ici, le cas ne s'est pas produit en France.

1. *Les résultats du référendum peuvent-ils faire l'objet d'un contrôle juridictionnel?*

Oui, mais dans des conditions très différentes du droit commun électoral : le Conseil constitutionnel examine en effet les réclamations (inscrites aux procès-verbaux des bureaux de vote) dans le cadre même des opérations de recensement national des votes dont il est chargé.

2. *Qui a qualité pour recourir?*

Ordinairement en droit, le représentant de l'Etat dans chaque département ou collectivité équivalente. Dans des conditions très particulières (inscription au procès-verbal du bureau de vote), chaque électeur.

### **K - Les expériences de référendum**

1. *Depuis que le pays est doté d'une Constitution combien de référendums ont-ils été organisés? Précisez quels types de référendum ont été organisés (voir supra I.C).*

Référendums nationaux : 9 depuis 1958, 2 en 1945, 3 sous le Second Empire.

2. *Qui a pris l'initiative d'organiser chacun d'eux?*

Le pouvoir exécutif depuis 1958.

3. *Certains référendums ont-ils échoué faute d'une participation suffisante?*

Sans objet, faute de quorum légal.

Cependant, à trois reprises, les taux de participation ont été jugés décevants :

- en 1972 (entrée de la Grande-Bretagne, de l'Irlande et du Danemark dans la CEE) : 60,40% ;
- en 1988 (statut de la Nouvelle-Calédonie) : 37,40 % ;
- en 2000 (quinquennat), 30,73 %.

1. *A combien de référendums les électeurs ont-ils donné une réponse affirmative?*

Depuis 1945, les référendums nationaux se sont tous conclus favorablement, sauf à deux reprises, en 1945 et en 1969 (soit 10 sur 12).

En 1969, à la suite de l'échec d'un référendum constitutionnel portant sur le Sénat et la décentralisation, le Président de la République, Charles de Gaulle, a mis fin à son mandat.

2. *A combien de référendums les électeurs ont-ils donné une réponse négative?*

Deux (un en 1945, un en 1969).

3. *La réponse s'explique-t-elle en grande partie pour des raisons étrangères à la question posée?*

La plupart des commentateurs se sont accordés pour expliquer l'échec du référendum en 1969 comme exprimant surtout une lassitude à l'égard du général de Gaulle.

4. *Une réponse affirmative s'explique-t-elle par la popularité de celui qui a posé la question?*

On l'a dit des premiers référendums organisés sous la Ve république par le général de Gaulle.

5. *Une réponse négative s'explique-t-elle par l'impopolarité des gouvernants? Ou par un mécontentement général? Ou encore par une inexacte compréhension des enjeux en cause?*

Ces explications ont été avancées. D'autres raisons ont toutefois pesé dans la balance.

## **II - Référendums régionaux ou locaux**

### **A - Quel fondement juridique?**

1. *Le référendum régional ou local est-il prévu par la Constitution nationale*

Oui (cf. Articles 53, 72-1, 72-4, 73 et 76), surtout depuis la révision du 28 mars 2003 sur la décentralisation. Il y a lieu de distinguer le référendum institutionnel, intéressant un territoire particulier et portant sur son statut de collectivité, et le référendum local, organisé par une collectivité dans un domaine relevant de sa compétence.

2. *A défaut de dispositions constitutionnelles la loi nationale permet-elle de recourir au référendum?*

La loi du 6 février 1992 avait en effet autorisé l'organisation d'un référendum consultatif sans base constitutionnelle. Celle-ci a été introduite en 2003 en conférant à la réponse une portée décisionnelle (cf. loi organique n° 2003-705 du 1er août 2003).

3. *Des dispositions des entités (fédérées, régionales, autonomes, etc.) prévoient-elles le référendum?*

Sans objet.

4. *En quelles matières le référendum est-il possible?*

Le référendum institutionnel porte sur deux domaines précis :

- la cession de territoire ou l'accession à l'indépendance d'un territoire d'outre-mer ;
- l'évolution institutionnelle (par exemple, outre-mer et Corse).

Le référendum local porte exclusivement sur une question relevant de la compétence de la collectivité qui l'organise.

**A1 - A quel niveau?**

1. *Au niveau des Etats fédérés?*

Sans objet.

2. *Au niveau des provinces? Des régions?*

Le référendum institutionnel concerne les collectivités particulières (outre-mer, Corse). Le référendum local est possible aux trois niveaux de l'organisation décentralisée de la République.

3. *Au niveau de circonscriptions plus réduites? Des départements?*

Pour le référendum local, c'est possible pour les départements.

4. *Au niveau des communes?*

C'est le cas le plus fréquent de référendum local.

5. *En quelles matières?*

La règle est que « L'assemblée délibérante d'une collectivité territoriale peut soumettre à référendum local tout projet de délibération tendant à régler une affaire de la compétence de cette collectivité » (cf. Article L.O. 1112-1 du code général des collectivités locales, résultant de la loi organique du 1<sup>er</sup> août 2003 précitée).

6. *Les autorités nationales ou fédérales peuvent-elles intervenir, et dans quelles conditions?*

Le représentant de l'Etat intervient pour le contrôle de légalité, soit avant l'organisation du référendum, soit après.

Dans le premier cas, les modalités du contrôle sont prévues par l'Article L.O. 1112-3 du code précité :

« L'exécutif de la collectivité territoriale transmet au représentant de l'Etat dans un délai maximum de huit jours la délibération prise en application de l'alinéa précédent.

Le représentant de l'Etat dispose d'un délai de dix jours à compter de la réception de la délibération pour la déférer au tribunal administratif s'il l'estime illégale. Il peut assortir son recours d'une demande de suspension.

Le président du tribunal administratif ou le magistrat délégué par lui statue dans un délai d'un mois, en premier et dernier ressort, sur la demande de suspension. Il est fait droit à cette demande si l'un des moyens invoqués paraît, en l'état de l'instruction, propre à créer un doute sérieux quant à la légalité de l'acte attaqué ou du projet de délibération ou d'acte soumis à référendum.

Lorsque la délibération organisant le référendum local ou le projet de délibération ou d'acte soumis à référendum est de nature à compromettre l'exercice d'une liberté publique ou individuelle, le président du tribunal administratif ou le magistrat délégué par lui en prononce la suspension dans les quarante-huit heures. »

Dans le second cas,

« Le texte adopté par voie de référendum est soumis aux règles de publicité et de contrôle applicables à une délibération de l'assemblée délibérante de la collectivité ou à un acte de son exécutif » (Article L.O. 1112-7 du même code).

### **B - Quel est le type de référendum? Qui décide?**

*Répondre aux mêmes questions que I-B, mutatis mutandis (en indiquant notamment quelles autorités fédérées/régionales/locales peuvent intervenir).*

La règle est que c'est l'assemblée délibérante de la collectivité qui décide.

Si la collectivité est saisie par des intervenants par voie de pétition, sa seule obligation est de prévoir un débat par son assemblée.

Le contrôle de légalité s'effectue à l'initiative soit du représentant de l'Etat, soit d'électeurs.

### **C - Contenu**

*Répondre aux mêmes questions que I-C.*

*En particulier :*

*Le référendum peut-il porter sur la sécession? Une modification des limites territoriales? Tout autre objet?*

Le référendum local porte exclusivement sur un domaine de la compétence de la collectivité qui l'organise (cf. texte supra).

La « sécession » relève du dernier alinéa de l'Article 53 de la Constitution, ainsi libellé :

« Nulle cession, nul échange, nulle adjonction de territoire n'est valable sans le consentement des populations intéressées ».

Il s'agit alors d'un référendum institutionnel (cf. dans les années 1970, les Comores et Djibouti).

#### **D - La forme du texte soumis au référendum (la validité formelle)**

*Répondre aux mêmes questions que I-D.*

La loi prévoit que : « L'assemblée délibérante d'une collectivité territoriale peut soumettre à référendum local tout projet de délibération tendant à régler une affaire de la compétence de cette collectivité » (Article L.O. 1112-1 du code précité).

Mutatis mutandis, on peut invoquer les règles de jurisprudence qui prévalent pour un référendum national (obligation de clarté et de loyauté de la consultation, question posée dépourvue d'équivoque).

Il en résulte logiquement que la question posée à propos d'un projet de texte doit amener une réponse par oui ou par non.

#### **E - Limites matérielles du référendum (la validité matérielle)**

*Répondre aux mêmes questions que I-E (et en particulier à la question de la conformité aux normes de l'Etat central).*

La procédure est soumise de bout en bout au contrôle de légalité, à peine de nullité. Ce contrôle peut porter sur la décision de recourir au référendum, dans les conditions rappelées supra, sur l'organisation du référendum lui-même ou sur la légalité de l'acte ainsi adopté en définitive.

Elle doit donc se conformer à la loi nationale. En particulier, les règles d'organisation du scrutin local renvoient aux règles de droit commun définies par le code électoral pour l'ensemble des élections au suffrage universel direct.

#### **F - Propagande et votation**

*Répondre aux mêmes questions que I-F.*

Normalement, les règles sont sensiblement les mêmes que celles du référendum national, à ceci près qu'il n'est pas interdit de prévoir des formes complémentaires de participation (par exemple, prise en charge de frais de propagande de partis locaux).

Les partis appelés à s'exprimer lors de la campagne sont des partis locaux, c'est-à-dire ceux qui sont représentés à l'assemblée à l'origine du référendum.

Aucune propagande sur des chaînes de télévision ou des stations de radio n'est prévue sauf dans le cas des référendums institutionnels, et alors seulement sur les chaînes et stations publiques locales.

Les seules restrictions réelles portent sur le calendrier du scrutin qui ne peut intervenir en même temps qu'une élection au suffrage universel ou un référendum national (cf. Article L.O. 1112-6 du code précité).



### **G - Les effets du référendum**

*Répondre aux mêmes questions que I-G.*

La loi dispose que :

« Le projet soumis à référendum local est adopté si la moitié au moins des électeurs inscrits a pris part au scrutin et s'il réunit la majorité des suffrages exprimés» (Article L.O. 1112-7 du code précité).

### **H - Parallélisme des formes et normes prévoyant le référendum**

*Répondre aux mêmes questions que I-H.*

Réponse positive des les mêmes cas de figure que ceux évoqués en I-H.

### **I - Règles particulières relatives à l'initiative populaire**

*Répondre aux mêmes questions que I-I.*

La loi en dispose ainsi :

« Dans une commune, un cinquième des électeurs inscrits sur les listes électorales et, dans les autres collectivités territoriales, un dixième des électeurs, peuvent demander à ce que soit inscrite à l'ordre du jour de l'assemblée délibérante de la collectivité l'organisation d'une consultation sur toute affaire relevant de la décision de cette assemblée. La décision d'organiser la consultation appartient à l'assemblée délibérante de la collectivité territoriale »

et

« L'assemblée délibérante de la collectivité territoriale arrête le principe et les modalités d'organisation de la consultation. Sa délibération indique expressément que cette consultation n'est qu'une demande d'avis » (cf. Articles L. 1112-16 et L. 1112-17, dont la date d'entrée en vigueur est le 1<sup>er</sup> janvier 2005).

### **J - Contrôle juridictionnel**

*Répondre aux mêmes questions que I-J, en distinguant le cas échéant le contrôle judiciaire au niveau de l'Etat central et des entités fédérées/des régions.*

Le contrôle juridictionnel est exercé à divers stades par le juge administratif (a priori, le tribunal administratif) avant l'organisation du référendum local dans les conditions rappelées ci-dessus (cf. Article L.O. 1112-3 précité), puis dans le cadre du contrôle de légalité.

Le tribunal administratif intervient également en tant que juge de l'élection compétent pour connaître de l'organisation du référendum local.

Dans le cas d'un référendum institutionnel, bien qu'aucune disposition de nature constitutionnelle ne le précise, le juge, tant de l'excès de pouvoir avant l'organisation du référendum, que de l'élection pour l'organisation de ce même référendum, est habituellement le Conseil d'Etat, statuant en premier et dernier ressort.

En principe, les juridictions judiciaires n'interviennent qu'exceptionnellement, par exemple en cas de commission d'un délit (fraude électorale).

### **K - Les expériences de référendum**

1. *Les référendums locaux ont-ils été nombreux?*
2. *A quel niveau? Etat fédéré? Province ou département? Communes? Autres circonscriptions? Précisez quels types de référendums ont été organisés.*

On doit distinguer plusieurs contextes.

Les référendums institutionnels sont rarement intervenus, mais se sont récemment développés. Ils concernent pour l'essentiel l'outre-mer mais aussi la Corse. On en compte 9 depuis 1958, dont 5 en 2003. Dans cette dernière catégorie, on doit mentionner la proportion inhabituelle de consultations conclues négativement (3 sur les 5 et les 3 concernant les populations les plus nombreuses).

Les référendums consultatifs organisés dans le cadre de la loi du 6 février 1992 n'ont pas fait l'objet d'un recensement systématique. Toutefois, les données statistiques fournies au Parlement en 2003 font état d'une cinquantaine de consultations organisées après les élections municipales de juin 1995 jusqu'à la fin 1999, soit une moyenne de l'ordre de 2 par mois. Deux communes en ont organisé plus d'un et deux opérations ont concerné plus d'une commune.

Les référendums décisionnels prévus par la loi organique du 1<sup>er</sup> août 2003 sont encore peu nombreux. Aucune statistique n'est disponible à cet effet, les textes d'application venant d'être publiés récemment.

### **III - Avenir du référendum**

*Une réforme du référendum est-elle en cours?*

Le champ d'intervention possible de la procédure de référendum national a été étendu en 1995 et le référendum local généralisé en 2003.

Pour l'instant, personne ne revendique d'extension supplémentaire et il est prématuré de répondre aux questions qui suivent.

A noter qu'à l'issue du référendum constitutionnel national de 2000 sur le quinquennat, le Conseil constitutionnel a, dans son rapport, émis le vœu que les règles relatives à la campagne et aux opérations de vote, au lieu d'être fixées au coup par coup par voie réglementaire, fassent désormais l'objet d'un cadre législatif pérenne. Cette réforme pourrait voir prochainement le jour.

**Voir aussi sur le site du Conseil constitutionnel :**

[Le référendum sous la Vème République \(1998\)](http://www.conseil-constitutionnel.fr/dossier/quarante/q20.htm)

<http://www.conseil-constitutionnel.fr/dossier/quarante/q20.htm>

[Le référendum de 2000 sur le quinquennat](http://www.conseil-constitutionnel.fr/dossier/referendum/index.htm)

<http://www.conseil-constitutionnel.fr/dossier/referendum/index.htm>

[La loi organique du 1er août 2003 sur le référendum local](http://www.conseil-constitutionnel.fr/decision/2003/2003482/index.htm)

<http://www.conseil-constitutionnel.fr/decision/2003/2003482/index.htm>

[La consultation de la population de Mayotte \(2000\)](http://www.conseil-constitutionnel.fr/decision/2000/2000428/index.htm)

<http://www.conseil-constitutionnel.fr/decision/2000/2000428/index.htm>

[Les référendums locaux consultatifs de la loi de 1992 \(2000\)](http://www.conseil-constitutionnel.fr/decision/2000/2000428/consul.htm)

<http://www.conseil-constitutionnel.fr/decision/2000/2000428/consul.htm>

[Liste des référendums nationaux organisés sous la Ve République](http://www.conseil-constitutionnel.fr/dossier/referendum/tableau.htm)

<http://www.conseil-constitutionnel.fr/dossier/referendum/tableau.htm>

## **GEORGIE / GEORGIA**

### **I - National referendums**

**A.1.** The Constitution of Georgia provides for the right of citizens to participate in the referendum. In particular,

Under Article 5 para. 2 of the Constitution of Georgia:

“2. The people shall exercise their authority through referendum, other forms of direct democracy and their representatives.”

Under Article 28 of the Constitution of Georgia:

“1. Every citizen of Georgia who has attained the age of 18 shall have the right to participate in referendum or elections of state and self-government bodies. Free expression of the will of electors shall be guaranteed.

2. A citizen, who is recognised as legally incapable by a court or who is detained in a penitentiary institution following a conviction by a court, shall have no right to participate in elections and referendum.”

Under Article 74 of the Constitution of Georgia:

“1. At the request of the Parliament of Georgia, of not less than 200,000 electors or on his/her own initiative the President of Georgia shall schedule a referendum concerning the issues determined by the Constitution and the Organic Law within 30 days after receiving such a request.

2. The referendum shall not be held with the view of adopting or repealing law, in terms of amnesty or pardon, ratification or denunciation of international treaties and agreements, as well as the issues restricting the basic constitutional rights and freedoms of individuals.

3. Issues related to the scheduling and holding referendum shall be determined by the Organic Law.”

Under Article 89 para. 1. subparagraph d)

“The Constitutional Court of Georgia ... shall consider dispute on constitutionality of referenda and elections”...

**A.2.** In addition to the Constitutional provisions. the issues related to a referendum are determined in detail by the Organic Law of Georgia “On Referendum”. In particular, the matters to be solved by means of a referendum are determined by Article 3 of the Organic Law, which reads as follows:

1. A referendum may be held on issues having particular state importance, including the issues and principles provided for in laws of Georgia, international treaties and agreements.
2. It shall be inadmissible to hold a referendum:
  - a. with the view of adopting or repealing a law;
  - b. on the issues of amnesty and pardon;
  - c. on ratification and denunciation of the international treaties and agreements;
  - d. on issues restricting fundamental constitutional rights and freedoms of citizens.”

A referendum shall be a public opinion poll held by means of voting related to the final resolution of issues having particular state importance. A referendum shall be one of the forms of exercise of the people’s authority. A referendum shall be held on the entire territory of Georgia. Referendum shall be held on the basis of universal, equal and direct suffrage by secret ballot. Citizen shall participate in a referendum directly and personally. Each participant of a referendum shall only have one vote. Participation in a referendum shall be free, control over the expression of will by the citizens shall be inadmissible. A referendum shall be prepared and held openly and publicly.

**B.1.** There is no mandatory referendum provision either in the Constitution or in the Organic Law.

**B.2.a.** The authorities can call a referendum.

**B.2.b.** The President of Georgia is entitled to call a referendum.

**B.3.a.** In accordance with paragraph 1 of Article 74 of the Constitution and Article 4 para. 1 of the Organic Law,

“1. At the request... of not less than 200 000 electors ... the President of Georgia shall schedule a referendum concerning the issues determined by the Constitution and the Organic Law within 30 days after receiving such a request.”

Signatures shall be collected on the standard sheet established by the central referendum commission with the agreement of the initiative group. No more than 50 citizens shall sign sheet, who himself/herself shall write name, surname, year of birth, number of an identity card, address and date of signature. Each sheet with the above mentioned data shall be signed by a responsible person of the collection of signatures indicating his/her address and his/her signature shall be confirmed at the notary or the body of the local self-government.

**B.3.b.**

The Constitution of Georgia determines the issues in terms of which a referendum may not be held. In particular, under Article 3 para 2, a referendum shall not be held with the view of adopting or repealing a law, in terms of amnesty or pardon, ratification or denunciation of international treaties and agreements, as well as the issues restricting the basic constitutional rights and freedoms of individuals.

**B.4.**

A referendum shall be called by the President of Georgia. The decision taken by the President does not need any approval. "1. At the request of the Parliament of Georgia, not less than 200 000 electors or on his/her own initiative, the President of Georgia shall schedule a referendum concerning the issues determined by the Constitution and the Organic Law within 30 days after receiving such a request."

**C.1 - Content**

Article 3 of the Organic Law of Georgia on Referendum determines the types of acts, which may be submitted for referendum, or not.

Referendum issues

1. A referendum may be held on issues having particular state importance, including the issues and principles provided for in the Georgian laws, international treaties and agreements.
2. It shall be inadmissible to hold a referendum:
  - a. with the view of adopting or repealing a law;
  - b. on the issues of amnesty and pardon;
  - c. on ratification and denunciation of the international treaties and agreements;
  - d. on issues restricting fundamental constitutional rights and freedoms of citizens.

**C.2.** There are no special matters determined in express terms either by the Constitution or by the Organic Law which would necessitate holding of a referendum automatically. About the issues automatically excluded from referendums see above, inter alia, C.1.

**F.1 - Campaigning**

In accordance with Article 7 of the Organic law on Referendum. (Propaganda)

1. Citizens, political parties, social communities of the citizens, initiatory groups shall have the right to propagate without hindrance about referendum and about the matter that was carried out at the referendum.
2. Members of the committee of the referendum shall have no right to propagate about referendum and about the matter that was carried out at the referendum.
3. Propagation at the day when the referendum is to be held shall be prohibited.

**F.2 - Funding**

Article 6 of the Organic law (Material support of the referendum)

1. The material support of a referendum shall be carried out on the expense of the state budget.

2. Local governmental bodies shall ensure preparation of the buildings and materials necessary for the preparation and holding of a referendum.

### **F.3 - Voting**

- a. Article 23 of the Organic Law

1. Voting shall be held from 7 a.m. until 20 p.m. on the day of the referendum.

- b. Under Article 8 of the Organic Law, it shall be impermissible to enquire on people's opinion on the day of the referendum until the end of the ballot.

- c. The Constitution of Georgia and the Organic law determine the circle of participants of a referendum who shall have the right and not the obligation to participate in the referendum regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.

- d. Article 27 of the Organic law states that

“The issue of referendum shall be deemed adopted if it is voted positively by more than half of the total number of the participants of the voting”.

### **G - Effects of referendum**

Paragraph 2 of Article 28 of the Organic Law states that “A decision adopted as a result of referendum shall come into force from the moment of its promulgation and have a legal force. It shall be final. Results of referendum shall have a direct effect”.

### **H - Parallelism of procedures and rules on referendums**

Under Article 28 para. 3 of the Organic Law, the legislature and the executive are obliged to bring the legislation and other acts into compliance in the view of the results of the referendum. Under para. 4 of the same Article 28 the decision adopted as a result of the may only altered or repealed only by means of a referendum. The results of the referendum may be declared to be null and void by the Constitutional Court of Georgia in the proceedings established by law.

### **I - Specific rules on popular initiatives**

Article 10 of the Organic law of Georgia on Referendum  
(Initiative Group of Holding a Referendum)

1. In case electorate is the initiator of holding a referendum, an initiative group shall be created. The name and place of residence of each member shall be defined in the list of the initiative group. Initiative group shall definitely determine the issue of referendum.

2. The initiative group shall apply the central referendum commission with a request to register the issue of referendum proposed by the initiative group, definition of the issue shall be determined with the agreement of the initiative group.

3. Central referendum commission shall register the issue of referendum and the composition of the initiative group and promulgate the information about this and address of the initiative group in the official gazette.
4. The issue proposed for referendum shall be included in the sheets of signatures of electorate.
5. Certificate of registration shall be submitted to the initiative group within a month from the request of registration. Registration shall be rejected in case the requirements of this law are violated.
6. The initiative group shall be entitled to appeal to the Supreme Court of Georgia within five days after the rejection of registration. This latter shall consider the claim within five days and adopt a final judgment.

Article 11 of the Organic law  
(Procedure and Terms of the Collection of Signatures)

1. The initiative group shall begin the collection of signatures from the day of obtaining the certificate of registration.
2. Signatures shall be collected on the standard sheet established by the central referendum commission with the agreement of the initiative group. No more than 50 citizens shall sign each sheet, who himself/herself shall write name, surname, year of birth, number of an identity card, address and date of signature. Each sheet with the above mentioned data shall be signed by a responsible person of the collection of signatures indicating his/her address and his/her signature shall be confirmed at the notary or the body of local self-government.

**J - Judicial review**

In accordance with Article 28 of the Organic law

“Decision adopted as a result of referendum shall be revised or annulled only by referendum. The Constitutional Court of Georgia shall be authorised to invalidate the results of referendum in accordance with a procedure established by law”.

The issue of constitutionality of a referendum shall be considered by the Plenum of the Constitutional Court. The time-limit for the consideration of a constitutional claim concerning constitutionality of scheduling a referendum shall not exceed fifteen days from lodging the claim with the Constitutional Court. Upholding a constitutional claim concerning the issue shall result in prohibition to hold the referendum on the issue submitted for referendum, cancellation of the scheduled referendum, or obliging to hold a referendum.

The following shall have the right to lodge a constitutional claim to the Constitutional Court concerning constitutionality of holding a referendum:

- a. not less than one fifth of the members of the Parliament of Georgia, if the President of Georgia on his/her own initiative or at the request of constituents has called or notwithstanding the request of Parliament of Georgia has not called a referendum;



- b. the Public Defender of Georgia, if notwithstanding the electors' request a referendum is not called;
- c. not less than one fifth of the members of the Parliament of Georgia, the Public Defender of Georgia, if they believe that the holding a referendum contradicts the requirements of Article 74.2 of the Constitution of Georgia.
- d. at least one fifth of the members of the Parliament of Georgia, the President of Georgia, the Public Defender of Georgia, if they believe that the referendum is held in violation of the requirements laid down in the third paragraph of Article 74 of the Constitution of Georgia.

To the cases, provided for in “a-c” paragraphs the President of Georgia shall be the respondent, whereas in the cases, provided for by paragraph “d” the Central Electoral Commission of Georgia shall be the respondent.

In the cases, provided for by paragraphs “a”-“c” the time-limit allowed for lodging a constitutional claim, shall not exceed fifteen days from the expiry of the term established by the first paragraph of Article 74 of the Constitution of Georgia (30 days), or from the date, on which the referendum is scheduled, whereas in the cases, provided for by the paragraph “d” the time-limit shall not exceed seven days from the promulgation of the referendum results by the Central Electoral Commission.

## **II - Regional or local referendums**

A referendum may only be held on the whole territory of Georgia.

## **GRECE / GREECE**

### **I – National referendums**

#### **A – Legal basis**

1. *Is provision made for referendums in the Constitution ?*

Yes, in article 44 (2) of the Constitution of 1975/1986/2001.

2. *If not, does the law provide for the use of referendums? On what matters?*

#### **B – What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

No.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

According to Article 44 (2) of the Constitution, the President of the Republic (Head of State) shall proclaim by decree a referendum on “crucial national matters” following a resolution voted by the absolute majority of the total number of Members of Parliament, taken upon proposal of the Cabinet.

Furthermore, the President of the Republic shall proclaim by decree a referendum on bills (tabled by the Government, not by Members of Parliament, according to most constitutional lawyers) voted upon as a whole by Parliament, regulating “important social matters” with the exception of fiscal ones, following a decision by 3/5 of the total number of MPs, taken upon proposal of 2/5 of the total number of MPs.

No more than two proposals to hold a referendum on a bill can be introduced in the same parliamentary term.

It is to be noted that the President of the Republic has no discretionary competence with regard to the issuing of the decree calling for a referendum. Furthermore, the presidential decree

proclaiming a referendum on a bill, as provided for in article 44 (2) of the Constitution, shall be countersigned by the Speaker of the Parliament (article 35 (3) of the Constitution).

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

No.

- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

No.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament – or do a number of members of Parliament – have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

Please refer to our reply to question B 2.

5. *Role of Parliament:*

See hereabove, under B 2.

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit a counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

**C - Content**

1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

*Is a referendum mandatory in the case of a constitutional amendment?*

No. On the contrary, constitutional doctrine considers that the Constitution cannot be revised through a referendum, since such procedure is not provided for in the relevant article 110 of the Constitution.

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

Accession to some international organisations could be considered, in our view, under certain circumstances, as a “crucial national matter” or as an “important social matter” and be, thus, subjected to a referendum under the conditions set out in article 44 (2) of the Constitution.

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

As explained in our reply to question B 2, referendums are reserved for “crucial national matters” and “important social matters”, under the conditions set out in article 44 (2) of the Constitution. There are no matters automatically put to a referendum. Fiscal matters are explicitly excluded from referendums.

#### **D – Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*

- *repeal of an existing provision?*

- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*

- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

In the case of bills voted by Parliament regulating important social matters, the text submitted to referendum would take, by definition, the form of a specifically-worded draft. It is not excluded that the said bill provides for the repeal of an existing provision. Referendums on “crucial national matters” could also take the form of a question of principle.

2. *Do questions submitted to referendum have to respect<sup>1</sup>:*

a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*

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<sup>1</sup>*Guidelines for constitutional referendums at national level, adopted by the Venice Commission at its 47th plenary meeting (Venice, 6 and 7 July 2001) (CDL-INF(2001)010), para. II.C.*

- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*
- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

See our reply to question D 1. It is to be noted that articles 115 and 116 of the Standing Orders of Parliament provide that the questions put to a referendum should be drafted in “clear terms”.

### **E - Substantive limits on referendums (substantive validity)<sup>2</sup>**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

It is not possible to submit to a referendum acts which are contrary to norms of a superior hierarchical rank. For instance, a bill voted by Parliament and submitted to a referendum may not be contrary to the Constitution, as well as the generally recognised rules of international law and international conventions duly ratified (article 28 (1) of the Constitution).

### **F – Campaigning, funding and voting**

As a general remark, we would like to point out that the law referred to in article 44 (2) of the Constitution, providing for the implementation of constitutional provisions related to referendums, has not been yet issued. However, referendums on “crucial national matters” are covered by law no 350/1976. According to some constitutional lawyers, the said law could be applied by analogy to referendums on “important social matters”. As a consequence, some issues related to the conducting of a referendum are not explicitly regulated. However, provisions of the Electoral Code on parliamentary elections may be applicable to referendums as well.

#### *1. Campaigning<sup>3</sup>*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

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<sup>2</sup>*Cf. CDL-INF(2001)010, para. II.D.*

<sup>3</sup>*Cf. CDL-INF(2001)010, para. II.E.2.*

- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*
- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*
- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

## 2. *Funding*<sup>4</sup>

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*
- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

## 3. *Voting*

The following replies are given on the basis of law 350/1976 regulating referendums on "crucial national matters". See the *chapeau* for further details.

- a. *Does voting take place on one day or over a number of days?*

Voting takes place on one day.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

No time-lag in Greece.

- c. *Is it compulsory for all voters to cast a vote?*

Yes.

- d. *Quorum:<sup>5</sup> For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

No.

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<sup>4</sup>*Cf. CDL-INF(2001)010, para. II.F.*

<sup>5</sup>*Cf. CDL-INF(2001)010, para. II.O.*

### **G - Effects of referendums<sup>6</sup>**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

Both types of referendums envisaged in article 44 (2) of the Constitution are considered as binding.

2. *Does the referendum make it necessary to take other decisions (see item B.5) ?*

Not necessarily.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

*A draft bill voted as a whole by Parliament, submitted to a referendum and rejected by the electorate may not enter into force.*

### **H – Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?<sup>7</sup>*

Due to the lack of practice, it is not possible to give a clear-cut answer to this question. Some constitutional lawyers consider that a bill rejected by popular vote may probably not be introduced before Parliament in the same parliamentary session.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?<sup>8</sup>*

Yes.

### **I – Specific rules on popular initiatives<sup>9</sup>**

1. *What is the time-limit for collecting signatures?*

2. *Who is entitled to collect signatures?*

3. *How are signatures checked?*

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<sup>6</sup>Cf. CDL-INF(2001)010, para. II.N.

<sup>7</sup>Cf. CDL-INF(2001)010, para. II.L.

<sup>8</sup>Cf. CDL-INF(2001)010, para. II.K.

<sup>9</sup>Cf. CDL-INF(2001)010, para. II.J.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

### **J – Judicial review**<sup>10</sup>

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

The decision of the authorities to hold or not to hold a referendum is not subject to judicial review.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*
3. *Are the results of referendums subject to judicial review?*

The Special Supreme Court, established by article 100 of the Constitution, has the competence to verify the validity and the results of a referendum (article 100 (2) of the Constitution).

4. *Who may lodge an appeal?*

Every member of the electorate registered in the relevant electoral rolls may lodge an appeal to the Special Supreme Court, alleging a violation of the legislation pertaining to the conducting of the referendum or an error in the counting of ballots (article 36 of law 345/1976).

### **K – Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*
2. *On whose initiative has each referendum been held?*
3. *Have any referendums been invalid because of a low turnout?*
4. *In how many referendums has the electorate voted yes?*
5. *In how many referendums has the electorate voted no?*
6. *Can any of the results be largely accounted for by factors unrelated to the question?*
7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

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<sup>10</sup>Cf. CDL-INF (2001)010, para. II.P.



8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

In Greek constitutional history, 6 referendums were held, in periods of political/constitutional transition. They were related either to the form of government (Crowned Democracy or Republic) or to the return to the Throne of a previously deposed Monarch. 2 referendums were called by the dictatorial colonels' regime (1967-1974), which did not express the free will of the people.

The latest referendum was held in 1974, after the reinstatement of democracy. The electoral body, by a majority of 69.18%, decided against crowned democracy, settling thus the issue of the form of government in Greece.

## **II – Regional or local referendums**

No regional or local referendums are provided for in the Greek legal order

### **A – Legal basis**

1. *Is there provision in the national Constitution for local referendums?*
2. *If there are no constitutional provisions, does national law allow local referendums?*
3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*
4. *On what matters is it possible to call a referendum?*

### **A1 – At what level?**

1. *Federate states?*
2. *Provinces? Regions?*
3. *Lower levels? Districts?*
4. *Municipalities?*
5. *On what matters?*
6. *May national or federal authorities intervene, and in what conditions?*

### **B – What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

**C – Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other subjects permitted?*

**D – Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

**E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

**F – Campaigning and voting**

*Reply to the same questions as in I-F.*

**G – Effects of referendums**

*Reply to the same questions as in I-G.*

**H – Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

**I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

**J – Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

**K – Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

### **III – The future of referendums**

1. *Is the referendum system currently being reformed?*
2. *If so, for what reason?*
3. *If so, what is the general tendency of this reform?*

Reform of the referendum system is not currently under consideration. It is to be noted that the relevant constitutional provisions have not been amended during the recent constitutional revision, completed in 2001.

## **HUNGARY / HONGRIE**

### **I - National referendums**

#### **A - Legal basis**

*1. Is provision made for referendums in the Constitution?*

Articles 28/B-28/E Constitution provide for the national referendum and the national popular initiative as follows:

#### **Article 28/B**

1. The subject of national referenda or popular initiatives may fall under the jurisdiction of the Parliament.
2. A majority of two-thirds of the votes of the Members of Parliament present shall be required for the Parliament to pass the law on national referenda and popular initiatives.

#### **Article 28/C**

1. A national referendum may be held for reaching a decision or for an expression of opinion. Carrying out a national referendum may be mandatory or may be the result of the consideration of a matter.
2. A national referendum shall be held if so initiated by at least 200,000 voting citizens.
3. If a national referendum is mandatory, the result of the successfully held national referendum shall be binding for the Parliament.
4. Based on its consideration, the Parliament may order a national referendum upon the initiative by the President of the Republic, the Government, by one-third of Members of the Parliament or by 100,000 voting citizens.
5. National referendum may not be held on the following subjects:
  - a. on laws on the central budget, the execution of the central budget, taxes to the central government and duties, customs tariffs, and on the central government conditions for local taxes,
  - b. obligations set forth in valid international treaties and on the contents of laws prescribing such obligations,
  - c. the provisions of the Constitution on national referenda and popular initiatives,
  - d. personnel and restructuring (reorganization, termination) matters falling under Parliamentary jurisdiction,

- e. dissolution of the Parliament,
- f. the Government's program,
- g. declaration of a state of war, a state of emergency or a state of national crisis,
- h. use of the Armed Forces abroad or within the country,
- i. dissolution of the representative body of local governments,
- j. amnesty.

6. A national ratification referendum shall be considered successful if more than half of the votes of the citizens voting are valid, but at least more than one-quarter of all eligible voters have given the same answer in the referendum.

#### Article 28/D

At least 50,000 voting citizens are required for a national popular initiative. A national popular initiative may be for the purpose of forcing the Parliament to place a subject under its jurisdiction on the agenda. The Parliament shall debate the subject defined by the national popular initiative.

#### Article 28/E

In order to call a national referendum, signatures may be collected for a period of four months in the case of a civic initiative, and for a period of two months in the case of a national popular initiative.

According to Article 26(6)(6) The President of the Republic shall ratify the law subject to national referendum if such law is confirmed by the national referendum.

Article 30/A(1)(d) provides that The President of the Republic shall announce general parliamentary or local government elections, and the date of the national referendum.

Article 70 declares that

1. All adult Hungarian citizens residing in the territory of the Republic of Hungary have the right to be elected and the right to vote in Parliamentary elections, local government elections or minority self-government elections, provided that they are present in the country on the day of the election or referendum, and furthermore to participate in national or local referenda or popular initiatives.

2. Persons residing in the territory of the Republic of Hungary as immigrants who do not have Hungarian citizenship also have the right to vote in local government elections of representatives and the Mayor, as well as the right to participate in local referenda and popular initiatives, in accordance with the regulations of a separate law, provided that they are present in the country on the day of the election or referendum.

The basis of all provisions on the referendum is Article 2(2): In the Republic of Hungary all power is vested in the people, who exercise their sovereignty through elected representatives and directly.

2. *If not, does the law provide for the use of referendums? On what matters?*

The substantial norms on national referendum are included into Act III/1998 on national referendum and popular initiative; the procedure is regulated in Act C/1997 on the electoral procedure.

**B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

There is no mandatory subject for referendum in Hungarian law.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes, see b.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

The President of the Republic, the Government, one-third of the Members of Parliament may call for a facultative (= depending on the consideration of the Parliament) referendum.

3. *Referendums held at the request of part of the electorate*

a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

100.000 voting citizen may call for a facultative referendum. On the initiative of at least 200.000 voting citizen the referendum must be held.

The signatures are checked by the National Board for Elections. Statistical and mathematical methods are used, on the basis of the central data bank of personal data and addresses. A representative of the initiator for the referendum may be present.

b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

Both are possible.

A law already adopted by Parliament but not yet signed by the President of the Republic can be submitted to a referendum. The President shall only sign the law if it was confirmed by the referendum. An amendment to the Constitution adopted by the Parliament can be confirmed

by referendum. Such referenda are always decision-making ones, that is binding on the authorities.

Any new text can be submitted to a referendum.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

If the referendum is initiated by the President of the Republic, the Government, one-third of the MPs, or more than 100.000, but less than 200.000 voting citizens, the Parliament decides freely whether the referendum will be held or not.

If the referendum is initiated by more than 200.000 voting citizens, the Parliament shall order that the referendum be held.

Note: The right of the Parliament to approve (or reject) the referendum applies only to questions, the text of which had previously been examined and approved (in the wording of the law “verified”) by the National Board for Elections.

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

Such a concurrence between initiatives is only permissible until the point in time, when the National Board for Elections - in the case of an initiative from the electorate - verifies the sheet for collecting signatures that includes also the question to be answered, or - in case of calling for a referendum by the President of the Republic, the Government or one-third of the MPs - verifies the question. No new initiative is possible on the same subject until the referendum was held, or the Parliament refuses the initiative, or the period of time open for submitting the signatures has been passed.

5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

See the answer to the previous question.

*- Is it entitled only to give its opinion?*

There is no such possibility.

- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?---*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

Yes, it is required to do so.

### **C - Content**

#### *1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

According to the standard jurisdiction of the Constitutional Court no referendum can be initiated on and held for the amendment of the Constitution. Even a “hidden amendment” is not permissible (when the question submitted to referendum is not directed to amend the text of the Constitution but would result in the amendment of the content of a constitutional provision). Only an amendment to the Constitution already adopted by the Parliament may be endorsed by referendum.<sup>11</sup>

*Is a referendum mandatory in the case of a constitutional amendment?*

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

Any question falling within the competence of the Parliament may be the subject of a national referendum. There are no obligatory or “recommended” matters. The referenda on the accession to the NATO and the European Union were held on the discretion of the Parliament.

#### *2. Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

See previous answer.

### **D - Form of the text submitted to referendum (formal validity)**

#### *1. What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*

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<sup>11</sup>Decision 2/1993; Decision 25/1999.



- a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?

The Law on Referendum requires only that the “concrete question submitted to the referendum” shall be worded in that manner that an unambiguous answer can be given to it. In the praxis all the questions has been formulated as a yes or no question. (“Are you in favour...”)

Even yes or not questions may include the exact wording of a proposed legislation. Question of principle or - as in most cases - a generally-worded proposal is also possible. The Constitutional Court ruled that the use of exact legal terms in the question was not required.

However, the Constitutional Court requires that the question be formulated in a way that on the ground of the result of the referendum the Parliament can decide whether it has the duty to pass a law, and with which content.<sup>12</sup>

2. *Do questions submitted to referendum have to respect:*

a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*

Although there is no special rule on this question, from the other rules it follows that the unity of form is required.

b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*

According to the Constitutional Court it is not contrary to the unambiguity requirement, if the question is composed of more subclauses. But if the subclauses are contradictory, if their relationship is not clear or one of them does not follow from the other, or if they are not connected by the same content, the question violates the right to vote.

c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*

There is no such express requirement but considering the very limited possibility to vote on the Constitution (see C.1. above) for practical reasons the unity of rank will prevail.

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<sup>12</sup>Decisions 32/2001 and 52/2001.

- d. *Does the vote have to be on a single question or can it be on several different ones?*

It is permitted to put to the vote more than one question on the same occasion/sheet provided that each question can be answered separately.

- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

For clarity see above. There is no special rule on being suggestion-free, but on from the other rules this follows.

### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules?*

Article 28/C(5) Constitution - that was incorporated into the Constitution 1997 - lists the subjects on which no referendum may be held (see above). The Constitution gives no authorisation to the legislator to add further subjects to this list. The exclusiveness of prohibited subjects in Art 28/C(5) Constitution was reinforced also by the Constitutional Court.<sup>13</sup> Nevertheless the Constitutional Court upheld its former jurisdiction also after 1997, that the Constitution may not be amended by the way of a referendum initiated by voters.<sup>14</sup>

Article 28/C(5)(b) provides that no referendum may be held on the obligations arising from international treaties in force and on the content of the laws containing these obligations. The Constitutional Court interpreted the notion of “obligations” extensively.<sup>15</sup>

On the other hand the Court held that if the question submitted to referendum is related to a prohibited subject only remotely and indirectly, the referendum may be held.<sup>16</sup>

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

There is no such obligation.

- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*

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<sup>13</sup>Decision 64/1997.

<sup>14</sup>See footnote 1.

<sup>15</sup>Decision 11/1999, Decision 25/2000.

<sup>16</sup>Decision 51/2001.

- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

There is no provision on this subject. Only the Law on Electoral Procedure contains some rules, which keep the buildings of State and local authorities outside the campaign. The campaign rules applies both for elections and referenda, although they are fashioned for the elections. Any restriction on campaigning would contradict to the rule that the Head of State, the Parliament, the Government are entitled to initiate a referendum. For instance The Government campaigned intensively in favour of the accession to the NATO and the EU. The respective referenda were initiated by them.

- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*

The Law on Electoral Procedure provides that all electoral candidates and their nominating organisations shall given equal opportunity to publish political advertisements. This shall apply to the referenda as well.

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

No provisions.

## 2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*
- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

The Law on Electoral procedure contains detailed rules on funding elections, but these rules are - differently from the rules of campaigning - not common provisions. So there are no rules on funding the campaign for referenda.

## 3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

The voting is held on one day. This day may not be a national holiday, a public holiday and the days before and following them.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

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- c. *Is it compulsory for all voters to cast a vote?*

Not.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

Concerning the decision-making obligatory referendum there is no separate validity quorum. Article 28/C(6) Constitution provides only for the criteria of success of the referendum. The referendum is successful if more than half on the voters voting validly and at least more than the one quarter of all persons having the right to vote have given the same answer to the question put.

### **G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The referendum may be either consultative or binding, according to the decision of the Parliament. The referendum on a law already adopted by the Parliament but not yet signed by the President of the Republic shall be binding. The referendum on the initiative of at least 200.000 voting citizens is always binding.

2. *Does the referendum make it necessary to take other decisions (see item B.5) ?*

See there.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- *suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*
- *resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*
- *abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

The effect is abrogative.

### **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

A previous regulation, according to which within two years no referendum was possible on the same question, and the law approved by referendum might not be amended within two years, was revoked 1998. At the time being there are no limits relating to the revision of provisions based on a referendum.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

### **I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*

In the case of a national referendum four months. On the day of the general elections for the Parliament and for the locals governments, and in a period of time of 41 days before and after that day the collection of signatures is prohibited. The running of the four months collecting time is suspended during that period.

2. *Who is entitled to collect signatures?*

Everybody.

3. *How are signatures checked?*

See B.3. above.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

There is no possibility for correction. If the National Board for Elections refuses verify the question, or the Constitutional Court repeals the verification by the Board (see J supra), a new question may be presented. The decision of the Board or the Court may of course give directions as to how to formulate a valid question.

### **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

There are two different appeals concerning holding a referendum. Against the decision of the National Board for Elections on verifying the question to be submitted to a referendum anybody can file an appeal with the Constitutional Court within 15 days. That is both the verification and the refusal of the verification of the question may be challenged. The Constitutional Court approves or repeals the decision of the Board. In the second case the Board has to initiate a new procedure.

If the question has been verified, the Parliament orders to hold a referendum, or refuses the holding of an obligatory referendum. Both decisions can be challenged before the Constitutional Court within 8 days.

As to the results of the referendum, decisions of the returning board may be objected to before the local electoral committee. Decisions of the electoral committee are subject to the review by the ordinary judiciary - by the county courts.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

Any formal or substantial deficiency may lead to a ruling against the referendum.

3. *Are the results of referendums subject to judicial review?*

See 1. above.

4. *Who may lodge an appeal?*

Anybody. See 1. above.

### **K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

Since 1989 four referenda have been held: two decisive and two consultative ones. One of the decisive referenda (in 1990) was aimed at the amendment of the Constitution (election of the President by the population),<sup>17</sup> the two consultative referenda were held on the access to the NATO and the EU.

In 16 cases the initiative was refused by the National Board for Elections or the Parliament (in most of the cases following the review by the Constitutional Court.

2. *On whose initiative has each referendum been held?*

The two decisive referenda were initiated by political parties, the consultative ones by the Government.

3. *Have any referendums been invalid because of a low turnout?*

One (that is referred to under 1. above).

4. *In how many referendums has the electorate voted yes?*

Three.

5. *In how many referendums has the electorate voted no?*

One.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

Not.

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<sup>17</sup>The Constitutional Court ruled later, in 1993 that the Constitution should not be amended by the way of a referendum.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

Not.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

Not.

## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

Article 44(1) Voters exercise local government through the representative body elected by them and by the way of local referendum.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Detailed rules on the local referendum are included in the Law on Local Governments,<sup>18</sup> and in the Law on Electoral Procedure.<sup>19</sup>

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

The Law on Local Governments provides only for the basic rules. All details are left for decrees of the local government. The local decree may regulate such important questions as the quorum for initiative by local voters, or the determination of subjects on which holding a local referendum is obligatory.

4. *On what matters is it possible to call a referendum?*

In all matters within the competence of the local representative body [local council], further in order to approve a local decree. In matters related to the merger of municipalities or a secession, changing the county the municipality is belonging to, founding a new municipality, it is obligatory to hold a referendum. Local decree may determine further subjects for obligatory referendum.

### **A1 - At what level?**

1. *Federate states?*

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<sup>18</sup>Law LXV/1990 as amended.

<sup>19</sup>Law C/1997.

2. *Provinces? Regions?*

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3. *Lower levels? Districts?*

Yes, counties.

4. *Municipalities?*

Yes, also municipalities. Until now all local referenda took place at the level of the municipalities.

5. *On what matters?*

Overwhelming majority of local referenda concerns dissolution of mergers of municipalities and restoration of the independent entity of a municipality. (Mergers had been forced by the socialist regime.)

6. *May national or federal authorities intervene, and in what conditions?*

Not.

### **B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

The question shall be verified by the Head of the Local Bureau for Elections (in case of a referendum on county level by the Head of the County Bureau). Judicial review is possible.

The second decision lies with the local representative body. If the number of valid signatures is under the limit determined by local decree, the mayor refuses the initiative. If the referendum was initiated by local representatives or a committee of the local representative body, the body decides whether the referendum be held. On the request of a sufficient number of voters, and on subjects determined by law or local decree (see A-4) the referendum must be held.

For subjects for a mandatory referendum see A-4 above.

A referendum can be held for approval of a local decree.

A referendum may be called for by one-quarter of the representatives of the local representative body or a commission thereof; the steering body of a local association.

A local decree shall determine the number of local voters on the request on which a local referendum must be held (obligatory). This number shall be more than 10% of the voters, and must not be more than 25% of them.



### **C - Content**

*Reply to the same questions as in I-C.*

*In particular:*

*- Can a referendum be held on a proposal to secede from the State?*

Not.

*- Can it relate to geographical boundaries?*

Yes. Municipalities on the border of two counties can vote for changing the county they belong to.

*- Are any other subjects permitted?*

The prohibited subjects are determined by law. They are: the budget of the municipality, local taxes, organisational and personal matters of local authorities; dissolution of the local representative body.

### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D. The same as in I-D.*

### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

The question shall be within the powers of the local representative body.

### **F - Campaigning and voting**

*Reply to the same questions as in I-F.*

The general rules apply.

### **G - Effects of referendums**

*Reply to the same questions as in I-G.*

The result of the local referendum is always binding on the local representative body. Within one year no referendum may be held on the same question, even in the case not, when the referendum was unsuccessful.

### **H - Parallelism of procedures and rules on referendums**

If the referendum was unsuccessful the local representative body can decide on the subject freely.

*Reply to the same questions as in I-H.*

**I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

For collecting signatures a one-month period is open. Anybody is entitled for collecting the signatures. The signatures will be checked by the Local Committee for Elections (in the case of referendum on county level the Count Committee).

**J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

Against the decision of the Head of the Local Bureau for Elections on the verification of the question; further against the decision of the local representative body on ordering, or on refusing the referendum on an obligatory matter, an appeal to the local court (in county matters to the county court) is possible. All other rules are as in the national referendum.

**K - Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

Local referendums have been frequently held. Typical matter is the dissolution of mergers of municipalities. In the last years many referenda has been initiated by voters and also held in environmental protection matters, namely against iussing a settling permission to polluting or hazardous industry.

**III - The future of referendums**

1. *Is the referendum system currently being reformed?*

Not.

2. *If so, for what reason?*
3. *If so, what is the general tendency of this reform?*

## **IRLANDE / IRELAND**

### **I - National referendums**

#### **A - Legal basis**

1. *Is provision made for referendums in the Constitution?*

Yes. Provision is made in the Constitution for (i) constitutional referendums, in which any proposal to amend the Constitution must be ratified by the people in a plebiscite, and for (ii) ordinary referendums, in which under certain circumstances, especially important legislation may be referred by the president to the people for approval. The Constitution provides that, the holding of referendums shall be regulated by ordinary legislation subject to the specific constitutional requirements as regards referendum procedure and the majority needed for the referendum to be deemed passed (Referendum Acts, 1994-2001).

2. *If not, does the law provide for the use of referendums? On what matters?*

The holding of referendums is regulated by ordinary legislation subject to the mandatory requirements of the Constitution.

#### **B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

Referendum to amend the Constitution

Article 46 of the Constitution provides that any proposed amendment of the Constitution must be first enacted by both houses of parliament in the form of 'An Act to amend the Constitution', and then submitted by referendum to the people for their approval. Proposed amendments of the Constitution are the only texts that are automatically submitted to referendum on their adoption by Parliament.

Article 46 of the Constitution states as follows:

1. Any provision of this Constitution may be amended, whether by way of variation, addition, or repeal, in the manner provided by this Article.

2. Every proposal for an amendment of this Constitution shall be initiated in Dáil Éireann [lower house of parliament] as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas [Parliament], be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.

3. Every such Bill shall be expressed to be "An Act to amend the Constitution".

4. A Bill containing a proposal or proposals for the amendment of this Constitution shall not contain any other proposal.

5. A Bill containing a proposal for the amendment of this Constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this Article have been complied with in respect thereof and that such proposal has been duly approved by the people in accordance with the provisions of section 1 of Article 47 of this Constitution and shall be duly promulgated by the President as a law.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

Yes, by Parliament.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

Parliament makes the proposal in respect of a bill to amend the Constitution. In respect of other bills, a majority of the Seanad together with one third of the Dáil may petition the president to decline to sign a bill into law on the ground that the will of the people ought to be ascertained (Article 27).

Apart from the procedure prescribed for a referendum to amend the Constitution, this is the only procedure for the calling of a referendum prescribed by the Constitution. The Referendum Acts 1994 to 2001 do not rule out the holding of referendums for other reasons, but they make no provision for such referendums. While the Constitution does not rule out further scenarios in which referendums might be held, legislation to regulate such referendums would be required before they could be held.

Article 27 of the Constitution states as follows:

This Article applies to any Bill, other than a Bill expressed to be a Bill containing a proposal for the amendment of this Constitution, which shall have been deemed... to have been passed by both Houses of the Oireachtas.

1. A majority of the members of Seanad Éireann and not less than one-third of the members of Dáil Éireann may by a joint petition addressed to the President by them under this Article request the President to decline to sign and promulgate as a law any Bill to which this Article applies on the ground that the Bill contains a proposal of such national importance that the will of the people thereon ought to be ascertained.

2. Every such petition shall be in writing and shall be signed by the petitioners whose signatures shall be verified in the manner prescribed by law.

3. Every such petition shall contain a statement of the particular ground or grounds on which the request is based, and shall be presented to the President not later than four days after the date on which the Bill shall have been deemed to have been passed by both Houses of the Oireachtas.

...

4. Upon receipt of a petition addressed to him under this Article, the President shall forthwith consider such petition and shall, after consultation with the Council of State, pronounce his decision thereon not later than ten days after the date on which the Bill to which such petition relates shall have been deemed to have been passed by both Houses of the Oireachtas.

5. 1° In every case in which the President decides that a Bill the subject of a petition under this Article contains a proposal of such national importance that the will of the people thereon ought to be ascertained, he shall inform the Taoiseach [Prime Minister] and the Chairman of each House of the Oireachtas accordingly in writing under his hand and Seal and shall decline to sign and promulgate such Bill as a law unless and until the proposal shall have been approved either

- i. by the people at a Referendum in accordance with the provisions of section 2 of Article 47 of this Constitution within a period of eighteen months from the date of the President's decision, or
- ii. by a resolution of Dáil Éireann passed within the said period after a dissolution and re-assembly of Dáil Éireann.

2° Whenever a proposal contained in a Bill the subject of a petition under this Article shall have been approved either by the people or by a resolution of Dáil Éireann in accordance with the foregoing provisions of this section, such Bill shall as soon as may be after such approval be presented to the President for his signature and promulgation by him as a law and the President shall thereupon sign the Bill and duly promulgate it as a law.

6. In every case in which the President decides that a Bill the subject of a petition under this Article does not contain a proposal of such national importance that the will of the people thereon ought to be ascertained, he shall inform the Taoiseach and the Chairman of each House of the Oireachtas accordingly in writing under his hand and Seal, and such Bill shall be signed by the President not later than eleven days after the date on which the Bill shall have been deemed to have been passed by both Houses of the Oireachtas and shall be duly promulgated by him as a law.

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

No.

- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

No.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

See Article 27 above. The decision to submit a bill passed by both houses of parliament to a popular vote must have the approval of a majority of the members of the upper house, and of not less than one-third of the members of the lower house. The President may also decline to sign the bill on the ground that the will of the people therein ought to be ascertained, at which point a referendum may be held. Alternatively, the president may reject the petition to put the bill before the people in a referendum, and may choose instead to sign it into law.

There is no procedure in existence whereby a part of the electorate may request a referendum. They may of course do so via their representatives in parliament, e.g. by petitioning them to instigate the above procedure.

There is no procedure for a referendum based on a popular initiative putting forward an alternative proposal to the one before Parliament.

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

Not applicable.

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

Not applicable.

5. *Role of Parliament*

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit a counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

After a dissolution and re-assembly of that house, a new Dáil may by a majority of its members, approve by resolution a bill that the president has refused to sign under the provisions of Article 27 discussed above, within a period of eighteen months from the date of

the President's decision not to sign the Bill into law. A special majority is not required.

More than one proposal may be laid before the people simultaneously. A majority in parliament is required to place a constitutional amendment before the people. In practice, no referendum could be put to the people without the support of the Government and such a scenario involving a parliamentary counterproposal is impossible.

### **C - Content**

#### *1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

*Is a referendum mandatory in the case of a constitutional amendment?*

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

Referendums must be held on proposals for constitutional amendments (Article 46). Referendums may also be held on Bills of particular national importance when the requisite proportions of both houses of the parliament, and the president, agree that they should. A

A Referendum was necessary for Ireland's accession to the European Union. Where it would amend the Constitution, a referendum is necessary to allow the government to ratify any further European treaty which extends or alters the essential scope or objectives of what earlier treaties have provided. See *Crotty -v- An Taoiseach* [1987] IR 713. These referendums take the form of amendments to the Constitution in that they give rise to alterations in Irish sovereignty which are otherwise contrary to it. So all amendments to the Treaties have been put to referendum other than those providing for the accession of new Member States.

Constitutional amendments and consequential referendums are also necessary when the State signs an international agreement that involves any alteration of the extent of Irish sovereignty e.g. 23<sup>rd</sup> Amendment to allow Ireland to ratify the Rome Statute of the International Court of Justice.

#### *2. Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

See answer to C-1 above.

### **D - Form of the text submitted to referendum (formal validity)**

#### *1. What form may the text submitted to referendum take:*

*- a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*

*- repeal of an existing provision?*

*- a question of principle (for example: "are you in favour of amending the Constitution to introduce a presidential system of government?")?, or*

*- a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

In the case of a constitutional amendment the text submitted to referendum must take the form of a specifically worded draft of a constitutional amendment which has been approved in the form of an Act to Amend the Constitution by both houses of parliament. In the case of a referendum to approve or veto a particular Bill, the proposal is the legislative enactment which has been passed by both houses of parliament.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*
- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

Questions submitted to a referendum on a proposal for a constitutional amendment must take the form of a specifically worded draft of a constitutional amendment which has been approved in the form of an Act to Amend the Constitution by both houses of parliament. Furthermore, a “Bill containing a proposal or proposals for the amendment of the Constitution shall not contain any other proposal.” (Article 46.4.) This has been interpreted by the courts to mean that such a bill may not contain another legislative proposal such as might be found in an ordinary referendum, but that it does not mean that it may not contain multiple related constitutional amendments. In fact the 19<sup>th</sup> amendment of the Constitution contained three distinct proposals; it allowed the government to ratify the Belfast Agreement (between the governments of Ireland and the United Kingdom), and to amend Articles 2 and 3 of the Constitution. Separate proposals to amend the Constitution may be put before the people on the same day.

It may be stated therefore that in Ireland, questions submitted to referendum have to respect unity of form and unity of rank. Due regard being had to those conditions, the vote may be on more than one question. (Also as noted above, more than one referendum may be put to the people simultaneously.)

The question is always whether the voter approves or disapproves of a piece of legislation or a specific amendment; therefore they are by definition clear and suggestion free. There is no requirement as to the content of the legislation or the specific amendments.



### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- to international law or some of its rules;
- to the Constitution or some of its rules;
- to other overriding legal rules.

There are no substantive limits over what may be put to the people in a referendum to amend the Constitution. Legislation put to the people in an ordinary referendum, like all legislation, must comply with the provisions of the Constitution and relevant provisions of European Union law. There was speculation that the Constitution could not be amended contrary to natural law, but this was rejected by the Supreme court in *Re Article 26 and the Information (Termination of Pregnancies) Bill 1995* [1995] 1 IR 1 at page 34 in which it was stated that “[the] People were entitled to amend the Constitution in accordance with the provisions of Article 46...and the Constitution as so amended... is the fundamental and supreme law of the State representing as it does the will of the People”.

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

Copies of a Bill containing the proposal which is the subject of the referendum are required to be made available for inspection and purchase at post offices during the period commencing on the fifth day after the date of the order appointing the polling day and ending on the polling day. (Referendum Act, 1994 Section 22.)

If it is so prescribed by a resolution of each of the houses of parliament, a statement in relation to the referendum proposal may be produced. Where such a statement is produced, polling information cards contain a copy of the statement copies of the statement are sent to every registered voter and or the special voters list; copies of the statement are displayed in and around the polling stations. (Referendum Act, 1994 Section 23.)

- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*

The explanatory statement is prescribed by a resolution of both houses of parliament. While the relevant legislative provisions are silent as to whether or not the statement must be impartial, and as to whether or not political parties not in government have a right to contribute, after the decision of the Supreme Court in *McKenna v An Taoiseach* (No. 2) [1995] 2 IR 10 the government are obliged not to spend public money with the aim of procuring a particular result in a referendum. This would logically extend to a duty to prepare information leaflets that are impartial, though it would not appear to extend to a duty to include all political parties in the drafting of such information leaflets. In *McKenna*, the Court stressed that the Government had interfered without justification in the referendum process and had thereby breached the principals of fair procedures and equality. The constitutional impropriety

lay in the Government's expenditure of public funds on a campaign to influence the voters in favour of the proposed amendment and not in advocating or campaigning for the proposed amendment. Political parties remain free to expend their own resources by campaigning for whatever result they deem appropriate.

A Referendum Commission was established by the Referendum Act 2001. It is independent in the performance of its functions. Section 3(1) provides that the Commission's principal functions are to prepare:

- 'a. a statement or statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate;
- a. to publish and distribute such statements in such manner and by such means including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned;
- b. to promote public awareness of the referendum and encourage the electorate to vote at the poll.

The Commission is further empowered to prepare, publish and distribute 'brochures, leaflets pamphlets and posters' and to distribute these to each household.

- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

Campaigning for or against the referendum text is not restricted to political parties. Any private party may campaign for a particular result. Public authorities, following the McKenna decision are not allowed to spend public money campaigning for a particular result. Officials of public authorities may express views as to the result they feel is desirable, and may use some of the incidents of office (i.e. in the case of a Minister, the ministerial car) in the course of campaigning in their private capacity as members of a particular party for a particular result.

- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*

Although there is no legislative requirement for the publicly owned media to allocate equal time to supporters and opponents of the referendum text, since the Supreme Court decision in *Coughlan v Broadcasting Complaints Commission* [2000] 3 IR 1, such public broadcasters are under an obligation to uphold the democratic values of the Constitution and to be fair to all interests concerned when allocating air time to opponents and proponents of particular referendums.

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

The decision in Coughlan indicates that by virtue of the Radio and Television Act 1988, independent broadcasters are under similar duties those which the national broadcasters labour under. It is also illegal to run advertisements in the broadcast media for political or religious ends; party political broadcasts are excluded from this provision, as are advertisements taken out by the publicly funded statutorily independent Referendum Commission, whose mission is to inform the public on the merits of each side in any given referendum as it sees fit. There are no restrictions on the political content of the print media. The only restriction on political advertisements is that, at election time (parliamentary, local, presidential and European) the newspaper can only accept advertisements from national agents of political parties, candidates' election agents, or some person authorised in writing by them. There are no such similar restrictions governing advertisements at referendum times. It is an open question as to whether advertisements from political parties advocating one side or another in a referendum would fall under the restrictions imposed on political advertising in newspapers due to their advocacy of policies of the parties in question. All the conditions discussed above apply equally to supporters and opponents of referenda.

## 2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

The use of public funds for the purposes of campaigning for or against a referendum proposal is not allowed. The Referendum Commission is allowed to advertise unfettered by such restrictions, but is under a statutory obligation to be fair to both sides.

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

There is no legislative regulation of the collection of signatures for popular initiatives. In any case, as noted above however, there is no legislative framework for the holding of a referendum under such circumstances.

## 3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

Voting takes place over one appointed day.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

Polling opens and closes at the same time in polling centres around the country.

- c. *Is it compulsory for all voters to cast a vote?*

It is not compulsory for all voters to cast a vote.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*
- i. There is no minimum turnout required for a referendum to amend the Constitution. The proposal is approved if a majority of the votes cast are cast in favour of one proposal's enactment into law (Article 47.1).
- ii. In referendums other than those to amend the Constitution, the proposal is vetoed
- a. If a majority of the votes cast are cast against its enactment into law; and
  - b. If the votes cast against its enactment amount to not less than 1/3 of the votes on the register.

### **G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The effect of a successful constitutional referendum is to amend the constitution.

The effect of an ordinary referendum is to either veto a piece of legislation or to force its promulgation by the President. He or she is required to sign into law a Bill approved by the people in an ordinary referendum. The electorate is therefore in both cases asked for a decision as opposed to an opinion.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

The referendum necessitates no further decisions. The subsequent course of action of government on the issue is dictated by the result of the referendum.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

In the case of constitutional referendums, the text of the proposed constitutional amendment is adopted by both houses of parliament before being put to referendum, and if it is not approved by the people it is abandoned. If it is approved, it enters into force immediately. In the case of ordinary referendums, legislation adopted by both houses of parliament is put to the people for approval or veto. In neither case however can a referendum be properly said to have a suspensive or resolutive effect (as the questionnaire explains them), as the measures in question have not entered into force. The referendum in both cases is part of the process by which legislation is promulgated.

## **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

A piece of legislation approved in ordinary legislation may be subsequently amended in the ordinary fashion by both houses of parliament without recourse to the people. The Constitution cannot be amended without a referendum.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

As it is the Constitution which mandates referendums in the two circumstances discussed variously above, the provisions allowing and mandating referendums cannot be revised by a procedure which does not allow a referendum. The legislative framework which legislates aspects of the referendum procedure not dictated by the Constitution can be amended by both houses of parliament in the ordinary fashion without recourse to the people.

## **I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*
2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

There are no specific rules in force governing popular initiatives.

## **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

As the decision to hold a constitutional referendum is one which is within the exclusive discretion of the parliament, following the doctrine of separation of power, which has constitutional status in Ireland, the courts will not interfere in the decision to hold or not to hold a constitutional referendum. The decision whether a legislative provision should be referred to the people lies with the President (after a petition requesting him or her to so do has been presented to him or her with the approval of a majority of the upper house and not less than one-third of the members of the lower house). As such, in theory it is possible though highly unlikely, that a decision by the President to accede or not to accede to such a petition might be judicially reviewable, as it is an exercise of a constitutional executive discretion. The president has never been called upon to exercise such discretion however, so the question has never been considered by the courts.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

The courts have consistently refused to interfere with the content of a referendum proposal put to the people. The Supreme Court has endorsed proposals which insert contingency provisions into the Constitution, and proposals containing more than one amendment. While in theory it is possible that if a referendum proposal violated the constitutional prohibition on mixing ordinary and constitutional referendum proposals in the same referendum text the Supreme Court might intervene, it has never had to consider this particular factual situation, and has always shown its reluctance to interfere with the popular sovereignty of the people in regard to referendums.

3. *Are the results of referendums subject to judicial review?*

The results of the referendum are not subject to judicial review. If however there is doubt that the referendum was conducted in a proper manner, the validity of the referendum certificate (which records the result of the referendum) may be challenged by means of a referendum petition to the High Court. The challenge may be taken on a limited number of grounds, namely: obstruction of or interference with or other hindrance to the conduct of the referendum; failure to complete or otherwise conduct the referendum in accordance with the relevant legislation; mistake or other irregularity in the conduct of the referendum or in the particulars stated in the provisional referendum certificate; any offence prescribed by electoral law. The court has the discretion to order the retaking of the referendum in any constituency where it is satisfied that prescribed irregularities affected the overall result, and may similarly order the votes in any constituency to be recounted.

4. *Who may lodge an appeal?*

An application to present a referendum petition may be made by the Director of Public Prosecutions, or by any person who is registered or entitled to be registered as a presidential elector.

### **K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

There have been 28 constitutional referendums since the ratification of the Constitution by plebiscite in 1937. No ordinary referendums have been held.

2. *On whose initiative has each referendum been held?*

Each referendum has been held in accordance with the provisions of the Constitution on the initiative of the parliament.

3. *Have any referendums been invalid because of a low turnout?*

No referendums have been invalid because of a low turnout.

4. *In how many referendums has the electorate voted yes?*

The electorate has voted yes in 21 referendums.

5. *In how many referendums has the electorate voted no?*

The electorate has voted no in 7 referendums.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

No.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

No.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

No.

## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*
2. *If there are no constitutional provisions, does national law allow local referendums?*
3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*
4. *On what matters is it possible to call a referendum?*

There is no provision for local referendums in the national Constitution. According the Local Government Act 2001, local governments (municipalities) may hold consultative plebiscites to consult the people under their jurisdiction regarding draft financial schemes. They are not obliged to hold plebiscites, nor are they bound to follow the wishes of the people as evident in the results. The Minister for Local Government is empowered to make regulations governing the manner in which such plebiscites are held. To date he has made no such regulations, no such plebiscites have been held, and no judicial consideration has been applied to the issue.

### **A1 - At what level?**

1. *Federate states?*
2. *Provinces? Regions?*
3. *Lower levels? Districts?*
4. *Municipalities?*
5. *On what matters?*
6. *May national or federal authorities intervene, and in what conditions?*

See above.

### **B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

See above.

### **C - Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other subjects permitted?*

See above. A referendum cannot be held on a proposal to secede from the state, or in relation to geographic boundaries.

### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

There are no rules governing the form of the text that may be submitted to plebiscite.

### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

There are no rules governing the substantive content of such plebiscites.

### **F - Campaigning and voting**

*Reply to the same questions as in I-F.*

There are no rules governing the provision of information, campaigning or any such matters ancillary to such plebiscites. National laws in relation to advertising in broadcast and print media and the political content of broadcast media would probably apply mutatis mutandis.

### **G - Effects of referendums**

*Reply to the same questions as in I-G.*

As the plebiscites are consultative, they have little practical effect, and may in actuality be ignored by the local government.



### **H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

Not applicable.

### **I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

Not applicable.

### **J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

As the decisions of local authorities are generally judicially reviewable, their decisions on foot of a plebiscite result may be reviewable. It is unlikely that the decision whether to hold a plebiscite or not would be reviewable however. There is no mechanism for appealing the result of the plebiscite.

### **K - Experiences of referendums**

1. *Have there been many local referendums?*

No local plebiscites have been held.

2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

## **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

No.

2. *If so, for what reason?*

3. *If so, what is the general tendency of this reform?*

## **ITALIE / ITALY**

### **I - National, regional or local referendums**

#### **A - Legal basis**

1.-2. There are some provisions dealing with referendums in the Italian Constitution:

Article 75 provides for the calling of referendums aimed at repealing an ordinary legislative act of the State; Article 123 allows the Statute (the basic act) of a Region to establish referendums on the legislative and administrative acts of the Region; Article 123 allows the calling of a referendum on the special legislative act of the Region dealing with the organization of the regional government; Article 132 provides for the calling of referendums on the change of the borders of the Regions or on the establishment of a new Region; Article 138 allows the calling of referendum on constitutional legislative acts aimed at revising the Constitution. Ordinary legislative acts provide for the implementation of these provisions.

Article 75 and Article 138 entrust the power of initiative of a referendum to five hundred thousand electors and to five regional councils. According to Article 138 also one fifth of the members of a House have the power of initiative. Article 123 entrusts the power of initiative to one fifth of the members of the concerned regional council or to one fiftieth of the electors of the interested Region.

Moreover regional or local referendums are provided for by the basic acts of the regional or local entities concerned.

#### **B - Types of referendums**

1.-2. Only the referendums provided for by Article 132 are mandatory and are called by the President of the Republic.

3. The referendums provided for by Articles 75, 123 and 138 are called when a proposal is submitted by 500000 voters (Articles 75 and 138) or by a fiftieth of the electors of the Region concerned (Article 123). The signatures are checked by the competent judicial authorities.

The request for a referendum can relate to a constitutional legislative act aimed at the revision of the Constitution adopted by the Parliament (Article 138), or to a regional legislative act dealing with the organization of the regional government adopted by the regional Council (Article 123). In both the cases the acts are submitted to referendum before their promulgation, which is allowed only if the result of the referendum is positive.

4. The request for a referendum submitted by the voters is mandatory for the President of the Republic (Articles 75 and 138) and for the President of the regional Government (Article 123).

The voters are not allowed to put forward an alternative proposal to the text approved by the Parliament (Article 138) or by the regional Council (Article 123).

5. When the voters require the calling of a referendum aimed at repealing a legislative act in force, the Parliament is allowed to bypass the popular initiative only by adopting a legislative act repealing the previous one on the condition that the new act modifies the basic principles and the essential content of the old act. In this case the referendum does not take place.

At the regional and local level the types of the referendums are chosen by the relevant basic acts. The types are numerous and cannot easily be systematized.

### **C - Content**

1.- 2. The referendums dealing with constitutional amendments are not mandatory.

The Constitution does not require referendum for accession to the European Union or international organizations. Referendums on a proposal of seceding from the State are not provided for.

Referendums aimed at the repealing of a legislative act are not allowed in the case of tax, budget, amnesty and pardon laws, in authorisation or ratification of international treaties. The constitutional jurisprudence of the Constitutional Court added to this explicit provision of the Constitution some implicit exclusions concerning the legislative acts which require a special procedure, the ordinary legislative acts which have a constitutional mandatory content or are constitutionally necessary for the functioning of the State.

### **D - Form of the text**

1. The text submitted to referendum is a concrete proposal presented not in the form of a specific provision but as a specifically - worded proposal which is referred to all the text of a legislative act or of the provisions of a legislative act dealt with by the proposal.

2. According to the jurisprudence of the Constitutional Court a question submitted to a referendum has to be homogeneous, that is it cannot deal with different matters; it has to guarantee the freedom of choice of the voter, who has to be allowed to make his choice without being conditioned by the multiplicity of the items of the question; if the question deals with more than one item, all the items concerned have to be connected by an intrinsic link; it has to respect the principle of the unity of form. Obviously the question cannot deal with legislative acts which have a different rank in the hierarchy of the sources of law. It has to be clearly drafted and understandable.

The same principles apply to the regional and local referendums.

### **E - Substantive limits**

A referendum is prohibited if the text put forward is contrary to the international obligations of the State, to the Constitution, and to the provisions of the ordinary acts of legislation which cannot be repealed by referendum. In judging these issues, that is the admissibility of a

referendum the Constitutional Court shall look at the possible effects of the approval of the question submitted to referendum.

The extension of the competence of the regional and local referendums obviously depends on the extension of the competence of the regional and local entities concerned. This principle applies to the relations with the national legislation also.

### **F - Campaigning, funding and voting**

1. There isn't any specific rule entrusting the authorities with the task of sending the text and an explanatory document of the question to the voters. The authorities have to publish posters with the announcement of the referendum and of the question submitted to the voters. When the voters can require the calling of a referendum on an act approved by a national, regional or local assembly, the act is published in the Official Journal of the State or of the regional or local entity concerned to inform the interested voters who have the right of requiring the calling of the referendum.

The public media are required to allocate equal time to all the political subjects, and specially to the political parties, the group of the promoters of the referendum and the associations interested in spreading their opinion in the matter. The principle applies also to the private media and to the newspapers which have to insure their spaces to all supporters and opponents at equal conditions.

2. There are not specific rules providing public funds to campaign for or against a proposal submitted to referendum.

The privately funded collection of signatures for popular initiatives is allowed.

3. The referenda take place in one day. There isn't time-lag allowing the results of a voting centre to be known before voting closes in other centres. The casting of vote is not compulsory. There are different quorum for the different types of referendum. The result of a referendum aimed at repealing a national legislative act is valid if the majority of those with voting rights have voted and a majority of the votes validly cast has been reached (art. 75). A regional legislative act providing for the organization of the regional government is approved if it is approved by the majority of the votes validly cast (Article 123). A national constitutional act aimed at amending the Constitution is approved when the majority of the votes validly cast is reached (Article 138). In both the last cases there isn't any requirement about the participation to the vote of the registered voters.

### **G - Effects**

1.-2. The decision of the electorate is binding in the referendums provided for by Articles 75, 123 and 138. It is not binding both in the case of the creation of new Regions (Article 132, first alinea), and in the case of the transfer of a local entity from one Region to another Region.

When the electorate decides to repeal a national legislative act, the Head of the State shall adopt a decree stating the result of the referendum. If the electorate approves a national constitutional legislative act aimed at revising the Constitution, the President of the Republic shall promulgate the act; otherwise the procedure is stopped. If the electorate approves a

regional legislative act dealing with the organization of the government of a Region, the President of the Region shall promulgate the act; otherwise the procedure is stopped. When the creation of new Regions or the change of the regional borders are at stake, the referendum is followed by a legislative act implementing the positive decision of the electorate.

Effects of the other local and regional referendums are provided for by the relevant basic acts.

3. According to Article 138 a constitutional legislative act aimed at revising the Constitution may not be promulgated before the running of the deadline for the submission of a request of the calling of a referendum, if it was not approved in the second voting by each of the Houses by a majority of two-thirds of the members. A regional legislative act dealing with the organization of the government of a Region may not be promulgated before the running of the time-limit provided for the submission of the request of a referendum.

According to Article 75 a legislative act ceases to be in force after the decision of the electorate accepting the proposal of its repealing (and after the presidential decree which declares the result of the referendum).

### **H - Parallelism**

1.-2. If a provision was repealed in a referendum, it could be adopted again by an ordinary legislative act which may in any case be submitted to a referendum according to Article 75 of the Constitution. On the other side the modifications of the Constitution adopted according to Article 138 may be revised in the same way, and therefore a referendum may be called on the constitutional legislative act of revision.

### **I - Specific rules**

1. Articles 123 and 138 provide for a deadline of three months. Article 75 does not explicitly provide in the matter, but the ordinary legislation requires that an initiative may be submitted between January 1<sup>st</sup> and September 30<sup>th</sup>.

2. The signatures are collected by the promoters of the initiative, but the signatures have to be authenticated by a judge of peace or by a notary or by a magistrate's clerk.

3.-4. A special office of the Court of Cassation is entrusted with the power of checking the signatures. It has the power of asking the necessary corrections to the promoters.

In the case of regional referendums the signatures are checked by the competent local judicial authorities or by special bodies of the regional councils. The signatures aimed at the calling of local referendums are checked by special branches of the relevant local administrations.

### **J - Judicial review**

1.- 2. The initiatives of calling a referendum on the basis of Article 75 are submitted to an automatic previous review by the special office of the Court of Cassation as far as the collection of the signatures is concerned and by the Constitutional Court with regard the content and the drafting of the question. Referendums provided for by Articles 132 and 138 are previously checked by the special office of the Court of Cassation. Regional referendums

are previously checked by the competent regional judicial authority or by special bodies of the regional councils..

3-4. The results of the referendums are declared on the basis of an assessment of a judicial authority. Promoters and electors may lodge an appeal.

Moreover the Constitutional Court could be requested to judge the conformity to the Constitution of the normative result of a referendum according to the ordinary rules providing for the access to the judicial review of legislation by the Court.

### **K - Experiences**

1.-8. Since 1948, when the Constitution entered in force, 54 referendums have been held. 53 of them were called according to Article 75, only 1 was called on the basis of Article 138.

Mainly they have been called on initiative of the electors, but some of them (three in 1993) on initiative of regional councils.

18 referendums have been invalid because of the low turnout. In 19 referendums the electorate voted yes, the electorate approved also a constitutional legislative act aimed at amending the Constitution. In 16 referendums the electorate voted no.

I don't have sufficient elements to answer the questions 6-8 of § K.

Regional and local referendums are frequently called; one referendum ex Article 123 was recently (2002) called in a Region (Friuli - Venezia Giulia) and the electorate rejected the legislative act dealing with the organization of the regional government approved by the regional Council.

### **III - The future of referendums**

The reform of the Italian Constitution which is under discussion in the Parliament does not provide any amendment of the provisions dealing with the referendum.

## **LETTONIE / LATVIA**

### **I - National referendums**

#### **A - Legal basis**

*1. Is provision made for referendums in the Constitution ?*

Yes. The general provisions for referendums are made in the Constitution (Satversme) of the Republic of Latvia. Referendums are required by the Constitution:

1.1. If the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum. (See Article 77 of the Satversme).

1.2. If the President proposes the dissolution of the Saeima, a national referendum shall be held. (See Article 48 of the Satversme).

1.3. The President has the right to suspend the proclamation of a law for a period of two months. The President shall suspend the proclamation of a law if so requested by not less than one-third of the members of the Saeima. This right may be exercised by the President, or by one-third of the members of the Saeima, within seven days of the adoption of the law by the Saeima. The law thus suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the aforementioned two-month period, the law shall then be proclaimed after the expiration of such period. A national referendum shall not take place, however, if the Saeima again votes on the law and not less than three-quarters of all members of the Saeima vote for the adoption of the law. (See Article 72 of the Satversme).

1.4. Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the Saeima. If the Saeima does not adopt it without change as to its content, it shall then be submitted to national referendum. (See Article 78 of the Satversme).

1.5. Membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Saeima. (See Article 68 of the Satversme).

1.6. Substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the Saeima. (See Article 68 of the Satversme).

*2. If not, does the law provide for the use of referendums? On what matters?*

-

**B - What type of referendum may be used? Who decides?***1. Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

There are 6 different types of referendum in Latvia. Some of them are mandatory (see Answers A1-1, A1-4, and A1-5)

*2. Referendums called by an authority*

- a. Can referendums be called by an authority?*
- b. If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

There are 6 different types of referendum in Latvia. Some of them can be called by authorities (see Answers A1-2, A1-5, A1-6),

*3. Referendums held at the request of part of the electorate*

- a. Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*
- b. Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

The electorate can't express a request for a referendum as such.

But:

1. the electorate can express a request for the referendum, if the proclamation of the law is suspended (see answer 1-3). The law suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate;
2. the electorate has the right to submit a fully elaborated draft of an amendment to the Constitution or of a law. If the Saeima does not adopt it without changes in its content, it shall then be submitted to national referendum (see answer 1-4). Electors have such right, if their number comprises not less than one tenth of the electorate.

If the proclamation of the law is suspended, the collection of signatures for calling of the referendum is organized by the Central Election Committee and is carried out by the city, district or pagasts (small rural district) Election Committees. Places for signing the request for calling the referendum shall be arranged in every city, district or pagasts, envisaging that for every 10 000 voters there is at least one place for signing the request. The lists of the collected signatures shall include the name, surname, identity number and the date of signing the list of every person expressing the request to hold the referendum. The data shall comply with the entries in the passport. The lists shall be signed by the Chairman of the Election Committee of the place and there shall be the stamp of the above Committee on



the list. It will certify that signing of the request has taken place under the procedure envisaged by law.

In its turn, when implementing the right to submit a fully elaborated draft of an amendment to the Constitution or of a law, the corresponding draft law and the signatures shall be submitted to the Central Election Committee. Every signatory has to state his/her name, surname and identity number. Besides, each signature shall be certified by a sworn notary or at the municipal institution not earlier than 12 months before the submission of the draft law or the Satversme (Constitution) draft amendment.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

There are specific provisions regarding the referendum, if the proclamation of a law is suspended. See answer A1-2.

**C - Content**

1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

No. See answers A1-1-1-6.

*Is a referendum mandatory in the case of a constitutional amendment?*

Only if there are amendments to the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution.

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organizations?*

See answers 1-1-1-6.

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters?*

Yes. See answers A1-1-1-6.

*Are certain matters automatically put to a referendum or excluded from referendums?*

Yes. About matters automatically put to a referendum see answers A1-1-1-6

Matters automatically excluded from referendum are determined in the Article 73 of the Satversme: The Budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations may not be submitted to national referendum.

#### **D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: "are you in favour of amending the constitution to introduce a presidential system of government?")?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a "generally-worded proposal" (for example: "Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?")?*

There are 6 types of referendums in Latvia. The Constitution (Satversme) provides matters on what the referendum shall be hold (see answers A1-1-1-6), but there are no provisions about the form.

The Law "On the Referendum and Proposition of Laws" envisages that the motion passed for the referendum as well as the words "for" and "against" shall be entered in the ballot.

When organizing the referendum on the membership of Latvia in the European Union or substantial changes in the terms regarding the membership of Latvia in the European Union, the formulation of the corresponding issues shall be elaborated by the Saeima.

In the three referendums, which have taken place in Latvia, the following issues (questions) have been formulated:

- In the referendum, which took place on October 3, 1998, the voters had to answer the question:

"Are you for abrogation of the June 22, 1998 Law "Amendments to the Law on Citizenship";

- In the referendum, which took place on November 13, 1999, the voters had to give an answer to the question: "Are you for abrogation of the Law "Amendments to the Law on the State Pensions";

- In the referendum, which took place on September 20, 2003 the voters had to answer to the following question: "Are you for membership of Latvia in the European Union"?

2. *Do questions submitted to referendum have to respect:*
  - a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
  - b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
  - c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
  - d. *Does the vote have to be on a single question or can it be on several different ones?*
  - e. *Does the question (or do the questions) have to be clear and suggestion-free?*

There are no such provisions in the law.

### **E - Substantive limits on referendums (substantive validity)**

Is a referendum prohibited if the text put forward is contrary:

- to international law or some of its rules;
- to the Constitution or some of its rules;
- to other overriding legal rules.

There are no such provisions in the law

### **F - Campaigning, funding and voting**

1. *Campaigning*
  - a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*
  - b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
  - c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*
  - d. *Are the public media required to allocate equal time to supporters and opponents of the text?*
  - e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

The Law does not directly regulate the process of campaigning for the referendum. Simultaneously the Law envisages that the Central Election Committee (CEC) informs the voters about the procedure of instigation of the referendum or proposals on laws. In practice the CEC takes care also about elaboration of informative materials, the contents of which is "neutral". The members of the CEC are forbidden to carry on propaganda.

2. *Funding*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*
- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

The law does not regulate these issues.

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

Voting takes place on one day.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

No. All the election districts work at one and the same time.

- c. *Is it compulsory for all voters to cast a vote?*

No. All citizens of Latvia, who have the right to vote in elections of the Saeima, may participate in national referendums. However, the citizens have no obligation to do it.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

An amendment to the Constitution submitted for national referendum shall be deemed adopted if at least half of the electorate has voted in favour. A draft law, decision regarding membership of Latvia in the European Union or substantial changes in the terms regarding such membership submitted for national referendum shall be deemed adopted if the number of voters is at least half of the number of electors as participated in the previous Saeima election and if the majority has voted in favour of the draft law, membership of Latvia in the European Union or substantial changes in the terms regarding such membership. (See Article 79 of the Satversme).

### **G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

All types of referendum are binding.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

No.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

The referendum in such case is suspensive.

### **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

If the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come into force as law, shall be always submitted to a national referendum.

As concerns other cases the Law does not envisage that amendments to a legal norm on which referendum has taken place shall be submitted to a national referendum. The above problem has not been solved in practice.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

The provision "If the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum" is set out in Article 77 of the Satversme, which in accordance with this norm may be amended only after a referendum.

In other cases legislative provision which allows referendums could be revised by a procedure which does not allow a referendum.

### **I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*

See answer B-3.

2. *Who is entitled to collect signatures?*

See answer B-3.

3. *How are signatures checked?*

See answer B-3.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

No.

### **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

In Latvia there are six different types of referendums and each of them is determined to be held under a different procedure. In several cases (see answers A1-1-A1-4) the procedure of the referendum does not start with a certain "decision on the referendum" but with another act - the adopted or not adopted decision of the Saeima or the proposal of the State President to dissolve the Saeima. Moreover, in one case - if the proclamation of the law has been suspended (see answer A1-2), at least one tenth of the electorate shall request holding the referendum. Only in one case (see answer A1-5) the Saeima adopts the decision on the national referendum.

The decisions, adopted by the Central Election Committee (also the decisions on calling of the referendum if the needed number of signatures for holding it has been received or vice versa) may be appealed against at the court.

The decisions by the State President or the Saeima, which are directly or indirectly connected with the referendum, may be challenged at the Constitutional Court by not less than 20 deputies of the Saeima, the State President or the Cabinet of Ministers. There has been no case like the above in practice.

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

The court may examine all aspects, which are connected with the conformity of instigation and process of the national referendum with the law.

3. *Are the results of referendums subject to judicial review?*

4. *Who may lodge an appeal?*

CEC passes the decision on the results of the referendum. The decision may be appealed against under the general procedure.

The law does not anticipate a special procedure for challenging the results of the referendum.

## **K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

Since July 1993 (the time of renewal of the validity of the Republic of Latvia Satversme as a whole) 3 referendums have taken place : 2 referendums on the draft laws adopted by the Saeima as well as the national referendum on membership of Latvia in the EU.

2. *On whose initiative has each referendum been held?*

A national referendum on the abrogation of the Law « Amendments to the Law on the State Pensions » was held on November 13, 1999 and the referendum on the abrogation of the Law «Amendments to the Law on Citizenship » was held on October 3, 1998 after the State President had suspended proclamation of the laws and not less than 1/10 of the electorate had requested to hold the referendum.

National referendum on membership of Latvia in the European Union took place on the initiative of the Saeima on September 20, 2003.

3. *Have any referendums been invalid because of a low turnout?*

Yes, one.

339 879 Latvian citizens who had the right to vote participated in the national referendum on the abrogation of the «Amendments to the Law on State Pensions ». “ 320 071 or 94,17 percent of the voters were for the abrogation of the law; in their turn against it were 18 160 or 5,34 % of the voters. At least participation of 482 334 voters or more than the half of the electorate, which had participated in the last Saeima elections, was needed for the referendum to be valid.

4. *In how many referendums has the electorate voted yes?*

In two referendums.

5. *In how many referendums has the electorate voted no?*

None.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

No.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

No.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

No.

## **II - Regional or local referendums**

There are no regional or local referendums in the Latvian Republic prescribed by law.

## **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

Yes.

2. *If so, for what reason?*

To ensure the possibility of taking decisions on issues, connected with membership in the EU.

3. *If so, what is the general tendency of this reform?*

Two more kinds of the referendum, connected with the EU are envisaged (see answer A1-5, A1-6)



## **LITUANIE / LITHUANIA**

### **I - National referendums**

#### **A - Legal basis**

1. Referendums in Lithuania are organized according to the Constitutional provisions indicated below:

Provision of Article 4, that “the People shall exercise their supreme sovereign power either directly or through their democratically elected representatives“;

Provisions of Article 9, that “the most vital issues concerning the life of the State and the People shall be decided by referendum“ and that “the procedure for calling and holding of a referendum shall be established by law“.

2. The procedure of calling and holding of referendum is established by the Law on Referendum of the Republic of Lithuania which was adopted on 4 June 2002, came into force on 1 January 2003 and changed the Law on Referendum of the Republic of Lithuania 1989.

#### **B - What type of referendum may be used? Who decides?**

1. Mandatory and consultative (deliberative) referendums may be held in the Republic of Lithuania.

According to the Constitution Referendums shall be mandatory with regard to the following issues:

1. on the amendment to the provision of Article 1 of the Constitution of the Republic of Lithuania that, “the State of Lithuania shall be an independent and democratic republic;”

2. on the amendment to the provisions of Chapter I of the Constitution of the Republic of Lithuania, “the State of Lithuania;”

3. on the amendment to the provisions of Chapter XIV of the Republic of Lithuania Constitution, “Amending the Constitution;”

4. on the amendment to the Constitutional Act, dated June 8, 1992, “On Non Alignment of the Republic of Lithuania to Post-Soviet Eastern Alliances;”

5. regarding participation by the Republic of Lithuania in international organisations, should this participation be linked with the partial transfer of the scope of competence of Government bodies to the institutions of international organisations or the jurisdiction thereof.

The Law on Referendum states that Mandatory referendums may be held also with regard to other laws or provisions thereof, which 300 thousand citizens having the right to vote or the Seimas (Parliament) shall submit a proposal for to be decided by means of a referendum. Consultative (deliberative) referendums may be held with respect to other issues of utmost importance to the State and the People, regarding which it is not necessary to hold a mandatory referendum, they are being proposed for a referendum by 300 thousand citizens having the right to vote or the Seimas (Parliament).

2. From all State institutions only the Seimas (Parliament) has the right of initiative of calling a referendum. The Seimas (Parliament) takes under the consideration the question on calling a referendum only if the corresponding proposal was submitted by a group comprising at least 1/4 of the Seimas (Parliament) members.

3. a. Part 3 of Article 9 of the Constitution states that “referendum shall also be called if at least 300,000 of the citizens having the voting right so request“. The Central Electoral Committee shall verify the authenticity of citizens' signatures and other documents on calling the referendum.

3. b. Both cases are possible.

4. It was already mentioned that 300 thousand citizens having the right to vote (at least 300,000 of the citizens announce their will by signing in the special blank issued by the Central Electoral Committee for collecting citizens' signatures ) and a group comprising at least one-fourth of the Seimas Members have right of calling a referendum. In both cases the final decision on this proposal shall be adopted by the Seimas (Parliament).

5. If a group of citizens submit a petition to call a referendum the Seimas, having received a properly registered final act of the group along with the citizens' petitions and the conclusion of the Central Electoral Committee that the submitted documents correspond to this Law, shall deliberate the issue of the date of the referendum at the next sitting of the Seimas during the session. The representatives of the referendum group shall be invited to participate in this sitting. The resolution of the Seimas on the date of calling the referendum shall be passed in accordance with the procedure set forth in the Seimas Statute, no later than within one month from the day on which the discussion issue of the date of calling the referendum has been started. Should the group of experts formed in the Seimas arrives at the conclusion that the referendum text supplied in the citizens' petition to call a referendum may not be in keeping with the Constitution of the Republic of Lithuania, can be the basis for not calling the referendum.

In case when a group of the Seimas Members initiate a calling of referendum, such proposal shall be deliberated by the Seimas at the next sitting of the Seimas and shall adopt a decision according to the procedure set forth in the Seimas Statute, i.e. in case of failing to collect a majority of votes the proposal of a group of Seimas Members to call a referendum may be rejected.

### **C - Content**

1. Constitutional amendments may be submitted to referendum. In cases mentioned in paragraph B-1 a mandatory referendum shall be hold. In cases concerning the amendments of other constitutional provisions consultative (deliberative) referendums may be held.

Draft laws or their parts (separate provisions), as well as most important matters of State or People may be submitted for a referendum. A referendum concerning Lithuania's accession to the European Union was held in Lithuania.

2. Matters that can not be submitted for a referendum are not established in the Constitution.

**D - Form of the text submitted to referendum (formal validity)**

1. A draft law which is being proposed for a referendum must conform to the requirements set forth by the Law on the Procedure of Drafting of Republic of Lithuania Laws and Other Regulatory Enactments.

The proposed draft resolution on a referendum shall indicate:

1. the type of referendum;  
2. the text of the law proposed for a referendum, text of another enactment or text of an issue to be deliberated, which concerns an issue (resolution) on the life of the State or of the People.

2. Every separate question must be submitted to referendum separately and the vote have to be on every single question.

**E - Substantive limits on referendums (substantive validity)**

Article 6 of the Law on Referendum states that, a draft law which is being proposed for a referendum must conform to the requirements set forth by the Law on the Procedure of Drafting of Republic of Lithuania Laws and Other Regulatory Enactments.

The proposed draft resolution on a referendum shall indicate: (1) the type of referendum; (2) the text of the law proposed for a referendum, text of another enactment or text of an issue to be deliberated, which concerns an issue (resolution) on the life of the State or of the People;

Upon a petition by the representatives of a citizen's initiative group, the Seimas Office must ensure its support, in drafting the text (resolution) of the law, other enactment proposed for a referendum or an issue concerning the life of the State or the People proposed for deliberation, by enlisting legal experts.

The concept "resolution" used in this Law shall include the law, other enactment and resolution.

For this reason deliberating the proposal of the Seimas Members to call a referendum Seimas may reject such proposal due to inaccuracy of draft content.

The initiative of the group of citizens can not be blocked on this basis. Part 2 of Article 14 of the Law on Referendum states that should the group of experts formed in the Seimas arrives at the conclusion that the referendum text supplied in the citizens' petition to call a

referendum may not be in keeping with the Constitution of the Republic of Lithuania, can be the basis for not calling the referendum.

### **F - Campaigning, funding and voting**

1.-2. Articles 16 and 17 of the Law on Referendum state that, the day of the group's registration with the Central Electoral Committee or the day of the submission of the proposal to the Seimas by the Seimas group to call the referendum shall be deemed as the start of the referendum agitation campaign.

Upon entry into force of the Seimas resolution to call a referendum, the Central Electoral Committee shall publish in the public media and their website the text of the resolution for the referendum.

From the onset of the referendum agitation campaign, the group representatives, Seimas members, the President of the Republic, the Prime Minister, ministers as well as, political parties and political organisations (hereinafter - parties), registered according to the prescribed procedure, public organisations and citizens shall be accorded the right to conduct agitation without interference for the proposal to call a referendum, passage of the resolution presented for a referendum and also against the proposal to call a referendum and the passage of the resolution being presented for a referendum.

The form and measures of referendum agitation must not be contrary to the Constitution and laws of the Republic of Lithuania.

Referendum agitation shall be prohibited within less than 30 hours before the commencement of voting in the referendum and on the day of voting.

A right to use the media free of charge shall be extended to the group representatives, President of the Republic, Prime Minister, ministers, parties, public organisations and citizens. The Central Electoral Committee having coordinated with the heads of the National Radio and Television of Lithuania, shall approve the regulations of preparing broadcasts intended for referendum agitation and the actual duration and time of the National Radio and Television of Lithuania broadcasts. It shall also distribute the broadcast time in such a way that the equal rights principles of the group's and its opponents' representatives would not be violated. The representatives of both the group and its opposition shall be accorded at least seven hours each of the public (national) radio and television time for holding debates between them.

The group shall propose the participants of the radio and television broadcasts, who support the initiative of calling a referendum and the resolution proposed therein for passage, and it shall inform the Central Electoral Committee of this. The opponents of the group shall be the representatives of the parties and public organisations and other persons, who do not approve of the initiative of calling a referendum and of the resolution proposed therein for passage. They shall inform the Central Electoral Committee of their desire to take part in the debates. The Central Electoral Committee, adhering to the order of priority set forth in paragraph three of this Article, shall comprise a list of the persons, who shall take part in the debates prepared for radio and television broadcasts.

The following order of priority shall be set for the persons in opposition to the group, who shall participate in the debates being prepared for radio and Television: The President of the Republic, Members of the Seimas (their order shall be determined through mutual agreement or by drawing lots); The Prime Minister; the ministers (their order shall be determined through mutual agreement or by drawing lots); the representatives of the parties whose candidates have been elected in multi-member electoral districts (their order of priority shall be determined through mutual agreement or by drawing lots); the representatives of the parties whose candidates have been elected only in single-member electoral districts (their order of priority shall be determined through mutual agreement or by drawing lots); representatives of the parties whose candidates had not been elected or did not take part in the Seimas elections, (their order of priority shall be determined through mutual agreement or by drawing lots); the representatives of public organisations (their order of priority shall be determined through mutual agreement or by drawing lots); citizens (their order of priority shall be determined by drawing lots). If some persons, who only support the calling of a referendum and the resolution proposed therein for passage or only oppose these, shall take part in the radio and television debates, they shall hold discussions with the broadcast manager or the broadcast participants invited by him.

Only the amount of the special election accounts shall limit the agitation in commercial mass media.

The Central Electoral Committee shall resolve all the disputes arising of referendum agitation.

3. a. Voting on referendum day shall take place from 7 to 20 hours at a polling station designated by the referendum committee. A different time may be set for voting in a Seimas resolution on calling a referendum. In a separate resolution the Seimas may establish that the referendum shall take place on more than one day.

The voter shall vote only at that polling station, on the voter lists whereof he is registered, unless established otherwise by this Law.

- b. The Central Electoral Committee may only begin establishing the results of the referendum after having received the vote counting records of all city and regional referendum committees and also, other documents indicated in Article 70 of this Law, and shall investigate all the complaints regarding the vote counting records of the city and regional referendum committees.

According to the vote counting records of the city, regional referendum committees and according to the vote counting records at the Republic of Lithuania diplomatic missions (consulates), the Central Electoral Committee shall determine:

1. the number of voters having the right to take part in the referendum;
2. the number of voters who took part in the referendum;
3. the number of referendum ballot papers which are invalid;
4. the number of valid referendum ballot papers;
5. the number of "YES" and "NO" or "FOR" and "AGAINST" replies.

The Central Electoral Committee, having determined that gross violations of this Law, committed in the course of voting, or the falsification of documents, have had a decisive impact on the results of the referendum, it may acknowledge the referendum results as invalid.

- c. The voters are not under compulsion to cast a vote in a referendum.
- d. A mandatory referendum shall be deemed having taken place, if over one half of the citizens, having the right to vote and having been registered in voter lists, have taken part in it.

The resolution regarding the provision of Article one of the Constitution of the Republic of Lithuania, "The State of Lithuania shall be an independent, democratic Republic," and also concerning the Constitutional Act of June 8, 1992, "On Non-Alignment of the Republic of Lithuania To Post-Soviet Eastern Alliances, shall be deemed as adopted, if at least three-fourths of the citizens having the right to vote and having been registered in voter lists, have approved it.

The resolution regarding the amendment of the provisions of Article 1 of the Republic of Lithuania Constitution on, "The State of Lithuania" and Chapter XIV, on "Amending the Constitution" shall be deemed as passed if more than half of the citizens, having the right to vote and having been registered on voter lists have approved it.

A resolution regarding other issues, laws or provisions thereof, which have been deliberated in a mandatory referendum, shall be deemed as approved, if more than one half of the citizens, who had taken part in the referendum, but at least one - third of the citizens having the right to vote and having been registered on voter lists.

The decision regarding participation by the Republic of Lithuania in international organisations, should this participation be linked with the partial transfer of the scope of competence of Government bodies to the institutions of international organisations or the jurisdiction thereof, shall be deemed adopted if it has been approved by more than one half of the voters who have participated in the referendum.

A consultative (deliberative) referendum shall be deemed as having taken place if over one half of the citizens, who are eligible and have been registered in voter lists, have taken part in it.

In the event, that over one half of the voters have taken part in the referendum and at least one half of those voters who have participated, have been in favor of the resolution, the resolution shall be deemed as having been adopted. The issue of the conducting of this referendum must be deliberated in the Seimas according to the procedure established by the Seimas Statute, within one month from its announcement.

In the event when fewer voters have taken part in the referendum, than has been stipulated in paragraph one of this Article, it shall be deemed that the referendum has not taken place, and the voter's opinion voiced during its course, may be considered in the Seimas during the deliberation of laws and other draft legal acts.

### **G - Effects of referendums**

1. The ballot paper shall include the text of an appeal to the voter and the reply versions: "Yes," and "No," or "For," and "Against."

Should there be two or several referendums being held, the ballots of each one of them must be of a different color.

The Central Electoral Committee shall establish the form and the specimen for filling them out.

Final referendum results may be officially published in the "State Gazette," by the Central Electoral Committee, no later than within 4 days of the referendum vote.

The Central Electoral Committee shall present to the President of the Republic the text of the resolution adopted by referendum no later than the next day following the official publication of the final referendum results.

2. The final decision on corresponding question in case of consultative (deliberative) referendum shall be made by the Seimas.

3. The day of voting by referendum shall be deemed as the day of the passage by referendum of a law, other legislative enactment or resolution. In the event, the referendum shall be held on more than one day, the last day of voting by referendum shall be deemed as the day of passage by referendum of a law, other legislative enactment or resolution.

The President of the Republic must sign and officially proclaim a law, other legal enactment or resolution passed by referendum no later than within 5 days from the official publication of the final results of the referendum.

Should the President of the Republic fail to sign and proclaim such a law, other legal enactment or resolution within the stipulated time, it will enter into force following its signing and official proclamation by the Chairman of the Seimas.

A Law passed by referendum on an amendment to the Constitution shall enter into force no earlier than after one month from the day it was passed by referendum.

A law which has been passed by referendum, with the exception of amendments to the Constitution, another legal enactment, or resolution, shall enter into force on the day of their official publication in the "State Gazette," provided a later entry into force date is not stipulated in them.

### **H - Parallelism of procedures and rules on referendums**

1. The laws agreed to in a referendum have the same legal power as the laws adopted by the Seimas, therefore the first ones as well as the second ones with the constitutional exceptions shall be amended according to the same (corresponding) rules (see answer in B-1).

2. Constitutional provisions on referendums are in sections I and XIV of the Constitution, and these provisions can be revised only by referendum.

**I - Specific rules on popular initiatives**

1. The citizens shall implement the citizens' right to call a referendum directly. With a view to this, an initiative referendum group (hereinafter - group) of at least fifteen citizens who are eligible, shall be formed. The chief representative of the group shall visit the Central Electoral Committee and file an application to register the group and to adopt the text of the resolution proposed for adoption by a referendum and also, shall co-ordinate on a preliminary basis the question of the date of the Central Electoral Committee sitting.

The Central Electoral Committee shall draw up the group's registration act at their sitting no later than within 15 days from the day of its receipt. A copy of the act shall be issued to the group or a representative thereof no later than on the day following the day of registration of the group and forwarded to the Chairman of the Seimas. The Chairman of the Seimas shall inform the Seimas of the initiative of calling a referendum, expressed by the citizens.

The Central Electoral Committee must, no later than within five business days of the registration of the group, issue it blanks for collecting the signatures of citizens.

A three-month time limit shall be established in order to implement the provisions of the right of the citizens' initiative to call a referendum. It shall be calculated from the day of issuing the citizen signature sheets at the Central Electoral Committee.

Should the required number of citizen signatures fail to be collected and submitted during the time limit set forth in paragraph 5 of this Article, the collecting of signatures shall be interrupted.

2. Citizens' signatures shall be collected in the special blank issued by the Central Electoral Committee. Signatures shall be collected by the members of an initiative referendum group and other assisting citizens. A citizen himself must write data about his person into the blank and sign it. The group shall accumulate citizen petitions to call a referendum. Having collected 300 thousand signatures, within the time limit set forth in paragraph five of this Article, the group shall draw up the concluding act and submit it to the Central Electoral Committee along with the citizen petitions.

3. The Central Electoral Committee shall verify within 15 days the received documents on calling the referendum. The Central Electoral Committee, having determined that the documents meet the requirements of this Law, shall give to the Seimas the final act along with the citizen's petitions and its own conclusion.

The Central Electoral Committee, having established that the documents contain non-essential deficiencies or that very few (up to 0.5 per cent) of the citizens' signatures are missing, shall inform the group thereof and set a 15 - day time limit to eliminate these deficiencies. Having eliminated these deficiencies over the prescribed period of time, the petition to call a referendum shall be examined further according to general procedure.

Should the time limit for the implementation of the citizens' right of initiative to call a referendum be violated, the required number of citizens' signatures fail to be collected or should it be determined that gross violations of the law (falsified citizens' signatures or a



violation of the principle of voluntariness in collecting signatures) exist in the submitted documents, the Central Electoral Committee shall refuse the petition to call a referendum, based upon a reasoned decision and inform the group and the Seimas thereof. The group shall have the right to appeal this decision to the Superior Administrative Court of Lithuania within the period of one month.

Should it be determined that a citizen has signed two or more times for calling the same referendum, all of his signatures shall not be counted. Signatures shall also not be counted, if in violation of paragraph 4 of this Article 11, the data about the citizen are entered on the signature sheet by someone else, and also, if all of the data set forth in this Law have not been included, or if they have been rendered falsely.

4. It was mentioned that, a draft law which is being proposed for a referendum must conform to the requirements set forth by the Law on the Procedure of Drafting of Republic of Lithuania Laws and Other Regulatory Enactments.

Upon a petition by the representatives of a citizen's initiative group, the Seimas Office must ensure its support, in drafting the text (resolution) of the law, other enactment proposed for a referendum or an issue concerning the life of the State or the People proposed for deliberation, by enlisting legal experts. An initiative citizens group file an application for registering the group to the Central Electoral Committee which can make proposals to revise the documents. However, it shall not be permitted to alter the text of the resolution proposed in the citizens' petition to call a referendum.

### **J - Judicial review**

1. Neither Constitution nor laws provide for a possibility to appeal to the Constitutional Court against decisions to hold or not to hold a referendum. However, it was mentioned that Seimas makes a final decision whether to call or not to call a referendum. Such decision (as well as the other act of Seimas) may be appealed against to the Constitutional Court.

2. The Constitutional Court investigates whether the act adopted by Seimas is not in conflict with Constitution, and whether the act of the Government is not in conflict with the laws.

3. A law adopted in a referendum (except constitutional amendments) also may be appealed against to the Constitutional Court to investigate whether it corresponds to the Constitution.

4. The right to file a petition with the Constitutional Court concerning the compliance of a legal act with the Constitution shall be vested in the Government, a group consisting of not less than 1/5 of all members of the Seimas, and the courts.

### **K - Experiences of referendums**

1. From 1992 till 2004 six referendums were held in Lithuania. One of them was mandatory (concerning Lithuania's membership in European Union). All six referendums were decisive (conclusive).

2. Five referendums were held on Seimas initiative and one - on citizens' initiative.

3. Two referendums failed because of too little activity of voters (less than half of citizens who had the right to vote and were on the voters' list took part in the referendum).
4. In two referendums citizens approved the question proposed to consider in referendum.
5. In two referendums citizens disapproved the question proposed to consider in referendum.
6. ---
7. ---
8. Citizens do not come to referendum to give the vote, because a great part of them do not trust governmental institutions and political parties.

## **II - Regional or local referendums**

Neither Constitution nor laws provide for regional or local referendums. According to the Law on Local Self-Government, municipalities may organize interrogatories of local residents concerning questions falling within municipality's competence.

## **III - The future of referendums**

1. See answer in A-2.
- 2-3 A requirement to coordinate with constitutional provisions, democratization of the procedures of holding a referendum.

## **LUXEMBOURG**

### **I - Référendums nationaux**

#### **A - Quel fondement juridique?**

1. *Le référendum est-il prévu par la Constitution?*

Oui, la Constitution prévoit la possibilité d'organiser un référendum. Ainsi, le référendum est introduit dans la Constitution luxembourgeoise par la révision constitutionnelle de 1919. Depuis, l'Article 51, paragraphe 7 de la Constitution prévoit que « les électeurs pourront être appelés à se prononcer par la voie du référendum dans les cas et sous les conditions à déterminer par la loi ». Pourtant, il n'existe pas de loi générale sur l'organisation d'un référendum.

2. *A défaut de dispositions constitutionnelles la loi permet-elle de recourir au référendum? En quelles matières?*

-

#### **B - Quel est le type de référendum? Qui décide?**

1. *Référendum obligatoire*

Le référendum est-il exigé par la Constitution, qui dispose que certains textes sont soumis automatiquement au référendum avant ou après leur adoption par le Parlement?

Au cas par cas : la Constitution ne prévoit pas de précision sur cette modalité. En fait, le texte de la Constitution reste muet tant sur le caractère obligatoire, ainsi que sur les autres modalités.

2. *Référendum à la demande d'une autorité*

a. *Le référendum peut-il être organisé à la demande d'une autorité?*

En fait le texte de la Constitution reste tacite sur ce sujet. On pourrait imaginer que le Gouvernement ou le Conseil d'Etat suggèrent l'organisation d'un référendum, néanmoins que la Chambre des Députés décide.

b. *Si oui, qui peut décider l'organisation d'un référendum? Le chef de l'Etat, le Gouvernement, le Parlement, une fraction du Parlement, des entités territoriales?*

Actuellement le référendum sur le traité de la Constitution européenne est suggéré par le Gouvernement, dans l'accord de coalition de 2004 libellé comme suit : « Le Gouvernement entend soumettre la Constitution européenne à un référendum après que la Chambre des Députés se soit prononcée par un premier vote. Le résultat du référendum sera obligatoire. »

### 3. *Référendum à la demande d'une fraction du corps électoral*

- a. *Un certain nombre d'électeurs peut-il exiger l'organisation d'un référendum? Dans ce cas, quel est le pourcentage des électeurs exigé pour valider la proposition? Comment sont vérifiées les signatures des électeurs?*

Non, a priori la Constitution ne prévoit pas de telles modalités. Or, la déclaration gouvernementale du 12 août 1999 ainsi que le projet de loi à l'initiative populaire en matière législative et au référendum, déposé le 20 mai 2003, prévoit ce qui suit:

« Afin d'inciter les citoyens à prendre une part plus active dans la vie politique entre deux échéances électorales, le Gouvernement élaborera un projet de loi réglant l'initiative populaire au niveau national. Celle-ci devrait permettre à 10.000 électeurs de présenter une proposition de loi qui devrait être examinée par la Chambre des Députés. De même, 50.000 électeurs pourraient exiger un référendum sur une proposition de loi ainsi présentée. »

- b. *Une demande de référendum peut-elle porter sur un texte déjà adopté par le Parlement? Une initiative populaire peut-elle proposer un texte nouveau?*

La Constitution ne détermine pas de précision en matière de l'organisation d'un référendum. En absence d'une loi générale sur l'organisation d'un référendum, les modalités seront fixées au cas par cas. En ce qui concerne, le référendum sur la Constitution européenne, l'accord de coalition prévoit : « Le Gouvernement entend soumettre la Constitution européenne à un référendum après que la Chambre des Députés se soit prononcée par un premier vote. Le résultat du référendum sera obligatoire. » Quant à l'initiative populaire un projet de loi a été déposé par le Gouvernement, qui devrait permettre à 10.000 électeurs de présenter une proposition de loi qui devrait être examinée par la Chambre des Députés. De même, 50.000 électeurs pourraient exiger un référendum sur une proposition de loi ainsi présentée.

### 4. *Procédure impliquant plusieurs autorités*

*Est-il prévu que la présentation d'un texte au vote populaire est soumise à l'accord de plusieurs organes?*

*Par exemple :*

*Si le référendum est proposé par le chef de l'Etat, faut-il une proposition du Gouvernement ou de l'une ou des deux chambres du Parlement ? Le chef de l'Etat ou le chef du Gouvernement peuvent-ils refuser la proposition?*

*Si le référendum est demandé par une fraction du corps électoral, faut-il l'accord du Parlement/d'une fraction du Parlement?*

*Le référendum peut-il être fondé sur une initiative populaire présentant une proposition alternative à un projet retenu par le Parlement?*

A l'exception du Parlement, ce sont le Conseil d'Etat et les Chambres professionnelles qui se prononcent par avis sur tout texte législatif. Cependant, l'avis des chambres professionnelles n'est que facultatif, tandis que l'avis du Conseil d'Etat est obligatoire. Si le Conseil d'Etat formule une opposition formelle (uniquement dans le cas d'ordre constitutionnel), alors la Chambre des Députés devra procéder à deux votes séparés d'un décalage d'au moins trois mois.

## 5. *Rôle du Parlement*

- *Peut-il s'opposer à l'organisation d'un référendum en adoptant un contre-projet portant sur le même objet? Dans quel délai? Une majorité spéciale est-elle requise?*
- *Peut-il soumettre un contre-projet au peuple simultanément au premier texte proposé?*
- *Peut-il donner uniquement son avis?*
- *Un délai est-il fixé pour que le Parlement prenne position et, si celui-ci n'est pas respecté, quelles en sont les conséquences?*
- *En cas de référendum portant sur une question de principe/une proposition non formulée/abrogatif (voir paragraphe suivant), doit-il adopter un (nouveau) texte juridique?*

En absence de loi générale sur l'organisation d'un référendum, les modalités seront fixées au cas par cas, ce qui signifie que la loi fixant les modalités de l'organisation d'un référendum sera adaptée au cas par cas selon les souhaits de la Chambre des Députés.

### **C - Contenu**

#### 1. *Types d'actes soumis au référendum*

*Le référendum est-il prévu seulement pour modifier la Constitution?*

Non, la Chambre des Députés n'est pas censée de recourir au vote populaire pour modifier le texte de la Constitution. Le champ d'application matériel de l'initiative populaire peut porter sur l'ensemble du domaine de la loi ordinaire, à l'exclusion dès lors des seules questions constitutionnelles.

*Un référendum est-il nécessaire pour modifier la Constitution?*

Non, le référendum n'est pas nécessaire pour modifier la Constitution.

*Sur quels autres types d'actes le référendum peut-il intervenir? En particulier, le référendum est-il nécessaire ou possible pour l'adhésion à l'Union européenne ou à une organisation internationale?*

En principe, la Constitution ne prévoit pas de restrictions, donc le texte du référendum peut porter sur l'ensemble du domaine de la loi ordinaire, à l'exclusion dès lors des seules questions constitutionnelles.

#### 2. *Matières sur lesquelles peut porter le référendum*

*Le référendum est-il réservé à certaines matières? Certaines matières sont-elles soumises obligatoirement au référendum ou, au contraire, exclues du référendum?*

Théoriquement, tous les actes peuvent être soumis au référendum, si la loi le prévoit à l'exclusion des seules questions constitutionnelles.

**D - La forme du texte soumis au référendum (la validité formelle)***1. Quelle est la forme possible du texte soumis au référendum?*

- un projet rédigé de texte constitutionnel, légal ou autre
- l'abrogation d'un texte en vigueur
- une question de principe (par exemple : « êtes-vous en faveur d'un amendement de la Constitution visant à introduire un système présidentiel ? ») ou
- une proposition concrète qui n'est pas présentée sous la forme de dispositions spécifiques, dite "proposition non-formulée" (par exemple : « êtes-vous en faveur d'un amendement de la Constitution réduisant le nombre de sièges du Parlement de 300 à 200 ? »).

En principe, la Constitution ne prévoit pas de modalités d'organisation, donc toutes les modalités sur l'organisation d'un référendum doivent être fixées par une loi.

*2. Les questions soumises au référendum doivent-elle respecter :*

- a. *l'unité de la forme (une même question ne doit pas combiner un projet rédigé et une proposition non formulée ou une question de principe) ;*

En absence d'une loi générale qui réglera les modalités de l'organisation d'un référendum, il nous est impossible de répondre à ces questions. Donc, les modalités dépendront donc du texte de la loi à intervenir. Précisons que le champ d'application matériel de l'initiative populaire peut porter sur l'ensemble du domaine de la loi ordinaire, à l'exclusion dès lors des seules questions constitutionnelles.

- b. *l'unité de la matière (sous réserve du cas de révision totale d'un texte, il doit exister un rapport intrinsèque entre les différentes parties de chaque question soumise au vote, afin de garantir la liberté de vote de l'électeur, qui ne doit pas être appelé à accepter ou rejeter en bloc des dispositions sans lien entre elles) ;*

En absence d'une loi générale qui réglera les modalités de l'organisation d'un référendum, il nous est impossible de répondre à ces questions.

- c. *l'unité de rang : une même question ne doit pas porter simultanément sur la Constitution et un acte normatif inférieur.*

En absence d'une loi générale qui réglera les modalités de l'organisation d'un référendum, il nous est impossible de répondre à ces questions.

- d. *Le vote doit-il porter sur une seule question ou peut-elle porter sur plusieurs?*

En absence d'une loi générale qui réglera les modalités de l'organisation d'un référendum, il nous est impossible de répondre à ces questions.

- e. *La ou les questions doivent-elles être claires et non suggestives?*

En absence d'une loi générale qui réglera les modalités de l'organisation d'un référendum, il nous est impossible de répondre à ces questions.

### **E - Limites matérielles du référendum (la validité matérielle)**

*Le référendum est-il exclu si le texte proposé est contraire :*

- au droit international ou à certaines de ses normes
- à la Constitution ou à certaines de ses normes
- à d'autres normes de droit supérieur

A priori oui, mais en absence de texte législatif, nous ne savons pas quelles seront les modalités exactes sur l'organisation d'un référendum. Cependant, il va de soi que dans un Etat de droit la hiérarchie des normes doit être respectée pour toute sorte de référendum.

### **F - Campagne/propagande/financement et votation**

#### *1. Campagne et propagande*

- a. *Les autorités sont-elles tenues de fournir une information objective, notamment par la remise du texte et d'une notice explicative aux électeurs?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

- b. *Si une notice explicative est prévue, qui la rédige? Les formations politiques peuvent-elles participer à la rédaction de cette notice? La notice explicative doit-elle présenter le point de vue des autorités et celui des personnes ayant un point de vue opposé, de manière équilibrée?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

- c. *La propagande pour ou contre le texte proposé est-elle réservée aux partis politiques? Dans le cas contraire, qui peut participer à cette propagande? Les autorités (nationales, régionales, locales) peuvent-elles faire campagne?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

- d. *Les médias publics sont-ils tenus de réserver une place égale aux partisans et aux adversaires du texte proposé?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

- e. *Qu'en est-il des médias privés? Les conditions financières ou autres de la publicité radio-télévisée sont-elles égales pour les partisans et les adversaires du projet?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

## 2. *Financement*

- a. *L'utilisation de fonds publics en faveur ou en défaveur d'un projet soumis au référendum est-elle autorisée? Dans quelle mesure? Est-elle exclue pendant la période précédant le vote?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

- b. *La rémunération de la récolte des signatures pour les initiatives populaires par des fonds privés est-elle autorisée, et à quelles conditions?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

## 3. *Votation*

- a. *Les opérations électorales sont-elles réalisées en un seul jour ou sur plusieurs?*

En principe les opérations électorales se déroulent en un seul jour, sauf en cas de dérogation d'une loi spéciale.

- b. *S'il y a un décalage horaire important entre les différents centres de vote, les résultats de certains d'entre eux peuvent-ils être connus avant la clôture des opérations des autres centres?*

Non.

- c. *La participation de chaque électeur est-elle obligatoire?*

Conformément à la Constitution, le vote est obligatoire. On ne saurait cependant exclure qu'une loi puisse modifier les modalités de cette disposition.

- d. *Quorum : Pour que la consultation soit valable, doit-elle avoir recueilli un certain pourcentage de votants par rapport au nombre des inscrits ? Ou faut-il une participation minimale?*

En absence d'une loi, une réponse à cette question s'avère impossible.

## **G - Les effets du référendum**

1. *Quels sont les effets du référendum? Est-il demandé aux électeurs un simple avis (référendum consultatif)? Ou une décision (référendum décisionnel)?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible. Néanmoins on peut mentionner que l'accord de coalition de 2004 retient que le Gouvernement entend soumettre la Constitution européenne à un référendum après que la Chambre des Députés se soit prononcée par un premier vote, dont le résultat du référendum sera obligatoire.

2. *Le référendum oblige-t-il à prendre d'autres décisions (voir point B.5)?*

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3. *Si le référendum porte sur un texte déjà adopté par une autorité, est-il :*

- *suspensif* : le texte ne peut entrer en vigueur tant qu'il n'a pas été approuvé par les électeurs ou qu'une demande de référendum n'a pas eu lieu dans le délai prévu par la Constitution ou par la loi ;

- *résolutoire* : le texte cesse d'être en vigueur suite à un vote négatif/en l'absence de vote positif intervenant dans un certain délai après son adoption;

- *abrogatif* : l'acceptation du référendum conduit à l'abrogation d'une disposition en vigueur.

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

### **H - Parallélisme des formes et normes prévoyant le référendum**

1. *Une disposition acceptée/refusée par référendum peut-elle être révisée/introduite par une procédure excluant le référendum?*

Dans chaque cas la loi qui sera à voter pour l'organisation de chaque référendum en détermine les modalités.

2. *Une norme constitutionnelle ou législative prévoyant la possibilité d'organiser un référendum peut-elle être révisée par une procédure excluant le référendum?*

Une réponse à cette question s'avère comme difficile, parce que tout dépend du contenu de la loi à intervenir.

### **I - Règles particulières relatives à l'initiative populaire**

1. *Quels sont les délais pour la récolte des signatures?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

2. *Qui est autorisé à récolter les signatures?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

3. *Comment la vérification des signatures s'effectue-t-elle?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

4. *Une autorité est-elle autorisée à rectifier les vices résultant du contenu de la question? (Exemples : en matière de validité formelle, de caractère obscur, trompeur ou suggestif de la question)*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

**J - Contrôle juridictionnel**

1. *La décision d'organiser ou de ne pas organiser un référendum peut-elle faire l'objet d'un recours devant une juridiction? Ou un contrôle judiciaire est-il exercé d'office? Ce contrôle concerne-t-il en particulier l'aboutissement des initiatives populaires?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

2. *Dans l'affirmative, quels sont les cas où le juge peut s'opposer à la tenue d'un référendum (violation de l'unité de la forme, de l'unité de la matière, absence de clarté de la question, etc.)?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

3. *Les résultats du référendum peuvent-ils faire l'objet d'un contrôle juridictionnel?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

4. *Qui a qualité pour recourir?*

En raison de l'absence d'une loi, une réponse à cette question s'avère impossible.

**K - Les expériences de référendum**

1. *Depuis que le pays est doté d'une Constitution combien de référendums ont-ils été organisés? Précisez quels types de référendum ont été organisés (voir supra I.C).*

Jusqu'à maintenant un référendum a été organisé qu'à deux reprises (1919/1937) qui étaient de nature consultative..

Le premier référendum de l'histoire du Luxembourg qui a lieu le 28 septembre 1919. C'était en fait un double référendum. Le même jour, les Luxembourgeois étaient appelés à se prononcer sur le maintien de la dynastie ou non ainsi que sur une union économique éventuelle avec la France. Ils se sont prononcés à de larges majorités pour le maintien de la dynastie avec la Grande-Duchesse Charlotte et pour une union économique avec la France.

Le deuxième, ou si l'on veut, le troisième référendum de l'histoire du Luxembourg s'est déroulé le 6 juin 1937. Les citoyens étaient appelés à se prononcer sur une loi dite, la « loi muselière », qui, adoptée à une large majorité à la Chambre des Députés, rencontrait une forte opposition extraparlamentaire menée notamment par les syndicats. Ces derniers voient dans cette loi une atteinte à la liberté d'opinion. Le projet de loi « pour la défense de l'ordre politique et social » interdit l'appartenance à tout groupement dont « l'activité tend à abolir ou à changer par la violence ou par tout autre moyen illicite la Constitution ». Elle visait avant tout le parti communiste. Suite à la forte opposition extraparlamentaire, le Gouvernement Bech décidait de soumettre l'application de la loi à un référendum. Ce référendum s'est soldé par une légère majorité contre l'entrée en vigueur de la loi.

2. *Qui a pris l'initiative d'organiser chacun d'eux?*

En 1919 et en 1937, c'était le Gouvernement qui a pris l'initiative du référendum.

3. *Certains référendums ont-ils échoué faute d'une participation suffisante?*

Non, puisque le vote est obligatoire

4. *A combien de référendums les électeurs ont-ils donné une réponse affirmative?*

Pour ce qui concerne les détails, veuillez vous référer aux annexes ci-jointes.

5. *A combien de référendums les électeurs ont-ils donné une réponse négative?*

Pour ce qui concerne les détails, veuillez vous référer aux annexes ci-jointes.

6. *La réponse s'explique-t-elle en grande partie pour des raisons étrangères à la question posée?*

Pour ce qui concerne les détails, veuillez vous référer aux annexes ci-jointes.

7. *Une réponse affirmative s'explique-t-elle par la popularité de celui qui a posé la question?*

-

8. *Une réponse négative s'explique-t-elle par l'impopularité des gouvernants? Ou par un mécontentement général? Ou encore par une inexacte compréhension des enjeux en cause?*

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## **II - Référendums régionaux ou locaux**

### **A - Quel fondement juridique?**

1. *Le référendum est-il prévu par la Constitution nationale?*

Oui, l'Article 51(7) de la Constitution nationale prévoit le recours au référendum.

2. *A défaut de dispositions constitutionnelles la loi nationale permet-elle de recourir au référendum?*

-

3. *Des dispositions des entités (fédérées, régionales, autonomes, etc.) prévoient-elles le référendum?*

L'Article 35 de la loi communale prévoit le recours au vote populaire : « Le conseil communal peut appeler les électeurs à se prononcer par la voie du référendum dans les cas d'intérêt communal et sous les conditions qu'il détermine. Le référendum est de droit lorsque la demande en est faite par un cinquième des électeurs dans les communes de plus de trois mille

habitants, et par un quart des électeurs dans les autres communes. Dans ces cas, le conseil doit organiser le référendum dans les trois mois de la demande. Les modalités du référendum sont fixées par règlement grand-ducal. Les dispositions de la loi électorale relatives au vote obligatoire, notamment les Articles 259 à 262 inclusivement, sont applicables. Dans tous les cas, le référendum n'a qu'un caractère consultatif. »

4. *En quelles matières le référendum est-il possible?*

Conformément à la loi communale, les modalités du référendum sont fixées par règlement grand-ducal.

**A1 - A quel niveau?**

1. *Au niveau des Etats fédérés?*

Le Gand-Duché est un Etat unitaire.

2. *Au niveau des provinces? Des régions?*

Le Gand-Duché est un Etat unitaire.

3. *Au niveau de circonscriptions plus réduites? Des départements?*

La répartition en circonscriptions n'existe qu'au point électoral.

4. *Au niveau des communes?*

Oui, au niveau communal le recours au vote populaire est possible.

5. *En quelles matières?*

L'organisation d'un référendum peut être exigé soit par le conseil communal soit par un cinquième des électeurs dans les communes de plus de trois mille habitants, et par un quart des électeurs dans les autres communes, dont les modalités sont à fixer par règlement grand-ducal.

6. *Les autorités nationales ou fédérales peuvent-elles intervenir, et dans quelles conditions?*

Non, à condition que la hiérarchie des normes soit respectée aucune autorité nationale n'a le droit d'intervenir, puisque les communes jouissent de l'autonomie communale. Sauf, en ce qui concerne les modalités, qui sont fixées par règlement grand-ducal.

**B - Quel est le type de référendum? Qui décide?**

*Répondre aux mêmes questions que I-B, mutatis mutandis (en indiquant notamment quelles autorités fédérées/régionales/locales peuvent intervenir).*

### **C - Contenu**

*Répondre aux mêmes questions que I-C.*

*En particulier :*

- *Le référendum peut-il porter sur la sécession?*

-

- *Une modification des limites territoriales?*

-

- *Tout autre objet?*

-

### **D - La forme du texte soumis au référendum (la validité formelle)**

*Répondre aux mêmes questions que I-D.*

La loi communale stipule que les modalités du référendum sont fixées par règlement grand-ducal. En outre, selon la loi communale, les dispositions de la loi électorale relatives au vote obligatoire, notamment les Articles 259 à 262 inclusivement, sont applicables. Cependant dans tous les cas, le référendum n'a qu'un caractère consultatif.

### **E - Limites matérielles du référendum (la validité matérielle)**

*Répondre aux mêmes questions que I-E (et en particulier à la question de la conformité aux normes de l'Etat central).*

A priori oui, mais vu que les modalités du référendum sont fixées au cas par cas par règlement grand-ducal, nous ne savons pas quelles seront les modalités exactes sur l'organisation d'un référendum. Cependant, il va de soi que dans un Etat de droit la hiérarchie des normes doit être respectée pour toute sorte de référendum.

### **F - Propagande et votation**

*Répondre aux mêmes questions que I-F.*

En raison du fait que les modalités du référendum sont fixées par règlement grand-ducal, une réponse à ces questions s'avère impossible.

### **G - Les effets du référendum**

*Répondre aux mêmes questions que I-G.*

En raison du fait que les modalités du référendum sont fixées par règlement grand-ducal, une réponse à ces questions s'avère impossible.

## **H - Parallélisme des formes et normes prévoyant le référendum**

*Répondre aux mêmes questions que I-H.*

Les modalités de l'organisation de chaque référendum sont déterminées par règlement grand-ducal.

## **I - Règles particulières relatives à l'initiative populaire**

*Répondre aux mêmes questions que I-I.*

L'Article 35 de la loi communale prévoit le recours au vote populaire : « Le conseil communal peut appeler les électeurs à se prononcer par la voie du référendum dans les cas d'intérêt communal et sous les conditions qu'il détermine. Le référendum est de droit lorsque la demande en est faite par un cinquième des électeurs dans les communes de plus de trois mille habitants, et par un quart des électeurs dans les autres communes. Dans ces cas, le conseil doit organiser le référendum dans les trois mois de la demande. Les modalités du référendum sont fixées par règlement grand-ducal. Les dispositions de la loi électorale relatives au vote obligatoire, notamment les Articles 259 à 262 inclusivement, sont applicables. Dans tous les cas, le référendum n'a qu'un caractère consultatif. »

## **J - Contrôle juridictionnel**

*Répondre aux mêmes questions que I-J, en distinguant le cas échéant le contrôle judiciaire au niveau de l'Etat central et des entités fédérées/des régions.*

## **K - Les expériences de référendum**

1. *Les référendums locaux ont-ils été nombreux?*
2. *A quel niveau? Etat fédéré? Province ou département? Communes? Autres circonscriptions? Précisez quels types de référendums ont été organisés.*

## **III - Avenir du référendum**

1. *Une réforme du référendum est-elle en cours?*

En 2003 le Gouvernement avait déposé un projet de loi à l'initiative populaire en matière législative et au référendum, qui ne fut pas encore votée.

En même temps, le Gouvernement a retenu dans l'accord de coalition de 2004 : « Le Gouvernement entend soumettre la Constitution européenne à un référendum après que la Chambre des Députés se soit prononcée par un premier vote. Le résultat du référendum sera obligatoire. »

2. *Si oui, quel est son objet?*

Dans l'exposé des motifs du projet de loi de 2003, le Gouvernement espère pouvoir « inciter les citoyens à prendre une part plus active dans la vie politique entre deux échéances électorales, le Gouvernement élaborera un projet de loi réglant l'initiative

populaire au niveau national. Celle-ci devrait permettre à 10.000 électeurs de présenter une proposition de loi qui devrait être examinée par la Chambre des Députés. De même, 50.000 électeurs pourraient exiger un référendum sur une proposition de loi ainsi présentée."

3. *Si oui, quelle est la tendance générale de cette réforme?*

La population est largement en faveur du vote populaire tandis que la Chambre des Députés paraît plus divisée sur cette question. Il faut attendre les débats à venir, notamment les discussions concernant le projet de loi qui a été déposé en 2003 par le Gouvernement ainsi que la campagne et le déroulement du référendum sur la Constitution européenne.

## MALTE / MALTA

### A - Legal Basis

#### 1. *Is provision made for referendums in the Constitution ?*

Section 6 of the Constitution of Malta declares the Constitution as the supreme Law: "Subject to the provisions of subsections (7) and (9) of section 47 and of section 66 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void."

The subsections of section 47 deal with the position when a state of emergency is declared, and are not relevant to the matter of referendums. Section 66 empowers Parliament to change the Constitution but provides in subsection (2) for a qualified majority of not less than two thirds of all the members of the House in the case of an alteration to a number of certain quoted sections, which are considered entrenched, and in subsection (3), for two further guarantees in addition to the two thirds majority, in the case of an alteration of the subsection itself and of subsection(4) of the same section as well as an alteration to subsection (2) of section 76 of the Constitution. Section 76 which deals with the dissolution and prorogation of Parliament. The two added guarantees are: the passage of six months between the two thirds vote in the House and the presentation of the bill amending the Constitution to the President and its being "submitted to the electors qualified to vote for the election of members of the House of Representatives, and the majority of the electors voting have approved of the bill."

In essence the Constitution considers referendums as a constitutional break on the powers of Parliament in the matter of the alteration of the Constitution itself, and only within the confines of a possible conflict of interest between the representatives and their electors. The Constitution does not see referendums as alternative ways of approval of legislation. The Constitution sees Parliament as the depositary of sovereign legislating power. The Constitution does not however limit the right of Parliament to legislate so as to make use of referendums.

#### 2. *If not, does the law provide for the use of referendums? On what matters?*

Chapter 237 of the Laws of Malta is the Referenda [throughout the Act itself the proper Latin plural is made use of instead of the colloquial referendums] Act. This Act [originally Act XXXIII of 1973] substitutes earlier specially enacted *ad hoc* Referendum Acts. The Referenda Act distinguishes between a referendum held under the Act and one held under section 66(3) of the Constitution. There is a further distinction between a referendum where the voters will be asked to "approve proposals set out in a resolution passed for that purpose by the House and published in the Gazette;" and a referendum in which they are called to declare "whether they agree that a provision of law should be abrogated in accordance with the provisions of Part V of this Act."

This Act regulates: the mandatory referenda held according to the Constitution; as well as (a) those where Parliament chooses to refer the matter to the electorate, because of the political, and maybe Constitutional importance of the issue; and (b) those where a number of citizens (not less in number than ten per cent of the registered voters) demand that certain specified



pieces of legislation or parts thereof shall not continue in force. Not all legislation can be put to the test of abrogative referenda. The Law specifies the following, as not subject to an abrogative referendum under the Act :

- “a. the Constitution and any regulation made under any provision thereof;
- b. the European Convention Act;
- c. any law providing for the matters referred to in Article 56(8)(a)(b) or (c) of the Constitution [Corrupt practices during elections and foreign interference];
- d. the Interpretation Act;
- e. the General Elections Act;
- f. any fiscal legislation;
- g. any legislation giving effect to any treaty obligation undertaken by Malta;
- h. save as provided in Article 36A of the Local Councils Act, any bye-law made by a Local Council under that Act.

### **B - What type of referendum may be used? Who decides?**

#### *1. Mandatory Referenda*

As stated above, only those under Article 66(3) of the Constitution can be said to be mandatory referenda, in the sense that they are required for certain pieces of constitutionally relevant legislation to be validly enacted. In that case the referendum has to be held after Parliament has voted with the required two thirds majority, and after the passage of six months.

#### *2. Referenda called by an authority*

##### *a. Can referenda be called by an authority ?*

Referenda can be held either under the Referenda Act (Chapter 237) or under an *ad hoc* Law. Under the Referenda Act it is the President of the Republic who fixes the date of the referendum, but the law provides that five weeks must lapse between the proclamation of the date, by publication of the Writ, and the date of the vote (Article 5). An *ad hoc* law will provide specifically, but in all cases in the past the President (and before him the Governor as the Monarch's representative) issued the Writ calling for the referendum.

There is however no authority which can call a referendum outside Constitutional and Legal provisions, acting on its own discretion.

##### *b. If so who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

As stated, a referendum has to be called in the case of certain proposed constitutional amendments, after the passage of the amending bill through Parliament. Parliament itself has therefore moved in the first place, but it is the President who has to fix the date and issue the Writ for the referendum to be held. The Maltese Constitution considers Parliament as one single collective body and though there are certain conditions for the passage of a constitutional amendment, once those conditions are fulfilled, it is Parliament as a whole that is acting and no group or number of deputies has any constitutional role.

Article 36A of the Local Councils Act (Chapter 363) makes the Referenda Act applicable to any bye-law made by a Local Council under the provisions of Chapter 363. SubArticle (2) of that Article applies the Referenda Act, by specifying that for the purpose of an abrogative referendum under this law the ten per cent of citizens required to request such a referendum, has to refer to the number in the locality of that local council. However all other legal requirements *mutatis mutandis*, apply.

3. *Referenda held at the request of part of the electorate*

The two questions under a. and b. have already been dealt with under 2 immediately above.

4. *Procedures involving more than one authority*

In the case of an abrogative referendum requested by at least ten percent of the voters [under the Referenda Act of the registered voters of the whole country, under the Local Councils Act of the voters of the locality], it is the Electoral Commission which has to ascertain whether the required number of voters have signed the declaration. After that the Electoral Commission has ascertained the signatures, it shall deposit a note in the Constitutional Court specifying the numbers of the valid and invalid signatures. The proposers of the referendum, not less than five and not more than ten, shall sign a declaration before all the other signatories, indicating that they are signing as proposers. The Constitutional Court shall within two days of receipt of the declaration from the Electoral Commission cause a notice to be published in the Government Gazette giving all the relevant particulars.

Any voter or the Attorney General on behalf of the Government may, within three months, file an application with the registry of the Constitutional Court, and petition that the Constitutional Court should declare that the Referendum requested should not be held, listing the reasons. The application shall be served on the Prime Minister, the Leader of the Opposition, the proposers and any other person making an application. If after hearing submissions, the Constitutional Court decides that the referendum should not be held, the request is rejected, on the contrary, if no grounds exist for the original request to be rejected, the referendum shall be held. The decision of the Constitutional Court shall be delivered personally to the President of the Republic, who shall fix a date for the referendum not earlier than three months and not later than six months, from the date of the receipt of the decision and issue a Writ for the referendum to be held.

If Parliament repeals the provisions which the referendum seeks to abrogate, the referendum is not held. If Parliament is dissolved between the date of the decision and the polling day fixed by the President, the referendum is likewise not held. In each of these cases the President shall by Proclamation declare that for the reasons above the referendum will not be held.

An abrogative referendum can only propose abolition or annulment of legislation, the laws (Chapters 237 and 363) do not provide for alternative proposals to be submitted to the popular vote.

#### 5. *Role of Parliament*

If Parliament acts to remove from any legislation the enactments which a referendum requested by ten percent of the electorate, and which has been admitted by the Electoral Commission and, in some cases, the Constitutional Court, had sought to abrogate, then the President of the Republic will by Proclamation declare that the referendum will not be held.

Parliament is not precluded by Law from proposing a counter referendum. Parliament does not have a "consultative" function, and cannot give opinions. Resolutions passed by the House of Parliament have no legislative binding force, as the promulgation of legislation presupposes a procedure [with a number of readings] with finally, the consent of the President and there is no constitutional provision for the President's consent to a resolution

The result of an abrogative referendum is definitive. Parliament can and should look into any legislative *lacuna* that might thereby ensue. The President may send a message to Parliament to remind it of its duty, in the same fashion as he may do after a judgement of the Constitutional Court declaring a law unconstitutional.

### **C - Content**

#### 1. *Types of act submitted to referendum*

*Are referenda held only on proposals for constitutional amendment?*

*Is a referendum mandatory in the case of a constitutional amendment?*

As stated above referenda are a *sine qua(æ) non* in the case of certain specified constitutional amendments, to which reference has been made above. In the case of other constitutional amendments, though not mandatory, Governments or Parliamentary majorities might wish to have the comfort of a popular vote.

Referendum can be and are held also on other matters.

*On what other types of measure can a referendum be called? In particular, is a referendum necessary or possible for accession to the European Union or International Organisations?*

The Constitution does not preclude the holding of a referendum on any matter. The Referenda Act does not authorise the holding of an abrogative referendum in the case of certain types of legislation which have been shown above. Referenda have historically been held in Malta on matters of great moment: Integration with Britain (1956); Independence Constitution (1964); Accession to the European Union (2003).

#### 2. *Matters to which referenda may relate*

*Are referenda reserved for particular matters ? Are certain matters automatically put to a referendum or excluded from referenda?*

As stated above, referenda are mandatory only in the case of certain specified constitutional amendments. Abrogative referenda on voters' initiative are excluded in certain specified cases. In all other cases there is ample liberty of choice open to political forces to opt for the holding of referenda when they deem it wise, salutary or democratically imperative.

**D - Form of the text submitted to referendum(formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically worded draft*
- *repeal*
- *a question of principle*
- *a concrete proposal*
- *generally worded proposal ?*

Article 4(2) of the Referenda Act provides that: "The question or questions to be put to those entitled to vote shall be so framed that they can be answered yes or no; and the ballot paper on which the vote is to be recorded shall be in such form that each question may be so answered". The legislator was also preoccupied with the distinction to be retained when more than one question was to be submitted to the electorate on the same occasion, that the law further stipulates in subsection (4) that different questions have to be shown in different colours on the ballot paper.

Provided these conditions are met there are no further limitations as to the question to be put. However in the case of an abrogative referendum the enactment which it is proposed should be annulled is to be specified clearly.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form*
- b. *unity of content*
- c. *unity of rank*
- d. *does the vote have to be on a single question or can it be on several different ones?*
- e. *does the question (or questions) have to be clear and suggestion free?*

The Referenda Act does not address these problems, and neither for that matter are they considered by the Constitution. As a political comment one can say that the political history of Malta does not offer too many occasions where a referendum was resorted to. Although the first referendum held in Malta goes back to the nineteenth century, referenda have been few in number. In fact only three in the twentieth century and one in the new millennium. It seems that the political parties, when in power, and can therefore, through a parliamentary majority, legislate for it to be held, are wary lest it turn into a protest vote against government. Also in the very balanced situation obtaining in Malta, it is resorted to only when it would be counterproductive not to hold it.

### **E - Substantive limits on referenda (substantive validity)**

There are no absolute constitutional obstacles to the possible content of a referendum. The Constitution only stipulates the cases when it is mandatory. The Referenda Act excludes from the procedure of an abrogative referendum certain enactments, which have been listed above (under A-2)

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

The Referenda Act in Article 10 makes applicable to referenda all the provisions of the General Elections Act (Chapter 354) and the Electoral Polling Ordinance (Chapter 102), *mutatis mutandis*. There is no extra requirement in the case of referenda with regard to the provision of information, except information as regards the voting document and the questions to be answered yes or no. Government has felt the need, in the case of the latest (2003) referendum concerning accession to the European Union, to set up a special unit which sent leaflets to voters concerning the choice: what entry into the Union would mean.

- b. *If an explanatory document etc..?*

The question does not arise as no explanatory document is legally required. Of course political parties or interested lobbies would be free to send leaflets and other material.

- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign ?*
- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*
- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

There are no restrictions as to who can campaign for or against. As a matter of fact not only political parties but also *ad hoc* groupings and dissidents as well as independent citizens, have participated in the latest referenda. The Broadcasting Act requires the Broadcasting Authority to ensure that there is a balance in the time allocated. In actual fact, in the latest referendum, the complaint was made by the proponents [ the Government ] that the Broadcasting Authority had been overzealous in scrupulously abiding by the Broadcasting Act, the different attitudes taken by opponents might have led to the noes being over represented.

#### *2. Funding*

- a. *Is the use of public funds for or against a proposal submitted to referendum allowed ? To what extent ? Is it published in the period immediately preceding the vote?*

There is no legislation explicitly prohibiting the use of public funds to explain or even to promote a referendum query. Indeed when the proposal comes officially from Government, it is assumed that information (as distinguished from promotion) is funded from public funds. Promotion though not prohibited is frowned upon as something not proper. In the case of the latest referendum concerning the Accession to the European Union, the money allocated to the information campaign was made known before the vote, and the money actually spent was the subject of public debate.

Article 21 of the Act authorises the Minister responsible for Finance may by warrant under his hand direct the Accountant General to pay all sums required to be spent or incurred to carry out the provisions of the Act, out of the Consolidated Fund. All accounts have to be laid on the table of the House of Representatives as soon as practicable. This is need when it had not been possible to provide for the public funding in the yearly budget estimates.

Is privately-funded collection of signature for proper initiatives allowed and if so on what conditions ?

There are no prohibitions of any sort concerning the funding and the manner in which the collection of signatures for popular initiatives is conducted.

### 3. *Voting*

#### *a. Does voting take place on one day or over a number of days?*

The Referenda Act mentions the "day" fixed by the President for the holding of the referendum.

The singular is assumed as normal in that in Malta, since some time, voting at elections is done on only one day. But nothing precludes Parliament from legislating for referenda to be held on more days when, for example, a number of questions are put to the electors or when the referendum is held concurrently with local or national elections.

#### *b. If there is a time lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

This cannot occur in Malta since the counting of votes is done in one centre, and does not begin before all the votes from all voting stations are collected in the central counting Hall.

#### *c. Is it compulsory for all voters to cast a vote?*

It is not a legal but a moral obligation to cast one's vote at elections and referenda; however a very high proportion of the Maltese electorate actually does vote.

#### *d. Quorum. For the results of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

Article 20(1) in its proviso stipulates that " such a proposal shall be deemed not to have been approved if less than fifty percent of those entitled to vote in the referendum plus one, will have cast their vote". This however applies only to abrogative referenda.

## **G - Effects of referenda**

1. *What are the effects of referenda ? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The referenda for which provision is made in the Constitution, and the abrogative referenda as in the Referenda Act are decision referenda. However Parliament may by resolution propose other referenda which may well be consultative. This has never happened to date, except, perhaps to a certain extent, in the Integration "proposal" referendum of 1956.

2. *Does the referendum make it necessary to take other decisions ?*

When an abrogative referendum is successful and the electorate by fifty percent of the registered voters, plus one has voted, in the sense that a majority of those voting has supported the amendment or repeal of the enactment, then the President of the Republic (Article 20(1)) has to issue a Proclamation accordingly. As the consent of the President is an essential ingredient in the promulgation of laws, this proclamation completes the amendment or repeal of the enactment by the electorate.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- suspensive;
- resolatory;
- abrogative ?

In the case of mandatory referendums as provided by the Constitution, the referendum is suspensive, in the sense that the amendments passed by Parliament cannot be given the assent of the President unless approved by the referendum.

In the case of other referendums provided for by a special law of Parliament, then it depends on the issue and how the question is put.

There is no doubt that in the case of an abrogative referendum the result abrogates the enactment and this is made public by the proclamation of the President.

## **H - Parallellism of procedures and rules on referenda**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

Parliament can, in the sense that this is not specifically excluded by the Constitution, further amend an enactment amended by an abrogative referendum, but this further emendment will also be subject to another referendum, if not covered by the specific exclusions listed under 13(2) of the Referenda Act. However this would be politically suicidal for that majority as it would be pitting itself against the electorate. It cannot be excluded however that further legal additions might be needed to complete legislation which has been changed by referendum.

2. *Can a constitutional or legislative provision which allows referenda be revised by a procedure which does not allow a referendum?*

The Referenda Act is not part of the Constitution though it is constitutionally based. It is therefore not entrenched and can be changed by simple majority in the House. Theoretically the whole institute of abrogative referenda can be done away with. No abrogative referendum would then be available as a remedy. A Parliamentary majority cannot remove the mandatory referendum provided in the Constitution without a confirmatory referendum.

### **I - Specific Rules on popular initiatives**

1. *What is the time limit for collecting signatures?*

There is no time limit from the entry into force of an enactment. In fact the Referenda Act expressly includes all enactments even those which were enacted before the coming into force of the Act.

2. *Who is entitled to collect signatures?*

Every elector is entitled to collect signature. The Referenda Act provides in Article 15(2) that not less than five and not more than ten can sign the declaration requesting the calling of a referendum as "proposers", signing before all other signatories.

3. *How are signatures checked?*

According to Article 14(3) of the Referenda Act the Electoral Commission has to ascertain within fifteen days from the delivery of the signatures, "the number of persons, qualified according to subArticle (1), who have signed the declaration and shall within the said period of fifteen days deposit the declaration by means of a note in the registry of the Constitutional Court, stating in the note the number of valid signatures appearing on the declaration as well as the number of invalid signatures and the reason for such invalidity". SubArticle (1) mentions the voters qualified as those who appeared in the last electoral registered published before the delivery of the declaration requesting the abrogative referendum. The law leaves it to the Electoral Commission to establish and adopt the methods to be employed to check the authenticity of the signatures. In Article 15(3) it is declared that the Electoral Commission has the right to ascertain that the persons actually appearing as signatories have in fact signed it and the Commission is empowered to ignore the signatures which have not been signed by the persons whose name appears as a signatory.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question?*

The Constitutional Court is vested with the duty to hear all applications which are filed contesting the abrogative referendum on any of four reasons set out in Article 16(1):

- a. number of signatures;
- b. application of the abrogative procedure to the named enactment;
- c. incompatibility of the remaining part of the Law with the Constitution or the European Convention Act, when the enactment is annulled;



- d. the time limits prescribed by the Referenda Act had not been respected.

### **J - Judicial Review**

1. *Is it possible to appeal to a Court against a decision to hold or not to hold a referendum? Or is there an automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*
2. *If judicial review exists under what circumstances may the Court rule against the holding of a referendum?*
3. *Are the results of a referendum subject to judicial review?*
4. *Who may lodge an appeal?*

The Constitutional Court has an original competence to deal with all matters with a "constitutional" subject matter. It is vested by the Referenda Act with the special competence to hear applications made by any registered voter and the Attorney General on behalf of the Government contesting a request to hold an abrogative referendum. The basis of this contestation is set out in the four reasons shown in Article 16(1). There is no limitation of the competence of the Constitutional Court in constitutional matters. The mandatory referenda and all matters concerning them fall within the scope of the Constitutional Court. The Constitutional Court has a final say on these matters and there is no appeal from its decisions though applications to the European Court of Human Rights are possible if it is alleged that the European Human Rights Convention has been breached.

### **K - Experience of Referenda**

1. *How many referenda have been held since the country has had a Constitution ?*

Since Independence (1964) only two referenda have been held: one was local, that is the abolition of the Gozo Local Council (1972) and one concerning the Accession to the European Union (2003). Under the various Constitutions before Self-Government only one was held: the question concerned the electability of Ecclesiastics. During the first period of Self-Government (1921-33) no referenda were proposed. During the second (1947-64) there were two "constitutional proposals" put to the electorate; one concerned the intended Integration with Britain (1956) and the other the Independence Constitution (1964).

2. *On whose initiative has each referendum been held?*

All these referenda were held on the initiative of the Government, and in every case except the first one, following a vote of the House.

3. *Have any referendum been invalid because of a low turnout ?*

None.

4. *In how many of the referenda has the electorate voted yes?*
5. *In how many of the referenda has the electorate voted no?*

There has been a majority of votes cast in favour of the positive reply "Yes" in all cases. However in the case of the Integration proposal, there was a massive and organised abstention

which added to the "no" vote indicated a substantial negative attitude of the electorate, which led, coupled with other factors, to a scuttling of the proposal.

6. *Can any of the results be largely accounted for by factors unrelated to the question ?*

By and large the electorate voted more on the merit of the questions than because it was influenced by other extraneous factors. However the fact that all referenda were proposed by the Government then in power could have added to the positive result. It is however fair to say that in all cases this might also have led to some protest negative voting counterbalancing the advantage. In the three most momentous decisions [Integration with Britain; Independence; Accession to the European Union ] there are indications of substantial transversal cross party voting proving a more "objective" approach to the referendum question.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

8. *Can any of the negative results be accounted for by an unpopular Government? Or by general discontent ? Or by a misunderstanding of the issues at stake?*

Undoubtedly the positive yes vote for the Integration with Britain proposal had been augmented by the personal popularity of Dom Mintoff, then a freshly elected Prime Minister in the peak of authority and persuasion. The close victory for the "yes" vote in the referendum concerning the Accession to the European Union is usually ascribed to a general electoral weary attitude to the Government then in power. Otherwise the yes vote might have won with a larger margin.

## **II - Regional or local referenda**

### **A - Legal basis**

1. *Is there provision in the National Constitution for Local Referenda?*

2. *If there are no constitutional provisions, does national law allow local referenda?*

Referenda at the local level are not entrenched or at least provided for by the Constitution, which however does not prohibit or exclude them, but are envisaged by the Local Councils Act which refers to the Referenda Act.

3. *Have the federate, regional, autonomous or other type of body adopted provisions for holding referenda?*

4. *On what matters is it possible to hold referenda?*

Malta has no federate, regional or autonomous body. One of the referenda mentioned above had in fact abolished the Gozo (regional) Council. There are Local Councils, under the Local Councils Act (Chapter 363) which provides also for the holding of abrogative referenda in the case of bye-laws adopted by local councils. There are no other standing legal provisions for other types of referenda: proposition or recall procedures. These might be provided for by an *ad hoc* law which would not be constitutionally barred. One can therefore say that whilst there are mandatory referenda, and referenda which are excluded under Part V of the Referenda Act with regard to abrogative referenda, all other matters are the possible matter for a referendum to be held under a special *ad hoc* law or resolution.

### **A1 - At what level ?**

1. *Federal States?*
2. *Provinces, Regions?*
3. *Lower levels? Districts?*
4. *Municipalities?*
5. *On what matters?*
6. *May national authorities intervene, and in what conditions?*

Malta has only local authorities (communes) and there is an abrogative referendum provided for in the Local Councils Act (Chapter 363) to repeal laws enacted by the Local Councils. The Government can only intervene, by an application made by the Attorney General on its behalf if there is any non-conformity with the law in the matter of the request for the holding of the referendum.

### **B - What type of referendum can be held? Who decides?**

Arguably the only possible referendum at the local level is the abrogative referendum expressly provided for in the Local Government Act. The Councils could hold other referenda either through specific *ad hoc* legislation by the House of Representatives, or, but however without a legally binding outcome, through special arrangements for the consultation of the local electorate.

### **C - Content**

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other matters permitted?*

It is difficult to imagine in the case of Malta, a proposal to secede from the State being submitted after a specific law authorising such a referendum being passed by the national Parliament. The geographical boundaries in the case of Malta are set by the forces of nature, but Parliament can alter the boundaries of jurisdiction of local councils and this matter could be made subject of a consultative referendum *ad hoc*.

### **D - Form of the text submitted to referendum(formal validity)**

The question to be put to the electorate must always be answerable in "Yes" and "No".

### **E - Substantive limits on referendum (substantive validity)**

Local referenda are subject to the Constitution and the two relevant laws [Local Councils Act and Referenda Act]. It would be *ultra vires* for the Councils to go beyond.

### **F - Campaigning and voting**

### **G - Effects of Referenda**

### **H - Parallellism of Procedures and rules on referenda**

**I - Specific rules on popular initiatives****J - Judicial review****K - Experience of referenda**

1. *Have there been many local referenda ?*
2. *If so at what level ?*

The Local Councils Act makes express reference to the Referenda Act as regards abrogative referenda to repeal bye laws enacted by local councils, and that Act applies, *mutatis mutandis*.

No local referenda of any type have been held in Malta.

**III - The future of Referenda**

1. *Is the referendum system currently being reformed?*
2. *If so for what reason?*
3. *If so, what is the general tendency of this reform?*

The referendum system is not being reformed and there is at the moment no movement to review it.

## **PAYS-BAS / NETHERLANDS**

### **I - National referendums**

#### **A - Legal basis**

1. *Is provision made for referendums in the Constitution ?*

The Dutch Constitution does not contain any provision concerning referendums. A proposal to include such a provision was recently rejected by Parliament in second reading.

2. *If not, does the law provide for the use of referendums? On what matters?*

Anticipating the inclusion of a provision on referendums into the Constitution and the adoption of a Law on Referendums based upon that constitutional provision, a Temporary Law on Referendums was adopted, which took effect on January 1, 2002 and will remain in force till January 1, 2005.

According to Article 6 of the Temporary Law, referendums may take place in relation to new laws, adopted by Parliament, and in relation to tacit approval by Parliament of treaties, provided that those treaties will bind only the Netherlands and not the two other parts of the Kingdom of the Netherlands: Aruba and the Netherlands Antilles. There are, however, several exceptions. According to Article 7, no referendums may take place in relation to laws concerning Kinghood and the Royal Family, concerning the State budget, concerning amendment of the Constitution and concerning the implementation of treaties or decisions of international organisations. Laws enacted for the whole of the Kingdom (*Rijkswetten*) are also excluded, unless they concern the approval of a treaty that will only apply to the Netherlands, and not to Aruba and the Netherlands Antilles.

Meanwhile, two members of Parliament have introduced a so-called legislative initiative, proposing to remove the temporary character of the Law and make it permanent. Parliament has not yet taken a decision on the proposal.

#### **B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

As indicated above, the Constitution does not contain any provision concerning referendums. The Temporary Law on Referendums does not provide for any automatic submission to a referendum. There must be a request by a certain number of persons entitled to vote.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

The Temporary Law only provides for referendums at the request of persons entitled to vote.

b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

Neither the Head of State, nor the Government or Parliament, nor any other authority may call for a referendum. Special provincial and municipal regulations concerning regional and local referendums may provide for referendums at the initiative of provincial and municipal authorities. However, these referendums are not covered by the Temporary Law (see Part II of the Questionnaire).

3. *Referendums held at the request of part of the electorate*

a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

A national referendum will take place if, after an introductory request of at least 40,000 persons entitled to vote, the definitive request is supported by 600,000 persons entitled to vote (Article 2 of the Temporary Law). They must sign the request in person, at the city hall or town hall, where their identity will be checked (Article 45 of the Temporary Law).

b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

Apart from the tacit approval of treaties, national referendums always relate to new laws that have been adopted by Parliament and promulgated by the King, but have not yet entered into force. The referendum is a consultative corrective referendum, which means that its outcome is a not binding opinion that the law should either enter into force or be withdrawn (Articles 5 and 115 of the Temporary Law). The Law does not provide for a popular legislative initiative.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

As indicated under I-B-2-a., only the electorate may take the initiative for a national referendum. If the requirements for the introductory and final requests have been met, and the requests relate to a law to which the Temporary Law applies, the referendum has to take place. No further authorization is required.

As said before, the Temporary Law does not provide for any popular legislative initiative.

#### 5. *Role of Parliament*

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit a counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

Whether a referendum will take place, depends exclusively on whether a popular initiative is taken that fulfils the requirements. Parliament cannot oppose it, nor take the initiative for a counter-referendum. There is also no place for any Parliamentary opinion concerning the contents or desirable outcome of the referendum.

If the referendum does not take place due to lack of the required subscriptions of the request, or if the outcome of the referendum is that the law should enter into force, a decision on the entry into force will be taken by Royal Decree. If the outcome is that the law should be withdrawn, the law will be reconsidered. This means that Government will submit a proposal to Parliament either concerning the withdrawal of the law, or concerning its entering into force. This way, Parliament will decide on whether to respect the outcome of the consultative referendum or to ignore it.

The referendum may only concern laws already adopted by Parliament, not issues still to be regulated by law.

### **C - Content**

#### 1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

*Is a referendum mandatory in the case of a constitutional amendment?*

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

Amendments of the Constitution are excluded from the Temporary Law on Referendums. The approval of treaties may be subjected to a referendum, provided that the treaty will not also bind Aruba or the Netherlands Antilles. Consequently, important issues of international

relations, if regulated in a treaty, may be subjected to a referendum. However, laws that are exclusively adopted to implement a treaty or a decision of an international organisation, may not be submitted to a referendum, since this might create a situation in which the Netherlands violates its international obligations.

With respect to the approval of the Constitution of the European Union, a draft law was introduced by a number of members of Parliament, which provides for a referendum. This would, therefore, be an *ad hoc* referendum, not covered by the Temporary Law. The proposal has been approved by the Second Chamber and is pending before the First Chamber.

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

The Temporary Law applies to all new laws, with the exception of the laws mentioned under A-2.

**D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

The text submitted to the referendum is the text of the law as adopted by Parliament and promulgated by the King. The only issue submitted to referendum is whether the law should enter into force or be withdrawn.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*



- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

The referendum may only relate to the text of the law as a whole - or to the approval of the whole of the treaty - and only to one law - or treaty - at the time. The only issue submitted for a vote is to either have the law enter into force or have it withdrawn (approval or not of the treaty) (Article 115 of the Temporary Law).

### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

These issues do not rise under the Temporary Law, since the text submitted to referendum is the text approved by Parliament, which means that Parliament is of the opinion that the law is not contrary to international law or the Constitution. Laws that are exclusively intended to implement a treaty or a decision of an international organisation, may not be submitted to a referendum (Article 7 of the Temporary Law). Thus it is guaranteed that the outcome of the referendum will not put the Netherlands in a situation of violating its international obligations.

### **F - Campaigning, funding and voting**

#### *1. Campaigning*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

The text of the law that will be submitted to a referendum will be available at all city halls and town halls during four weeks preceding the referendum. The mayor will publicly announce this.

- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*

The Minister responsible for having proposed the law that will be submitted to a referendum, in consultation with the Prime Minister, will make a factual summary of the law and have that sent to all voters at least two weeks before the referendum takes place. (Article 114 of the Temporary Law)

- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

Campaigning in relation to the referendum is not the exclusive right of the political parties; every voter and any group of voters may organise a campaign. Public authorities may provide

information relating to the referendum. If the information includes an opinion, it should expressly indicate that this is the case.

- d. Are the public media required to allocate equal time to supporters and opponents of the text?*

The Temporary Law does not provide for a special role for the media. They are, of course, free to give information and opinions concerning the referendum. Political parties may use their broadcasting time on radio and t.v. also for campaigning in connection with the referendum.

- e. What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

See under d.

## *2. Funding*

- a. Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

It was the express choice of the legislator not to include in the Temporary Law any provision concerning funding of those who take the initiative for a referendum. However, debate in Parliament reveals that it was also not the intention to expressly exclude such funding. Starting point was that both the proponents and the opponents of the referendum would carry their own expenses.

- b. Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

The collection of signatures is not of any use under the Temporary Law, since every supporter of the provisional and final request has to register in person at the city hall or town hall.

## *3. Voting*

- a. Does voting take place on one day or over a number of days?*

Voting takes place on one day, in accordance with the normal rules concerning voting laid down in the Law on Voting.

- b. If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

Since the Temporary Law only applies to the Netherlands and not to Aruba and the Netherlands Antilles, the issue does not arise.

- c. Is it compulsory for all voters to cast a vote?*

Voting is not compulsory under the Law on Voting.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

In order for the negative outcome of the referendum (*i.e.* the opinion that the law should be withdrawn (the treaty should not be approved) to be valid, it must have supported by a majority of the votes cast and, at the same time, by at least 30% of the number of persons entitled to vote (Article 20 of the Temporary Law).

### **G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The Temporary Law only provides for consultative referendums.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

If the outcome is a positive one, a decision will be taken to have the law enter into force (to approve the treaty). If the outcome is a negative one, the decision will be put before Parliament either to have the law enter into force or to withdraw the law (to approve or not to approve the treaty).

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

If the term for the introductory request for a referendum has passed without such a request having been made, the law will enter into force at the moment provided by the law, which moment may not be within six weeks after the law has been made public (Article 12 of the Temporary Law). If the introductory request has been made and fulfils the requirements, the provision in the law concerning its entry into law becomes obsolete (Article 13 of the Temporary Law). If no final request follows, or if the referendum has as its outcome that the law should enter into force, a new decision on entry into force of the law will have to be made. If the outcome of the referendum is that the law should be withdrawn, the Government has to submit to Parliament a proposal concerning withdrawal or concerning entry into force, leaving the choice to parliament (Article 15 of the Temporary Law).

## **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

If a certain law may be submitted to a referendum, this means that every posterior amendment of that law may also be submitted to a referendum.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

The Temporary Law will automatically end on January 1, 2005. This ending cannot be submitted to a referendum, because it requires no new law. However, a law that would shorten or prolong its legal force, or change its temporary character into a permanent character, would itself be covered by the Temporary Law.

## **I - Specific rules on popular initiatives**

N.B. Although all referendums require an initiative by voters, the procedure cannot be qualified as a popular initiative in the sense that those who take the initiative may formulate the questions submitted to a referendum.

1. *What is the time-limit for collecting signatures?*

Since every voter who supports a request for a referendums has to register in person, no collection of votes takes place. The introductory request has to be made within three weeks after the Minister of the Interior has published his decision that the law concerned may be subjected to a referendum. The Minister adopts and publishes his decision within one week after promulgation of the law. In the case of the approval of a treaty the decision is taken and published by the Minister of External Affairs. The final request has to be made within six weeks after the introductory request has been declared valid by final decision.

2. *Who is entitled to collect signatures?*

No collection of signatures takes place.

3. *How are signatures checked?*

The identity of those who sign as supporters of a request is checked at the city hall or town hall.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

Since the referendum only concerns the entry into force or withdrawal of the law (the approval or not of a treaty) no questions have to be formulated.

**J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

Against the decision on whether or not a law or the approval of a treaty may be submitted to a referendum an appeal may be lodged to the Administrative Jurisdiction Division of the Council of State within six days. The same holds good for decisions by the Chairman of the Central Polling Station about the validity of introductory and final requests, and about the outcome of referendums. (Article 144 of the Temporary Law).

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

The Council of State may declare the appeal against the decision that the law, or the approval of a treaty, may be submitted to a referendum inadmissible because of non-fulfilment of a procedural requirement, declare it not well-founded or declare it well-founded. In the latter case the decision appealed against will be annulled on the ground that it has been taken in violation of the law or of one or more general principles of good administration (Article 8.77 of the General Administrative Procedure Law).

3. *Are the results of referendums subject to judicial review?*

See under 1.

4. *Who may lodge an appeal?*

An appeal may be lodged by all those who have an interest to sue.

**K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

Under the Temporary Law no referendum has taken place so far.

2. *On whose initiative has each referendum been held?*

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3. *Have any referendums been invalid because of a low turnout?*

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4. *In how many referendums has the electorate voted yes?*

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5. *In how many referendums has the electorate voted no?*

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6. *Can any of the results be largely accounted for by factors unrelated to the question?*

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7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

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8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

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## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

The proposal to include a provision in the Constitution, that was rejected, also concerned referendums at regional and local level.

2. *If there are no constitutional provisions, does national law allow local referendums?*

The Temporary Law also applies to provincial and municipal referendums concerning decisions of the provincial and municipal authorities of general effect (Article 8 of the Temporary Law). The required number of voters supporting an introductory request is one third of the persons entitled to vote in a province, and for a final request it is 5%. For the municipalities these figures differ depending on the size of the municipality concerned.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

The provinces and municipalities have the possibility to make regulations concerning regional and local consultative referendums. However, these regulations may not apply to legal acts with respect to which the Temporary Law provides for, or excludes the possibility of a referendum (Article 166 of the Temporary Law). However, Article 165 of the Temporary Law provides for inter-temporal law in this respect.

4. *On what matters is it possible to call a referendum?*

Article 8 of the Temporary Law contains a detailed list of decisions by provincial and municipal authorities that may be submitted to a referendum, and decisions that are excluded from a referendum. Submitted to a referendum may most decisions of a general

binding character, decisions to participate in private forms of cooperation, decisions to join common public structures, decisions to change the name of the province or municipality, decisions to change the boundaries of a municipality, *etcetera*. Article 8 also lists several exceptions such as decisions which are exclusively meant to implement an international treaty or decision of an international organisation, decisions on matters which leave no margin of discretion to the authority concerned, and decisions which form part of a zoning planning. In addition, the provincial and municipal legislator may exclude other decisions from the possibility of a referendum, such as decisions concerning the labour conditions of civil servants, decisions concerning regional or local taxes *etcetera*.

As said before, the provinces and municipalities may regulate that other decisions may also be subjected to a referendum, provided that they are not excluded by the Temporary Law.

### **A1 - At what level?**

1. *Federate states?*
2. *Provinces? Regions?*

See under A-1 and A-2.

3. *Lower levels? Districts?*
4. *Municipalities?*

See under A-1. and A-2.

5. *On what matters?*

See under A-4.

6. *May national or federal authorities intervene, and in what conditions?*

There is no possibility of intervention. However, the Temporary Law has precedence over provincial and municipal regulations.

### **B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

The provincial and municipal referendums regulated in the Temporary Law are also exclusively of a consultative corrective character. They also require an introductory and a final request, and they take place before the regulation or decision concerned has entered into force.

### **C - Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*

A proposal of that kind is not included in the list of Article 8 of the Temporary Law. The provincial and municipal regulations may provide that other decisions may be subjected to a referendum; however, the power to propose to secede is not provided for in the Provincial Law nor in the Municipal Law.

- *Can it relate to geographical boundaries?*

A municipal decision to correct the boundaries of the municipality is covered by Article 8 of the Temporary Law. The change of the boundaries between two or more municipalities is regulated by national law and may be submitted to a national referendum.

- *Are any other subjects permitted?*

Article 8 contains an exhaustive list of subjects. However, the provinces and municipalities may regulate that other subjects may be submitted to a referendum, provided that such subjects are not excluded in the Temporary Law.

#### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

The text submitted to referendum is the text adopted by the provincial or municipal authority.

#### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

The referendum may only relate to the issue of the entry into force or withdrawal of the regulation or decision concerned.

#### **F - Campaigning and voting**

*Reply to the same questions as in I-F.*

The same applies as to national referendums (I-F).

#### **G - Effects of referendums**

*Reply to the same questions as in I-G.*

The same applies as to national referendums (I-G).

#### **H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*



The same applies as to national referendums (I-H).

### **I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

The same applies as to national referendums (I-I).

### **J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

The same applies as to national referendums: direct appeal within six days to the Administrative Jurisdiction Division of the Council of State.

### **K - Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

A considerable number of municipalities have their own regulation on referendums. Referendums at the local level are rather common, mainly of a consultative nature, at the initiative of either voters or the municipal authorities. So far, only in three municipalities has there been a referendum in virtue of the Temporary Law.

The Province of North-Holland is the only province with a regulation on referendums. No provincial referendums have taken place so far.

## **III - The future of referendums**

1. *Is the referendum system currently being reformed?*
2. *If so, for what reason?*
3. *If so, what is the general tendency of this reform?*

As said before, the Temporary Law on Referendums will end on January 1, 2005. Unless the proposal by two members of Parliament to give the Law a permanent character will be adopted, the situation thereafter will be that the Netherlands has no law on referendums at the national level. In that situation referendums at the national level will be possible only on the basis of a special law, such as the law now proposed to hold a referendum in connection with the approval of the Constitution for the European Union.

For referendums at the provincial and municipal level the ending of the Temporary Law will mean that the restrictions laid down therein no longer apply, while the subjects which may be submitted to provincial and municipal referendums, regulated in the Temporary Law, may again be regulated in provincial and municipal regulations.

## NORVEGE / NORWAY

### I – National referendums

#### A – Legal basis

1. *Is provision made for referendums in the Constitution ?*
2. *If not, does the law provide for the use of referendums? On what matters?*

#### B – What type of referendum may be used? Who decides?

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

2. *Referendums called by an authority*
  - a. *Can referendums be called by an authority?*
  - b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*
3. *Referendums held at the request of part of the electorate*
  - a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*
  - b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament – or do a number of members of Parliament – have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

5. *Role of Parliament:*

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit a counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

**C - Content**

1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

*Is a referendum mandatory in the case of a constitutional amendment?*

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

**D – Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

2. *Do questions submitted to referendum have to respect<sup>20</sup>:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of*

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<sup>20</sup>*Guidelines for constitutional referendums at national level, adopted by the Venice Commission at its 47th plenary meeting (Venice, 6 and 7 July 2001) (CDL-INF(2001)010), para. II.C.*

suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);

- c. *unity of rank*: the question must not relate simultaneously to the Constitution and subordinate legislation.
- d. Does the vote have to be on a single question or can it be on several different ones?
- e. Does the question (or do the questions) have to be clear and suggestion-free?

### **E - Substantive limits on referendums (substantive validity)<sup>21</sup>**

*Is a referendum prohibited if the text put forward is contrary:*

- to international law or some of its rules;
- to the Constitution or some of its rules;
- to other overriding legal rules.

### **F – Campaigning, funding and voting**

#### 1. *Campaigning<sup>22</sup>*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*
- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*
- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*
- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

#### 2. *Funding<sup>23</sup>*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

<sup>21</sup>Cf. CDL-INF(2001)010, para. II.D.

<sup>22</sup>Cf. CDL-INF(2001)010, para. II.E.2.

<sup>23</sup>Cf. CDL-INF(2001)010, para. II.F.

b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

3. *Voting*

a. *Does voting take place on one day or over a number of days?*

b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

c. *Is it compulsory for all voters to cast a vote?*

d. *Quorum:*<sup>24</sup> *For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

**G - Effects of referendums**<sup>25</sup>

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

**H – Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*<sup>26</sup>

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*<sup>27</sup>

**I – Specific rules on popular initiatives**<sup>28</sup>

1. *What is the time-limit for collecting signatures?*

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<sup>24</sup> Cf. CDL-INF(2001)010, para. II.O.

<sup>25</sup> Cf. CDL-INF(2001)010, para. II.N.

<sup>26</sup> Cf. CDL-INF(2001)010, para. II.L.

<sup>27</sup> Cf. CDL-INF(2001)010, para. II.K.

<sup>28</sup> Cf. CDL-INF(2001)010, para. II.J.

2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

### **J – Judicial review**<sup>29</sup>

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*
2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*
3. *Are the results of referendums subject to judicial review?*
4. *Who may lodge an appeal?*

### **K – Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*
2. *On whose initiative has each referendum been held?*
3. *Have any referendums been invalid because of a low turnout?*
4. *In how many referendums has the electorate voted yes?*
5. *In how many referendums has the electorate voted no?*
6. *Can any of the results be largely accounted for by factors unrelated to the question?*
7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*
8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

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<sup>29</sup>Cf. CDL-INF (2001)010, para. II.P.

## **II – Regional or local referendums**

### **A – Legal basis**

1. *Is there provision in the national Constitution for local referendums?*
2. *If there are no constitutional provisions, does national law allow local referendums?*
3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*
4. *On what matters is it possible to call a referendum?*

### **A1 – At what level?**

1. *Federate states?*
2. *Provinces? Regions?*
3. *Lower levels? Districts?*
4. *Municipalities?*
5. *On what matters?*
6. *May national or federal authorities intervene, and in what conditions?*

### **B – What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

### **C – Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other subjects permitted?*

### **D – Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

### **E – Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

**F – Campaigning and voting**

*Reply to the same questions as in I-F.*

**G – Effects of referendums**

*Reply to the same questions as in I-G.*

**H – Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

**I – Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

**J – Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

**K – Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

**III – The future of referendums**

1. *Is the referendum system currently being reformed?*
2. *If so, for what reason?*
3. *If so, what is the general tendency of this reform?*



## **POLOGNE / POLAND**

### **I - National referendums**

#### **A - Legal basis**

In the Polish Constitution there is provision made for referendum. (Article 90 p. 3, Article 125, Article 235 p. 6). There are also: Nationwide Referendum Act 2003 (NRA), and Local Referendum Act 2000 (LRA).

#### **B – What type of referendum may be used? Who decides?**

1. Mandatory referendum is not required by the Constitution. No texts are automatically submitted to referendum before or after their adoption by Parliament.
2. Referendum can be called by Sejm (lower chamber of the Parliament) or by President of the Republic with the consent of the Senate.
3. Referendum can be held at the request of part of the electorate. 500 000 of members of the electorate can call for a referendum. The motion signed by 500 000 citizens is presented to parliament by the plenipotentiary of signatories. To the motion is attached the list of the signatures of the citizens supporting the idea of referendum. The decision of the Sejm shall be taken by an absolute majority of votes in the presence of at least half of the statutory number of deputies. In the case the Sejm does not accept the request to call referendum Speaker of the Sejm shall inform the movers. Referendum at the request of citizens can not be held on such matters like:
  - expenditures, revenues and taxes,
  - matters on the defence of the state,
  - amnesty.
4. Sejm can call referendum on its own initiative as well as at the request of the Senate, Government and citizens.

President of the Republic can call referendum with the consent of the Senate given by an absolute majority of votes taken in presence of at least half of the statutory number of senators.

5. Parliament has to express its agreement for the referendum by voting (as mentioned above in p. 3). In such a situation Parliament can oppose the holding of a referendum by adopting a counterproposal on the same matter.

#### **C - Content**

Article 125 of the Constitution states that nationwide referendum may be held in respect of matters of particular importance to the state. No matters are automatically put to referendum or

generally excluded from referendums.

Article 235 of the Constitution states that if a bill to amend the Constitution relates to the provisions of chapter I (the Republic), chapter II (the freedoms, rights and obligations of persons and citizens) or chapter XII (amending the Constitution) the subjects entitled to submit amendments to the Constitution i.e. at least 1/5 of the statutory number of deputies, the Senate or the President may require the holding of a referendum. It is a confirmatory one.

Referendum is possible but not necessary for accession to the EU. In the Polish constitution there is a general rule in Article 90 stating that granting of consent for ratification of an international agreement delegate to an international organization or international institution the competence of organs of State authority may also be passed by nationwide referendum. Any resolution in respect of the choice of procedure for granting consent to ratification (statute or referendum) shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of deputies.

Referendum for granting consent for ratification of such agreement can be called by Sejm or by President of the Republic with the consent of the Senate.

#### **D - Form of the text submitted to referendum (formal validity)**

All forms are possible. These questions however are not directly regulated by law. The vote can be held on a single question as well as can be held on several different ones. Questions have to be clear and suggestion free.

#### **E - Substantive limits on referendums (substantive validity)**

The Constitution does not contain direct provisions in this matter. The substantive limits are taken into account by Sejm in the process of making a decision to hold or not to hold a referendum.

#### **F - Campaigning, funding and voting**

1. State's Electoral Commission (SEC) is the main authority responsible for the organization of a referendum. Article 11 of the law on referendum states that SEC, among others, implements the supervisory function during the process of preparation of the referendum and controls the observation of the rules in the process of carrying out the referendum; explains the way of voting in a referendum. SEC is authorised to provide objective information.

2. Article 59 NRA states that expenditures concerning the preparation and carrying out of a referendum are covered by the state's budget.

3. Article 37 NRA states that political parties, associations, foundations and other subjects are entitled to take part in the referendal campaign.

The public media are required to allocate equal time to all subjects entitled to take part in the referendal campaign (Article 52 NRA).

Voting can take place on 1 day or 2 days (Article 4 NRA). In Poland there is no large time lag between different voting centres. It is impossible that results from some voting centres will be

known in other centres before the end of voting.

It is not compulsory for all voters to cast a vote.

There is no special quorum for referendum to be valid. There is however special quorum needed for referendum to be binding. Article 125 p. 3 of the Constitution states that if more than half of the number of those having the right to vote have participated in it a result of nationwide referendum shall be binding. Article 125 p. 4 of the Constitution regulates that the validity of the referendums shall be determined by the Supreme Court. The procedure is regulated by NRA (Articles 33-36) .

### **G - Effects of referendums**

1. In the light of the general rules on referendum in polish law, electorate can be asked for an opinion or a decision. The nationwide referendum may be held in respect of matters of particular importance to the State (Article 125 p. 1 of the Constitution). Article 2 NRA states that polish citizens in voting shall express their will how to decide on the questions left to referendum. The written principles are of a very general nature. The only factor making difference between consultative and binding referendum , as has been explained above, is quorum.(Article 125 p.3).

2-3. This questions are not directly regulated by law.

### **H - Parallelism of procedures and rules on referendums**

Referendum in polish law is not obligatory in any case. So it is possible that provision agreed to or rejected in a referendum can be revised or adopted in the legislative procedure without voting in referendum. For example the current polish Constitution from 1997 has been ratified in referendum. But the amendments to the Constitutions don't need a form of referendum (exceptions are mentioned in Article 235.6 of the Constitution, but even in this case referendum is not obligatory, p. C above).

### **I - Specific rules on popular initiatives**

There is no time limit for collecting signatures . The initiators of the request to organize referendum are entitled to collect the signatures.

Speaker of the Sejm after receiving the request with attached signatures, having doubts concerning the correctness of signatures has the right to send the list of signatures to SEC for verification.

### **J - Judicial review**

If the number of signatures is smaller than required by law, in the term of 14 days, on the decision of the Speaker of the Sejm , the number must be completed. In the case this condition will not be met Speaker of the Sejm rejects to accept(to receive) the motion with request on referendum. The plenipotentiary of the signatories can appeal the decision of the Speaker to the Supreme Court. The decision of the Supreme Court is a final one.

There is no automatic judicial review on the decision to hold or not to hold a referendum.

It is possible in the framework of general rules regarding the Constitutional Tribunal to make application to the Constitutional Tribunal. In such a case there must be the controversies of a constitutional nature. Applicants have to meet the conditions needed for making application to Constitutional Tribunal in the light of the Constitution and Constitutional Tribunal Act.

In fact the group of MP made such an application (april 2003) claiming the inconformity of the Nationwide Referendum Act 2003 with the Constitution in the matters concerning the provisions on referendum granting of consent for ratification of the international agreements.

Constitutional Tribunal in its judgment of 27th May 2003 (K.11/03) stated that the Nationwide Referendum Act 2003, insofar as relates to the applicant's claims, conforms to the Constitution. The judgment of the Tribunal did not touch the concrete questions on referendum.

### **K - Experience of referendums**

The new polish Constitution has entered into force in 1997 and had been accepted in referendum. Referendum was obligatory and binding. Since the new Constitution is in the force Poland has had one nationwide referendum on the polish accession to the EU, (june 2004).

## **II - Regional or local referendums**

### **A - Legal basis**

Article 170 of the Constitution reads as follow: "members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local self-government established by direct election." The principles of and procedures for conducting a local referendum are specified by statute "Local Referendum Act 2000 (LRA).

### **A1 - At what level?**

Referendum can be held on different levels: regions, districts and municipalities.

### **B - What type of referendum can be held? Who decides?**

Referendum can be called by the decision of the constitutive organ of unit of local self-government taken by absolute majority of voices out of all statutory members of the local constitutive organs.

Referendum is held on the initiative of the constitutive organ of local self-governing unit. It can be also held at the request of the members of a self-governing community (10% inhabitants on district's and municipal's level and 5% on regional level) Article 4 LRA. Such a motion on behalf of members of the local community can be proposed by- the group of 15 citizens having the right to vote and 5 citizens having the right for being elected; - local structure of the political party; - other organizations. This subjects (entities) are called "initiators of referendum". The initiator of referendum informs the president of the local units on the

intention to make a referendum. In the term of 60 days initiator is obliged to collect demanded number of signatures.

After receiving the request on referendum with attached questions, constitutive organ of the self-governing unit take decision to hold the referendum, under the condition that the results of referendum will not lead to the solutions contrary to the law. (Article 17 LRA) Decision on conducting referendum must be taken in the term of 30 days. (Article 18 LRA).

The decision of the organ of local units rejected the motion of citizens to hold referendum can be appealed to the administrative court in the term of 14 days. The administrative court shall make its judgment in term of 14 days. The decision of the court replaced the decision of the organ of local unit.(Article 20 LRA)

### **C - Content**

LRA provides that in the case to dismiss an organ of local self-government established by direct election before the end of the period it has been elected, the decision should be made in referendum called only at request of the inhabitants of the self-governing unit. (Article 5 LRA).

### **D - Form of the text submitted to referendum (formal validity)**

See p. D above.

### **E - Substantive limits on referendums (substantive validity)**

See answer p. B above.(Article 17 LRA),

### **F - Campaigning and voting**

See the role of State's Electoral Commission.

Campaigning is not restricted to political parties. All initiators of referendum can take party in referendal campaign.

The provisions on funding are very restrictive. The costs of referendum are covered from the budget of the local self-governing unit..

The expenditures of the initiator of referendum are covered by its own means.(Articles 42, 43 LRA).

Voting. - the local referendum is valid if at least 30% of entitled members of local community took part in the voting.(Article 55 LRA).

The result of referendum is decisive if the proposal (question) is accepted by more than half valid voices in referendum.

### **G - Effects of referendums**

In the light of Article 170 of the Constitution (see p. A above) electorate is asked for the decision.

**H - Parallelism of procedures and rules on referendums****I - Specific rules on popular initiatives****J - Judicial review**

Answers have been given above.

**K - Experiences of referendums**

There were local referendums on different levels concerning the dismissal of an organ of local self-government established by direct election.

**III - The future of referendum**

The general principles concerning referendum were under discussion during the term of constitution-making process (1991-1997). The results of the discussion are put to the constitutional provisions (Article 125) and were approved in referendum. The only point, however is and still is controversial, i.e the very restrictive quorum for binding result of the referendum: more than half of the number of those having the right to vote have participated in it.

## PORTUGAL

### I - Référendums nationaux

#### A - Fondement juridique

Dès la réforme constitutionnelle de l'année 1989, la Constitution de la République Portugaise (dorénavant: CR) prévoit le référendum national (Article 115), en établissant les principes fondamentaux dans la matière. Ces principes font, ensuite, l'objet de concrétisation et développement par une loi organique (CR, Articles 164-b, 166-2) - aujourd'hui la Loi n° 15-A/98, du 3 avril (dorénavant: LRN).

#### B - Type de référendum

1. Un cas - un seul cas - de référendum obligatoire est prévu, portant sur la «régionalisation» du pays. La création des «régions administratives» appartient à la loi (CR, Article 255) et doit être simultanée, mais elle ne deviendra effective qu'après un référendum ayant par objet, à la fois, la décision de «régionaliser», en général, et la délimitation géographique de chacune des régions - la réponse affirmative (au niveau national) à la première question conditionnant la seconde (au niveau territorial correspondant): CR, Article 256; LRN, Articles 245-251.

2. Hors le cas indiqué, un référendum national peut être organisé sous l'initiative, soit du Parlement («Assemblée de la République»), soit du Gouvernement (conformément la matière appartient à la compétence d'un ou d'autre), mais seulement après décision du Président de la République: l'accord de celui-ci et d'un de ces autres pouvoirs est donc nécessaire: CR, Articles 115/1; Article 134/c.

3. a. L'initiative populaire - d'au moins 75.000 citoyens électeurs - est aussi prévue, mais elle n'a qu'une nature indirecte, puisque la demande des citoyens doit être dirigée au Parlement et discutée et acceptée (ou non) par celui-ci: CR, 115/2; LRN, Articles 16, 21.

L'authenticité de la signature et de l'identité des électeurs peut être vérifiée, par échantillonnage, à la demande du Parlement, par les autorités compétentes: LRN, Article 17/1-2.

b. La demande des citoyens devra, soit envisager la matière d'un texte normatif (mais pas le texte lui-même: v. infra, D.1) déjà en train de procédure au Parlement, soit être accompagnée d'un texte d'une telle nature, présenté par les demandeurs: LRN, Article 17/3-4.

4. Dans le cadre qui vient d'être décrit, la question de la possibilité du Parlement de contrecarrer à une initiative référendaire ne pourrait avoir de place qu'au cas où celle-ci parviendrait du Gouvernement: mais rien n'est prévu à ce sujet par la Constitution ou la loi.

## **C - Contenu**

1. Seules les matières relevant de la loi ordinaire (loi ou décret-loi) ou d'une convention internationale peuvent être l'objet d'un référendum (CR, Article 115/3).

Ça vaut dire que le référendum est exclu en matière constitutionnelle (révision ou réforme de la Constitution) : CR, Article 115/4/a; et, de même, en matière de statut des régions autonomes (archipels d'Açores et Madeira), aussi bien que de loi organique: CR, Article 115/4/c-d, combiné aux Articles 161 et 164.

2. D'après ces principes un référendum est possible concernant la participation à l'Union Européenne ou l'adhésion à une organisation internationale.

3. La formule constitutionnelle inclut, en principe, toutes les matières à caractère législatif ou conventionnel; mais d'importantes exceptions s'ensuivent, qui limitent beaucoup la portée du principe. Par exemple (et outre les indiquées déjà): les matières financières (budget, impôts, emprunts) et toutes celles qui rentrent dans la réserve législative absolue (ça veut dire, sans possibilité de délégation) du Parlement: CR, Article 115/4/c.

## **D - La forme des textes soumis au référendum**

1. Seules peuvent être soumises à un référendum des questions: «des questions d'un intérêt national particulier» (CR., Article 115/3). Il est exclu, donc, que le référendum puisse porter directement, soit sur un projet de texte normatif, soit sur l'abrogation d'un texte.

La formule constitutionnelle couvre tantôt des questions de principe que des questions plus précises (p.ex., l'avortement jusqu'aux 10 premières semaines).

2. Les questions doivent respecter l'unité de la matière et ne peuvent pas aller au-delà de trois demandes; celles-ci doivent être l'objet d'une formulation «objective, claire et précise», ne pouvant contenir aucune suggestion ni aucune considération préalable (CR, Article 115/6; LRN, Articles 6-7).

## **E - Limites matérielles du référendum**

Le référendum est exclu au cas où une des alternatives de réponse soit contraire à (ne soit pas admise par) la Constitution: cf. CR, Article 115/8.

## **F - Campagne/propagande/financement et votation**

### *1. Campagne et propagande*

- a. Tel que pour les actes électoraux, il incombe à une autorité indépendante - la Commission Nationale pour les Élections (dorénavant, CNE) la tâche d'élaborer et de fournir toute information objective sur le référendum, nécessaire à l'éclaircissement des électeurs (LRN, Article 252).
- b. A la participation dans la propagande (pour et contre) sont admis, soit les partis politiques et coalitions de partis, qui en déclarent l'intention auprès de la CNE,



soit des groupes d'au moins 5000 citoyens électeurs, qui s'y inscrivent (LRN, Articles 39-41).

Par contre, aux autorités publiques - de quelque niveau qui soit - est défendue toute participation à la propagande et exigée la neutralité et l'impartialité les plus strictes (LRN, Article 45).

- c. Aussi bien les publications informatives dépendant (de façon directe ou indirecte) d'une entité publique que celles détenues par des entités privées - celles-ci dès que désirent insérer matériel de la campagne - sont tenues au principe du traitement égal de tous les partis et groupes participant à la propagande (LRN, Articles 54-55).

Le même principe vaut pour toutes les chaînes de radio et de télévision. Mais celles-ci - les unes et les autres - sont obligées, en plus, à accorder, pendant la période de la campagne, à tous les partis et groupes y participant, des «temps d'antenne», distribués selon des critères établis par la loi (LRN, Articles 57-62)

L'utilisation des *media* par les partis et les groupes est gratuite, à l'État un devoir d'indemnité des publications et des chaînes par une telle utilisation (LRN, Article 46/2; Article 187).

## 2. *Financement*

- a. Aucun financement publique en faveur (défavor) d'un projet est autorisé (cf. LRN, Article 71).
- b. Rien n'est prévu par la loi, concernant le coût des récoltes des signatures pour une initiative populaire.

## 3. *Votation*

- a. Les opérations électorales sont réalisés en un seul jour (LRN, Article 106).
- b. Bien qu'il y ait un décalage horaire entre le territoire continental du pays et l'Archipel d'Açores, il n'a pas de signification, n'étant que d'une heure.
- c. Le vote n'est pas obligatoire: il n'est conçu, en général, par la Constitution que comme un «droit» et, en plus, un «devoir civique» (CR, Article 49/2). Pour la situation concrète, cf. LRN, Article 107/1.
- d. La question d'un quorum de participation ne vienne pas précisément posée en termes de «validité» du référendum, mais plutôt de son «efficacité»: cf. infra, G-1.

## **G - Les effets du référendum**

1. Le référendum est conçu comme ayant un caractère décisionnel (CR, Article 115/1), mais à condition que le nombre des citoyens participants dépasse la moitié du nombre des citoyens inscrits au recensement (CR, Article 115/1).

2. Si la condition de l'effet décisionnel («effet obligatoire») est remplie, et si la réponse à la question fut affirmative, le Parlement ou le Gouvernement, selon le cas, sont tenus à

approuver, dans le délai maximum de 90 ou 60 jours, respectivement, la convention internationale ou l'acte législatif correspondant (LRN, Article 41).

3. La question des modalités possibles de l'effet d'un référendum sur un texte normatif ne se pose pas en droit portugais: cf. supra, D-1.

#### **H - Parallélisme des formes et normes prévoyant le référendum**

1. Un nouveau référendum n'est pas absolument nécessaire pour dépasser une réponse négative (à effet décisionnel) à la question soumise aux citoyens; mais, faute de lui, le Parlement ou le Gouvernement, selon le cas, ne pourront approuver une convention ou un texte législative de sens contraire à une telle réponse qu'après une nouvelle élection parlementaire (LRN, Article 243).

2. La Constitution portugaise en vigueur étant de source parlementaire et n'admettant des modifications que par la même voie, celle-ci sera la seule voie possible pour réviser (éventuellement, abroger) le régime constitutionnel du référendum. En s'attendant à ce cadre constitutionnel, un référendum sur la matière n'est pas possible (cf., d'ailleurs, supra, C-1).

#### **I - Règles particulières relatives à l'initiative populaire**

La loi (LRN) ne contient aucune règle concernant la récolte des signatures. Et de même pour ce qui est d'une possibilité de correction par le Parlement des termes de la question (le Parlement accepte ou n'accepte pas la demande): cf. supra, B-3.

En ce qui concerne la vérification des signatures, cf. également supra B-3.

#### **J - Contrôle juridictionnel**

1. Aucun référendum ne peut avoir lieu sans que la Cour Constitutionnelle - saisie obligatoirement par le Président de la République, dès qu'il reçoit la proposition de référendum approuvée par le Parlement ou le Gouvernement - vérifie au préalable; «la constitutionnalité et la légalité» d'une telle proposition (CR, Article 115/8).

Le contrôle de la Cour porte, tantôt sur les exigences formelles (cf. supra, D), que sur les limites matérielles du référendum (cf. supra, C et E).

2. En ce qui concerne le contrôle des résultats, des règles similaires à celles valables pour toute élection politique sont applicables: il peut être introduit, donc, par les partis ou groupes ayant participé à la campagne (ou leurs représentants), la Cour Constitutionnelle étant aussi la juridiction compétente (LRN, Articles 172-176).

#### **K - Les expériences de référendum**

1. Dès que il a été admis par la Constitution, trois initiatives de référendum national on eu lieu, toutes dans l'année 1998, l'une correspondant à un référendum obligatoire et les deux autres provenant du Parlement:

- le référendum obligatoire a porté sur la création des régions administratives (cf. supra, B-1): la participation a atteint 49,12% des électeurs, le «non» ayant emporté avec 60,87%, contre 34,97% pour l'«oui», des voix exprimées;

- des deux initiatives parlementaire, l'une a eu trait à la dépénalisation de l'avortement jusqu'aux 10 premières semaines sur livre décision de la femme: le «non» a aussi emporté par 50,07 %, contre 48,28% pour l'«oui», des voix exprimées, la participation n'ayant atteint que 31,94% des électeurs. Le référendum n'a pas eu, donc, d'effet décisionnel (cf. supra, G); mais la majorité parlementaire a pris, quand même, le choix politique d'accueillir l'indication populaire;

- l'autre initiative parlementaire concernait le développement et l'approfondissement de l'Union Européenne, dans le nouveau cadre du Traité d'Amsterdam: elle a toutefois échoué au contrôle préventif devant la Cour Constitutionnelle, par «manque de clarté» de la question soumise aux électeurs.

2. La raison des résultats des référendums organisés ne fut essentiel et sûrement déterminée que par la substance même la question posée: il n'y a aucun fondement pour penser le contraire.

## **II - Référendums régionaux et locaux**

### **A - Fondement juridique**

1. Tant les référendums régionaux (Article 232/2) que les référendums locaux (Article 240) sont prévus par la Constitution, leurs régimes juridiques étant par la suite (comme celui du référendum national) développés et définis par une loi organique (CR, Article 164-b).

2. Ça vaut dire qu'aucune disposition d'une entité régionale ou locale ne peut intervenir dans la matière.

### **A.1 - Niveau régional**

1. Il s'agit du niveau des «régions autonomes» d'Açores et Madeira (CR, Articles 225ss.).

2. Étant donné que la loi organique portant sur le régime des référendums régionaux n'a pas été émise jusqu'à présent, leur organisation n'est pas encore possible.

3. Toutefois - puisque la Constitution, en admettant ces référendums, leur impose dès lors certaines règles et les subordonne, en général, aux mêmes principes qu'elle établit pour les référendums nationaux, «avec les adaptations nécessaires» (Article 232/2) - on peut d'ores et déjà conclure que les éléments suivants, parmi d'autres, devront forcément intégrer leur régime:

- le droit d'initiative du référendum est octroyé à l'Assemblée Législative Régionale, et à elle seule, mais la décision appartient au Président de la République: l'organisation du référendum n'est pas laissé en exclusif, donc, aux autorités régionales;

- le référendum - à effet décisionnel - devra porter sur une «question ayant un intérêt spécifique régional particulier». De toute sorte, donc, sur une question, et pas sur un texte normatif;

- le référendum ne pourra porter que sur des matières appartenant à la compétence législative des assemblées régionales: en plus des matières constitutionnelles, statutaires et de loi organique, sont exclues, donc, toutes celles qui relèvent de la compétence du législateur national ou d'une convention internationale;

- ces indications (et il y aurait d'autres) suffisent, d'autre part, pour conclure que le référendum ne pourra pas porter sur une éventuelle «sécession» d'une région.

## **A.2 - Niveau local**

1. Il s'agit du niveau des «communautés locales» (CR, Articles 235ss.), à savoir: les «municipalités» (noyau de la décentralisation administrative territoriale, au Portugal) et des «communes» que les constituent.

2. Le référendum à ce niveau est admis dès la 1<sup>ère</sup> révision de la Constitution, de l'année 1982. Son régime juridique est contenu maintenant dans la Loi Organique n° 4/2000, du 24 août (dorénavant, LRL), qui est venue substituer un texte antérieur.

**Note:** n'étant pas encore concrétisé le régime des référendums régionaux, **on ne s'occupera, dans la suite, que des référendums locaux.**

## **B - Types de référendum**

1. Aucun cas de référendum obligatoire n'est prévu.

2. La compétence pour décider l'organisation d'un référendum est attribuée en exclusif aux assemblées de chaque communauté locale (municipalité ou commune), le droit d'initiative appartenant aux membres de l'assemblée, à l'exécutif local respectif et encore à des groupes de citoyens électeurs (dont le nombre minimum et maximum sont fixés par la loi, en fonction de la grandeur de chaque communauté locale): LRL, Articles 10, 13, 23.

Aucune interférence d'une autorité centrale n'est donc admise dans cette procédure (sauf le contrôle juridictionnel, dont il sera question infra, J).

## **C - Contenu**

1. Ne peuvent être l'objet d'un référendum local que «des questions ayant un intérêt local particulier qui doivent être décidées par les autorités municipales ou communales et relèvent de leurs compétences, soit une compétence exclusive, soit partagée avec l'État ou les régions autonomes» (LRL, Article 3/1).

2. En plus des matières réservées en exclusif aux organes législatifs ou réglées par un acte législatif ou réglementaire que les autorités locales son tenues d'observer, sont exclues d'un référendum local, notamment, les questions budgétaires ou celles qui ont déjà été l'objet d'une décision administrative ou judiciaire définitive: LRL, Article 4.

3. Dans ce cadre - et puisque la division territoriale du pays et la création de communautés locales sont réservées au législateur - un référendum local portant sur les limites territoriales de la communauté correspondante ne pourra avoir lieu (au mieux !) que pour déterminer la position à prendre par les organes locaux dans la procédure consultative que le législateur sera tenu d'entamer auprès d'eux, avant de décider.

#### **D - La forme du texte soumis au référendum**

1. Le texte doit porter sur une question: une question sur laquelle l'autorité locale devra prendre une décision: LRL, Article 3. Le fait que la procédure pour la prise de cette décision soit déjà entamée n'empêche pas, d'ailleurs, le recours à un référendum (la procédure restant alors suspendue): LRL, Article 5.

2. Des exigences communes ou identiques à celles du référendum national - concernant l'unité de la matière, le nombre des demandes, la clarté du texte, etc. - valent aussi pour le référendum local: LRL, Articles 6-7.

#### **E - Limites matérielles**

En plus - évidemment - des principes et règles constitutionnelles, ils découlent déjà, et surtout, de ce qui a été dit supra, C.

#### **F - Campagne/propagande, financement et votation**

Il est applicable tout ce qui vaut pour le référendum national - sauf le droit à des «temps d'antenne» à la radio et la télévision, qui n'es pas prévu pour les référendums locaux. Cf. LRL, Article 224 (CNE), Articles 37, 43 (participation à la campagne), Articles 44, 52, 53 (moyens de campagne), Article 61 (financement), Articles 96-97 (votation).

#### **G - Effets du référendum**

1. Aussi le référendum local est conçu comme ayant un effet décisionnel – mais (encore de façon semblable au référendum national) sous la condition que le nombre des votants dépasse la moitié des citoyens électeurs concernés: LRL, Article 219.

2. Si l'effet décisionnel est atteint, et si la réponse à la question exige l'émission d'un acte par l'organe local compétent, celui-ci devra le pratiquer dans le délai de 60 jours: LRL, Article 221.

#### **H - Parallélisme des formes**

Le résultat d'un référendum local (une fois remplie la condition de l'effet décisionnel) - et notamment, s'il est le cas, l'acte de l'organe local qui lui a donné suite - ne peuvent être révoqués qu'au cours d'un nouveau mandat des organes locaux: LRL, Article 222.

Le même principe vaut - au cas de réponse négative - pour l'organisation d'un nouveau référendum sur la même question: LRL, Article 223.

### **I - Règles particulières relatives à l'initiative populaire**

Il vaut pour le référendum local, *mutatis mutandis*, ce qui a été dit pour le référendum national, *supra*, I.H. Cf. LRL, Articles 15, 18, notamment.

### **J - Contrôle juridictionnel**

Il vaut aussi ce qui a été dit pour le référendum national: cf. LRL, Articles 25ss. (contrôle préventif, la Cour Constitutionnelle devant être saisie par le président de l'assemblée locale en cause) et Articles 151-153 (contrôle des résultats).

### **K - Les expériences de référendum**

Dès qu'il est prévu, 22 initiatives d'organisation d'un référendum local ont été délibérées, mais presque toutes - 20 - ont échoué au contrôle préventif devant la Cour Constitutionnelle (soit en raison de la matière, soit par des raisons de forme, parmi lesquelles il vaut souligner les cas où l'alternative de réponse n'était pas simple - ça veut dire, «binaire»: - ainsi que l'exige la nature même d'un référendum décisionnel: cf. LRL, Article 7 = LRN, Article 7 = CR, Article 115/6).

En deux cas seulement, donc, le référendum a eu lieu: l'un d'eux (portant sur la localisation d'un équipement sportif) dans une «commune» de très petite dimension (927 électeurs), avec une forte participation (76,6%), le «non» ayant emporté à une différence de 5 voix; l'autre (portant sur la démolition d'une édification à éventuel intérêt municipal) au niveau d'une «municipalité» de dimension plutôt petite (21.000 électeurs), avec une participation très faible et loin d'arriver à l'effet décisionnel (36,2%), le «non» ayant aussi emporté avec 54,5% des voix.

## **III - Avenir du référendum**

Aucune réforme n'est en cours (ou même envisagée) à l'heure actuelle.

## **FEDERATION DE RUSSIE / RUSSIAN FEDERATION**

A.1. La Constitution de la Fédération de Russie prévoit le référendum dans les Articles 3.3, 32.2, 84-c, 92.3 et 135.3.

A.2. Le référendum national est réglementé par la Loi constitutionnelle fédérale "Sur le référendum de la Fédération de Russie" de 28 juin 2004 (nommée ci-dessous comme "la Loi"). Sont soumises au référendum les questions attribuées par la Constitution à la compétence de la Fédération de Russie, ainsi qu'à la compétence conjointe de la FR et de ses sujets, sauf les questions suivantes:

1. la modification du statut constitutionnel des sujets de la FR;
2. l'extinction avant terme ou la prorogation du mandat du Président de la FR, de la Douma d'Etat de l'Assemblée fédérale, aussi bien que l'organisation des élections anticipées du Président de la FR, des députés à la Douma d'Etat ou le report de la date de réalisation de ces élections;
3. l'élection, la nomination ou l'extinction avant terme, la suspension et la prorogation du mandat des personnes qui occupent les postes d'Etat de la FR;
4. la composition des membres des organes fédéraux du pouvoir d'Etat;
5. l'élection, l'extinction avant terme, la suspension ou la prorogation du mandat des organes formés en vertu d'un traité international de la FR, ou des fonctionnaires élus ou nommés en vertu d'un tel traité, ainsi que la formation de tels organes ou la nomination de telles personnes, sauf clause contraire du traité international;
6. l'adoption et la modification du budget fédéral, l'exécution des engagements financiers de la FR;
7. l'établissement, la modification et la suppression des impôts et taxes fédéraux, ainsi que les exemptions fiscales;
8. les mesures extraordinaires et urgentes pour assurer la santé et la sécurité de la population;
9. l'amnistie et la grâce.

B.1. Il n'y a pas de référendum obligatoire, sauf les cas où il est prévu par un traité international de la FR.

B.2. Le référendum peut être décidé par l'Assemblée constitutionnelle (Article 135.3 de la Constitution) ou par le Président de la FR (Article 84-c), s'il y a une initiative prévue par la loi précitée.

- a. L'initiative peut venir des organes d'Etat fédéraux aux cas stipulés par un traité international ou prévus par la Loi.
- b. Si le référendum est organisé en vertu d'un traité international, l'initiative vient de l'organe d'Etat fédéral, auquel ce traité attribue la compétence d'examiner la question correspondante. Conformément à l'Article 11.1 de la Constitution, ce sont le Président de la FR, l'Assemblée fédérale, le Gouvernement de la FR ou un tribunal de la FR. L'initiative commune de ces entités est possible.

- B.3. Le référendum peut être organisé à la demande des électeurs.
- a. Le nombre des électeurs ne doit pas être moins de 2 millions. A l'aide de son appareil administratif et d'autres personnes recrutées à ce fin, la Commission centrale électorale vérifie, au moins, 40% du nombre total exigé des signatures.
  - b. L'objet de l'initiative populaire peut être un texte nouveau.
- B.4. Chaque sujet du droit de l'initiative agit indépendamment des autres.
- B.5. Le parlement ne peut demander le référendum qu'en cas où cela est stipulé par un traité international. La Loi ne réglemente pas une possibilité de l'opposition de l'initiative populaire à cette demande.
- C.1. Le référendum ne peut pas porter sur la question des amendements constitutionnels, mais seulement sur une nouvelle Constitution de la FR dans son ensemble, comme c'est prévu par l'Article 135.3 de la Constitution. Pour l'adhésion à l'Union européenne ou à une organisation internationale, le référendum est admissible.
- C.2. Les réponses à ces questions sont données ci-dessus.
- D.1. La Loi n'établit pas les conditions formelles.
- D.2. Selon la Loi, peuvent être soumises au référendum plusieurs questions qui ne sont pas liés entre elles-mêmes, ainsi que les versions alternatives des réponses. Le bulletin doit expliquer, comment il doit être rempli. Les autres conditions indiquées dans ce titre du questionnaire ne sont pas stipulées par la Loi.
- E. La question soumise au référendum ne doit pas être contraire à la Constitution de la FR, restreindre, annuler ou réduire les droits et les libertés de l'homme et du citoyen universellement reconnus, ainsi que les garanties constitutionnelles de leur exercice.
- F.1.
- a. Si une nouvelle Constitution est soumise au suffrage universel, la Commission centrale électorale (CCE) de la FR est tenue de publier le projet constitutionnel dans les éditions de presse de l'Etat et sur Internet. Si le texte d'un acte normatif est soumis au référendum, la CCE est tenue de publier ce projet, au plus tard, 20 jours avant la votation.
  - b. Une note explicative n'est pas prévue par la Loi, mais celle-ci réglemente les modalités d'explication aux citoyens de la législation relative au référendum, le mode de sa réalisation et les réponses des commissions électorales aux questions des électeurs.
  - c. Peuvent participer à la campagne de propagande les partis politiques, les associations sociales et les citoyens, à l'exclusion des autorités et des personnalités officielles, des associations religieuses et de bienfaisance, des commissions de référendum, des étrangers et des apatrides.
  - d. Oui, les médias audiovisuelles et de la presse publics sont tenus de réserver une place égale aux différents groupes de propagande, mais ceux-ci ont le droit



d'acheter, pour le compte de leurs propres fonds, le temps d'antenne et la surface dans les éditions écrites.

- e. Il est de même pour les médias privés, toutefois ils peuvent refuser de publier quelle que ce soit propagande de référendum ou, s'ils offrent cette possibilité, ils doivent assurer l'égalité à tous les groupes de propagande.

F.2.

- a. Non, les autorités de l'Etat sont interdites de participer à la création des fonds de référendum des groupes d'initiative. Les fonds budgétaires sont utilisés exclusivement pour le financement de l'organisation et de la réalisation du référendum.
- b. La récolte des signatures est financée par le fond du groupe d'initiative respectif, mais la récompense des signatures proprement dites n'est pas permise, bien que la rémunération du travail des récolteurs des signatures est prévue. Il est interdit aux groupes d'initiative de faire usage d'autres moyens financiers, outre leurs propres fonds référendaires.

F.3.

- a. La votation est effectuée en un seul jour. Cependant, les commissions électorales des sujets de la FR sont en droit d'autoriser le vote anticipé (au plus tôt, 15 jours avant le vote général) dans les circonscriptions qui sont peu accessibles ou trop lointains ou qui se trouvent au bord des bateaux navigant au jour du vote, aux stations polaires et, d'une manière générale, partout en dehors du territoire national.
- b. Les résultats du vote sont annoncés après la clôture de tous les centres de vote et après le dépouillement général du scrutin.
- c. La participation au vote n'est pas obligatoire.
- d. Pour que le référendum soit valable, la participation de la majorité simple des personnes ayant le droit de vote est nécessaire.

G.1. La décision prise au moyen de référendum est obligatoire.

G.2. En vertu des résultats du référendum, la prise d'autres décisions est possible et doit avoir lieu dans le délai de 3 mois.

G.3. Le référendum suspensif n'est pas prévu par la Loi. L'avenir du texte soumis au référendum dépend du résultat de la votation.

H.1. Une disposition adoptée par référendum ne peut être annulée ou révisée que par un nouveau référendum, si une autre procédure n'est pas établie par cette disposition.

H.2. Ce n'est possible que par l'adoption d'une nouvelle Constitution.

I.1. Les signatures doivent être récoltées dans le délai de 45 jours dès l'enregistrement du groupe d'initiative pour l'organisation du référendum.

I.2. La récolte des signatures est réalisée par un groupe d'initiative pour l'organisation du référendum, qui comprend des groupes régionaux à former dans la plupart des sujets de la FR (un tel sous-groupe peut être formé aussi par les citoyens résidant à l'étranger).

I.3. A l'aide de son appareil administratif et d'autres personnes recrutées à ce fin, la Commission centrale électorale vérifie, au moins, 40% du nombre total exigé des signatures.

I.4. La conformité de la formule du référendum aux dispositions de la Loi est vérifiée par la Commission électorale centrale de la FR.

J.1. Toutes les décisions des commissions électorales peuvent faire l'objet du recours devant une juridiction.

J.2. Ce n'est que le non-respect de la Constitution de la FR, de la Loi fédérale et des autres lois peut servir de fondement pour le rejet d'une initiative de réalisation du référendum.

J.3. Les résultats des référendums peuvent faire l'objet d'un contrôle juridictionnel pour les mêmes motifs.

J.4. Une personne ou un organe participant au référendum peut déposer une plainte.

K. Depuis l'entrée en vigueur de la Constitution de 1993, les référendums nationaux n'ont jamais eu lieu.

## **II - Référendums régionaux ou locaux**

A.1. La Constitution de la FR ne prévoit pas les référendums régionaux.

A.2. Le droit national, notamment la Loi fédérale "Sur les garanties principales des droits électoraux et du droit des citoyens de la FR à la participation au référendum" permet de recourir aux référendums régionaux et locaux.

A.3. Un nombre considérable des entités régionales et locales ont réglementé juridiquement le référendum.

A.4. En règle générale, un référendum peut porter sur n'importe quelle question, sauf les questions budgétaires, fiscales, d'emploi du personnel et quelques autres.

A.1.-1.5. Cf. le § 3 ci-dessus.

A.1.6. Les possibilités légitimes de l'intervention des autorités supérieures sont très restreintes.

B. La réglementation juridique est, en général, analogue à celle à l'échelon fédéral. Pratiquement, il n'y a pas de possibilités légitimes pour les autorités supérieures d'intervenir, si les autorités inférieures respectent le droit national.

C. Le référendum portant sur la sécession d'un sujet de la FR peut être organisé avec l'accord de ce dernier.

- Il peut porter sur une modification des frontières géographiques.
- Tout autre objet du référendum est possible.

D.-J. Les réponses sont analogues à celles qu'on a données dans le Titre I.

K.1.-2. Les référendums régionaux et locaux ont été peu nombreux. Par exemple, c'est par la voie de référendum qu'on a adopté en 2003 la Constitution de la République Tchetchene.

### **III - Avenir du référendum**

1. Le 28 juin 2004, le Président de la FR a signé la nouvelle loi constitutionnelle fédérale "Sur le référendum de la Fédération de Russie", qui a introduit un nombre d'innovations législatives importantes dans la réglementation juridique du référendum.

2.-3. En comparaison avec la loi pré-existante du 10 octobre 1995, cette nouvelle loi contient une réglementation plus détaillée des modalités d'exercice de l'initiative du référendum, par exemple:

- le nombre des sujets ayant le droit d'initiative est devenu plus large et comprend désormais les organes fédéraux du pouvoir de l'Etat, si c'est prévu par un traité international de la FR;
- les modalités de réalisation de l'initiative populaire sont devenues plus compliquées;
- les modalités de la propagande qui précède la votation populaire sont réglées plus concrètement;
- un vote réitératif est prévu au cas d'invalidation des résultats du vote par suite d'un non-respect considérable de la loi.

Il y a encore d'autres innovations moins importantes.

## ESPAGNE / SPAIN

### I - National referendums

#### A - Legal basis

1. *Is provision made for referendums in the Constitution ?*

Yes:

A. Article 92 declares that “1. Political decisions of special importance may be submitted to all citizens in a consultative referendum. 2. The referendum shall be called by the King on the Prime Minister’s proposal following authorisation by the Congress. 3. An Organic Act shall lay down the terms and procedures for the different kinds of referendum provided for in this Constitution”.

B. Article 168 (total revision of the Constitution or partial revision affecting its basic political decisions): “3. Once the amendment has been passed by the Cortes Generales, it shall be submitted to ratification by referendum”.

C. Article 167 (partial revision of the Constitution) “3. Once the amendment has been passed by the Cortes Generales, it shall be submitted to ratification by referendum, if so requested by one tenth of the members of either House within fifteen days after its passage”.

D. Article 152: The Statutes of Autonomy drafted by the privileged procedure foreseen in Article 151.C (which includes approval in referendum ”by the overall majority of electors in each province” concerned, Article 151.1) “may be amended only by the procedure provided for therein and a referendum of registered electors in the Self-governing [Autonomous] Community”.

E. Article 149.1 “The State shall have exclusive jurisdiction over the following matters: (...) 32) Authorisation of popular consultations through the holding of referendums”.

F. Article 62: “It is incumbent upon the king: (...) c) To call a referendum in the circumstances provided for in the Constitution”.

2. *If not, does the law provide for the use of referendums? On what matters?*

Constitutional provisions have been developed by the Organic Act 2/1980, of 18 January. In any case, this Act declares that its provisions do not affect to “popular consultations which may be held by Local Councils, related to relevant matters of local nature, in their respective territories, according to Legislation of Local Regime and, in any case, guaranteeing the exclusive jurisdiction of the State for its authorisation”. And the Act 7/1985, of Local Regime, says in its Article 71 that “according to the Laws of the State and of the Autonomous Community, when the latter has jurisdiction over this matter, the Mayors, with

the agreement of the overall majority of the Local Council, and authorisation of the national Government, may submit to popular consult those issues belonging to the local jurisdiction and of local nature, which may be of special relevance for the interests of the neighbours, with the exception of those relative to the Local Treasure”.

Finally, some (not all) Statutes of Autonomy foresee the jurisdiction of the respective Communities over the system of (local) popular consults, respecting in all the cases the jurisdiction of the State for its authorisation.

**B - What type of referendum may be used? Who decides?**

*1. Mandatory referendums*

See paragraph A.

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum after their adoption by Parliament?*

*2. Referendums called by an authority*

*a. Can referendums be called by an authority?*

*b. If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

See paragraph A.

*3. Referendums held at the request of part of the electorate*

*a. Can a specified number of members of the electorate call for a referendum?*

No.

*If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*

*b. Can a request for a referendum relate to a text already adopted by Parliament?*

Yes.

*Can a new text be put forward by popular initiative?*

No.

*4. Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

The Head of the State may not reject the proposal, but of course the Parliament may do it.

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

## 5. *Role of Parliament*

*- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter?*

No. *If so, what is the time limit for doing so?*

*- Can it submit a counterproposal to popular vote at the same time as the first proposal?*

No.

*- Is it entitled only to give its opinion?*

*- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*

*- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

## **C - Content**

### 1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

No.

*Is a referendum mandatory in the case of a constitutional amendment?*

No (see Article 167.C).

*On what other types of measure can a referendum be called?*

### 2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

**D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

Article 3.1 of the Organic Act 2/1980: The Decree which calls for the referendum “will contain the whole text of the bill... or of the political question submitted to the consult; will clearly establish the question or questions” which have to be answered by the voters; and the date of the voting.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*
- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

**E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

## **F - Campaigning, funding and voting**

### *1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*

No. The Organic Act 2/1980 (Article 11.1) calls for the general electoral regime - including provisions relative to the so-called “institutional campaign”. Consequently, authorities may inform the citizens about the date of the voting, the procedure for voting and the requirements for mail-voting, but with the obvious limit of not influencing on the sense of the vote (Article 50.1 of the Electoral Organic Act).

- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities’ views and their opponents’ views?*
- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

Freedom of beliefs and of speech guarantees the possibility of any subject for taking part in the campaign. But only parties, coalitions or electoral groupings –provided that they have parliamentary representation, that is, which have seats in the national or regional, or even provincial assemblies, depending on the scope of the referendum- have the right to free propaganda in public mass media.

- d. Are the public media required to allocate equal time to supporters and opponents of the text?*

No. The campaign is made by political groups. And those which have parliamentary representation have the right to freely present their opinions in public media. The time guaranteed to each party depends on their electoral strength, according to proportional criteria.

- e. What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

According to the Electoral Organic Act, political groups may spend no more than 20 % of their campaign budget in paid publicity in private media. The fares for this kind of propaganda cannot be higher than for commercial publicity, and conditions related to inclusion, fares and treatment of this kind of publicity have to be equal for all parties and/or groups.

### *2. Funding*

- a. Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

The law does not allow the public funding of the electoral campaign. Nevertheless, as it has been pointed out, it foresees that the public mass media must give to political groups free time



for campaigning. And, also very important, campaign mailing receives also an special treatment.

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

On one day.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

No.

- c. *Is it compulsory for all voters to cast a vote?*

No.

- d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

As a rule, quorum is not required. The only exception is the -no longer possible- referendum for the approval of an Statute of Autonomy following the privileged way of Article 151 (which allowed a faster and initially more powerful access to autonomy).

**G - Effects of referendums**

- 1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

Article 92 expressly refers to a consultative referendum; but in other cases (logically: constitutional revision, approval and reform of Statutes of autonomy) the result has to be binding.

- 2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

No.

- 3. *Is an existing provision or measure rejected in a referendum regarded as thereby immediately repealed?*

No.

**H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

Yes.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

Yes.

**I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*
2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

**J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum?*

Not against the (political) decision.

*Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

If the referendum does not fulfil the legal requirements set up by the Organic Act, judicial appeal should be possible.

3. *Are the results of referendums subject to judicial review?*

Yes, following the procedures established by the electoral law.

4. *Who may lodge an appeal?*

All interested subjects (parties, institutions).

## **K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution?*

At the national level, just one, on the belonging to the NATO (1986). At regional - or autonomous - level, five: two in Andalusia, and one in the Basque Country, Catalonia and Galicia (for approving their respective Statutes).

2. *On whose initiative has each referendum been held?*

Government.

3. *Have any referendums been invalid because of a low turnout?*

No.

4. *In how many referendums has the electorate voted yes?*

In all of them.

5. *In how many referendums has the electorate voted no?*

None.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

No.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

May be - possibly - the national one: the Socialist Prime Minister, Felipe González, led his party in the campaign in favour of staying at the NATO, when three years before they had won an overwhelming electoral majority (49 % of the votes, 60 % of the seats) with the slogan "NATO: de entrada, no".

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

## **II - Local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

No.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Yes.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

Yes.

4. *On what matters is it possible to call a referendum?*

Article 71 of the Act 7/1985, of Local Regime: “according to the Laws of the State and of the Autonomous Community, when the latter has jurisdiction over this matter, the Mayors, with the agreement of the overall majority of the Local Council, and authorisation of the national Government, may submit to popular consult those issues belonging to the local jurisdiction and of local nature, which may be of special relevance for the interests of the neighbours, with the exception of those relative to the Local Treasure”.

### **A1 - At what level?**

1. *Federate states?*

2. *Provinces? Regions?*

Yes.

3. *Lower levels? Districts?*

4. *Municipalities?*

Yes.

5. *On what matters?*

### **B - What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

### **C - Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*

- *Can it relate to geographical boundaries?*

- *Are any other subjects permitted?*

### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

**E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

**F - Campaigning and voting**

*Reply to the same questions as in I-F.*

**G - Effects of referendums**

*Reply to the same questions as in I-G.*

**H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

**I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

**J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

**K - Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels?*

**III - The future of referendums**

1. *Is the referendum system currently being reformed?*

No.

2. *If so, for what reason?*

## **SUEDE/SWEDEN**

### **I – National referendums**

#### **A – Legal basis**

1. *Is provision made for referendums in the Constitution ?*
2. *If not, does the law provide for the use of referendums? On what matters?*

As a general rule the Swedish Constitution prescribes in its introductory chapter that democracy in Sweden shall be realised through a representative and parliamentary polity.

Referendums are exceptions to this representative form of government and under provisions in Chapter 8 of the Constitution they can be held in two cases only:

1. as binding on a matter of fundamental law, and
2. as consultative on any question put to the people.

The Constitution further prescribes that necessary provisions concerning the holding of a consultative referendum throughout the whole of the Realm and the procedure for holding a referendum on a matter of fundamental law shall be laid down in an act of law, i.e. by ordinary legislation. This act, the Act on Referendums, was adopted in 1979, and it covers both types of referendums. The Act on Referendums prescribes (among other things) that before each referendum the specific question or questions put to the people shall be stated in another act of law, i.e. again in ordinary legislation. Such acts were adopted by Parliament for example before the two latest referendums – both consultative – in 1994 on accession to the European Union and in 2003 on the introduction of the Euro as currency. Insofar there has been no referendum on a matter of fundamental law in Sweden.

#### **B – What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

No, there is no provision in the Swedish Constitution that certain texts automatically have to be submitted to referendum.

2. *Referendums called by an authority*

- a. *Can referendums be called by an authority?*
- b. *If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

Referendums can be called by Parliament only. On motions of its members to hold consultative referendums Parliament decides in ordinary procedure by majority vote. A referendum on a proposal concerning fundamental law has to be held on a motion to this effect by at least on tenth of the members of Parliament, provided that at least one third of members concur in approving the motion.

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*
- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

A request of part of the electorate cannot as such trigger a referendum, but may lead to motions in Parliament to hold a referendum.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament – or do a number of members of Parliament – have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

See answer to questions I.B.1 and 2.

5. *Role of Parliament:*

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit a counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

No other authority than Parliament can call a referendum. See answer to questions I.B.1 and 2.

**C - Content***1. Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

No.

*Is a referendum mandatory in the case of a constitutional amendment?*

No.

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?*

Consultative referendums can be called on any question, binding referendums on proposals concerning fundamental law can be called on any proposal to amend one of the four fundamental laws of Sweden. The referendum in 1944 on accession to the European Union was consultative only.

*2. Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

No, referendums are not reserved for particular matters, and no matters are automatically put to a referendum or excluded from referendums.

**D – Form of the text submitted to referendum (formal validity)***1. What form may the text submitted to referendum take:*

*- a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*

*- repeal of an existing provision?*

*- a question of principle (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or*

*- a concrete proposal, not presented in the form of a specific provision and known as a “generally-worded proposal” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?*

The texts submitted to referendum in 1994 and 2003 have been formulated as questions. In 1994 the question put forward was “Do you think that Sweden shall become member of the EU according to the treaty between Sweden and the Member States of the EU?” and in 2003 “Do you think that Sweden shall introduce the Euro as currency?”; possible answers were in both referendums either “Yes” or “No”. However, in 1980 there was a referendum on the role of nuclear power as a source of energy supply in the future and in 1957 on possible systems of social security pensions. In both referendums the voter could choose among three proposals. These three proposals were lengthy documents containing fairly complex political programmes.



Drafts of questions or proposals are usually submitted to Parliament by the Government as part of an ordinary proposition to enact legislation (i.e. on the proposed referendum) and after extensive negotiations with the political parties represented in Parliament. But these drafts are legally not binding upon Parliament which in principle could change them freely.

2. *Do questions submitted to referendum have to respect*<sup>30</sup>:
  - a. *unity of form* (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);
  - b. *unity of content* (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);
  - c. *unity of rank*: the question must not relate simultaneously to the Constitution and subordinate legislation.
  - d. Does the vote have to be on a single question or can it be on several different ones?
  - e. Does the question (or do the questions) have to be clear and suggestion-free?

There are no legal provisions which limit the discretion of Parliament when it decides on the proposals or questions which are to be submitted to referendum.

### **E - Substantive limits on referendums (substantive validity)**<sup>31</sup>

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

Legislation by which proposals or questions are submitted to referendum has to be in compliance with all the usual standards of constitutionality.

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<sup>30</sup>*Guidelines for constitutional referendums at national level, adopted by the Venice Commission at its 47th plenary meeting (Venice, 6 and 7 July 2001) (CDL-INF(2001)010), para. II.C.*

<sup>31</sup>*Cf. CDL-INF(2001)010, para. II.D.*

**F – Campaigning, funding and voting***1. Campaigning<sup>32</sup>*

- a. *Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*
- b. *If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
- c. *Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*

Ways and means of how to provide information and how to achieve balance of opinions are decided upon by Parliament in connection with the adoption of legislation on a specific referendum.

- d. *Are the public media required to allocate equal time to supporters and opponents of the text?*

All the usual standards of balanced reporting by public mass media apply, and time has to be allocated equal.

- e. *What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?*

As a rule, radio and television advertising to promote a specific opinion is not possible in referendum matters.

*2. Funding<sup>33</sup>*

- a. *Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

As was said before: Ways and means of how to provide information and how to achieve balance of opinions are decided upon by Parliament in connection with the adoption of legislation on a specific referendum. This includes decisions on public funding.

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

This question is not applicable in the case of Sweden. Collection of signatures is not a prerequisite for any form of national referendum.

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<sup>32</sup>Cf. CDL-INF(2001)010, para. II.E.2.

<sup>33</sup>Cf. CDL-INF(2001)010, para. II.F.

3. *Voting*

- a. *Does voting take place on one day or over a number of days?*

Voting takes place on one day, but voting by mail is regularly provided for during 30 days before referendum day. Mailed in votes are opened and counted together with the other votes after the end of the voting.

- b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*

All voting places are in the same time zone, they open and close at the same time, and the counting of votes does not start before closing time. Therefore results from one voting place cannot become known at any other voting place before voting closes there.

- c. *Is it compulsory for all voters to cast a vote?*

No.

- d. *Quorum:<sup>34</sup> For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

No to both questions.

**G - Effects of referendums<sup>35</sup>**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

2. *Does the referendum make it necessary to take other decisions (see item B.5) ?*

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

*-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

*-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

*-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

The effect of a referendum depends on the type of referendum.

The outcome of a *consultative* referendum is neither suspensive, nor resolutive, nor abrogative. Results have to be evaluated and interpreted politically, which has been a severe problem after the 1980 referendum on nuclear power. However, in the case of the two latest

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<sup>34</sup>Cf. CDL-INF(2001)010, para. II.O.

<sup>35</sup>Cf. CDL-INF(2001)010, para. II.N.

referendums – on accession to the European Union and on the introduction of the Euro as currency – the political parties declared in advance that they would abide by the results of the voting whatever the turnout of voters and whatever the outcome of the vote. The consequences were in 1994 that preparations for the accession continued, and the Treaty of Accession was ratified later that year. In 2003 the consequence was that all further preparations to introduce the Euro as currency were discontinued.

A *binding* referendum on a matter of fundamental law would be binding insofar as a negative outcome of the vote on a proposed constitutional amendment would block further amendment proceedings. The proposed amendment therefore could not be enacted, and neither could it enter into force. But a binding referendum has insofar never taken place in Sweden.

### **H – Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*<sup>36</sup>

The results of a consultative referendum will have to be evaluated and interpreted politically. Overturned proposals could be introduced again, but whether they will succeed will be a political question.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*<sup>37</sup>

The provisions in the Swedish Constitution on referendums can be revised by amending the Constitution, which does not require neither a binding nor a consultative referendum. Similarly, provisions on referendums in ordinary legislation can be revised in ordinary legislative procedures without referendum.

### **I – Specific rules on popular initiatives**<sup>38</sup>

1. *What is the time-limit for collecting signatures?*
2. *Who is entitled to collect signatures?*
3. *How are signatures checked?*
4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

These questions are not applicable in the case of Sweden. Popular initiatives cannot initiate any form of national referendum.

<sup>36</sup> Cf. CDL-INF(2001)010, para. II.L.

<sup>37</sup> Cf. CDL-INF(2001)010, para. II.K.

<sup>38</sup> Cf. CDL-INF(2001)010, para. II.J.

### **J – Judicial review**<sup>39</sup>

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*
2. *If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*
3. *Are the results of referendums subject to judicial review?*
4. *Who may lodge an appeal?*

Against Parliament's decision to hold or not to hold a referendum there is no appeal to a court of law, nor is there any judicial review. Against irregularities in voting procedures there are basically the same possibilities of review and appeal as in general elections.

### **K – Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*

Since the possibility to call a referendum was introduced in 1920 there have been six referendums, which all have been consultative. No binding referendum has ever been called.

The six referendums and the questions put to the people have been:

1. in 1922 whether to generally prohibit alcoholic beverages,
2. in 1955 whether to change road traffic from driving on the left to driving on the right hand side of the road,
3. in 1957 which scenario to choose out of three, which were presented as possible, for social security pension systems,
4. in 1980 which scenario to choose out of three, which were presented as possible, for the future development of nuclear energy,
5. in 1994 whether to accede to the European Union, and
6. in 2003 whether to introduce the Euro as currency.

2. *On whose initiative has each referendum been held?*

All referendums were held on political initiatives from within the parliamentary system. These initiatives were followed of initiatives by the Government to technically implement the preceding political decisions.

3. *Have any referendums been invalid because of a low turnout?*

No.

4. *In how many referendums has the electorate voted yes?*

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<sup>39</sup>Cf. CDL-INF (2001)010, para. II.P.

5. *In how many referendums has the electorate voted no?*

The answers to the six referendums

1. in 1922 whether to generally prohibit alcoholic beverages,
  2. in 1955 whether to change road traffic from driving on the left to driving on the right hand side of the road,
  3. in 1957 which scenario to choose out of three, which were presented as possible, for social security pension systems,
  4. in 1980 which scenario to choose out of three, which were presented as possible, for the future development of nuclear energy,
  5. in 1994 whether to accede to the European Union, and
  6. in 2003 whether to introduce the Euro as currency
- were three times no (in 1922, 1955 and 2003) and once yes (in 1994).

In 1957 the results were

scenario 1: 45,8 %, scenario 2: 15 %, and scenario 3: 35,3 %.

In 1980 the results were

scenario 1: 18,9 %, scenario 2: 39,1 %, and scenario 3: 38,7 %.

6. *Can any of the results be largely accounted for by factors unrelated to the question?*

No, not really.

7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*

No.

8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

No, not really.

## **II – Regional or local referendums**

### **A – Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

No.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Yes. Regional and local referendums are allowed and regulated by the Act on Local and Regional Government of 1991 together with the Act on Local and Regional Referendums of 1994.

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

No.

4. *On what matters is it possible to call a referendum?*

The local (municipal) and regional assemblies can call a referendum on any matter before them and within their competence and as a means to gather information on local or regional opinions in order to prepare the final decision of the matter. Such referendums are consultative only. National authorities cannot intervene in this process.

#### **A1 – At what level?**

1. *Federate states?*
2. *Provinces? Regions?*
3. *Lower levels? Districts?*
4. *Municipalities?*
5. *On what matters?*
6. *May national or federal authorities intervene, and in what conditions?*

See answers to II.A.

#### **B – What type of referendum can be held? Who decides?**

*Reply, mutatis mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

Referendums can be called as consultative referendums only and exclusively by the local (municipal) or regional assemblies.

A request of part of the electorate cannot as such trigger a referendum, but may lead to a motion in the assembly to hold a referendum.

#### **C – Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other subjects permitted?*

The local (municipal) and regional assemblies can call a referendum on any matter before them and within their competence.

A question of secession or proposal to secede from the State would not be within their competence.

Questions which relate to geographical boundaries – for example between two municipalities or two regions – would definitely be a matter for the assemblies and can therefore lead to referendums and quite regularly lead to local referendums.

#### **D – Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

There are no legal provisions which limit the discretion of a local (municipal) or regional assembly when it decides on the proposal or questions which are to be submitted to referendum.

#### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

Decisions by which proposals or questions are submitted to referendum have to be in compliance with all the general provisions and standards of legality.

#### **F – Campaigning and voting**

*Reply to the same questions as in I-F.*

Ways and means of how to provide information and how to achieve balance of opinions are decided upon by the assembly in connection with the adoption of the decision to call a referendum.

For

#### **G – Effects of referendums**

*Reply to the same questions as in I-G.*

The aim of local (municipal) and regional referendums is to provide guidance for the assembly which called the referendum. The outcome of a referendum is neither suspensive, nor resolutive, nor abrogative. Results have to be interpreted politically.

#### **H – Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

The results of a local (municipal) or regional referendum will have to be evaluated and interpreted politically. Overturned proposals could be introduced again, but whether they will succeed will be a political question.



### **I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

These questions are not applicable. Popular initiatives cannot as such initiate a local (municipal) or regional referendum.

### **J – Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

Appeal is in principle possible to administrative courts against decisions of local (municipal) or regional assemblies on referendums and on the basis of the outcome of a referendum. Judicial review however will be limited to certain questions of procedure, competence and legality.

### **K – Experiences of referendums**

1. *Have there been many local referendums?*
2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

There have been many referendums, most of which have been on the local (municipal) level. All were – and legally had to be – consultative.

## **III – The future of referendums**

1. *Is the referendum system currently being reformed?*

No. *Legal* reforms are not discussed. However the use of the referendum as a *political* instrument has been debated since the 1980 referendum on nuclear power, and quite hotly so in connection with the referendums in 1994 and 2003 and with a possible referendum in mind on the proposed Constitutional Treaty of the European Union.

2. *If so, for what reason?*
3. *If so, what is the general tendency of this reform?*

Not applicable.

## **SWITZERLAND / SUISSE**

### **I - Référendums nationaux**

#### **A - Quel fondement juridique?**

1. Oui.
2. ---

#### **B - Quel type de référendum? Qui décide?**

1. Oui, voir l'Article 140 de la Constitution, qui mentionne les textes qui sont soumis automatiquement au référendum après leur adoption par le Parlement.
2.
  - a. Article 141 de la Constitution
  - b. Référendum peut être organisé à la demande de huit cantons.
3.
  - a. Article 141 de la Constitution : 50'000 citoyens peuvent demander un référendum sur les actes mentionnés à l'Article 141 de la Constitution.
  - b. Le référendum porte toujours sur une loi déjà adoptée par le Parlement. Une initiative populaire peut proposer un nouveau texte tendant à la révision totale de la Constitution (Article 138 Cst.), à la révision partielle de la Constitution (Article 139 Cst.), ou à l'adoption d'une loi (Article 139.a Cst.). 100'000 signatures sont nécessaires.
4.
  - Le référendum n'a pas à être approuvé par une autorité, sauf la question du contrôle de la validité des signatures.
  - Les initiatives doivent en revanche être examinées quant à leur validité par le Parlement fédéral (Article 139 par. 2 Cst.).
  - En cas d'initiative tendant à la révision partielle, le Parlement peut lui opposer un contre-projet (Article 139 par. 3 Cst.).
  - Non, le Parlement ne peut pas s'opposer à l'organisation d'un référendum.
  - Le contre-projet n'est possible qu'en cas d'initiative populaire tendant à une révision partielle de la Constitution (Article 139 par. 3 Cst.).
  - Oui, dans la dernière hypothèse ci-dessous, il peut également recommander de voter oui ou recommander de voter non.

- 4 ans.
- L'hypothèse de l'initiative non formulée (constitutionnelle ou législative) est envisagée à l'Article 139.a Cst.

### **C - Contenu**

#### *1. Types d'actes soumis au référendum*

- Non (voir Articles 140 et 141 Cst.).
  - Oui (voir Article 140 Cst.).
  - Union européenne : Article 140 par. 1<sup>er</sup> let. b. (organisations supranationales) ; référendum obligatoire. Autres organisations internationales : Article 141 par. 1<sup>er</sup> let. d, ch. 2 = référendum facultatif.
2. Toutes ces matières sont indiquées aux Articles 140 et 141 Cst.

### **D - La forme du texte soumis au référendum (la validité formelle)**

#### *1. Forme possible du texte soumis au référendum*

- Oui, projet rédigé seulement pour la Constitution (Article 139 Cst.).
  - Oui, Article 165 Cst.
  - Oui, Articles 139.a par. 5 Cst. et 193 par. 3 Cst.
  - Oui, Article 139.a Cst. (initiative populaire générale).
- 2.
- a. Oui (Articles 139 par. 2 Cst. et 194 par. 3 Cst.).
  - b. Oui (Articles 139 par. 2 Cst. et 194 par. 2 Cst.).
  - c. Oui.
  - d. Une seule.
  - e. Oui.

### **E - Limites matérielles du référendum**

- Seulement aux règles impératives de droit international (Articles 139 al. 2 et 139.a al. 2 Cst.).
- Non.

**F - Campagne / propagande / financement et votation***1. Campagne et propagande*

- a. Oui.
- b. Les autorités (Conseil fédéral). Les partis politiques ne participent pas officiellement à la rédaction de cette notice. Oui, la notice explicative doit présenter les divers points de vue de manière équilibrée.
- c. Tout groupement ou association intéressé peut participer à la campagne. Les autorités peuvent aussi faire campagne.
- d. Oui.
- e. Normalement oui.

*2. Financement*

- a. Non.
- b. Pas officiellement, mais elle n'est pas non plus interdite.

*3. Votation*

- a. Un seul jour (le dimanche), mais de plus en plus par correspondance, sur une période de trois semaines. Le vote électronique commence à faire son apparition.
- b. Cette question ne se pose pas en Suisse.
- c. Non, sauf dans un canton.
- d. Non.

**G - Les effets du référendum**

1. Le référendum est décisionnel.
2. Dans certains cas : Articles 139.a par. 5 Cst. et 193 Cst.
3.
  - Le plus souvent le référendum a un effet suspensif.
  - L'effet est résolutoire ou abrogatif dans le cas des lois fédérales urgentes (Article 165 Cst.).

### **H - Parallélisme des formes et normes prévoyant le référendum**

1. Non.
2. Non.

### **I - Règles particulières relatives à l'initiative populaire**

1. 18 mois (Articles 139 et 139.a Cst.).
2. Les citoyens, mais dans la pratique les partis politiques.
3. Par la Chancellerie fédérale.
4. Oui, mais avant le début de la récolte des signatures.

### **J - Contrôle juridictionnel**

1. Pas pour les initiatives au niveau fédéral ; oui pour les initiatives au niveau cantonal.
2. Au niveau fédéral, les motifs de non-validité d'une initiative sont mentionnés à l'Article 139 al. 2 Cst.
3. Au niveau fédéral, non. Au niveau cantonal, oui.
4. Tout électeur.

### **K - Les expériences de référendum**

1. Plus de cent.
2. Le plus souvent le peuple, sauf dans les cas où le référendum est obligatoire.
3. Non.
4. et 5. Impossibles de le dire.
6. Non.
7. Non.
8. Très difficile à dire.

## **II - Référendums régionaux ou locaux**

### **A - Quel fondement juridique?**

1. Seulement pour les Constitutions cantonales (Article 51 Cst.).
2. ---.
3. Oui.
4. Constitution, lois, voire accords entre les cantons.

### **A1 - A quel niveau?**

- 1.-4. Le référendum, obligatoire et facultatif, existe au niveau des cantons et des communes.
5. Constitution, lois et certaines dépenses (référendum financier).
6. Non.

### **B - Quel est le type de référendum? Qui décide?**

Les réponses sont différentes selon les cantons. Il existe 26 réglementations différentes.

### **C - Contenu**

- La sécession n'est pas expressément prévue par la Constitution. Elle n'est pas non plus expressément interdite.
- Oui, cela est prévu à l'Article 53 Cst., en particulier aux par. 2 et 3.

### **D - Forme**

Mêmes réponses, 26 réglementations différentes.

### **E - Limites matérielles**

Tout le droit supérieur, à savoir le droit fédéral et le droit international.

### **F - Propagande**

Mêmes réponses.

### **G - Effets**

Mêmes réponses. Le référendum consultatif existe dans certains cantons.

### **H - Parallélisme**

Mêmes réponses.

### **I - Règles particulières**

Mêmes réponses.

### **J - Contrôle juridictionnel**

Oui, il existe une voie de droit spéciale, le recours de droit public pour violation des droits politiques cantonaux (Article 85 de la loi fédérale sur les droits politiques).

### **K - Les expériences**

1. Oui, très nombreux.
2. Aux niveaux des cantons et des communes.

## **III - Avenir du référendum**

1. Oui, réforme des droits populaires en général
2. Une réforme d'ensemble
3. Difficile à dire pour l'instant.

**“L’EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE”/**  
**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

**I - National referendums**

**A - Legal basis**

1. *Is provision made for referendums in the Constitution?*

Yes, Provision for referendums are made in Article 2, Article 73 and Article 120 paragraph 3 of the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No.52/91,1/92,31/98, 91/2001).

2. *If not, does the law provide for the use of referendums? On what matters?*

**B - What type of referendum may be used? Who decides?**

1. *Mandatory referendums*

*Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?*

There are two such cases required by the Constitution: the first is referendum for adopting proposal for changing the borders of the Republic, and the second is referendum for adopting proposal for joining or abandoning a union or community with other states.

The first referendum is regulated in Article 74 and the second in Article 120. The two referendums are further regulated by the Law on referendum and civil initiative in Articles 12, 13 and 14.

2. *Referendums called by an authority*

a. *Can referendums be called by an authority?*

b. *If so who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?*

A. Yes, referendums are called by an authority.

B. According to the Law, the referendums are called by the Parliament (Article 28, 29, 30, 31, 32 and 33). Proposal for legislative referendum may be submitted by the Government, any member of the Parliament and at least 10.000 citizens (Article 71 paragraph 1 of the Constitution, and Article 17 of the Law for referendum and civil initiative).



The local authorities (the Municipality Council) may also call referendum for questions under their authority and in the units of the local self-government (Article 21 of the Law on Local Self-Government).

3. *Referendums held at the request of part of the electorate*

- a. *Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?*
- b. *Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?*

A. Yes, According to Article 17 of the Law for referendum and civil initiative proposal for announcing a legislative referendum may be submitted by at least 10,000 voters.

The procedure for collecting and checking signatures is regulated by the Law on procedure for collecting signatures of voters, for announcing referendum and submission of proposal for amending Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia). 16/96). According to Article 7 of this Law, signatures are given on specially prescribed form. Signatures of the voters are collected directly by the initiator. Each of the voters is obliged to identify himself and to provide information about his/her name, name of the parents, last name, sex, date of birth, unique citizens number, address, municipality, date of signing. Signature and stamp of the official clerk of the Ministry of Justice are guaranty that this person has signed in front of the official of the Ministry.

B. Yes, The Law provides opportunity for additional referendum for re-estimation of laws and decisions passed by the Assembly by the electors or for giving the opinion of the electors for other issues decided by the Assembly (Article 5 of the Law on referendum and civil initiative).

A new text for law or a decision can be put forward by popular initiative according to Article 9 of the Law on referendum and citizens initiative.

4. *Procedures involving more than one authority*

*Must the decision to submit a text to popular vote have the approval of more than one body?*

*For example:*

*If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?*

*If the referendum is requested by part of the electorate, does Parliament - or do a number of members of Parliament - have to agree?*

*Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?*

No, the Assembly decides autonomously according to the Constitution and the Law. The Assembly decides on issuing notice of a referendum concerning specific matters within its sphere of competence by a majority vote of the total number of Representatives.

According to Article 21 of the Law for referendum and civil initiative, the Assembly may reject the proposal for proposing a legislative referendum; if the proposer does not act as stated in Article 19 paragraph 3 of this Law. The Assembly shall reject the proposal for announcing a legislative referendum, if it estimates that the content of the proposal is not in accordance with the Constitution and the Law for referendum and civil initiative.

The Assembly is obliged to announce a legislative referendum, when the proposal is submitted by at least 150,000 voters, on issues that are under the authority of the Assembly, in accordance with the provisions of the Law for referendum and civil initiative (Article 22 of this Law)

#### 5. *Role of Parliament*

- *Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?*
- *Can it submit a counterproposal to popular vote at the same time as the first proposal?*
- *Is it entitled only to give its opinion?*
- *Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?*
- *If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?*

The Assembly shall be obliged to decide within 30 days of submitting the proposal for announcing a legislative referendum. The decision for announcing a legislative referendum shall be passed with majority of votes out of the total number of Members of Parliament. (Article 20 of the Law for referendum and civil initiative).

The Assembly shall be obliged to pass a law, if on a legislative (previous) referendum the voters decided for passing a law. The Assembly shall not pass a law, if on a legislative (previous) referendum the voters decided against passing a law, or against the method of regulating certain issue, which would be contrary to the results of the referendum, nor it shall repeat the referendum on the same issue one year after the referendum.

The Assembly shall be obliged within 60 days from holding the legislative (additional) referendum to regulate the issue or the law that has been decided about on the referendum, in accordance with the results from the referendum. (Article 24 and 25 of the Law for referendum and citizen initiative).

### **C - Content**

#### 1. *Types of act submitted to referendum*

*Are referendums held only on proposals for constitutional amendments?*

*Is a referendum mandatory in the case of a constitutional amendment?*

*On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organizations?*

According to Article 120 of Constitution and Article 3 of the Law for referendum and civil initiative referendum is obligatory for association in or dissociation from a union or community with other states.

A decision of association or dissociation concerning membership in international organizations is adopted by the Assembly by a majority vote of the total number of Representatives of the Assembly and proposed by the President of the Republic, the Government or at least 40 Representatives of the Assembly (Article 121 of the Constitution). The decision of association in or dissociation from a union or community is adopted if the majority of the total number of voters upholds it in a referendum in the Republic. On the base of this, the decision for accession to the European Union necessarily requires referendum.

Referendum may be announced for the need of ratifying international agreements. The provisions of the Law on referendum and civil initiative, related to legislative referendum, shall accordingly be applied to the referendum for ratifying international agreements.

2. *Matters to which referendums may relate*

*Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?*

Referendum may be announced also for other issues that are under the authority of the Assembly (Articles 26 and 27 paragraphs of the Law for referendum and civil initiative). For issues of broader significance to the citizens and the Republic a consultative referendum may be announced. The decision made on the consultative referendum shall not oblige the Assembly.

Referendum may not be announced for issues related to the Budget of the Republic and the final closing account of the Budget, for public fees, for the reserves of the Republic, for the issues related to elections, appointments and dismissals and for amnesty (Articles 6 and 7 of the Law for referendum and civil initiative).

**D - Form of the text submitted to referendum (formal validity)**

1. *What form may the text submitted to referendum take:*

- *a specifically-worded draft of a constitutional amendment, legislative enactment or other measure?*
- *repeal of an existing provision?*
- *a question of principle (for example: "are you in favour of amending the constitution to introduce a presidential system of government?")?, or*
- *a concrete proposal, not presented in the form of a specific provision and known as a "generally-worded proposal" (for example: "Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?")?*

The decision for announcing a referendum shall establish the following: the type of referendum, the decision for which it will be decided, the text of the question that will be put on referendum, the day of announcing the referendum and the day of its holding.

The decision for announcing referendum shall be published in the Official Gazette of the Republic of Macedonia.

The text of the decision upon which it will be decided on the referendum shall also be announced in the media.

The citizens shall be informed about the referendum through a public appeal and putting posters on perceptible places.

The decision for announcement of the referendum and the text of the question put on referendum shall be post in the polling stations.

2. *Do questions submitted to referendum have to respect:*

- a. *unity of form (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);*
- b. *unity of content (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);*
- c. *unity of rank: the question must not relate simultaneously to the Constitution and subordinate legislation.*
- d. *Does the vote have to be on a single question or can it be on several different ones?*
- e. *Does the question (or do the questions) have to be clear and suggestion-free?*

The ballot shall contain the question put on referendum and instructions on the way of voting. If it is voted for more issues, each issue shall be voted for on a separate ballot.

The question on the ballot must be formulated precisely and unambiguously, so that the citizen on the referendum can answer with "FOR" or "AGAINST". (Article 46 paragraphs 2 and 3 of the Law for referendum and civil initiative).

### **E - Substantive limits on referendums (substantive validity)**

*Is a referendum prohibited if the text put forward is contrary:*

- *to international law or some of its rules;*
- *to the Constitution or some of its rules;*
- *to other overriding legal rules.*

The Assembly shall reject the proposal for announcing a legislative referendum, if it estimates that the contents of the proposal are not in accordance with the Constitution of the Republic of Macedonia and with the Law for referendum and civil initiative. (Article 21 paragraph 2 of the Law).

According to the Article 118 of the Constitution of the Republic of Macedonia, the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

## **F - Campaigning, funding and voting**

### *1. Campaigning*

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?*
- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?*
- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?*
- d. Are the public media required to allocate equal time to supporters and opponents of the text?*
- e. What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents.*

The provisions from the Law on Election of representatives in the Assembly of the Republic of Macedonia, shall be applied for the conduct and the way of voting on the referendum, unless otherwise determined by the Law for referendum and civil initiative (Article 41 paragraph 2 of the Law).

The citizens shall be informed about the referendum through a public appeal and putting posters on perceptible places. (Article 33 of the Law for referendum and civil initiative) The public propaganda on the referendum shall end no later than 48 hours prior to the day of voting. (Article 42 of the Law for referendum and civil initiative).

According to the Articles 51, 53 and 54, of the Law on election of the representatives in the Assembly of Republic of Macedonia, public media are obligate to provide under equal conditions equal access on their programs in the presentations to supporters and opponents of the text of the referendum. The duration of the presentation, methods of advertising and terms for the use of time, or the space in the media for the presentation shall be determined by a decision on the rules for equal media presentation. The decision on the rules for equal media presentation shall be reached by the Assembly, upon a proposal by the Broadcasting Council. The public media, whose founder is the Assembly, in co-operation with the State Election Commission have an obligation without compensation to inform the citizens of the way and technique of voting.

### *2. Funding*

- a. Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?*

- b. *Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?*

The means for the conduct of the referendum shall be provided from the budget of the Republic of Macedonia.

For the activities, acts, submissions and other documents related to the conducting of a referendum tax shall not be paid and all activities in the procedure shall be exempt from paying all kinds of taxes (Article 11 and Article 59 of the Law for referendum and civil initiative).

### 3. *Voting*

- a. *Does voting take place on one day or over a number of days?*  
b. *If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?*  
c. *Is it compulsory for all voters to cast a vote?*  
d. *Quorum: For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?*

According to Article 31 of the Law on referendum and civil initiative, Sunday or other non-working day shall be determined as day for holding a referendum. The referendum shall be conducted from 7.00 until 19.00.

Two or more referendums may be held in the same day.

The decision for announcing a referendum shall be announced in the media no later than 15 days before the day of holding the referendum.

The text of the decision upon which it will be decided on the referendum shall also be announced in the media.

The citizens shall be informed about the referendum through a public appeal and putting posters on perceptible places

The voting take places in one day. There is no time lag between different voting centers.

According to Article 22 paragraph 2 of the Constitution, the right to vote is equal, universal and direct, and is exercised at free elections by secret ballot.

The voting on the referendum shall be secret.

The citizen cannot be called for on responsibility for voting on a referendum.

Each citizen shall have a right to only one vote on the referendum.

The citizen may vote only in person.

The citizen who is illiterate or due to physical disability cannot vote in the way determined by the Law on referendum and civil initiative or other law, shall have a right to bring a person who will help him/her during the voting.

The electorate board shall assist the illiterate citizen in the voting.

The decision for a legislative referendum shall be considered adopted, if majority of the voters that voted, voted for that, if more than half of the total number of voters registered in the Voters' List voted. Decision reached on a legislative referendum shall be compulsory. (Article 73 of the Constitution and Article 23 of the Law for referendum and civil initiative).

### **G - Effects of referendums**

1. *What are the effects of referendums? Is the electorate asked for an opinion (consultative referendum) or a decision (binding referendum)?*

The decision reached on a legislative referendum shall be compulsory.

The Assembly shall be obliged to pass a law, if on a legislative (previous) referendum the voters decided for passing a law.

The Assembly shall not pass a law, if on a legislative (previous) referendum the voters decided against passing a law, or against the method of regulating certain issue, which would be contrary to the results of the referendum, nor it shall repeat the referendum on the same issue before the expiration of one year from the referendum.

The Assembly shall be obliged within 60 days from holding the legislative (additional) referendum to regulate the issue or the law that has been decided about on the referendum, in accordance with the results from the referendum.

2. *Does the referendum make it necessary to take other decisions (see item B.5)?*

Please see answer under item B 5.

3. *Where a referendum deals with a text that has already been adopted by an authority, is that referendum:*

- *suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;*

- *resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or*

- *abrogative: the acceptance of the referendum leads to the repeal of a provision in force?*

The Parliament is obliged to regulate the issue or the Law that has been on referendum according to the results of the referendum, within 60 days after the realization of the referendum.

## **H - Parallelism of procedures and rules on referendums**

1. *Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?*

No.

2. *Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?*

Yes.

## **I - Specific rules on popular initiatives**

1. *What is the time-limit for collecting signatures?*

According to Article 7 of the Law for procedure of collecting the signature of voters for proposing adoption of law, announce the referendum and for submission of proposal for changes of the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No.16/96), and Article 66 of the Law on referendum and civil initiative, the deadline for collecting signatures for submitting a proposal for approaching towards amendment of the Constitution shall be six months following the day of starting the collection of signatures. The deadline for collecting signatures for proposing of passing a law and reaching decisions and resolving other issues that are under the authority of the Assembly shall be three months following the day of starting the collection of signature.

2. *Who is entitled to collect signatures?*

The signatures are collected by the initiator in front of the authorized official of the Ministry of Justice.

3. *How are signatures checked?*

According to Article 7 of the above mentioned Law, within the three days after the submission of the initiative, the signatures of the voters are handed over in the Departments for state administration of the Ministry of Justice as competent bodies for evidencing of right to vote.

The collection of signatures starts with putting on signature on the form from Article 6 of the law, from the first signed voter. Each of the voters is obliged to identify himself and to provide data about his/her name, name of the parents, last name, sex, date of birth, unique citizens number, address, municipality, date of signing, signature and stamp of the official clerk. Signature and stamp of the official clerk is the guaranty that the person has signed in front of the official of the Ministry.

4. *Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)*

No, there is no such authority.



## **J - Judicial review**

1. *Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?*

The only possibility is to appeal affront of the Constitutional Court on the base of violation of the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation.

The Constitutional Court of the Republic of Macedonia decides on the conformity of laws with the Constitution; decides on the conformity of collective agreements and other regulations with the Constitution and laws; protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation; decides on conflicts of competency among holders of legislative, executive and judicial offices; decides on conflicts of competency among Republic bodies and units of local self-government.

Anyone can submit an initiative for initiating constitutionality of law and constitutionality and legality of a regulation or other common act assessment procedure.

The Constitutional court may itself initiate constitutionality of a law, that is constitutionality and legality of a regulation or other common act assessment procedure. During the investigation of the constitutionality of a law that is the constitutionality and the legality of a regulation or other common act, the Constitutional court may also assess the constitutionality and the legality of the regulation or other common act, which are not denied with the initiative.

*If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?*

2. *Are the results of referendums subject to judicial review?*

Only on the base of protection of the right to vote: irregularities in the work of the election bodies. Each citizen shall have a right to submit a complaint for irregularities in the procedure for voting in the polling stations and the work of the electoral board to the electoral commission within 72 hours of the day of holding the referendum.

The electoral commission shall be obliged to reach a decision within 24 hours of the receipt of the complaint.

Against the decision of the electoral commission an appeal may be submitted to the Appellate Court, which local authority is for the area of the electoral unit.

The Appellate Court shall be obliged to reach a decision on the appeal within 48 hours.

Each citizen shall have a right to submit a complain for irregularities in the work of the electoral commissions to the State Election Commissions within 72 hours of the day of holding the elections.

The State Election Commission shall be obliged to reach a decision within 48 hours of the receipt of the complaint.

Against the decision of the State Election Commission an appeal may be submitted to the Supreme Court of the Republic of Macedonia.

The Supreme Court of the Republic of Macedonia shall be obliged to reach a decision on the appeal within 48 hours of the receipt of the appeal ( Articles 61 and 62 of the Law for referendum and civil initiative).

### 3. *Who may lodge an appeal?*

Each citizen shall have a right to submit a complaint for irregularities in the procedure for voting in the polling stations and the work of the electoral board to the electoral commission.

Against the decision of the electoral commission an appeal may be submitted to the Appellate Court.

Each citizen shall have a right to submit a complaint for irregularities in the work of the electoral commissions to the State Election Commissions. Against the decision of the State Election Commission an appeal may be submitted to the Supreme Court of the Republic of Macedonia (Articles 61 and 62 of the Law for referendum and civil initiative).

## **K - Experiences of referendums**

1. *How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?*
2. *On whose initiative has each referendum been held?*
3. *Have any referendums been invalid because of a low turnout?*
4. *In how many referendums has the electorate voted yes?*
5. *In how many referendums has the electorate voted no?*
6. *Can any of the results be largely accounted for by factors unrelated to the question?*
7. *Can any of the positive results be accounted for by the popularity of the person putting the question?*
8. *Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?*

On September 8, 1991 a referendum was held for the independence of the Republic of Macedonia from the Socialist Federative Republic of Yugoslavia. The question of the referendum was “are you for a sovereign and independent Macedonia with a right to become part of a union of sovereign states of Yugoslavia?”. The turnout was 72% and 95 % of the electorate was in favour.

On June 4, 1996, with the Conclusion No.08-1901/11, Assembly of the Republic of Macedonia did not accepted the citizens initiative supported by 150 000 signatures of citizens for predate parliamentary elections.

## **II - Regional or local referendums**

### **A - Legal basis**

1. *Is there provision in the national Constitution for local referendums?*

Article 2 of the Constitution stipulates in general that the citizens of the Republic of Macedonia exercise their authority through democratically elected representatives, through referendum and through other forms of direct expression. Other than that, the Constitution does not dictate any specific case for local referendums.

2. *If there are no constitutional provisions, does national law allow local referendums?*

Law of local self-government (Official Gazette of the Republic of Macedonia No. 5/02) and Law for referendum and civil initiative (Official Gazette of the Republic of Macedonia No. 16/96).

3. *Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?*

Yes, provision for holding referendums are adopted by the authorities of the local self-government (in their Statutes).

4. *On what matters is it possible to call a referendum?*

The citizens shall directly participate in the decision-making process on issues of local importance through citizen's initiative, citizen 's gatherings and referendum, in a manner and procedure determined by law (Article 25 of the Law of local self-government)

Through a referendum the citizens may decide on issues from under the competency of the municipality, as well as other issues of local importance. The council shall be obliged to issue a notice of a referendum at the request of at least 20% of the voters of the municipality. The council may issue a notice of a referendum on issues within its authority, at its own initiative.

The decision adopted on the referendum shall be binding for the council. (Article 28 of the Law of local self-government).

### **A1 - At what level?**

1. *Federate states?*

No.

2. *Provinces? Regions?*

No.

3. *Lower levels? Districts?*

No.

4. *Municipalities?*

Yes.

The citizens shall directly participate in the decision-making process on issues of local importance through civil initiative, citizens' gatherings and referendum, in a manner and procedure determined by law.

5. *On what matters?*

Referendum may be announced in the units of the local self-government for issues that have local significance and which are under the authority of the units of the local self-government, particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.

6. *May national or federal authorities intervene, and in what conditions?*

Yes, the Ministry of Local self-government is the State body authorized to audit the legality and the constitutionality of the work of the units of local self-government and its bodies.

The Mayor shall be obliged, within 10 days from the day of their publishing, to submit the municipal regulations to the Ministry of Local self-government.

In case the Ministry considers that the regulation is not in accordance with the Constitution and law, within 45 days from the day of submission, it shall adopt a resolution for withholding the implementation of the regulation, giving explanation for the reasons for the withholding.

The resolution shall be published in the "Official Gazette of the Republic of Macedonia".

The Ministry of Local self-government shall be obliged to raise an initiative in front of the Constitutional Court of the Republic of Macedonia for the assessment of the constitutionality and legality of the withheld regulation, within 30 days from the day of the publication of the resolution referred to in paragraph 1 of this Article.

If the procedure is not initiated within the determined deadline, the validity of the resolution for withholding of the application of the and the withheld regulation shall become valid (Art 71 of the Law on local-self government).

### **B - What type of referendum can be held? Who decides?**

*Reply, mutates mutandis, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).*

In units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of public services, urban

and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law (Article 115 of the Constitution of the Republic of Macedonia).

Through a referendum the citizens may decide on issues from under the competency of the municipality, as well as other issues of local importance.

The council shall be obliged to issue a notice of a referendum at the request of at least 20% of the voters of the municipality.

The council may issue a notice of a referendum on issues within its authority, at its own initiative.

### **C - Content**

*Reply to the same questions as in I-C.*

*In particular:*

- *Can a referendum be held on a proposal to secede from the State?*
- *Can it relate to geographical boundaries?*
- *Are any other subjects permitted?*

At local level referendum may be organized on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other issues determined by law on local self-government.

### **D - Form of the text submitted to referendum (formal validity)**

*Reply to the same questions as in I-D.*

### **E - Substantive limits on referendums (substantive validity)**

*Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).*

The decision for announcing a referendum shall establish the following: the type of referendum, the decision for which it will be decided, the text of the question that will be put on referendum, the day of announcing the referendum and the day of its holding.

The ballot shall contain the question put on referendum and instructions on the way of voting.

If it is voted for more issues, each issue shall be voted for on a separate ballot.

The question on the ballot must be formulated precisely and unambiguously, so that the citizen on the referendum can answer with "FOR" or "AGAINST".

All rules for local referendums are in full conformity with central – government rules.

**F - Campaigning and voting**

*Reply to the same questions as in I-F.*

See answer under I- F.

The expenses for execution of the direct participation of the citizens in the decision-making process shall be covered from the municipal budget

**G - Effects of referendums**

*Reply to the same questions as in I-G.*

The decision adopted on the referendum shall be binding for the council.

**H - Parallelism of procedures and rules on referendums**

*Reply to the same questions as in I-H.*

See answer under I-H.

**I - Specific rules on popular initiatives**

*Reply to the same questions as in I-I.*

The citizens shall have the right to propose to the council to enact a certain act or to decide upon a certain issue within its authority.

Civil initiative shall not be raised for personnel and financial issues.

Upon the citizens proposal, the council shall be obliged to discuss if it is supported by at least 10% of the voters in the municipality, that is of the neighbourhood self-government to which a certain issue refers.

The council shall be obliged to hold the discussion at the latest 90 days after the raising of the initiative and to inform the citizens on its decision.

Another form of direct participation of the citizens in the decision-making process in the municipalities is citizens' gathering.

Citizens' gathering may be convened for the territory of the entire municipality or for the territory of the neighborhood self-government.

The citizens' gathering shall be convened by the mayor of the municipality upon his/her own initiative, at the request of the council or at the request of at least 10% of the voters in the municipality, that is in the neighborhood self-government that a certain issue relates to.

The municipality organs shall be obliged within 90 days to review the conclusions made at the citizens' gathering and to take them into account when making decisions and determining measures on issues they relate to, and to inform the citizens on their decision.

### **J - Judicial review**

*Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.*

See answer under I-J.

### **K - Experiences of referendums**

1. *Have there been many local referendums?*

Yes.

2. *If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.*

At the level of the Municipalities.

Most of the referendums at the municipalities are legislative, for passing laws, (previous referendum).

## **III - The future of referendums**

1. *Is the referendum system currently being reformed?*

2. *If so, for what reason?*

3. *If so, what is the general tendency of this reform?*

Proposal for adoption of new Draft Law for referendum and other form on direct citizen's expression is in process of preparation. The intention of the draft law is realization of the purpose, in unique law text to incorporated forms, ways and procedure for realization of direct democracy as one of the fundamental rights of citizens, guaranteed by the Constitution. The draft law proposes regulation of right of referendum and civil initiative on local level, in accordance with Article 25 of the Law of local self-government.

## **TURQUIE / TURKEY**

A. The Turkish Constitution of 1982 (as amended in 1987) refers to referendums in its Article 175 dealing with the constitutional amendment procedure. The Constitution provides for referendums only in the process of constitutional amendment. There is no possibility to submit ordinary laws or other legal texts to referendums. The details of constitutional referendums have been regulated by the Law No. 3376 dated 23 May 1987.

B. Under Article 175 of the Constitution, constitutional referendums are mandatory in one case, and optional in two cases. If a constitutional amendment is adopted by at least three-fifths but less than two-thirds majority of the total number of members of the Grand National Assembly and is not returned to the Assembly by the President of the Republic for reconsideration, a constitutional referendum is mandatory. A constitutional amendment adopted by the Assembly by a two-thirds majority can either be referred back to the Assembly for reconsideration by the President or submitted to a referendum by him. In this case, referendum is optional and depends entirely on the discretion of the president. A third possibility where a constitutional referendum is also optional, materializes when the Assembly adopts a constitutional amendment by a two-thirds majority upon the referral by the President for reconsideration. Here again, the President is entirely free to submit or not to submit an amendment to referendum.

It is thus clear that in optional referendums, the President of the Republic is the sole authority to initiate a constitutional referendum process. This is one of the constitutional prerogatives of the President which he/she can exercise alone, i.e. without the counter-signature of the Council of Ministers. In Turkish constitutional law, neither the government, nor the parliament, nor a certain proportion of the electorate can initiate a referendum process, nor can obstruct it if the president so decides.

C. Referendums are held only on proposals for constitutional amendments.

D. Only a specially-worded draft of a constitutional amendment can be submitted to a referendum, not a question of principle.

The Grand National Assembly, in adopting the laws amending the Constitution, also decides on which provisions shall be submitted to referendum together and which shall be submitted individually.

E. There is no substantive limits on referendums.

F.

3 a. Voting takes place on one day.

b. No.

c. Yes



- d. There is no specific quorum. The adoption of a constitutional amendment requires the approval of more than half of the valid votes cast.
- G. The effects of referendums are immediately binding.
- I. There is no room for popular initiative.
- J. There is no judicial review on the President's decision to hold a referendum. Irregularities in the voting process may be reviewed by the Supreme Board of Elections.
- K. There have been only two instances when a constitutional amendment was submitted to a referendum (in 1987 and 1988).
- II. There is no room for regional or local referendums.