

# The position and the role of direct democracy's institutions in the political system of Principality of Andorra

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**Abstract**—The article is an attempt to answer the question about the role of institutions of direct democracy in Andorra. The author points to a relatively unique situation in the modern European political systems that takes place in the Principality, where the number of referendums after the adoption of the Constitution (which provides these institutions) is significantly smaller than the period prior to its adoption. The author also tries to answer the question about the reason for such poor use of direct democracy institutions in contemporary Andorra.

*Andorra; direct democracy; referendum; citizens' legislative initiative; Magna Assembly*

## INTRODUCTION

Andorra, as a country which for many decades exists in the landscape of European democracies, is a political entity poorly understood by contemporary constitutionalists and political scientists. Interest, in particular, is unique on a world scale two members of head of state formula, which consist of *ex officio*: bishop of Spanish diocese (Seo de Urgell) and the President of the French Republic. The subject of few studies, however, is relatively young, and so popular in neighboring France, the referendum and other forms of direct democracy. The present article is an attempt to indicate the place of direct democracy institutions in the Andorran legal system and the role they play in the political life of the Principality.

### I. DIRECT DEMOCRACY IN THE ANDORRAN POLITICAL SYSTEM BEFORE 1993

The current political and legal system is based on the first and only in the history of the state, constitution of 1993. Before this turning point Andorran political system was based on two medieval arbitration agreements of co-princes and issued by them (or their representatives) acts. Many researches show that Andorra before 1993 can not be described even as a sovereign state. For some, it was in fact a *quasi*-sovereign territory, for other - autonomous territory. There were also terms such as: condominium, non-self-governing territory, non-colonial dependent territory, vassal territory [1, 2]. Adoption of the Constitution in 1993, regulation of relations with its neighbors

through a trilateral agreement, accession to the United Nations and the Council of Europe, has changed this status.

The only forms of direct democracy in the Principality are currently referendum and popular legislative initiative. Before 1993 the direct democracy was fulfilled in consultations carried out by national referendums. In 1971 Andorrans expressed support for the idea of equality in the electoral rights of women. In 1977 and 1978 Andorrans supported the plan of political and institutional reforms, which resulted in the great reform in 1981. In 1982 there was a referendum on electoral law reform. The last referendum in Andorra was a constitutional referendum by which Andorrans approved the Constitution of the Principality of Andorra in 1993. This means that during the functioning of the Constitution, in Andorra there was no one referendum [3].

Worth mentioning is the Magna Assembly (*Assemblea Magna*) before adoption of the Constitution. This institution was formed to act as an intermediate level between the parliament and the national assembly (as for example *Landsgemeinde* in Switzerland) which affected on the development of the Andorran parliamentarism. The seventy-member Magna Assembly used to be convened on matters of utmost importance. It included *ex officio* all MPs (28 persons), presidents and vice-presidents of the parish councils (14 persons) and four representatives of all parishes (28 persons). One of the last Assemblies were held because of the decision on the resumption of operations of the radio station on 8th February 1983 [4, 5].

### II. LEGAL FOUNDATIONS

Worth mentioning are the qualified acts which exists in the Andorran legal system (Piotr Uziębło calls these acts *organic acts*) [6]. These are acts of the General Council (Andorran parliament) which can be passed by increased majority (an absolute majority). The Constitution of the Principality mentions in which cases higher majority should be used. The legislator, in the case of qualified acts connected with elections, referenda, as well as the changes in the competence of local authorities, introduced the additional restriction. To such acts could be adopted there must achieved both: an absolute

majority of MPs elected in parishes and an absolute majority of the MPs elected from the national lists [7]. The constitution does not allow the use of the urgent ruling procedure to pass bills of qualified acts. The actual act regulating the referendum proceedings was adopted in 1993 and later was amended several times (1999, 2000, 2005, 2007, 2008) [8].

### III. CITIZENS' LEGISLATIVE INITIATIVE (*INICIATIVA LEGISLATIVA POPULAR*)

Currently in Andorra there are two forms of direct democracy: referendum and citizens' legislative initiative (*iniciativa legislativa popular*). In the same Andorra is in the group of the few European countries whose constitutions equip their citizens in the right to initiate legislation at the same time depriving them of a constitutional initiative institutions [9]. Such a construction of direct democracy institutions is probably due to inspiration by the creators of the Andorran constitution of the Spanish Constitution, which also predicts the existence of a legislative initiative in the absence of a constitutional initiative.

Andorran legal system distinguishes bills (*projectes de llei*) from the proposals (*proposicions de llei*). The bills may be made by the government and parliament, and the proposals may be submitted by the parliamentary groups, three deputies, three parish councils acting together, and the Andorrans. According to the Constitution, where the proposed law will make the signature of at least ten percent of the citizens who have the right to vote, the General Council is obliged to consider the proposal [10].

The first, and so far the only, example of this form of direct democracy in Andorra took place in 2012, when there was a successful attempt to bring the agenda of the parliament and the adoption of an act which banned smoking in public places. [11]. Originator of the first popular legislative initiative in the Andorran history was Noemí Rodríguez, a local journalist. At the end of 2010 the *Sindicatura* (the ruling organ of the Andorran parliament) received a request signed by the initiators of the 2157 people. Work on the text of the law in parliament were extended, but in the end 17 May 2012, the act was adopted (by 20 MPs were in favor, 6 abstentions, no one voted against). Worth mentioning is that MPs have mentioned several times in their speeches during sessions of the General Council that exercising of unused never before popular legislative initiative must be fully respected [12-19].

### IV. CONSULTATIVE REFERENDUM (*REFERÈNDUM CONSULTIU*)

Previously mentioned the Electoral System and Referendum Qualified Act (*Llei qualificada del règim electoral i del referèndum*) regulates the conduct of the parliamentary elections and referendums (similar solutions adopted neighboring Spain). It provides two modes of a referendum: consultative (*referèndum consultiu*) and on constitutional reform (*referèndum de reforma constitucional*). At the local level, neither the Constitution nor qualified act provides a referendum.

Consultative referendum is managed by co-princes at the request of the head of government. To hold a referendum on the need to accept the majority of the MPs. The date and content of the questions are set by the government in consultation with parliament. The Constitution requires not only indicate how many Andorrans were in favor and against, but the result should take into account the preferences of the citizens of the Principality divided into parishes.

### V. THE REFERENDUM ON CONSTITUTIONAL REFORM (*REFERÈNDUM DE REFORMA CONSTITUCIONAL*)

Right to legislative initiative in cases of constitutional acts were given only to the head of state (co-princes need in this case to work together), and a group of MPs in the number of third statutory composition of the parliament. The government was deprived of this right, but it can be assumed that the legislator acted on the assumption that, given the necessary support in parliament more than 14 MPs, the government can carry out the change due to its supporting MPs.

Constitutional act (referred to the Rules of Procedure of the parliament - *la reforma constitucional*) requires the support of 2/3 of the MPs. The act is sanctioned by the head of state, and before signing it, a referendum should be held in which citizens give their views on the merits of a decision taken by the MPs of the review of the constitution. Complicated (for applicants) process of changing the Constitution leaves no doubt as to the rigid nature of the act. In the case of the constitutional referendum act adopted by the General Council shall be sent by the *Síndic general* (presiding officer of the Andorran parliament) to co-princes who jointly decide to call a referendum (called the referendum *a posteriori*).

The wording of the question and determining the date for voting is a matter of parliament. After the announcement of voting results by the Prime Minister, the *Síndic general* sends amendment to co-princes who are required to sign and promulgate the act. So far there are no referendum which was held on the matter of revision of the Constitution, which *ipso facto* means that the Constitution of the Principality has not been changed.

### SUMMARY

In conclusion, it should be noted that the referendum in Andorra, as well as other forms of direct democracy, in spite of large options provided in the Constitution, is not sufficiently used. Evidenced by the fact that Andorra is one of the few countries in the world that since the adoption of the constitution has not carried out a referendum. One example of the efficient use of the institutions of direct democracy after 1993 has been successfully carried out on a popular initiative to ban smoking in public places.

So poor use of the most popular form of direct democracy, which is the referendum, probably has its roots mainly in the implementation of social interests by MPs. Another source of this limited use of direct democracy is Andorran political culture which is very similar to Spanish (despite the legal opportunities in both of these countries), and does not provide the active participation of citizens in the institutions of direct

democracy (in Spanish, from the adoption of the Constitution in 1978, there were only 2 national referendums, while in neighboring France from the adoption of the Constitution in 1958, there were 9). It seems that the most likely subject of the next referendum in Andorra in political matters is a matter of accession to the European Union. The further evolution of the institution of direct democracy in Andorra, should be a field of researches.

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