

Local Referendums; As a Tool for Promoting Democracy and Respect for Human Rights in Albania

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Abstract: Despite all the efforts after twenty years, Albania is still considered a transitional government or hybrid regime (Freedom House, 2013). Direct participation of citizens in decision making through referendums is a tool to raise the level of public awareness and encourage critical debate of local community concerns among different actors of the society. Local referendums have the advantage to increase critical mass debate about the concern question raised. However, it is often argued that referendums are problematic because they weaken representative democracy. The notion of referendum implies the coexistence of representative institutions such as local councils and the procedures for the intervention of direct participation of the citizens. Seeing the fact that our representatives are far from representing citizens interests and also the fact of the citizens' apathy, this paper argues that local referendums help to develop local democracy, promoting direct participation and human rights values.

Keywords: referendum, democracy, participation, practicing democracy, human rights

Introduction

Despite a long period of efforts made by different political actors, but not only by them alone, Albania continues to be part of the group of countries in transition and have a hybrid regime (2013). This analyses clearly points out that Albania still has some duties to fulfill in order to be classified in the group of half-consolidated democratic countries, whereas its responsibilities are bigger if it wants to become a part of the group of consolidated democracies. Stepan and Linz define three minimal conditions to be fulfilled before any possibility to talk about the consolidation of democracy may come into existence. Firstly, they discuss about a modern state, in which free elections take place, which are, however, not sufficient; in which a chance to contest them exists as well as a democratic government, which does not violate the constitution and the freedom and rights of the minorities (Stepan, 1996).

The main issue for international partners is the integration process, while the consolidation of institutions, law implementation, the respect/veneration for the individual's fundamental rights and freedom are asked. An element which remains very important in the consolidation of democracy is the participation of citizens in decision-making and public life. As long as the citizens don't have the chance to express their thoughts, decide on issues belonging to them and elect representatives once in four years, participation of people plays a peripheral role.

Direct participation of citizens in decision-making develops the democracy, and at the same time it increases the level of direct civic engagement in debates pertaining the public needs and issues. Direct democracy can be developed in different forms, thus empowering the role of citizens in the local decision-making, whereas the local referendum remains an effective tool in the engagement of citizens in public affairs, which are directly related to their needs. The very fact of holding a local referendum increases the level of public discussion for the issue arisen by different groups. Local referendum – as an important tool in the development of direct democracy in a local level – has priority in the creation of critic spirit of the mass.

Different scholars have argued that referenda are problematic, for they weaken the representative democracy. However, the experience has shown that referenda have been successful when they are used rarely for practical issues both in a local level and national one.

Because democracy in Albania continues to function improperly; the role and voice of citizens in debates directly related to their own issues are not significant; the people's elected representatives to Local Councils in periodic elections are far from the representation of civil interests; and the weak role of civil society to encourage civil debates and participation is insignificant, I strongly argue on favour of local referendum practice. The Constitution of the Republic of Albania doesn't mention at all the local



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referenda, giving voice only to the national ones, since the organization of a referendum needs fifty thousand signatures for them to take place, or via the proposal of at least one fifth of the parliamentarians, or through the proposal of Council of Ministers. In the existing law, the practice of local referendum is unquestionably excluded, since it is technically impossible for every initiative undertaken by different groups in the local level to collect the signatures of fifty thousand electors. This number is many times larger than that of the electors living in the most of local units' territories (Town Halls and Communes). Different international actors, including OSCE/ODIHR have criticized the law on referendum, proposing important recommendations to have it amended, however up to the present these amendments have not been considered, setting back some initiatives for the organization of referenda in Albania.

The main focus of this paper will be on the empowerment of citizens in the local level through their participation in direct democracy, via law, which would give them the opportunity to organize referenda in the local level. I shall argue that local initiatives, which are closely related to the civil interests, should have the chance for the direct decision-making through the local referenda, which would serve as an efficacious and important tool for the consolidation of democracy in Albania. This paper will also bring forward the characteristics of local referenda in different countries in which democracy is consolidated, which, at the same time, don't violate the representative democracy. Instead, they constitute a tool for stimulating the responsibility and accountability. I shall also argue the need for direct participation through the local referendum, as an effective tool for solving the problems of the local community, and as a right to be freely expressed, through using the role of the majority within the Albanian context. I recognize, however, that referenda don't solve all the existing problems of the direct democracy.

The History and Practices of Referenda in Albania.

First of all let's explain the terms "referendum" and "local referendum", in order to avoid probable misconceptions and make possible a better understanding of this democratic tool in the hands of citizens. The referendum is related to the direct democracy; it is a democratic tool that enrolls citizens in controlling the political power. This implies a voting practice to accept or decline a proposal or a set of proposals for a given issue (Meidani, 2010). According to the Albanian Language Dictionary the word "referendum" is defined as "a form of people's thought expression performed by means of general voting for a state or social issue with a special importance" (2006).

Referenda can be organized around different issues, such as that for the adoption of a new constitution (in 1994 and 1998 in Albania), or, in other cases, for the passage of constitutional amendments (as was the case of those in France for the reduction of the president's mandate from 7 to 5 years); for the approval of treaties (in the cases when other countries become members of EU); as well as in cases of separation from another country (Montenegro from Serbia in 2006, and the repeated cases of Quebec in Canada for separation). The referendum is, thus, a form of direct democracy practice, which embodies the application of the universal democratic values. It can be initiated by political authorities such as the parliament, president or government and by the citizens as well.

So far I have brought definitions and examples of people's referenda in the national level, whereas this commentary is not directly related to them, since the main issue being discussed is that of local referenda. The local referendum is a form of direct democracy, giving the electors a mechanism through which they can express their views as regards the local issues (UK Government, 2011). It is related to the community issues for a given territory situated within the boundaries of a unit of local government, which can be a District, Town Hall or Commune. The local referenda are related to the needs of a particular community, which might have objections as regards those policies of local or central government which violate their interest. A good chance to organize a local referendum emerged after the local elections of 2011. Citizens could have been engaged to express their opinions on Scanderbeg Square's new appearance. In this case, however, we are still dealing with an issue directly related to the capital of the country and the number of individuals affected by this decision goes beyond the boundaries of the local governmental unit of Tirana. Another chance would be the organization of a referendum for the construction of an industrial park in Vlora. This is a typical local issue, which directly affects the industry of tourism of this city.

In the historical past, since the foundation of the Albanian state in 1912 and up to the present, Albania has very rarely organized big referenda. After investigating the foundation documents of the Albanian state, starting with the Fundamental Status of the Albanian Kingdom of 1928, and then with the Constitution of the People's Republic of Albania of 1946, to continue with that of 1976, no law-based practices are found. There have been only three organizations of referenda in Albania, carried out by political actors. Thus they have not been initiated by the citizens. The first referendum was organized in 1994 for the approval of the Constitution; the second was organized at the same time with the elections of 1997 and was concerned with the issue of whether

Albania would be a Republic or a Monarchy; the third was organized in 1998 and again its focus was on approval of the Constitution of Albania. Despite the recent attempts for a referendum on the issue of waste importation, made by the Alliance Against the Trash Importation; and more recently that of the Red and Black Alliance for national unification, their organization has not been made possible.

The International Referenda Practices

The civil initiatives have their roots in the politics of USA, where referenda are part of the legislature of 24 states (Tolbert, C. and Smith, D. 2006). This refers to the model of direct democracy, which, through the incentive of a petition, makes the organization of a referendum possible. This mechanism is also applied in the record-holding state for referenda organization: the political system of Switzerland, which is organizes the highest number of referenda in the world (Christin, T., Hug, S. & Sciarini, P., 2002). Since 1848 – the period of Swiss Constitution – till nowadays more than 550 national level referenda have been organized, while in local or canton level in Switzerland approximately 10 referenda per year take place. Not only Switzerland, but other countries which have a long democratic tradition such as France, United Kingdom, USA, Germany, Australia etc., have organized many referenda in local or national level depending on the issue in question. This example is followed by many other new democracies of Eastern Europe or Baltic Countries. Referenda have early taken place even in Latin America. For example, referring to the history of Chile, the practice of referenda is found as early as 1925 (Meidani, 2010). As an example of national referendum I remind you of that of Spain which was about the issue of becoming a member of NATO. I also bring forward the referendum for the European Constitution Bill in 2005, which goes beyond the national boundaries. Through this referendum France and Netherlands voted against the European Constitution at the time.

In the United States of America, the practice of referendum is considered as the most important direct democracy instrument available because of its potential to change the direction of the political debate program. Referenda also take place in six countries of former communist bloc (Lupia, A. & Matsusaka, J. 2004). Referenda which are called by local councils also exist in these countries: Belgium, Czech, Estonia, England, Finland, Ireland, Luxemburg, Netherlands and Macedonia. In Hungary a local referendum can be initiated by one fourth of a local council or by one of its commissions, thus providing a very effective way for the local governing institutions to call for referenda. In Croatia a governing group of an autonomous governing unit can call for a local referendum. In Bulgaria a local referendum can be initiated by one fourth of local

councilors or by the Mayor, but it is up to the local council to decide on the initiative.

Why do we need Local Referendum?

It is a fact that Albania continues to be considered “a difficult case” of democratization and an isolated case from the other former communist countries, which have experienced the changes of the regime. It is for these reasons that it’s necessary to effectively use the tools which help the democracy and civil participation to function better. Albanians have a high level of apathy when it comes to their participation in civil activities (BTI, 2012). The social changes which have taken place during the transition period in Albania, have had an immense impact on the loss of connection between electors on the one hand, and the elected and institutions on the other, thus making it difficult for the latter to represent the social group and their political programs for and through which they enter the national or local election race. This is the main concern in the work of Ingrid Van Biezen, entitled Political Parties in New Democracies, where he states that contemporary democracies have stopped performing their representative and governing function (Biezen, 2003). The absence of responsibility from the part of these institutions reflects and feeds the civil non-engagement in public affairs. Thus, if measures to address this problem are not taken, we will be dealing with an increasing civil apathy and non-engagement.

The need for engaging the public in the process of decision making is urgent. Electoral statistics show that there are different levels of progress for different electoral campaigns, which points out that the level of participation in local elections is increasingly higher than that of national ones (KQZ, 2011). This is one of the most significant indicators which show that citizens are much more interested in community issues than in political affairs which go beyond the local ones. Another reason for arguing that the practice of local referendum is necessary in Albania is the weakening democracy. The use of this tool by the citizens would undoubtedly affect the consolidation of democracy, giving the citizens the opportunity to exercise more direct power. This would strengthen and multiply the connections between the elected and the citizens; further develop the public hearing and create the possibility to develop public debate in a greater extent. The electoral problems also appear as regards the increasing diminishment of the direct election exercise. In 1991, all the representatives were nominally and directly elected, whereas in 2010 no central institution (the Parliament, Government or President) is directly voted by citizens. The problem of direct exercise of people’s will remains an essential issue for the future because of the lack of experience and chance for the implementation of

direct democracy in other forms. “An optimal solution would be the creation of the mechanism of periodic elections in the form of direct democracy (local and national referenda) for different issues of major interest; it would be a mechanism for a greater representation, increase of trust in political institutions and citizen education with the culture of election” (Krasniqi, 2009). In this sense a representative governing and the procedures of direct democracy complement each other encompassing a wide range of concrete problems in the political agenda. Moreover, the direct democracy increases the level of civil engagement in legislative, political, economical, environmental etc., issues, thus distressing the citizens’ apathy (Meidani, 2010). So the direct democracy is not only a constitutive part of political education and civil decision-making, but it also serves as an encouraging ‘food’ for the social and individual autonomy.

Albania, in all international reports compiled by the most important institutions which support its integration, is mentioned for the high level of corruption among high bureaucrats, but not only for them. This indicator constitutes another reason why there should exist the possibility to exercise the direct democracy. The citizens will have at their hands another tool to react against the frequent abusive decisions taking place in Albania in pure interest conflicts, mistreating the civil interest. The proponents of representative democracy should not worry about the direct democracy, since the referendum will remain a complementing form and not a dominant one. So, as we have already mentioned in the definition of the term ‘referendum’, which we gave before, this (the referendum) can take place only for very special and particular cases, but let’s not forget too, that the representative democracy in Albania hasn’t really functioned during these twenty years of transition. The findings of a study on local governing and the level of representation, conducted by a non-governmental organization in the District of Kukës, indicate that eight in ten people don’t believe the local councilors to represent the community and their interests. There is a multitude of issues relating to the legitimacy of political institutions, and their small impact in the community life. All of these issues result from the absence of civil engagement.

The impact of local referenda in the function of local government is another important issue of this debate. One of the main local government principles deals with holding direct elections for the community where they serve. The elected representatives of the local government – the councilors – should play the role of citizens’ voice transmitter in the local governing, defending the interests of the community; in local policies and in their management. They should definitively be held responsible to their

electors for the decisions they make and the actions they undertake. If it has to be like this, and if this happens, chances are that the tool of direct democracy, *the referendum*, is almost of no use. Of course as for the local councilors and governors their answer to whether a local referendum is necessary would be negative. A mechanism that would get in the way of direct democracy is to leave the decision for a referendum in the hands of the local councilors.

The Problems of Information and Public Informing.

Informing participant actors in a given process is crucial for decision making. The supporters of representative democracy and opponents of referenda would strongly emphasize as a main argument the informing and populist aspect of the direct democracy. According to the critics of referendum, the citizen which part-take in voting, are not adequately well-informed to make important decisions, so they can be manipulated by influential personalities of the society and the propaganda transmitted by the media. In support of these arguments we can find a dozen of pretensions according to which it’s through democracy that ‘the tyrannies of the majority’ can come alive, bringing forward very dark historical periods such as those of Hitler and Musolini, who used the direct democracy to empower their oppressive role. Another similar more recent case is that of the 1978 referendum in Chile, where the army clique in power asked the people whether it supported that government and the results where 95% in favor of the clique. In this same country in 1988 it was through a referendum that an end was put to the Pinochet regime and the transference of power to a democratic government took place. Let’s not forget, however, that this commentary considers and defends the idea of local referendum as an important tool for civil engagement and consolidation of democracy in the country.

Local councilors and the Chiefs of local government are elected for their ability to decide on important issues and to inform the citizens. It is their role to represent the citizens’ interests and make mature decisions, informing the citizens every time their interests are harmed. However even this informing mechanism is as weak as their representation as far as the citizens’ interests are concerned. The councilors and the other local elected can use different tools to protect citizens against misinformation, or to manipulate the decision-making. So this is bilateral, while it is up to the citizens to choose.

Despite the support for direct democracy we should recognize the fact that an unavoidable emphasized absence of it is about informing the public in cases when a referendum on a particular issue is to take place. The interested parties, however, which think differently, in the conditions of democracy and free

speech, have in their disposition the means to oppose it and to inform citizens in order for them to make the right decision. I would argue that since referenda are held only for a particular issue this gives enough time to choose what accords with the interests of the citizens. Citizens are as equal as when they elect their representatives. They are never 100% informed about the candidates proposed to them, however they vote to elect them in the way they think. It would be naïve and impractical to expect the electors to be as informed as the elected. This argument can be used by the critics of the practice of referendum in order to stress the absence of information and the reasons to oppose it. But what is the extension of this problem? The researchers recognize that voters are more capable than the decision makers in the processes of elections. The majority of the uninformed voters can define their decisions based on information provided through different means or channels. In these cases the numerous public debates in the media, which take place between actors positioned as opponents of referendum holding, are of value as they serve as a good means to get informed and to vote pro or con.

Is it the majority or the minority which benefits from the local referenda?

Maybe the biggest critique addressed the referendum practice is related to what Tocqueville in his book "Democracy in America" refers to as "tyranny of the majority" (Tocqueville, 2002). Put in a few words, the direct democracy implies the majority of voters supporting a particular issue/alternative and as a result the minorities are in a disadvantaged situation (Tolbert, C. & Smith, D., 2006). In the case of Albania, however, this argument loses a bit of its value regarding the local referenda, since there already exists a dominant homogeneous populace. It will be the democracy and all the local actors the ones who would benefit from the local referenda. In this case the minority is constituted by the officials of the local government, while the rest of the citizens with no exception can be considered to be part of the majority.

The revision of academic literature – specifically for states like USA, New Zealand, and Switzerland, which have a history in the organization of referenda – has identified two main beneficial aspects: there are evidences showing that referenda produce a high educative effect, in the sense of the increase of the possibility the citizens have to vote in USA (Tolbert, 2003), the presence of referenda increases the participation as high as 5 %, although in Europe this practice is not tested yet; however this does affect the increase of civil engagement (Qvortrup, 2007). The second effect concerns the representation: there are evidences from USA which show that the states which practice the model of local referendum, have more consistent policies with the public opinion than those which don't have this practice. Moreover,

research in Europe and USA detects a high level of public support for referenda, as a direct democracy mechanism (Lupia, A. & Matsusaka, J., 2004).

Another reason why referenda are important is an economic one, since they provide an effective direction for policies. According to Tolbert and Smith the states that apply the model of referendum have partially reduced the general expenses because of the reduction in taxes and increase of the users'/clients' demands. The organization of referenda reduces the general expenses; the states applying the models of direct democracy spend 4 % less than those which don't apply these models; the states which organize referenda are more responsible towards the public opinion; civil initiatives tend to produce general financial policies; the studies on the quality of political decisions – despite their problems in the research methodology – tend to indicate a more efficient and fast economic growth in those states which organize referenda. This series of arguments gives us the opportunity to accept the fact that the majority, which is constituted by the middle and low class of the society which cannot have the appropriate representation in the local councils and whose voice is rarely or very rarely listened to, is the main social body which takes advantage of the local referenda practice. As a result it is the system itself which would benefit the most. So the direct democracy will produce a more responsible governing for its citizens.

Conclusions

In this commentary I have argued that local referendum is a mechanism for giving an impetus to the civil engagement towards governing and active participation, thus directly affecting the consolidation of democracy in Albania. The Albanian Parliament should compile and pass the law on local referenda by way of consulting all the interested parties, giving the citizens the opportunity to use the mechanism of direct democracy for particular issues directly concerned to their interest.

The experience of the countries which apply the practice of local referenda has showed that referendum use for specific and particular issues has benefits and yields positive effects on:

- Civic education
- Increasing civil engagement and active participation
- Development of public debate
- A greater responsibility in local policies
- Increase legitimacy of politics

We believe that the inclusion of the practice of the Local Referendum in the Constitution of Albania and Electoral Code will have a significant impact in the relations between citizens and officials, increasing the level of responsibility of the latter and

establishing the trust of citizens to them. This will make the promotion of democracy values possible and the respect of human rights as well. It will also make better decisions possible and the interests of citizens represented in the elected local councils, clearly improving the local communities' life quality. It is of crucial importance to emphasize that the people should have his own mechanism to use in those special cases when the politics doesn't consider its citizens' interests as its first priority. The right to use the mechanism of direct democracy is a legitimate right and it should function.

Bibliography:

- ✚ Biezen, I. V. *Political Parties in New Democracies*. Palgrave Macmillan, 2003.
 - ✚ Krasniqi, A.. *Zgjedhjet ne Shqiperi*. Tirane, 2009.
 - ✚ Parlamenti i Shqiperise, *Kushtetuta e Shqiperise*, 1998.
 - ✚ Qvortrup, M. *Supply Side Politics. How Citizens' Initiatives could revitalise British politics*. London: *Centre for Policy Studies*, 2007.
 - ✚ Sartori, G. *C'ështëë Demokracia*. Tirane: Dituria, 1998.
 - ✚ Stepan, J. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Johns Hopkins University Press, 1996.
 - ✚ Thomai, J. *Fjalori i Gjuhës Shqipe*. Tirane: Akademia e Shkencave e Shqiperise, 2006.
 - ✚ Tocqueville, A. D. *Demokracia ne Amerike*. Tirane: Fondacioni Soros & Kristalina, 2002.
 - ✚ Tolbert, C. J. *Cycles of Democracy: Direct democracy and institutional realignment in the American states*. *Political Science Quarterly*, 2003, pp. 467-489.
- Journal Article**
- ✚ Bertelsman Stiftung , BTI 2012, Albania Country Report, Gütersloh: Bertelsmann Stiftung, 2012.
 - ✚ Christin, T., Hug, S & Sciarini, P. Interests and information in referendum voting: An. *European journal of political research*, 2002, pp. 759-776.
 - ✚ Lupia, A. and Matsusaka, J. Direct Democracy: New Approaches to Old Questions. *The Annual Review of Political Science*, June 2004, pp. 463–482.
 - ✚ Tolbert, C and Smith, D. Representation and Direct Democracy in The United States. *Journal of Representative Democracy 42.1* , 2006, pp.25-44.
- Electronic Source:**
- ✚ FRIDE, 20 April 2010, *FRIDE*. Retrieved January 4, 2013, from: <http://www.fride.org/publication/758/democracy-in-albania>
 - ✚ Government, D. f. January 2011. *Government of UK*. Retrieved Janary 20, 2013, from Localism Bill: local referendums: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6045/1829672.pdf
 - ✚ Freedom House. January 2013., *Freedom House*. Retrieved January 19, 2013, from http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Release_Booklet.pdf
 - ✚ KQZ. 2011. *Komisioni Qendror i Zgjedhjeve*. Retrieved Janar 20, 2013, from Komisioni Qendror i Zgjedhjeve: http://www.cec.org.al/index.php?option=com_content&view=article&id=244%3Apjesmarrja-ne-votime&catid=121&Itemid=146&lang=sq