



Memorandum for the 27 of May, 2015 visit of
the Venice Commission delegation



1 Executive summary

The aim of our initiative is to fully implement the self-government potential given to the people of our province by the Autonomy Statute.

In this document we would like to underline what we believe are the key elements in our legislative proposal devised to reach that objective.

We will thus concentrate in this memo on the referenda referred in art. 47 of the Autonomy Statute, where they have the same status as the election of executive and legislative bodies and their relationship.

In particular we will review five aspects related to the implementation of referenda in local legislation:

1. how a section of the electorate can bring forward a proposal and put it to popular vote
2. on which subjects it is possible for the electorate to make a legislative proposal
3. the turnout quorum
4. the binding effect of the vote
5. the (confirmative) referendum

These are the aspects on which we have the main clashes with the head of the executive branch, which, by the effect of our system, to all practical effects has a substantial saying also on the legislative branch.

2 Introduction

Although we know that the evaluation by the commission will be done on purely legal basis, it is nonetheless important to give a view of the political framework that determines what is deemed “possible” by the legislator in our province.

Legislators that by all practical effect have the monopoly on the approval of local legislation and its implementation.

To keep this monopoly, they use a combination of high number of signatures, in short time and with a lot of bureaucracy, limiting the matters on which a referendum is held and setting a high turnout quorum.

The usual justification is the necessity of preserving the “representative democracy”.

We believe that a functioning system that allows a direct expression of the popular will is in no way alternative to representative democracy, but complementary to it. It is a way by which there is the possibility of a check of popular will in between elections, that permits the representative bodies to remain really representative.

The so called preservation need does not come from a reading of John Stuart Mills or James Madison, let alone the federalist 10. But from the fear of losing the monopoly on legislation.

In the current legislation the provisions limiting the effects of referenda are essentially two. A turnout quorum of 50%, and the fact that a propositive referendum is not binding.

Collecting 8000 signatures in a short timeframe is also a limiting factor for minorities not well organised, and in fact the only two referenda held in Trentino were proposed one by a union and the other by a minority (but not so small) party.

Both were invalidated for not reaching the turnout quorum, although largely approved by the voters. In both referenda the majority parties and the executive actively campaigned for the abstention.



3 Analysis of the main aspects of our proposal

3.1 how a section of the electorate can bring forward a proposal and put it to popular vote

There are three main factors that limit the capacity of a section of the electorate to bring forward a proposal:

1. number of signatures required
2. the time interval for gathering signatures
3. the need of having a public officer authenticating each signature

3.1.1 number of signatures required

The number of signatures required to put forward a proposal should be in our view sufficiently large to show some popular support, but not so big to prevent groups with no voice in the representative assembly from having the possibility to bring to popular attention themes that they deem important.

The quantity required to request a referendum on the “form of government laws” set in art. 47 of the statute represents for us a good compromise (2% of the electorate) which more or less corresponds to 8.000 voters, as requested by the current law.

For initiatives, and only for initiatives, provided that there is sufficient time, a reduction of the bureaucracy for signature gathering and administrative support, we could accept a slightly larger number, but not larger than the quorum to elect a representative. It means less than 12.000 signatures.

3.1.2 the time interval for gathering signatures

Setting a short timeframe for gathering signature is a way to prevent people that cannot work full time, and cannot pay full time signature gatherers, to reach the required number signatures.

While it is reasonable to set a relatively limited timeframe for (confirmative) referenda, by also lowering the required number of signatures accordingly, for initiatives this is not required. In a recent regional law on municipal referenda it has been established the principle that this period cannot be shorter than 6 months. The same should apply to provincial initiatives.

3.1.3 the need of having a public officer authenticating each signature

In Italy there is the legal request that each collected signature be authenticated by a public officer. So when someone wants to gather signatures to support an initiative or a referendum she/he has to bring with him someone allowed by law to authenticate signatures. Beside notaries (which are allowed by default, but are expensive), the Italian electoral law lists a very limited, and arbitrary, class of people who have the possibility to act as authenticators. For example elected officers.

We ask that, either in our law or more in general also for the electoral law, our province allows all citizens at least with passive electoral rights to act as authenticators.

Moreover we ask that it is allowed to sign through electronic means using the infrastructure already in place to legally sign public documents.

In our province is mandatory to use only electronic means with legally binding electronic signature to enroll children in schools. So all families with young children have the means at home to sign authenticated and legally binding electronic documents.



It is in our view totally unacceptable that the same infrastructure cannot be used to gather signatures for initiatives and referenda.

We have not inserted those requests in the original proposal, but we asked to amend the current text during the legislative process with the administration to devise a legislative formula which is technically and practically feasible.

3.2 on which subjects it is possible for the electorate to make a legislative proposal

Since there are no limitations in the statutory provisions, we believe that any restriction on the subjects by the law is totally arbitrary. We think that the electorate should be able to hold a referenda on all matters on which a member of the legislative body can have the right of initiative.

The current law has some limits, most notably those on tax related matters, but the Executive tried to insert among the forbidden matters the modifications to the referendum laws.

As said we believe that any restriction on the subject of the initiative not explicitly stated in the Statute are totally arbitrary, but in particular limiting by law the possibility of requesting and voting on modifications of the referendum law constitutes an unacceptable limitation of voters rights.

3.3 the turnout quorum

There is a strong resistance by most of the elected members of the provincial legislative branch to eliminate the turnout quorum.

The maximum effort offered is a quorum of 50% of the voters turnout at the last general elections.

The main reasoning we got is that they do not want to allow an organised minority to approve a law against the majority.

But of course anyone objecting to a particular law would show up at the ballot box if there were no quorum, since it would be the only way to block a proposal.

Only those with no or neutral opinion on the matter would not show up.

3.4 the binding effect of the vote

The propositive referendum should be binding, given an adequate form of the initiative, not requiring a further vote by the legislative branch.

Based on the exactly the same article provision in the statute (art. 47), the initiative in province of Bolzano already is binding. The proposal is signed into law immediately after the positive result of the vote. The same happens in Valle d'Aosta, with similar provisions in their Autonomy Statute. In both cases however the turnout quorum (40% and 45%) limits the possible effects of the referenda, and the sole case where referendum proposal has been signed into a law has been in Valle d'Aosta.

3.5 the (confirmative) referendum

The President of the Province wanted to eliminate altogether the possibility of having a referendum on provincial laws and the main administrative deliberations as proposed in our legislative proposal.

The reason is that is would "harm" the capability to take swift actions to govern the province.



In our view the quality and the stability of the legal framework is equally important, if not much more important for a functioning legal system.

A really urgent law should be declared as such, and should have a special treatment.

And in general, to mitigate the effect of the introduction of the (confirmative) referendum, which is not part of the current law, we set a very strict timeframe for a duly formed committee to say that they are seeking a referendum on that law.

In all other cases the approved legislation becomes a law as today.

4 Other matters

4.1 Institutional information

4.1.1 participation portal

Our proposal calls for the creation of a web portal with all the information on the possibilities for citizen participation, and a list of all current and past activities, especially petitions, initiatives and referenda.

Today it is very difficult to find such information on the institutional web portal of the province either of the executive or the legislative branch.

It is much easier to find information about the institutional activities of councilors.

4.1.2 vote booklet

We proposed that a booklet be sent to all voters with information about the issue at vote.

In the province of Bolzano the 9th of february of last year there has been a referendum on their provincial referendum law.

A lot of people were unaware of the vote, and even among those who knew of the vote day, many do not knew of the subject of the vote.

And this even as local media covered the vote for a few weeks before the ballot day.

The booklet is an essential tool to ensure a fair and complete information for each voter.

The President of the Province wanted this article removed on the basis that it is too expensive.

4.2 Selection of the day for the popular vote

One way by which the participation to a vote by citizens can be manipulated is the selection of the electoral day, today completely in the hands of the President of the Province.

We asked to have the vote days for the year set the previous year, and excluding sundays too close to holidays.

In the last (abrogative) referendum held in the province the President choose as the vote day a sunday where the following tuesday was a holiday. So that many people selected that period for a vacation. To “invite” even more people to go in vacation, he decided that the monday would have been a day of mandatory holiday for all the provincial employees.

Without a quorum of course such tactics would be useless, and even counterproductive.

4.3 counterproposal

We proposed that the legislative assembly can make a counterproposal to the popular initiative, and both be put to popular vote.

The President of the Province stated in a television interview that the local voters are unable to choose among two different proposals.



4.4 Mandatory referendum

We thought of introducing some the mandatory referendum for some matters. But decided against to avoid a complete refusal of our proposal. The (confirmative) referendum is the most feared instrument for our current politicians. And in fact, they wanted to eliminate even that by request of a section of the electorate.

Even in the provincial law of Bolzano, which is based on the same article of our Autonomy Statute, does not include the provision for a (confirmative) referendum, but only the possibility to cancel the law after it has been put in force.

The (confirmative) referendum available is only the statutory one ex art. 47 of the Statute.

So while we think that in several themes of the legislation the referendum should be mandatory, like in all cases where the laws concern directly the elected officials approving the laws (conflict of interest), and when the laws concern big expenses with an impact on the provincial budget for several years.