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CONFERENCE PRESENTATION: BRIEF REMARKS ON REFERENDUMS IN ITALY[1]

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Abstract. Italy is one of the Western democracies in which referendums are held with the greatest frequency. The use of the referendum, in its various forms, has become an important issue in Italy and is debated on all levels, from academic analysis to public debate, including the work of journalists and clashes between political actors and subjects. However, the intense and continuous debate over the past decades, and above all in the run-up to votes, has often remained within the limits of partisan interpretations, which has given rise to distortions of perspective, acritical condemnations and an equally acritical exaltation of the referendum as an instrument.
Referendums have often been understood within the Italian system, not so much as a means of stimulating or supplementing the activity of Parliament, but rather as an exception which, due to its very nature, gives rise to a situation of competition and conflict with the representative system.

Keywords: Italy, referendum, Constituent Assembly, conflicts.

Introduction

The subject of referendums has become highly topical for Italian law and the debate about referendums is very timely:
- a *regional* referendum was held last Sunday[3], just five days ago. Although it was a referendum, concerning only two regions, it's an extremely important referendum because it could have deep consequences and could bring relevant constitutional and political changes;
- a *constitutional* referendum (namely a referendum on the amendment of the Constitution governed by Article 138 of the Constitution[4]) was held a year ago. On 4 December 2016, Italians voted against constitutional reforms proposed by the government led by Matteo Renzi.
- a *referendum to repeal legislation* pursuant to Article 75 of the Constitution, was held in April 2016.

[1] This speech was presented in International Scientific – Practical Conference,25TH Anniversary of the Constitution: Experience, Problems and New Challenges. The event was held on 27 October 2017 at the Parliament of the Republic of Lithuania. Organizers of the conference: University of Mykolas Romeris, Office of Seimas, Committee of legal affairs of Seimas, Ministry of Justice, Lithuanian BAR.
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[3] The autonomy referendum of 2017 took place on 22 October in Lombardy, home to Milan, and Veneto, which includes Venice. Two of Italy's most prosperous regions voted overwhelmingly in favour of greater autonomy from Rome. See paragraph 3 of Article 116 of the Constitution. The poll was not binding, but might have consequences in terms of negotiations between the Italian government and Lombardy and Veneto, as the two regional governments will ask for more devolved powers.
[4] *Constitutional* referendums have a contingent status. Indeed, until October 2001, no constitutional referendum had ever been held, even though the Constitution had been amended on various occasions.

Within the space of just eighteen months, referendums of three different types have been held.

In fact, the Italian Constitution provides for various types and forms of direct democracy[5] and various types of referendums.

It will not be possible within the short space available in this paper to provide an account, even in summary form, of the various legal problems surrounding such a broad and fluid issue.

This short presentation will thus consider referendums held on the *national* [6]level, namely referendums to repeal legislation as provided for under Article 75 of the Constitution[7].

First of all, it should be noted that Italy is one of the Western democracies in which referendums are held with the greatest frequency. Over the course of little more than 40 years[8], Italian voters have been consulted around twenty times concerning 70 referendum questions. Between May 1974 and April 2016, 17 referendums were held in Italy to repeal legislation pursuant to Article 75 of the Constitution, along with two consultative referendums[9] and three constitutional referendums under Article 138 of the Constitution.

The use of referendums, in their various forms, has become an important issue in Italy and is debated on all levels, from academic analysis to public debate, including the work of journalists and clashes between political actors and subjects. However, the intense and continuous debate over the past years, and above all in the run-up to votes, has often remained within the limits of partisan interpretations, which has given rise to distortions of perspective, acritical condemnations and an equally acritical exaltation of the referendum as an instrument.

A referendum should be an instrument enabling the electorate to make decisions that have an immediate effect within state law. But very often, the debate increases political conflicts and referendums appear to be a source of more conflict rather than acting as a real improvement within the institutional framework.

This begs the question as to why referendums are so significant within the Italian legal system.

1. The Referendum within the Constituent Assembly

As is always the case (Bognetti, 1994, p. 23), the reasons for this have deep roots in history.

The Italian people elected the Constituent Assembly that adopted the Constitution of the Republic of Italy (The Constitution came into force on 1 January 1948), and on 2 June 1946 in the first election according to universal

[5] With regard to the Italian system, the instruments of direct democracy are: popular legislative initiative (see art. 71 of the Constitution), the petition (see art. 50 of the Constitution), and the several kinds of referendums. The Founding Fathers intended that these instruments should perform a "propulsive" function. In practice however, popular legislative initiative has an entirely marginal significance, and due to their extremely limited practical effects, petitions have now fallen entirely into disuse. The most important instrument of direct democracy in Italy is undoubtedly the referendum, which involves the consultation of the entire electorate with a legally binding result. The Italian Constitution, as pointed out above, provides for various types of referendums.

[6] The instrument of the referendum was envisaged by the Constituent Assembly as operating on both regional and local levels (see articles 121, 123, 132 and 133 of the Constitution) as well as nationally.

[7] There is an extremely rich amount of literature available on this issue. In particular, the issue of referendums has been engaged with in the Italian literature on such a scale that even an attempt to present an account of it in this study would be extremely arduous and indeed, most likely inappropriate. We shall thus limit ourselves to referring to various commentaries on the Constitution (Articles 75) along with the extremely comprehensive bibliography provided in these.

[8] Italy's first popular referendum was the referendum on divorce held on 12 May 1974.

[9] The regional referendum that was held on 22th October 2017 was a consultative referendum (see above note 3). In addition, a consultative referendum was also held in 1989 concerning the granting of constituent authority to the European Parliament, although this was made possible by a constitutional law enacted on an *ad hoc* basis.

suffrage, when women voted for the first time. At the same time as elections to the Constituent Assembly, an institutional referendum was also held in which Italians were asked to choose whether the country should be a monarchy or a republic.

The history of the Republic of Italy thus started with a referendum.

The adoption of the referendum within the Italian system by the Constituent Assembly was thus facilitated by the evident consideration that the Republic had originated from a plebiscite. In addition, the decision by the Founding Fathers to make a provision for referendums within the new Constitution also arose within a climate that was adverse to any form of centralisation of power within which the Assembly was operating (as is known, the birth of the Republic of Italy was marked by a clear opposition to Fascism in the wake of the twenty-year dictatorship).

Finally, it is important to note the close connection between the instrument of the referendum and the principle of popular sovereignty enshrined in Article 1 of the Constitution, which contributed to creating fertile ground for the adoption of an instrument enabling the sovereign popular will to be expressed.

Thus, a sense of the novelty and discontinuity at what was being introduced was widespread within the Constituent Assembly.

However, despite the initial favourable stance towards referendums, there was a fundamental disagreement regarding the range of referendum types proposed within the Constituent Assembly, including amongst authoritative and influential scholars, and the instrument of the referendum was scaled back significantly during the final stage of approval. The issue of the use of a referendum was considered in particular by the 2nd sub-committee thanks to the work of Costantino Mortati (Costantino Mortati 1946). An important contribution was also made by Luigi Einaudi, who was elected President of the Republic on 12 May 1948.

The rich and variegated range of referendum types originally proposed was in part modelled on the example of the German Weimar Constitution of 1919 (see Article 73 of the Weimar Constitution). This provided for a broad variety of instruments of direct democracy, which also included referendums concerning policy matters and proposals and popular legislative procedures in a strict sense. Provision was made for referendums to repeal legislation, referendums to resolve disputes arising between the two houses of Parliament concerning specific draft legislation, referendums to confirm legislation already approved by Parliament, and so on.

The reasons for the gradual abandonment of the initial stance, which was much more favourable to referendums, may not only be found in specifically political considerations (including first and foremost the staunch opposition by the Communist Party) but also in the subsequent dissemination of widespread mistrust in and prudent caution towards an instrument which had traditionally been regarded as foreign to the parliamentary model of government towards which the country was moving. Above all, it was regarded as dangerous due to the maintenance of the "numerous compromise choices", which had been painstakingly made by the representatives of the people and was regarded as a harbinger of great transformations and problems. It's not superfluous to point out the highly heterogeneous and profoundly diverse composition of the ideological groupings represented by the deputies elected within the Constituent Assembly.

These forces, which were profoundly divided amongst themselves, shared in common the aim of giving birth to a state that was diametrically opposed to the fascist state, and broadly speaking, substantially new compared to the pre-fascist state. This was certainly a cause for the compromise status of various rules within the Constitution, and indeed of the Constitution as a whole. There is full agreement within the literature concerning the fact that the Italian Constitution is the result of a compromise between Catholic, Liberal, Socialist and Marxist political forces. Moreover, it is important in this regard not to underestimate the monopoly claimed by the political parties over the aggregation and political synthesis of the popular will, which led them to consider with suspicion an instrument

that lent itself to use by interest groups and organised lobbies in order to promote their own political agendas, without any mediation through party structures, and in fact at times with an "anti-party" aim[10].

The stance of mistrust and caution did not apply solely to the instrument of the referendum. The opposing groupings, comprised of profoundly heterogeneous political forces, considered that, given the uncertainty as to who would win subsequent elections, it might be a good idea to ensure in general a low profile for the governmental authorities; otherwise, any opponent who gained control of the governmental apparatus in the future would have access to an instrument that was capable of implementing its plans quickly and in full, and perhaps of crushing an opposing ideological grouping. Essentially, the parties tacitly agreed to shape the powers of the state according to the dictates of prudence. This was due to the lack of a strong central power and the fact that the Parliament at the centre of the political system was based on the anachronism of perfect bicameralism. (Bognetti, 2001, p. 126).

However, the result achieved appears in part to run counter to the way in which the debate concerning the approval of the Constitution developed, as the referendums provided for under the Constitution have a significant capacity to impinge upon the operation of the institutional system. Not only referendums to repeal legislation, but also constitutional referendums as well as regional referendums are capable of causing traumatic effects on the normal operation of representative bodies, as they may result in the open rejection of the actions of Parliament and the Government by the electorate.

2. Referendums to Repeal Legislation Pursuant to Article 75 of the Constitution

Referendums to repeal legislation, governed by Article 75 of the Constitution, involve the subjection to a popular vote of one or more questions concerning the full or partial repeal of legislation already in force. It is thus an instrument through which the electorate may have a direct effect on the legal system by repealing legislation[11] or acts with the force of state legislation, or individual provisions contained in such acts. As the Constitutional Court has held (Judgments No. 29 (1987); Judgment No. 15 (2008), "the referendum is an act/source of law within the legal system with the same status as ordinary legislation"[12].

In the hierarchy of laws, referendums have the same effective level as formal laws. The electorate is given the possibility, on the initiative of minority groupings (or regions accounting for a minority of the territory) to object to the choices made by the majority of the representatives elected by voters: those adopted laws by representatives, which the electorate then repeals. In effect, referendums have often been understood within the Italian system not so much as a means of stimulating or supplementing the activity of Parliament, but instead as an exception which, due to its very nature, gives rise to a situation of competition and conflict with the representative system. It is thus no coincidence that the specific operation of this instrument has been conditioned by law,[13] as the typical expression of political representation, namely of Parliament.[14]

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[10] See P.Barile, in P.Barile C.Macchitella (eds), 1979, p. 50, according to whom the referendum to repeal legislation would constitute the "'anti-party' weapon *par excellence*".

[11] However, a referendum may have potential legislative capacity: a removal of individual words from the legislation previously enacted may give rise to meanings that differ significantly from the original meaning, resulting in the creation of new norms. See below § 3, note 28.

[12] It amounts to a "*sui generis*" source of law, the content of which is "predetermined under constitutional law". See: (Guastini, 2010, p. 322; Crisafulli 1984, p. 98).

[13] See article 75(5), which provides that "The law establishes the modality for conducting a referendum".

[14] A law governing all of the procedural aspects not regulated in the Constitution itself was only enacted in 1970, a full 22 years after the Constitution entered into force. Until that time, the ability of the people to state its position through an exercise of direct democracy was precluded, having been boycotted by obstructionism by the parties comprising the parliamentary majority, which often ended up placing their own interests even above their obligations to implement the Constitution. The extremely sluggish pace at which legislation on referendums was implemented was in fact attributable to so-called "majority obstructionism", which was responsible for the delays in the implementation also of other institutes of constitutional law, such as the Constitutional Court, the Supreme Council of the Judiciary and the legislation on the regions, all of which pursued the

The first referendum on the repeal of legislation in Italy, which was held in 1974, related to the law on divorce. It has been followed by many others, 67 in total,[15] with the most recent in April 2016.

Paragraph 1 of Article 75 of the Constitution stipulates that at least 500,000 voters must support any request for a referendum; alternatively, it also stipulates that such requests may be supported by at least five regional councils[16]. The following paragraphs address two other very important issues of the legislation on referendums: those relating to the substantive limits and those relating to the procedural limits on the effects of referendums.

First and foremost, as regards the substantive limits, the Constitution stipulates that, due to their complexity and importance, certain areas of law may not be the object of referendums. These include tax and budgetary laws, amnesties and the remission of sentences as well as the authorisation to ratify international treaties. The inadmissibility of referendums in relation to laws in these areas is based on different principles. Such laws are in general merely formal in nature, although in reality amount to acts of political direction of and control over the activity of the government. Likewise, it is also necessary to prevent the repeal of laws that impinge upon the wealth of private individuals and impose financial charges, and also to block any pressure in favour of referendums that lend themselves to evident demagogic exploitation.

With regard to the procedural issues, it is important to recall the control carried out by the Central Office for Referendums established at the Court of Cassation[17] along with the review by the Constitutional Court[18] concerning respectively the legality and the admissibility of the referendum.

Due to the serious nature of the effects resulting from a referendum to repeal legislation, the Constitution provides for a two-stage quorum[19]: one relating to overall participation, according to which the referendum can only validly repeal legislation if a majority of the electorate (for the Chamber of Deputies) participated, and another requiring a majority in favour of the proposition. The legislation is only repealed if a majority of the votes validly cast approves the repeal. The rationale for such a high turnout threshold, laid down in paragraph four of Article 75, is explained by the fact that a law cannot be repealed by a majority calculated on a modest turnout of the electorate, because in such a scenario it would in actual fact express the opinion of a *minority* of the electorate. In other words, the Constitution imposes the quorum in order to ensure certainty that a large percentage of voters actually wishes the provision to be repealed.

It must thus be pointed out in this regard that the electorate need not necessarily state its position by participating in the decision making procedure but also by refusing to do so, precisely because if a majority of the electorate decides not to participate in the referendum it has the effect of invalidating the popular vote. In this case, the popular will is thus the result of a "negative act" and not a positive decision.

common rationale of substantially limiting the powers of the governing majority. The approval of Law no. 352 of 1970 on referendums was the result of a political compromise between Catholic and secular groupings within Parliament in the wake of specific circumstances, namely the turbulent and much-contested approval of the law introducing the possibility for married couples to divorce, namely Law no. 898, also of 1970. In fact, the law on referendums was the compensation requested by the Catholic groupings in return for desisting from attempts to obstruct the passage of the law allowing for the possibility of divorce. The law on divorce was the first area in which the instrument was specifically experimented. On 12 and 13 May 1974, with an extremely high turnout in the referendum (87% of registered voters participated), Italians decided to maintain the law on divorce. 59.26% of those who participated voted in favour of maintaining the law, whilst 40.74% voted in favour of its repeal.

[15] In addition, further referendums have not been held, even after they were upheld as admissible by the Constitutional Court, due to the amendment by Parliament of the provisions the repeal of which was sought. See below note 24.

[16] See below, note 34.

[17] See art. 12 law no. 352 of 1970.

[18] See Constitutional Law no. 1 of 1953. See below § 3.

[19] See: (Servizio Studi del Senato, 2012).

In practice, the quorum is quite a sore point. Almost half of all referendums to repeal legislation[20] held to date have failed precisely due to the failure to achieve the quorum[21]. The strong increase in abstention, which has now spread in consideration of all forms of voting (Anduiza Perea, 2002), has often favoured the opponents of the various referendum questions who, rather than campaign in favour of a no vote, have found it easier to argue in favour of abstention.

3. The Constitutional Court and Rulings on the Admissibility of Referendums

According to a renowned political scientist (Lijphart, 2012), referendums have a greater weight in Italy compared to other countries because they are not called by the Government, but rather by the people. It should also be added that, within the Italian system, this decision also falls to the Constitutional Court, which plays a fundamental role in the referendum procedure. The reference parameter of constitutional law is provided by Article 75 of the Constitution, paragraph two of which provides that "No referendum may be held on a law regulating taxes, the budget, an amnesty or sentence remission measure, or a law ratifying an international treaty." However, after an initial period (Judgment of Constitutional Court No. 10, 1972; No. 251, 1975), during which the constitutional provision cited above was interpreted literally, the Court identified other implicit limits in addition to the express limits, thereby creating a particularly stringent filter for requests for referendums. Following a leading judgment at the end of the 1970s (Judgment of Constitutional Court No. 16, 1978)[22], the Court started to change its approach, substantially expanding the scope of admissibility proceedings (Chiappetti, 1974; Pertici, 2010). First and foremost, it held that the limits laid down by Article 75 were to be interpreted broadly. This meant that not only laws concerning the approval of budgets would be inadmissible, but also other laws relating to the much broader "corrective financial legislation", including the so-called finance law, now known as the stability law; in addition, not only questions relating to laws granting authorisation to ratify treaties are inadmissible, but also those relating to laws required for their implementation. It should be added in this regard that a referendum such as that recently held in the United Kingdom, in which British citizens were called upon to choose whether to remain in or leave the European Union, could not be held in Italy.

The Court also noted that "there are various values of constitutional standing that require protection, which call for the introduction of new criteria for establishing admissibility beyond those laid down in Article 75(2) of the Constitution. A fundamental criterion introduced by the Court was that the referendum question must be homogeneous, clear and coherent.

In the opinion of the Court, applications formulated in such a manner that each question to be submitted to the electorate, should they contain a variety of heterogeneous questions lacking a rationally unitary core, may experience the result of being considered to be inadmissible, and that they cannot be brought within the logic of Article 75 of the Constitution.

Article 75 postulates a clear and precise response of either yes or no to a question which must in turn be clear and precise. Otherwise, this would result in a manifest and arbitrary departure from the goals for which the referendum

[20] See below in Conclusions.

[21] It is important not to underestimate the costs of referendums. The last referendum held in Italy in April 2016, in which the quorum was not reached, costed around 300 million euros. See: Corriere della Sera, Referendum senza quorum, i costi di un buco nell'acqua, 18-04-2016, p. 1. See in this regard also Law no. 157 of June 1999, which was subsequently amended and updated in August of 2006, providing for a reimbursement of one euro for each valid signature collected in the event that the referendum reaches the quorum stipulated for the vote to be valid. This is a form of public financing which on one hand, compensates the civic committees that take steps to promote a referendum, whilst on the other hand also reimbursing the all parties that have embraced the relevant principle at issue in the referendum.

[22] That this was a unique event has been confirmed by the lively debate that this decision has aroused within the literature on the pages of the main public law journals. See: Giurisprudenza costituzionale, Politica del Diritto, Giurisprudenza italiana, Foro italiano, Diritto e Società.

to repeal legislation was introduced into the Constitution as an instrument for the "genuine expression of popular sovereignty" (Judgment of Constitutional Court No. 16, 1978, cit.)[23].

On the basis of this and other criteria[24] introduced by the Court, to date more than 60 questions have been "blocked", i.e. ruled inadmissible. Almost one referendum application out of two is struck down following the Court's ruling. In this regard, it should be pointed out that the Court's ruling, which is evidently not framed in precise and foreseeable terms, could excessively expand the role of the judges on the Constitutional Court and could have repercussions on politics by exposing the judges to the risk of being dragged into political controversy (Chiappetti 1974, p. 197). It has been pointed out on various occasions in the literature (Onida, 1978), how the Court has vested itself with substantively unlimited and practically uncontrollable freedom of choice, and thus, a power of review of the will of the people which is probably broader than that which theoretically falls to it under the Constitution.

For some time now, there have been calls within the literature for the Court to make its decisions at an earlier stage, precisely in order to involve the Court in becoming more involved in the last stage of the long referendum process, when a consensus surrounding the questions has already been established and the attention of all political players is focused on this last obstacle (Biscaretti di Ruffia, 1989 p. 459).

It is not possible within the short space available in this study to consider in greater depth the procedural aspects of referendums or to dwell on the - albeit highly significant - role of the Central Office established at the Court of Cassation,[25] nor indeed on the equally important role of the committee promoting the referendum (Judgment of Constitutional Court No. 69, 1978).

However, it is important to make several clarifications. As already noted, a referendum to repeal legislation is a source of law,[26] as it is capable of terminating the effects of legislation. In this regard, it must be observed first and foremost that in contrast to a repeal of legislation, a repeal ordered by a referendum (by way of a decree of the President of the Republic proclaiming and endorsing the result) can only occur expressly and not also tacitly on the grounds of normative incompatibility or implicitly as a result of the enactment of new legislation applicable to the area of law as a whole.[27]

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[23] The opportunity resulted from an application to subject to one single referendum a total of 97 articles of the Criminal Code, ranging from violations of the press laws, through the expulsion of foreign nationals, to incitement and corporate sabotage. The Court held that, in stipulating a clear alternative between a "yes" and a "no", which cannot be differentiated from case to case, multiple non-homogeneous questions fall foul of the essential prerequisites for referendums, distorting the will of the electorate and thus, the freedom of the vote. In 1981, referendums concerning 31 articles of the Criminal Code were also ruled inadmissible on the grounds of non-homogeneity. See Constitutional Court, judgment no. 28 of 1981.

[24] The Court also held that the referendum question must relate to provisions that may be associated with a "common principle", which must be clearly apparent. On this basis, it ruled as inadmissible, questions that were deemed to be "non-homogeneous" and "incomplete" on the grounds that they left certain provisions intact even though these also fell under the "common principle" or because the consequences of the repeal were not clear. The Court also introduced the criterion of laws with a content mandated under constitutional law, which are not amenable to repeal or amendment by referendum, and laws required under constitutional law, which are by contrast not immune to referendums. The boundaries of this criterion appear to be unclear, as it is certainly difficult to establish the difference between the two types of law. See: (Penasa, 2005).

[25] It is required to call a halt to the referendum procedure in the event that the legislative act or the individual provisions within it to which the referendum relates are repealed before the date scheduled for the referendum (Article 39 of Law no. 352 of 1970). However, if a repeal is followed by the enactment of new legislation in the same area of law that leaves intact the principles inspiring the previous legislation along with the essential normative content within the individual principles, the referendum will be transferred to the new legislative provisions. It falls upon the Court of Cassation to assess the new legislation in the light of the referendum questions. The intention behind this is to prevent a "cunning" legislator from only formally amending a law in order to avoid a popular pronouncement concerning it. On all of these points, see Constitutional Court judgment no. 68 of 1978 on the repeal of provisions concerning nuclear power stations.

[26] See above note 12. See also (Crisafulli, 1978), according to whom, repeal means "to make a different provision". Accordingly, the generation of the repealing effect is an indicator of the normativity of the act providing for it.

[27] Furthermore, considering its repealing effect, a referendum can never have a retroactive effect.

In addition, while it is the case that a referendum that can repeal legislation is a form of "negative" legislation in the sense that its aim is only to repeal, or to eliminate statutory provisions from the legal order, but not to introduce new provisions, this does not, however, preclude the possibility of introducing new rules as an effect of the "manipulation" of the legislative text: in some cases, the removal of individual words from the legislation previously enacted may give rise to meanings that differ significantly from the original meaning, resulting in the creation of new norms.

The most striking proof of the potential legislative capacity of a "manipulative referendum" may be found in the 1993 referendum on election law: by eliminating individual articles, paragraphs, propositions or parts thereof, the nominally majoritarian electoral system for the Senate was transformed into a completely different system.[28]
Another important aspect concerns the consequences of a referendum. When the yes side wins, the President of the Republic must issue a declaration repealing the law. However, there is a question as to whether it is open to the legislator to re-enact the provision repealed. The Constitutional Court has recognised that for some time, and on various occasions, there is a "prohibition on the formal or substantive re-enactment of the legislation repealed" (Judgment of Constitutional Court No. 32, 1993), where a legislator cannot even re-introduce an issue on a transitory basis (Judgment of Constitutional Court No. 468, 1990, No. 33, 1993).

The Court recently (Judgment of Constitutional Court No. 199, 2012) confirmed this position, for the first time, ruling a law unconstitutional precisely because it had reintroduced, in its essential normative terms, legislation previously repealed by a referendum. This related to a law that essentially re-enacted the provision repealed by the so-called "referendum on water"[29] held in June 2011. In effect, it cannot be denied that legislation of this type, which is aimed at frustrating the outcome of the popular vote (and thus circumventing Articles 1 and 75 of the Constitution), amounts to a kind of "constitutional fraud" (*fraus Constitutionis*) which may easily be objected to on the grounds that the law is unreasonable as an *ultra vires* act by the legislature. However, a highly significant question concerns the duration of the legal prohibition on the restoration of the legislation repealed by the people. The Court has in fact been silent on the duration of the prohibition on re-enactment. There is no doubt that it would be unreasonable to tie the hands of Parliament by a popular choice, which may have been made in the very distant past, as it would prevent consideration being given to any subsequent events or legislation that may be relevant or any change in the mood of society. This would essentially be tantamount to recognising perpetual effect to the referendum result, which no legal provision may claim, not even on the constitutional level. There is thus a restriction; however, its uncertain duration is liable to give rise to disputed situations.[30]

Conclusions

It may be concluded from a glance at the instrument of the referendum in general that, in practice, it has served very different practical and political functions. At times it has acted as an instrument for promoting alternative programmes and political approaches to those of the majority parties, and at other times as a means for exerting pressure in order to solicit legislative solutions from Parliament. On many occasions, referendums have been abused,[31] even though they should only perform an exceptional function.

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[28]This referendum registered an extremely high turnout: on 18 and 19 April 1993, 77% of registered voters participated. See: (Gigliotti, 2009).

[29] The referendum against the privatisation of water and local public services took place on 12 and 13 June 2011.

[30] According to the Court, it is not possible for the Parliament and Government to change the result chosen by the electorate, unless any "structural change to the political framework" or "factual circumstances within the general context" arise (Judgment of Constitutional Court No. 199, 2012). This is an ambiguous definition which is open to a multitude of interpretations, and which allows for exceptions. And as far as exceptions are concerned, perhaps the most fitting example is the referendum held on 18 April 1993 concerning the abolition of public financing for parties (which attracted a yes vote of 90.3 percent!), which was subsequently de facto reintroduced by the Parliament the same year under the new name of "electoral reimbursements". See: (Azzariti, 1993, p. 88; Panunzio, 1997, p. 1993; Pinardi, 1994, p. 2342).

[31] See above, note 23. See also, the next note.

In fact, 28 out of the 67 referendums on the repeal of legislation - including the most recent referendum held in April 2016 - having not reached a quorum, explains the difficulties that may be encountered, very well, over the many years of its use. There may be various reasons for such difficulties: from the abuse of the referendum, which has on some occasions been used as an instrument for casting an overall protest vote against the government's general policies[32], through problems relating to their comprehensibility, to attempts by the political class to exploit or "neutralise" in various ways the possible effects of votes[33].

It should be added that the Italian people have been questioned in relation to issues concerning profound matters of conscience such as divorce, abortion and medically assisted reproduction; however, they have also been asked to vote on marginal or complex issues and on all types of problems, no matter how technical[34] (which it would be more appropriate to leave to careful consideration by experts), thereby depriving the referendum as an instrument of the exceptional status that it deserves and establishing it within a routine which has resulted in disaffection and immense difficulties relating to the quorum[35]. It is not possible to dwell further on the fundamental role, which is both precious and dangerous at the same time, played by the media, which do not always offer a correct and effective channel for communication. At this juncture, we limit ourselves to noting the evident upset to the ordinary operation of Parliament which is caused by a referendum.

Through a referendum, the minorities in Parliament, which need not necessarily assume that they are also in a minority within the electorate, may seek to appeal to the people in order to establish whether or not it approves an individual act adopted by the majority, while not calling into question the underlying choices. This may not be self-evident, as the electorate may be called upon to also rule on questions that had not arisen at the time it elected its representatives in such a way that the latter may be informed of the choice of voters. However - to continually repeat - all of this should be exceptional in nature. In reality, as things stand, it appears possible to assert that referendums are largely construed as a possible instrument for resolving institutional crises, which are capable of overturning conflictual elements, social tensions and in general, dealing with unresolved issues. In the light of the most recent practices, the relationship between citizens and the political class and referendums appears to becoming even more complicated.

[32] For example by the Radical Party – the party which has by far been the most assiduous in presenting requests, proposing 32 referendum questions in the 1990s alone.

[33] As occurred in the referendum, cited above, on the public financing of politics from 1993, see above note 30.

[34] On April 17, 2016, Italians have been called to vote on a referendum on the duration of existing oil and gas exploitation and drilling concessions in territorial waters. The referendum was on the proposed repealing of a law that allows gas and oil drilling concessions extracting hydrocarbon within 12 nautical miles of the Italian coast to be prolonged until the exhaustion of the useful life of the fields. Although 86% voted in favour of repealing the law, the turnout of 31% was below the majority threshold required to validate the result. It was the first referendum requested by at least five regional councils in the history of the Italian Republic: all 66 previous referendum questions since 1974 were called after the collection of signatures.

[35] There is no doubt that the instrument of the referendum has been abused, and that perhaps referendums have been proposed to repeal legislation that is not always of major importance. But naturally every person has the right to abstain. However, it is quite serious that calls to abstain have often been made by constitutional figures from for instance the government or by the president of one of the Houses of Parliament, namely by the very representative institutions for the decisions of which the referendum is an "instrument of countervailing power". Similarly, the author considers it equally serious for a call for no abstention to have been made by the President of the Constitutional Court. The prestige of the Court will remain high it if is perceived as an institution that stands aloof from political debate. Were that perception to change, the Court would be open to attack in the same way as any other body. In the end, its prestige would be considerably undermined.

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