The Referendum in the Portuguese Constitutional Experience

Rodrigues, A.F.G.

THE REFERENDUM

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Le peuple est admirable pour choisir ceux à qui il doit confier quelque partie de son autorité (…). Le people ne doit entrer dans le gouvernement que pour choisir ses représentants.

Montesquieu

La souvereineté ne peut être representée, par la même raison qu'elle ne peut être aliénée. (…) Les deputés du peuple ne sont donc ni peuvent être ses répresentants, ils ne sont que ses commissaires; ils ne peuvent rien conclure définitivement. Toute loi que le peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi.

Rousseau

The Referendum in the Portuguese Constitutional Experience

Abstract

The referendum is one of the most studied and practiced institutions of semi-direct democracy around the world, in several latitudes and historical times, in different systems and political regimes, at international, national, regional or local levels, with different legal frameworks and with various political consequences. However, Portugal, whose constitutional experience begins in 1820 with the liberal revolution, had its first democratic referendum only in 1998. On the other hand, there is no significant research on the referendum in Portugal, and certainly none that studies it from its inception. The object of this study is to fill this obvious gap, and to address the actual place of the referendum in Portuguese political life and debate.

In the first place, we shall try to conceptually characterize the referendum, in order to establish its fundamental typologies regarding the most relevant experiences in this field and to situate the case for and against the referendum as an expression of semi-direct democracy in the political and philosophical debate of different historical moments. In the next chapters, entirely dedicated to the Portuguese case, we shall present the historical evolution of the national and local referendum in the constitutional and political life in Portugal since 1820. An added emphasis will be given to the referendum experience of the Portuguese democracy born in 1974, particular attention being payed to the political debate about the formal introduction of the referendum in the 1976 Constitution and to the concrete experience of referendums proposed and held since then. Finally, we shall try to understand the role of the referendum as an instrument of democracy and citizenship in Portugal, at different levels of its possible application.

Het Referendum in de Portugese Constitutionele Ervaring

Abstract

Het referendum is een van de meest bestudeerde en beoefende instellingen van semi-directe democratie in de wereld, in verschillende breedten en historische tijden, in verschillende systemen en politieke regimes op internationaal, nationaal, regionaal of Hlokaal niveau, met verschillende wettelijke kaders en met diverse politieke gevolgen. Echter, Portugal, wiens constitutionele ervaring begint in 1820 met de liberale revolutie, had zijn eerste democratische referendum pas in 1998. Anderzijds is er geen significant onderzoek naar het referendum in Portugal, en zeker geen onderzoek vanaf de aanvang van het referendum. Het doel van deze studie is om het aanwezige gat te vullen en om de plek van het referendum in het Portugese politieke leven en debat te benoemen.

In de eerste plaats, zullen wij pogen het referendum conceptueel te karakteriseren, om de fundamentele typologieën jegens de meest relevante ervaringen in het veld en om de zaak te situeren tegen het referendum als een expressie van semi-directe democratie in het politieke en filosofische debat in verschillende historische momenten. In de volgende hoofdstukken, geheel toegewijd aan de Portugese situatie, zullen we de historisch evolutie van het nationaal en lokaal referendum in het constitutionele en politieke leven van Portugal sinds 1820 presenteren. Extra nadruk zal worden gelegd op de ervaring van het referendum in de Portugese democratie, geboren in 1874. Additionele aandacht wordt besteed aan het politieke debat over de formele introductie van het referendum in de constitutie van 1976 en de concrete ervaring van referendums die sindsdien zijn voorgesteld en gehouden. Tot slot, zullen we proberen te begrijpen wat de rol van het referendum als instrument van democratie en burgerschap in Portugal is, op verschillende niveaus van de mogelijk toepassing.

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Introduction

The referendum is not part of the Portuguese political tradition. Indeed, the first proposal for the direct consultation of electors did not occur until the beginning of 1870s, almost half a century after the approval of the first Portuguese Constitution in 1822. This suggestion was not adopted, and the first referendum in Portugal was not held until the beginning of the 20th century.

After the 1910 Republican Revolution, it became possible to hold local referendums. Indeed, some even took place, albeit under very limited terms. However, somewhat ironically, the first national plebiscite was organised in 1933 by the dictatorship, *Estado Novo* (New State), which was established after the military coup of 1926. This plebiscite was held to legitimise a Constitutional text drawn up under the direction of Salazar himself. The text, which supported the authoritarian regime, applied with revisions until the regime's final downfall in 1974. The plebiscite of 1933 was the first experience of a national referendum in Portugal and, given its non-democratic character, it tainted the image and notion of the referendum (in the eyes of Portuguese democrats in particular) for years to come.

In the early 1960s, when the regime engaged in colonial wars against the liberation movements of Angola, Guinea-Bissau and Mozambique, some sectors suggested an appeal to the referendum as a potential means of resolving problems that had no military solution. For some, the referendum would be a road to self-determination. For others, it would legitimise colonisation. However, neither the Portuguese regime nor the liberation movements were interested in that kind of solution. The regime insisted on the war, even though no end was in sight, and both the Portuguese opposition and the liberation movements believed that the liberation of the colonial territories was only a matter of time.

After the 1974 Democratic Revolution, the idea of a referendum resurfaced regarding two central issues of Portuguese political life: decolonisation and the Constitution. Some sectors opposing the recognition of the independence of former Portuguese colonies claimed that referendums could aim at, and allow for, federative solutions as an alternative to independence. However, these suggestions were ephemeral, since the way to independence had already proved itself to be irreversible. Furthermore, such a solution was unacceptable to the liberation movements, and was not supported by either the revolutionary military or

democratic forces in Portugal. Curiously, many years later, the former Portuguese colony of East Timor arrived at independence through a referendum, achieving its liberation not from Portuguese colonial rule, but from Indonesian occupation that lasted between 1975 and 2001.

Within Portugal itself, the referendum flag was brandished by the opponents of the 1976 Constitution, who tried to use a plebiscitary means to promote a change in the Constitutional order. The defeat of this attempt in the 1980 presidential election created the conditions for a peaceful acceptance of the referendum as a complementary device of representative democracy. Thus, the successive Constitutional revisions allowed for three different types of referendums to take place: the local referendum in 1982, the national referendum in 1989 and finally the referendum in the autonomous regions in 1997.

From 1990 onwards, the question was not whether referendums were possible, but the circumstances under which they should be held. Three main issues mobilised support for referendums: the ratification of the European Union treaties by Portugal; the decriminalisation of abortion; and the creation of administrative regions. Since the approval of the Maastricht Treaty in 1992, demands for European treaties to be ratified by referendums have been a constant feature of Portuguese political life. However, no referendum has ever been held in this context. On the other hand, the decriminalisation of abortion was considered by referendums in 1998 and 2007, and the creation of administrative regions was also submitted to a referendum in 1998.

Therefore, if it is true that the referendum in Portugal does not enjoy a strong tradition, it is also true that several political and Constitutional controversies have involved debates about whether or not to hold a referendum. As such, the circumstances in which national and local referendums are held make useful case studies, the relevance of which we shall try to demonstrate in this work. After approaching the theoretical basis of the referendum and its expression in political thought and practice, we shall develop in detail the theme of the referendum in Portuguese policy. The starting point will be the advent of liberal Constitutionalism with the 1820 revolution.

Firstly, we shall draw on the historical evolution of the Portuguese Constitutional experience, focussing on the referendum proposals introduced in each period, even those that did not formally materialise. This evolution has three distinct parts: Monarchic Constitutionalism (1820-1910); the First Republic (1910-1926); and the

dictatorship of the New State (1926-1974), during which the Constitutional plebiscite of 1933 took place.

The debates surrounding the potential use of referendums to resolve colonial issues, and to facilitate or stall the decolonisation process, will be considered in detail. To begin with, these will be analysed through a close discussion of the hypothetical referendums regarding the Portuguese colonial statutes that were proposed by some voices in the early 1960s. After that, reference will be made to the attempts to avoid the decolonisation process by drawing on a referendum. This section will focus on how this was implemented by each of the former colonies on their road to independence. The case of East Timor deserves a special reference, because it was militarily occupied by Indonesia in 1975, a few days after its declaration of independence, eventually winning back its independence precisely by means of a referendum held in 1999 under the aegis of the United Nations.

The main aim in this study is to analyse the role of referendums in Portuguese democracy between 1974 and 2011. The first issue under analysis will be the Constitutional referendum, including the proposals which aimed **a)** at approving a provisional Constitution by referendum (1974), **b)** at submitting the approval of the Constitution to a referendum after its passing in the Constituent Assembly (1976), **c)** at changing the Constitution by referendum (1980), and **d)** at enshrining the referendum as a normal procedure of Constitutional revision.

Afterwards, the experience of local referendums, which the Constitution has permitted since 1982, will be discussed. All local referendum proposals will be discussed, including those that were formally considered, and the four local referendums that were actually held. Reference will also be made to the Constitutional and legal provision that allowed for the holding of referendums in the autonomous regions of the Azores and Madeira, which has not had any practical consequence until now.

Particular attention will be paid to national referendums. Reference will be made to their inclusion in the 1989 Constitutional revision and the law of 1991. After this first phase, there will also be reference to the unsuccessful draft referendums presented in advance of the 1997 Constitutional revision, and the passing of the referendum law of 1998, which preceded the first national referendums of the democratic period. This section will conclude with a synthesis of the subsequent legal evolution, with reference to every draft referendum that were presented.

A detailed anlaysis will consider each of the three main questions underlying the debate on the referendum in Portugal during the last decades: the referendum on the decriminalisation of abortion; the referendum on the creation of administrative regions in the Portuguese mainland; and the referendum on the participation of Portugal in the European integration process. Each of these themes will be treated in a specific section. Finally, a global account of the experience of the referendum during the Portuguese democracy will be presented and some conclusions will be drawn on the future of referendum in Portugal.

The present work will focus on referendum proposals actually made, regardless of their formal requirements. However, particular attention will be paid to the draft referendums formally introduced in the Portuguese Parliament in each historic period. As Portugal's central legislative body, the Parliament has unavoidably been the centre stage for political debate. It bears a special responsibility in the discussion and voting on all decisions about whether or not referendums should be held. Therefore, a significant part of the present research is based on the systematic survey and study of the parliamentary debates on referendums in general and each draft referendum in particular. The activities of the Portuguese Parliament in relation to referendums are, in fact, the main focus of the present work.

This is the first global study of the referendum in Portugal. At the beginning of the 1990s, some works were published following the Constitutional and legal sanctioning of national referendums. They analysed the referendum as an institution, and the terms of its application at the national level. However, the first national referendum occurred only in 1998, and few articles in scientific journals were published on the results of this referendum, or other national referendums held since then. In fact, there are no scientific works on the referendum in Portugal, tracing the historical evolution of that institution from the beginning of the 19th century until now. Thus, the parliamentary debates of the 19th century on referendums are presented here for the first time, alongside the first analysis of local referendums during the First Portuguese Republic (1910-1926).

This is also the first work referring specifically to the role of the referendum in the Portuguese decolonisation process, before and after the 1974 Revolution. Regarding the democratic regime, this is also the first work to contemplate all the parliamentary debates and proposals on the referendum in Portugal, and the only comprehensive academic analysis of all the local and national referendums ever held in the country. In these

circumstances, this thesis seeks to fill a significant gap in legal and political theory, and in philosophy studies in Portugal.

Which leads me to a few words on the reasons for the submission of this work in the Netherlands and at Leiden University in particular. Despite their significant Constitutional differences, Portugal and The Netherlands have curiously close positions regarding referendums. The referendary institution is recognised in both Constitutional orders, at local and national levels, but in both cases, the use of referendums has been very scarce.[1] There have been some experiences at a local level, on relatively unimportant questions, and a few experiences at a national level with controversial results, in regard to both participation and political consequences. Besides, the result of the Dutch referendum on the European Constitutional Treaty was one of the decisive reasons to avoid a similar referendum in Portugal, and also to avoid a referendum on the Lisbon Treaty in both States.

The search for a scientific vision of the referendum in the present work, avoiding Portuguese political controversies, seems to indicate The Netherlands as a European State well chosen for that purpose. In addition, submission at Leiden University is a real privilege, given the great prestige of this ancient institution and its reputation for quality, which is acknowledged around the world. The precious support of Professor Grahame Lock in Leiden, and Professor João Bettencourt da Câmara as co-supervisor in Lisbon, guarantee that this research meets the most exacting academic and scientific standards.

[1] On the referendum in Dutch Constitutional experience before the referendum on the European Constitutional Treaty, see Holsteyn (1996).

Part I

The Referendum in Practice and Theory

1. The Origins

The word 'referendum' orginates in the Latin expression *ad referendum,* which was used in diplomatic affairs to name an agreement concluded by a deputy under reserve of ratification. Initially, the referendum was primarily an act of control: an instrument through which the people, as represented, could ratify the acts of the assembly as representative. In this sense, the referendum appears as something related to the imperative mandate (Vega, 1985, p. 113) and its development is linked to the exercise of direct democracy (Duarte, 1987, p. 199).

Some authors find the distant ancestors of the referendum in Ancient Greece and Rome. The Spanish author José Luís López González (2005, p.12) refers to Athenian democracy, after the Cleisthenes reforms (508 BC) as the classic example of direct democracy, having the *ekklesia* (popular assembly) as the main structure of government. The first demonstrations of direct democracy came from the political organisation of the Greek city-States, where the citizens gathered to decide on the most important matters of the city. This model of decision-making was obviously impossible in communities of significant size and, as Gonzalez observes, one should not excessively idealise the classic formulas of direct participation. Important social sectors, including slaves, women, foreigners and citizens with less economic power, were excluded from the decision-making processes.

Other distant origins of the referendum were probably the deliberative practices of the plebs during the Roman Republic. The plebiscite, or plebs, decree was the method used to approve certain types of laws binding only to plebeians (González, 2005, p.12). The Portuguese author Jorge Miranda (1996a, pp. 232-233) refers to the *plebiscitum* as a type of *leges rogatae,* decisions made at diets that, after 287 BC (*Lex Hortensia de plebiscitis),* became binding for all. The Middle Ages also had some methods of direct democracy in the Swiss cantons, where the free men gathered in *Landsgemeinde* to discuss and decide on the main problems of their communities (Duarte, 1987, p. 200).

Though Swiss cantons made decisions by referendum two hundred years earlier, the word referendum, in its current meaning, appeared in English only in the 1880s, to denote the idea of putting issues

directly to the electorate (Butler & Ranney, 1978, p. 4). This was defined by Jorge Miranda (1996a, p. 231) as the popular vote which used individual and direct citizens' suffrage to reach a political or administrative decision, as well as an indication to the government or administrative bodies, or even for other constitutionally or legally established ends.

Since its inception, direct democracy has struggled with the question of how to link citizens to political decision-making procedures. This led to the appearance of institutions like the referendum. It was through popular consultation that the referendum tried to conciliate the exercise of power by representation and its direct exercise by the people (Duarte, 1987, p. 200). However, according to David Butler & Austin Ranney (1978, p. 5), there is little benefit in going back to the distant origins of referendums in the assemblies of Greek city-States and the *plebiscitum* in Rome, or even in the cantons of 15th century Switzerland, or in France, which legitimised its annexation of Metz by a vote in 1552. The first examples of modern referendums are found in the popular votes by which, starting in 1778, some American States adopted and altered their Constitutions. Other early examples include the efforts of *Girondins*, and subsequently Napoleon Bonaparte, to demonstrate support for successive annexations and key Constitutional revisions.

2. Direct and Representative Democracy in the United States

Some commentators believe that, in 1778, the commonwealth of Massachusetts became the first polity in history to use the Constitutional referendum (Ranney, 1978, pp. 68-69). In 1777 the legislature drew up a Constitution, which was delivered to all town meetings, and stipulated that this Constitution would take effect only if it were approved by two-thirds of the voters. The draft was defeated, and only in 1780 was a new proposal accepted. In 1779, the Constitution of New Hampshire was also rejected in a referendum, and was only approved in 1783. But, of course, what interests us here is the resort to the referendum rather than its particular outcomes.

In the following years, other Constitutional referendums were held in the United States: Rhode Island in 1788, Maine in 1816, Mississippi in 1817, Connecticut in 1818, and Alabama in 1819. Therefore, referendums have been used for the approval of Constitutional amendments in most States since their very inception as States of the Union. Presently, 49 of the 50 States may use it, Delaware being the only exception (Ranney, 1978, p. 69). The Constitutional referendum was the

first device of semi-direct democracy established in the federated States, and the only one until the end of the 19th century, when other instruments of direct democracy (referendums, statutory or by citizen's initiative) were introduced mainly in the western States, until they became frequent forms of political and legislative decision-making.

However, although the holding of referendums became a political device at State level, their use did not extend to the Union itself. In fact, the Constitution of the United States of America does not include any form of direct or semi-direct democracy. Representative government was enshrined as an absolute principle of the Union, thus establishing the checks and balances necessary to prevent the supremacy of factions, and to defend the rights of minorities. These considerations were thought to be essential to the survival and cohesion of the Union.

The argument that referendums are only possible in small communities is easily denied if we consider that some very large States uses referendums routinely. The essential argument for refusing semi-direct democracy devices was the challenge of uniting States with very different interests that should be democratically respected. The concept of common interest supported by Madison was based on the diversity of human society, and very far from the notion of the general will of the people espoused by Rousseau in the Social Contract (Marques, 2011, p. 122).

For the Founding Fathers, the problem was not the territorial dimension of the Union, but the very nature of representative democracy. This issue is stressed and its implications discussed by João Bettencourt da Câmara, who notes that Madison in the United States, like Sieyès in France, considered it quite clear that representative democracy was radically different from direct democracy, affording a higher form of representation. Direct democracy was, in this sense, false democracy, as opposed to the true form, present only in representative democracy (Câmara & Martins, 1997, pp. 169-170).[2]

In the Federalist Paper No. 10, James Madison criticised what he called a pure democracy, a '*society consisting of a small number of citizens who assemble and administer the government in person, which can admit of no cure for the mischiefs of faction. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political*

[2] See also Câmara (1998, pp. 76-122).

rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions'.

The main difference between that 'pure' but undesirable democracy and the desirable republic was precisely the advantages of the representative government: 'the delegation of the government to a small number of citizens elected by the rest'. The effect of this difference is '*to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves'*.[3]

In the Federalist Paper No. 51, Madison and Hamilton stressed '*the great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. If a majority be united by a common interest, the rights of the minority will be insecure'*.[4]

In fact, as João Bettencourt da Câmara stresses, having in mind the Federalist Paper No. 63[5], the main difference between the United States and the ancient Greek republics, in Madison's view, was the total exclusion of the people, in their collective capacity, from any immediate and direct share in the government (Câmara, 1997, pp. 170-171).

3. The Referendum in the French Revolution

3.1. Rousseau *versus* Montesquieu

In Europe, the referendum began its development as a widespread institution following the French Revolution. It was then that the confrontation between the theories of representative democracy and direct democracy, having Montesquieu and Jean-Jacques Rousseau as figureheads, took place (Urbano, 1998, p. 8). At the end of the 17th century, thinking on ownership and representation of sovereignty was divided in two theoretical tendencies: Montesquieu's national sovereignty

[3] Available at: http://www2.hn.psu.edu/faculty/jmanis/poldocs/fed-papers.pdf, p. 44 [accessed 12 June 2012].
[4] Available at: http://www2.hn.psu.edu/faculty/jmanis/poldocs/fed-papers.pdf, p. 233 [accessed 12 June 2012].
[5] Available at: http://www2.hn.psu.edu/faculty/jmanis/poldocs/fed-papers.pdf, pp. 280-286 [accessed 21 June 2012].

and representative government, and Rousseau's popular sovereignty and rule by direct democracy. The political model built by Montesquieu was based on the idea of representation. He considered the mass of the people incapable of taking political decisions by themselves, and that the institutions of direct democracy held the danger of plebiscitary perversion and were in direct contradiction with the theory of national sovereignty.

The institution of referendum had its theoretical grounds in the *Social Contract*: *sovereignty, for the same reason as makes it inalienable, cannot be represented; it lies essentially in the general will, and will does not admit of representation; it is either the same, or other; there is no intermediate possibility. The deputies of the people, therefore, are not and cannot be its representatives: they are merely its stewards, and can carry through no definitive acts. Every law the people has not ratified is null and void – is, in fact, not a law* (Rousseau, 1762/1973, p. 240).

Neither Montesquieu nor Rousseau expressly foresaw any form of popular vote in the manner of the modern referendum. However, Rousseau was one of the first to express the logical need for direct popular participation as a necessary condition for the creation and maintenance of a democracy, and for the legitimation of political order. In Rousseau's works, there are no specific references to the popular referendum. His kind of democracy was closer to that of Athenian assemblies, but the idea of a modern referendum underlies his conception of the process of government (Urbano, 1998, pp. 12-14). In the event, Article 6 of the *Declaration of the Rights of Man and of the Citizen* expressed a compromise, hedging between a solution based exclusively on representation, and the admission of the future enshrinement of devices typical of semi-direct democracy, like the referendum. Law is the expression of the general will and every citizen has a right to participate personally, or through his representatives, in its foundation (Rodrigues, 1994, p. 57).

3.2. Condorcet's Contribution

In the French Revolution, Condorcet and Sieyès led opposing sides in the debate between direct and representative democracy. Condorcet was the first supporter of semi-direct democratic institutions, proposing several measures inspired by Rousseau's ideal. These were aimed at correcting potential dysfunctions of the representative system, which was the form of government he supported. The representative system should be the basis of political organisation, but it should be complemented by corrective means of direct democracy (Duarte, 1987,

pp. 227-228). These measures, which in fact were the principles of referendum and popular initiative, were received in his *Girondist* Constitutional draft, and introduced at the Convention on 15 and 16 February 1793 (Urbano, 1998, pp. 16-18).

As Anne-Cécile Mercier (2003, p. 487) suggests, Condorcet had the courage to resist surrendering himself unconditionally before the representative system. With the right of popular initiative, his purpose was to adapt direct democracy to the geographic constraints of large States. The draft was received with indifference, but sparked confrontations between *Girondists* and *Montagnards*. The victory of the latter condemned the proposal to defeat.

Condorcet's concept was based on the idea that the first of all rights was the natural and primitive equality of Man. From that descends the right of suffrage, but also the right to participate in legislative processes through a system of popular initiatives. These turned popular sovereignty into something real (Mercier, 2003, p. 489). Condorcet was an admirer of the American Constitutional experience, particularly of the Pennsylvanian Constitution. The *Girondist* Constitution was the result of the systemic union between the principles of New England and the French philosophy of the 18th century (Mercier, 2003, pp. 490-491).

Condorcet's work was based on the conviction of the superiority of direct democracy, which he aimed to put in practice in a large nation. He went further than the Constitutional referendum in an essay written in 1789 titled '*Sur la necessité de faire ratifier la Constitution par les citoyens.*' In it, he gave people the power to initiate a Constitutional dialogue between themselves and the Constituent Assembly, and he made reference to a desirable widening of the referendum to legislative matters (Mercier, 2003, p. 493).

The Constitutional draft drawn by Condorcet included a Title VIII on the 'censure of the people on the national representation acts'. [6] This title gave fifty citizens, who lived in the circumscription of the same primary assembly, the right to scrutiny, along with Constitutional, legislative and administrative acts, and the right to initiate the procedure to change an existing law or to enact a new law.

For that purpose, these fifty citizens had the right to gather their primary assembly the Sunday following the submission of the draft or

[6] Available at: http://mjp.univ-perp.fr/france/co1793pr.htm#8 [accessed 10 February 2011].

subject. The discussion would continue for a week. On the following Sunday, the members of the primary assembly would decide if there should be any deliberation on the proposed subject. In the case of an affirmative vote, all the primary assemblies of the same commune would be called in order to deliberate on the same subject. If the majority of the citizens of the commune decided positively, all the primary assemblies of the department would be called to vote on the same subject. If the majority of the primary assemblies of the department voted in favour, the proposal would be submitted to the legislative body for consideration.

The legislative body should then decide within 15 days whether a deliberation should be taken. In the case of an affirmative vote, the proposal would be addressed to the representatives, who should decide on the concrete proposal within the next fifteen days. If the legislative body refused to decide, or rejected the proposal, all the primary assemblies of the whole territory would be called to vote directly on the legislative body's decision. If that referendum contradicted the decision of the legislative body, the latter should be dissolved, new elections should be held, and the representatives who opposed the popular will would not be eligible for re-election. The new assembly would decide again on the subject.

For a Constitutional revision, the citizens would have the right to call a National Convention for that purpose using the same process. However, the legislative body should always consult the primary assembly directly, submitting the draft amendments to popular suffrage. If citizens rejected the draft, it should be changed and submitted again to the people. In case of a second rejection, the Convention would be dissolved, and the people would decide directly if a new convention should be called.

This right of initiative was defeated in the Convention. However, the *Montagnard* Constitution of 1793 included some provisions of direct democracy.[7] Article 115 enshrined a Constitutional referendum by popular initiative. If the absolute majority of departments, the tenth part of their regularly formed primary assemblies, demanded a revision of the Constitution or an alteration of some of its articles, the legislative body was obliged to gather all the primary assemblies of the Republic in order to ascertain whether a national convention should be called. Articles 58 to 60 provided that all proposed laws should be printed and sent to all

[7] Available at: http://oll.libertyfund.org/index.php?option=com_content&task=view&id=862&Itemid=264 [accessed 10 February 2011].

the communes of the Republic. If, 40 days after sending the proposed law, the absolute majority of departments, one-tenth of all the primary meetings legally assembled by the departments, had not protested, the bill would be accepted and would become a law. In the event of a protest, the legislative body should call for primary meetings (Guedes, 1978, p. 160; González, 2005, p. 17).

Moreover, the 1793 French Constitution (Year I), as well as the 1795 (Year III) and 1799 (Year VIII) Constitutions were ratified by plebiscites (Wright, 1978, p. 139). The first referendum in France took place on 24 June 1793 to approve the *Montagnard* Constitution.

In an article criticising the Constitution of Year I, under the title *'Aux citoyens français sur la nouvelle Constitution'*, Condorcet proposed what he believed should be the basis of a new social organisation at that moment of the Revolution. This included the absolute equality among citizens, the unity of the legislative body, the necessity to submit the Constitution to the immediate acceptance of the people, and the need to establish periodic assemblies that could amend the Constitution. It also provided the people with the means to call these assemblies when they felt their freedom was being threatened or their rights were violated by the established powers. The idea, above all, was to organise a way for the people to express their voice on the need for any reform, therefore avoiding both oppression and the need for insurrection (Mercier, 2003, p. 504).

Condorcet intended to make discussions and votes prevail over arms and violence. This revealed a different logic from the reasons for supporting the popular initiative in other countries, particularly in the United States at the end of the 19th century, where the central worries related to the dysfunctions of the representative system (Mercier, 2003, p. 505).

3.3. The *Bonapartist* Referendums

The use of popular consultations in France entered a second phase at the beginning of the 19th century. The referendum was used by Napoleon Bonaparte to ratify the Constitutional arrangements that made him consul (February 1800), consul for life (May 1802) and emperor (May 1804). The restoration of the empire was also ratified by a referendum in May 1815 (Wright, 1978, p.139).

Vincent Wright (1978, p. 140) refers to the way that the reputation of the referendum as a *Bonapartist* device was reinforced in the

19th century when Louis Napoleon, nephew of Napoleon I, used it to legalise and legitimise his coup d'état of 21 and 22 December 1851, his restoration of the empire (21 November 1852), his annexation of Nice and Savoy (15 and 22 April 1860), and his liberal Constitutional ammendments (8 May 1870). The French Constitutions of 1852 (Article 6) and 1870 (Article 13) gave the President or the Emperor the faculty of appealling to the people.

One possible reaction to the *Napoleonic* plebiscites was that the 1875 French Constitution of the III Republic did not include any type of referendum. Indeed, referendums were to remain unmentioned until the end of World War II.

4. The Swiss Experience

In Switzerland, the referendum was used at the end of the Middle Ages in several cantons, most notably in Bern. In the 17th and 18th centuries it was suppressed by the development of a form of oligarchic government. It reappeared in the 19th century, first in isolation at the time of a national vote on a Constitution for the Swiss Republic, and then more generally in the liberal regeneration around 1830 (Aubert, 1978, p. 39).

In June 1802, the Swiss people voted for the first time on the text of the Helvetic Constitution. It was clearly announced that abstentions would be considered as affirmatives. The Constitution was accepted with 92,500 votes against and 72,500 votes in favour because there were 167,000 abstentions (Aubert, 1978, p. 39).

In Switzerland, the tradition of direct democracy helped to propagate the idea of referendum. The *Landsgemeinde* drew inspiration from the pact that united the three *Waldstätten* (Schwyz, Uri and Unterwald) in the 13th century. Its origin was not Athenian but Germanic. The Germans had a strong tradition of natural goods management by democratic and communitarian means (Mercier, 2003, p. 506).

The Constitution of the Republic of Geneva, voted by the citizens in February 1794, gave the people the right to approve or reject laws and edicts. Drafts made by representatives could be submitted for approval or rejection by the people, if required by 3,500 electors within 30 days of their publication (Rodrigues, 1994, p. 60).

Most cantons accepted the custom of submitting their Constitutions to the people. When Switzerland became a federation in 1848, the new Constitution was submitted to the people in the great

majority of cantons (Aubert, 1978, p. 39). Jorge Miranda (1996a, p. 240) notes that the scheme present in the 1848 Federal Constitution of Switzerland, with mandatory Constitutional referendums and optional legislative referendums required by the citizens, remains to the present day. According to José Luís López González (2005, p. 16), the institutions of direct democracy were enshrined in the Swiss Federal Constitution – such as in the canton's Constitutions – as a way to balance the transfer of powers from the cantons to the Federation.

Since 1848, and particularly since 1870, the Swiss have accepted the principle that almost every major national decision can become the subject of a popular vote (Butler & Ranney, 1978, p. 5). From 1848 until the end of the 19th century, 55 referendums took place in Switzerland at a federal level. Between 1900 and 1945, 87 referendums were held.

5. Other Experiences in the 19th Century

In the second half of the 19th century, a boom of referendums took place in the North American States and in Switzerland. Maria Benedita Urbano (1998, p. 24) sees common reasons for this development: the democratic traditions of both federations, and the federal structures, with their pronounced decentralisation of political power.

Butler & Ranney (1978, p. 6) explain that referendums are widely used only in Switzerland and a dozen States of the American Union, because only in these polities was there longstanding pre-referendum experience with direct government using face-to-face assemblies of citizens. Some small Swiss cantons have regularly made decisions by *Landsgemeinden* since the 13th century. Similarly, New England towns have conducted their affairs by town meetings since the 17th century. In the 19th and early 20th centuries, such assemblies were impractical in the pioneer western territories and States. Thus, referendums came into being as useful ways of adapting the principles of a direct democracy to the limitations and necessities of large populations.

Furthermore, the referendum was used in the 19th century to resolve territorial questions. In the case of the Italian Unification, referendums were held in Lombardy, Tuscany, Sicily, Naples, Venice and Rome between 1840 and 1870. The same happened in Greece, Prussia and Finland.

Until the end of the 19th century, the referendum was scarcely used in other countries and for other purposes. Only 13 States held referendums. From the first referendum in France, in 1793, until the end

of 1899, Switzerland held 56 referendums (55 since 1848), but the remaining sovereign States only held 24, including 10 in France. The others were in Greece, Romania, Malta, Canada, Australia, New Zealand, Mexico, Peru, Ecuador, the Dominican Republic, and Liberia.

However, in the transition from the 19th to the 20th centuries, the use of referendums and the theoretical debate surrounding their use, increased substantially. The referendum was introduced into the political practice of many countries, and the subject of the referendum interested some distinguished authors in the fields of political science and Constitutional law.

6. The Referendum in the 20th Century

6.1. The Theoretical Debate

The highest moment of referendums in the world was also the moment when this institution was most criticised. The contradiction between the referendum and representative democracy was stressed. However, it was also the time of an intensive debate about the advantages and disadvantages of the referendum, either as an instrument of semi-direct democracy against the representative government, or as a useful instrument to correct some of its recognised dysfunctions. The framework for this debate was provided by the philosophical conceptions that came from the 17th century, and by the practice of some referendary experiences.

According to Butler & Ranney (1994, pp. 11) democrats have, since the 17th century, divided into two main schools of thought regarding the institutions required to enact the democratic principles of popular souvereignty, political equality, popular consultation and majority rule. One might be called the participationist or direct-democracy school, led by such classical theorists as Jean Jacques Rousseau and such modern theorists as Benjamin Barber, Lee Ann Osbun and Carol Pateman. Opposing this conception is the representationist or 'accountable elites' school of democratic theory, led by such writers as John Stuart Mill, Henry Jones Ford, Joseph Schumpeter, Elmer Eric Schattschneider and Giovanni Sartori.

Proponents of direct democracy have traditionally stressed Rousseau's objection to representative government: popular sovereignty cannot be subject to representation. As soon as the people transfer their powers to representatives, giving them a non-imperative mandate, they lose their freedom. Butler & Ranney (1994, p. 12) summarized the

arguments of this school as follows: **1)** the only way to achieve the ideal that political decisions be made in full accordance with the wishes of the people is to ensure that those wishes are expressed directly, not mediated or interpreted; **2)** the higher end that democracy seeks is the full development of each citizen's full human potential, which can be realised only by their direct and full participation in public affairs, not by delegating their civic powers to representatives.

On the other hand, the writers from the school of democratic theory argue that the dream of direct democracy is relevant only for polities so small that all citizens can meet face-to-face in one place at one time, and when all citizens can spend all their time on political decisions. The only way to achieve that dream is through the election of representatives who represent their constituents in lawmaking assemblies and, at the end of their terms, are held accountable by their constituents for their performance in the use of their temporary powers (Butler & Ranney, 1994, p. 13).

According to Butler & Ranney (1978, p. 24), the main argument for referendums consisted of two basic propositions: **1)** the popular and universal legitimation of the decisions, given that all political decisions should be as legitimate as possible and **2)** that direct democracy was the highest degree of legitimacy, since the decisions are made by the direct, unmediated vote of the people. For the supporters of the democratic advantages of referendums, people may or may not trust legislators, cabinets, and prime-ministers, but they certainly trust themselves most of all, and decisions in which popular participation is direct and unmediated by others produce more accurate expressions of their will than decisions in which they participate only by electing others who make the decisions for them (Butler & Ranney, 1978, p. 25).

From the 19th to the 20th century, the main arguments in favour of referendums were Stated by Swiss writers like Simon Deploige (1892) or William Rappard (1912), and particularly by the leaders of the Progressive Movement in the United States (Butler & Ranney, 1978, pp. 26-27). The Progressive Movement operated in most American States from the 1890s to World War I, having as principal leaders luminaries like Robert M. La Follete of Wisconsin, Hiram Johnson of California, Theodore Roosevelt of New York, and Woodrow Wilson of New Jersey. Their main purpose was to introduce several reforms in order to increase the participation of ordinary citizens in governmental decisions. The referendum was one of these reforms (Butler & Ranney, 1978, p. 27).

The progressive case rested upon two beliefs. The first was their faith in the unorganised, free individual. The second was hostility towards intermediary organisations. Any organisation that seeks to interpose itself between the people and their government is bound to subvert democracy and the public interest. When a group organises itself permanently, and seeks to influence government decisions on a wide range of issues, it will inevitably distort the popular will and promote its special interest over the public interest (Butler & Ranney, 1978, pp. 27-28).

The synthesis of benefits of direct democracy according to the progressives, were the following: **a)** any issue can be put on the law making agenda; **b)** decisions are brought close to the people; **c)** decisions are always made in the clean open air; **d)** popular will is accurately expressed; **e)** the end of apathy and alienation; **f)** public interest is served; and **g)** the citizens' human potential is maximised (Butler & Ranney, 1978, pp. 29-30).

The influence of the progressives in the United States had profound consequences. It was precisely from the beginning of the 20th century, as already seen, that the referendum was to become a common device in several States of the Union. Between 1906 and 1918, nineteen States adopted the referendum for Constitutional amendments or ordinary legislation (Ranney, 1978, p. 69).

Meanwhile, in Europe, some authors criticised the use of the referendum, concerned about its opposition to representative democracy. A. Esmein (1894), in a work published in the first issue of the '*Revue du Droit Public et de la Science Politique en France et à l'Etranger'*, considered an illusion the idea that the referendum and the representative government could be superposed without inconveniences. According to him, the referendum could prevent bad and arbitrary laws, but it could also be an invincible obstacle to a good legislative process. The best laws, the most useful to national progress may come up against popular prejudices and thoughtlessness, sometimes due to a provision of secondary importance, hidden in some article (Esmein, 1894, p. 40). On the other hand, the possibility of a referendum decreases the responsibility of legislative assemblies, and consequently their ability to usefully discuss legislation (Esmein, 1894, p. 41). Later some other authors, including Georges Burdeau (1950, pp. 13-14) and Mirkine-Guetzévitch (1931), called into question the need or the opportunity for the referendum in the political context of the time.

In *The Case Against the Referendum*, published by the Fabian Society in 1911, the British author Clifford Sharp summarised the main arguments against the referendum, as follows: **a)** the weakening of the power of elected authorities; **b)** the inability of ordinary citizens to make wise decisions; **c)** the impossibility to measure the intensity of belief; **d)** the making of forced and not consensual decisions, while the true democratic decisions were not competitive; **e)** the danger for minorities; **f)** the weakening of representative government. He summed up by saying there was no particular reason to suppose that the adoption of the referendum in England would result in special advantage to any party. It must be admitted that when the unit of government is small and the population homogeneous in character, the advantages of the referendum are very considerable. But when the unit of government is large and the population heterogeneous, the inherent defects of 'majority rule' assume overwhelming importance (Sharp, 1911, pp. 18-19).

The scepticism of the strongest supporters of representative government regarding the advantages of the referendum does not mean that all those who criticised representative government as an expression of the popular will supported the referendum as a viable or suitable alternative. In fact, the Swiss and North American experiences never awakened great enthusiasm in Europe. Everyone considered that direct democracy, as a rule, could only be viable in small communities, not being suitable in societies with the dimension and complexity of the modern State. Furthermore, the use of plebiscites as devices to realise imperial ambitions, as in France under Bonaparte's rule, inspired some caution regarding the referendum as a means for expressing the citizens' will.

However, even among those who believed that representative government was the most democratic and effective system, there was some dissatisfaction regarding the perversions and dysfunctions resulting from the influence of the political parties. Concern was expressed that political parties captured the political system, substituting themselves for the sovereign will of the citizens. Even authors who coherently supported the representative government, from conservatives to progressives, recognised the need to correct its dysfunctions as a way to defend it.

This subject, the crisis of representative government and its divorce from citizens, which remains an ongoing concern in the 21st century, gave rise to strong criticisms at the beginning of the 20th century, particularly from Moisei Ostrogorski, who strongly criticised the influence of political parties in democratic systems. His seminal works,

Democracy and the Organization of Political Parties, contained studies of political parties in England (Volume I) and in the United States (Volume II), and were published for the first time in 1902. Ostrogorski argued that, in the modern conditions of universal suffrage, parties became oligarchic, with their bureaucratic structures aimed purely at gaining and retaining political power. Thus, parties substituted themselves for the true will of the citizens.

As Lipset (1964, p. xx) States in his *Introduction* to the North American edition of Ostrogorski's main work, the parties, which were created to promote the national interest upon some particular principle on which they all agreed, necessarily form permanent organisations staffed by professional politicians. The need to maintain the party apparatus inevitably leads parties to modify their initial principles and activities, instead favouring activies and policies that maximise financial and electoral support to the organisation. Rather than being a means to an end, parties (i.e. the perceived interests of the party elite) become ends in themselves.

The studies of Ostrogorski[8] had a substantial influence on other European authors, including Robert Michels and Max Weber. Michels was a German Italian with a background in the socialist movement. He later became a strong supporter of Italian fascism. In his book published in 1911, *Political Parties – A Sociological Study of the Oligarchic Tendencies of Modern Democracy*, he used the German Social Democratic Party as an example of the 'iron law of oligarchy'. Michels argued that this organisational form had become endemic in the conditions of mass democracy (Michels, 2009).[9]

In his conference in Munich on 28 January 1919, *Politik als Beruf* (Politics as a vocation), Weber ackowledged the influence of Ostrogorski, making a detailed reference to his reflections about the political parties in England and in the United States and their effects on the political system. In England, the party machinery normally turned out MPs that were little more than well-disciplined 'yes men'. The caucus machine in the open country is almost completely unprincipled if a strong leader exists who has the machine absolutely in hand. Thus, the plebiscitarian dictator actually stands above parliament. He brings the masses behind him by means of the party machine, and the members of parliament are merely political clients enrolled in his following. From this

[8] On Moisei Ostrogorski, see in Portuguese, Balão (2001).
[9] On Robert Michels, see in Portuguese, Teixeira (2000).

viewpoint, in the United States, the spoils system means that quite unprincipled parties oppose one another. Thus, they are organisations of job hunters, designing their changing programmes according to the needs of vote-grabbing.

In post-World War I Germany, Weber saw only two options: leadership democracy with a 'machine', or leaderless democracy. He defined the latter as the rule of professional politicians without a calling, without the inner charismatic qualities that make a leader, i.e. what party insurgents usually designated as 'the rule of the clique'. At that time, in Germany, Weber perceived that the system had only the latter type of party. Also in Germany, Carl Schmitt, a steady supporter of the Nazi regime, published *The Crisis of Parliamentary Democracy*, strongly criticising the Republic of Weimar regime (Schmitt, 1988) in 1923.

The first decades of the 20th century were times of political instability and social crisis, sparking great dissatisfaction with representative democracy and the role of the political parties. The model of representative government was challenged from both the left and the right. However, these challenges did not increase support for semi-direct democracy devices like referendums. The reality was quite the reverse. In Russia, the 1917 Revolution challenged the bourgeois representative system with the first experience of a socialist State. In Italy, Spain, Portugal, Germany, and in other European States, fascism emerged from the ruins of representative governments and discredited party systems, offering the propertied classes protection from the rise of the workers' movement and against the spread of the Soviet revolution. It is significant, however, that fascism, while rejecting democracy as a political system and free elections as a method for choosing representatives, used plebiscites to assure their formal legitimacy in Italy, Germany and Portugal.

Even among the liberals, nobody wanted to replace representative democracy with any kind of semi-direct democracy. This was unanimously considered to be impossible in large communities. Not even Ostrogorski supported referendums as an alternative to the dysfunction of parties systems, perhaps thinking that their control over the political system could be further exacerbated by the referendums. The solution proposed by Ostrogorski was a form of temporary parties, supporting concrete causes and extinguished once they achieved their goals. However, debates about the advantages and disadvantages of referendums were kept alive inside the liberal camp, with several authors supporting their importance as a useful supplement to representative democracy.

This was the case of Albert Venn Dicey, who made an important contribution to the theory of referendums. Although he initially opposed the introduction of referendums (Qvortrup 2005, pp. 46-51), describing them in 1884 as one of the most dubious devices of Swiss democracy, he gradually changed his view. His primary concern was the lack of a Constitutional check on the powers of the House of Commons, which increased the possibility of a fundamental change passing into law, even if undesired by the majority of the nation. Dicey's main argument for introducing the referendum was a profound dissatisfaction, and frustration, with the practical implementation of the principles of representative government, which he hoped (and believed) could be remedied by elements of direct democracy.

Dicey did not view the referendum as an antidote for all the deficiencies of parliamentary government, nor did he believe that representative government could be replaced. The referendum was merely a popular veto, limiting the parliamentary system and balancing the powers of the legislative and executive bodies provided both could appeal to it. It would also set boundaries on the influence of the parties in political life. According to Dicey (1915, p. xcii), parliamentary government had suffered an extraordinary decline. The causes were the same referred by Ostrogorski. Party government inevitably gives rise to partisanship. At the very least, this produced a machine that might engage in political corruption, thus distorting the work of the fairly-elected legislature and misrepresenting the permanent will of the electors (Dicey, 1915, p. xciv).

However, Dicey did not ignore the arguments against the referendum. In England the introduction of the referendum would mean the transfer of political power from knowledge to ignorance. The Parliament contained a far greater proportion of educated men, endowed with marked intellectual power and trained in the exercise of high political virtues, than would be found among electors assembled merely by chance (Dicey, 1915, p. xciv). The referendum might indeed often stand in the way of salutary reforms, but it might on the other hand delay or prevent innovations condemned by the weight both of the uneducated and of the educated opinion (Dicey, 1910, pp. 551-552). The same arguments were used by James Bryce (1921, p. 159): while it was possible to achieve consensus in the Parliament, the same was not possible by referendum, because it did not give any opportunity to amend a measure or arrive at a compromise upon it; in other words, it is the bill, the whole bill, and nothing but the bill.

For these reasons, Dicey (1915, p. c) recommended that the referendum should be used purely as a means for the people to veto legislation passed by the House of Commons. According to him, the referendum, if introduced in England, would be strong enough to curb the absolutism of a party possessed of a parliamentary majority. The referendum is also an institution that promises some considerable diminution in the most patent defects of party government and, if judiciously used, might revive faith in the parliamentary government by checking the omnipotence of partisanship (Dicey, 1915, p. xcvii).

In a similar vein, authors like Leon Duguit (1948, pp. 148-149), Maurice Hauriou (1929, pp. 134, 144-146, 547, 549-550) and mainly Carré de Malberg (1931, pp.15-27), considered that the referendum was not only perfectly compatible with representative democracy, but even a necessary complement to it, in order to limit the absolute power of parliaments, governments and political parties. Carré de Malberg even considered that the referendum should work as an element to moderate the absolute supremacy of parliament, joining the advantages of a parliamentary system and democracy. The representative powers of the parliament would remain, but they would be constrained by the powers of the represented people.

Butler & Ranney (1994, pp. 14-15) also stressed the idea of the referendum as a supplement, rather than an alternative, to the representative government. Representative government must, and should, be the basic institutional form for democracy in any densely populated community, such as modern nation States. But representative democracy can be improved by permitting, under certain conditions, the direct votes of citizens to confirm, reject, or even make laws.

Therefore, those who supported the referendum as a useful supplement for representative democracy excluded the referendum by popular initiative, i.e. referendums invoked by the will of the citizens who gathered a certain number of signatures. In such cases, the referendum could be indeed a challenge to representative government. However, the use of the referendum decided by parliament, i.e. suggested and approved by the main parliamentary parties, could reinforce the popular legitimacy of certain decisions which might otherwise lead to divisions inside the parties. The referendum would be a pacifying element inside the parties, preventing the risk of divisions on fragmenting issues.

The main parties could decide if, how and when the referendum should be called. However, by delegating the decision on the submitted

issue to the electors, they would escape the responsibility of the choice. In this manner, the risk of discredit of parties or governments by referendums could be limited, but could not be avoided entirely. For example, the referendums of the 21st century on the Treaty Establishing a Constitution for Europe were implemented to strengthen the legitimacy of the European integration, but became an instrument for its rejection and highlighted the chasm between rulers and citizens on this issue.

In summary, the main benefits anticipated from referendums were the increase of legitimacy and participation. Democratic regimes rely on the consent of citizens rather than on the coercive power of governments to ensure the rule of law. One of the greater virtues of referendums derives from the belief of most ordinary people that decisions they make themselves are more legitimate than those made by public officials, even if they are elected public officials. Direct popular decisions made by referendums have a legitimacy that indirect decisions by elected representatives cannot match. This does not mean that all decisions should be made by direct vote of the people. It does not even mean that decisions made by referendums are wiser or more prudent than those made by representatives. It means only that when a representative democracy wishes a particular decision to be made with maximum legitimacy, it would do well to make that decision by referendum (Butler & Ranney, 1994, pp. 14-15).

However, there are consistent arguments against referendums in democracy: **1)** ordinary citizens have neither the analytical skills nor the information to make wise decisions on technically complex issues; **2)** decisions by elected officials involve weighing the intensity of preferences and melding the legitimate interests of many groups into policies that will give all groups something of what they want; **3)** decisions made by representatives are more likely to protect the rights of minorities; **4)** by allowing elected officials to be bypassed by encouraging officials to evade divisive issues by passing them on to the voters, referendums weaken the prestige and authority of representatives and representative government (Butler & Ranney, 1994, pp. 16-17).

In an attempt to summarise the causes of popularity of the referendum at the beginning of the 20th century, Maria Benedita Urbano (1998, pp. 25-28) refers to three main reasons: **1)** the crisis of the parliamentary system: the excess of power of the executive bodies, reinforced by the World War I and led to the discredit of parliament, labelled by its instability; **2)** the success of the Swiss and North American experiences, and the good results from the popular consultations for the

resolution of territorial issues after the end of the World War I; **3)** the transition from the liberal State to the mass State, when the widening of suffrage spurred a conception of parliament as an instrument of the bourgeoisie, which disregarded popular interest.

Another Portuguese author, Maria Luísa Duarte (1987, p. 220), stressed this last point. The liberal State was founded on a representative model, characterised by the hegemony of the parliament, the strictly representative nature of the mandate, and the censitary suffrage. The rules to check the right to vote were undoubtedly aimed at safeguarding the oligarchic structure of the liberal society and the political supremacy of the bourgeoisie. The restriction of suffrage left out those who could jeopardise the political uniformity of the parliament.

The most evident signs of challenge to the liberal political model came from the struggle for universal suffrage and from the critics of the parliamentary system. The causes of that challenge came essentially from the changes of the liberal economic system which had unavoidable effects on the social structure, with the appearance of intermediate bodies between the individual and the State, namely the political parties.

The steady growth of a working class, and the concentration of population in urban centres, created a working class that was politically vocal and organised around trade unions. Some political parties followed ideologies against capitalism, liberalism and the parliamentary system, and developed intense campaigns for universal suffrage. The transition from representative government to representative democracy became indispensable to the survival of the representative system. The direct participation through referendum appeared as a possible way of compromise, a solution to the insufficiencies of the pure representative model.

6.2. The Weimar Constitution

Within the first decades of the 20th century, the referendum was enshrined in the Constitution of several States in all continents. However, the most complete example of Constitutional reception by direct democracy institutions was the 1919 Weimar Constitution of Germany.[10] In fact, in the Weimar Constitution, we can see several types of direct democracy institutions (Rodrigues, 1994, pp. 64-65):

[10] Available at: http://www.zum.de/psm/weimar_vve.php [accessed on 15 February 2011].

a) Recall of the *Reich President*, who could be deposed by plebiscite, which had to be suggested by the *Reichstag*, whose decision required a majority of two thirds. The rejection of the deposition was regarded as a re-election and resulted in the dissolution of the *Reichstag* (Article 43).

b) Legislative referendums, by popular, presidential or parliamentary initiative: a law passed by the *Reichstag* had to be presented in a plebiscite, if the *Reich President* decided so, within the period of one month. A move supported by one third of the members of the *Reichstag* and one twentieth of the registered voters could suspend the proclamation of a law and submit it to plebiscite. A plebiscite also had to be held if one tenth of the registered voters demanded a law draft to be presented. The plebiscite would not be held if the law draft in question had been accepted or unaltered by the *Reichstag*. In regard to the budget, taxation laws and pay regulations, only the *Reich President* could request a plebiscite (Article 73).

c) Referendum of arbitrage between parliamentary chambers: in case of disagreement with the *Reichsrat* regarding a law passed in the *Reichstag*, the *Reich President* might call for a plebiscite. If the President did not call the plebiscite, the law was regarded as not having been passed. If the *Reichstag* decided against the *Reichsrat* objection with a vote of more than two thirds, the *Reich President* had to either proclaim the law or call for a plebiscite (Article 74) within three months.

d) Constitutional referendum: Constitutional changes should be passed by a two thirds majority both in the *Reichstag* and in the *Reichsrat*. The amendments could be submitted to plebiscite if demanded by one tenth of the registered voters. An absolute majority of the registered voters was required in order for the amendment to pass. If the *Reichstag* decided on a Constitutional amendment against *Reichsrat* objection, this could require a plebiscite to be held (Article 76).

e) Local referendum: The alterations of territory must be decided by the majority of the population (Article 18).

6.3. Referendums in the 20th Century: 1900-1945

In the first four decades of the 20th century, the devices of semi-direct democracy were disseminated across Europe and the rest of the

world. Between 1900 and 1945, there were, in Europe alone, 87 referendums in Switzerland, and 98 referendums in 32 other countries (see Table 2). Australia was the second State in the world in terms of the number of referendums (22 in that period). It is interesting to note the significant use of referendums in America, probably influenced by the tradition and frequent use of referendums in the North American States, though not in the United States as a whole. During that period, referendums were also held in Bolivia, Canada, Chile (4), Guatemala, Panama, Paraguay, Peru and Uruguay (4). In Europe, several referendums took place in Germany (6), Greece (4), Austria, Denmark (3), Iceland (6), Italy (2), Estonia (5), Latvia (4), Finland, Portugal, Romania (3), Luxembourg (3), Poland (3) and Sweden.

However, not all of these referendums were democratic consultations. On the contrary, several plebiscites were designed to give formal legitimacy to authoritarian regimes. These were held without any possible alternatives or public freedoms, and under the severe repression of any type of opposition. Mussolini in Italy, Hitler in Germany, Salazar in Portugal, among other dictators in Europe, used the referendum to give formal legitimacy to strengthen their absolute powers. In these kinds of plebiscites, which were made in a non democratic context, the official propaganda completely nullified the significance of a referendum as an instrument of direct democracy (González, 2005, pp. 20-21).

6.4. The Referendum after World War II: 1945-1969

Some authors, like Michael Gallagher (1996, p. 230) highlight a retreat from the use of referendums in Europe after World War II. The referendum was used to decide some institutional problems, including in: Belgium in 1950 on the return of Leopold III; Italy in 1946 on the choice between the Republic or the Monarchy; Greece in 1946 on the return of George II; Iceland in 1944 on its separation from Denmark; and France, where it was restored 76 years after, by the hand of General De Gaulle, in 1945, in order to put an end to the III Republic, and later in 1946, 1958, 1961, 1962 and 1969.

However, the number of referendums increased substantially in the world. Between the beginning of 1900 and the end of 1944, 61 sovereign States held 214 referendums. Even considering the number of referendums held in Switzerland (84), more than 130 referendums were held in the rest of the world. A significant number of States that became independent after World War II, and particularly at the beginning of the 1960s as result of the decolonisation movement, used the referendum as a

process to declare the sovereign will of their people in favour of independence. This was the case in Cambodia (1955), Togo (1956), Benin, Burkina Faso, Central African Republic, Chad, Congo, Ivory Coast, Djibouti, Gabon, Guinea, Madagascar, Mali, Mauritania, Niger, Senegal (1958), Somalia and Samoa (1961) and Algeria (1962).

6.5. The Referendum in the 1970s and 1980s: 1970-1989

In the following years, the number of referendums increased further. From the beginning of 1970 to the end of 1989, 68 States held 324 referendums. Switzerland held 147 while the other countries had 177 (see Table 2). During this period, there was a visible dispersion of referendums around the world. In Australia, after some retraction in the 1950s and 1960s, the referendum was once again used frequently (16 times). Meanwhile, Italy became the second user in Europe, with 15 referendums. Other significant cases were the Philippines (12), Ireland (9), Egypt (8), Samoa (7), and New Zealand (5).

In 1972, the first referendums regarding the European integration process were held at the time of the first enlargement. Denmark and Ireland decided to join by referendum, while Norway resolved not to acceed by referendum as well. France submitted the EEC enlargement to a national referendum. In 1975, the United Kingdom held the first national referendum of its history on the renegotiation of the terms of European integration. Finally, in 1986 and 1987, Denmark and Ireland submitted the ratification of the Single European Act to a referendum.

6.6. Referendums in Modern Times: 1990-2011

Again, over the past two decades, the use of referendum increased substantially (LeDuc, 2003, p. 13). Between the beginning of 1990 and the end of 2011, 107 States held 642 national referendums, with 200 held in Switzerland and 442 in the rest of the world (see Table 2). Italy distinguished itself as second most active referendum user in the world, holding 54 in that period on several public issues. Ireland also increased the frequency of referendums, holding almost one referendum per year (a total of 20).

In recent times, a significant use of the referendum has been in relation to the appearance of new independent States in the International Community, following the fall of the Soviet Union and the disaggregation of former Yugoslavia. The new independent States used the referendum not only as a device to decide on their independence, but also to approve

Constitutions or to decide several public issues. Therefore, we can note that 41 referendums were held in Azerbaijan, 19 in Lithuania, 15 in Slovakia, 12 in Slovenia, 11 in Kyrgyzstan, eight in Latvia, seven in Ukraine, six in Russia, four in Georgia, three in Armenia, Belarus, Estonia, Moldova and Serbia, two in the Czech Republic, Kazakhstan, Macedonia, Montenegro, Tajikistan and Uzbekistan, and one in Croatia and Turkmenistan.

Other States held referendums in significant number, like the Federated States of Micronesia (16), Ecuador (15), Uruguay (11), New Zealand (10), or Bolivia and Venezuela (6). In these years, for the first time in history, the number of States with referendums became the majority (107 against 73).

6.7. The Special Case of 'European Referendums'

The referendum has been a common feature of the European integration process since 1972, when the enlargement of the European Communities from six to nine members was submitted to referendum in France on 23 April. With the accession of new members, there were new submissions to referendum in Ireland on 10 May and in Denmark on 26 September, both with affirmative results. However, in Norway, which held a referendum on 26 September 1972, the electors voted against joining the EEC.

In the United Kingdom, there was no referendum on accession to the EEC, although the Labour opposition demanded one. After the electoral victory of Labour in 1974, Harold Wilson, who had strongly criticised the Conservatives for signing a treaty that he believed was economically disastrous for the UK, sought to demand a re-negotiation of accession conditions. A national referendum on EEC membership was held on 5 June 1975, the first national referendum in the history of the United Kingdom.

A second wave of referendums was held in 1992 with regard to the Maastricht Treaty. The Danish people rejected the treaty on 2 June. It was accepted in Ireland (18 June) by a comfortable margin, and more narrowly in France (51.04%) on 20 September.

According to its own rules, the Treaty could not come into force unless ratified by all twelve Member States. The ratification process was suspended and the Danish electors recipients of strong pressure from European governments pushing for a fresh referendum to consider a set of derogations agreed in Edinburgh. The Edinburgh Agreement was

submitted to referendum in Denmark on 18 May 1993, under the threat that Denmark's would be excluded from the European Union in case of a negative answer. The 'Yes' campaign won at last.

After Maastricht, the referendum was used again regarding the adhesion of Austria, Sweden, Finland and Norway. Austria (12 June 1994), Finland (16 October), and Sweden (13 November), voted 'Yes' on the referendum regarding their EU membership. On 28 November, Norway voted 'No' again.

In 1998, two Member States submitted the Amsterdam Treaty to referendum: Ireland on 22 May and Denmark on 28 May. The result was affirmative in both cases.

On 28 September 2000, the Danish electors refused to approve the European currency by referendum. On 7 June 2001, Ireland held a referendum on the ratification of the Nice Treaty. The result was a refusal. A fresh referendum was held on 19 October 2002, and approval was gained after the opportunity was offered for Ireland to avoid taking part in a EU mutual defence pact.

At the time of the 2004 enlargement, the accession of 10 new Member States led to nine referendums. Cyprus was the only nation that did not submit its accession to a referendum. Referendums were held in Malta (8 March 2003), Slovenia (23 March), Hungary (12 April), Lithuania (10/11 May), Slovakia (16/17 May), Poland (7/8 June), Czech Republic (13/14 June), Estonia (14 September) and Latvia (20 September). The results were affirmative in every cases.

On 14 September 2003, the Swedish voters refused the single currency by referendum. Sweden remains outside the euro zone.

In 2005, after the signature of the Treaty Establishing a Constitution for Europe, four Member States held referendums: Spain, on 20 February, voted 'Yes'; France, on 29 May, voted 'No'; The Netherlands, on 1 June, voted 'No'; Luxembourg, on 10 July, voted 'Yes'.

The negative results in France and The Netherlands, two founding States of the European Community, threw the EU into a crisis. It would not be possible to save the Constitutional Treaty. The solution previously used for two small countries, Denmark and Ireland, was not appropriate for two founding States at the heart of the European Union, one of them a major power and a key part of the 'European locomotive'.

The agreed 'solution' among the European leaders was the Lisbon Treaty, signed on 13 December 2007. The new Treaty would drop the Constitutional formula, but it would contain the essence of the Constitutional Treaty. Referendums would not be held in the ratification process, avoiding the risk of fresh defeats. Spain would not repeat the referendum because the Treaty was the same; France and The Netherlands did not repeat the referendums because the Treaty was different. Despite the protests of those who supported the need for referendums to grant legitimacy to the European integration process, the only recognised exception was Ireland; its Constitution required a referendum to ratify the Treaty.

After 32 referendums on the European integration process, European leaders now had a change of heart, refusing referendums on the Lisbon Treaty. The referendum, recognised since 1972 as a proper and democratic way to legitimise European integration was, by 2007, treated with suspicion. It became clear that, for European leaders, there are other values in the European Union that are heavier than popular participation.

The referendum, as a democratic device was defeated, except for the only exception allowed, Ireland, which saved the honour of the institution. On 12 June 2008, the Lisbon Treaty was refused by the Irish people, who, so to speak, voted on behalf of all like-minded European citizens who did not have the possibility to pronounce themselves.

However, higher interests prevailed, and the Irish people had to vote again in a referendum on the Lisbon Treaty on 3 October 2009. That time the 'Yes' became the winner and the way was open for the enactment of the Lisbon Treaty. Nevertheless, nobody has doubts that the Irish Republic should hold as many referendums as needed for the approval of the Treaty. The European Union process defeated the referendum as an institution and disregarded it as an expression of popular will.

7. Defining Referendums

7.1. Types of Referendums

According to Arend Lijphart (1984, p. 206), referendums fail to fit any clear universal pattern. The referendum label includes a variety of situations and usages which bear only a superficial similarity to one another (Uleri, 1996, p. 3). In fact, each referendum is unique, and the political context can differ widely (LeDuc, 2003, p. 15).

Table 1 - Referendums around the World

	1793-1899	**1900-1944**	**1945-1969**	**1970-1989**	**1990-2011**	**Total**
Number of States	**52**	**68**	**121**	**146**	**180**	**180**
With referendums	13	32	61	68	107	139
Without referendums	39	36	60	78	71	40
Number of referendums	**80**	**185**	**214**	**324**	**642**	**1445**
In Switzerland	56	87	84	147	200	574
In other States	24	98	130	177	442	871
Constitutional referendums	44	73	105	249	258	638
Referendums on international treaties	0	2	8	15	42	67
Referendums on sovereignty Decisions	3	14	29	6	23	75
Referendums on other public issues	33	96	72	136	328	665

Sources: LeDuc (2003); Uleri (2003); Butler &Ranney (1994); Gallagher & Uleri (1996); Centre for Research on Direct Democracy, available at http://www.c2d.ch/inner.php?table=dd_db [accessed 29 February 2012].

Table 2 - Number of Referendums by State

Number of referendums	**Number of States**
20 or more	8
10 or more but less than 20	12
More than 5 but less than 10	28
Between 1 and 5	91
None	41

Nevertheless, it is possible to distinguish some types of semi-direct democracy devices which come under the label of referendums. Several authors have created typologies, and some of these are summarised below.

First, we must properly distinguish between referendums and recalls. The latter are a negative variant of personal election involving a vote that terminates the mandate of an elected person (Butler & Ranney, 1978, p. 5). In recent years, Venezuela in 2004 and Bolivia in 2008 have seen recalls. These ended in the victory of the elected presidents.

In Portugal, Jorge Miranda (1996a, pp. 237-238) refers to a large number of possible classifications of referendums: **a)** internal or international law; **b)** national, regional or local scope; **c)** Constitutional, legislative, political or administrative; **d)** mandatory or optional; **e)** of popular, parliamentary, governmental, presidential or monarchic initiative; **f)** binding or advisory; **g)** positive or negative; **h)** suspensive or resolutive.

Maria Luísa Duarte (1987, pp. 207-208) distinguishes the types of referendums by having in mind **a)** the subject of the consultation, on constituent (to approve a Constitution), Constitutional (to approve a Constitutional revision), legislative, administrative, or international issues; **b)** the territorial scope, at national or infra-State levels; **c)** the nature of a mandatory or optional consultation; **d)** the effects of the consultation, which may be binding or advisory.

In France, Jean-Louis Quermone (1985, pp. 577-590) adopted a classification that is not so different: **a)** mandatory or optional; **b)** binding or advisory; **c)** by governmental origin (Head of State, Head of Government or parliamentary majority) or popular initiative; **d)** Constitutional or legislative; **e)** on rules or plebiscitary; **f)** of national, regional or local scope.

David Butler and Austin Ranney, (1978, pp. 23-24) in their comparative study, classified referendums into four basic types:

a) Government controlled referendums, when the government has the power to decide whether a referendum will be held. This includes the subject matter and wording of the proposition to be voted on, the proportion of yes votes needed for the proposition to win, and whether the outcome will be binding or merely advisory.

b) Constitutionally required referendums, when the Constitution requires certain kinds of measures adopted by the Government to be approved by the voters before they can take effect.

c) Referendums by popular petitions, when ordinary voters are authorized to file a petition demanding that a certain measure adopted by the Government be referred to the voters. If a majority of the voters support a repeal, the law is voided regardless of whether the Government wishes to retain it.

d) Popular initiatives, when ordinary voters are authorized to file a petition demanding that a certain measure, which the Government has not adopted, be referred to the voters. If the required majority of voters vote in favour, it becomes a law regardless of whether the government opposes it.

An interesting classification was drawn by Gordon Smith (1976, p. 6). This author establishes a functional variance of the referendum, based on the degree of control exercised by political authorities. The referendum is controlled if the government can decide if, when and how it will be held in order to obtain foreseeable results in favour of the governing authority. The reverse applies to an uncontrolled referendum. The continuum of control has to be construed as an expression of manifest intention, apart from the particular issue and irrespective of the actual result.

However, the intention behind the referendum is one thing; the consequences are quite another, and the sum of them may be supportive or detrimental to a regime. The consequences may have a fundamental impact on the system. Thus, in a similar fashion to the continuum based on control, it is feasible to distinguish a second type of effects with two extremes: pro-hegemonic and anti-hegemonic (Smith, 1976, p. 7).

For the purpose of Gordon Smith's classification, Arend Lijphart (1984, pp. 261-262) points out that the majority of referendums are controlled and pro-hegemonic. Governments have used the referendum when they expect to win. The mandatory referendums were not totally controlled, and not all the controlled referendums are pro-hegemonic because governments cannot always foresee the results. The referendums in France and The Netherlands on the European Constitutional Treaty are good examples of controlled but anti-hegemonic referendums.

Pier Vincenzo Uleri (1996, pp. 6-7), distinguishes some types of referendums:

a) Prescribed referendum is a referendum according to rules and a discretionary referendum is one at the discretion of some person or institution.

b) Prescribed referendums can be mandatory or optional. If it is mandatory, the procedure is automatic in the sense that the vote must be called in order for a decision to be valid and enter into force. It is optional when it is promoted at the request of an agent entitled by the Constitution or law.

c) Binding and advisory votes. A vote is binding when its outcome must be accepted and adopted by Parliament and Government, or when the referendum vote is itself the decisive act. It is advisory when its outcome has only an indicative value, with the last word going to Parliament and Government. However, most de jure advisory votes have been considered de facto as binding ones.

The same author also distinguishes two general classes of popular votes: referendum and initiative. The criterion should be the promoter of the vote: promoted at the voters' request and promoted by other agents.

Another criterion is the comparison between the promoter of the request for consultation and the author of the act put to the vote. Decision-promoting votes are those in which the promoter of the consultation and the author of the decision put to vote coincide. Decision-controlling votes are all votes in which the promoter of the consultation and the author of the decision put to vote are two different agents. The decision-controlling vote can be a rejective vote, on a decision taken but not yet implemented, and an abrogative vote on an existing State of affairs (Uleri, 1996, pp.10-14).

Finally, the Canadian author Lawrence LeDuc (2003, p. 39) distinguishes four forms and variations of the referendum: **a)** mandatory Constitutional referendum (binding referendum); **b)** abrogative referendum (popular veto); **c)** citizen initiated referendum (popular initiative); **d)** consultative referendum.

According to another criterion, the same author (2003, p. 47) refers to different political functions of the referendum, which he classified as follows:

a) The referendum as the recourse of the Prince: implemented by a State President, Head of Government, or ruling figure to obtain public endorsement of a person, regime or programme.

b) The referendum as the recourse of the citizens: initiated by citizens or groups either against the governing authorities or without their approval.

c) The referendum as the recourse of the parties: a vote organised by the governing party as part of its political agenda or to resolve internal political conflicts.

7.2. Typology of Subject Matters of Referendums

How have referendums been used around the world? Butler and Ranney (1978, pp. 18-19) point out that a look at the list of referendums offers a powerful deterrent to easy generalisations about why they have been held. Each seems to have a special history, rooted in an individual national tradition. The reasons for each referendum, its treatment by politicians and by voters, and its consequences fail to fit any clear universal pattern. However, according to the same authors, common elements can sometimes be detected: first, where there is Constitutional necessity; second, where there is a legitimating function; third, where there is a transfer of decision-making.

On his turn, Lawrence LeDuc (2003, p. 33) establishes a typology of subject matters for referendums in the following terms:

a) Constitutional issues: amendments to the Constitution and changes in political institutions, forms of governance, basic laws, etc.
b) Treaties and international agreements: all agreements between nations, supranational organisations, etc, whether such referendums are Constitutionally mandated or not.
c) Sovereignty: referendums on territorial questions, issues of national self-determination, devolution of authority, federation, secession.
d) Public policy: referendums on policy questions, including consultative votes on government proposals, abrogative votes on public laws, citizen initiatives, etc.

8. Towards a Global Balance

When discussing referendums, we can speak about two different worlds: in Switzerland, California, and a few other States of the USA, initiatives and referendums are prominent strands in the fabric of political life. In all other countries referendums are held infrequently, usually only when the government thinks they are likely to provide a useful ad hoc solution to a particular Constitutional or political problem or to set the seal of legitimacy on a change of regime (Butler & Ranney, 1978, p. 221).

In fact, referendums are relatively rare events in the politics of most nations. In only a few countries is the referendum a long-established and frequently used device for obtaining popular consent on major public questions. Switzerland uses the referendum as an integral part of its process of government, and Australia and Ireland do so for all Constitutional changes. In a few other instances, notably Italy, the referendum is a more frequently used, but still far from routine, part of the political process (LeDuc, 2003, p. 30).

As we can see in Table 2, until the end of 2011 there were only eight States in the world which used the referendum for 20 or more times in their history, and only 12 more States that used it for 10 or more times. However, 127 other States held referendums. Table 1, having considered 180 sovereign States (all with more than 100,000 inhabitants), allows us to conclude that the large majority (139) held referendums only occasionally.

Switzerland is a world apart. From the 1,445 referendums that we could identify around the world, at a national level in sovereign States before the end of 2011, 574 of them were held in Switzerland and 871 in other States. In these latter, the referendum was used more frequently in Italy (72), Australia (48), Azerbaijan (41),[11] Ireland (33), New Zealand (26), France, and Uruguay (25).

Using Lawrence LeDuc's typology of subject matters for referendums, we can see that the majority were Constitutional referendums, held to approve or ratify new Constitutions, Constitutional amendments, changes in political institutions, forms of governance or basic laws (638); 75 were held to decide on territorial questions, issues of national self-determination, devolution of authority, federation, or secession; 67 were held on treaties or international agreements, and 665 were held on other policy questions submitted to voter decision.

[11] 29 on the same day.

As LeDuc points out (2003, p. 30), the referendum has been used not only to manage questions of major Constitutional change but also to allow citizens to influence the decisions of government directly on a wide range of policy matters, at least partly in response to a widespread sense of dissatisfaction with democratic performance in many countries. But, as Uleri refers (1996, p. 1), sometimes they have made life more complicated for governments, parliaments and political parties. At other times they have been useful instruments to solve difficulties that these bodies seemed unable or unwilling to tackle.

9. Referendum and Democracy

At the very beginning of their comparative study, Butler and Ranney (1978, p. 1) assert that referendums, as a means of making government decisions or giving legitimacy to them, have a history that is almost as old as democracy. However, they point out that a few admirable democratic societies have never tried the device, while some authoritarian ones have grotesquely abused it.

Returning to Uleri (1996, p. 1), we can say that the referendum phenomenon needs to be considered in the light of the origins, tradition and development of liberal democratic representative institutions and government. The tension between Montesquieu and Rousseau, between representative and direct democracy, traversed the history of the modern Constitutional State. Nevertheless, its fundamental structures had been built on the basis of representative democracy. However, the referendary appeals for the people to ratify government decisions, from Rousseau's concept of democracy, were never forgotten (Vega, 1985, pp. 102-103).

In theory, the referendum is not incompatible with representative institutions, but only with a certain form of representative government. Historically the referendum has been defined with the liberal State of pure parliamentarianism, with its corollaries, restricted suffrage, representative mandate and primacy of the parliament. However, the parliamentary system suffered the influence of a dynamic that seeks to limit the powers of the parliament, through the strengthening of the executive and the effectiveness of the direct participation of voters. The referendum does not, however, necessarily undermine the parliamentary institution, since its integration in the system is submitted to a basic principle of complementarity (Duarte, 1987, p. 230).

In each institutional crisis, from the representative government to representative democracy, from liberalism to the interventionist State, from the latter to neo-liberalism, the idea of referendum is reborn, as a

corrective device, as a way of control, as a formula of citizen participation and an expression of popular will, and as a counter power regarding or vis-avis the parties (Vega, 1985, cited in Cardoso, 1992, p. 26).

The referendum, as an arbitrage process, is a serious inconvenience to the balance of powers. In the case of conflict between the Head of State and Parliament, it can degenerate in plebiscitary consultation, with the strengthening of the President and the weakening of the Parliament. In the case of conflict between the chambers, it nullifies the High Chamber. In the case of conflict between the Parliament and Government, it causes institutional instability, leading to the fall of one of them (Duarte, 1987, pp. 225-226). The referendum as a process of control does not have these risks. It allows for the control of the representatives by the electoral body, through the expression of their will on this or that political decision, in addition to the guidance of the parties (Duarte, 1987, p. 226).

As a way of direct participation, the referendum allows for the approximation between the adoption of public decisions and the electoral body affected by such decisions. But it is not possible to conceive of a democratic system based exclusively on successive direct decisions taken by the voters. The problem is not technical. Indeed, it is easy to admit that, in a near future, the development of technology for electoral purposes, namely by electronic means, can make easier the holding of referendums (Câmara, 1997, pp. 166-176). If the Constitutional State presupposes the limitation of power, such limitation would be impossible in a direct democracy, because it is not capable of guaranteeing political pluralism (González, 2005, pp. 9-10). If the referendum is used with electoral purposes, not as a complement of the elections but as their replacement, it becomes a device opposed to the democratic principle. It does so because runs contrary to the purpose of elections. It is the choice between several options that gives suffrage its genuine significance (González, 2005, p. 32).

As Uleri stresses (1996, p. 2), it is not possible to contrast representative democracy and direct democracy, simply because no modern political regimes use referendums as the main decision-making system. The referendum phenomenon generally presupposes an interaction with the mechanisms and processes of the political system that work within it. In fact, as LeDuc (2003, p. 31) refers, many nations have traditionally combined elements of both direct and representative democracy in their political institutions and have merely shifted the

balance more towards one or the other at different moments in their history.

Representative democracy, that is, parliamentary democracy, is the general rule followed in the exercise of constituted power. In that sense, and apart from certain exceptions like the Swiss case, the referendum as a direct democracy device has a complementary role. From the participative point of view, it adds value to representative democracies. The referendum is one of the several participative techniques in a fully pledged democracy, endowed with effective political pluralism and with guaranteed fundamental rights under the rule of law. Even the referendum in Switzerland is used as a supplement to representative democracy (only 4% of the bills are decided by popular referendums). The experiments with deliberative democracy clearly indicate that referendums can serve only as supplements to representative democracy (Qvortrup, 2005, pp. 40-41).

In unusual situations, like the adoption of fundamental decisions or the option between alternatives that seriously divide public opinion in a democratic context, the referendum can assure that the final decision adopted has sufficient social support (González, 2005, p. 24). However, the authoritarian experience of referendums goes to show that the referendum is a technique and, consequently, it is value-free, in principle. It is necessary to know in which context, with which contents, purposes, conditions and guarantees the referendum takes place, in order to establish a concrete evaluation (González, 2005, p. 21). It would be difficult to conclude that there is a clear pattern connecting the use of referendums with democratic practice (LeDuc, 2003, p. 29). The referendum is a political device, which can be democratic, but which is not necessarily democratic. Governments have chosen to hold referendums mainly for reasons of political convenience rather than in response to overarching general theories about how laws should be made and unmade (Butler & Ranney, 1978, p. 24).

Indeed, as Matt Qvortrup (2005, p. 10) points out, democracy is more than plain majority vote. The essence of democracy is not the vote but the discussion. The vote is assuredly an integral part of democratic decision-making. When the matter has been fully discussed, then a vote must be taken. This understanding of democracy has usually led theoreticians and practitioners to the conclusion that representative democracy must be the norm and that referendums are to be avoided as a device of pure direct democracy. A system that allows voters to vote only

'yes' or 'no' would institutionalise majoritarianism, and consequently be inimical to the ideal of democracy as discussion.

The referendum as an institution cannot represent the future of democracy, but in the democracy of the future there could be an increasing number of votes by referendum. There are important differences between countries, especially with regard to those that adopt referendum by initiative and those that do not (Uleri, 1996, p. 17). Giving citizens the chance to express their views directly on important political questions, or providing them with additional opportunities to intervene in the sometimes impenetrable processes of political decision-making, seems an obvious remedy for the present democratic malaise. While the referendum may not be capable of resolving all of democracy's problems, it does respond to at least some of the concerns expressed by many citizens in contemporary democratic societies (LeDuc, 2003, p. 20).

The framework of references for the democratic participation of citizens cannot, therefore, be reduced to the dilemma between the typical work of representative democracy and the appeal to the referendum. Between the extremes, there are all the mechanisms of participative democracy that coexist with representation, such as the exercise of the right of petition, the participation in a wide range of associations (political, civic, trade unions), the legislative initiative of citizens, and the free exercise of fundamental rights of citizenship.

In 1975, during the electoral campaign for the first free elections in Portugal after the revolution, which had the participation of 92% of registered voters, it was said that the vote is the weapon of the people. There is no doubt that, in democracies, the vote is, and must remain, a decisive and fundamental way of expressing the popular will. However, the participation of the citizens in a democracy cannot be limited to periodic voting in elections or referendums. If it is true that there is no democracy without the right to vote, it is also true that there is more to democracy than the vote.

Part II

The Historical Evolution of the Referendum in Portugal

Chapter 1

The Constitutional Monarchy: 1820-1910

1. Experiences and Constitutional Tradition in the 19th Century

1.1. Constitutional Antecedents

The years preceding the liberal revolution of 1820 in Portugal were painfully marked by three French invasions, the flight of the Court to Brazil (which was then a Portuguese colony), and by *de facto* British rule following the defeat of Napoleon's troops. Since Britain declared war on the French Convention in 1792, Portugal was internally divided between the 'French party' and the 'English party'. This severely affected the country given the contradictory pressures from France and Britain, and the oscillations of the Spanish position in that conflict.

In 1807, Napoleon ordered the closure of Portuguese ports to British ships under the terms of the Continental Blockade. Given the initial Portuguese refusal to accept that diktat, Napoleon, after celebrating the Treaty of *Fontainebleau* with Spain and the King of Etruria, which divided Portugal among the three powers, ordered his troops to advance upon Lisbon. Under the command of General Junot, Napoleon's troops aimed to impose the blockade that would otherwise have been ineffective. Unable to resist, the Portuguese Royal Family fled to Brazil, after a secret agreement with England (Cronin, 1979; Vicente, 2004).

On 23 May 1808, with the country under French occupation, the Three States (*Junta dos Três Estados)*[12] decided to request a Constitution similar to the one of the Great-Dukedom of Warsaw. They also requested the appointment of a Constitutional king from the Emperor's family. A deputation was sent to Napoleon, who was then in Bayonne. This request

[12] *Junta dos Três Estados* was the name of the Portuguese Courts during the Ancient Regime.

for a Constitution[13] was the first systematised proposal for a Portuguese Constitution (Araújo, 1993, p. 31; Canotilho, 1993, p. 149). However, the request had no hope of success. That same year, following developments in Spain, a popular rebellion broke out. With the British aid requested in June 1808, Junot's troops were expelled. Two other invasions were defeated, commanded respectively by Generals Soult and Massena, in 1810.[14]

With the King absent in Brazil, Portugal was, in practice, under British occupation. In fact, the Regency was subordinate to the British high command, which was insured by William Beresford, who supported the conservative members of the Regency. He worried about maintaining order and preventing the social, political and ideological effects of the revolutionary ideals, which had been reinforced in Portugal by the French invasions (Marques, 1992, p. 27). The Portuguese felt themselves abandoned by their Monarch, and complained about the constant drainage of money to Brazil. On the other hand, they regretted the commercial decline and the permanent deficit, and resented British influence on the Army and on the Regency (Marques, 1998, p.15). The abuses which British soldiers inflicted on the civilian population, and the subordination to which they held the Portuguese military, caused considerable anger, which increased after the condemnation and execution of several Masonic plotters, including a prestigious Portuguese General, Gomes Freire de Andrade, in October 1817.

The revolutionary movements that occurred in Europe and North America at the end of the 18th century implemented many of the concepts and political values of Enlightenment thought: freedom, equality, safety, individual property, citizens' rights and duties, national representation, tolerance, and the social pact. From those concepts, although defined in different ways, for instance, in the works of Locke, Hume, Adam Smith, Montesquieu, Rousseau, Mably, Sieyès, or Holbach, there appeared new interpretations of political liberalism. Constitutional solutions were found in the work of Jeremy Bentham, Benjamin Constant or Guizot (Vargues, 1993, p. 45). The Portuguese press, published abroad, mainly in England, was the core of the Portuguese liberal political formation. All these publications demanded a Constitution for Portugal and Brazil, and had as models English and French Constitutionalism as well as the Spanish Constitution of 1812 (the liberal Cadiz Constitution). In Portugal, the

[13] Called in Portugal *Súplica de Constituição*. Text available in Praça (1894, pp. IX-X).
[14] On the French invasions, see Bainville (1931); Araújo (1993); Vicente (2004) and Serrão (1983).

secret societies that were forbidden and severely repressed in 30 March 1818 were important bases for the liberal movement (Vargues, 1993, p. 45).

1.2. From the Revolution to the Constitution

Meanwhile, several liberal revolutions occurred in 1820. In France, there was an increase in the popular and military struggle against the restored monarchy after the fall of the empire. In Naples and Sicily, liberal rebellions broke out. In Spain, in January 1820, troops that should have proceeded from Cadiz to the American colonies under Colonel Quiroga and Major Rafael del Diego rebelled, proclaiming their allegiance to the Constitution approved in that Spanish city, in 1812 (Marques, 1992, p. 30; Ventura, 2004b, p. 158). Finally, in Portugal, due to the spread of dissatisfaction in military circles, a rebellion emerged in Oporto, on 24 August, and a Committee named *Junta Provisional do Governo do Reino* was created. Its purpose was to summon a parliament (*Cortes*) and draw up a Constitution (Marques, 1992, p.18). As Isabel Nobre Vargues (1993, p. 45) remarks, the first Portuguese liberal movement represented, in Europe, an aspect of the liberal victory (in Portugal, Spain, Italy and Greece) over the royalists, represented by France and the Holy Alliance, a coalition that included Russia, Austria and Prussia.

As had happened in Oporto, there was also a military uprising in Lisbon, on 20 September, and another Governmental Council (*Junta Governativa)* was constituted. The divergences between both committees on the electoral system for the Constituent Courts, and the very contents of the Constitution, almost caused a confrontation due to the disagreement concerning the "Instructions" for the election of the Constituent Assembly (Ventura, 2004a, p. 159; Santos, 1990, pp. 43-44). These Instructions were approved at last in a second version on 22 November 1820, according to the method established in the Spanish Constitution of 1812, which was adopted by the Kingdom of Portugal (Marques, 1992, p. 19; Santos, 1990, pp. 122-144).[15]

The election of the Constituent Assembly took place in December 1820, yielding a majority of owners, merchants, jurists and bureaucrats, who immediately requested the return of King João VI to

[15] See text in Almeida (1998) which contains all of the Portuguese electoral legislation practically up to 1926, with an introduction by the author and a valuable synoptic board of the legislative evolution. The text with all of the Portuguese electoral laws can also be seen in Namorado & Pinheiro (1998).

Portugal. The Constituent Assembly met between 24 January 1821 and 4 November 1822.[16] The King arrived in Lisbon on 3 July 1821.

The Bases of the Constitution were approved on 9 March 1821, and the King swore them in on 4 July. It Stated that sovereignty lay within a free and independent Nation, that it could not be the property of anybody (Article 20), and that the form of government was a hereditary Constitutional monarchy with fundamental laws regulating the exercise of the three political powers (Article 18). Only the Nation could draw up the Constitution or Fundamental Law, through its freely elected representatives (Article 21). Once drawn by the Extraordinary Assembly, the Constitution could only be reformed or changed in some of its articles four years after its publication. Even then, two thirds of the deputies had to agree on the need for the intended alterations. This being the case, the reform could only take place in the next legislature, with the deputies having the powers needed for that purpose (Article 22).[17]

1.3. The Constitution of 1822

The first Portuguese Constitution was approved on 23 September 1822, and sworn in by the King on 1 October.[18] As has been shown, the approval of the 1822 Constitution did not involve any plebiscitary device, in spite of that institution being well known by then. In fact, the plebiscite had recently been used in other places. Several Constitutions were approved by referendums in the American States and also in Europe. Besides the Swiss experience, the French Constitutions of Year I (1793), Year III (1795) and Year VIII (1799) were approved by plebiscites, (Guedes, 1978, pp. 156-170) and the same happened in Italy, with the Constitutions of the Cisalpine and Liguria Republics, in 1797, under Napoleon's influence (Uleri, 2003, pp.120-121). The French Constitution of Year VIII was changed by plebiscites, creating the Consulate for life (4 August 1802) and, then, the hereditary imperial dignity (18 May 1804). However, the Portuguese constituent deputies of 1821-1822 never considered holding a plebiscite.

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[16] All parliamentary debates that took place in Portugal since 1821 until now are available on the site of the Portuguese Parliament (*Assembleia da República*) at http://debates.parlamento.pt [accessed 8 March 2011]

[17] Text available at http://www.arqnet.pt/portal/portugal/liberalismo/bases821.html [accessed 8 March 2011].

[18] On the Constitution of 1822, see Marques, A. H. O. (1998, pp. 73-74); Canotilho (1998, pp. 123-128); Miranda(1981, pp. 226-230); Sá (1994, pp. 137-140); Gouveia (2010, pp. 419-430). See the text in Assembleia da República (2004, pp. 7-106).

The 1822 Constitution which, according to Gomes Canotilho (1993, p. 150), was the first demonstration of the democratic constituent power and its limit, recognised only the representative principle. Article 26 provided that sovereignty lies essentially in the Nation, and it could not be exercised by anyone, except legally elected representatives. Therefore, the Constitution assumed the structural principles of the liberal doctrines: national sovereignty, representation, independence of powers, and fundamental rights.

Like the French Constitution of 1793, the Portuguese Constitution of 1822 welcomed the popular sovereignty principle and opted for a directly elected unicameral parliament, reflecting the influence of Rousseau (Machado, 2001, pp. 140-141). However, the Portuguese Constitution did not adopt the principle of popular ratification of laws passed by the Parliament as laid down in Articles 58 to 60 of the French Constitution. On the contrary, influential deputies, including Borges Carneiro and Manuel Fernandes Thomaz, explicitly rejected the plebiscite. According to the latter in the 5 November 1821 session of the Constituent Assembly, the people used their right to elect the legislators: 'The people have to receive the Constitution as it will be presented and take into consideration that Congress will only propose a Constitution aimed at the happiness of the Nation. Therefore, the people have to voluntarily obey.' (*DCGENP*, 217, 5 November 1821, p. 2949).[19]

In the 1822 Constitution, legislative power belonged to a single assembly. The monarchic principle remained, but the King's authority came from the Nation. His power was founded in the Constitution, rather than in divine right or the inherited principle. The King had important powers, but he did not have the right to dissolve parliament. As Luís Sá (1994, p. 139) points out, that was the monarchic Constitution where the representative principle was taken further, undermining the aristocratic principle.

In the Constitutional revision procedure provided in Article 28 of the 1822 Constitution, some authors glanced in a relatively explicit, although indirect, way at the principle of voter's ratification of the decisions taken by Parliament (Cardoso, 1992, pp. 67-68; Urbano, 1998, pp. 97-100). In fact, taking inspiration from Article 22 of the Bases, the Constitution laid down that any revision could only happen four years after its publication. Only then, could Constitutional changes be proposed

[19] All mentions and expressions cited from Portuguese texts were translated by the author from the original.

to Parliament. In that case, the proposal would be read three times with intervals of eight days. If the proposal had been admitted for discussion, and if two thirds of the deputies had agreed on its need, it would be published as a decree, ordering that, in the elections for the next legislature, the voters should give the deputies special powers to make that revision, which, if passed, would be recognised as Constitutional.

As Maria Benedita Urbano writes (1998, p. 99), it was natural that, when those elections took place, the subject of the revision would be unnoticed in the wider context of other relative subjects to the normal tasks of the chambers, making it difficult to know the exact position of the voters regarding the changes proposed to the Constitutional text. Fernanda Lopes Cardoso (1992, p. 68) echoed this point, noting that voters were likely to overlook their right to amend the Constitution.

1.4. From the Constitution to the Constitutional Charter

The 1822 Constitution was in force only briefly. Brazil's precipitous independence inflicted a mortal blow to the Courts and made the liberals extremely unpopular. The economic crisis, and advances by the conservative party, combined with the European situation, worked against the liberal movement, causing its collapse (Marques, 1998, p. 21). In this context, counter-revolutionary forces led by Queen Carlota Joaquina and by Infant Dom Miguel, prompted a military coup on 27 May 1823, which led to the dissolution of Parliament on 3 June, followed by the fall of the Constitution on 4 June (Vargues & Torgal, 1993, p. 67).

However, King Dom João VI did not wish to see the return to absolutism. On 18 June 1823 he appointed a committee to draw an improved and modified Fundamental Law to the Portuguese Monarchy, annoying the most conservative sectors, but gaining the support of liberals (Marques, 1992, p. 40). At the same time, and in order to placate the victors of the coup, he decreed the dissolution of Parliament (Marques, 1992, p. 22; Vargues & Torgal, 1993, p. 69). At the end of 1823, the committee had a moderate draft of a Constitutional text (Canotilho, 1998, p. 135). Its approval was nonetheless prevented by political instability due to successive anti-liberal movements. In the event, King Dom João VI did not grant the Constitutional text made by the committee and, on 4 June 1824, he decided to declare and establish the 'old, true and only' Constitution of the Portuguese Monarchy (Santos, 1990, pp. 45-46).

King Dom João VI died on 10 March 1826, ending his moderating influence and throwing the country into open conflict once again. By decree published on 6 May 1826, he appointed his eldest son,

Dom Pedro, as his successor, who therefore became King Dom Pedro IV of Portugal and Emperor of Brazil. In Portugal, a Regency-Council headed by the Infanta Isabel Maria, took charge of government, representing the new monarch's will. From Brazil, the successor gave his providences: he granted a Constitutional Charter *(Carta Constitucional)* made under his own direction and gave the Portuguese Crown to his daughter, Maria da Glória, who would marry Dom Pedro's brother Infante Dom Miguel, under the condition of his Charter's oath. The Constitutional Charter arrived in Lisbon, taken by the British ambassador Charles Stuart, and the Regent swore allegiance to it on 31 July 1826.

1.5. The Constitutional Charter of 1826

The Constitutional Charter was written in Brazil between 24 and 29 April 1826. Its main inspiration was the Brazilian Constitution of 1824, which itself followed the French example of 1814. This Constitutional form was also copied by several regions in South Germany, and also by Poland, thus reflecting the conservative reaction against the enacting of popular Constitutions.[20]

The Charter did not receive only the three known political powers – legislative, executive and judicial – but joined them into a moderating power, a theoretical product of Benjamin Constant that was introduced in Portugal by Silvestre Pinheiro Ferreira. The King had the power to appoint the Peers of the Kingdom without restrictions, to dissolve the Lower Chamber, to veto and give sanctions to Parliament diplomas, and to extend and adjourn the Parliament sittings. All these competences gave the King such power that it annulled the representative essence of the legislative bodies (Sá, 1994, p. 142; Santos, 1990, p. 203).

The Charter established the Parliament *(Cortes)* as holder of legislative power, with the King's sanction, and composed by The Chamber of Peers *(Câmara dos Pares)* and the Chamber of Deputies *(Câmara dos Deputados)*. The Peers' nomination by the King was made for life and it was hereditary, without any fixed number of members. On the other hand, the Deputies were indirectly elected.

The Constitutional Charter did not contain any device of semi-direct democracy. Like the Constitution of 1822, the Charter retained the principle of parliamentary renewal in case of Constitutional revision.

[20] On the Constitutional Charter see Marques, A. H. O. (1998, pp. 74-76); Canotilho (1998, pp. 135-141); Miranda (1981, pp. 230-237); Sá (1994, pp. 140-147); Gouveia (2010, pp. 432-442).

Articles 140 to 143 established that, once the Constitutional Revision Act was approved, it would be sanctioned and enacted by the King. In such an Act, the voters were requested to give the deputies special powers to make that reform in the next election. In the first sittings of the next legislature the subject would be retaken, and if passed, it would be enacted solemnly, and joined to the Constitution.

Nevertheless, from all Constitutional revisions made during the force of the Charter, named as Additional Acts *(Actos Adicionais)*, only the one of 1895 respected the established rules. The Additional Acts of 1852 and 1908 were approved by dictatorial decrees (Carvalho, 1980, pp. 95-113).

1.6. From the Constitutional Charter to the 'September Revolution'

While the supporters of the absolute monarchy were mobilised against the Charter, the liberals saw it as a base for the establishment of a Constitutional regime (Marques, 1998, pp. 24-25; Santos, 1990, pp. 47-48). Infant Dom Miguel, advised by Metternich, initially accepted the conditions imposed by King Dom Pedro IV to give him the Regency. On 3 July 1827 he swore allegiance to the Charter, and on 22 February 1828 he returned to Lisbon. However, the general atmosphere of the country soon led him to betray his commitment to the Charter (Santos, 1990, p. 49).

On 13 March, the Deputies' Chamber was dissolved. The Constitutional Charter was repealed on 3 May. On 5 May, the Three States of the Kingdom were summoned to proclaim Dom Miguel as the absolute King on 25 June 1828. This left Portugal diplomatically isolated: the new King was recognised only by the Vatican, United States and Spain (Vargues & Torgal, 1993, p. 73; Santos, 1990, pp. 139-140). The return to an absolutist regime was characterised by violent repression.

At the beginning of the 1830's, the international situation became more favourable for the liberals. Belgium became independent and adopted a Constitution. In France, Charles X was deposed, with Louis Philippe D'Orleans ascending to the throne. This favoured Pedro's cause (Santos, 1990, p. 52). In England, Palmerston replaced Wellington as the Government's leader. Therefore, the Holy Alliance suffered a hard blow. Two of the most influential European countries – France and England – had changed their political positions, and they became more receptive towards the Portuguese liberals (Ventura, 2004a, p. 177). In 1831, King Dom Pedro, who was having serious political troubles in Brazil, abdicated

in this country in favour of his son, Dom Pedro II. He boarded a shop to Europe in order to lead the liberal forces. The economic, political and military support that he could obtain, led him to victory in the civil war in 1834.

After the defeat and exile of Dom Miguel, the Constitutional Charter was restored and the elections were called, although the right to vote was severely restricted (Maltez, 2004, p. 245). King Dom Pedro IV died on 24 September. His daughter, Queen Maria II, succeeded him, and the Duke of *Palmela* led a conservative Government.

Fresh elections took place in July 1836, against a backdrop of disturbance and instability. The Government obtained the majority, but the liberal radical opposition had an important victory in the Oporto district. When these elected Deputies landed in Lisbon on 9 September, they were received in apotheosis by the Lisbonian people and the National Guard, and imposed a new government formed by the insurgents (Silva, 1993, pp. 89-105). The 'September Revolution' was only supported by the industrial and commercial bourgeoisie and by the town popular classes. It was strongly opposed by the "new Chartist aristocracy" (Santos, 1990, p. 56; Ribeiro, 2004, p. 338).

In spite of clear divisions among the supporters of the September Revolution, the revolt attempts from the Charter supporters were controlled (Ribeiro, 2004, pp. 339-349) and there were elections. These were held according to rules contained in the legislation of 1822 (Santos, 1990, p. 154), to elect the General, Extraordinary and Constituent Courts *(Cortes Gerais, Extraordinárias e Constituintes).* These met from January 1837 to March 1838, to make and pass the new Constitution.

In April 1838, the new Constitution was passed and sworn. That Constitution reflected the special circumstances of its creation process, as well as the attempt to conciliate the 1822 Constitution and the Constitutional Charter (Marques, 1992, pp. 81-82).

1.7. The Constitution of 1838

The 1838 Constitution was characterised by the abolition of moderating power, and by the return to the three classic powers.[21] It adopted bicameralism, but did not give the High Chamber the role of representing and preserving the aristocracy's interests. In fact, the Senate,

[21] On the Constitution of 1838, see Canotilho (1998, pp. 145-148); Miranda (1981, pp. 238-240); Sá (1994, pp. 147-150); and Gouveia (2010, pp. 446-454).

(Câmara dos Senadores), was elective and temporary (Article 58), with the renewal of half of their members whenever there were elections for the Deputies' Chamber (Article 62).

The 1838 Constitution represented a pact between Parliament and the Queen, and a compromise between national sovereignty and the monarchic principle (Sá, 1994, p. 149; Canotilho, 1998, p. 158). It reinStated the Sieyès line of democratic constituent power, which meant that a Constitution could only be created by a constituent power that lives in the Nation. The King led the executive power, and also had the powers to give sanction and enact laws, and dissolve the Deputies' Chamber if the "salvation of the State" required it.

This Constitution was not approved by any plebiscitary process and, much like its antecedents, excluded any devices of that nature. The Constitutional revision process followed the same model as the previous Constitutions, based on the principle of voter ratification. Draft amendments could be presented in the Deputies' Chamber and, if they were passed in both Chambers, they would be sanctioned by the King and submitted to the next Parliament after elections. If they were approved, then they would be considered as part of the Constitution without dependence on any sanction.

1.8. The Replacement of the Constitutional Charter

The 1838 Constitution lasted four years. With the dissolution of the National Guard, the September Revolution lost one of its main supporting bases (Santos, 1990, p. 58). Consequently, in April 1839, the Government fell and was succeeded by an ambiguous Government that was against the Constitution but working in its framework. However, on 27 January 1842, a *coup d'état* led by Costa Cabral proclaimed once again the Constitutional Charter.

Under the flags of order and economic development, a new strong man, Costa Cabral, established a repressive regime in the country and closed the Parliament. On 5 February 1844, the individual guaranties were suspended and the Parliament was kept closed until 30 September (Ribeiro, 1993a, p. 109).

Costa Cabral won the elections of 1845 by resorting to widespread electoral fraud (Santos, 1990, p. 164), arousing a strong sense of disapproval and opposition. In March 1846, riots broke out with a

strong revolt called *Maria da Fonte*,[22] which led to the Government's resignation. On 23 July Marshal Saldanha led a *coup d'état* and a new Government that reignited the civil war in October, with a large revolt named *Patuleia*,[23] that was only defeated by an English, French and Spanish joint military intervention, thus forcing the *Gramido* Convention on 29 June 1847 (Ribeiro, 1993a, pp. 107-119).

In the next elections Costa Cabral reappeared and got to lead the Government again on 18 June 1849, until being dismissed after several political scandals (Maltez, 2004, pp. 323-327). Another coup, led from Oporto by Marshal Saldanha in April 1851, represented a turn in the political and Constitutional Portuguese history with the beginning of the Regeneration *(Regeneração).*

1.9. The Regeneration and the Additional Act to the Constitutional Charter

The new Government was constituted on 22 May 1851. In a country strongly traumatised and divided, power was taken by a wide political room where the centre prevailed with strong populist support desiring the end of instability. This is when Fontes Pereira de Melo appeared as the political leader who was able to break up with the military coups and give stability to the institutions. He also established national consensus based on the centre (Ribeiro, 1993b, p. 121; Telo, 2004, pp. 118-119; Mónica, 1999).

The Regeneration meant the end of ideological conflicts in favour of pragmatism over the classes based on promises of economic welfare and material progress. The two parties created then - *Regenerador* and *Histórico* – worked according to a tacit agreement for political conciliation. This marked the beginning of a long period of a rotational system *(rotativismo)* where both parties alternately shared the exercise of power (Proença & Manique, 1992, pp. 18-19). According to Pereira Marques (1992, p. 47), from 1851 until the Republican Party's boom in the 1880s and 1890s, it can be said that there was no real opposition against the institutions, the forms of governance, the policies, and the economic and social structures in Portugal. Between 1851 and 1865, the *regeneradores* from the centre-right and the *históricos* from the centre-left shared power, and the convergence between both parties brought a union government in 1865 (Silva, 2004, p. 195).

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[22] *Maria da Fonte* is a legendary woman who would lead the beginning of that revolt.

[23] The word *patuleia* comes from *pata-ao-léu* which means barefooted people in Old Portuguese slang. The term expresses obviously the social origin of the revolt.

The Additional Act to the Constitutional Charter gave expression to the new regime and arose from a commitment between *cartistas* and moderate *setembristas*. The main Constitutional changes were a return to the direct election of deputies and a marginal widening of suffrage (Almeida, 1998, p. XI). The Additional Act, however, did not respect the process foreseen in the Constitutional Charter for its own revision. In the Decree of 25 May 1851, which prepared the ground for reform, the Queen admitted that she decided to ignore the formalities prescribed in the Charter 'on behalf of the public salvation supreme law' (Canotilho, 1998, p. 158).

The expression 'Additional Act' was introduced by Benjamin Constant and had its origin in a project submitted to popular ratification in 1815 (Additional Act to the Empire Constitutions). One year before the Portuguese Additional Act, Louis Bonaparte called the people to pronounce on his maintenance, with enough powers to make a Constitution. However, the Portuguese 'regenerators' had no intention of submitting their Constitutional reform to any form of popular ratification or instituting some device of that nature.

2. The First Proposals for Referendum

2.1. The Proposals by Ferreira de Melo

At the beginning of 1868, the political crisis returned with a popular revolt on 1 January in Oporto and in Lisbon, called *Janeirinha*, due to the approval of a new consumption tax. In a scene of deep economic crisis, this movement strongly affected the liberal political class and the traditional power of the *Histórico* and *Regenerador* parties. That situation opened the way for several radical governments, called "reformists" *(reformistas)*, who governed with great difficulty due to lack of parliamentary support (Silva, 2004, pp. 195, 202).

A new political cycle started, marked by the appearance of new parties and instability (Maltez, 2004, p. 392). It was in this context of political and parliamentary instability that Ferreira de Melo proposed, in a speech addressed to the Deputies' Chamber in the session of 30 July 1869, that the parliamentary system had broken down and should be temporarily substituted by a government legitimised by plebiscite.

António Augusto Ferreira de Melo (1838-1891) was descended from a convinced liberal family (Moreira, 2005). His father, Joaquim Ferreira de Melo, took up arms for the liberal cause and was also a Member of Parliament between 1858 and 1864 (Soares, 2005). A law

graduate (1858) and a barrister in Oporto, Ferreira de Melo was a councillor of the Supreme Administrative Court in Lisbon. Nobleman, commander and academician, author of several works on Law, he would come to be distinguished in 1870 with the title of viscount (*Visconde de Moreira de Rei*).

Until 1868, Ferreira de Melo stayed outside the political life and he did not belong to any party. After the *Janeirinha* movement, he decided to intervene because he agreed with its purposes, although he had not taken part in the revolt. In April 1868 he was elected to Parliament for the first time, in the single member constituency of *Fafe*, his birthplace. During the disturbed period of 1868-1871, he remained outside the parties and, for that reason, he was absolutely free to approve or to criticise the measures taken by successive governments.

Ferreira de Melo's speech before the Chamber of Deputies was made on 30 July 1869 (*DCSD*, 67, 30 July 1869, pp. 959-962). The reformist Government led by Sá da Bandeira had been in power for a little over a year (since 22 July 1868), and it was in crisis following the resignations of the Justice and Finance Ministers. It would fall just 12 days later.

In his speech, Ferreira de Melo began by approaching the political crisis, expressing his approval of the Finance Minister's (*Conde de Samodães*) resignation and declaring that he no longer had any reason to oppose the Government. He even expressed his trust in Sá da Bandeira's capacity to recompose the Cabinet, but he clearly showed his dissatisfaction with the financial policy taken by former governments and his great scepticism about the near future. The solution proposed was to interrupt the parliamentary system for some time, in order to save freedom and the institutions.

A government called by popular will would present a programme or a Statement to the country saying which reforms were required. It would clearly expose the extraordinary means needed to carry that government, and its programme would be introduced to the country and submitted for its approval. The government would become legitimate by a plebiscite, with the voters being asked whether they agreed to grant extraordinary powers for a certain and fixed time in order to turn the suggested programme into reality.

Ferreira de Melo's proposal expressed his concern about the good administration of the country, which needed to pay greater attention to the health of public finances, reducing expenses and making savings,

raising revenue and prioritising the organisation of all services. This is what he expected from the Governments after the *Janeirinha* revolt, but its performance had been disappointing. The administration before the revolt was the ruin of the country, but the following governments had also fallen short of expectations.

Ferreira de Melo suggested four reasons for persistant problem of poor governance: **a)** the inoperativeness, incompetence and discredit of the Parliament; **b)** the rivalries and the incoherence in the governments' formation, given the conventions that ruled their formation and behaviour; **c)** governments' weaknesses due to the parliamentary system i.e. deep reforms caused great resistance, and no parliamentary system had the necessary strength to prevail in making difficult decisions; **d)** the falsification of the parliamentary system, which was endemic and influence the elections, the organisation of the cabinets, and had consequences for the entire civil service.

Ferreira de Melo criticised the dependence of parliament and government members on the installed powers who decided their election and their maintenance in power through electoral fraud. Therefore, he expressed his conviction that the change would only be possible by a fundamental change in the 'rules of the game'. In his view, the solution was to interrupt the parliamentary system for a period of time. An exceptional situation and a serious crisis of the system demanded an exceptional solution. Suspending the Parliament would create the conditions for its rehabilitation. The speaker supported a reformist and revolutionary government, which would have sufficient strength to transform the country's aims into realities. The parliamentary system would then be re-introduced, saving and respecting the Constitutional institutions that had fallen into disrepute.

This change, qualified by the speaker as revolutionary, would mean a rupture with the Constitutional Charter without using military means. Ferreira de Melo's declaration did not suggest a military revolution, or any other procedure by which the national will would be usurped.

This last point is important for two reasons: Firstly, the speaker rejected the traumatic experiences of the past, which were nevertheless still recent. The country had lived for three decades, between 1820 and 1850, in an almost permanent climate of civil wars and riots perpetrated by military officers. He did not want a return to that past but, mindful of the crisis engulfing the country after almost 20 years of relative peace, he

proposed something somewhat new, a 'regeneration' of sorts. Military means would be rejected, and change would come from the people, without arms, but with a plebiscite. Secondly, Ferreira de Melo refused any means by which it could be possible for someone to usurp a position which he felt belongs only to national will. In other words, he refused any solution that could impose personal power through plebiscite. He was probably thinking about the French plebiscitary experiences of the 19th century held precisely for that purpose, which were deeply unpopular in Portugal for very comprehensible reasons.

Ferreira de Melo proposed the appeal to national sovereignty to save the country from the crisis. That solution returned to a conception that was well accepted by the *vintistas* and *setembristas*, who never looked favourably on the change to the Constitution made by a Constituent Assembly, which expressed national sovereignty for a Constitutional Charter as being granted by the King's sovereign will. As he said: 'I respect very much the Constitutional Charter, which is the fundamental law of the country, but I respect the national sovereignty much more, which did not disappear even after Charter enactement' (*DCSD*, 67, 30 July 1869, p. 960).

The proposed solution included four stages: **First** - The Constitution of a revolutionary reformist government, coherent in its composition and unfamiliar to the installed powers, would be composed by members who put the interest of the country above their personal interests. **Second** - The popular legitimation of the government, its programme, and its extraordinary powers by plebiscite. That government would be in charge of appointing a concrete day to hold elections for a new Constituent Assembly. **Third** – The electoral rules for the Constituent Assembly would be changed. By ending electoral abuses, a free election would result in representatives that were faithful to the purity of the parliamentary system later established. **Fourth** – The return to the parliamentary system after the established period has ended. Prior to this time, the government would have extraordinary powers to turn its promises to the country into reality, and those in the Constituent Assembly would judge its actions definitively.

There remained, however, a decisive problem: the legitimacy of the new government. Ferreira de Melo resolved it simply: it would be a revolutionary government, resultant from a rupture with the Constitutional Charter. That is to say: resulting from a Constitutional *coup d'état*. That government could be imposed in one of two ways: through petitions signed by the voters addressed to all the State powers and other interests

or through a *coup d'état*. Ferreira de Melo preferred the first solution but he did not exclude the second, as long as it was by peaceful means. The military solution was expressly excluded.

Ferreira de Melo's proposal did not raise significant reactions. Only Deputy Vasconcelos de Gusmão (Matos, 1999) referred to the speech, addressing it to the literary field, and depreciating its political value (*DCSD*, 67, 30 July 1869, pp. 963-964).

In the event, Ferreira de Melo's speech had no relevant political consequences. He was a politician without a party, and therefore he lacked the resources to move forward with a political project and engage support for an ambitious proposal of political change. He was not a military chief able to impose a *coup d'état* with the Army's support (it is probably for this reason that he declared to refuse that solution). He was, in the end, a Member of Parliament who was annoyed with the political and Constitutional situation of the nation and, given his independent status, he proposed a Constitutional change based on popular will.

It was certainly an unrealistic proposal, as events would demonstrate, and it had all the less impact for having been made by a deputy who had some notoriety despite his relative youth as a parliamentarian. As discussed by Fernando Moreira (2005, p. 819), Ferreira de Melo distinguished himself very quickly in the Chamber of the Deputies as one of the remarkable figures of the Portuguese parliamentary system in the second half of the 19th century. However, his pioneer spirit proposing to introduce the plebiscite in Portugal has always been ignored by historians and political scientists, perhaps because there were no institutional consequences.

Ultimately, Ferreira de Melo's diagnosis of the crisis was prescient. The Government of Sá da Bandeira fell on 9 August, 10 days after the above mentioned speech was given, and was substituted two days later by a government led by the Duke of Loulé, which included members from several groups opposing the *Reformistas* (Maltez, 2004, pp. 394-398; Santos, 1990, p. 190). Facing a strong parliamentary opposition and fearing military intervention, Loulé obtained from the King, on 20 January 1870, the dissolution of the Chamber of Deputies. Fresh elections were held on 13 March, which the Government predictably won.

During this period of difficult and unstable governance, Ferreira de Melo proposed another way to directly hear the citizens' will. This no longer concerned the government of the nation, but a concrete governmental measure. In fact, following a decree on property enrolment,

published on 30 December 1869, raised a popular riot broke out in April 1970 in the municipality of *Ovar*. The intervention of the armed forces caused several deaths and injuries. Commneting on these events, Ferreira de Melo, in the Chamber of Deputies session of 23 April 1870, deplored the tumult as much as the repression. He criticised the governmental decree and proposed a solution to check its acceptance or its rejection on the part of the receivers (*DCSD*, 17, 23 April 1870, p. 155).

The population would express their will addressing petitions to the Government and/or to the Parliament, and demonstrate their support or opposition towards the measure in question. After considering the expressed positions, Parliament would have an easy and simple process in knowing the will of the population in order to take the right position. However, in his speech Ferreira de Melo did not hide his disagreement regarding the decree in question. He did not propose a plebiscite, which is usually understood as transferring directly a decision to the electors. That way of listening to the citizens by the exercise of the petition right would not be binding. The Parliament retained full autonomy in decision-making as a representative body, by either contradicting the will of the country or respecting it.

We cannot say this time that we are before a proposal of a direct or semi-direct democratic device, rather we are before a proposal that endorsed a very relevant political value to the citizens' direct initiative, expressed through a sort of petition right. The autonomy of the Parliament's decision was not formally questioned, but the legislative body would have the citizens' will, expressed that way, as a relevant element used to consider its position, which would be hardly ignored.

The Government responded as if Ferreira de Melo had suggested introducing plebiscites. The Finance Minister, Anselmo Braamcamp, in his answer, considered that such arbitrariness would be the destruction of the Constitutional principles. Thus, the proposal was unacceptable. Calling on the people to make decisions by any kind of plebiscite would be equivalent to abandoning the basic principles of the representative system (*DCSD*, 18, 25 April 1870, p. 167).

The refusal of that proposal was founded basically on four aspects: **a)** such a proposal was unusual, almost unbelievable, and against the bases of the representative system; **b)** it would create a strange precedent, which would destruct the Constitutional principles; **c)** the proposal meant a plebiscite (which becomes clear as to the unpopularity of this device among Portuguese politicians); **d)** through such a procedure,

particularistic interest would prevail over the general interest and the free exercise of the parliamentary mandate as a principle of the representative system would be prejudiced.

Nevertheless, even without the acceptance of Ferreira de Melo's proposal, the popular revolts against the property enrolment decree soon lead to its revocation. However, not even that fact could prevent a military uprising led by Marshall Saldanha to impose a dictatorship on the night of 18 May 1870. Between 19 and 26 May, Saldanha was the only member of the Cabinet, and his new Government lasted only until 29 August. After a temporary government, led again by Sá da Bandeira, a new political cycle began with a new Government led by Fontes Pereira de Melo which lasted from 13 September 1871 to 1 March 1877 (Santos, 1990, pp. 193-194; Maltez, 2004, pp. 404-410).

2.2. The Historic Party Draft, Introduced by José Luciano de Castro

In 1872, in the framework of a failed revision of the Constitutional Charter, a draft introduced by José Luciano de Castro on behalf of the Historic Party proposed to introduce the referendum into the Constitution for the first time in Portugal. José Luciano de Castro had one of the most outstanding and durable political careers of the 19th century in Portugal (Moreira, F., 2004). A law graduate who worked as a journalist, he was only 19 years old when he was elected to parliament in 1854. His political life began in the Regenerator Party, but he left it in 1859, joining the Historic Party in 1861. In the 1860s, he became one of the most outstanding deputies of his party.

After Fontes Pereira de Melo's ascent to power, leading the Regenerator Party, José Luciano de Castro, by then the third figure of the Historic Party, assumed the need to have two parties that were politically placed in the centre, and which would ensure the rotation of the government. As he defined in the Chamber of Deputies session of 13 September 1871, 'one, more or less conservative, the other, more advanced, liberal, and democratic, without harming the question of freedom through order and material progress meanwhile not forgetting that the material improvements of the country are also questions of freedom' (Moreira, F., 2004, p. 837; Maltez, 2004, p. 406). From 1886 to 1906 José Luciano led the Government on three separate occasions. The end of his political life arrived only with the fall of the Monarchy in 1910.

On 24 January 1872, José Luciano introduced a draft to reform the Constitutional Charter on behalf of the Historic Party, saying then that

in order to change the Constitutional dispositions, national sovereignty should always be consulted directly. In future revisions, and after the ordinary chambers declared the need of the reform, and other chambers with special powers for making it were called,[24] the approved changes should be submitted for popular ratification. Consequently, José Luciano proposed to lay down in the Constitutional Charter a new provision that no changes could be made to it without being ratified by the popular vote. Luís Barbosa Rodrigues (1994, p. 244) qualifies such a referendum as Constitutional, mandatory and binding.

This draft was actually the first formal proposal to introduce the referendum in Portugal. Therefore, it meant a deep break with the political and Constitutional Portuguese tradition. The Constitutional Charter had been granted by the King in 1826, and had been changed by the Additional Act approved by Parliament in 1852. The previous Constitutions (1822 and 1838) had been approved by Constituent Assemblies.

José Luciano based the need for a new revision of the Constitutional Charter on the 'implacable lapse of time', which demanded new improvements in the political system. Meanwhile, he refused to give Parliament the exclusive power to change the Constitution, given the inalienable character of popular sovereignty, but also keeping in mind the serious imperfections of the representative system. As he said during the session of 24 January 1872, political Constitutions are not eternal. No matter how perfect they are, they cannot resist progressive changes, which civilisation imposes on all people through its infinite march (*DCSD*, 15, 28 January 1872, p. 120).

The need for a referendum to change the Constitution was justified by three main reasons: **1)** the direct participation of the country in the political institution; **2)** the legitimation of the reform with the strength of the popular vote; **3)** the insufficiency of the representative devices for expressing national sovereignty.

It is important to underline this last point. José Luciano did not hide his disillusionment with the political representation and electoral

[24] This was the procedure established in the Constitutional Charter for its own revision. Thus, the draft introduced by José Luciano contained only two provisions. The first, detailing the Constitutional dispositions which would be changed, and the second, disposing that, for the next legislature, the electors would give their representatives special powers for that reform.

procedures: 'Election after election, the ministries go up and down, the dissolutions are repeated with an almost unalterable regularity, and the country remains disappointed with so many adversities, having lost faith in its regeneration and tired of choosing today what they will choose again tomorrow. The election, as an essential basis of the representative system, is a fraud. The vote doesn't ordinarily translate the will and thinking of the nation' (*DCSD*, 15, 28 January 1872, p. 121).

Before these considerations, we can understand that the appeal to popular sovereignty would add something more: the widening of suffrage. José Luciano's draft proposed a substantial expansion of the right to vote, which would be given to all male citizens in the ownership of their civil rights, turning them into the receivers of inalienable national sovereignty. Notice however that he did not intend an absolute break with political representation. José Luciano did not propose any plebiscite that would give legitimacy to a Constitutional reform. The Parliament would continue to be the seat of the Constitutional reform. The Parliament would have the initiative, and be the scene of any discussion and approval of proposals for Constitutional change. Only after that would the people be called to ratify the proposals passed in Parliament through direct suffrage. That referendum should be mandatory and binding.

José Luciano called upon the experience of North American States. However, he was discreet in this brief reference, which was intended only to show that his proposal would not be originally Portuguese. A focus on comparing political experience could bring about difficulties in acceptance of referendum proposals. The United States, Switzerland, and France were the obvious comparitors, and they pointed towards an inevitable relationship between the referendum and republican institutions. This was certainly not the purpose of José Luciano de Castro, who was a staunch supporter of the Monarchy until the end of his life in 1913.

Luís Barbosa Rodrigues (1994, p. 120) discussed the inspiration for Luciano de Castro's draft. Across Europe, democratic tendencies intensified around 1870, revealed by the British electoral reform of 1867, the Spanish revolution of 1868, the evolution of the French Empire in a liberal direction and its fall in 1870, and the unification of Italy. It is possible that some of these tendencies could have provided inspiration for the relatively vast set of proposals introduced by José Luciano, namely those regarding the expansion of suffrage. However, as for the referendum, the inspiration in the international experience seems to be more indefinite and seems to report more to an idea than to a model. What

he proposed was the introduction of a device already being used in other States, which did not mean the adoption of their Constitutional models.

Nonetheless, the Chamber of Deputies refused to admit the draft for discussion. After its third reading, 26 members voted in favour, but 47 refused it.

3. The Last Years of the Constitutional Monarchy

3.1. The Proposal for an Organic Plebiscite to Sell the Colonial Domains

The Conference of Berlin, which represented the great first division of the African continent among the European powers, and the established of new rules for the 'scramble for Africa', was an enormous challenge for the Portuguese ambitions in that continent. Portuguese and British interests clashed, and the British made an ultimatum, threatening to break diplomatic relations between both countries if the Portuguese did not withdraw immediately from all of the disputed areas. The capitulation of the Portuguese Government was considered a national humiliation, leading to a patriotic wave of anti-British sentiment, which also discredited the Portuguese Monarchy. In retrospect, Britain's ultimatum is often considered to be the beginning of the end for the Portuguese Monarchy (Matos, 2004). Therefore, it is not strange that a significant proportion of the political and parliamentary debates of that time have had colonial politics as a theme.

On 1 February 1892, looking for solutions to the financial crisis that the country faced, José Bento Ferreira de Almeida (Almeida, 2004) proposed a bill in the Chamber of Deputies suggesting a sort of organic referendum to sell colonial territories to raise money. In those terms, the Government would be authorised to sign and ratify a convention transferring the sovereignty of the colonial domains of Guinea, *Ajudá*, Cabinda, Mozambique, Macau and East Timor. The funds obtained would be applied to the immediate solvency of the internal and external floating debt, providing a base to convert the general public debt, thus reducing the interest rate (*DCSD*, 17, 1 February 1892, p. 3).

After extensively laying out his reasoning (*DCSD*, 17, 1 February 1892, pp. 3-5), Ferreira de Almeida proposed that the bill be printed and sent to all the elected and legally constituted bodies of the country (district authorities [*juntas gerais*], municipal authorities [*câmaras municipais*] and parish authorities [*juntas de freguesia*]), trading and industrial associations, and also to scientific institutions. Therefore,

they would give their opinion within a month, and simply declare their approval or rejection. The absence of an answer in due time would be considered as an approval (*DCSD*, 17, 1 February 1892, p. 5).

According to Ferreira de Almeida, his proposal for an organic referendum was justified by three reasons: **1)** the Chamber was in the third year of its legislative period; **2)** when its election took place there were no opinion movements concerning the reduction of the colonial domain, and **3)** the subject had high national importance. In other words: Ferreira de Almeida called into question the legitimacy of Parliament to pass his proposal. According to him, the subject was too fresh for Parliament to make a decision, given that Parliament had been elected three years earlier and the subject had not been a matter of electoral debate.

However, the arguments contained significant weaknesses. If the Parliament did not have legitimacy, the decision should surely be addressed to the electors and not to the corporations. In that point Ferreira de Almeida, seemed to be undermining the representative institution, denying Parliament the legitimacy that he recognised in corporative institutions. Moreover, abstentions would count as affirmative votes. The simple lapse of time had the effect of a favourable vote, which was a type of tacit acceptance.

This bill was evaluated in two readings, the second of which was held in the session of 3 February 1892, and it was decided that would not be admitted for subsequent discussion. However, it gave rise to some controversy by those in favour, such as Abílio Lobo (Pereira, 2005) and Augusto Fuschini (Silva, 2005), and those against it such as João Franco.[25]

Abílio Lobo agreed that Parliament did not have sufficient legitimacy to legislate on the proposed subject. In spite of not having an imperative mandate to the Parliament when it was elected, the theme of selling colonies was not in public discussion. Therefore, the voters did not have the possibility of knowing about that matter and consequently they could not give their opinion to Parliament. Therefore, Abílio Lobo thought that Parliament did not have powers to decide about the sale of the colonies, and considered it reasonable that the country decide the issue. Therefore, the proposed plebiscite would be 'perfectly suitable' (*DCSD*, 21, 3 February 1892, p. 6).

[25] João Franco was a regenerator politician in great ascension that would later become famous as a Minister and Head of Government, having interrupted those functions after King Carlos' murder in 1908.

Similarly, Augusto Fuschini was in favour of a plebiscite: 'If you ask my opinion, I will say that we must not sell the colonies, but the country can think in a different way, and we must not constitute ourselves as an association of 160 Statesmen going against the will of the country. (…) The plebiscite form is perfectly acceptable; it does not offend the dignity of Parliament and it allows us to clearly know the opinion of the country on an important subject' (*DCSD*, 21, 3 February 1892, p. 7).

In this last case, the reasoning seems to be weak and contradictory. Fuschini simultaneously declared the Parliament's dignity and undermined it by calling it a 'Statesmen association' that did not represent the will of the country. In addition, it was precisely in this point, the validity of the representative democracy that seated the argument against Fuschini's opinion, which was uttered by João Franco:

'So, aren't we here, because of the rights given to us by our country? Aren't we the representatives of the country? If the deputies had to discuss, not as independents, but through the force of a plebiscite, what would Parliament have served for? (…) The Constitutional Charter as is constitutes the law that rules us, and because of it, the legislative power is completely independent and does not lack the consultation of anyone to deliberate as it pleases. This is the reason why I believe Mr. Ferreira de Almeida's proposal could not be accepted. (…) So, aren't we here making laws on a daily basis on such important subjects, as for instance, taxes and those regarding freedom and individual property without previously consulting local corporations? (…) If we, an independent legislative power with the right to impose taxes and decide on other serious matters, recognised at the same time that, for certain subjects, we did not have our own authority and needed to appeal to the administrative corporations, as if they were the representatives of the country, the duty of the executive power would be, in this case, to close this Chamber and fire all of us for we would be worthless and represent nothing' (*DCSD*, 21, 3 February 1892, pp. 7-8).

This refutation deserves attention, insofar as it represents a significant argument against the referendum on behalf of representative government. This subject had never been discussed in such clear terms in the Portuguese Parliament, and the three main arguments extended were:

a) The Constitutionality - The Constitutional Charter did not provide the possibility of referendums. It adopted a separation of powers principle and gave legislative responsibilities to Parliament. The referendum would be an

unConstitutional interference in that principle and it would reduce the representative institution to uselessness.

b) The importance of the subjects under a decision – According to João Franco, the importance of the subjects under a decision could not serve as an argument. Parliament existed not only to decide on smaller subjects, but also, and mainly, to deliberate on important subjects including 'taxes, and those concerning freedom and individual property' (*DCSD*, 21, 3 February 1892, p. 8).

c) The legitimacy - If the Parliament's legitimacy was contestable, then the corporations' mandate was, at best, identical, and never superior. Otherwise, the Parliament would have to consult the corporations on all decisions that it had to take, and in that case, the Parliament 'was worth nothing and did not represent anything' (*DCSD*, 21, 3 February 1892, p. 8).

3.2. The Fall of the Monarchy and the Plebiscite to Avoid the Republic

In 1908 the siege of the Monarchy was drawing to an end. On 1 November the Republican Party won the municipal elections in Lisbon. The republican disturbance worsened, and the deeply divided monarchic field could not provide a government with even the minimum of stability. Consequently, the stage was set for a revolution.

On 20 September 1910, Paiva Couceiro,[26] a distinguished military officer for African campaigns who would lead several military attempts from Spain to throw down the Portuguese Republic, was interviewed by the newspaper *O Porto*, and defended a 'plebiscitary dictatorship' as the only solution for the existent impasse. According to him, such a solution was 'out of his principles', but necessary to avoid the Republic (Maltez, 2004, p. 563).

Paiva Couceiro's proposal, which came from a military that belonged to the more conservative royalists, was a desperate attempt to head off the upcoming republican revolution, which would occur 14 days later. Although the proposal was 'against his principles', Couceiro thought that the parliamentary system had failed, and that system of government was unable to support the monarchy. Therefore, the solution would have

[26] On Captain Henrique Paiva Couceiro, see Menezes (2011) and Valente (2006).

been a military coup, not to make the republic but to avoid it. The plebiscite would come later as an instrument of legitimacy.

Pulido Valente (2006, p. 69) sees Paiva Couceiro's proposal as a stripping of King Manuel's authority. In fact, the legitimacy of the dictatorship would only stem from the plebiscite, which would not be subject to Royal agreement. The King would be seen as a simple adornment: he could neither remove nor survey the military, which would supporter of the plebiscitary dictatorship. At the end, the King could not even decide his own future role, which was under military guardianship, and, in theory (with the elections being the way they were), under the people's sovereignty. The King had to accept what the military and the people would give him.

Couceiro wanted a plebiscite as a way to legitimise the use of military force. The dictatorship would only last the time needed to execute a programme of governance whose nature was unknown, to maintain order and focus on national security (in other words, for sweep the Republican Party), and to change the Constitutional Charter by means that were neither foreseen nor permitted.

In the event, the revolution could not be suppressed. On 5 October 1910, the Portuguese Royal Family left the country and was exiled to England. On 8 October, Paiva Couceiro resigned from his position in the Army, and once again in his resignation letter, he declared the need for a plebiscite that allowed the Nation to decide between the Republic and the Monarchy. Pulido Valente (2006, p. 84) explains that Couceiro refused both the Republic and the Old Monarchy, and not knowing what to do, he found the solution in the people's sovereignty. In other words, he wanted to follow the Bonapartist example of a regime and introduce a government based on a plebiscite, which would be able to unite the Portuguese people. Couceiro had understood that the old parties could not compete with the new mass parties, so he wanted to use the plebiscite to drown the urban vote inside the rural vote, and the southern vote inside the northern one.

Chapter 2

The First Republic: 1910-1926

1. The National Referendum in the Constitution of 1911

1.1 The Republican Revolution

The Republican Revolution began on 3 October 1910. In the face of indecision and disillusionment amongst officials, the rebellion capitalised on the determination of army soldiers and sergeants, supported by Lisbon civilians. The support of three warships was decisive in the face of an Army that had little interest in fighting the revolution (Valente, 2004, pp. 113-150). The republican forces soon reached victory, abolishing a Monarchy that had lasted eight centuries. On 5 October, a republican regime was proclaimed with the strong support of the people of Lisbon.[27]

As soon as the Republic was proclaimed, a provisional government with full powers was organised, led by Teófilo Braga. The majority of the Government belonged to the political group led by Afonso Costa, the Republican Party top figure. However, the Government also integrated the most outstanding figures of the other main political tendencies that had emerged in the Republic, including António José de Almeida and Brito Camacho.[28] As João Bonifácio Serra (1992, p. 21) States, the Provisional Government's action cannot be described as a coherent sum of measures or a product of a defined programme, accomplished by a unified team. On the contrary, these actions were the result of ministerial whims, a symptom of an acephalous government where ministers each acted independently. As a consequence, the governmental programme appeared disconnected and incoherent.

The regulation for the Constituent Assembly election was established through Provisional Government Decrees, published on 14 March and 5 April 1911. The electoral constituencies were established by

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[27] On the republican revolution and the subsequent political evolution, several reference works exist, such as: Maltez (2005); Marques (1978, 1991, 1998); Medina (2004); Ramos (1994); Santos (1990); Serra (1992); Valente (2004); Wheeler (1978).

[28] These three personalities would come to lead the three main parties of the republican regime: Afonso Costa led the widely prevailing Democratic Party *(Partido Democrático)*; António José de Almeida, was at the forefront of the Evolutionist Party *(Partido Evolucionista);* and Brito Camacho was head of the Unionist Party *(União Republicana).*

the Decree of 20 April 1911. The elections were summoned on 28 May 1911, by a Decree dated 28 April.[29]

1.2. The Constitution of 1911 - General Aspects

The Constituent Assembly met for the first time on 19 June 1911. Its first sittings sanctioned the Revolution of 5 October 1910, thus proclaiming the Democratic Republic and abolishing the Monarchy. Neither the Provisional Government nor the Republican Party introduced any draft Constitution, preferring to leave the Constituent Assembly totally free on this matter (Souza, 1913, p. 5). However, the Head of Government, Teófilo Braga, drew a Constitutional draft, which was distributed to the Cabinet and addressed to the Constituent Assembly for consideration, under the title of "Indications" (Braga, 1911).

During the sessions held on the 20 and 21 June 1911, the Constituent Assembly put a committee in charge of working out the Constitutional draft. This was chaired by Correia de Lemos and had Sebastião de Magalhães Lima as the reporter.[30] Furthermore, some deputies introduced their own Constitutional drafts. Some citizens even openly introduced Constitutional texts to be considered by the Constituent Assembly.[31]

The draft made by the Constitutional Committee was introduced during the session of 3 July 1911. It had a strong leaning towards a presidential system, in the line of the North American and Brazilian Constitutions. This was broadly rejected from the instant discussion on the general principles began. After that debate, the Constitutional draft was

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[29] These statutes are published in Namorado & Pinheiro [1998 (II) pp. 515-536] and Almeida (1998, pp. 525-583).

[30] See biographical syntheses of all First Republic parliamentarians and ministers in Marques, *et al.* (2000).

[31] These were the cases of Fernão Botto-Machado (Machado, 1911), José Barbosa (Barbosa, 1911) or Machado Santos (Santos, 1911). The Parliamentary Historical Archive of the Assembly of the Republic holds original typewritten or handwritten Constitutional drafts presented by Deputies João Gonçalves and António Cabreira, and also by José Soares da Cunha e Costa, a lawyer who sent a Constitutional draft to the Constituent Assembly to be taken into consideration. The Deputy Nunes da Mata introduced a Constitutional draft during the debate on the general principles, in the 19th session, on 12 July 1911. The Masonic Organization Grémio Montanha also sent a draft to the Constituent Assembly (Grémio Montanha, 1911).

modified and a consensus emerged around the principle of parliamentary supremacy.[32]

The 1911 Constitution did not include the national referendum. However, some of drafts that were introduced contained references to referendums. The lawyer José da Cunha e Costa rejected the idea, rejecting the Swiss Constitution as a source of his draft, considering that its application in Portugal would soon lead to anarchy. Meanwhile, some deputies welcomed it in their proposals, although under different forms.

1.3. The 'Popular Veto' in João Gonçalves' Draft

The draft introduced by João Gonçalves proposed, in Article 43, the existence of 'initiative committees' in both parliamentary chambers (the Chamber of Deputies and the Senate). These would be charged with creating laws, and could utilise the advisory referendum of the municipal authorities (*câmaras municipais*) and other corporations on any statute under procedure.

Article 101 (and the following articles) of the same draft also proposed that the country could object to the adoption of certain parliamentary deliberations within 15 days if a two-thirds majority had not been obtained in either chamber. In that case, those deliberations were submitted to a 'popular veto'. The right to reject legislation was restricted to loans, administrative issues, electoral subjects and Constitutional revisions. The legislative chambers could also add new topics to be submitted to the popular sanction if a two-thirds majority was not obtained. The municipal authorities would make the complaints, which had to be signed by a quarter of the voters under their governance. After that, the text would be submitted, within 15 days, to the vote to all of the Nation's municipal authorities. 'Special legislative committees' were chosen to express the will of each constituency.

João Gonçalves even suggested that legislative committees and municipal authorities should have the right to initiate legislation. These, in turn, could take the initiative on subjects that could be submitted to a 'popular veto'. If they represented at least a quarter of all votes pertaining to the committees and *câmaras* of the entire country, they could introduce their bills directly to Parliament.

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[32] For the main aspects of the 1911 Constitution, see Souza (1913); Miranda (1981, pp. 240-246); Lopes (1992); Canotilho (1998, pp. 156-171); Gouveia (2010, pp. 455-473) and Assembleia da República (2011).

If those bills were rejected by either of the parliamentary chambers by a two-thirds majority, they would be rejected for all intents and purposes. If the rejection was decided by an inferior number of votes, the bill could be submitted to the vote of the municipal authorities and legislative committees. If some parliamentary chamber passed a counter project, it could also be submitted to the 'popular veto'.

The matters excluded from the 'popular veto' included: the State Budget, the State accounts, expenditure on war materials, alliances and treaties, and resolutions taken by the Chambers in secret sessions. In addition, matters considered urgent by both parliamentary chambers would be exempt, provided a two-thirds majority in both chambers agreed with this categorisation.

1.4. The Referendum in Botto-Machado's Draft

In the introduction of the Constitutional draft published by Fernão Botto-Machado there is a staunch defence for the referendum as found in Switzerland and other republics: without the referendum, the people's sovereignty would continue to be defrauded. For Botto-Machado, a republic without a referendum is nothing but an 'ancient regime' (Machado, 1911, p. 16).

The proponent criticised the republicans, who had been 'so radical' before, but were now saying that the people were not prepared for the referendum. According to him, they had forgotten that the referendum had been practised in the Greek and Roman Republics two thousand years before. If people were insufficiently educated, it was necessary to educate them, since only those who get accustomed to using freedoms know how to use them.

However, he did not introduce a concrete proposal. He was still almost willing, as an experiment, to propose the referendum only in the cities of Lisbon, Oporto and *Coimbra*, naturally the most educated and involved in political life. Nonetheless, the fears were such that he proposed that the referendum be only exercised by the members of the municipal authorities *(vereadores)*. In those terms, Botto-Machado proposed a sort of organic referendum, under the designation of 'legislative review'. Any legislative proposal approved in the legislative chambers could be submitted to the referendum of *vereadores* before becoming a Law of the Republic.

This referendum would be optional and remain in the Government's free will, but it could be mandatory on Acts that raised

taxes, whenever requested by more than half of the presidents of district authorities (*juntas gerais)*, by one tenth of the *vereadores*, or by more than a thousand *comunas*.[33] The Republic's budget could never be submitted to referendum.

Regarding a Constitutional revision initiative, Botto-Machado also proposed the intervention of local and regional power bodies: the Constitution would be reviewed whenever the people's sovereignty determined it, or at least every 10 years if demanded by two thirds of both legislative chambers or by the districts, municipalities and *comunas*. This proposal, however, was badly explained. The expression 'at least every ten years' was ambiguous: would the revision be mandatory every 10 years, or would it be possible at any moment? The author also failed to explain how the people's sovereignty would be demonstrated in order to make a Constitutional revision.

1.5. Other Proposals for National Referendum

The draft made by the Constitutional Committee did not welcome the referendum at a national level. Only Article 56 allowed for a Constitutional revision to be anticipated in five years[34] if such was claimed as necessary by two thirds of the *vereadores*. However, during the Constituent Assembly debates, some deputies suggested a number of ways in which the national referendum could be included in the text.

The unionist Goulart de Medeiros introduced two proposals: the first was a device to resolve deadlock between the parliamentary chambers. If neither of the chambers would withdraw their opinions, then the matter could be resolved by a supreme appeal to the Nation as the first and genuine holder of sovereignty (*DANC*, 20, 13 July 1911, p. 12). The second consisted of, according to Jorge Miranda (1996a, p. 245), a singular modality of a referendum on unConstitutionality: The Supreme Court of Justice would judge any complaint against the enactment of unConstitutional Acts. Depending on that decision, there would then be an appeal to the Nation, which would be consulted directly (*DANC*, 49, 15 August 1911, p. 29).

Carlos Olavo proposed the popular referendum as way to dissolve Parliament in case of conflict between the Legislative and Executive powers. 'When there is a conflict between the executive power

[33] In Botto-Machado proposal, *'comuna'* would be the same as parish (*freguesia)*, the smallest local authority.

[34] The ordinary revision should happen, according to the draft, every 10 years.

and Parliament, the people are consulted. If the people's answer authorizes the dissolution, it means removing the mandate which had been given to the representatives; if it does not authorize it, Parliament remains in its powers with reinforced proof from the popular vote' (*DANC*, 22, 17 July 1911, p. 11). This proposal meant, according to Luís Barbosa Rodrigues (1994, p. 121), an arbitrage model coupled with a mechanism of popular decision-making, seeking to solve conflicts between Parliament and the Executive.

The draft sent to the Constituent Assembly by the Masonic organisation, *Grémio Montanha*, did not forget the referendum, but established it only for the future and in an undefined way. As provided in Article 110, five years after, if the National Assembly should want it, it could decree and regulate the referendum. That is, in the first five years of Constitution validity, the referendum would not be admitted. After that period, the referendum could be decreed and regulated by the Parliament.

None of these proposals progressed because of the fears mentioned by Botto-Machado in his draft introduction about the people's lack of political culture. These fears were shared by others, including José de Freitas, who noted that: 'In Portugal, I would admit the referendum if our people were not in the pitiful delay of civic education in which they find themselves and if the monstrous percentage of more than 70 percent of illiterates did not exist' (*DANC*, 22, 17 July 1911, p. 18).

2. The Plebiscitary Purposes of Paiva Couceiro

Military attempts to restore the Monarchy were commanded from Spain by Captain Paiva Couceiro, who invaded the north of the country twice, in October 1911 and July 1912. However, these raids were carried out by a small and ill-armed group of fighters who joined forces in Spain, and were easily defeated by the republicans due to their weakness. It also matters to refer that the conspiracy programme did not explicitly want to reestablish the Monarchy, but only to challenge to the Republican Government to accept a plebiscite on the choice of the regime (Maltez, 2005, p. 188; Ventura, 2004b, p. 184; Ramos 1994, p. 459).

On 18 March 1911, Paiva Couceiro sent an ultimatum to the Republican Government inviting it to dissolve the Republic and to trust the country to a new power, which would re-establish order and would organise elections so the sovereign people could peacefully decide between the Monarchy and the Republic (Couceiro, 1917, p. 10; Lavradio, 1942, pp. 186-188). Two days after, on 20 March, he escaped to Spain, after being advised that he would be arrested (Valente, 2006, pp. 85-86).

Couceiro hoped to take power by military means, and then hold a referendum on the regime, followed by free elections. However, he expressed no desire to return Dom Manuel II on the Throne (Valente, 2004, p. 254). His first purpose was 'to cease the revolutionary State of the country', accomplish 'free and fair elections as soon as possible', and consecutively to move on to 'the choice of the regime, the Constitution and the Higher Magistrate' (Dias, 1912, p. 99).

As Rui Ramos (1994, p. 459) explains, the will of the conspirators to separate themselves from the unpopular Constitutional Monarchy was so strong that Paiva Couceiro openly declared that he did not want to restore the Monarchy, but rather requested a plebiscite on the regime. He hoped that his entrance in Portugal could break out a general revolt in the country, which could isolate Lisbon. However, as Couceiro was alone in Spain, with some serious communication problems, this scenerio of simultaneous revolts was unfeasible and the invasions were easily dominated by the Republicans (Valente, 2004, pp. 254-255).

Couceiro, or at least some of his supporters, played a double game in search of help near those faithful to Dom Manuel II. In the Memoirs of Marquis of Lavradio we can read that the relationship between Couceiro and Dom Manuel was not easy, given that the former King could not accept the idea of a plebiscite to choose between the Monarchy and the Republic. In fact, it was on behalf of that idea that the supporters of the absolutist branch of the Monarchy made their propaganda. Meanwhile, some of Couceiro's followers made the King aware of their conviction that Couceiro's idea didn't have any importance and that as soon as he entered Portugal, he would acclaim the Monarchy and Manuel II as King (Lavradio, 1942, pp. 194-195).

The ambivalence of the movement was criticised heavily by Dom Manuel II. In a Statement on 31 October 1911, he greeted the partisans committed to the restoration of the Monarchy, but he considered the movement to be neutral, because it joined persons who had completely different ideals and hoped to overcome the decisions of the country in a future plebiscite. In addition, he expressly declared his complete disapproval towards the neutrality of the movement and his rejection of any kind of agreement with the other royalist party (Lavradio, 1942, p. 208).

This Statement would give rise to great perplexity in those who struggled inside the country for the monarchic restoration. Even some close confidentes of Dom Manuel II, including his private secretary,

Marquis of Lavradio, objected and requested the dismissal of his functions as a consequence of this disagreement (Lavradio, 1942, p. 209). The Statement was not only considered to be ungrateful by those who struggled in Portugal for the restoration of the Monarchy, but it also allowed the *miguelistas* to increase their influence in those movements. That Statement would have also caused a deep displeasure in Couceiro and, as he wrote to Lavradio, it would have reinforced the *miguelistas* who accepted his idea of the monarchic restoration by plebiscite (Lavradio, 1942, pp. 212-215).

Nevertheless, the disagreement was resolved during Couceiro's journey to Richmond (London), where the King was exiled. After a two hour meeting with Dom Manuel, Couceiro agreed to end the neutral movement (Lavradio, 1942, pp. 217-219). Paiva Couceiro's plebiscitary purposes never achieved success. By the time of his second frustrated attempt of military invasion, in 1912, when he occupied the small town of *Vinhais*, he did not introduce himself as a proponent of a plebiscite but as a royalist, acclaiming Dom Manuel II as King (Ramos, 1994, p. 460).

It is important to remember that the idea of a plebiscite against the Republic was not a new idea in Paiva Couceiro's thought. He had pleaded this idea during the Monarchy, as a way of avoiding the advent of the Republic, and he renewed it as a way of defeating the Republic. Obviously, at the basis of that proposal was the idea that the Republicans had electoral influence only in the urban centres, and that the electoral mobilisation of rural areas could favour royalist purposes.

Furthermore, in several occasions, Couceiro would come to repeat his proposal of plebiscite. He did it in 1914, when he was included in an amnesty, but nobody followed him (Valente, 2006, p. 122). He did it again in 1918, during Sidónio Pais' Government, and in 1919, then in harmony with a significant part of the monarchic opposition who also assumed that claim. Vasco Pulido Valente (2006, p. 126) refers that, in his first appointment with Sidónio Pais, António Cabral, one of the eminent figures of the monarchic opposition, asked for a plebiscite on the regime, which Sidónio refused almost angrily.

In the summer of 1918, Couceiro insisted on the presence of several military chiefs who conspired with him, and on the need of a military cabinet to assure public order and to make a plebiscite (Valente, 2006, pp. 127-128). After Sidónio Pais' death, Couceiro, who was still in exile, urged a revolt against Canto e Castro, claiming the need for a military dictatorship and a plebiscite (Valente, 2006, p. 129). Even after

the defeat of the 'Monarchy of the North' proclaimed by him between 19 January and 17 February 1919, and already exiled in Spain, he repeated the idea of a plebiscite in an interview to the newspaper *El Sol*. According to Pulido Valente (2006, p. 129), the reaffirmation of that proposal by Couceiro was the discredit of the 'Monarchy of the North' and of himself.

3. The Local Referendum

3.1. The Constitutional Inception

In the draft introduced for the discussion of general principles on 3 July 1911, the referendum did not obtain any Constitutional inception, neither at the national level nor in the sphere of local administration. As for the latter, the draft only referred, in Article 61, that 'special laws based on autonomy and decentralization compatible with the Nation's unity, readiness and effectiveness of National Defence, and municipal financial resources, will reorganise the local administration, as well as the mainland and adjacent islands and the overseas provinces.'

However, that position soon changed during the debate. During the 10 July session, Pedro Martins proposed a motion to introduce the autonomy of local administration and the municipal referendum (*DANC*, 17, 10 July 1911, p. 12). On 12 July, Barbosa de Magalhães defended the administrative referendum 'although in a restrictive way' (*DANC*, 19, 12 July 1911, p. 20). On 13 July, Eduardo de Almeida proposed the introduction of referendums in each parish (*freguesia)* of the mainland to decide on its most important and private interests, and the municipal referendum in Lisbon and Oporto (*DANC*, 20, 13 July 1911, p. 18). On 14 July, João Gonçalves, recovered his 'popular veto' and 'popular legislative initiative' as a draft amendment (*DANC*, 21, 4 July 1911, pp. 18-19). Celestino de Almeida considered the referendum to be very convenient at a local level, but not for laws and Governmental Acts (*DANC*, 22, 17 July 1911, p. 15). Finally, Jacinto Nunes introduced a motion to reinforce local autonomy, proposing a sort of organic referendum exercised by the municipal authorities on certain deliberations from the district authorities, which was well accepted by the Committee.

As a consequence of these debates, the Constitution Committee amended the text. The version introduced for discussion on the details already suggested that, in Article 55, the organisation and attributions of administrative bodies would be regulated by special law. It also Stated that they would be based on the referendum exercised by the municipal authorities from the district authorities' deliberations, and by the parish

authorities on the deliberations from the municipal authorities if they involved an increase in expenses.[35]

The opinions expressed during the discussion of the details concerning this proposal were very divergent. Miranda do Vale completely disagreed, considering that the members of the *juntas de freguesia* would be less cultured than the *vereadores*, and the same happened with the *vereadores* in regards to the members of the *juntas gerais* of districts. But there were other reasons: if a municipal authority wanted to improve the conditions of the seat of the municipality, and for that reason decided on a certain number of extraordinary expenses, the surrounding *juntas de freguesia* could agree on making a constant obstructionism of all improvements that the *câmara* wanted to implement. Therefore, in order to avoid that, he proposed that the referendum be enshrined in the Constitution 'in the terms and for the deliberations prescribed by law' (*DANC*, 50, 16 August 1911, p. 12).

João de Menezes proposed the final solution for Article 66 of the Constitution on behalf of the Committee. The organisation and attribution of administrative local institutions would be regulated by special law, which would be based on the exercise of referendum in the terms established by law.

Marnoco e Souza (1913, pp. 593-595), although considering the limited nature of the Constitutional disposition, welcomed it enthusiastically: according to him, that reform allowed a wider decentralisation, and a more effective control by the people on the local administration acts. The responsibility of administrative bodies before the people in the referendum system made them unavoidably more careful and attentive to the exercise of their functions. The people, through referendum practice, would become enpowered, over time, to exercise the referendum in the great issues of national politics.

Although the Constitutional and legal inception of local referendum was, beyond doubt, a feature of the first Portuguese Republic, there are no specific studies on that subject, except for brief references in publications on the referendum in general or about local power during that historical period.[36] The authors only referred that the referendum was merely sent to the local administration level, (Cardoso, 1992, p, 69; Pinto,

[35] The original hand written document is available at the Historic Parliamentary Archive of the Assembly of the Republic, Lisbon.

[36] See Oliveira (1996a) and Baiôa (2000) for the local power in the First Portuguese Republic.

1988, p. 64; Duarte, 1987, pp. 9-10), which is correct, and some of them referred to the legal provisions in it (Suordem, 1997, pp. 23-26), but there is no publication about its concrete application. Nevertheless, the local referendum existed from this time.

3.2. The Administrative Code

3.2.1. General Aspects

Article 85 of the 1911 Constitution charged the first Congress of the Republic with the task of drawing up the Administrative Code. When the Republic was established, João Franco's Administrative Code, published on 4 May 1896, was still in force. It was strongly centralist, and its structure was considered to be intensively conservative and incompatible with the republican system's doctrines. This was affirmed by the introduction of the Decree of 13 October 1910, which determined that if the Administrative Code were not enacted in accordance with republican principles, the administrative bodies established by the Administrative Code of 6 May 1878 would be reinStated. However, as the simple resurrection of the Code of 1878 was not viable, the courts had to admit the validity of the Code of 1896 in some matters. Therefore, with the Republic maintaining two codes, a new one became indispensable.

The Republic had a historical commitment to the principles of administrative decentralisation. One of their first ideologists, José Félix Henriques Nogueira, conceived the Republic as a federation of municipalities (Silva, 1976). Portugal would be organised into one hundred municipalities, which would be as self-sufficient as possible. They would be associated into regions, thus constituting a federal State where the central power would have scarce and controlled powers (Oliveira, 1996a, pp. 243-245). However, as César de Oliveira mentions (1996a, p. 259), during the revolutionary period, republicanism was in a contradictory position. On the one hand, it had the duty to decentralise in order to implement the ideals of its heritage; on the other, the jacobinism of its main leaders' impelled the Republic towards centralism. Shortly after, on 25 October 1910, the Home Minister, António José de Almeida, appointed a commission to draft the Administrative Code, led by José Jacinto Nunes.

3.2.2. The Bill

The Administrative Code Bill, introduced in the Chamber of Deputies on 21 November 1911 (*Ministério do Interior*, 1911), where discussions began on 13 February 1912 in the Chamber of Deputies and

19 June 1913 in the Senate, did not contain, in its initial version, any mention of the popular referendum. Only certain kinds of deliberations required any participation from the citizens.

The Government could: change municipalities from a district to another, and civil parishes from a municipality to another; create new municipalities and new parishes; change the seat of municipalities and civil parishes; and extinguish districts, municipalities and civil parishes that did not have enough resources to satisfy their obligatory duties.[37] However, those decisions required the assent of two-thirds of the respective voters (Articles 4 to 7). The extinguished civil parishes and the municipalities would be incorporated, entirely or partly, into contiguous similar constituencies, according to the will of the majority of the respective inhabitants (Article 8).

There were also provisions for some types of organic referendums. Certain deliberations from the district authorities required the approval of the majority of municipalities. When the municipal authorities deliberated on important financial matters (Article 102), the most significant taxpayers could take part in the meetings, in an equal number to that of the *vereadores*, thus having a deliberative vote. [38] On the other hand, the parish authorities could not make some deliberations without the favourable opinion of the majority of the 10 most significant taxpayers of the parish (Article 181).

3.2.3. The Debate in the Chamber of Deputies

During the debate of the Administrative Code in the Chamber of Deputies, the issue of local referendums was widely discussed. Barbosa de Magalhães considered the referendum principle as one of the most precious liberal conquests. In the parishes, it should be direct. In the municipalities, the parish authorities should exercise it, because they would know the needs and conveniences of their municipality better (*DCD*, 60, 28 February 1912, p. 5). He also proposed that complaints be presented to the administrative courts in order to dissolve the administrative bodies. These should be submitted to referendum and must obtain the support of two thirds of voters (*DCD*, 85, 26 March 1912, p. 14). João de Menezes defended that the right to vote for the popular

[37] The Government within the first six months of the Code's validity could take these kinds of deliberations. After that period, such decisions could only be taken by the legislative power (Article 10).

[38] The number of *vereadores* could be 32, 24 or 16, depending on the size of the municipality.

referendum would be restricted to male citizens, 31 and older, that paid taxes because otherwise a popular referendum would not be obtained but rather the cacique's will (*DCD*, 61, 29 February 1912, p. 8).

Filemon de Almeida proposed that the change of municipalities to other districts or the change of parishes to other municipalities should be voted by two thirds of the respective electors. A referendum should be mandatory whenever it was requested by at least a third of the members of the municipal or parish authorities, or by a tenth of the registered electors (*DCD*, 81, 21 March 1912, p. 30). This idea obtained acceptance from the Chamber of Deputies, but was rejected in 1913 by the Senate.

Dias da Silva proposed that the parishes with more than a thousand inhabitants could exercise functions that belonged in general to the municipal authorities, thus exercising, according to the proposed designation, 'communal functions'. The Congress of the Republic would declare the establishment of those communal functions by petition, subscribed by a third of the parish electors and sanctioned in referendum by two-thirds (*DCD*, 124, 31 May 1912, p. 10). The petition should be sent to the Home Minister who within two months should submit it to the referendum. Jacinto Nunes, believing that it would create a new category of administrative bodies, vehemently contested Dias da Silva's proposal.

In the session of 31 May 1912, the Public Administration Committee introduced its draft for discussion regarding the responsibilities of parish authorities, proposing that some of their deliberations should be submitted to referendum. Jacinto Nunes clearly showed his disagreement (*DCD*, 124, 31 May 1912, p. 12).

Finally, the version passed in the Chamber of Deputies included the local referendum in the following situations:

- **a)** The suppression and the creation of municipalities and parishes, as well as the change of parishes to other municipalities, should be requested by a third of the electors, and voted by two thirds of them (Articles 4 to 7). The abolished constituencies would be integrated, wholly or partly, into contiguous similar constituencies, according to the proposal made by the respective administrative body, sanctioned by referendum (Article 9).
- **b)** Some deliberations of district authorities should be approved by a majority of municipal authorities in order to become 'executory' [Article 56(§1)].

c) Certain deliberations from municipal authorities should be approved by most of the parish authorities in order to become 'executory' (Article 107), and some of them would have to be submitted to referendum if requested by a tenth part of the electors [Article 107(§1)].

d) Some deliberations from parish authorities should be obligatorily submitted to referendum in order to become 'executory' (Article 190).[39]

3.2.4. The First Debate in the Senate

On 19 June 1913, the Senate began to debate the Administrative Code Bill, already passed in the Chamber of Deputies. Before the debate began, it decided to consider only 12 of the 20 proposals. The Administrative Code, given its scale and complexity, would need time and reflection, which was impossible in such a short period. On the other hand, the provisional situation of the administrative bodies should cease immediately (*DS*, 134, 19 June 1913, p. 15). Thus, the Senate did not discuss territorial division, the suppression or creation of municipalities and parishes, or the change of parishes to other municipalities, including the referendums needed for those changes.

The rest was the organic referendum of municipal and parish authorities, as well as the popular referendum on the deliberations from parish authorities, which were the object of several Statements. Pedro Martins considered the referendum a beautiful idea and a democratic aspiration, but worried that under the special conditions of the country, it might be risky and dangerous (*DS*, 135, 19 June 1913, p. 73). João Freitas was more pessimistic, fearing that the experience was disastrous because the exercise of the referendum presupposed a degree of civic education that the people, mainly in the rural areas, lacked at the current time (*DS*, 137, 20 June 1913, p. 29).

3.2.5. Law No. 88, of 7 August 1913

The result was Law No. 88, of 7 August 1913 (*DG*, 183) on the organisation, working, attributions and responsibilities of administrative bodies. Local administrations were not definitively reorganised by a new Administrative Code. According to Law No. 88, the administrative bodies were the *junta geral* in the district, the *câmara municipal* in the

[39] In the Portuguese Administrative Law, 'executory' is the ability of an administrative act to be fully effective: in other words, it is an act which is coercive by itself and executed without a judicial decision (Correia, 1982, p. 332-334).

municipality, and the *junta de paróquia* in the civil parish (Article 2).[40] Regarding the organic or popular referendum, it essentially welcomed the proposal passed in the Chamber of Deputies. Under these terms it Stated that:

a) Some deliberations from the *juntas gerais* or *câmaras municipais*, only became executory, after being submitted to an organic referendum and approved, respectively, by the majority of the *câmaras municipais* or *juntas de paróquia* [Article 45(§ unique) and Article 96].

b) Some deliberations from the *câmaras municipais* should be submitted to the popular referendum, if requested by a tenth part of the electors [Article 96(§1]. In the case of a popular referendum request, the organic referendum from the *juntas de paróquia* would not be held (*DCD*, 52, 13 February 1912).

c) Some deliberations from the *juntas de paróquia* had to be submitted to popular referendum to become executory (Article 147).

In general, the deliberations that could be submitted to referendum were those that proposed increased expenditure. Given that the right to vote was still restricted at the time, the local referendum was essentially gave taxpayers the right to prevent any deliberations from administrative authorities that had financial implications.

Meanwhile, Congress passed a law concerning expropriation in the public interest, which actually included the local referendum for the first time. While the Chamber of Deputies discussed the Administrative Code, Senator Silva Cunha introduced a bill in the Senate proposing that there should be a declaration of public interest in order to expropriate which would be submitted to a referendum of the constituency electors in case the expropriator was an administrative body. The Senate passed the proposal on 13 May 1912[41] and the Chamber of Deputies did the same on 6 July 1912. Thus, the Law of 26 July 1912, in Article 3(§ unique), laid down that the declaration of public interest for expropriation purposes would be made by the legislative power, or by referendum in the

[40] Fernando Farelo Lopes (1992, p. 87) informs that there were 17 districts, 263 municipalities and 3,620 parishes in Portugal in 1914.

[41] The Senate passed the proposal despite some controversy: Machado de Serpa declared that he could not admit the referendum in a country of illiterates (*DS*, 87, 13 May 1912, p. 9). Bernardino Roque said that in the northern provinces of the country 'the referendum is perfect celestial music, because nobody knows what that is' (*DS*, 87, 13 May 1912, p. 7).

respective constituency, depending on whether the expropriator was the State or an administrative body (*DG*, 185, 1 August 1912).

3.2.6. The Second Debate in the Senate

On 12 March 1914, the Senate re-opened discussion of the Administrative Code. The Committee responsible for appreciating the Deputies Chamber proposal gave an opinion (*DS*, 54, 12 March 1914, p. 7) and foresaw that some decisions could be submitted to referendum if requested by a third and voted by two thirds of the male citizens aged 21 and over who fully enjoyed their civil rights. These decisions were **a)** the passage of municipalities to an upper order[42] when they did not have the number of inhabitants demanded but had a remarkable industrial and commercial increment [Article 4(§3)]; **b)** the annexation and disunion of administrative circumscriptions (Article 6); **c)** the creation of new municipalities and parishes (Article 7); **d)** the incorporation of suppressed circumscriptions (Article 10).

Senator Leão de Meireles proposed that the right to vote in the referendum would only be granted to male citizens, aged 21 and over, voters, owners and industrial taxpayers, in the full enjoyment of their civil rights, and residents in the circumscription for more than six months (*DS*, 70, 6 April 1914, p. 14). The Senate rejected the proposal (*DS*, 72, 14 April 1914, p. 14), but passed a proposal by Pais Gomes giving the right to vote in the referendum to taxpayers (*DS*, 70, 6 April 1914, p. 14).

The Bill of Administrative Code submitted by the Committee to the Senate contained a Title XV on the referendum (*DS*, 116, 17 June 1914, pp. 40-41), which laid down that:

1) The referendum would be exercised by all male citizens, aged 21 and over, in full enjoyment of their civil rights, residents in the circumscription, who were electors or taxpayers (Article 251).
2) The ballots would be a flat piece of paper, one green coloured for approval, and the other red for rejection (Article 252).
3) The referendum would be realised by the assemblies on an appointed Sunday at least twenty days before by the

[42] The municipalities could be of the first order (district capitals, municipalities with more than 40,000 inhabitants, and still those whose chief-town was a city with more than 18,000 inhabitants); second order (municipalities with more than 18,000 and less than 40,000 inhabitants) and third order (all others).

administrative body whose deliberation was in cause. It would also be publicised by warning and published in the local newspapers along with posted edicts (Article 255).

4) After the chair of the assembly was constituted, the call for votes would take place and each citizen, when called, would give his ballot to the chairperson (Article 256).

5) The deliberation under referendum would be confirmed if it had the participation of 30% of registered citizens, except for decisions relating to administrative circumscriptions.

The discussion did not end, however, in that legislative session. The following years would be disturbed by the beginning of World War I, the postponement *sine die* of the parliamentary elections, and the establishment of a dictatorship government led by General Pimenta de Castro at the beginning of 1915. In this manner, the local referendum remained without any type of regulation, despite its urgency.

3.3. The Lack of Regulation and Its Consequences

In 1914, despite the lack of regulation on the local referendum, Congress (which joined the Chamber of Deputies and the Senate) created seven new municipalities by law: *Bombarral* (Law No. 123, of 28 March); *Alpiarça* (Law No. 129, of 2 April); *Ribeira Brava* (Law No. 154, of 6 May); *Alcanena* (Law No. 156, of 8 May); *Sines* (Law No. 167, of 19 May); *Alportel* (Law No. 178, of 1 June); *Castanheira de Pêra* (Law No. 203, of 17 June). This attitude from Congress attracted severe criticism.

In the session of 18 March 1914, which passed the bill to create the municipality of *Bombarral*, approved by the Chamber of Deputies but refused by the Senate, Jacinto Nunes considered that the only serious, loyal and honest way to decide the issue would be the referendum (*DC*, 7, 18 March 1914, p. 8). In the Senate sittings of 17 April 1914, in which a bill to create the municipality of *Ribeira Brava* was discussed, Senator Tasso de Figueiredo proposed the postponement of that decision until the appreciation by the Chamber of Deputies on the Administrative Code had already passed in the Senate. The idea was to avoid the creation of municipalities under extraordinary conditions (*DS*, 75, 17 April 1914, p. 10). The Chamber passed the postponement, but on 27 April, the bill was passed, in spite of several protests.

These discussions were repeated throughout 1914 due to a veritable avalanche of bills aimed at changing administrative

circumscriptions.[43] At the Chamber of Deputies' session on 22 April 1914, Barbosa de Magalhães, on behalf of the Public Administration Committee, appealed to the urgent regulation of Law No. 88, having obtained a promise from the Head of Government that such would be made as soon as possible (*DCD*, 79, 22 April 1914, p. 9).

While the legislative power did not approve the regulation for the local referendum, some decisions were taken without a referendum. Three parishes were created in 1915: *Painho* (municipality of *Cadaval*), *Caneças (Loures), Estoril (Cascais)*; Six in 1916: *Quarteira (Loulé), S. Mamede (Batalha), Santa Iria de Azóia (Loures), Amadora (Oeiras), Vale de Paraíso (Azambuja), Cristelo (Paredes)*. In 1917, even after the publication of the law which established the rules for local referendums, the municipality of *Marinha Grande* was created by law, without a referendum.

Although the lack of a referendum had consequences concerning the bills needed to change administrative circumscriptions, it also concerned other types of decisions. For instance, in the Senate session of 27 June 1914, Senator Tasso de Figueiredo criticised a bill that authorised the *Câmara Municipal* of *Vila Real de Santo António* to create a tax. Such authorisations should have been submitted to a referendum, and the Chamber approved the objection (*DS*, 127, 27 June 1914, pp. 6-9).

Another problem was that some deliberations from local authorities needed a referendum to approve their execution. Given that the way to accomplish the optional referendum requested by the electors was not regulated, nothing prevented the deliberations. However, in the case of deliberations that needed an organic referendum from parish authorities, which was mandatory, the courts judged that those deliberations were merely provisional until a referendum took place. In fact, in April 1917, the Supreme Administrative Court granted an appeal against a deliberation from a parish authority, which had acquired a piece of land, without a referendum.

During this period, certain deliberations of local authorities had to be confirmed by referendum. However, until 1916, no law governed the conduct of referendums. After the publication of Law No. 621, of 23 June 1916, the court ruled that all decisions made in the previous years were only provisional until approved by a referendum. This judgment was based on Article 12 of that Law, which applied retrospectively. The Court

[43] See for example: *DS* (83, 29 April 1914, p. 5) or *DS (*87, 6 May 1914, p. 16).

therefore considered that all pending deliberations must be submitted to a mandatory referendum [*DG* (II) 91, 18 April 1917].

3.4. The First Restrictions on the Extent of the Local Referendum

On 24 August 1915, António Fonseca, who was member of the Democratic Party, introduced a bill. It stated that the deliberations from the municipal authorities regarding expenses only had to be submitted for approval from parish authorities, or through a referendum, if the increase of taxes was greater than that of the previous year. The same rule would be valid for the referendum on the decisions regarding taxes taken by parish authorities (*DCD*, 56, 24 August 1915, p. 15). The Chamber of Deputies approved this bill on 26 August 1915, thus giving origin to Law No. 446, of 18 September 1915 [*DG* (I) 189].

Nevertheless, even within this new legal system, the law was sometimes ignored. For example, during the session of 10 February 1916, Jorge Nunes, member of the unionist opposition, criticised the municipal authority of Oporto for having increased taxes without respecting the Administrative Code, that is, without consulting the parish authorities (*DCD*, 38, 10 February 1916, p. 15).

3.5. Law No. 621, of 23 June 1916

3.5.1. The Debate in the Chambers

Finally, on 24 March 1916, the Public Administration Committee introduced, in the Chamber of Deputies, a bill regulating the local referendum [*DG* (II) 72, 27 March 1916, pp. 1095-1099]. The Bill drew on the debate that had taken place two years previously in the Senate, and proposed that:

- **a)** The restriction of the electoral body, which gave male citizens aged 21 and over the right to vote, as long as they fully enjoyed their civil rights, were electors or taxpayers, and lived in the constituency for more than one year.
- **b)** The reduction of the municipal authorities' deliberations submitted to the parish authorities' organic referendum.
- **c)** The restriction of the deliberations submitted to the municipal referendum required by one tenth of the electors, which could only happen on deliberations concerning loans or taxes.

d) The suppression of an organic referendum from parish authorities on deliberations made by Lisbon and Oporto municipal authorities, which could be submitted to popular referendums only for the restricted terms mentioned above.

The debate began on 10 May 1916 (*DCD*, 85, 10 May 1916) and the Public Administration Committee prepared a new draft, which was different in some aspects from the previous one. The text no longer referred to the abolision of municipalities and *freguesias* (new designation for the parishes), but only mentioned their creation, which still had to be approved by referendum, requested by a third of the electors and voted by two thirds of them. To change parishes from one municipality to another, it would suffice to have the approval by a third of the electors.

The electoral body for the referendum would be the same as for other electoral acts, with references to the taxpayers' participation and to residence in the circumscription for more than one year having disappeared. Those who did not vote would no longer be considered as giving tacit approval. The new draft changed other details, namely the ballot paper, which should have only one colour, thus guaranteeing the secrecy of vote.

The Chamber reduced the use of the organic referendum from parishes on the municipalities' deliberations, but not to the extent proposed. As for the electors' optional referendum, the restriction was more evident: the taking out of loans and the creation of taxes could be subject to a popular referendum. There would be no special regime for Lisbon and Oporto. The deliberations from municipal authorities would be tacitly approved if the parish authorities did not communicate their resolutions within the 45-day term.

Parish authorities repeatedly requested restrictions on the popular referendum for two main reasons. The first was the staff resource required by the local authorities to raise the referendary device with all the legal requirements, and the second was the difficulty felt by the local authorities of obtaining revenues, given the foreseeable refusal of any tax increase by taxpayers (*DCD*, 71, 12 April 1916, p. 4).

After passing, the bill returned to the Senate for further debate during the session of 19 May 1916. The Chamber introduced further amendments: **a)** the change of parishes to other municipalities would need the vote from two thirds of the electors, and not only a third; **b)** the referendum on the creation of new municipalities should take place in

each parish that had requested it; **c)** the approved rules should be applied to the pending cases (*DS*, 72, 19 May 1916, pp. 21-22).

3.5.2. The Rules Passed

This long and troubled legislative process ended with the passage of Law No. 621, of 23 June 1916, which finally regulated the local referendum in the following terms:[44]

1) The creation of new municipalities, the partial or total change of parishes to other municipalities, or the change of villages from a parish to another, should be requested by a third of the voters and should be passed a two-thirds majority.

2) For annexations or the dissolution of unions, such as the creation of parishes or municipalities, the referendum only took place in the area that proposed to separate. It was summoned by the administrative body of that circumscription within 15 days of the delivery of a request signed by a third of the citizens registered in that part. If that summon was not made, any elector could request it to the district judge.

3) The Law introduced some restrictions on the extent of local referendums, but the taking out of loans and the creation of taxes could be submitted to referendum if requested by a tenth of the citizens.

4) When the parish authorities had not communicated their resolution on the municipal deliberations submitted to the organic referendum within 45 days, tacit approval would be assumed.

5) The citizens registered to vote in each constituency had the right to vote in the local referendum.

6) The ballot papers would be in white, flat, printed or lithographed paper, and would only mention: '*aprovo'* (I approve) or '*rejeito'* (I reject).

7) The referendum would be held by assemblies, which would meet on a Sunday scheduled at least 20 days before by the administrative body. The deliberation from this body would be publicised by advertisements in local newspapers and divulged in common places, thus informing citizens of the purpose of the referendum.

[44] For a detailed description of the local referendum procedure, see Oliveira (1924).

8) The assemblies' chairpersons were appointed as Stated in the Electoral Code, and the chairs were constituted much like the parish elections.

3.6. The First Local Referendum on Territorial Issues

The first local referendum on territorial issues that we have observed occurred in the small parish of *Covelo de Paivô*, located about 30 kilometres from the seat of the municipality *(S. Pedro do Sul)*, and about 15 kilometres from the seat of the neighbouring municipality *(Arouca)*. For geographical reasons, the people of *Covelo de Paivô* wanted to become part of the *Arouca* municipality and the legislative power approved the proposal, without a referendum, by publishing a Law on 16 February 1917.

The municipality of *S. Pedro do Sul* objected to the decision, and on 24 June 1917, the people of the parish were consulted through a local referendum on whether they preferred to remain in the *Arouca* municipality or return to *S. Pedro do Sul*. This referendum was mentioned in the Senate as being the first time that such an act would take place (*DS*, 69, 22 June 1917, pp. 3-4). However, the Administrative Court of *Aveiro* would consider that referendum null and void. A valid referendum was held on 15 July, in accordance with Law No. 621, of 23 June 1916. Therefore, the integration in *Arouca* proceeded, and the boundary reorganisation of July 1917 remains in place to this day.

4. The New Republic *(República Nova)*

4.1. The '*Sidonist* Interregnum'

On 5 December 1917, exploiting the dissatisfaction that came from all sides towards the Portuguese participation in World War I, Major Sidónio Pais, Professor at *Coimbra* University and Finance Minister of the first Constitutional Government, instigated a *coup d'état*. Having the support of the urban populations who had backed the 1910 revolution, he was able to resist the government's counteroffensive, proclaiming a Revolutionary Committee that arrested the President (Bernardino Machado) and the Head of Government (Afonso Costa), dissolved Congress, and established a regime called the New Republic (*República*

Nova).[45] On 10 January 1918, the new power dissolved all administrative bodies.

The simultaneous elections for the President of the Republic and for a Parliament with constituent powers took place on 28 April 1918. Meanwhile, a new electoral law gave the right to vote to all male citizens aged 21 and over. With the widening of suffrage, the population that could be registered to vote increased from 617,201 to 1,510,545 and the effective census had about 900,000 electors registered. Sidónio Pais was elected President with 513,958 votes. Participation in the parliamentary elections was very low (36% in Lisbon) due to the call for abstention made by the Democratic, Evolutionist and Unionist parties (Marques, 1978, p. 610; Maltez, 2005, p. 243).

The new Parliament met between 23 July and 6 August 1918, but it did not decide how the new Constitution should be drawn up. Sidónio Pais merged the functions of President and Head of Government, and he broke with the syndical movement that had supported his ascension to power. The regime leaned to the right and assumed a fascist character (Serra, 1992, pp. 60-61; Santos, 1990, pp. 255-260). On 14 December 1918, Sidónio Pais was murdered in Lisbon. During the '*Sidonist* interregnum', the Government created three new parishes by decree: *Penha de França (*Lisbon*), Serra de Santo António (Alcanena)* and *S. Cristóvão (Montemor-o-Novo)*. Only in the last one did the decree refer to the execution of Law No. 621, which demanded that its creation be requested by a third of the electors and voted for by two-thirds.

4.2. The Referendum in Carneiro de Moura's Draft Constitution

On 24 July 1918, the '*sidonist'* Senator Carneiro de Moura, introduced a draft Constitution (Serra 1992, p. 60-61), which proposed the inception of the national referendum. If the President of the Republic refused to give assent to a statute, after hearing the Council of State,[46] he could submit the final decision to a popular referendum (Article 79).[47] If

[45] On the New Republic, see Serra (1992, pp. 54-57); Santos (1990, pp. 83-85), Maltez (2005, p. 234) and Wheeler (1978, pp. 151-173).

[46] According to the draft, the Council of State would be composed by the Presidents of the Legislative Chambers, the President of the Supreme Court of Justice, the Dean of the University of Lisbon, the Commander of the Navy, the Commander of the 1st military division, and six members representing the working class, fine arts, agriculture, industry, trade and liberal professions.

[47] If the President did not appeal to the popular referendum, he should enact the diploma within a 15 day term (Article 80).

the popular referendum approved the statute, it would be enacted (Article 81). If the referendum rejected an important resolution of the Legislative Power, the President could dissolve both parliamentary chambers, after hearing the Council of State (Article 112). Beside this proposal of national referendum, the draft also included the popular referendum on subjects of great regional interest (Article 141).

The Carneiro de Moura draft, in its most relevant part, which was the inception of the national referendum, wanted to reinforce the President's Constitutional position. This idea was dear to *'sidonism'*, and the alliance with the popular strata that supported the New Republic. In the case of conflict with Parliament, the President could appeal directly to the people, and the defeat of the legislative body by the people triggered the power of dissolution. This draft, however, would expire with the new parliamentary elections in May 1919 without ever being discussed.

4.3 The Royalists and the Plebiscite

With the Democratic Party removed from power by Sidónio's revolution, and with elections expected during February 1918, the supporters of the Monarchy tried to organise their own participation. Hoping to achieve that aim, they created a monarchic electoral commission and, on 2 February, they met Sidónio Pais. According to the former minister, António Cabral, who took part in the delegation, the purposes of that meeting were to discover Sidónio's guidelines and political intentions. But they also sought to find out if they would be permitted to distribute their electoral propaganda freely in assemblies and meetings, diffusing their ideas, publishing their principles, introducing their candidates, and using, in accordance with the law, every legitimate way that they judged necessary to take a condign representation in parliament (Cabral, 1932, p. 359).

Sidónio Pais guaranteed the freedom to meet, and to make electoral propaganda. However, he tried to lure Cabral and his followers into accepting the new situation by expressing the desire that the supporters of the Monarchy participate in the Republic on equal terms with the republicans, arguing that, with a new Constitution, the moment was opportune (Cabral, 1932.p. 360). António Cabral considered the proposal insulting and threatened to leave. Sidónio, trying to pacify him, defined his proposal as an experiment instead of an abdication. The monarchists would support Sidónio in the direct presidential election in order to avoid the disturbances. Before such an appeal for a direct vote, the royalists replied with a proposal for a plebiscite, so that the nation

could freely choose the political system. According to António Cabral (1932, p. 360), Sidónio refused that idea peremptorily and appeared to be annoyed.

The supporters of the Monarchy did not accept the compromise and insisted, during that year, on their claim for a plebiscite. Miguel Dias Santos (2003, p. 170) made a survey of the claim for a plebiscite by the monarchic press in 1918, referring to articles published in the newspapers *A Pátria* on 13 February, 16 August, 1, 2 and 17 October, 7, 19 and 22 November; *O Liberal* on 19 and 26 February; and *Diário Nacional* on 14 February and 27 November. In spite of being well aware that Sidónio Pais, as a republican, would never accept the plebiscite, the monarchic press demanded it consistently througout 1918. The plebiscite would become a flag of some supporters of the Monarchy. However, the idea was not unanimous among them, and the exiled King did not accept it. That was clear in the monarchic movements in the aftermath of Sidónio Pais' death.

Hipólito Raposo (1945, pp. 42-45), a supporter of Paiva Couceiro's military movements against the Republic which gave place to the ephemeral proclamation of the 'Monarchy of the North' in January 1919, recalls in his memoirs that he tried to obtain the approval of the exiled King for those military movements, and that he himself sent a document to the King's representative, Aires de Ornelas. That document asked for the opinion of Dom Manuel II about the possibility of a military movement promoted by monarchic and republican military officials, and proposed that the country hold a plebiscite on the political system. The verdict brought on that paper by Aires of Ornelas was, for the first point: 'Go on! Words of the King'. However, as for the second: 'I do not see reason for a plebiscite.'

Monarchic opinion remained divided over the plebiscite. João de Almeida (1937, pp. 216-217), who fought militarily for the monarchic restoration, defended the plebiscite for tactical reasons in the beginning, but he later changed his opinion, deciding that the plebiscite would only serve to legalise the will of the Government that imposed it. Alfredo Pimenta (1937, p. 161) considered himself an anti-liberal and anti-democratic royalist. He was an admirer of Dom Manuel II and, in a text written in 1925, he expressed his agreement with the King's position, refusing the idea of a plebiscite in principle. He thought the plebiscite was contrary to the monarchic doctrine. The King was a King because of the Grace of God. His power came from God. A plebiscitary King would be a King of the democracy, a King of the vote, a King of the ballot, a King of

the party. His conclusion was that a plebiscitary monarchy would be a republic.

The monarchic position on the plebiscite varied therefore between the positions of those who refused it for reasons of principle, like Dom Manuel II himself, and others who accepted it for tactical reasons. For the *Miguelist* branch, the idea of a plebiscite allowed them to join the opposition to the Republic and to fight against the return of Dom Manuel II to the throne. For the supporters of a restoration by military means, the plebiscite would appear as a way of avoiding the pure and simple return of a Monarchy that had been defeated. They were conscious that achieving restoration without broadening their political support base would be difficult, and they wanted to legitimise the return of the Monarchy through plebiscitary means. On the other hand, the plebiscite idea, when working as a 'democratic' challenge to the Republican regime, was intended to unite, and to win the support of, all those discontented with the Republic, taking full benefit of the deep political instability and crises that typified the First Portuguese Republic.

Therefore, the idea of a plebiscite did not have unanimous support amongst the supporters of the Monarchy, and it was even opposed by the exiled King. Nevertheless, the defeat of the military attempts to restore the Monarchy excluded the possibility of such a plebiscite. The ephemeral proclamation of the Monarchy in occupied places during those campaigns was made on behalf of the return of King Manuel II, and never under condition of a plebiscite to confirm his legitimacy. The practical difficulties of the plebiscite would be certainly real. However, it is not relevant to analyse these in detail, since the question was solved by revolutionary means. The monarchic reaction was centered fundamentally in military actions in spite of its weakness. The plebiscite functioned as a political argument for some monarchic sectors, but a plebiscite would have beeen unlikely even if the military outcome had been different.

5. The Last Years of the First Republic

5.1. The Constitutional Revision of 1919

After Sidónio Pais' murder, the Government assumed executive power based on the Constitution of 1911 and decided to hold elections for a new President of the Republic according to its rules. The President elected was Admiral Canto e Castro, who completed Bernardino Machado's term of office, which finished on 5 October 1919. Tamagnini Barbosa assumed Government leadership.

Until February 1919, the country had a president and a government with disputed legitimacy, since Bernardino Machado had never resigned. Furthermore, it faced revolutionary revolts in Lisbon and *Covilhã* (10 January), and *Santarém* (12 January), along with the declaration of the Monarchy in the North of the country by Paiva Couceiro on 19 January, and a monarchic military revolt in Lisbon on 22 January. When the republican opposition overthrew the monarchic revolt in Lisbon, a government led by José Relvas, which included all parties from the 'Old' Republic, took power on 27 January 1919. The 'Monarchy of the North' surrendered on 17 February. The Parliament, which had carried over from *Sidonism*, was dissolved on 19 February. In the legislative elections, which took place on 11 May 1919, with electoral suffrage again restricted, the Democratic Party elected 55% of the deputies, in spite of the absence of Afonso Costa, exiled in Paris after Sidónio's coup (Serra, 1992, pp. 63-71).

In August 1919, there was a Constitutional revision process. Two draft amendments included different kinds of referendums. The draft from the socialist José António da Costa Júnior, proposed, in the provision regarding local institutions, the inclusion of the exercise of referendum by universal suffrage, on any political, social or economic measure that could worsen or make it difficult for the municipal community (*DCD*, 26, 22 July 1919, p. 52).

The draft introduced by José Mendes Nunes Loureiro and other members of the Democratic Party (*DCD*, 26, 22 July 1919, p. 53) proposed the referendum for Congress dissolution. If some proposal for the self-dissolution of Congress were introduced, it would be dissolved if the proposal was approved in a joint session with both Chambers. However, if the proposal obtained a third of the votes from the Congress members, it would be submitted to referendum.

The schedule of the referendum would imply the immediate suspension of the ministers' functions, with the Government being assumed by a body called the National Council, chosen during a joint session of both Chambers of Congress. In case of a negative answer from the voters, the ministers would retake their functions immediately. These proposals did not have any success and, once again, the arguments against the referendum were based on the citizens' lack of knowledge and understanding.[48] The fact that the dissolution of Congress was

[48] In that sense, see the speeches by António Maria da Silva and Vasco Borges (*DCD*, 31, 30 July 1919, pp. 14 and 27).

Constitutionally forbidden until then was a real problem for the republican political system, and explains the association between the referendum and Congress dissolution. That power would later be conferred to the President of the Republic, although in a conditioned way, but the referendum did not obtain any role in that process.

5.2. The Local Referendum in the Last Years of the First Republic

The final years of the First Republic were categorised by a dizzying succession of governments, and this instability would lead to its final collapse. The Democratic Party was torn apart by dissidence. The Evolutionist and Unionist Parties disappeared, giving room to the Liberal Party. From the death of Sidónio in February 1919, until 19 October 1921, the country had 13 governments. On the night of 19 October 1921, the so-called 'bloody night', the Head of Government, António Granjo, and other key republicans were assassinated.

The next Government lasted only 17 days. The only exception to this instability, which lasted until the collapse of the Republic, was a two year period, between 1922 and 1923, when a clear electoral victory for the Democratic Party allowed for some governmental stability under António Maria da Silva's leadership. From 21 January 1920 to 30 May 1926, the country had 24 governments (Santos, 1990, pp. 260-275, Maltez, 2005, pp. 249-333).However, in those last years of the First Republic, references to the local referendums are frequent in the parliamentary works, namely regarding the creation of parishes. Between 1919 and 1925 (inclusive), the legislative power created 28 new parishes, and the holding of the referendums demanded by law were expressly referred in respective works.[49] There are also references to referendums on the annexation and disunion of parishes,[50] to proposals refused due to the lack of legally required referendums (*DCD*, 49, 11 March 1924, p. 7), as well as to referendums held in parishes on other issues.

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[49] As examples see the references to referendums held in *Bustos (Oliveira do Bairro)*, (*DCD*, 81, 14 January 1920, p. 3); *Vila Cortumes (Alcanena)*, (*DCD*, 85, 20 February 1920, p. 4); *A-Ver-o-Mar (Póvoa de Varzim)*, (*DCD*, 44, 8 April1921, p. 4); *Afrivida (Vila Velha de Ródão)*, (*DCD*, 90, 3 August 1922, p. 26); *Albergaria dos Doze (Pombal)*, (*DCD*, 161, 1 November 1922, pp. 4-7); *Lomba da Fazenda (Nordeste)*, (*DCD*, 7, 14 December 1923, p. 9); *Vila Nova de S. Pedro (Azambuja)*, (*DCD*, 115, 2 July 1924, p. 22); *Queluz (Sintra)*, (*DCD*, 68, 23 April 1925, p. 7); or *Silveira (Torres Vedras)*, (*DCD*, 34, 21 April 1925, pp. 16-17).

[50] As an example see the disunion of a part of *Alverca* and its annexation to *Alhandra*, preceded by referendum (*DCD*, 67, 6 June 1922, p. 32).

Chapter 3

The Dictatorship of the New State: 1926-1974

1. The Military Dictatorship

1.1 The Military Coup of 28 May

On 28 May 1926, General Gomes da Costa, former Commander of the Portuguese Expeditionary Corps in World War I, led a military revolt in the northern city of *Braga* and started a march towards Lisbon. Most of the army joined him after some hesitation, while the rest remained neutral. In Lisbon, the Government resigned on 30 May and President Bernardino Machado resigned on 31 May, giving complete power to one of the revolutionary leaders, Commander Mendes Cabeçadas (Rosas, 1994, p. 156; Marques, 1998, p. 278; Maltez, 2005, pp. 324-328).

The new power had neither any political or governmental project, nor any effective and united direction. As Fernando Rosas points out (1994, p. 155), this military conspiracy lacked a clear leadership. The conspiracy was separated into political-military factions, each having their own leaders with different strategies. Jorge Campinos (1975, p. 39) emphasises that the military movement was united only by the common idea to reestablish public order, without knowing what to do the next day. Having risen to power promising stability and order, the effectiveness of the military government was hampered by heterogeneity and disunity of its own (Oliveira, 1992, p. 13).

On 17 June, Mendes Cabeçadas, who was still a rightist republican, thought that the military coup of 28 May should not put an end to the liberal-parliamentary system, but should regenerate it (Rosas, 1994, p. 151). As a result, he was expelled from the Government. His place was taken by Gomes da Costa himself, with the support of the most extreme right wing and anti-republican faction, led by General Sinel de Cordes. However, given his absolute political incompetence, Gomes da Costa was no more than an ornamental figure of the movement, and was removed from power on 9 July by a new military coup commanded by Generals Óscar Carmona and Sinel de Cordes. They then assumed the positions of Head of Government and Finance Minister, respectively (Marques, 1998, p. 375). On 26 November, Carmona was appointed provisionally as both President of the Republic and Head of Government.

In 1927, several republican military revolts against the dictatorship were defeated. The extreme right wing reinforced its position

by improving its repressive mechanisms (Marques, 1998, pp. 380-381). As António Pedro Ribeiro dos Santos points out (1990, p. 277), the winners felt that the maintenance of the dictatorship would not be possible without a social base of support. Therefore, in the first anniversary of the 28 May revolution, through Carmona's voice, they declared the intention of calling elections with the clear purpose of getting that support. Thus, on 29 December 1927, Decree No. 14,802 on the electoral census expanded the right to vote.

On 25 March 1928, the only candidate for the Presidency of the Republic, Óscar Carmona, was directly elected with 761,730 votes. The election was governed by Decree No 15,063, of 25 February 1928, from his own Government. Carmona's entrance into the Presidency on 15 April changed the military dictatorship into a national dictatorship (Maltez, 2005, p. 345). For Marcello Caetano (1956, p. 2), this election was a plebiscitary ratification of the revolution. Meanwhile, the financial policies from the dictatorial governments, led by Sinel de Cordes, and Ivens Ferraz after 16 February 1928 failed completely (Maltez, 2005, pp. 335-338; Rosas, 1994, p. 219).

1.2. The Rise of Salazar

On 18 April 1928, Carmona instituted a new government led by Colonel José Vicente de Freitas, with António de Oliveira Salazar as Finance Minister, establishing, in the words of José Adelino Maltez (2005, p. 346), a 'finance dictatorship' inside the national dictatorship. The purpose of Vicente de Freitas' Government initially seemed to be reconciliation with republican positions (Rosas, 1994, p. 168). However, the reinforcement of most right-wing positions, including Salazar's, halted that tendency with the support from catholic conservatives, young *sidonist* officials and Carmona. This was achieved first through a governmental reshuffle which happened on November 1928, secondly, by forcing Vicente de Freitas' dismissal on 8 July 1929, and substituting him with Ivens Ferraz, and finally by forcing General Domingos Oliveira to take his place on 21 January 1930 (Marques, 1998, pp. 383-384; Almeida, 1999, pp. 87-88).

The dismissal of Ferraz and the appointment of Domingos Oliveira's Government, with Salazar as its true leader, meant a rupture with the Republic and the beginning of a personal and authoritarian regime. This would be the answer to the crisis of liberalism and parliamentary democracy, and also to the threats of the socialist revolution (Oliveira, 1992, p. 15).

The suppression of new republican military revolts in 1931, gave way to a general hardening of the dictatorship and to the reinforcement of the anti-liberal and anti-parliamentary stream. Eleven months later, Salazar would claim government leadership. After his appointment as Finance Minister during Vicente de Freitas' government, he gained support from most of the catholic reactionary faction, and began to take all levels of power, generating around himself movement of unconditional followers. After having belonged to the governments of Vicente de Freitas, Ivens Ferraz and Domingos de Oliveira, Oliveira Salazar became Chief of Government on 5 July 1932. He would only interrupt those functions 37 years later, on 27 September 1968, due to his health condition.

2. The Constitutional Project

2.1. The Essential Lines of the Constitutional Project

The military dictatorship established in 1926 decisively overthrew the Constitution of 1911. Although it was maintained in theory, several dictatorial decrees altered fundamental aspects of the State organisation. Decree No. 11,711, of 9 June 1926 dissolved the Congress of the Republic. Still in that same year, the Decrees No. 11,789, of 19 June and No. 12,740, of 26 November, gave the functions of the Chief of Government to the President of the Republic. In 1928, Decree No. 15.063, of 25 February, established the direct election of the President, whose term of office would be five years. Decree No. 15,248, of 24 March, expressly repealed the 1911 Constitution provision regarding the President's election. Decree No. 15,331, of 9 April, defined the President's attributions and Stated the terms of his honour commitment. Finally, Decree No. 18,570, of 8 July, approved the Colonial Act, which replaced Title V of the 1911 Constitution, on the administration of the overseas provinces (Santos, 1990, p. 92).

In spite of being only a Finance Minister, Salazar appointed himself with the task of expressing the doctrinaire basis of the regime and the Constitutional future of the dictatorship. Fernando Rosas (1994, pp. 198-202; 1996, pp. 198-203) synthesises the essential lines exposed by Salazar's Constitutional project on the New State (*Estado Novo*) into five fundamental parameters: **a)** The refusal of democratic liberalism; **b)** corporative nationalism; **c)** a strong State; **d)** economic and social interventionism; and **e)** colonial imperialism.

2.2. The Constitutional Draft

In October 1931, the Home Minister announced the way to 'Constitutional normalcy', which would be achieved through the approval of an electoral legislation, a new Administrative Code and the reform of the Constitution. On 22 December, through Decree No. 20,643, the Government established a National Political Council *(Conselho Político Nacional)* in order to give an opinion on the foundations of the Constitutional system that needed to be created (Santos, 1990, p. 282). This Council, led by the President of the Republic, included the Head of Government, the Home Minister, the President of the Supreme Court of Justice, the Attorney General of the Republic and eleven persons appointed by the President. One of these was Oliveira Salazar, who had a decisive influence on the choice of the other council members (Almeida, 1999, pp. 107-108; Urbano, 1998, p. 103; Nogueira, 2000a, pp. 132-133).

The Council had a heterogeneous composition, but its members, though representing different sensibilities, all supported the dictatorship. One of their main advisory functions was to assess the Constitutional draft of the Republic. That text would be introduced by a task force coordinated by Oliveira Salazar himself, including university professor Fezas Vital, the young jurist Marcello Caetano, Salazar's future successor in the government's leadership many years later (Almeida, 1999, p. 108),[51] and Quirino de Jesus, a politically discreet person who has been considered the true inspirer of Salazar's Constitutional project.

The National Political Council met for the first time on 5 May 1932 to give their opinion on the draft, published in the press on 28 May, and opened a public debate that lasted until February 1933. However, with the press censorship, which drastically restricted fundamental freedoms, the effective decapitation of republican resistance and worker movements due to the repressive waves from previous years, the debate was restricted to the dictatorship's many factions: the liberal conservatives, the radical right wing, and Salazar's supporters defending the proposed draft (Rosas, 1996, p. 198).

According to the proposed draft, the Head of State, who was directly elected for a seven-year term of office, and was responsible only to the Nation, centralised executive power with the widest responsibilities. He could dissolve the Parliament, promote Constitutional revisions, appoint and remove the Head of Government and ministers without any parliamentary interference. The Government would only be politically

[51] On the relationship established between Salazar and Caetano during the working up of the Constitutional draft, see Caetano (1977, pp. 52-53).

responsible to the President and it would be completely independent from Parliament. The Head of Government had the huge power of countersigning all the Presidential Acts under the penalty of their inexistence, thus creating a bicephalous presidentialism. The role of Parliament would be minimal, given that even at the legislative level it would only have the responsibility of approving the general elements of the legal systems.

Meanwhile, the conservative liberals had drawn a true counter-draft of the Constitution under the authorship of General Vicente de Freitas, who was the Head of Government during the dictatorship's initial years. He addressed his draft to Óscar Carmona, and proposed a strong and stable government system, which would make disorder impossible, but would absolutely respect the democratic principle of government and which would not sacrifice any individual freedoms. As for the passage of the Constitutional text, Vicente de Freitas contested the plebiscitary option. The Government should only make an Electoral Law for the election of a Constituent Assembly, and introduce its draft to the Assembly once elected. (Santos, 1990, p. 284).

Vicente de Freitas wanted to give his draft directly to Carmona, but Salazar prevented him from doing that by convincing the President to pretend to be ill. Salazar received the document on 8 February 1933. The press published the text on 12 February 1933, and added an unofficial note from the Government refuting its arguments. Meanwhile, the author was discharged on that same day from the post of President of the Administrative Commission of Lisbon.

The final proposal, made by a commission named by the Government, of which Fezas Vital, the Justice Minister Manuel Rodrigues and the Colonies Minister Armindo Monteiro took part, included some of the conservative liberals' proposals. In spite of everything, they still maintained some influence near Carmona. The draft, published by Decree No. 22,241 of 22 February, was to be submitted to a plebiscite. In its final version, it accepted the direct election of the 90 members from the National Assembly. The possibility for presidential reelection was approved, as well as the obligatory presidential enactment of vetoed Acts, which was confirmed by a two-thirds majority. (Rosas, 1996, pp. 205-206; Urbano, 1998, pp. 104-105).

3. The Plebiscite on the 1933 Constitution

3.1. The Procedure

On 21 February 1933, Decree No. 22,229 scheduled the 19th of March as the day of the national plebiscite to approve the Political Constitution of the Portuguese Republic. According to its provisions, the draft would be published as a supplement of the official journal (*Diário do Governo)* on 1 March 1933, and it would be distributed by the municipal authorities to all parishes and posted in public places until 12 March. Participation in the plebiscite was compulsory for the heads of family registered in the electoral census of 1932.

The draft Constitution would be passed if the majority of electors voted affirmatively. However, the 'heads of family' who had not voted would have their votes considered as affirmative ones unless they showed proof that one of the following circumstances had prevented them from voting: **a)** death of any relative in one of the three days previous to the plebiscite; **b)** disease that had disabled him from attending; **c)** absence from the municipality during the previous seven days.

Particularly significant was the way of expressing the vote. The ballot paper contained the following question: 'Do you approve of the Political Constitution of the Portuguese Republic?' The voters who wanted to approve, simply had to give the paper without any answer. Those who wanted to reject it had to write 'No'.

In these terms, the results were not surprising. From the 1,213,159 casted votes, 719,364 were considered as affirmative and 5,955 were negative. The 487,179 abstentions (40.2%) were counted as affirmative votes (Santos, 1990, p. 285). In the minutes of the Counting General Assembly we have the following data: registered voters (Mainland, Islands and Colonies): 1,330,258; votes Yes: 1,292,864; votes No: 6,190; blank votes: 666; absentee votes: 30,538. The abstentions had already been counted as favourable votes (Almeida, 1999, p. 134).

The passage of the Constitution through a plebiscite had direct effects on the President's term of office. This was fixed for a seven year period [Article 72(§1)] and there was a transitory disposition (Article 137) which recognised the President's functions. In that case, the term of office would last seven years from the date of his investiture. When the Constitution came into force, Carmona had completed five years of functions. Consequently, the passage of the Constitution meant the automatic extension of the presidential term of office by two years.

Salazar, who considered it difficult, or even impossible, to find someone in that period of time as qualified as General Carmona to exercise the post of President, assumed that option himself (Ferro, 1933, p. 136-137).

3.2. Political Significance

The plebiscite that approved the 1933 Constitution was not an expression of popular will, and did not even appear to be so. It was only a way to legitimise a Constitutional text granted by a dictatorial power that refused universal suffrage. It was also a way to legitimise political power that assumed its opposition to any devices inherited from democratic or liberal regimes. In Mário Soares' words (1969, p. 78), the 1933 Constitution was only a juridical mean to mask the previous dictatorial structure.

The Constitutional draft did not result from any Constituent Assembly that had been designated for its drawing, as had happened with the liberal Constitutions of the Monarchy (1822, 1838) and the Republic (1911). The text was drawn under Oliveira Salazar's direction, just as the Constitutional Charter of 1826 had been made under the direction of King Pedro IV. The plebiscite was being used to legitimise the title of a dictator.

Interviewing Salazar about the dictatorship's Constitutional future, António Ferro (1933, p. 136) asked: 'will the Constitution be ordained by decree or by plebiscite?' This question excluded all other possibilities, and implicitly admitted that the Constitution could plausibly be granted by dictatorial decree. However, Salazar admitted: 'it will be submitted to a plebiscite. It would not be well accepted nor would it be fair to impose it to the country, without first hearing the people on such an important statute that will regulate our political and social life'. Take note of the significance this has coming from someone who always chose his words carefully. The plebiscite was not made in order for the people to decide, but only so that they could be heard.

In spite of Salazar's well-known monarchic militancy during the First Republic, he did not want to restore the Monarchy. Nevertheless, several demonstrations of esteem and sympathy were exchanged between Salazar and the former King Manuel II, who was exiled in England. The refusal to restore the Monarchy can be explicable by several reasons. First, because the dictatorship, which resulted from the military coup of 1926, never assumed itself against the Republic, but rather against its deviations. Second, because the dictatorship's Governments always maintained a significant weight of republicans. Third, because the social

support needed for regime survival included the conservative factions, who were against monarchic restoration (Marques, 1998, p. 429). Fourth, because the support for Salazar's increased personal power was given by President Carmona, who was chosen by the dictatorship. Fifth, because the dictatorial statute that Salazar gave to himself as Head of Government could hardly compatible with the existence of a Monarch who was jealous of their prerogatives.

Therefore, the formal maintenance of republican institutions served Salazar's goals perfectly. The premature death of Dom Manuel II, in 1932, without any direct descendants, obliterated the monarchic hopes of reestablishment and allowed Salazar to consider the monarchic idea as having lost its 'acting force' and to accept the idea of Republic (Marques, 1998, p. 430). The death of Dom Manuel II allowed Salazar to consider the subject as settled. However, there is nothing to prevent us from supposing that he had not already decided on the matter.

Nonetheless, the dictatorship needed a Constitution in order to provide a Constitutional for the so-called New State, in other words, to grant a formal Constitution. Without a King and without a Constituent Assembly, the solution would have to be something that conferred the dictator an apparent legitimacy. Vital Moreira (2004, p. 408) qualifies the 1933 Constitution as a sort of Constitutional Charter granted by Salazar. In the event, the way chosen to grant it, the plebiscite, was, no more than a farce.

The option for a plebiscite of this nature was in agreement with Salazar's doctrinaire conceptions. While refusing the liberal, democratic and parliamentary basis of the State, Salazar rejected any possibility for free or competitive elections. He did not even recognise each individual citizen's right to vote, but only considered them as representatives of the family, which was the basic unit of the society. The goal of the plebiscite was not to submit a Constitutional draft to the popular verdict, but rather to release it from that verdict.

In fact, the plebiscite was carried out in total absence of civic freedoms, including the forbiddance of expression of any opposing tendency and press censorship. Debate was restricted to the factions of the dictatorship, with confrontations among them being also badly tolerated.

The plebiscite was on a single text, and it was inconceivable to the regime that any alternative could be submitted to the electorate. Electoral registration and all electoral operations were completely controlled by the Government. There was never any possibility for

independent scrutiny of the plebiscitary process. On the day of voting, an appeal from Carmona, encouraging approval of the draft, was dropped over Lisbon, Oporto and *Coimbra* by airplane. (Almeida, 1999, p. 134).

In Luís Barbosa Rodrigues' reference to the plebiscite of 1933 (1994, pp. 122-126), he considers its qualification as a 'national plebiscite' to be incorrect. It was not national because the inclusion of the colonies was doubtful, and it was not a plebiscite because its topic was neither an election nor a recall, and that point is decisive for the author to distinguish between a referendum and a plebiscite. If the first question is undisputed, the second one is not. In fact, the idea that a plebiscite must always be an election or recall is not true. There are hundreds of pages written by outstanding authors trying to distinguish plebiscite and referendum without convincing results.[52] However, even if we consider that distinction to be correct, it is also true that the plebiscite of 1933 functioned politically as a legitimacy title for Salazar and it also had the formal effect of extending Óscar Carmona's presidential term of office.

On the other hand, Rodrigues does not think it is 'controversial' to qualify that plebiscite as democratic, regardless of fact that the submitted text that was drawn up by a restricted group, the vote was compulsory, the abstentions had been counted as affirmative votes, and because there was a smashing majority of affirmative votes. The author finds similar cases in democratic contexts. In his view, the 'difficulty' in considering the 1933 vote as democratic resulted from the reduction of the pluralism to the minimum, and from the fact that the freedoms were very restricted and in some cases suspended. These facts, taken together, and connected with the brief, abbreviated and insufficient publicity of the draft proposed in a country with a high illiteracy rate, with a discriminatory voting procedure, and the limits of its secret nature, all allowed for the author to think that the democratic nature of the plebiscite was 'controversial'. This seems like an understement: the facts adduced by the author should be more than enough put the anti-democratic nature of that plebiscite beyond question.

The Portuguese plebiscite of 1933 was, after all one, of a handful of plebiscites held in Europe by fascist dictators, giving formal legitimacy to their absolute powers. That plebiscite was similar to the Italian and German fascist plebiscites held between 1929 and 1938. Until its fall on 25 April 1974, the dictator did not use the plebiscite again. But

[52] On the conceptual difference between referendum and plebiscite see among many others, Miranda (1996a, pp. 234-235); Canotilho (1998, pp. 284-285); Duarte (1987, pp. 206-207); González (2005, pp. 8-9); Butler & Ranney (1978, p. 4); Denquin (1976).

that single act in 1933 was a very clear sign of how the dictatorship viewed electoral processes. This comtempt for democracy was to be revealed again in several electoral farces during the following decades. The plebiscite of 1933 also contributed to a long-term suspicion of referendums amongst the Portuguese left wing, and attitude that was to persist for many years to come. For a long time, there was a feeling of reluctance, or even of distrust, of referendums as an expression of the popular will.

3.3. The Constitution of the New State

In the event, the 1933 Constitution was passed.[53] According to Vital Moreira (2004, p. 409), the final text of the Constitution was little more than an enshrinement of the ideas expressed by Salazar in 1930. It formally maintained some institutions from the 1911 Constitution, and contained some secondary influences from the Constitutional Charter of 1826, from the Weimar Constitution of 1919, and from the North American presidential system. However, it was largely the original product of its creator.

Vital Moreira (2004, p. 417) points out that Salazar's political system, just as it was shaped historically, is not fully reflected in the formal Constitution. The truth is that, the doctrinaire conceptions of the Head of Government prevailed more than the Constitution: the abolition of the opposition, and the strongly anti-liberal, anti-democratic, anti-parties and anti-parliamentary features, which assumed unequivocally fascist aspects in the thirties. Marcelo Rebelo de Sousa (1992, p. 63) referred to the 1933 Constitution as a 'semantic Constitution' that was largely ignored in day-to-day political and governmental practices.

In the power system, the President had a formal supremacy. He was elected through a direct vote (until 1959) for a seven-year term of office. He could be reelected. He appointed the Chief of Government *(Presidente do Conselho de Ministros)* and the ministers. He summoned the National Assembly, and could give it constituent powers, and dissolve it in name of the highest interests of the nation. The majority of his acts had to be countersigned by the responsible ministers or by the whole government (Miranda, 1981, p. 259). As Vital Moreira refers, in theory, this scheme could have been a presidential system, but this is not how the system developed in practice. The Head of Government actually occupied

[53] On the Constitution of 1933, see Moreira, V. (2004, pp. 405-454); Canotilho (1998, pp. 172-179); Miranda (1981, pp. 247-275); Sá (1994, pp. 158-164); Caetano (1956); Campinos (1978).

the main role in the government's system and in the regime's evolution. The Constitution laid down that the President appointed and discharged the Head of Government, but what really happened was the opposite. It fact, the Head of Government chose the President and decided on his 'reelection' or removal (Moreira, 2004, pp. 420-421).

The Parliament, *Assembleia Nacional*, was emasculated. In the beginning, it was comprised of 90 members,[54] and it worked in sittings of three months a year. The Government was not politically responsible before the Assembly. Its legislative powers were scarce and assumed by the Government. Besides, only members appointed by the National Union constituted the Assembly. It was unthinkable that within it some deep divergence or a real diversity of opinions could be expressed. Only after 1969 was there any controversy in parliamentary debates due to the existence of a 'liberal wing' in the National Assembly.

There was a second chamber, named the Corporative Chamber *(Câmara Corporativa)* that had an auxiliary nature and advisory functions. It was composed of representatives of local authorities and social interests. Initially, its functions were limited to the expression of opinions on the legislative initiatives introduced in the National Assembly. Later, in parallel with the undermining of the Assembly's legislative powers, the Corporative Chamber started to give legislative suggestions directly to the Government, thus becoming an instrument that reduced the role of the directly elected Assembly (Moreira, V., 2004, pp. 427-430).

Gomes Canotilho (1998, pp. 173-174) synthesises three essential marks of the political system: **a)** A strong executive, independent from the legislative body; **b)** a legislature without partisan divisions, limited to the formulation of the general foundations of legal systems and to the ratification of Government executive laws; **c)** a directly elected Chief of State that is only held responsible before the Nation, and who could appoint or freely discharge the Head of Government. This political structure had enough elements to develop either a presidential system or a chancellor's regime. The direction followed was the latter.

To underline the identification between the regime and Salazar, Vital Moreira (2004, pp. 430-431) reminds us that Salazar was appointed to lead the Government for the third and last time in 1936. He maintained his functions without interruption until 1968. Several Presidents died,

[54] The number of members increased from 120 in 1945, to 130 in 1959 and 150 in 1971.

were removed or re-elected, the ministers succeeded, Ministries were created and extinguished, and the National Assembly was recomposed regularly. However, there was never a need to formally reinState Salazar as Chief of Government – not even after presidential elections.

4. The Referendum in the Constitutional Revision of 1935

4.1. The Constitution and the Referendum

The 1933 Constitution did not contain, in its original text, any provision about the national referendum. However, the position of the local referendum remained quite similar to the terms in the 1911 Constitution. In Title VI, on political and administrative circumscriptions and local authorities, Article 126 laid down that special laws will regulate the organisation, along with the functioning and responsibilities of administrative bodies, with the administrative life of local authorities under the government agency's supervision. It also States that their deliberations could be submitted to referendum. Besides the evident and drastic limitation of the local powers' autonomy, due to Government interference, the regulation for the local referendum was sent to the Administrative Code, in terms that we shall see further ahead.

The national referendum would be enshrined in the Constitutional revision of 1935. In the text passed in 1933 the provision on the Constitutional revision laid down that the Constitution would be reviewed every ten years, and the National Assembly whose mandate included the revision time would have constituent powers (Article 133). However, the revision could be advanced five years, if approved by two thirds of the National Assembly [Article 133(§1)]. However, the Chief of State could also, if the common good was imperiled, after hearing the Council of State and through decree signed by all ministers, determine the elected National Assembly's constituent powers and could review the Constitution on subjects appointed in that same decree (Article 134). These were the general rules. However, Article 138 of the Constitution lay down that the first National Assembly would have constituent powers.

4.2. The Government's Draft

In early 1935, during the first legislature of the National Assembly, the first revision of the 1933 Constitution took place. According to the draft introduced by the Government, a new Article 134(2) gave the President of the Republic the power to submit the amendments to the Constitution regarding legislative function, to a national plebiscite. The approved amendments would come into force as

soon as the definitive result from the plebiscite was published in the official journal (*DSAN*, 8, 23 January 1935, p. 71). According to the draft preamble, this right given to the President was in agreement with the plebiscitary origin of the Constitution, and with the principle that sovereignty resides in the Nation. The idea was to avoid a situation where only a single body exercised sovereign powers – the National Assembly – and would be capable of changing the Constitution.

The Corporative Chamber had an opinion on that proposal and Fezas Vital reports that the question is not to establish a general rule for all Constitutional matters but only to avoid that the National Assembly could prevent, through its own exclusive will, a reform which touched its power, restricting it, or that touched the privileges of their members, thus decreasing them.

Therefore, the Corporative Chamber understood the advantage of the proposal and considered that its inception would prejudice neither the national sovereignty principle nor the plebiscitary origin of the Constitution. But the opinion added, significantly, that, 'the given adhesion does not mean, however, the acceptance as a principle of the national sovereignty dogma or the appeal to plebiscites. Such a subject was not in question.' (*DSAN*, 8 – Supplement, 4 February 1935, p. 33).

Meanwhile, the 1935 Constitutional revision provided another chance for a plebiscite due to a proposal introduced by Manuel Fratel (Lobo, 2004, pp. 672-673). The proposal referred to the power to initiate legislation (Article 97) and suggested that if the Assembly passed a bill, introduced by a deputy, and sent it to the President for enactment, the procedure would not follow if the Government declared it as inconvenient. In that case, if the Assembly insisted,[55] the President would hear the Council of State, and definitively decide on its enactment or rejection within 15 days (*DSAN*, 8, 23 January 1935, p. 95).

The proponent's idea, according to his own explanation, would be to put the President in a referee position (*DSAN*, 74, 22 February 1935, p. 343) for eventual divergences between the Assembly and the Government, which was in fact very implausible. In either case, if the Government were against a bill passed by the Assembly, the President would have an absolute right to veto. Therefore, the President and the Assembly together

[55] According to the Article 98(§ unique), of the Constitution, the bills which had not been enacted by the President of the Republic would be submitted again to Parliament and, if they were approved by a two thirds majority, the Chief of State could not refuse the enactment.

could prevail against the Government, but the Assembly could never prevail against the Government and the President. It was a proposal that sought to further depreciate the role of Parliament as a legislative body.

The Corporative Chamber was once again called to give its opinion and had Fezas Vital as the reporter. It supported the idea that the President should have an absolute right to veto on all the bills passed by the Assembly, even in the case of an initiative by the Government. If the President had unrestricted powers to dissolve Parliament, he could always use that extreme solution to solve any disagreement. That solution should be exceptional, but it would be a consequence of presidential supremacy (*DSAN*, 14 – 2nd Supplement, 15 February 1935, p. 5).

However, the Corporative Chamber foresaw an exception that would change the presidential powers if the bill passed. That could happen in theory, given that the National Assembly elected in 1934 had constituent powers. In that case, the Corporative Chamber proposed that when the vetoed bill concerned the Constitutional responsibilities of the President, it should be submitted to a national plebiscite within 30 days, and the Constitutional changes would come into force if they were passed as soon as the definitive result of the plebiscite was published in the official journal. Manuel Fratel disagreed. He considered that giving the President the absolute right to veto did not mean giving him a role as a referee but as a tyrant. In addition, he expressed his disapproval the 'abuse' of the plebiscite (*DSAN*, 17, 22 February 1935, p. 343).

4.3. The Corporative Chamber Draft

Cancela de Abreu (Rolo, 2004, pp. 85-88) introduced the Corporative Chamber' proposal in the National Assembly. The bills passed in the National Assembly would be sent to the President to be enacted within 15 days. If the President, after first consulting the Council of State, thought that the highest interests of the country were not served by the enactment, he could refuse it. However, when that bill regarded the Constitutional responsibilities of the President, it should be submitted to a national plebiscite within 30 days, and the Constitutional amendments, if passed, would come into force soon after the publication of the definitive result of the plebiscite in the official journal. That proposal was rejected, as well as Manuel Fratel's original proposal (*DSAN*, 17, 22 February 1935, p. 345). Finally, it is important to note that, in the 1935 Constitutional revision, there was an isolated voice, that of Antunes Guimarães, who considered that any deep changes of the Constitution should be submitted to a national plebiscite because that was how the

Constitution had originally been passed (*DSAN*, 17, 22 February 1935, p. 345).

4.4. The Proposal Passed

The outcome of the Constitutional revision of 1935 was the right given to the President of the Republic to submit the Constitutional amendments referred to in the legislative function or their bodies to a national plebiscite, when the common good demanded it, after first consulting the Council of State and through a decree signed by all the ministers. Jorge Miranda (1996, pp. 247-248) States that the idea was to prevent the Assembly, which was responsible for the Constitutional revision, from paralysing any reform that changed its own responsibilities. It was not acceptable that other bodies of the State were submitted to the will of the Assembly regarding the change of their structure and responsibilities while the Assembly could not be changed by another will. Parliament could not be resistant to the President. In that case, the President could transfer the final decision to the voters.

Maria Benedita Urbano (1998, p. 106) considers that this option reflected the anti-parliamentary attitude of the regime. Insofar as Oliveira Salazar's ideas went forward, it was intolerable that the Constitutional revision was, in practice, under the Parliament's exclusive responsibility. From that point of view, it was particularly worrying that the Constitutional future of the New State depended, as a whole, on the National Assembly. It was unacceptable that a directly elected organ could increase its own responsibilities through the Constitutional revision, even though elections to that body were not free and fair.

This possibility was never applied in practice, and that the plebiscite was never held. The reasons for the indifference regarding this plebiscite, according to Maria Benedita Urbano (1998, p. 107) were the reduced powers of the President relative to the Head of Government, the understanding that Parliament would never be a true obstacle to the New State purposes, and the fear that a plebiscite could awaken the opposition's protest.

Therefore, the revisions of the 1933 Constitution were never submitted to popular verdict, in spite of the approval of provisions regarding the legislative function. They were all passed by the National Assembly alone, without any popular consultation.

5. The Local Referendum in the Administrative Code of 1936-1940

5.1. The Establishment of a Local Government

The military dictatorship established in 1926 abruptly ended the local governmental system of the Republic. On 13 July 1926, Decree No. 11,875 dissolved all administrative bodies. The administrative commissions appointed by the new power were a precious instrument to support the New State construction. Ten years later, the New State approved its administrative law (Oliveira, 1996b, pp. 304-305). The 1933 Constitution laid down in Article 126 that special laws regulated the organisation, functions and responsibilities of the administrative bodies, with the administrative life of local authorities subject to the supervision of Government agents, and their deliberations being submitted to referendum. The Administrative Code would consequently have the Constitutional incumbency to regulate the organisation, functions and responsibilities of administrative bodies, which were the municipal authorities *(câmaras municipais)*, the parish authorities *(juntas de freguesia)* and the province authorities *(conselhos de provincia)*,[56] and to regulate the terms in which their deliberations could be submitted to referendum.

The Administrative Code, passed by Executive Law No. 27,424, of 31 December 1936, was initially introduced as a trial. The definitive version came into force in 1940 through Executive Law No. 31,095, of 31 December. This code broke with the liberal administrative tradition and divided the mainland territory into municipalities *(concelhos)*, constituted by parishes *(freguesias)* and grouped into districts and provinces. The municipality was at the centre of the administrative division (Oliveira, A. C., 1993, p. 36). Therefore, the resident citizens no longer elected the municipal authorities. They were composed of a president and a vice-president appointed by the Government, and by city councillors (*vereadores*), who were elected by the Municipal Council (*Conselho Municipal*) for four-year terms of office (Article 36). This last body gathered twice a year and reproduced the corporative structure of the regime. Its members were the Mayor (*presidente da câmara*) and other

[56] The Constitution of 1933 and the Administrative Code created the provinces and did not recognise the districts as local authorities. The experience was over in 1959, with the abolition of the provinces, replaced by the districts (Oliveira, A. C., 1993, p. 36).

representatives chosen by the parish authorities, the trade unions,[57] the patronage, the professional Orders and other corporative structures.

5.2. The Local Referendum

The Bill of Authorisation to Legislate allowed the Government to pass the Administrative Code, which was introduced to the National Assembly on 19 December 1935. It laid down that the deliberations from the parish authorities, which concerned the by-laws or regulations, the acquisition or alienation of real eState goods and the concession of servitudes on parish goods, should be submitted to referendum or oversight approval (*DSAN*, 57, 20 December 1935, p. 131). The Corporative Chamber, in its Opinion reported by Fezas Vital, proposed that only the onerous acquisition of goods be submitted to referendum (*DSAN*, 75 – Supplement, 8 February 1936, p. 25). On the session of 21 February 1936, Albino dos Reis proposed that the free acquisition of goods also be submitted to referendum if it involved any duty to the parish authorities. The proposal was passed (*DSAN*, 86, 22 February 1936, p. 642).

Therefore, the Authorisation to Legislate established that would be submitted to referendum or oversight approval, as laid down in the Code, the parish authorities' deliberations which concerned by-laws or regulations, the onerous or free acquisition of real eState goods with duties, along with their alienation, and the concession of servitudes on parish goods (*DSAN*, 87, 6 March 1936, p. 7). Thus, Administrative Code of 1936 established that certain deliberations from the parish authorities were not fully effective on their own.

The mayor should approve by-laws in general, along with: **a)** the making, interpretation and revocation of by-laws on the fruition of goods, pastures and any fruits from the common area that is exclusive to the parish or some of its residents; the plantation of forests, groves and cutting of wood in parish lands; the fruition and use of public waters under parochial administration; **b)** the regulations needed for the parish administration; **c)** the acquisition of movable properties and real eState goods needed for the *junta's* services and the alienation of those that are dispensable; **d)** the concession of servitudes on parish goods; **e)** the onerous or free acquisition of real eState goods with duties; **f)** the request to create new municipalities.

[57] The trade unions were obviously under the regime's control and mandatorily led by people it confided in.

In order for them to come into full effect, they should be passed by: **a)** a parish council composed by seven members appointed by the mayor or, in Lisbon and Oporto, by the civil governor, in first order parishes; **b)** a parish assembly composed by the president and other members of the *junta* and by every head of family 40 and over in the third order parishes outside of towns; **c)** by local referendum in third order or in second order parishes placed in towns.

Such deliberations needed the approval of the majority of the heads of family, through referendum, which would be carried out on a Sunday or Holiday (Article 187) designated by the mayor upon request by the president of the parish authority [Article 208 (2)]. The act would be chaired by the mayor or a city councillor (Article 187). The posters, which were placed on public spaces at least 15 days before, had to contain the question submitted to referendum in clear and exact terms (Article 186). Each head of family with the right to vote went to a ballot box with a paper 'yes' or 'no' written on it. These words could be, however, replaced by conventional signs in the posters since they were well known to illiterate voters. After the vote, the mayor proceeded to the scrutiny, with the presence of the parish priest, a primary school teacher and two old heads of family, chosen by the mayor (Article 187).

It is notable that the Constitution of 1933 and the Administrative Code kept the local referendum nominally as it existed during the Republic, but drastically reduced its sphere of action. According to the centralist and anti-democratic characteristics of the regime, all of the local government bodies, with the exception of the parish authorities, were directly or indirectly appointed by the central government. No decision from those bodies could be subject to a local referendum. Only some deliberations from parish authorities could be submitted. Therefore, the only body that was formally elected by the population[58] was also the only one whose deliberations could be submitted to referendum.

For Marcello Caetano (1991, p. 234), who was surely the real author of the 1936-1940 Administrative Code, the Code of 1936 still tried to revitalise the local referendum introduced by the Constitution of 1911, but even that attempt was frustrated. Consequently, the Code of 1940 completely removed the possibility for a local referendum. In the version of 1940, the mayor had to approve the deliberations that could be

[58] Without public freedom it was unthinkable that from such elections there could result the choice of anybody who did not have the regime's confidence.

submitted to referendum according to the 1936 version.[59] It remains a vague succedaneum, which was the organic referendum exercised by municipal and provincial councils[60] on certain deliberations from municipal and province authorities (Articles 55 and 318). As mentioned by Ricardo Leite Pinto (1988, p. 68), an instrument that was potentially democratic and decentralising became a typical instrument of centralism that obeyed to an authoritarian and anti-democratic political philosophy.

6. The Constitutional Revisions without a Plebiscite

In the first legislature of the New State, the National Assembly, which assumed constituent powers, passed five laws for Constitutional revision[61] including numerous Amendments to the Constitution.[62] However, the common denominator for these revisions was the reduction of the National Assembly's responsibilities contrasting with the Government's and Corporative Chamber' reinforcement. Jorge Miranda (1981, pp. 264-266) classified this period by using a common expression by Marcello Caetano. He called it 'parliamentary ratification' of the Constitution, having in mind that its approval had not been made by any Constituent Assembly (Moreira, 2004, p. 413).

The end of World War II gave rise to the regime's first serious crisis. Germany's defeat increased Salazar's concerns about the dictatorship's survival after the war, and he was alarmed by the fall of many friendly fascist regimes. In addition, there was a strong internal social struggle led by the Portuguese Communist Party *(PCP)*, which had, by then, reorganised in secrecy and assumed a decisive role in wanting to overthrow the dictatorship. Salazar, at this point, moved in three directions: approach the allied field, avoid conspiracies in the army, and repress workers' strikes. (Rosas, 1994, pp. 353-369).

At the end of the war, there were antifascist demonstrations all over the country on 7 and 8 May 1945. This generated perplexity in the regime's ranks. Salazar counterattacked with a Constitutional revision, a

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[59] See Article 253(18)§ 1-2. The proposal to create new municipalities would be sent by the parish authority to the provincial authority, and then to the civil governor and finally to the Government (Article 8).

[60] The district councils replaced the provincial councils in 1959.

[61] Law No. 1885, of 23 March 1935; No. 1910, of 23 May 1935; No. 1945, of 21 December 1936; No. 1963, of 18 December 1937 and No. 1966, of 23 April 1938. Law No. 1900, of 21 May 1935, modified the Colonial Act (Miranda, 1981, p. 265).

[62] Respectively: Law No. 1885, 44 amendments; Law No. 1910, one amendment; Law No. 1945, three amendments; Law No. 1963, 13 amendments; Law No. 1966, three amendments (Miranda, 1981, p. 264).

new electoral law, the dissolution of the National Assembly, the call for legislative elections and the change of the National Union ruling classes (Rosas, 1994, p. 377).

The Constitutional revision made through Law No. 2009, of 17 September 1945 had, as its most important change, the establishment of parity between the Government and Parliament regarding their legislative responsibilities, which formally inscribed in the Constitution something that had already been practiced (Miranda, 1981, p. 267). The Government started to legislate by executive-law in normal situations and not only in the case of urgency or public need. It is true, however, that the Government was the only judge of what would be considered an urgency and public need. According to the Corporative Chamber' Opinion, reported again by Fezas Vital, the Constitutional revision adjusted the Constitution to the political realities of the past. The National Assembly had, in practice been an exceptional legislative body, the Government being the primary source of legislation under normal circumstances (*DSAN*, 176 – Supplement, 16 June 1945, p. 13).

This proposal was opposed by Antunes Guimarães (Caldeira, 2004) who called for a plebiscitary approval of the Constitution. The Nation had not decided on a decrease of the National Assembly's legislative functions through a plebiscite. For that reason, if the Nation's best interests showed the opportunity to change the legislative function, the suitable thing to do would be to follow Article 135(2) of the Constitution and submit the amendments to the Constitution regarding the legislative function or their bodies to a national plebiscite. Those Amendments would be effective after the publication of the results of the plebiscite in the official journal (*DSAN*, 187, 4 July 1945, pp. 718-720).

The reply came from the President of the Assembly, José Alberto dos Reis, who alleged that the plebiscite foreseen in Article 135(2) of the Constitution would not be suitable for the normal revision process made by the National Assembly in the fixed terms. That regime was only suitable for the exceptional procedure of a revision made by the Assembly or through national plebiscite, or out of the regular periods, through presidential initiative as laid down in Article 135. However, Antunes Guimarães insisted, to no avail, that in decreasing the legislative responsibilities of the Assembly, which had been awarded through plebiscite in 1933, the President should consult the Nation (*DSAN*, 190, 7 July 1945, p.768).

The next Constitutional revision occurred in 1951, immediately after Carmona's death, through Law No. 2048, of 11 June 1951. It established that all candidates to the presidential election should offer warranties of respect and fidelity to the Constitutional principles, with such political suitability being verified by the Council of State (Miranda, 1981, p. 267). Even so, the regime was unable to avoid a wave of strong opposition in 1958, which supported the candidacy of General Humberto Delgado. Massive electoral fraud gave the presidency to the regime's candidate, Américo Thomaz. Following a Constitutional revision of 1959, made through Law No. 2.100, of 29 August, the citizens would no longer elect the President, whose choice, by a restricted electoral assembly (Almeida, 1999, p. 592) became an administrative act (Santos, 1990, pp. 319-320).

After the replacement of Salazar by Marcello Caetano in 1968, the hopes of liberalisation were disappointed. However, in the elections of October 1969, now considered a milestone in the road to freedom (Carvalho, 2000), the opposition tested whether the 'liberalisation' was genuine by organising a powerful campaign against the regime. Knowing that the National Assembly elected in 1969 would have Constitutional revision powers, the socialist Mário Soares (1969, pp. 193-208) introduced in the 2nd Republican Congress held in Aveiro from 15 to 18 May 1969, a thesis on the 1933 Constitution and the democratic evolution of the country. In that speech, Soares proposed two referendums, both with Constitutional consequences.

Soares argued that, bearing in mind that the time and the political circumstances left the 1933 Constitution outdated, the new National Assembly should have undergone a deep Constitutional revision. The elections should have prompted a far-reaching debate about the main problems of the Nation. Such a debate should lead to a direct consultation of the Nation, under the form of referendums, on two crucial points of the collective life: the overseas policy and the corporative orientation of the economic life (Soares, 1969, pp. 207-208). The 1933 Constitution defined the Portuguese State as a unitary and corporative Republic. This determined relations between the mainland and the overseas. Give Europe's economic evolution, Soares argued that it was time to frame of a new overseas policy and abandonment the corporative experience, which was exhausted. Thus, Soares proposed two referendums: to define the overseas policy, and to put an end to the corporative State. The result of the referendums would settle the options of the National Assembly for the Constitutional revision.

As was expected, the 1969 elections were not free. The final Constitutional revision of the regime happened in 1971, through Law No. 3/71, of 16 August. In spite of this being the most extensive and debated revision of the 1933 Constitution, almost nothing essential changed (Miranda, 1981, pp. 268-269). A Draft Amendment to the Constitution introduced by Francisco de Sá Carneiro and other members of a liberal wing of the Assembly, who defended the evolution of the dictatorship in a liberal way, was not even accepted for discussion (Miranda, 1981, p. 269).

The only 'popular consultation' held during the dictatorship was the plebiscite of 1933, which gave formal legitimacy to the fascist Constitution. Besides that sham of a referendum, the regime never seriously considered holding any type of direct consultation, not even in the case of Constitutional revisions.

On the other hand, given the inexistence of public freedoms, the prohibition of any opposition and the systematic practice of electoral fraud by the authorities, the democratic opposition, mainly led by the Communist Party, never thought of the referendum as a worthy objective in its political struggle. The exceptions were the proposal mentioned by Mário Soares in 1969, and in consideration of the colonial problem. In fact, some sectors of the opposition considered the referendum as a way to change the Portuguese colonial rule, and this could have been achieved even inside the regime's ranks, as we will see further ahead.

For now, what is important is that on 25 April 1974, the Armed Forces Movement, 'crowned the long years of resistance and reflected the deepest feelings of the Portuguese people by overthrowing the fascist regime.'[63] Actually, through a resolute and well-planned military action, quickly supported by a formidable popular movement, almost half a century dictatorship was overthrown, thus opening the way for the construction of a democratic polity in Portugal.

[63] Preamble of the Constitution of the Portuguese Republic passed on 2 April 1976.

Part III

The Referendum on the Portuguese Colonial Problem

Chapter 1

The Last Phase of the Portuguese Colonial Rule

1. The Portuguese Colonial Problem

Between the plebiscite regarding the 1933 Constitution and the fall of fascism in 1974, all proposals for referendums discussed possible ways of resolving the colonial problem. After World War II, the concepts of self-determination and independence reached the rest of the world, and were enshrined in the UN Charter of 1945. The development of anti-colonialist ideas in the international community soon led to concrete results, with the first decolonisation processes verified in Asia and among Near and Middle East Arab countries (Silveira, 1992, p. 73). Bandung's Conference, which took place in Indonesia in 1955, would constitute a decisive event for widening the anti-colonialist movement. The 29 Afro-Asian countries, which took part in the Conference and had recently become independent, reaffirmed their condemnation of colonialism as a social process against people's rights. They established a platform of active solidarity towards the struggles for independence by populations under colonial rule.

In Africa, the situation developed very quickly from then on. In 1956, Morocco, Tunisia and Sudan became independent. One year later, it was Ghana's turn. After the independence of Guinea-Conakry in 1958, which was decided by referendum, the liberation of French colonies accelerated. In 1960, 17 African countries achieved independence (14 former French colonies, two British and one Belgian).

Portuguese colonial rule therefore faced an increatingly unsimpathetic international framework. The regime, still based on the Constitutional revision of 1951, which declared that colonies were overseas provinces, argued that Portugal did not have colonies, only provinces in several continents. This theory convinced nobody. Above all, after the approval of UN General Assembly Resolutions No. 1514 (XV) entitled 'Declaration on the Granting of Independence to Colonial Countries and Peoples' and No. 1541 (XV) which considers the overseas

provinces as Non-Self Governing Territories, respectively in 14 and 15 December 1960, the isolation of Portugal in the United Nations became evident (Silveira, 1992, pp. 74-77; Nogueira, 2000b, pp. 170-173).

In the early fifties, Indian Union concerns regarding the territories of the 'Portuguese State of India' became clear. By early 1950, questions had been raised in the Indian Parliament about the future of Goa, which worried the Portuguese Government. On 6 February 1950, Vasco Garin, the Portuguese representative in Delhi, mentioned, in a communication to Lisbon, that the Prime Minister of India, in reply to a parliamentary question, said that his Government had no doubt that Goa would become Indian territory (Gaitonde, 1987, p. 58).

On 27 February 1950, the representative of India in Lisbon, Atchut Menon, having been given instructions to discuss the future of the Portuguese colonies in India formally with the Portuguese Government, was clearly told by the Foreign Minister Caeiro da Mata that the Portuguese Government would not discuss or negotiate questions related to the sovereignty of their territories with a foreign government (Gaitonde, 1987, p. 59). On that same day, the Government of Delhi sent a note to Lisbon, which Garin refused to accept, referring namely to the 'popular feeling in those territories for a union with the new and free Republic of India'. In June the Portuguese Government replied by refusing to discuss that question (Gaitonde, 1987, pp. 60-63).

In 1954, Indian pacifist volunteers formed the Satyagraha movement and occupied the enclaves of Dadra and Nagar-Haveli (Gaitonde, 1987, pp. 81-91). In 1955, they marched on Goa. The Portuguese authorities reacted by resorting to violence. The result was a massacre, with 22 protestors shot dead and 225 wounded (Gaitonde, 1987, pp. 92-109).

Portugal, which had been admitted into the UN, continued to challenge the Indian Union in the International Court of Justice, asking for recognition of the right of access to the occupied enclaves. On 12 April 1960, the International Court of Justice declared that **a)** Portugal had a right of passage between Daman and the Dadra and Nagar-Haveli enclaves; **b)** there was no right of passage for the Portuguese Armed Forces; **c)** India had not acted contrary to its obligations resulting from Portugal's right of passage in respect of private persons, civil officials and goods in general (Gaitonde, 1987, p. 126). Consequently, the decision had no practical effect (Rosas, 1994, p. 515).

Meanwhile, the other colonies began to stir. In 1951, the Portuguese authorities brutally repressed uprisings in the fields of Sao Tome and Principe. In 1956, protests by workers in the north of Angola, and the strike of the trimmers of *Lourenço Marques* (nowadays Maputo), resulted in the death of several dozen. In 1959, there was a massacre of strikers in the harbour of Bissau. In January 1961, cotton plantation workers from northern Angola went on strike. The armed forces killed hundreds in villages, which they razed as they went.

Also in the 1950s, separatist organisations started to appear in the Portuguese colonies (Silveira, 1992, p. 79; Moreira, 1992, p. 33): In 1954, there was the *MING* (Movement for the National Independence of Guinea), which later changed into the *PAIGC* (African Party for the Independence of Guinea and Cape Verde). In the same year, the *UPA* (Union of the Peoples of Angola), later known as the *FNLA* (National Front for the Liberation of Angola), was founded. In 1956, there was the *MPLA* (Popular Movement for the Liberation of Angola). In 1959, the *MANU* (African National Union of Mozambique) which, in 1962, joined with the *UNAMI* (African National Union for Independent Mozambique) and the *UDENAMO* (National Democratic Union of Mozambique) which gave place to the *FRELIMO* (Front of Liberation of Mozambique).

The armed struggle against Portuguese colonialism had its starting point on 4 February 1961, with the attempt to assault the jails of Luanda by the *MPLA*. On 15 March, the *UPA*, with strong supports in Congo and with North American complicity, massacred hundreds of settlers and their families in northern Angola, forcing a rapid dislocation of Portuguese military forces. On 14 April, after defeating General Botelho Moniz's attempt at a *coup d'état*, Salazar proceeded to a deep ministerial recast that, in his words, had a single reason: Angola (Silveira, 1992, pp. 86-87; Fernando, 2005, pp. 149-166).

A turning point came in 1961, when the colonial war began in Angola. On 17 December, the Indian Union invaded the territories of Goa, Daman and Diu, and the 'Portuguese State of India' came to an end. In the following years, the war spread to Guinea-Bissau (beginning of 1963) and Mozambique (September 1964). Until the regime's fall in 1974, the foreign and internal policies were dominated by a never-ending and desperate military and political struggle to coninue and support the regime's colonial paradigm in the face of growing national and international opposition (Rosas, 1994, p. 516).

2. The Alleged Referendum on the 'Portuguese State of India'

2.1. The Events

On 17 December 1961, the Indian Union attacked the territories of Goa, Daman and Diu. The small and badly armed Portuguese military forces stood there, had no realistic means of defence. This military invasion put Salazar's tactics in ruins. However, he remained defiant in defence of the 'Portuguese State of India'. He accepted no discussion of Portuguese sovereignty on those territories (Rosas, 1994, p. 514).[64]

For Salazar, discussing Portuguese sovereignty in the 'State of India' would mean creating a precedent for the other colonial territories. The Portuguese Government was realistic about the difficulties inherent in defending the territory militarily, but its tactics were to prevent Nehru from falling unless there was a military invasion (Rosas, 1994, pp. 512-513).

In April 1956, in an article published in *Foreign Affairs*, Salazar argued that, in the case of Goa, there were only three possible resolutions, one of them violent and the other two essentially peaceful. The violent decision would be for the Indian Union to undertake integration by force. Regarding the peaceful solutions, one would be for the Indian Union to ignore Goa. The third scenario, and the only genuine solution to the problem, would be to open negotiations regarding situations where proximity and neighbourhood seated risks or were likely to cause friction (Salazar, 1956, pp. 172-173).

Contrary to Salazar's expectations, the Indian Union invaded the territories. Portuguese diplomats had tried to head off this development through diplomatic efforts in the United States and Great Britain. In Washington they asked the United States to maintain its previous opposition to the use of force by the Indian Union, and in London they appealed to the historical alliance between both countries (Nogueira, 2000b, p. 315).

The position from the Government of Lisbon did not allow the scarce Portuguese troops in India to leave the territory. In case of attack, they not surrender. Their resistance would give the Portuguese Government time to obtain diplomatic support, which set an example regarding of the fate of the remaining overseas territories. On 14

[64] On the process that led to the fall of the 'Portuguese State of India', see Stocker (2005); Gaitonde (1987) and Morais (1995).

December 1961, a few days before the invasion, Salazar wrote to General Vassalo e Silva, commander of the Portuguese troops in India, saying that he foresaw neither the possibility of a truce nor Portuguese soldiers being taken prisoner. They would either be victorious or dead (Nogueira, 2000b, p. 238).

The invasion began on 17 December 1961. With only 3,500 men, Portuguese troops were clearly outnumbered. They had no Air Force and only one ship. The invaders had 45,000 men. Despite Salazar's orders, surrender was the only realistic option.

The Portuguese Government immediately appealed to the United Nations, hoping to obtain a Resolution from the Security Council that authorising a cease-fire and sending international observers to the territory. However, the proposal was defeated by a Soviet Union veto. In fact, only Brazil and Spain explicitly supported the Portuguese position. Despite indignant Portuguese diplomacy, neither the United States nor Great Britain went beyond a rhetorical condemnation of the events (Stocker, 2005, p. 238). The international environment was unfavourable to the Portuguese colonial pretensions, and that heavily influenced the position of the Kennedy Administration. As for Great Britain, it preferred not jeopardise its relationship with India, a former British colony which had become a member of the Commonwealth and was emerging as a power in the Asian continent.

2.2. The References to an Eventual Plebiscite

After the annexation of Goa, Daman and Diu, some international press referred to the possibility of having a plebiscite to allow the people of the 'Portuguese State of India' to decide their destiny. Some of them even referred that as a suggestion from Portugal. Franco Nogueira (1979, p. 42) briefly referred to the idea of a plebiscite as a solution to the problem of the other Portuguese colonies. Although he did not support the idea of a plebiscite, he argued that the Goan people prefereed to be ruled by Portugal rather than India. Some international press, writing in favour of the Portuguese Government's position, also mentioned that hypothesis, as we can see in a recollection of comments published then by the National Secretariat for Information (*SNI*, 1962). Two days before the invasion, on 15 December, the newspaper *Ya*, published in Madrid, referred to Portugal giving the population of Goa, some 600,000 people, the opportunity to decide on their future through a plebiscite. However, the Indian Union refused that proposal knowing that they wanted to remain as a part of Portugal (*SNI*, 1962, p. 262).

Soon after the invasion, other newspapers in a few countries, referred to the same idea, for example: in Spain (on 20 December, *El Correo Gallego* (*SNI*, 1962, p. 282) and on 30 December, *El Español* (*SNI*, 1962, p. 34)); and in the United States, on 18 December, the *New York World Telegram and Sun* (*SNI*; 1962, p. 147). Some newspapers mentioned the plebiscite in the abstract, without referring to any concrete proposal in that sense. On 13 December, *Gazette de Lausanne*, from Switzerland, considered that the best way to solve the problem would be, theoretically, through a supervised referendum. Nonetheless, this would not serve the purposes of either Salazar or Nehru, who could not allow it for Goa when he refused it for Kashmir (*SNI*, 1962, p. 98).

The *Sonntags-Illustrierte* of 17 December, also from Switzerland, found it interesting that Nehru never allowed the people of Goa to decide through a plebiscite about whether to continue linked to Portugal or to integrate India. This was due to the fact that he didn't trust the people of Goa and he could not continue to deny the right of self-determination to the inhabitants of Kashmir (*SNI*, 1962, pp. 204-205). Soon after the invasion, on 6 January 1962, the *Télégramme de Brest* speculated that Portugal would have accepted a referendum without any doubt, but Nehru, doubting the outcome of the result, did not want it (*SNI*, 1962, p. 373).

2.3. The Proposal that Never Existed

It is important to establish whether any proposal was actually made to the population of Goa, Daman and Diu for a plebiscite so that they could decide on integration in the Indian Union, the maintenance of Portuguese sovereignty or, by chance, self-determination. We evidently referred to an eventual Portuguese proposal, which from India would be out of the question. The published references regarding the Indian Union always point out to the peremptory refusal of any negotiation concerning the future of the 'Portuguese State of India'. The newspaper *La Suisse*, from Geneva, wrote on 19 December 1961 that the Secretary General of the UN, Mr. U. Thant, offered his good offices for a negotiation. Howeever, Nehru answered stating that it was impossible to have 'any negotiation with a country still based on the concepts of the 16th century and colonial conquest through force' (*SNI*, 1962, p. 99).

The press unanimously reported the Indian Union's peremptory refusal of the very idea of a plebiscite. Nevertheless, was there actually a proposal for a plebiscite? The already mentioned references, from some Spanish and North American press sources, are worth very little. It is

known that the Portuguese Government initiated a propaganda campaign to make its case at an international level, securing the services of a North American agency and making an enormous effort so that the press echoed its positions and condemned the Indian Union's action (Stocker, 2005, pp. 216-241). Some press referred to a Portuguese proposal without saying where, how and when such a proposal would be carried out. *El Correo Gallego* referred to 'information that we possess' as the source of the news; other newspapers referred to a 'suggestion'; others mentioned the abstract idea without referring to any proposal.

Ambassador Franco Nogueira, the future biographer of Salazar who was, at the time, Foreign Minister, mentions that the proposal was considered, without saying when, how and by whom. A significant fact as to the inexistence of a concrete proposal is that, among the dozens of news pieces collected in the *SNI* publication, few of them referred to that hypothesis. However, the cited press spoke, in full detail, about the diligences made by Portugal at the United Nations and with other States, including the Portuguese proposal for a ceasefire and the sending of international observers to the territories. Still more significant is the absolute inexistence of references to any proposal of a plebiscite in the Portuguese press at that time.

Luís Nuno Rodrigues (2002, pp. 141-142) refers to more concrete evidence that Portuguese 'support' for a plebiscite was part of a public relations campaign, rather than a true suggestion. During the early years of Kennedy's Administration, the North American positions in the United Nations tended towards the defence of the principle of self-determination. It was a difficult moment for the diplomatic relations between Portugal and the United States. At that time, Franco Nogueira met with the Secretary of State Dean Rusk in Washington, hoping to obtain a public Statement from the US Government that opposing the eventual attack from the Indian Union in Goa. Nogueira did not obtain that Statement, and was asked by Rusk if Portugal would be willing to 'test' the question of self-determination in Goa if the Indian Government raised the subject. He answered negatively and asked if the modality was an 'international plebiscite' or if it was made under the auspices of the United Nations.

It is true that the United States saw a referendum on the statute of the Portuguese territories in India as a possible solution. P. D. Gaitonde (1987, pp. 61-62) refers to two interesting facts. When, in a note to Lisbon dated 27 February 1950, the Government of India said that the 'popular feeling in those territories is for union with the new and free Republic of

India', part of the Indian press believed that the meaning of the Indian note was a proposal for a plebiscite in Goa. The newspaper *Hindustan Times* of 20 March even claimed that diplomatic sources in Lisbon believed that the Indian note had been largely dedicated to the discussion of a proposal for a plebiscite in Goa. This was quickly denied by the Government of India. The second fact is that, on 23 March, a letter from Ambassador Garin to Lisbon refers to the Ambassadors of Brazil and the US in Delhi, even though the mere suggestion of a plebiscite on Portugal's part would scare away the Indians. Henderson, the US Ambassador, suggested that the plebiscite should take place within six months, be conducted by the UN, and that neither India nor Portugal should carry out any propaganda. Garin's reaction was that any plebiscite would be contrary to the Portuguese Constitution (Gaitonde, 1987, p. 61).

Actually, the Portuguese Government never introduced any proposal of a plebiscite to the populations of Goa, Daman and Diu. In 1954, when the Indian Union occupied the enclaves of Dadra and Nagar-Haveli, the proposal from the Portuguese diplomacy on 8 August of that year was to send impartial observers to the territory. These would be chosen among representatives from countries that maintained diplomatic relations with both countries [*MNE*, 1967 (II) pp. 66-68].

Even with the invasion of Goa by the Indian Union imminent, the only proposal given by the Portuguese diplomacy was on 8 December 1961. It recommended the sending of international observers, but was refused by the Indian Government [*MNE*, 1967 (IV) pp. 79-80]. A telegram sent by Salazar to the interim Secretary General of the United Nations on 15 December 1961 referred to that exact proposal [*MNE*, 1967 (IV) p. 181]. Even after the invasion, on 18 December, when the Portuguese Government asked for a summons at the United Nations Security Council, it only requested the condemnation of the aggression committed by the Indian Union troops, a ceasefire, and their immediate withdrawal from the territories of Goa, Daman and Diu [*MNE*, 1967 (IV) p. 230]. Moreover, the proposal introduced to the UN Security Council by the US Ambassador Adlai Stevenson, on behalf of the United States, Great Britain, France and Turkey, and vetoed by the Soviet Union, did not refer to any other demands.

It is clear that neither the Portuguese Government, nor any of its allied States, presented any proposal for a plebiscite to the population of Goa, Daman and Diu. The references by some of the press in a few countries seemed to come only from the international press campaign launched by the Portuguese Government after the occupation.

Nevertheless, even without any concrete proposal for a plebiscite, it is important to establish whether the Portuguese Government ever pondered on the hypothesis of the plebiscite as a solution to maintain the 'Portuguese State of India'.

2.4. The Referendum as Hypothesis Excluded

It is true that the idea of a referendum was considered in Portugal. General Humberto Delgado admitted to it on 5 October 1960 in Brazil, when he introduced a Colonial Plan for the Portuguese opposition. Delgado proposed to submit to a plebiscite the Constitution of a Federal Republic of the United States of Portugal as well as the Constitution of each the States that would integrate it. The 'Portuguese State of India' would be among them (Delgado, 1974).

However, the most concrete testimony comes from Francisco da Costa Gomes. At the end of 1950s, by which time the Indian Union's use of force had been anticipated, the Under-Secretary of State of the Army, Costa Gomes, future President after the 1974 Revolution, visited the territories. He realised that an invasion was inevitable in the near future, and expressed that conviction to Salazar, proposing a plebiscite as a solution, without any illusions as to the result. As Costa Gomes himself later explained (Cruzeiro, 1998, p. 65), he returned from India with two proposals: to reduce the military forces and to move forward with a plebiscite for the Indian populations.

Costa Gomes had verified the null hypotheses of military defence of the territories in the case of an invasion by the Indian Union, as well as the scarce hypotheses of maintaining Portuguese sovereignty in the case of consultation by the populace. He understood, therefore, that the transfer of those territories' sovereignty to the Indian Union would be unavoidable within a very short period. The question was how to avoid an invasion, and to engineer an honourable political exit. Either way, it would be an exit. Salazar refused the proposal peremptorily, explaining that a plebiscite in India would set a precedent for every other colony, which would be entirely unacceptable (Cruzeiro, 1998, p. 81); [Santos, 2006 (I) pp.128-131].

Salazar's position is not surprising. It was the Portuguese Government's consistent position. On 9 January 1954, a Brazilian journalist asked the Portuguese Foreign Minister Paulo Cunha, in a press conference in Rio de Janeiro, if Portugal would accept a plebiscite in Goa. He answered smilingly with a question: 'What answer would Brazil give if anybody proposed a plebiscite in Rio de Janeiro so that the population

decided on whether they wanted to continue or not being Brazilian?' [*MNE*, 1967 (II) p. 236].

Salazar clearly expressed his position in a speech uttered on 30 November 1960 before the National Assembly. He Stated that the unity between Portugal and its overseas provinces was not a political or juridical fiction, but a social and historical reality, which did not hold alienations or abandonment. As for the juridical figures of plebiscite, referendum, and self-determination, these did not fit within its structure either (*DSAN*, 179, 2 December 1960, p. 87). After the invasion of Goa, Daman and Diu, Salazar addressed a long speech to the National Assembly on 3 January 1962.[65] He referred to the positions taken by the Portuguese Government from the beginning of the debates with the Indian Union, the diplomatic measures taken at the United Nations and other States, and the positions taken by each of the States with whom Portugal maintained closer diplomatic relations. However, Salazar never referred to any proposal, intention or hypothesis of ever holding a plebiscite (Salazar, 1962).

We know therefore that the Portuguese Government never intended to submit its sovereignty over the 'Portuguese State of India' to any plebiscite, and never introduced any proposal or suggestion in that sense. So, how can we understand the references made to it? The references by some of the press, given their scarce credibility, seem to result from the information war that usually follows political and military conflicts. The news that Portugal would have suggested a referendum or that that hypothesis would have been plausible, would have the purpose of making the Indian Union responsible for having refused to listen to the population. The Indian Union would have appeared in the eyes of international public opinion as contradicting the self-determination principle, i.e. denying the people's right to choose its own destiny through a democratic means.

Franco Nogueira's references were also explicable. In his book *Diálogos Interditos* (Forbidden Dialogues), he refers to the hypothesis of a plebiscite for the African territories. Nogueira (1979, p. XLII) also wrote that when Goa was faced with this hypothesis, the Indian Prime Minister, Nehru, declared that he would not tolerate the Portuguese in Goa although the people of Goa wanted that.

[65] In all truth, the Speaker of the Assembly read the speech, given that Salazar was aphonic due to the commotion that the events in India had caused him.

On this point, Nogueira merely reStates what he had affirmed before the General Assembly of the UN on 18 October 1962. On that occasion, Nogueira accused the Prime Minister of India of refusing any negotiation, and of having declared any plebiscite as unacceptable, probably – Nogueira said – because he knew that the result would be unfavourable to him, and (alluding to Kashmir) also because he would not want a plebiscite in any other place of the Indian subcontinent [*MNE*, 1967 (IV) p. 437).

It is true that the Indian Union peremptorily refused Portuguese sovereignty on Indian territories and did not accept any discussion of the matter, much less consideration of a plebiscite. It is also true that the Indian Union maintained the same position regarding its disagreement with Pakistan regarding Kashmir. It is still true that, on 6 September 1955, Nehru affirmed before the High Chamber of the Indian Parliament (*Rajya Sabha*) that he was not willing to tolerate the presence of the Portuguese in Goa, even though he acknowledged that the people of Goa would welcome a continued presence. According to the Indian Prime Minister, the people of Goa should resolve the integration of Goa in the Indian Union, but the presence of a foreign colonial potency in Goa was unacceptable.[66]

Althouth Portuguse dipolomats seized on Nehru's comments, the truth is that Nehru was being accused of refusing something that nobody proposed and nobody wanted. The Portuguese Government did not want a referendum because of the precedent it would set, and the Indian Union did not want or need a plebiscite to achieve their aims.

3. The Positions Regarding the Colonial War

3.1. The American Position and Its Internal Effects

The Portuguese Government's difficulties at the international level began in earnest in the early 1960s. On 15 December 1960, the General Assembly of the UN began a historical turn with the Declaration that Granted Independence to the Colonial Countries and its Peoples. It also specified that the Portuguese colonies were among those territories considered as Non-Self Governing. In that same year, Prime Minister MacMillan also initiated a change in direction in British politics. Newly elected presidents in Brazil and the United States, Jânio Quadros and John F Kennedy, began to keep their distance from the colonial policies

[66] The Portuguese diplomacy profusely used these declarations reproduced in the *Times* to prove the Indian refusal of any negotiation [*MNE*, 1967 (II) p. 493].

practiced by Salazar's Government (Rosas, 1994, pp. 517-518; Pinto, 2001, p. 16).

This new situation even had repercussions inside the regime and gave rise to an attempted *coup d'état*, led by the National Defence Minister, Botelho Moniz, with the support, if not under the inspiration, of the United States Embassy in Lisbon. On 17 February 1961, Botelho Moniz met the ambassador of the United States in Lisbon, Charles Burke Elbrick, and told him that he, and other key actors in the regime, had decided to compel Salazar to liberalise his policies, both in the mainland and overseas (Nogueira, 1979, p. 208). On 6 March, Botelho Moniz and Elbrick lunched together and the Ambassador told the Minister that he had received instructions from Washington to conduct a steady diligence in order to force Salazar to change his African policy (Antunes, 1991).

That diligence took place on 7 March. The Ambassador met with Salazar and informed him of the new position of the United States. President Kennedy considered that the self-determination and independence of the African countries would be the most effective way to obstruct the road of the USSR. He also affirmed that decolonisation was unavoidable, and corresponded with the ideals of freedom and the defence of human rights. The situation in Angola could create a very embarrassing situation in the UN, and the United States could not support the Portuguese position. The US Administration thought that the Portuguese Government should make a public and formal Statement announcing reforms and accepting the self-determination and independence of Angola. The USA would guarantee Portugal the financial support needed to reward the consequences of that independence (Nogueira, 1979, p. 210; Rosas, 1994, pp. 533-534).

Salazar refused to comment, sending only his regards to President Kennedy (Nogueira, 1979, p. 211). On 13 March, the United States voted against Portugal for the first time in the United Nations Security Council. On 15 March, the *UPA*, supported by US services, carried out deadly attacks in the north of Angola (Rosas, 1994, p. 534).

The events in Angola, and the loss of the United States' support, caused consternation in some sectors of the regime. Botelho Moniz wrote a harsh letter to Salazar, and had two long meetings with him on 28 and 29 March. Moniz proposed political changes 'in the continuity' and considered that the situation of the Armed Forces was grievous and on the verge of becoming unsustainable. Afterwards, he shared the letter with the Higher Military Council and met with the commanders of military

regions, having openly proposed Salazar's dismissal as head of government (Rosas, 1994, pp. 534-535). On 5 April, Moniz met with the President of the Republic, having repeated the same arguments and proposals. Salazar therefore had ample time to consider how best to resassert his authority, and on 13 April, with President Thomaz' support, he dismissed Botelho Moniz from the post of Defence Minister. The attempt had failed (Rosas, 1994, p. 536).

The American position towards Portugal during the Kennedy Administration softened over time. This reflected internal disagreements between those who supported the right to self-determination in the African territories, and those who prioritised Portugal's role as an ally in the cold war, particularly with regard to use of the Portuguese military base in The Azores (Pinto, 2001, p. 18; Rodrigues, 2002, pp. 171-181). It is clear that the initial position of the Kennedy Administration against the Portuguese position in the United Nations changed gradually in 1962. This change was due, above all, to the strategic importance of the American Base in The Azores. The Portuguese Government used negotiations on the Agreement that allowed the Americans to use the military base, which ended in 1962, to compel the United States to moderate its position towards Lisbon's colonial policy (Rodrigues, 2006a).

From 1961 to 1965, Washington made several proposals on the Portuguese colonial politics, which were systematically refused by Salazar. All of them raised the potential use of a referendum. At the start of 1962, Paul Sakwa, Deputy Director of the CIA, made the 'Commonwealth Plan'. Based on the idea that Portugal could never win the colonial war, the United States should force a non-communist decolonisation. Angola and Mozambique should become independent within eight years. The plan foresaw the creation of political parties in 1965, elections and referendums in 1967, and full independence in 1970.

According to these American plans, Portugal should receive economic help, which would double its per capita income in five years (Fernando, 2005, p. 230). If Salazar refused, the author of the report proposed that he be overthrown by a group of military officials close to the USA. In March 1962, the National Security Council approved the plan, excluding the overthrow of Salazar. However, the need to renew the agreement for the use of the base in The Azores, where 75% of the military air traffic from the USA to Europe and the Middle East passed, led the Kennedy Administration to change its position in a favour of the Portuguese Government (Pinto, 2001, pp. 18-19).

3.2. Salazar's Supposed Admission of a Plebiscite Regarding the Overseas

3.2.1. A 'Solemn and Public Act'

On 31 July 1963, the Security Council of the United Nations passed Resolution S/5380, regarding the territories under Portuguese Administration, with abstentions from the United States, Great Britain and France. The resolution affirmed that Portugal's policies were contrary to the principles of the Charter and the relevant resolutions of the General Assembly and the Security Council; deplored the attitude of the Portuguese Government; and determined that the situation in the territories under Portuguese Administration was seriously disturbing peace and security in Africa (Nogueira, 2000b, p. 502).[67]

On 12 August 1963, Salazar (1967, pp. 287-335) gave a long radio and television speech about the overseas policy. In general, it was a speech without great or substantial news (Nogueira, 2000b, p. 421; Almeida, 1999, pp. 700-707). However, Salazar uttered an enigmatic Statement at the end. Without ever doubting the feelings the Portuguese had concerning the defence of the Nation's integrity, he saw an advantage in pronouncing a 'solemn and public act' on the Government's overseas policy (Salazar, 1967, p. 335). That Statement gave rise to speculation about this solemn and public act. It could be a referendum, a demonstration, or a special session of the Parliament. Many other scenarios were possible. No explanation was forthcoming from official sources (Nogueira, 2000b, p. 509).

Franco Nogueira, Foreign Minister at that time, has since revealed that he suggested the announcement of a plebiscite or referendum, which would involve the whole Nation, to Salazar. There would be no doubt about the results given the electoral weight of the mainland, and it would be difficult for other western States to deny the political and legal value of a plebiscite. Inferferences from the UN would need to be rejected, since they would insist on opposing their own terms. However, it would be possible for the Portuguese to offer governments and independent journalists the chance to send unofficial observers. According to Nogueira, Salazar welcomed the idea in the initial version of his speech, but developed researvations at the last minute, thus changing

[67] See full text of the UN Resolution at http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/200/53/IMG/NR020053.pdf?OpenElement [accessed on 28 April 2011].

the word 'plebiscite' to 'solemn and public act', without defining it (Nogueira, 2000b, p. 509). On 27 August 1963, the regime promoted a demonstration in Lisbon that supported the Government's colonial policy.

3.2.2. George Ball's Initiative

On 29 August, George Ball, Under Secretary of the Department of State, arrived in Lisbon as an emissary from President Kennedy. His purpose was to discuss the overseas issue with the government in Lisbon. This visit happened after a meeting in the White House between Kennedy and Franco Nogueira, in which the North American President admitted to a possible agreement on the overseas based on the self-determination principle (Amaral, 1994, pp. 30-32). In meeting with Franco Nogueira, Ball proposed that Portugal accept self-determination. According to the USA, this principle involved the consent of people through a valid political process. Freitas do Amaral (1994, p. 30) understands this as meaning that the people in the colonies had the right to declare if they wanted to remain linked to Portugal or become independent countries through an individual and secret vote. Ball was convinced that the self-determination process of the colonies was inevitable, and that Portugal would not have window of ten years to try to find a solution that safeguarded their interests.

Franco Nogueira did not accept to fix any term, but suggested a plebiscite in which the entire population would participate. On 30 August, Salazar received George Ball. According to Freitas do Amaral (1994, pp. 31-32) he restrained Franco Nogueira's impulses avoiding discussion of self-determination or a plebiscite, and refusing to yield on anything substantive.

A few days later, George Ball returned to Portugal and received a memorandum on the Portuguese position from Franco Nogueira on 6 September (Amaral, 1994, pp. 61-67). In that document, the Portuguese Government rejected the concept of self-determination as understood by the United Nations. It was only admitted as a multiform concept expressed through successive acts, which proved the adhesion and consent of the governed peoples to the State and government structures. Moreover, the memorandum excluded any idea of dates or terms, and affirmed that the Government could consider a plebiscite or referendum, in a short term. However, that plebiscite should have a national scope and it should be held under Portuguese Constitutional conditions (Amaral, 1994, p. 37; Rodrigues, 2002, p. 298, Nogueira, 2000b, pp. 514-519). In other words, the plebiscite would be a fraud, as were all other electoral acts held in

Portugal during the dictatorship. Freitas do Amaral (1994, p. 39) considers this position as 'a huge retreat' in the talks. Everything that had been admitted as possible – self-determination, plebiscite, process with phases or sequences that could lead to a purpose – was expressly subordinated to an essential condition: that nothing questioned the territorial integrity of the Portuguese State as unitary and multi-continental.

3.2.3. The Expectation of a Plebiscite

Meanwhile, during that month of September 1963, anticipation grew in Portugal about the meaning of the 'solemn and public act' mentioned by Salazar. Some sectors from the opposition understood it as a plebiscite. Cunha Leal and other personalities from the liberal opposition even sent a letter to Salazar mentioning his speech dated 12 August and pleading for an urgent referendum. This would give the Portuguese people the opportunity to be consulted on the overseas policy as a free people (Nogueira, 2000b, p. 523).

The extreme right of the regime tried to respond immediately. The director of the newspaper *Diário de Notícias,* Augusto de Castro, wrote an article under the title 'A Plebiscite?' saying that a plebiscite would be indispensable to give up, revoking inalienable rights, but would never maintain unquestionable rights: 'We can submit doubts to a plebiscite and turn them into certainties, but we cannot submit certainties to a plebiscite and turn them into doubts. We cannot submit God to a plebiscite. We cannot submit Honour to a plebiscite. We cannot submit the Motherland to a plebiscite' (Nogueira, 2000b, p. 523). However, Salazar refused to authorise publication of the article, explaining his reasons in a letter sent to the author on 24 September 1963. Although he agreed with the doctrine defended in the article, he thought that the timing was inappropriate (Nogueira, 2000b, p. 524). He preferred to maintain ambiguity.

14 October 1963 marked the beginning of talks between Portugal and the African States, which were chaired by the UN Secretary-General, U Thant, in New York. In a memo about those conversations, the Portuguese Government affirmed the possibility of holding a plebiscite, which would consult the whole Portuguese Nation on overseas policy. The results would be considered definitive and beyond further debate. (Nogueira, 2000b, p. 534).

The conversations in New York were inconclusive. The Portuguese Government did not really want a plebiscite, and no African countries would accept the terms suggested by the Portuguese. However,

in Portugal, the press omitted any allusion to a plebiscite or to that position from Portuguese diplomacy. In either case, the expectation had reached its end. Salazar had made his decision, if indeed there ever was a time where he had been undecided.

On 21 October, the US Department of State sent a memo to Lisbon to follow up the talks with George Ball in the previous month. This document warned that military strength could not stop the African nationalist forces, and that it would not be possible to have another ten years to prepare for a self-determination process that attracted the moderate African leaders' support (Amaral, 1994, pp. 69-83). Salazar answered on 29 February 1964, expressing his total disagreement (Amaral, 1994, pp. 85-98).

3.2.4. Real Hypothesis or Mere Simulation?

The question that comes to mind is whether this was a real hypothesis or mere simulation. The truth is that the possibility for a referendum on the colonial policy stirred some Portuguese political sectors between August and the beginning of October 1963. It is important to fully State the several positions in that respect.

Inside the regime, Franco Nogueira affirms to have defended the plebiscite with a pledge. That act should include the whole Nation, and should not put to sub-units or be used to undermine the unitary State. Salazar did not accept even that idea, but fed the ambiguity, allowing Nogueira, as Foreign Minister, to discuss the terms of a possible plebiscite for some time in the UN. However, even Franco Nogueira would come to consider that possibility as unrealistic. According to him, further developments in the UN and Afro-Asian surroundings demonstrated that the United Nations and the African Governments would consider any plebiscite, irrelevant since they were not held under conditions that were compatible with their ideals or procedures. (2000b, p. 509). As for the support from western nations, Nogueira (1979, p. XLII) concluded that it would be just provisional and would be rejected as soon as the UN's unavoidable rejection was verified.

The regime's extreme right wing was strongly opposed to the idea that Salazar's speech could mean the acceptance of a plebiscite, as was revealed in the article by Augusto de Castro. Although it was never published, it had certainly been written with the intention of interpreting the dictator's thought and echoing a doctrine that had his approval.

In the opposition field, some non-communists defended the plebiscite. These included Cunha Leal, who wanted the speech of 12 August 1963 to admit the possibility of a referendum, and also the socialist Mário Soares (1969, pp. 61-62), who would even reaffirm the idea in a text written in 1966 concerning the 40 years of the dictatorship.[68] Nevertheless, knowing, as everybody did, Salazar's thought and political practice, nobody in the opposition would have had illusions about the likelihood of the plebiscite taking place, even under the corrupted rules of the false elections of that time.

In his text, Mário Soares (1969, p. 71) suggests that, at the beginning of the colonial war the Government considered the referendum as a hypothetical idea, but the idea ran its course. According to Soares (1974, p. 452), Salazar moved away from the idea because he knew perfectly well what the result of a popular consultation would be if done with seriousness. In spite of demanding unanimous support from the Nation, he was not confident that such support existed. Therefore, he substituted the referendum with a 'spontaneous demonstration' of support for his policy. This interpretation is shared by Almeida Santos [2006 (I) pp. 216-217], who writes that the 'plebiscite' was made with a demonstration of support officially organised by the regime. Unlike Freitas do Amaral, Almeida Santos considers that there was no retreat in Salazar's position, and that any appearance of a change in position was merely a result of his usual rhetorical abilities.

The communist leader, Álvaro Cunhal, had the same opinion. In his book *Rumo à Vitória* (Road to Victory), written in 1964, he expressed the idea that, when Salazar spoke of the possibility of a national consultation on the overseas policy, some people thought he was suggesting a 'plebiscite' of the same type of his 'elections'. Not so. In Cunhal's view, it was only a fascist demonstration (Cunhal, 1974, p. 127).

For the purposes of this research, it is irrelevant whether Salazar left the question of a referendum hanging because he was genuinely undecided, or if he played along with the idea for tactical reasons. The second scenario is more likely. In the explanation given to Augusto de Castro about the prohibition of the article, Salazar affirmed his agreement with the doctrine espoused in the article, which excluded the plebiscite for reasons of principle. Therefore, there was no room for indecision. Simply, the article would not be opportune at that moment for tactical reasons.

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[68] According to Mário Soares (1969, p. 37) this was a text that was nothing more than a draft written in May 1966 when the Government was preparing the celebrations for the 40th anniversary of the regime, and which was confiscated by the political police.

It does not seem plausible that Salazar could truly want a plebiscite, even the results would be innocuous. It is true that the colonial problem divided the opposition. It is also true that the regime could have manipulated the process, perpetrating an electoral fraud in the usual manner, or prohibiting and repressing the action of the opposition, as always, or even falsifying the results as had been done in the presidential elections of 1958. However, Salazar also knew that the national and international political situation in the early 1960s was not the same as that of the 1930s. The regime had not fully recovered from the deep disturbances of 1958 to 1962. The opening of a plebiscitary process in those circumstances would give the most coherent opposition forces the opportunity to make their case. The dictatorship would win the plebiscite, without any doubt, but the results would be contested, both in Portugal and abroad. Therefore, it does not seem likely that Salazar would seriously consider running such serious risks for such an uncertain political reward.

As for the reasons behind the prohibition in Augusto de Castro's article, it seems clear that the publication of that article at that moment did not suit Salazar for tactical reasons. In the internal level, it was suggested that the idea of a plebiscite on the colonial policy would be enough to create division in the opposition between those that sustained such an idea and those that had no illusions about Salazar's intentions. At the international level, it is important to remember that the Portuguese diplomacy led by Franco Nogueira continued to be open to the idea of a plebiscite during the ongoing talks with the US Department of State. Salazar did not want any plebiscite, but he wanted control the timing of when his position became clear.

3.3. The Last US Attempt: the Anderson Plan

In the spring of 1965, during Lyndon Johnson's presidency, Admiral George Anderson, Ambassador in Lisbon, introduced the last American initiative to solve the Portuguese colonial problem.[69] In spite of the previous refusals, the United States remained interested in persuading the Portuguese Government to accept a programmed and controlled plan for the decolonisation of Portuguese overseas territories. With that in mind, the US Administration made a final attempt, introducing a proposal to the Government of Lisbon, known as the 'Anderson plan' (Rodrigues, 2006b, p. 101).

[69] On the Anderson Plan, see Samuels & Haykin (1979); Pinto (2001); Rodrigues (2004); Rodrigues (2006).

The plan was introduced to Franco Nogueira on 2 September 1965. According to the report from the Portuguese Foreign Minister, mentioned by Luís Nuno Rodrigues (2004, pp. 106-107), Portugal would have to set an exact date for a large-scale plebiscite that would be entirely free, open, and under international observation. At the same time, the Portuguese Government committed itself to increase its efforts in the social, economic and political levels of the overseas populations in order to better understand their situation. The African countries would commit themselves to not allowing the use of their territories as base of terrorism or attacks against Portuguese territories. The United States and other NATO countries would agree to use their influence over the moderate African countries so that they respected that commitment, with the USA guaranteeing the open condemnation of any violation of such an agreement or commitment.

When Anderson introduced this plan, Franco Nogueira immediately Stated his objections to the plebiscite, given the conditions needed for its recognition by the African countries. It would be necessary to remove all the armed and police forces from the Portuguese territories, whose presence would be considered as an obstacle to the freedom of the voters. Portugal would also be required to authorise access to the territories to the UN and to recognise leaders of the liberation movements in individual African colonies, which would require an amnesty. Finally, since the UN would certainly demand a democratic process, it would be necessary that the Portuguese Government granted total freedom to the political parties inspired by any foreign government (Rodrigues, 2004, p. 107).

These objections pointed, from the very beginning, to a refusal by the Portuguese Government, who would never accept those conditions. An acceptable plebiscite to the United Nations and the African countries would be inherently unacceptable to the Portuguese Government. On the other hand, it would not be realistic to think that the US diplomacy could impose a plebiscite under different conditions. Still, Franco Nogueira promised to introduce the plan to Salazar.

In his memoirs, Franco Nogueira (1986, p. 142) makes a brief reference to the Anderson plan, which clearly showed how little importance he attributed to it:

> ‘Lisbon, 3 September - (…) Anderson came, with his eternal plan to solve our overseas problem. What does it consist of? In holding a plebiscite (in the terms demanded by the UN, it is

> clear); in an agreement with the Africans to end the 'guerrilla' (that supposes our declaration of intentions for independence); in international help to develop the territories. Doing this or giving the overseas their independence is the same. I don't know if Anderson is ingenuous, or if he takes me for being ingenuous. I did not exalt myself with the plan: I told him without blinking that I would study it.'

On 22 October 1965, George Anderson had the opportunity to introduce his own plan to Oliveira Salazar. He did not reject it immediately, but left his objections clear (Rodrigues, 2004, p. 108). In the official answer, given in March 1966, Franco Nogueira explained to George Anderson that it would be unthinkable for Portugal to make any public declaration admitting that the last objective of its policy in Africa was self-determination.

Actually, neither the Portuguese nor the Americans gave great importance to the Anderson plan. The Secretary of State Dean Rusk did not even refer to it when he met Franco Nogueira in October 1965 (Pinto, 2001, p. 26). Moreover, after the formal rejection of the plan, George Anderson concluded himself that in the immediate future, there little possibility that the Portuguese Government would change its attitude regarding the African provinces. He even considered that there was no advantage in precipitating any trouble, unnecessarily, in the relations between the United States and Portugal (Rodrigues, 2004, p. 108).

In fact, the beginning of the Vietnam War and the support the Portuguese Government gave to the US position in that conflict ended any hesitation from the United States regarding their support of Portuguese colonialism. Actually, the only hesitation was at the very beginning of Kennedy's presidency, between 1961 and 1962 (Guimarães, 2006; Maxwell, 1995, pp. 50-55).

3.4. The Divisions Inside the Opposition

3.4.1. The Situation Up To the 1950's

When the colonial war emerged, only the Portuguese Communist Party recognised the colonised people's right for independence. In *PCP*'s 3rd Congress, the first illegal one, which was held secretly between 10 and 13 November 1943, the future leader Álvaro Cunhal (2007, pp. 145-235), drew a report that contributed to the exact communist definition of the national-colonial problem. According to Cunhal (2007, p. 185), the communists recognised the colonial people's

right to constitute their independent States, although the people from the Portuguese colonies, which were undeveloped under all aspects, were not, under the present circumstances, able to to assert independence on their own.

In 1957, when *PCP* held its 5th Congress, the situation had substantially changed. There had been widespread decolonisation since the end of the World War II, and the UN had passed resolutions on the right of self-determination for the people of colonised territories. In Portugues colonies, liberations movements were building momentum with communist support. The Declaration was approved, which proposed that the necessary conditions should be created in the Portuguese colonies to allow them to obtain their freedom and independence, notwithstanding any the changes in the political situation in Portugal (*PCP*, 1981, p. 142).

At that time, the other opposition groups did not question the legitimacy of the Portuguese presence in Africa. Cunha Leal (1957, p. 39), in articles published in the daily newspaper *Diário de Lisboa*, in June 1954 and on 23 October 1957, defended the application of a confederation to the State of India and to extend it progressively to other colonies (Correia, 1994, p. 45).

In Humberto Delgado's electoral campaign in 1958, the question was not mentioned. However, Delgado, later in exile in *São Paulo*, recognised the right of the colonised people to self-determination. He also sought a Federal Republic of the United States of Portugal and proposed plebiscites to approve the Constitution of the federal State and each of the States that would integrate it.

3.4.2. Humberto Delgado's Plan

Humberto Delgado (1974, pp. 331-337) introduced this plan on 5 October 1960, pointing to the 50th anniversary of the Republic, on behalf of the Independent National Movement (*MNI*) that he had founded on 18 June 1958. What Delgado defended after all, in spite of proclaiming the recognition of the right to self-determination, was a federalist solution that would create the Federal Republic of the United States of Portugal. The federation would include the federal State, composed by continental Portugal, adjacent islands and territories too small to have the same statute of other colonies, and five other States: Guinea (including Cape Verde), Angola (including Sao Tome and Principe), Mozambique, India and East Timor.

More than a plebiscitary proposal to solve the colonial problem, this plan corresponded to Delgado's aspirations for the Constitutional future of the country once the dictatorship had been overthrown by a coup of force. The solution for the colonial issue was the federalist way. The situation in Africa in the early sixties allowed him to believe that the struggle for independence could soon come to the Portuguese colonies. Delgado's plan was very far from being anti-colonialist. Except for the plebiscite, this plan had much in common with the federalist theories that had echoed inside the regime.[70] In fact, the concreteness of the right to self-determination did not prioritised over the creation of sederative States, and there was no idea of independence.

This plan expressed a conception not far from Delgado's idea that the regime would have to fall by a coup of force. The overthrowing of the dictatorship would occur through a military attack made by small groups of men armed with imported weapons, along with a lightning raid against other neighbouring corps, and finally with a mass insurrection (Delgado, 1974, pp. 339-340).[71] After power had been taken, the Constitution of the federal State and the Constitutions of the federated States would be approved through plebiscites.

The plan was light on details. How would such plebiscites take place? Who would make the drafts of the Constitutions? Who would have the right to vote? The plan said nothing. It was, after all, a proposal that was as inconsistent as the projects of military coups that would supposedly make it possible.

3.4.3. The Programme for the Democratisation of the Republic

On January 1961, the liberal opposition worked out the Programme for the Democratisation of the Republic (1961). In matters concerning the colonies it only included unambitious proposals of administrative decentralisation, without daring to refer to independence, self-determination or even autonomy (Correia, 1994, p. 49).

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[70] The federalist theories were defended inside the regime namely by Manuel José Homem de Melo (1962) in a book published in 1962, *Portugal, Ultramar e o Futuro* (Portugal, the Overseas and the Future) and by Marcello Caetano, who supported the existence of a federation of three States: the Mainland, Angola and Mozambique, in a consultation concerning the revision of the overseas provinces' governmental system (Nogueira, 2000b, p. 395).

[71] The illusions as to the possibility of overthrowing the dictatorship by a coup of force led the General to fall into a trap perpetrated by agents of the political police. The police attracted him to Spain, near the Portuguese border and murdered him on 13 February 1965.

However, events in Angola at the start of 1961, between the Programme's inception and its publication in May, forced the inclusion of a final addition on the overseas policy. Reaffirming the principles proclaimed before, the Programme expressed disapproval of the internationally condemned processes, considering the problem to be essentially political. It concluded the need to meet in peace, and never at war, along with a dialogue among the population and a guarantee of all rights. The Communist Party criticised that position (Cunhal, 1975, p. 88) and its Secretary-General Álvaro Cunhal (1976, p. 50) later recognised that the colonial question created a real problem for the ability of the anti-fascist forces to unify, given that, unlike the *PCP*, the republican, liberal and socialists defended colonial or neo-colonialist positions.

For the legislative elections of November 1961, the Programme for the Democratisation of the Republic reappeared with a small addendum. It cautiously advanced the idea of a referendum for the self-determination of the colonial peoples. This idea would collide with the traditional ideas from some oppositionists coming from the First Republic, mainly supporters of colonialist ideals, who began to leave the movement (Moreira, 1992, pp. 26-27).

Nevertheless, during the 1961 legislative elections, the opposition candidates introduced the colonial problem in electoral debates for the first time. They blamed the Government for the colonial war, which, they argued, had resulted from overly rigid colonial policies. They claimed that the recognition of the colonies' right to self-determination as a way to peacefully solve the conflict in Africa. However, they proposed that the Government submit its African policy to a democratic referendum so that the Portuguese people could pronounce themselves on the subject (Silveira, 1992, p. 96).

3.4.4. The Idea of the Referendum

In the book *Portugal Amordaçado* (Portugal Gagged) Mário Soares claimed that the opposition consistently agitated for a referendum on the African policy since 1961. This was preceded by a period of public discussion, when all political forces could debate the problem freely and bring their respective solutions to public appreciation (Soares, 1974, p. 452).

That was the position of Mário Soares. In 1966, in the draft of a Statement concerning the 40 years of the New State, he deplored that the regime had never allowed a wide debate on the colonial problem and that the country had never had the possibility to give its opinion on it (Soares,

1969, pp. 61-62). Consequently, he proposed a referendum on the overseas policy within the time limit of six months, preceded by a wide and explanatory national debate (Soares, 1969, p. 71).

This proposal for a referendum never had the support from the opposition as a whole. The Communist Party defended the right of the colonised people to self-determination and independence at that time. Thus, it would not make sense to decide on the future of those people through a referendum that ignored them, and gave the decisive weight to the mainland. Furthermore, the referendum, as proposed, would presuppose the existence of political freedom which did not exist. Therefore, the proposal had two fundamental goals: to embarrass the regime, making its refusal of any democratic consultation of the people evident; and to take advantage of the opportunity to demand it once again. On the other hand, that proposal was aimed at concealing a fudged position on the resolution of the colonial problem.

4. The Colonial Issue under Marcello Caetano's Government

4.1. Caetano's Strategy and the Opposition

Marcello Caetano's choice for the Government's leadership in September 1968 took place with some expectation on the colonial policy, given his support for federalist theories in the early 1960's. However, the integrationist wing, which prevailed in the regime, did not allow any velleity in that respect. In his first speech before the National Assembly on the colonial policy as Chief of Government, on 27 November 1968, Marcello Caetano (1974, p. 50) affirmed to having considered all the aspects of overseas defence, having concluded that the position followed by Portugal 'could not have been any other'.

In the 1969 elections, the colonial issue divided the opposition. According to Cunhal (1976, p. 50), Mário Soares and his friends were opposed to the approach of a colonial war through the democratic movement. They supported the formula 'no to abandonment, no to war' and 'progressive autonomy'. They also refused to sign documents that recognised the right to complete and immediate independence of the people from the Portuguese colonies at international conferences. Lino de Carvalho (2000, p. 38) refers to the effort made at the National Meeting of Electoral Democratic Commissions on 15 June 1969, with the opposition still united in attempts to find a common formula. Thus, the Common Action Platform adopted a moderate formula that only proposed the peaceful and political resolution of overseas wars, based on the

recognition of the right to self-determination, and preceded by a wide national debate.

In three electoral constituencies, (Lisbon, Oporto and *Braga*), the Portuguese Socialist Action (*ASP*), led by Mário Soares, decided to take part in the elections out of the Electoral Democratic Commissions (*CDE*), creating the *CEUD*. The division among the opposition due to the emergence of the *CEUD* meant different visions on the colonial problem. For the *CDE*, in spite of different visions within it, the end of the war would inevitably have to pass through the recognition of the right to self-determination and independence (Ferreira, 1970, pp. 363-369). The *CEUD*, in its manifesto on the overseas problem, assumed positions that are more ambiguous. It refused to abandon the colonies and referred only to the will to find peace through dialogue (Ferreira, 1970, pp. 431-435). It is important to remember that, a few months before, Mário Soares had introduced a thesis supporting the idea of a referendum on the overseas policies at the Republican Congress in *Aveiro*. According to him, this would precede the Constitutional revision that the National Assembly should carry out.

In the elections of 1969, Marcello Caetano promised a policy of progressive autonomy to the colonies that could lead to a federal type solution in the future (Silveira, 1992, p. 99). Pezarat Correia (1991, pp. 44-46) separates Caetano's position from the federalist thesis, considering it an intermediate solution that accepted a progressive autonomy associated to a central State. However, the truth is that Caetano gave up in of the face of opposition from the regime's radical wing. The Constitutional revision of 1971 was part of that strategy, transforming the colonies into 'States', without any substantial change of their statute (Silveira, 1992, p. 101).

After the 1969 elections, the youth radicalised their attitude towards the Colonial War. The opinion movement against the war became a focal point in the struggle against the dictatorship. The immediate and complete independence of the territories submitted to Portuguese colonialism became the central aim of this political action. The opposition also converged around this viewpoint. In a meeting in Paris the Communist and the Socialist Parties signed a joint Statement proclaiming the end of the colonial war as a common objective. They also had negotiations in mind which would give complete and immediate independence to Angola, Guinea-Bissau and Mozambique (Cunhal, 1976, pp. 50-51). From July 1969 to May 1973, the UN Security Council adopted 16 Resolutions condemning the Portuguese Government's

colonial policy (MacQueen, 2006, p. 103). In the Democratic Opposition Congress from 4 to 8 April 1973, the end of the colonial war appeared in the Final Declaration (1973, p. 149) as the first of immediate objectives to follow through with the united action of democratic forces. Moreover, in the elections of 1973, with the opposition united around the *CDE*, the contestation of the colonial war was a central political aim.

4.2 *Portugal e o Futuro*: António de Spínola's Proposal

A few months before the fall of fascism, from within the regime and still concerning the resolution of the colonial problem, General António de Spínola, Deputy Chief of the General High Staff of the Armed Forces and former military commander in Guinea-Bissau, published a book entitled *Portugal e o Futuro* (Portugal and the Future). This book, published on 22 February 1974, had significant public impact and proposed the referendum as a solution to the colonial issue.

António de Spínola had supported a federalist solution to the colonial problem since the early 1960s. In the beginning of the 1970s, as he had direct knowledge about the military situation in Guinea-Bissau, he concluded that there was no military solution for that problem. Thus, on 18 May 1972, as Governor-General of Guinea, he opened direct talks with the President of Senegal, Leopold Senghor. Senghor's proposal, which Spínola transmitted to Lisbon, involved starting an immediate phase of internal autonomy. This would last at least ten years, followed by a popular consultation, which would probably lead to independence in the frame of a Portuguese-Afro, or a Portuguese-Afro-Brazilian community (Spínola, 1978, pp. 26-27).

On 26 May, Marcello Caetano prohibited the talks, arguing that there was no legal basis for questioning the unity of the State. Then, Spínola (1978, pp. 28-40) sent a last appeal to the Chief of Government on 28 May. He was sure that wasting this opportunity would result in an endless war or a disastrous end. Spínola proposed the pursuit of talks based on the following points: **1)** the guarantee of an administrative autonomy in the frame of preparing African staff; **2)** the progressive participation of the people of Guinea in the administration of their interests; **3)** The acceptance of the principle of free option for the Guinean people regarding their political statute through the usual form of public consultation, after a minimum ten year term (Spínola, 1978, p. 38).

On 30 May, Marcello Caetano definitively rejected the continuation of the talks. According to the Chief of Government, the talks ceased due to the refusal of any direct contact with *PAIGC* as they would

create a precedent that would be followed in other colonies, thus jeopardizing the overseas defence. Caetano (1974, p. 191), preferred military defeat in Guinea to an agreement with the 'terrorists', which would open the way to other negotiations in other territories.[72]

On the same day he entered into office as Deputy Chief of the General High Staff of the Armed Forces, Spínola informed Caetano of the publication of his book within a few days. The Head of Government demonstrated his displeasure and reminded him that a military in exercise of functions could not emit political opinions without superior permission. However, General Costa Gomes had given the superior permission, as Chief of the General High Staff of the Armed Forces. In Spínola's foreword, he considered that the colonial war had become the first national problem, and criticised the overseas issue as having been reduced to extreme positions which introduced the dilemma of eternising the war or betraying the past.

Spínola's proposal (1974, p. 56) did not consider popular consultation as something untouchable. He considered that the pure and simple rejection of public consultation, under certain pretexts, is the absolute denial of the Constitutional concept of sovereignty that the Nation is based on. To reject the popular referendum with the pretext of the people's lack of preparation would be the same as recognising the people's lack of preparation for citizenship.

The author referred to possible objections to his proposal: as the war was motivated by odd interests, the referendum would always be questioned, no matter how honest it had been; and there would be no advantage in it being held. For him, the referendum is not only made when there is an advantage in that, but it was fundamentally the answer to an imperative. Secondly, he did not fear consulting the will of the people who lived under the Portuguese flag, because the indestructible strength of the Portuguese understanding would have to be based on the respect of that will. He was convinced that the free world would militantly be on the Portuguese side when, after a period of appropriate preparation, the referendum for the Portuguese Africans revealed their unequivocal will to remain Portuguese under a statute of their free choice (Spínola, 1974, pp. 57-58).

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[72] However, the Portuguese newspaper *Expresso* revealed that on 26 and 27 March 1974, there was a secret meeting in London between a Portuguese Government emissary and a *PAIGC* delegation in order to achieve a cease-fire and begin the formal talks for independence [Castanheira (1994) cited by Garcia (2003, p. 77)].

It is clear that Spínola's purpose was to avoid the colonies' independence. According to his own words, the problem resides in promoting the self-determination of overseas populations and integrating them in the Portuguese Republic, which would be easy in a framework, other than the current one (Spínola, 1974, p. 148).

To reach that purpose, Spínola (1974, pp. 206-207) proposed a programme with three points: **1)** clarify the situation of Portugal as a multicontinental country, with autonomous States in Europe, Africa and Asia; **2)** accelerate the autonomy and administrative decentralisation processes, with the effective transfer of responsibilities to local institutions; **3)** introduce the results of the referendum to the world which would be done after the time fixed for the widening of autonomy.

Spínola's position was not identical to the most reactionary sectors of the regime, but it was equally different in the ideas of self-determination and independence that the opposition defended. Spínola's position was close to the federalists, extolling an autonomy solution of a federal type.

Besides the military problem, another subject that was difficult to overcome was the international isolation of the Portuguese authorities. The referendum proposal sought to appease world public opinion, and especially that of its traditional allies. The Government should control the whole referendum process, defining how and when it would be held and taking the necessary measures to win.

Spínola did not ignore that a fair referendum would demand democratic conditions that existed neither in the mainland nor in the colonies. The seriousness of a referendum would demand a democratisation of the regime, which Spínola did not propose. After all, he intended to obtain with the referendum, the same that Marcello Caetano had thought to obtain with the Constitutional revision of 1971: the acceptance of a regional autonomy that would be a false solution to maintaining the colonial domain intact.

Spínola's proposal was actually far from representing a rupture with the regime. He simply did not ignore the difficulties, acknowledging that the regime was facing an inevitable defeat. However, the regime's ranks found themselves in a hard situation because the recognition of imminent defeat came from the Deputy Chief of the General High Staff of the Armed Forces, thus opening a breach that was difficult to hide.

The impact of Spínola's book was not due to the concrete proposal for a referendum. Norrie MacQueen (1997, p. 101) remembers that the fundamental concept of the book was peculiarly similar to the ideas of the 'Anderson plan', introduced to Salazar by the US Ambassador in the mid 1960's. However, what gave the book its true political charge was the author's identity and the moment of publication.

Most significantly, for the first time, a high military commander publicly recognised that there was no military solution for the colonial war. *Portugal e o Futuro* added more fuel to the flames that had already been burning. It fed the popular and democratic protest against the colonial war and the captains' movement that was then in an advanced phase of preparation for the revolutionary military coup that would quickly take place. The worries of the book ran separately, but paralleled the growing professional discontentment of the Armed Forces officers (MacQueen, 1997, p. 103).

4.3. Marcello Caetano's Reaction

Caetano reacted with a speech uttered in the National Assembly, by his request, on 5 March 1974 (*DSAN*, 34, 6 March 1974, pp. 705-710). It led to a debate on the colonial policy, which ended with the approval, unsurprisingly, of a motion supporting the Government's position. In that speech, Marcello Caetano referred to the plebiscite proposal on the colonial policy in contusing terms, refusing it, obviously.

His first argument was the delay of the African people to accept the principles of European democracy. In other words, for people that in their majority did not go beyond the tribal organisation stage, democracy did not make sense. Moreover, the popular consultation according to the individualistic formula - one man (or one woman), one vote – would be a parody of direct democracy. The application of this argument to the colonised people was at least curious given that not even the Portuguese residents in Europe could aspire to the principles of European democracy. Would they be, like the Africans, in a tribal organisation stage?

His second argument was that, under the conditions demanded by the United Nations, the referendum would result in certain loss. A referendum, held under Portuguese initiative and authority, would be worth nothing for the enemies of Portugal, and the United Nations, it would only recognise the legitimacy of the results according to their desires. For Caetano, the referendum, just as Spínola extolled, would be unviable, for the simple reason that the United Nations would never accept it. Neither the liberation movements, nor the United Nations,

would recognise a referendum controlled by the Portuguese authorities that was able to prejudice the self-determination and independence principles that were internationally recognised. That conclusion seems realistic. Nobody would accept the referendum proposed by Spínola. Meanwhile, the regime was deeply isolated, internally and externally. To conclude this debate, the Overseas Committee presented a motion supporting the Government's policy 'on overseas defence and valorisation', which was passed on 8 March.

Having the support from the President and the National Assembly, Caetano needed to guarantee the military support, which had been shaken by the positions of Spínola and Costa Gomes. That would be the next step. On 14 March 1974, a Military Chiefs delegation, jokingly known later on as the 'rheumatic brigade', declared their support for the Government's overseas policy. Costa Gomes and Spínola were absent, and consequently, dismissed. Two days later, and inspired by Spínola, there was the first military attempt to overthrow the regime, which was unsuccessful. The revolution would come the following month, by the hand of the Captains' Movement, which would be successful this time around.

On 25 April 1974, António de Spínola received power directly from Caetano's hands, and became leader of the National Salvation Junta *(Junta de Salvação Nacional)*. A few days later, he became the provisional President of the Republic. He then attempted to direct an overseas policy based on the conceptions exposed in the *Portugal e o Futuro.* However, the dynamics of the revolution and the unstoppable decolonisation process quickly span out of his control.

Chapter 2

The Idea of Referendum in the Decolonisation Process

1. The *MFA* Programme and Spínola's Position

Although the central purpose of the military coup of 25 April 1974 was to put an end to the colonial war, the Armed Forces Movement had no clear plan in that respect. Keeping in mind that the Nation had to provide a definition for its foreign policy, the Provisional Government needed to follow three guidelines: **1)** the recognition that the solution for the overseas war was political and not military; **2)** the creation of conditions for a frank and open debate on the overseas problem at a national level; **3)** the release of the basis for an overseas policy towards peace.

That solution was a compromise. The manifesto on 'The Movement, the Armed Forces and the Nation', approved in a *MFA* meeting in *Cascais* on 5 March 1974, in spite of the opposition from the Air Force representatives, assumed that 'the solution for the overseas problem should consider the incontrovertible and irreversible reality of the strong desire the African people had for self-government' (Correia, 1991, p. 55).

Pezarat Correia (1991, pp. 55-56) points out that, on the eve of the 25th of April, an informal text titled '*MFA* Protocol' appeared. It was not signed and remained anonymous with the intent of avoiding definitive political measures in relation to the overseas problem, until the Constitution of powers by the vote of the Nation had gone through. According to this document, the *MFA* should not accept the solution to the overseas problem in the following twelve months.

In its original version, the *MFA* Programme declared the clear recognition of the right to self-determination, and the fast adoption of measures towards the administrative and political autonomy of the overseas territories, with effective and clear participation of the autochthonous populations, along with the convenient measures for a fast re-establishment of peace. However, General Spínola achieved the suppression of those references on the night of the 25th to the 26th of April after an arduous discussion. Such actions would become a feature of the decolonisation process in the following months (Correia, 1991, pp. 56-57; Ferreira, 1993, p. 55).

In his first meeting, on 27 April, with elements from the *MDP/CDE*,[73] *SEDES*[74] and the Monarchic Convergence, Spínola introduced his idea of self-determination under the Portuguese flag through a plebiscite. His plans presupposed a certain cultural level of the people that did not yet exist, and the overseas elites were not prepared for such. He simply ignored the liberation movements (Correia, 1991, p. 58).

The Programme of the First Provisional Government, (Executive Law No. 203/74, of 15 May) executed the principles of the *MFA* Programme, and recognised that the solution to the overseas war was essentially political. Therefore, its purpose was to lay a new policy towards peace, including the peaceful and permanent coexistence of all residents, and the creation of conditions for a frank and open debate on the future overseas.

2. The Colonial Issue During the First Months of the Revolution

Among the emerging political forces in April 1974, there was no unanimity as to the solution for the overseas problem. The only point of consensus was the recognition that the colonial policy of the previous regime had led to a dead end and must now be rejected.

The liberation movements that had taken up arms for independence did not accept any other solution except their prompt recognition. Among the Portuguese political forces, the *PCP* argued passionately for the recognition of the right of the people from the Portuguese colonies to self-determination and immediate independence. The socialists had also developed the same view, having abandoned the idea of referendum proposed by Mário Soares in 1966 and 1969. The joint Statement by *PS*/*PCP* in September 1973 took a clear anti-colonialist position, assuming the end of the colonial war. They also advocated negotiations whose goal was the complete and immediate independence of Angola, Guinea-Bissau and Mozambique (Cunhal, 1976, p. 50).

General Spínola kept his position, expressed in the 'Portugal and the Future', that the solution to the overseas problem should be through a plebiscitary consultation. According to Pezarat Correia (1991, p. 61), some isolated positions wanted plebiscites in each of the colonies, but they intended to postpone the decolonisation problem until after the elections had been held and a Constitution designed in the mainland. In

[73] The *MDP/CDE* was the party created from the former Democratic Opposition (*CDE*).
[74] The *SEDES* (Economic and Social Development Association) was a liberally inspired group that was created during Marcello Caetano's Government. The founders of the *PPD/PSD* parties would emerge from this association.

this manner, they could recover the dead '*MFA* Protocol', without explaining how they would solve the problem of war and until then the liberation movements would not interrupt the hostilities.

From the very beginning, these cleavages marked the Portuguese revolutionary process. Freitas do Amaral (1996, pp. 165-166) talks about a meeting, as early as 4 May, between the *MFA* and both existing and nascent political parties. Amaral himself would later found the Centre Democratic and Social Party (*CDS*), which was based on Christian Democratic ideology. Elements of the former liberal wing, including founders of the *PPD*, were also in that meeting. They argued that commitments in the *MFA* Programme regarding overseas territories had to be respected. This meant listening to the will of the Portuguese people, and to the views of African people under Portuguese administration, preferably through a referendum.

Álvaro Cunhal replied that for the communists, all those solutions and methods were deeply unrealistic. The federalist theory and the referendary method came too late. What the United Nations Charter imposed on Portugal was decolonisation, which was only possible through the negotiation of a cease-fire with the liberation movements that had struggled against Portuguese colonialism. This had to be progressed as quickly as possible. Portugal had no option but to concede full independence to the colonial territories without imposing conditions.

Álvaro Cunhal (1976, pp. 106-107) also describes the divergences during that time, distinguishing three different factions in the organs of political and political-military power. One of them, extolled by Spínola, the Prime-Minister Palma Carlos and Sá Carneiro, wanted to continue the war until an agreement on the future plebiscite could be obtained. Others, including some socialist leaders and *MFA* members, conceded formal independence but wanted to delay the process in order to keep Portugal's dominant positions and prevent the revolutionary movements that had driven the liberation fight from ascending to power. Finally, a third orientation, supported by the communists and the most left-wing civil and military sectors, wanted an immediate end to the war, negotiations with the revolutionary movements that had driven the liberation fight, the acceleration of the process and the recognition of full independence with the governments based on those movements.

António de Almeida Santos [2006 (I) p. 325], Minister of Inter-territorial Coordination (new designation for the Overseas Minister) of the First Provisional Government, has since recognised that the calendar fixed

in the *MFA* Programme for the beginning of the decolonisation process was unrealistic. It presupposed that the liberation movements would lay down their arms with the acceptance of the simple Statement of the self-determination principle, which would be based on the popular consultations in the territories, excluding direct negotiations among them. However, the liberation movements refused to subject their revolutionary legitimacy to the vote. Besides, as Almeida Santos reminds us [2006 (I) pp. 326 and 567], the liberation movements closely followed developments in Lisbon. They could see that, to some extent at least, António de Spínola and the *MFA* were divided on the decolonisation. Therefore, Spínola pled that the beginning of the decolonisation process should occur after the democratic legitimisation of the new power in Portugal (about a year and a half later), and that popular consultations in each territory would require the participation of all society, not just of the liberation movements.

3. Law No. 7/74, of 27 July

This indecisiveness would last until the publication of Law No. 7/74, of 7 July, legislation that openly contradicted Spínola's position. Article 1 of Law No. 7/74 recognised that the principle solution to overseas wars was political and not military (…). It also implied that Portugal recognised the people's right to self-determination, in agreement with the United Nations Charter. Article 2 recognised the right to self-determination, with all its consequences, including the acceptance of the independence of the overseas territories. Finally, Article 3 entrusted the President, after first consulting the *Junta de Salvação Nacional*, the Council of State and the Provisional Government, to practice the acts and to conclude the agreements referring to the exercise of the right recognised in the previous articles.

Law No. 7/74 re-established the commitment to the decolonisation of the *MFA* Programme in its original version. The Law did not propose any explicit procedure for the exercise of self-determination that could lead to independence. However, the proposal for truces in preparation for referendums, which were essential in Spínola's project, was not mentioned anywhere (MacQueen, 1997, p. 118). The Law did not legislate against the possibility of plebiscites in any territories, but it opened the door for a decolonisation process without any referendum.

Three main factors determined the approval of Law No. 7/74. The first was the disagreements between forces in Portugal that supported different solutions to the colonial problem. Those who pled the immediate recognition of the right to self-determination and independence were the

winners of that confrontation. The divergences regarding the revolutionary decolonisation process was at the core of both Palma Carlos' resignation from the post of Prime Minister in July and António de Spínola as President of the Republic in September 1974. The second factor was the fast evolution of the military situation in the overseas territories. The liberation movements refused any cease-fire without solid guarantees recognising their right to independence. Meanwhile, the Portuguese soldiers peremptorily refused to fight, and threatened to recognise independence themselves if the Government of Lisbon did not do so. The third factor was the international pressure for self-determination and independence which remained strong throughout this period (Ferreira, 1993, pp. 56-60).

In *Quase Memórias*, Almeida Santos [2006 (I) pp. 264-267] reveals some irregularities in the process of enacting and pulishing Law No. 7/74. For example, the President did not sign the first version, which did not contain Article 3, published on 19 July 1974. The definitive version published on 27 July, already had that provision, which was proposed by Almeida Santos as the Minister in charge of overseas issues. The Council of State passed the original drawing of Law No. 7/74 during its meeting on 8 July 1974. On that same day, the Council considered and rejected the Prime Minister's plan, known as the 'Palma Carlos coup'. That approval was the main reason why Palma Carlos resigned from the post of Prime Minister. As he explained later, the Council of State had passed a statute that would issue the immediate independence of the overseas territories. The Prime Minister decided to resign because he disagreed in delivering the colonies independence without a popular consultation, and he did not accept to step back, 'for not wanting to die as traitor of the Motherland' (Osório, 1988, p. 96).

If it is an undoubted fact that Law No. 7/74 contradicted Spínola's intentions as to the decolonisation process, his speech as President of the Republic, on the day it was published, 27 July, is very surprising. On 15 May 1974, Spínola (1976, p. 36) affirmed, in his investiture speech as President, that the destiny of the Portuguese overseas would have to be resolved democratically by all of those who consider that territory as their own. On 16 May, during the installation of the First Provisional Government, he affirmed his disagreement on a solution negotiated only among factions that had a doubtful or imperfect representativeness, believing instead that the African and European populations of Africa should freely and consciously choose their own destiny. Therefore, he insisted on the preparation of a popular consultation

that would be impartial and open to all monitoring (Spínola, 1976, pp. 47-48). On 11 June, during the installation of Angola and Mozambique's Governors, Spínola insisted on his decolonisation programme, which contained four points: **a)** the re-establishment of peace; **b)** fast reconstruction and development; **c)** the implantation of wide democratic participation schemes and a fast regionalisation process of the political, economic and social structures; and **d)** popular consultation as the final formula to fulfill those principles (Spínola, 1976, p. 88).

However, on 27 July 1974, Spínola (1976, p. 148) supported the approved text without any reservations in his speech. He considered that the law gave the necessary Constitutional legitimacy to immediately begin the decolonisation process of the Portuguese overseas territories. As he later explained, he accepted the law as inevitable, but consciously agreed with it, because at that historical moment it was still the only opportunity that could create a community of Portuguese expression formed by independent countries or associated States according to the free will of the people. As Spínola explained (1978, p. 262), he enacted the law without holding the popular referendum that he wanted, but with the full conviction that it represented the widespread will of the Portuguese people. He also sought to avoid being overtaken by events, in the hope of still being able to control them in time.

It was therefore a retreat by the General, which he assumed as inevitable. He had a minority in the *MFA* and was alone in the Council of State. He no longer had a Prime Minister, who was dismissed in the meantime, he could trust and he faced a demand for the immediate end to the colonial war, in Portugal and among the troops in the territories that refused to fight and fraternised with the fighters of the liberation movements. Actually, he did not have a choice. If he did not accept Law No. 7/74, he would have had to resign. In the event, his hopes of controlling events were unrealistic. At the end of September he resigned from his position as President.

César de Oliveira (1993, p. 149) argues that the alternative defended by Spínola demanded four conditions that did not exist: **a)** the liberation movements should accept popular consultations, stop the war and organise themselves in the colonial territories by daylight; **b)** the Portuguese political forces, mainly those who took part in the Provisional Government should agree with Spínola's positions; **c)** the Armed Forces, particularly in the colonies, should assure conditions for that process militarily; **d)** the *MFA* should be in agreement with Spínola's proposals. However, none of these conditions had any truth.

4. The Unfeasibility of Popular Consultations in Guinea-Bissau and Mozambique

4.1. Guinea-Bissau

When the Portuguese Revolution broke out, the Republic of Guinea-Bissau had already been proclaimed unilaterally on 24 September 1973, and it had been recognised by 82 countries. Political defeat was already a reality, and the military defeat was imminent. For the *PAIGC* the only acceptable solution was recognition of its independence by the new Portuguese authorities.

The talks with the *PAIGC* on Guinea-Bissau's independence began in Dakar just one day after the installation of the First Provisional Government. At that moment, Spínola still considered it possible for a plebiscite to be held in Guinea and even decided to send thousands of photos with his face to the territory for distribution. However, nobody distributed them [Santos, 2006 (I) p. 98].

In the meetings before Law No. 7/74, the Portuguese delegations had no mandate to recognise independence. The orders from Spínola regarding Guinea consisted in negotiating with the *PAIGC*, followed by a defensive war effort until the signature of a cease-fire agreement, and giving continuity to the political process of self-determination, in order to hold a popular consultation (Spínola, 1978, p. 274).

Thus, the meetings in Dakar on 17 May, in London on 31 May, and in Algiers on 13 June, ended in a deadlock.[75] Meanwhile, events continued to develop in Guinea. On 1 July, an *MFA* assembly with 800 soldiers passed a motion demanding the immediate and clear recognition of the Republic of Guinea-Bissau by the Portuguese Government. In addition, they demanded the immediate reestablishment of talks with the *PAIGC*. They no longer wanted to negotiate the right to independence, but only the transfer of powers (Ferreira, 1993, p. 61).

Law No. 7/74 unblocked the situation, and the round of talks that began in Algiers on 22 August finished four days later with the agreement that the Portuguese recognition of Guinea-Bissau's independence would occur on 10 September 1974.[76] The Junta of National

[75] For details on these talks told by Mário Soares see Avillez, (1996, pp. 297-305).
[76] On Guinea-Bissau's decolonisation process, see Ferreira (1993, pp. 60-61); Pinto (2001, pp. 67-69); Santos [2006 (II) pp. 7-53]; MacQueen, (1997, pp. 129-142), Avillez (1996,

Salvation, the Council of State and the II Provisional Government unanimously passed the Algiers Agreement signed on 30 August. Spínola ratified it as the only possible solution (Spínola, 1978, p. 285).

4.2. Mozambique

In Mozambique, *FRELIMO*, the only liberation movement that led the armed struggle, not only did not stop the military operations, and instead intensified their efforts. They knew Spínola's federalist theories and disagreed with them. On 27 April 1974, a *FRELIMO* leadership declaration hailed the Portuguese democratic forces and the return of democracy to Portugal. However, they warned that the end of the war could only be possible with the recognition of the right of the people of Mozambique to independence, led by the *FRELIMO* Party, as their authentic and legitimate representative [Santos, 2006 (II) p. 59].

Just as it had happened in Guinea, the process of decolonisation in Mozambique was also delayed until the publication of Law No. 7/74. Regardless of a strong embrace between the Portuguese Foreign Minister, Mário Soares, and the leader of *FRELIMO*, Samora Machel, when they first encountered each other in Lusaka, on 5 June 1974, the war did not stop on the ground. The Portuguese delegation did not have the mandate to accept *FRELIMO*'s three claims, which were: **a)** the recognition of the right of the people of Mozambique to complete and total independence; **b)** the acceptance of the sovereignty transfer from Portugal to *FRELIMO*; **c)** the recognition of *FRELIMO* as the unique and legitimate representative of the people of Mozambique (Antunes, 2004, p. 354).

On 11 June, Governor-General Henrique Soares de Melo was charged with implementing an overseas policy based on the people's self-determination through universal suffrage (Spínola, 1978, pp. 297). However, while *FRELIMO* intensified the operations, the Portuguese soldiers refused to fight. On 23 July 1974, the Governor-General of Mozambique sent a telegram to Lisbon reporting that the regional commissions of the *MFA* in two districts threatened to impose a unilateral cease-fire if they did not establish a global agreement for the cease-fire by the end of that month. On that same day, the Coordinating Commission of the *MFA* of Mozambique informed by telegram that there were only two alternatives: the immediate recognition of the right to independence, or independence resulting from a military collapse [Santos (II) pp. 62-63].

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pp. 297-305). For the full text of the Algiers Agreement see Miranda [1978a (II) pp. 1019-1024].

As in Guinea-Bissau, Law No. 7/74 allowed the situation to be solved. Until then, during the exploratory contacts with *FRELIMO*, the Portuguese representatives suggested the idea of a popular consultation, which was refused by the delegation from Mozambique.[77] However, by the end of July, the Minister and outstanding member of the *MFA*, Melo Antunes, went to Dar-es-Salaam and between 30 July and 2 August, he dealt with a document which contained the basic concepts and the main lines of the agreement that would be formally negotiated between 15 and 16 August at the same location (Antunes, 2004, pp. 356-359); [Santos, 2006 (I) pp. 345-350]. Thus, the idea for a referendum continued to be rejected. Portugal immediately recognised Mozambique's right to independence and *FRELIMO* as the unique partner in that process (MacQueen, 1997, p. 178).

Spínola (1978, p. 304) is said to have refused the acceptance of the final document from the Dar-es-Salaam meeting, maintaining his position that the people of Mozambique should choose the political and social regime freely and democratically, and that *FRELIMO* should agree to the consultation of the population on their future, with that consultation being supervised by international observers. The final agreement for the independence of Mozambique, obtained in Lusaka on 7 September 1974, refused Spínola's intentions.[78] Almeida Santos refers to another attempt to convince the partners of the mutual convenience to hold an election or referendum that would give legitimacy to the transfer of power, in the conviction that *FRELIMO* would win it without any doubt. Obviously, the delegation from Mozambique invoked the precedent of the agreement with the *PAIGC*. Besides, they considered that such a consultation would give an opportunity to the last hour parties and to those who wanted an independence of a Rhodesian type since they had the political and military support for that. Nevertheless, the decisive argument was that the insistence on the popular consultation would lead to the continuation of the war. [Santos, 2006 (II) p. 89].

Spínola ratified the Agreement after its unanimous approval by the Council of State. As he explained, with the full conscience of a military collapse, that was the only solution to avoid national shame, which would have been even worse (Spínola, 1978, p. 306). According to

[77] Besides the meeting of Lusaka, Almeida Santos [2006 (II) p. 82] refers to the occurrence of a secret and inconsequent encounter in Amsterdam in which he took part.
[78] See the text of the Lusaka Agreement in Miranda (1978a, pp. 1024-1028).

the Agreement of Lusaka, the independence of Mozambique was solemnly declared on 25 June 1975.[79]

5. The Troubled Process in Angola

5.1. From the 25th of April to the *Alvor* Agreement

The case of Angola was different. In Guinea-Bissau and Mozambique, the exclusiveness of the *PAIGC* and *FRELIMO* as representatives of the people was undoubted and the idea of a popular consultation was peremptorily rejected in both cases. The situation in Angola was more complex, given the existence of three movements with political and military implantation on the ground and with international support from several entities.

When the Revolution of the 25th of April, 1974 broke out in Portugal, the military situation in Angola was not as desperate as in Guinea-Bissau or Mozambique, partly due to the division and rivalry among the liberation movements. Even so, the Portuguese Armed Forces had about 65,000 military in the territory. The political confrontation between General Spínola and the *MFA* about the decolonisation was particularly strong regarding Angola. After his plans for Guinea and Mozambique had been defeated, Spínola was determined to retain control of the negotiations with Angola (Maxwell, 2006, p. 213).

On 10 August 1974 the *Junta de Salvação Nacional* produced an official report on the decolonisation of Angola, proposed by Spínola and re-stating his thesis. Once the cease-fire was obtained, a provisional coalition government would be constituted. This would represent not only the liberation movements, but also the diverse ethnic groupings of the State of Angola, including the white ethnic group. That government would be in charge of making an electoral law based on the principle of 'one man, one vote', and have in view the election of a constituent assembly for a direct, universal and secret vote, before October 1976. That Assembly would elaborate the Constitution of the new State and define the links to maintain with Portugal (Correia, 1991, p. 86; Spínola, 1978, pp. 444-445).

[79] On Mozambique's independence process see Ferreira (1993, pp. 64-69); Pinto (2001, pp. 72-75); Santos [2006 (II) pp. 55-109]; Avillez (1996, pp. 307-313) and MacQueen (1997, pp. 157-193).

Until his resignation on 28 September, Spínola actively tried to regulate the Angolan decolonisation process. On 15 September, he met privately with Mobutu in Cape Verde. The strategy of Zaire's President, considered the strong man of the United States in the area, was to strongly support the *FNLA*. The private understanding between Spínola and Mobutu stayed secret, but according to Kenneth Maxwell, they had the common desire of neutralising, and if possible eliminating, the *MPLA* (Maxwell, 2006, p. 213).

A few days later, on 22 September, Spínola reaffirmed his will to take responsibility personally for the decolonisation process in Angola. On 25 September, he promoted a meeting in Lisbon with persons linked to the political and economic life of Angola, excluding the liberation movements, in which he reasserted his purpose of assuring a relevant role for the Portuguese settlers in the decolonisation process [Santos, 2006 (I) pp. 358-361]; (Correia, 1991, pp. 88-89). Three days later, on 28 September 1974, he left the Presidency. Meanwhile, the *MFA* moved in Angola, and on 18 September 1974, about 500 officials gathered in Luanda recognised that the movements that had struggled against the colonialist regime had to lead the decolonisation process (Ferreira, 1993, p. 71; Correia, 1991, p. 93).

5.2. From the *Alvor* Agreement to Independence

The problem, however, was the need for a mutual understanding among the three Angolan movements. A summit was held between the Portuguese authorities and the three liberation movements to find an agreement for the decolonisation of Angola. This took place in Portugal, in *Alvor (Algarve)*, on 15 January 1975. The *Alvor* Agreement established: **a)** the recognition of the liberation movements – the *FNLA*, *MPLA* and *UNITA* – as the sole legitimate representatives of the people of Angola; **b)** the recognition of the right of the people of Angola to independence; **c)** the recognition of Angola as one indivisible unit, within its present geographical boundaries, with Cabinda in that context being defined as an unalienable part of Angolan territory; **d)** the solemn proclamation of independence and full sovereignty of Angola on 11 November 1975; **e)** the establishment of a High-Commissioner and a Transitional Government until independence.

During the transition to independence, the Portuguese State would be represented by the High-Commissioner, and the Government of Transition would be chaired and driven by a collegial Presidency

composed of three elements (one from each liberation movement), with the remaining members chosen in equal proportion by Portugal and the three movements (Correia, 1991, pp. 125-128). Until October 1975, the Government of Transition would organise elections for the Constituent Assembly of Angola. Only the three liberation movements would be allowed to present the candidates and a Central Commission, also reporting to these three movements, would make practical preparations for the elections.[80]

António Almeida Santos [2006 (I) p. 395 and (II) pp. 174-176] has recently revealed that, when he participated in *Alvor* meetings as a Minister of the Portuguese Government, it was clear that the tripartite Presidency was unworkable. The election of a legislative assembly would not be possible with the voters divided between three liberation movements, each one with its own Army. With this in mind, he took the initiative of summoning an informal talk with the leaders of the three movements, where he suggested the possibility of a rotating President, Prime Minister and Chief of the High-Staff of the Armed Forces. The elections would be delayed until these arrangements had been formalized. Meanwhile, the Constitution for the new State of Angola would be approved by referendum.

The purpose of this suggestion was to avoid a scenario where the legislative elections descended into conflict. The three liberation movements would conjointly draw a draft of the Constitution to be submitted to referendum. However, Agostinho Neto insisted that any deal must be ratified by *MPLA*'s political bureau, which preferred the solution of the Agreements.

Soon after the *Alvor* Agreements, the *FNLA* took advantage of its military superiority in the north of Angola to attack the positions that the *MPLA* had taken in Luanda. As it developed, the civil war became general and international, with the *FNLA* and *UNITA* receiving support from the United States, Zaire and South Africa, and the *MPLA* gaining its support from the Soviet Union, Yugoslavia, Cuba and Congo-Brazzaville (Ferreira, 1993, p. 76).

In June 1975, at the height of the civil war, Almeida Santos made a proposal to review the *Alvor* Agreements. He called for a conflict resolution provision, which could be interpreted as giving him the power to mediate a negotiation process between the Portuguese Government and the liberation movements.

[80] The *Alvor* Agreement text is available in Miranda (1978a, pp. 1032-1041).

In synthesis, he proposed that: **a)** the electoral platform for a draft of the Constitution made by the three movements be substituted and submitted to referendum; **b)** this referendum would not count the vote according to parties; **c)** the new Constitution would assure the Constitutional legitimacy of the new regime and it should be provisional, temporary and transitory; **d)** a definitive draft would be submitted to an opportune popular consultation, by plebiscite or the election of a Constituent Assembly [Santos (II) pp. 176-178].

That plan received a positive reception from the Government and the President of the Republic in Portugal, but it did not obtain the support of the Angolan liberation movements. On 22 August, with war now becoming entrenched in Angola, the V Provisional Government declared the *Alvor* Agreement as suspended through Executive Law No. 458-A/75 (Miranda, 1978a, pp. 1042-1043).

At the end of October 1975, the military force of Zaire, supported by United States and Portuguese mercenaries, invaded the north of Angola in support of the *FNLA*. From the south, another attack was carried out by a combination of extreme-right Portuguese, South African troops, and a diverse group of people that included *UNITA*, auxiliary forces of the *FNLA* and dissidents of the *MPLA* (Correia, 1991, pp. 154-160). As Kenneth Maxwell wrote (2006, p. 231), it was the rest of the old Spínola-Mobutu plan in action. However, having received the aid from Cuban troops and weapons from the Soviet Union, the *MPLA* resisted in Luanda and, from there, proclaimed Angola's independence on 11 November 1975 (Correia, 1991, pp. 166-170).

6. Cape Verde and Sao Tome and Principe

6.1. Cape Verde

In Cape Verde and Sao Tome and Principe, where there was no colonial war, independence was obtained through the commitment of the election of constituent assemblies. This procedure was considered to be a form of hearing the popular will. In either case, the processes were different.

Cape Verde's circumstances were unique because of its strong links with Guinea-Bissau. Indeed, the *PAIGC* fought for the independence of both territories. Its founder, Amílcar Cabral, although born in Guinea,

had family roots in Cape Verde. Besides, the main leaders of the *PAIGC* were from Cape Verde.[81]

Despite avoiding a colonial war, Cape Verde was at the table of the first negotiations between the Portuguese Government and the *PAIGC*. The *PAIGC* accepted Portugal's proposal to separate both processes. In any case, the Algiers Agreement on Guinea-Bissau's independence contained two provisions concerning Cape Verde. In the first, the Portuguese State reaffirmed the right of the people of Cape Verde to self-determination and independence, according to United Nations resolutions, having in mind the General Assembly Resolution A/2918 (XXVII), of 14 November 1972, which recognised the *PAIGC* as the only and genuine representative of the people of Guinea and Cape Verde (Ferreira, 1993, p. 62) In the second, the Portuguese Government and the *PAIGC* considered that Cape Verde's independence, in the frame of the decolonisation of African territories under Portuguese rule, was essential for a lasting peace and a sincere cooperation between the Portuguese Republic and the Republic of Guinea-Bissau.

On 7 August 1974, while speaking about the induction of Cape's Verde Governor, António de Spínola (1978, p. 165) reaffirmed the view that the independence of that territory should be resolved by having a referendum. However, the *PAIGC* used its strong influence in the territory, organising mass demonstrations with the aim of gaining independence. On 14 September 1974, when Spínola landed in Cape Verde for meeting with Mobutu, hostile demonstrators were waiting for him, and his visit to the capital of the territory was cancelled [Santos, 2006 (II) pp. 233-234]. In his place, Minister Almeida Santos made the visit, and took the opportunity to suggest that a referendary consultation be made to the people of Cape Verde. He also floated the idea that a constituent assembly should be elected, which would be entrusted with drawing up a Constitution for the future State. He even approached that question with a member of the *PAIGC* leadership, Silvino da Luz, who pronounced against the referendum without excluding the idea of the constituent assembly [Santos, 2006 (II) p. 235]; (Lopes, 1996, p. 377).

While the talks with the *PAIGC* about independence remained inconclusive because the Portuguese Government refused to recognise this movement as its only partner in Cape Verde, the Portuguese Armed Forces in the territory acted decisively with the purpose of ending the process quickly. They sent an ultimatum to the Government of Lisbon

[81] See detailed information on the overall process that led to the independence of Cape Verde in Lopes (1996).

giving only a few days to transfer the sovereignty of Cape Verde to the *PAIGC*. Otherwise, they would make it locally [Santos (II) pp. 247-248]; (MacQueen, 1997, p. 147).

Under that pressure, Almeida Santos and Pedro Pires[82] found a solution that would be acceptable to both parties. According to the Portuguese Minister's proposal, if the *PAIGC* accepted a popular consultation, not necessarily a referendum, but possibly the direct and universal election of a constituent assembly that approved the sonstitution of the new State of Cape Verde and defined its political future, everything would be easier [Santos, 2006 (II) p. 249]; (Lopes, 1996, p. 403). The leadership of the *PAIGC* accepted the proposal, opening the way to the quick independence of Cape Verde, on 5 July 1975.

6.2. Sao Tome and Principe

In Sao Tome and Principe, the independence process was formally similar to that of Cape Verde. Both archipelagos had something in common: the fact of not having had colonial wars and the election of a constituent assembly. However, the processes that led to independence were different.

Sao Tome and Principe had a memory of repression. In 1953, the colonial authorities had cruelly repressed a social movement that refused to work in the cocoa plantations. In that massacre, known as the *Batepá* massacre, more than a thousand natives from Sao Tome were murdered.

In 1960 the *CLSTP* (Commitee of Liberation of Sao Tome and Principe) was founded and recognised by the African Unity Organisation in 1962 as a legitimate representative of the people of the archipelago. In 1972, the *CLSTP* changed its name to the liberation movement, *MLSTP* (*Movimento de Libertação de São Tomé e Príncipe)*. When the Portuguese revolution broke out in 1974, the leaders of the *MLSTP* were in exile in Gabon (Ferreira, 1993, p. 63).

On 28 August 1974, the Secretary General of *MLSTP*, Manuel Pinto da Costa, sent his first message to the people of Sao Tome and

[82] Pedro Pires was an outstanding member of *PAIGC* leadership, from Cape Verde, and one of the leading negotiators of Guinea-Bissau's independence. He was Prime Minister of Cape Verde between 1975 and 1991 and President of the Republic from 2001 to 2011.

Principe, via Radio Gabon. His goal was the full independence and the opening of negotiations between *MLSTP* and the Portuguese Government, with a view to the decolonisation of the territory (Cruz, 1975, pp. 84-90). On 12 October 1974, in a meeting in Sao Tome, the officials of the Portuguese Armed Forces declared *MLSTP* as the only interlocutor for the negotiations aimed at independence [Santos, 2006 (I) pp. 342-343].

On 26 November, the Portuguese Government and the *MLSTP* signed the Agreement. In that document, published on 17 December 1974 (Miranda, 1978a, pp. 1028-1032), the Portuguese Government reaffirmed the right of the people of Sao Tome and Principe to self-determination and independence and recognised the *MLSTP* as the sole interlocutor and legitimate representative of the people of Sao Tome and Principe. The High-commissary appointed by the Portuguese President and a Transitional Government chosen by the *MLSTP* had to prepare the election for 7 July 1975, and establish a representative assembly of the people of Sao Tome and Principe, endowed with sovereign and constituent powers, with the main function of declaring independence and drawing the future Constitution of the State (Cruz, 1975, pp. 101-107).

The achievement of this agreement was difficult. During the negotiations, the *MLSTP* insisted on independence with an automatic transfer of powers, with the argument that no other result would be acceptable to Gabon. However, an unexpected alliance among the Portuguese delegation, the Algerian Government, and the observers from the *PAIGC*, *FRELIMO* and *MPLA*, saved the agreement. All of them were interested in contradicting Gabon's intentions, which were francophone and committed with neo-colonialism (MacQueen, 1997, p. 150). The months before the independence were still troubled by divergences inside the *MLSTP* (Cruz, 1975, pp. 109-159; MacQueen, 1997, p. 151), but the elections for the Constituent Assembly took place on 7 July and the act of the official declaration of independence of the State of Sao Tome and Principe took place on 12 July 1975.[83]

7. The Special Case of East Timor

7.1. From the Portuguese Revolution to the Indonesian Invasion

[83] On the process of independence of Sao Tome and Principe, see Cruz (1975); Ferreira (1993, pp. 63-64); Pinto (2001, pp. 71-72); Santos [(II) pp. 263-289]; MacQueen (1997, pp. 147-152).

The territory of East Timor is part of Timor Island. The western part of the island has belonged to Indonesia since this country became independent from The Netherlands. Before the 1974 Portuguese Revolution, there were no significant autonomist movements there.

East Timor was not a priority for the decolonisation process when the 25th of April Revolution broke out. In the beginning of May, the Governor of the territory asked the *JSN* for instructions, having received the indication to proceed in agreement with the principles of the *MFA* Programme, considering the local conditions and trying to avoid damaging the relationship with Indonesia (Riscado *et al*, 1981, pp. 25-26).

Indonesia's official position did not demand the annexation of East Timor. That territory was not part of the Dutch colonial inheritance, so Indonesia did not have any territorial claim. However, there was a movement in that country that wanted to integrate East Timor into Indonesia (Riscado *et al*, 1981, pp. 27-28).

In June 1974, the claim for a referendum in East Timor appeared in Indonesia. It was to be held in March 1975. Regarding the possible outcomes, only independence would be opposed by Indonesia (Riscado *et al*, 1981, p. 28).

However, the political groups began to organise themselves in East Timor. The first to appear was *UDT* (*União Democrática de Timor*), which supported the right to self-determination with some connection to Portugal. After July 1974, there were three different factions in this movement: **a)** those who defended the situation before the 25th of April, and were against the referendum; **b)** those who defended an autonomy that was strongly connected to Portugal; **c)** those who defended the transition to independence in the frame of a community led by Portugal.

Consecutively, the *ASDT* (*Acção Social Democrata Timorense)* appeared, followed by the *FRETILIN* (*Frente Revolucionária de Timor Leste Independente)*, an anti-colonialist movement that wanted independence, and had a revolutionary faction that opposed the referendum. Finally, there was the *APODETI*, which defended integration into Indonesia and the referendum (Riscado *et al*, 1981, pp. 31-33).

On 19 October 1974, the Minister Almeida Santos [2006 (II) pp. 297-298] visited the territory and set out the several possibilities for its future. He viewed total independence with some scepticism due to the economic weakness of the territory, but floated the idea of a connection to

Indonesia. The other possibility was maintaining a connection to Portugal, which he saw then as the most probable solution. However, the people of the territory should choose the solution by vote. The Portuguese Government would ensure that the people of East Timor could freely choose their country's destiny (Pires, 1981, pp. 22-23).

For that purpose, Almeida Santos announced the methodology to follow by the Portuguese Government. A law would be published to legalise the local political parties. Next, an electoral law based on the principle of 'one man, one vote' would be published and an electoral registration process would be carried out. After a period for debate and confrontation between the different positions, a popular consultation would be held under a wider surveillance, including UN observers. The vote could be either a plebiscite or the election of a constituent assembly. Almeida Santos [2006 (II) pp. 298-299] said he would prefer the second option.

On 3 December 1974, before the General Assembly of the United Nations, Minister Almeida Santos renewed the Portuguese intention of holding a referendum to freely determine the will expressed by the people of East Timor. The Portuguese Government would respect the result of that referendum, but the Minister maintained his scepticism about the viability of independence [Santos (II), p. 317].

In the beginning of December, the Portuguese Government sent a draft of organic statute to the territory. The *FRETILIN* did not accept it. The *UDT* accepted it and proposed a referendum for July 1975. The *APODETI* thought that the statute was dispensable and wanted a referendum in October 1975 (Pires, 1981, p. 39). Meanwhile, the signs of Indonesian interference in East Timor's political process, supporting *APODETI*, became clear. This movement was divided between those who simply supported the annexation of the territory to Indonesia and those who admitted such an option if taken by referendum (Pires, 1981, p. 43).

On 25 January 1975, the *UDT* and *FRETILIN* created a coalition for independence, having as its main purposes: **a)** achieving total independence; **b)** the rejection of *APODETI*; **c)** the rejection of integrating another foreign power; **d)** the recognition of Portugal as the only interlocutor; **e)** the formation of a Transitional Government through negotiations among the Portuguese Government, *FRETILIN* and *UDT* (Pires, 1981, p. 44).

In February 1975, it was rumoured that Indonesia might be preparing an invasion of the territory. However, on 18 February, the

UDT/*FRETILIN* coalition established direct contacts with the Government of Lisbon, proposing namely the election of a constituent assembly to decide the future of the territory within two years (Pires, 1981, pp. 48-49, 77-78).

In the framework of the negotiations on the decolonisation of Timor, a summit in Macau was scheduled for 15 June. However, on 27 May 1975, after a visit of some of their leaders to Indonesia, the *UDT* decided to break the coalition with *FRETILIN*, invoking the prevalence of the hard line at this movement. With the break of the coalition, the *FRETILIN* refused to take part in the meeting in Macau, from which resulted Law No. 7/75, of 17 July, which approved the organic statute of the territory.

As laid down in Law No. 7/75, the future of Timor was committed to a popular assembly, representative of the people of the territory, elected by a direct, secret and universal vote. The election should be on the third Sunday of October 1976. Independence would be proclaimed on the third Sunday of October 1978 (Riscado *et al*, 1981, pp. 157-170).

However, in August 1975, the situation became worse in the territory as tensions increased between the *UDT* and the *FRETILIN*. On 11 August, the *UDT* attempted to take power by a military coup, having occupied some military barracks and taking control of the Police in Dili. The aim was to ban the *FRETILIN*, to annul the Agreements of Macau and to establish negotiations with the Portuguese Government for independence under its control (Pires, 1991, pp. 181-231).

Before the absence of military reaction from the Portuguese authorities, the natives of Timor, who were the majority of the military contingent in the territory, began to occupy the respective barracks, on 17 August, and declared their support of the *FRETILIN*. In a few days, this movement began a counteroffensive and took control of almost the entire territory. The Governor and the military of Portuguese origin, were only able to secure their own defence, and took refuge in the neighbouring island of *Atauro* (Riscado *et al*, pp. 173-214; Pires, 1981, pp. 228-248; Pires, 1991, pp. 233-265).

In open Timorese civil war, the President of the Republic asked Almeida Santos, who was no longer in the Government, to try to broker peace between the *UDT* and the *FRETILIN*. However, the contacts with

Australia, Indonesia and the United Nations had no remarkable results [Santos, 2006 (II) pp. 370-380].

From *Atauro*, Almeida Santos tried to convince the *FRETILIN* to release 23 Portuguese prisoners and to accept the popular consultation foreseen in the Agreement of Macau, which would be supervised by observers from Portugal, the United Nations, Indonesia and Australia. *FRETILIN*, which clearly controlled the territory, agreed to release the prisoners, but refused the referendum.

On 28 November 1975, the *FRETILIN*, which controlled almost all of the territory, proclaimed the independence of the Democratic Republic of East Timor. At the same time, the *UDT* and *APODETI* declared the integration into Indonesia (Riscado *et al*, 1981, pp. 217-243, 253-257; Pires, 1981, pp. 287-315). A few days later, on 7 December 1975, Indonesia invaded the territory of East Timor, annexing it by force and sparking a genocide that sacrificed about 200,000 lives.

During the very day of the invasion, the Portuguese Government decided to break diplomatic relations with Indonesia and to appeal to the United Nations to obtain the end of the military intervention of that country. It also asked for a peaceful and negotiated solution of the conflict that would proceed with the decolonisation process under its aegis.

7.2. The Resistance Against the Occupation

Soon after, on 12 December 1975, the General Assembly of the United Nations approved the Resolution 3485 (XXX) with 72 votes for, 10 against and 43 abstentions.[84] On 22 December, the Security Council approved the Resolution 384 (1975) requesting the Secretary General to urgently send a special representative to East Timor and to follow the implementation of the Resolution.[85]

On 29 December 1975, the Secretary General of the United Nations appointed Vittorio Winspeare Guicciardi as special representative. His first visit to the territory occurred between 20 and 22

[84] Available at:
http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/98/IMG/NR000198.pdf?OpenElement [Accessed 19 May 2011].
[85] Available at:
http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/782/32/IMG/NR078232.pdf?OpenElement [Accessed 19 May 2011].

January 1976, without authorisation to visit areas under control by the Democratic Republic of East Timor. After that visit, the special representative reported to the Security Council that there was a common acceptance that the people of Timor should be consulted about their future, but that the consultation element was divergently interpreted. The Government of the Democratic Republic of East Timor suggested a referendum based on the principle of 'one man, one vote', to take place after the withdrawal of all Indonesian forces and their replacement by an international force, offering a choice between integration into Indonesia or independence with *FRETILIN*. The Portuguese Government was in favour of a referendum after the withdrawal of the Indonesians and the arrival of an international force, but it thought the people of East Timor should decide on their own on the process of making that referendum, possibly in agreement with Law No. 7/75. The Provisional Government, which exercised power in the territory, declared that the people had already exercised their right to self-determination and considered East Timor as part of Indonesia (Riscado *et al*, 1981, pp. 225-226).

On 22 April 1976, the Security Council approved Resolution 389, demanding the withdrawal of the Armed Forces of Indonesia.[86] That Resolution had the abstentions of Japan and the United States of America. During the next month, the 'Provisional Government' considered that any referendum concerning the future of East Timor to proclaim the integration into Indonesia was not necessary. On 17 July 1976, the Indonesian Parliament proclaimed East Timor as the 27th province of Indonesia (Teles, 1999, pp. 383-385).

Year after year, from 1976 up to 1982, the General Assembly of the United Nations approved Resolutions on East Timor. However, insofar as the occupation persisted, the favourable votes had a tendency of reducing and the votes against increased (Pires, 1991, p. 370). The recognition of the occupation by the United States in October 1977 and by Australia in January 1978, certainly contributed to that.

However, the Indonesian occupation ended after about 25 years. The Indonesian withdrawal had four main reasons. The first was the resistance of the Timorese people towards the occupation. The second was the diplomatic action of Portugal and other *CPLP* countries that never stopped raising the issue of East Timor in all the international

[86] Available at: http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/294/77/IMG/NR029477.pdf?OpenElement [Accessed 19 May 2011].

organisations where they had the possibility of doing it. The third was the constant lobbying of human rights organisations, and of several personalities that, with their testimonies, highlighted the issue of East Timor to international public opinion. Finally, in the final years of the 20th century, the political evolution in Indonesia created conditions where the country could accept its withdrawal from the territory.

7.3. The Claim for the Referendum

After a long process of resistance and international solidarity, the claim for a referendum, which allowed the Timorese people to choose between independence and integration into Indonesia, reappeared near the end of the 1980s. On 4 July 1988, the Political Affairs Committee of the European Parliament adopted a draft resolution on East Timor exhorting the European Council and the European Commission to take initiatives in order to organise a referendum [Cardoso *et al*, 1991 (I), p. 61].

On 16 April 1989, the Bishop of Dili, Ximenes Belo, addressed a letter to the Secretary General of the United Nations, Perez de Cuellar, requesting the accomplishment of a referendum to hear the people as to their future [Cardoso *et al*, 1991 (I), p. 158]. This proposal by Dom Ximenes Belo was a matter of debate in several forums and received a lot of international support. On 16 August 1989, in the meeting of the UN Special Committee of 24 on Decolonisation, representatives of other countries, namely Australia, Japan, Canada and the United Kingdom, supported the Portuguese positions, suggesting a plebiscite under the aegis of the UN to define the future of East Timor [Cardoso *et al*, 1991 (I), p. 198].

In October 1989, the commander of the armed resistance, Xanana Gusmão (1994, pp. 73-74), wrote a letter in the mountains of Timor, expressing his total support of Bishop Ximenes Belo's proposal. A referendum should have presupposed: **a)** the cessation of hostilities; **b)** the adoption of international juridical mechanisms to verify, control and make the process possible; **c)** the respect for the supreme wishes of the people of East Timor, expressed in free and democratic conditions. If, in those conditions, the people of East Timor accepted the integration into Indonesia, Gusmão declared his willingness to lay down arms.

In the beginning of July 1990, the Indonesian Foreign Minister, Ali Alatas, during a visit to Japan, received an appeal to referendum, from the Japanese Coalition 'Free East Timor' [Cardoso *et al*, 1991 (I) p. 315]. On 11 August 1990, the representative of the International Pax Christi near the UN, who intervened in the Committee on Decolonisation,

formally requested a referendum in East Timor under the auspices of the UN [Cardoso *et al*, 1991 (I) p. 327]. On 8 February 1991, the international organisation 'Parliamentarians for East Timor' sent an appeal to Perez de Cuellar for a referendum in East Timor as requested by the Bishop of Dili [Cardoso *et al*, 1991 (I) p. 390]. On 27April 1991, in Portugal, Ximenes Belo reaffirmed his proposal. The Governor of East Timor, Mário Carrascalão, who considered the referendum in the territory as completely out of question for the Government of Jakarta, refused the idea [Cardoso *et al*, 1991 (I) p. 430].

On 15 September 1991, the representative of the resistance abroad, José Ramos Horta, defended a referendum in Timor at the same time of the legislative elections in Indonesia in 1992 [Cardoso *et al*, 1991 (I) p. 514]. During that same month, the European Parliament passed a report drawn by the British MP Derek Prag, saying that the European Community should press Indonesia to accept a free referendum in East Timor, under the supervision of the UN [Cardoso *et al*, 1991 (I) p. 517]. On 12 November 1991, the images of a massacre perpetrated by the Indonesian Army, in *Santa Cruz*'s cemetery in Dili, during the funeral homage to Timorese resistants murdered days before, gave a new international dimension to the Timorese issue and weakened Indonesia's position.

7.4. The 1999 Referendum and the Re-Establishment of Independence

In May 1998, Indonesian dictator Suharto stepped down after 32 years in office, and was replaced by B. J. Habibie, who brought a new attitude to the issue of East Timor. In June 1998, Indonesia informed the Secretary General of the United Nations and Portugal of its intention to give a wide autonomy to East Timor, with Jakarta retaining only the control of foreign affairs, external defence, and some aspects of monetary and fiscal policy. In August, the Foreign Ministers of Portugal and Indonesia began talks on a possible autonomy, leaving aside the question of the final status of East Timor. Indonesia viewed autonomy as a final solution. Portugal considered it as a transitional arrangement pending the eventual exercise by the people of East Timor of their right to self-determination (UN, 2000, p. 6).

On 27 January 1999, President Habibie announced that, if the people of East Timor did not agree to be part of Indonesia based on the autonomy plan in discussion, they could separate from Indonesia. The Secretary General of the United Nations and Portugal welcomed that

declaration (UN, 2000, p. 7); [AR, 1991 (I) pp. 503-505]. By admitting the separation from Indonesia as the 'second option' if the Timorese rejected the proposed autonomy, Habibie gave a unique opportunity to solve the problem of East Timor.

On 7 and 8 February 1999 the Ministers Jaime Gama of Portugal and Ali Alatas of Indonesia agreed that the autonomy plan should be presented to the East Timorese people as a choice of the final solution. Accepting Indonesia's proposal for autonomy would mean permanent integration within Indonesia. A rejection of the proposal would represent an irreversible step towards independence (UN, 2000, p. 8).

On 10 and 11 March the two Foreign Ministers agreed that there should be a direct ballot in which all East Timorese of voting age, both those living in and outside East Timor, would accept or reject a status of permanent autonomy from Indonesia. On 5 May 1999, Portugal and Indonesia signed three agreements in New York: the Constitutional framework for autonomy as submitted by Indonesia, an agreement regarding the modalities for the popular consultation and a broad agreement on security arrangements (UN, 2000, p. 9; Teles, 1999, pp. 392-396).

The main agreement requested that the Secretary General put the proposed Constitutional framework to the East Timorese people for their acceptance or rejection. In case of their acceptance, Indonesia would initiate the Constitutional measures to implement the autonomy framework, and Portugal would initiate the procedures necessary for removal of East Timor from the list of Non-Self-Governing Territories before the UN General Assembly. If the East Timorese rejected the proposed autonomy, Indonesia would take the Constitutional steps to terminate its links with East Timor. In this event, Indonesia, Portugal and the Secretary General would agree on the arrangements for a peaceful and orderly transition towards independence (UN, 2000, p.10). 8 August 1999 was set as the ballot date for the popular consultation.

The agreement on security arrangements gave Indonesia the responsibility to ensure a secure environment devoid of violence and intimidation during the popular consultation. Meanwhile, the political and military sectors of Indonesia, who refuted the possibility of independence, supported the creation of pro-integration militias in the territory. Even before the agreements of 5 May 1999, and more intensively after that, they spread violence and intimidation against pro-independence activists (Martin, 2001, pp. 56-59).

On 7 May 1999, the UN Security Council, through Resolution 1236, requested the Secretary General to provide detailed plans for the popular consultation and establishment of a mission in the territory. On 22 May, the Secretary General proposed the establishment of the UN Mission in East Timor (UNAMET) to the Council, which would carry out its tasks objectively and impartially. The UNAMET would cooperate with the Indonesian authorities, but it would only accept instructions from the United Nations. There were 200 registration centres inside the territory, for registration and polling, and 13 external voting centres (five in Indonesia, four in Australia, and one each in Portugal, Mozambique, Macau and the United States). For the polling, the registration centres were subdivided into 700 polling stations. UNAMET accredited more than 2,000 observers. In order to ensure complete transparency of the consultation process, the Secretary General created an independent Electoral Commission with three eminent jurists.

The planning operations would take place between 10 May and 15 June. The public information programme and voter education would extend from 10 May to 5 August. Preparation and registration was set for between 13 June and 17 July. The exhibition of lists and a period for challenges as well as decisions on challenges and complaints would extend from 18 to 23 July. There would be a political campaign from 20 July to 5 August, followed by a two-day cooling off period. Polling day would be 8 August (UN, 2000, pp. 14-15).

The lack of security in the territory, because of the violence and intimidation actions made by the militia against independence, having in many cases the complicity and the support of Indonesian military forces, delayed the registration process. Because of that situation, the UN Secretary General, in his report dated 22 June, postponed the ballot date for two weeks (UN, 2000, p. 28). In 29 June and 4 July, pro-integration militia attacked an UNAMET office and a humanitarian convoy. After that, there were strong protests and heavy international condemnation against Indonesian authorities, requesting the immediate end to the violence.

The registration process, initially planned to begin on 13 June, began on 16 July. This delay required a new postponement of the ballot date to 30 August. In spite of the violence and intimidations, which continued even during the registration process, 451,796 Timorese enrolled for the popular consultation.

On 30 August 1999, 446,953 East Timorese (98.6% of all those registered) cast their ballots within and outside the territory. The counting of the ballots, centralized in Dili, began at 6 a.m. on 31 August and finished at 6 p.m. on 4 September. At 9 a.m., the Special Representative of UN Secretary General, Ian Martin, read out the results in Dili. The Secretary General simultaneously informed the Security Council of the result in open session in New York. 94,388 (21.5%) Timorese accepted the special autonomy proposed. 344,580 (78.5%) rejected it.

The security situation in East Timor deteriorated rapidly after the ballot. The violence of the militia intensified, not just against the Timorese population (forcing hundreds of thousands of people to abandon their houses and to take refuge in the mountains or in West Timor) but also against the staff and offices of the UNAMET. The situation deteriorated to such an extent that, on 8 September, the United Nations decided to relocate their mission to Darwin, Australia.

Meanwhile, on 6 September, the Security Council sent a mission to the Indonesia Government to relay its concerns about the post-ballot violence. The mission arrived in Jakarta on 8 September. Strongly pressed by the United Nations, and under the threat of being held responsible for crimes against humanity (UN, 2000, p. 49), Indonesia finally accepted the Constitution of a multinational force to intervene in the territory. On 12 September, the Security Council authorised the creation of the International Force East Timor (INTERFET) under the command of Australia, which entered in the territory on 20 September.

On 19 October, Indonesia formally recognised the result of the popular consultation. On 25 October, the Security Council, through Resolution 1272 established the United Nations Transitional Administration in East Timor (UNTAET). On 31 October, Indonesia's last troops left the territory. On 1 December, Xanana Gusmão returned to East Timor. On 20 May 2002, the Democratic Republic of East Timor was formally restored (Martin, 2001).

Part IV

The Referendum in the Portuguese Democracy

Chapter 1

The Constitutional Referendum

1. Palma Carlos's Proposal (1974)

1.1. The Circumstances

In June 1974, a proposal for a Constitutional referendum introduced by the Prime Minister of the First Provisional Government, Adelino da Palma Carlos, resulted in the first political crisis of the Portuguese democracy, and culminated in his resignation. Adelino da Palma Carlos was a civilian, a legal academic and an opponent of the dictatorship. Considered to be a liberal conservative, he was chosen by the President of the Republic, General Spínola, to lead the First Provisional Government. The military Junta of National Salvation, which was entrusted to assume power on the night of 25 April 1974 by the *MFA* Coordinating Council that led the military coup, approved the Government's Programme by Executive Law.

Besides the compromised nature of the Government, which united people with different conceptions and perspectives as to the revolutionary process, it soon became obvious that the Government was in the epicentre of a confrontation between General Spínola and the *MFA* Coordinating Council. They diverged deeply over decisive questions about the revolutionary process, such as the democratisation of the country and the solution to the colonial problem.

The clash between Spínola and the *MFA* became evident in several public addresses by the President of the Republic, who did not hide his dissatisfaction over the country's direction. These disagreements were reflected inside the Government. After the first three weeks, misunderstandings were rife. (Osório, 1988, p. 93).

On Spínola's insistence, Palma Carlos proposed to change Law No. 3/74, which defined the provisional Constitutional structure based on the *MFA* Programme, in order to modify the balance of powers between the Government and the President. The purpose of the Prime Minister was

to accomplish the Presidential election as quickly as possible and to hold a referendum to approve a Provisional Constitution giving the Chief of State and the Executive the power needed to execute some of the provisions of the *MFA* Programme (Osório, 1988, p. 95).

Armed with Palma Carlos's proposals, Spínola chaired a meeting of the *MFA* Coordinating Council, which was attended by ministers and members of the Junta of National Salvation. With the support of the ministers Sá Carneiro and Vasco Vieira de Almeida, he introduced a catastrophic description of the political and economical situation of the country. In addition to that, he violently attacked the *MFA* Coordinating Council and proposed that the Constitutional referendum and the direct election of the President of the Republic take place simultaneously on 3 October 1974. The election of the Constituent Assembly would take place until 30 November 1976.

On behalf of the Coordinating Council, Colonel Vasco Gonçalves contradicted Spínola's thesis, leading to a violent exchange of words. According to Vasco Gonçalves (Cruzeiro, 2002, pp. 82-84), the meeting ended with a draw: Spínola did not reinforce his powers and the Coordinating Council maintained its positions.

On 4 July, the Council of Ministers discussed the national political situation, having had a general discussion on that theme [Santos, 2006 (I) p. 298]. On 5 July, Palma Carlos introduced two documents to the President. The first was an appraisal of the *MFA* Programme, and the second was a draft amendment to the Constitutional law No. 3/74. On that same day, and upon Spínola's request, he went to the Council of State to introduce those documents and submit them to his appraisal.[87]

On 7 July, the *MFA* Coordinating Council, gathered in Lisbon and expressed its rejection of Palma Carlos's plan. On 8 July, the Council of State unanimously rejected those proposals. On 9 July, Adelino da Palma Carlos announced his resignation to the Council of Ministers (Osório, 1988, pp. 241-249).

1.2. The Reasons

In the document on the *MFA* Programme, Palma Carlos enunciated the main problems that he believed prevailed in the Portuguese situation: the social indiscipline, the short term risk of degradation of

[87] Both documents are published in Osório (1998, pp. 101-119) and Miranda [1978a (II) pp. 1153-1168].

economic life, and the subsistence of the colonial war (Osório, 1988, pp. 102-104). Palma Carlos considered that the *MFA* Programme was outdated, since it was inadequate, and lacked ideas to alleviate the economic and social disturbances or solve the problem of the colonial war. In his opinion, only the President of the Republic and the Government were able to remove such obstacles (Osório, 1988, p. 106).

There was a question of timing. The *MFA* Programme left the decision on essential matters up to the Constituent Assembly, which had been elected until 31 March 1975 and had a deadline of 180 days to draft the Constitution. There would hardly be a democratic and legitimate Government before the beginning of 1976. For Palma Carlos, it was not possible to wait so long to take essential decisions, so he believed that the election should take place as soon as possible (Osório, 1988, pp. 106-108). There were three main possibilities to choose from. The first was the immediate election of the Constituent Assembly. The second was the immediate election of the President of the Republic. The third was to instantly hold a referendum based on a concrete proposal to overcome the crisis.

Palma Carlos readily excluded the first hypothesis. Firstly, it was not possible to hold elections in short term because the public administration had not been replaced, the balance among all the political parties had not been established, and the country was in the middle of an economic crisis that would be worsened by a dramatic electoral campaign. The second idea was excluded because the Constituent Assembly could not be elected while the overseas problem was not solved, regarding the representation of those territories in the Assembly. And finally, legitimate democratic elections would require an electoral law, a law on political parties, and the law on the electoral registration (Osório, 1988, pp. 109-110).

Palma Carlos considered the proposal for the President's immediate election to be justified, since the current President was the only person capable of obtaining the support of the great majority of the Portuguese people and had enough prestige to promote decolonisation. However, a President needed a Constitution. Otherwise his election would be a mere attribution of the supreme power to a certain chief, which reminded of the 'elections' of Óscar Carmona in 1928 and Sidónio Pais in 1918. For that reason, he proposed simultaneous elections on the referendum on a provisional Constitutional draft that replaced Law No. 3/74 (Osório, 1988, p. 110).

Palma Carlos concluded his explanation by refuting comparisons with the sad memory of the 1933 plebiscite, pointing out the provisional nature of the draft. The provisional Constitution could be submitted to referendum in the overseas territories, and the improvisation of the electoral operations would become less of a concern (Osório, 1988, p. 111). In either case, the passing of the Constitution would necessarily involve the delay of the Constituent Assembly's election for a few months, which would, in turn, delay the making of the definitive Constitution.

1.3. The Contents

Palma Carlos proposed that, up to 31 October 1974, there would be a referendum in order to pass a draft of the Provisional Constitution of the Portuguese Republic. This Constitution would come into force with the definitive Constitution made by the Constituent Assembly foreseen in the *MFA* Programme.

The Provisional Government would submit the draft of the Provisional Constitution to the Council of State by 31 July, in order for it to be passed by 31 August. The Provisional Constitution would be enforced until the Constitution made by the Constituent Assembly was approved by referendum, which had to be before 30 November 1976.

In the Constitutional referendum, the citizens were asked to give a straight yes/no answer to the following question: 'do you approve of the Provisional Constitution of the Portuguese Republic, which allows the President of the Republic and the Government to solve the serious national problems of our time and which will be enforced for a limited period until the approval of the definitive Constitution?' Together with the Constitutional referendum, the Portuguese people would choose the President of the Republic by universal, direct and secret suffrage.

1.4. The Reactions

Palma Carlos's proposal was opposed by the *MFA* Coordinating Council and the left wing of the Junta, led at that time by Costa Gomes. Among the political parties, the Communist Party (*PCP*) was strongly against it and the Socialist Party (*PS*) clearly distanced itself from it. Support came from Spínola loyalists and from the Popular Democratic Party (*PPD*). It is true that the *PPD* did not officially support Palma Carlos's plan, but the ministers from this political area resigned in solidarity with him. The *PPD* leader, Sá Carneiro, actually had a real and direct involvement in Palma Carlos's operation, by openly showing his

participation in the *MFA* Assembly on 13 June, where he exposed a catastrophic picture of the country's situation (Cunhal, 1976, p. 141; Cruzeiro, 2002, p. 82). Costa Gomes (Cruzeiro, 1998, p. 235) and Almeida Santos [2006 (I) p. 295] even expressed the conviction that Sá Carneiro would have been the true initiator of the so-called 'Palma Carlos coup'.

The reception of Palma Carlos's proposal by the Council of State was not good. Diogo Freitas do Amaral (1996, p. 211) States that the Council unanimously approved the proposal that sought the reinforcement of the Prime Minister's powers, giving way to Law No. 5/74, of 12 July, but also unanimously refused the other proposals, including the Constitutional referendum. The day after Palma Carlos resigned. However, he still achieved support from the ministers Sá Carneiro, Magalhães Mota, Vasco Vieira de Almeida and Firmino Miguel, along with the socialist Raul Rego in the beginning. The latter, however, knew the positions of his comrades Mário Soares and Salgado Zenha, and changed his position, which gave rise to bitter recriminations from the Prime Minister and to a sour exchange of words between them (Amaral, 1996, p. 336).

Almeida Santos [2006 (I) p. 300] points out that the communist leader, Álvaro Cunhal, was one of the first ministers to express his position in the Council of 9 July, having refused to follow Palma Carlos, in both the motivation or the resignation. Concerning that, Cunhal (1976, p. 140) wrote that Spínola was the true abetter of the Palma Carlos coup. The scheme was simple. The Council of State would give full powers to General Spínola through the Prime Minister, who had no influence besides the position that he carried out during his incumbency. Within three months there would be an electoral masquerade to confirm the General as President, who was no longer appointed by the *MFA*, but chosen through 'universal suffrage', having therefore 'legitimacy' against the *MFA* to assume full powers. A Provisional Constitution that would postpone the elections for the Constituent Assembly for November 1976 would also be approved.

Carlos Brito (1999), then member of the *PCP* leadership, wrote about the event 25 years later and reaffirmed his conviction that the coup consisted in an attempt to change the powers that the *MFA* had delegated to the President, by plebiscite. This would give absolute powers to General Spínola and neutralize the *MFA.* He also says that when the Political Commission of the *PCP* obtained knowledge about the presentation of Palma Carlos's proposal in the Council of State, it

requested meetings with its civil members to advise them on the dangers of that plan.

The socialist ministers also showed their opposition to the proposal. Salgado Zenha said, 'it is known how a dictatorship begins, but never when it ends'. Mário Soares considered the President's premature election as wrong, inconvenient and contrary to the *MFA* Programme, and that the approval of a Provisional Constitution by referendum would set a serious and undesirable political precedent [Santos, 2006 (I) p. 300].

Mário Soares (Avillez, 1996, p. 335) says that Palma Carlos explained his plan to him one month after the Government's formation, but that he disagreed with it. Without a Constitution, it would be necessary to have legislative elections prior to the popular mandate, which allowed for the legitimate drawing of a new Constitution. It should be the new Constitution that determines if the President of the Republic would be directly or indirectly chosen by the people. Soares considered that everything was set out for a plebiscite for President Spínola, and the disastrous example of Sidónio Pais was still in mind. The legitimacy gained from presidential elections would inevitably suffocate the political parties.

The Counsellor of State, Diogo Freitas do Amaral, had a very surprising position, given his political proximity to Spínola and Palma Carlos. His refusal would have contributed to the unanimity of that body against the proposal. As he explains (Amaral, 1996, p. 211), if the proposal had been approved, the *MFA* would be dissolved, Spínola's personal authority would be greatly reinforced, and the regime would be defined in practice as an 'almost-presidentialist' Gaullist type, with the aggravated circumstance of the lack of a parliament to scrutinise it, something that De Gaulle always maintained. Furthermore, the election of the deputies would be postponed for a year and half, also postponing the drafting of the new Constitution for an equal period of time.

Freitas do Amaral (1996, p. 211) based his opposition on three ideas: first, the balance of powers in the Council of State condemned and refused the proposal. Second, neither the *PS* nor the *PPD* were publicly and clearly committed to it. Finally, the proposal would lead to a military presidential system, and Freitas do Amaral favoured a civil parliamentary system.

António de Almeida Santos explains that the *MFA* and the emerging political forces could hardly accept the proposal because of eight reasons: **1)** the appeal to the Constitutional referendum was

susceptible to suspicion in a country still traumatised by the *soit disant* referendum on the 1933 Constitution. **2)** The resistance to a 'yes' or 'no' referendum – as referendums should be – was understandable given the length and complexity of the question. **3)** The formulation of the question clearly induced a certain answer. **4)** The Government was an interested party, because the reinforcement of its powers was in question, and the Council of State, with military majority, was an interested party too. **5)** The referendum was able to arouse reserves as a normal form of exercising the sovereignty of the Nation, side by side with the elections, in a country without any tradition in that domain. **6)** The President would be the only sovereign organ legitimated by a universal, direct and secret suffrage, thus giving him the legitimacy that would arouse the fear of personal power. **7)** The transitory period would finish in a reasonable forecast, in the second half of 1977, which would be enough time for the imagined crisis, thus justifying emergency measures. **8)** The fundamental basis of the *MFA* complaint was that the scheme would undermine its proclaimed role as the 'engine of the revolution and warranty of the political unit', leaving it out of the programmed system. The *MFA* was not ready to leave the political scene so early.

Palma Carlos's proposal did not obtain doctrinaire supports either. Luís Barbosa Rodrigues (1994, pp. 128-129) points to the disagreement of the proposal with the *MFA* Programme that gave the fullness of the constituent power to the Constituent Assembly. Before the making of the definitive Constitution, the referendum would limit the powers of the Constituent Assembly. The terms proposed for the referendum did not give the voting any guarantees of authenticity. The previous presidential election would give way to a presidential system. Finally, the proposal, when interconnecting the referendum and the presidential election effects, was like a plebiscitary vote of confidence towards the President and the Government (Duarte, 1987, p. 236).

1.5. Critical Analysis

The relationships between General Spínola and *MFA* were always difficult. Spínola was not a man from the *MFA* and his appointment as President of the Junta of National Salvation on the night of 25 April 1974 resulted much more from his own initiative than from the spontaneous will of the Movement. No wonder, then, the divergences between the General and the *MFA* Coordinating Council had been expressed early on in the meeting that lasted the whole night, from the 25th to the 26th of April. From that moment and until Spínola's resignation from the position of President on 28 September, the revolutionary process

and decolonisation remained on a collision course. The Palma Carlos coup was the first serious incident of that confrontation.

The main purpose of Palma Carlos was to reinforce the powers and the legitimacy of the President before the *MFA*. For that very reason, the first priority was the direct election of the President at the same time as the referendum on a Provisional Constitution, thus changing the terms of the *MFA* Programme significantly. At stake was more than the chronological order of the elections. The proposal was essentially for a plebiscite on Spínola, with the intention of imposing a conception of the revolution and decolonisation process that was different from the *MFA*'s.

In fact, according to Palma Carlos (Osório, 1988, p. 96), decolonisation was the decisive question for his resignation as Prime Minister. The only proposal by Palma Carlos that was accepted by the Council of State allowed the Prime Minister to choose the governmental cast. However, on the very same day, the Council of State passed a diploma that allowed for decolonisation without consulting the indigenous populations, which Palma Carlos considered unConstitutional. This meant the immediate recognition of the independence of the overseas territories.

It was clearn from the start that Palma Carlos's attempts to exorcise the ghosts of referendums past would raise more questions than they answered. The ghost of the 'elections' of Sidónio Pais in 1918 and Óscar Carmona in 1928 could be exorcised by simultaneously holiding a Constitutional referendum and a presidential election, so that the election was not seen as a mere attribution of the supreme power, although limited, to certain chief. The referendum argument, however, awakened another ghost: the Constitutional plebiscite of 1933. In an attempt to reassure people that the 'sad memory of that referendum' (in Palma Carlos's words) would not be repeated, Palma Carlos pointed to the provisional nature of the draft to approve. The argument was not strong given that, according to the draft of the Provisional Constitution, the definitive Constitution, which the Constituent Assembly would approve, should also be submitted to referendum. However, despite the arguments, the question around Palma Carlos's proposal was above all the option between Spínola and the *MFA*.

Despite Palma Carlos's attempts to exorcise the ghosts, the truth is that they were unavoidably present in the plebiscitary nature of the operation. The analogy with the presidential elections of 1918 and 1928, and with the Constitutional referendum of 1933, was the fact and it was not bearable in a country just freed of a dictatorship that had been 'legitimated' in that way. Furthermore, since there was no electoral law or

electoral registration made in democracy, the electoral operations would be commanded by the rules of 1946, with an electoral universe that was democratically unsatisfactory.

On the other hand, the delay of the Constituent Assembly election until the end of 1976 would contradict the aim of the political implantation of the emerging parties. These would be delayed to affirm themselves in the political scene in contrast to the legitimating degree afforded the President. The proposal came out to a military presidential system worsened by the lack of a parliament that could scrutinise it.

1.6. The Consequences

The immediate consequences of the refusal of Palma Carlos's proposal were the resignation of the Prime Minister and some ministers, and the appointment of a new Prime Minister with the *MFA*'s confidence, Colonel Vasco Gonçalves, and six military ministers. President António de Spínola's political position came out frankly weakened. The dynamics of the revolutionary process changed, and the decolonisation process would be unblocked with the publication, a few days later, of Law No. 7/74, of 27 July. António de Spínola resigned by the end of September 1974 and the election of the Constituent Assembly took place on 25 April 1975.

2. The Proposals for a Referendum on the 1976 Constitution

During the drafting of the Constitution by the Constituent Assembly elected on 25 April 1975, there was a proposal to submit its text to referendum once approved. On 30 December 1975, the *PPD* introduced a proposal for a Constitutional referendum to the Council of the Revolution[88] having in view the renegotiation of a Platform of Constitutional Agreement established between the *MFA* and the political parties on 11 April, preceding the election of the Constituent Assembly (Miranda, 1981, pp. 300-305). After the events of 25 November 1975, which defeated the military left and changed the course of the revolutionary process, the members of *PS*, *PPD* and *CDS* in the Constituent Assembly started to defend the renegotiation of the Platform of Constitutional Agreement. For that purpose, they paralysed the debate on the organisation of the political power. On its side, the Council of the Revolution proposed the renegotiation of the Platform on 11 December.

[88] The Council of the Revolution was a military sovereignty organ which replaced the Junta of National Salvation and the Council of State after a failed attempt of coup d'état led by Spínola on 11 March 1975.

The First Platform foresaw in point (C.3) that the President should enact the new Constitution, made and approved by the Constituent Assembly, after first consulting the Council of the Revolution. As an alternative, the *PPD* proposed the submission of the new Constitution to popular referendum within the 15 days of approval by the Constituent Assembly. In case of rejection, the provisional Constitutional laws would remain in force, attributing constituent powers to the next Parliament, which would be chosen by 25 April 1976 (Miranda, 1976, p. 153).

The *PPD* disagreed with the enactment of the Constitution by the President of the Republic after first consulting the Council of the Revolution. According to the reasoning of the proposal, the Constituent Assembly was the only sovereignty organ endowed with democratic legitimacy, and only the people who chose it could judge the results of its work. The enactment of the Constitution by the President, appointed according to criteria of revolutionary legitimacy, was a deviation of the democratic principles and traditions, which made popular consultation on the acceptance or rejection of the Constitution so indispensable (Miranda, 1976, p. 153).

On 9 January 1976, António de Sousa Franco, a member of the *PPD* leadership, justified the proposal when referring to the Party's Programme in an article published in the newspaper *O Jornal*. He defended the principle that the referendum was obligatory to approve laws that revised the Constitution, according to the principle that consituent power should be exercised by the people. In the Constituent Assembly, the parliamentary leader of the *PS*, José Luís Nunes, strongly criticised that article in the session of 14 January 1976. According to him, the *PPD*, unhappy with the democratic and progressive provisions voted for by the Constituent Assembly, intended to demand a plebiscite on the Constitution and, in case of refusal, to trample the will of the Portuguese people and to impose a provisional Constitution drawn behind the people's backs (*DAC*, 104, 15 January 1976, pp. 3359-3360).

Several *PPD* deputies replied to José Luís Nunes's speech. Jorge Miranda[89] denied that the referendum was antidemocratic in nature and refused any comparison between the *PPD* proposal and the plebiscite on the 1933 Constitution. In 1933, there was no Constituent Assembly, nor were there electoral campaigns, parties, public life, pluralism or freedom of expression. The opposition had been persecuted in 1933. In 1976, none of this was true (*DAC*, 104, 15 January 1976, pp. 3361-3362). In response,

[89] Jorge Miranda, outstanding Professor of Constitutional Law, was *PPD* deputy in the Constituent Assembly.

José Luís Nunes said that the differences between the situations in 1933 and in 1976 gave more reasons to refuse a referendum than to defend it. In 1976, there should be no referendum precisely because there was a Constituent Assembly (*DAC*, 104, 15 January 1976, p. 3364).

In articles published in the newspaper *Diário de Notícias* on 16 and 24 February 1976, Jorge Miranda (1976, pp. 153-167) referred in detail to the topics raised by the *PPD*'s proposal. Miranda thought that the *PPD* proposal contained two different aspects. He supported it in terms of motives, but disagreed with the contents mainly because of its foreseeable consequences. As to the first aspect, Jorge Miranda thought that the proposal did not deserve the accusations received. He considered the referendum a democratic device, giving several examples in favour of that idea, and he saw the *PPD* proposal as an alternative to the First Platform of Constitutional Agreement. Jorge Miranda explained that, for the *PPD*, the aim was to defend the Constituent Assembly from the interference of any other body because, at that moment in Portugal, no other was representative in nature.

However, Jorge Miranda argued that a referendum would be an unnecessary inconvenience. The proposal was unnecessary because the Council of the Revolution, in the renegotiation of the Platform of Constitutional Agreement stopped referring to the enacting of the Constitution by the President of the Republic after first consulting itself. Therefore, the *PPD* proposal had achieved its purpose (Miranda, 1976, p. 159).

Jorge Miranda also considered the Constitutional referendum to be inconvenient. He immediately thought that the proposed timing – 15 days after the voting by the Constituent Assembly – was excessively short. He considered it to be more desirable to hold any referendum at the same time as the legislative elections. Here, the assembly could choose the constituent powers if the Constitution was rejected.

In case of rejection, the country would suffer serious damage for several reasons. Firstly, the country would continue to be ruled by provisional governments, and two years after the 25 April, the country needed definitive institutions. Secondly, the refusal of the Constitution would question the historical commitment obtained in the Constituent Assembly as well as the sorely reached balance of powers (Miranda, 1976, p. 161). On the other hand, in case of approval, there would be no advantage in submitting it to referendum, and there would be the inconvenience of understanding that the popular approval would represent

the acceptance of all and each of the Constitutional provisions, preventing its further modification (Miranda, 1976, p. 162). Despite his disagreement, Miranda (1974, p. 112; 1976, p. 160) thought that the referendum was legally possible, since the Council of the Revolution, as the heir of the Junta of National Salvation, or even the Constituent Assembly, had changed the provisional Constitutional law for that purpose.

Writing in 1981 on this same subject, Jorge Miranda (1981, p. 300) rectified his opinion, considering it unlawful that a Constitutional law approved by the Council of the Revolution could impose any form of referendum. He did not accept that the decisions of the elected Constituent Assembly should be precarious and dependent on popular approval. The Constituent Assembly should be sovereign.

In 1996, Jorge Miranda (1996a, p. 251) synthesised the reasons for the refusal of the *PPD* proposal. It was too late to organise the referendum; it could reduce the Constituent Assembly's authority; and there was fear of the possible consequences. In fact, the rejection of the Constitution would extend the Provisional Government's inconveniences with serious costs; and an approval would crystallise some Constitutional solutions, making its revision in the future more difficult (Urbano, 1998, p. 112).

3. The Proposals for Constitutional Revision by Referendum

3.1. The Doctrinaire Drafts of the Constitution

None of the Constitutional drafts introduced by the political parties in the Constituent Assembly included the Constitutional referendum.[90] However, if that was the position of the parties, the same did not happen with the doctrinaire drafts which were openly presented by their authors, who where individually held responsible. Thus, two experts in Constitutional Law, Jorge Miranda and Francisco Lucas Pires, introduced their own drafts of the Constitution.

In April 1975, Jorge Miranda published his own draft of the Constitution (Miranda, 1975), which would eventually form the basis of the *PPD* draft. However, the Political Commission of the Party did not get to pronounce on it, and the Platform between the *MFA* and the Parties rejected much of its content. He never introduced his draft in the

[90] This did not happen with the parties without parliamentary expression. The Programme of the Popular Monarchic Party (*PPM*) approved in 1974 proposed the referendum on the Constitution and the Constitutional amendments drawn by the Constituent Assembly. This party did not have, however, any representative in the Constituent Assembly.

Constituent Assembly. Article 315 of the draft, under the epigraph of the 'people's deliberation', established that any amendment to the Constitution approved by the Parliament would be submitted to referendum between 60 and 90 days after the final parliamentary vote.

Lucas Pires's (1975) draft was published in essay form, and was requested by the leader of the *CDS*, Diogo Freitas do Amaral, as a contribution to the draft which the Party intended to present. Freitas do Amaral explains in the foreword (Pires, 1975, pp. 5-6) that the ideas proposed by Lucas Pires could not be totally integrated in the *CDS* draft due to the commitments assumed by this party when signing the Platform of Constitutional Agreement with the *MFA*.

In this essay, Lucas Pires recommended caution in the Constitutional revision process. He considered the referendum to be an exceptional device of defence of Constitutional order when threatened. In his words (Pires, 1975, p. 160), Constitutional law cannot be in equal terms with ordinary law and the separation between constituent power and constituted powers is one of the no less important forms of separation of powers. It was a warranty that the revision procedure would only take place in case of the defence and accommodation of the Constitution to new situations.

This decision of promoting the Constitutional revision in defence of the Constitutional order could be made in one of two ways: either by the Parliament, through a two-thirds majority or by referendum, with a proposal by the Chief of State (Pires, 1975, p. 160). That decision of the Chief of State could be made after a popular initiative, that is, if he was addressed with a significant number of requests asking for a plebiscite (Pires, 1975, p. 109). One should note that this proposal referred to the decision of making the Constitutional revision and not the revision process itself.

Maria Benedita Urbano (1998, p. 119) points out that this Constitutional referendum is different from the typical or classic model of consultation. In fact, would not allow the people to sanction a draft of Constitutional amendments, or even to ratify a new Constitution. The people could only decide, in principle, whether or not a Constitutional revision or a new Constitution should be made. In the case of the Constitutional referendum in Switzerland, the people can decide not only whether or not to proceed with a Constitutional change, but also have a say on the Constitutional subject in question. Lucas Pires did not explain

reasoning in this respect. In any case, the Constituent Assembly did not consider any of these proposals.

3.2. The Referendum against the Constitution

3.2.1. The Sá Carneiro Strategy

As the 1976 Constitution emerged from and reflected the economic, social and political changes of the revolutionary process that began in April 1974, it soon became obvious that the Portuguese right-wing political forces assumed the purpose of replacing the Constitution or deeply changing its ideological sense, as an essential part of its strategy. In the Constituent Assembly, the *CDS* was the only party that voted against the Constitution. However, in spite of having voted in favour of the Constitution on 2 April 1976, the *PPD/PSD* took the leadership of a resolute action seeking to radically change the content of the Fundamental Law. The referendum assumed a very relevant role in that struggle.

On 7 November 1977, one month before the fall of the First Constitutional Government led by the socialist leader Mário Soares, Francisco de Sá Carneiro resigned from the leadership of the *PSD* due to his disagreement with the political line of the majority of the National Political Commission. Sá Carneiro defended a stronger opposition of the *PPD/PSD* towards the *PS* Government and Ramalho Eanes, the President of the Republic who had in the meantime been elected. In his declaration vote before the *PSD* Political Commission, which left him in minority, Sá Carneiro [1989 (V) p. 21] advanced, for the first time, the idea that the Party needed to begin thinking about Constitutional revisions and the election of a new President of the Republic.

At the *PPD/PSD* Congress in Oporto on 28 and 29 January 1978, Sá Carneiro (1978, p. 66) explained the reasons for his resignation and approached the fundamental subjects that the Party must face. They were the structure of the State, the economic and social system, the Constitution, the President of the Republic, the Council of the Revolution, and the political role of the armed forces. He warned that it was necessary to consider Constitutional revisions and the election of a new President (Carneiro, 1978, p. 55). In that Congress, Sá Carneiro was not a candidate to lead the Party, but he was the head of all the lists to the National Council. At the end, he abstained from voting on the approved motion. Sousa Franco continued as President of the National Political Commission.

In text written a few days later, Sá Carneiro (1978, p. 55) criticised the Party for following an excessively moderate line towards the Government. Sá Carneiro (1978, pp. 13-15) defended that the opposition assumed by the *PSD* should be extensive to the President of the Republic, which he accused of being co-responsible for the governmental situation of the country and for playing the lead role of a type of presidential militarism. He believed that the *PSD* Congress fell short of the criticism that the presidential action imposed. Two factions were then visible inside the *PSD*. Sousa Franco and the National Political Commission supported a closer position towards the *PS* Government and a peaceful relationship with the President of the Republic. Sá Carneiro defended a radicalisation of positions against the Government, President Eanes and the Constitution (Manalvo, 2001, p. 76).

In a strategy to return to the Party's leadership, Sá Carneiro began to take public positions that diverged from the Political Commission, and he maintained his attacks against the *PS*, Eanes and the *MFA*. At the same time, he invoked the urgency of a Constitutional revision before the foreseen date (1980), through referendum [Carneiro, 1978, p. 77; 1989 (V) p. 178]. The confrontation peaked in *Vimeiro*, on 2 April 1978, during a lunch with *PSD* militants who invited him to speak. In his speech, Sá Carneiro [1989 (V), pp. 201-207] assumed the purpose of changing the Constitution through referendum. His argument was that, if the Constitution did not foresee the referendum, it did not exclude it. His proposal was for a referendum on the need for a Constitutional revision, and the holding of early elections.

On 3 April, in a radio interview, Sá Carneiro [1989 (V) pp. 181-197] Stated his strategy more precisely. There would be advanced elections to the Assembly of the Republic. The campaign should mainly discuss the Constitutional revision. If the result of the elections led to a conclusion that most of the Portuguese people, or a great percentage of the Portuguese people, wanted a premature revision of the Constitution, a referendum should be held.

The leftist Parties in the Parliament immediately criticised Sá Carneiro's proposal. The communist MP Jorge Leite considered the proposal for referendum to be part of a vast operation to endanger the stability of the democratic system and the Constitution (*DAR*, 56, 5 April 1978, p. 2030). On his side, the parliamentary leader of the *PS*, José Luís Nunes, considered that the innovation of the referendum to be a permanent coup d'état, since the Constitution did not allow it (*DAR*, 58, 7 April 1978, p. 3149).

In an article published in the newspaper *A Capital* on 15 April 1978, Jorge Miranda (1980, pp. 208-210) replied to the argument that even though the Constitution did not foresee the referendum, it did not exclude it either. As he explained, any jurist knows that the rule in public law is competence and not freedom. The State can only practice acts allowed by law, and the only body with power of Constitutional revision was the Parliament. On the other hand, the referendum was not included among the institutions considered by the Constitution.

Given the opposition of the founder of the Party, the Political Commission elected at the *PPD/PSD* Congress was unable to weather the political turbulence that resulted. It resigned at the National Council of 15 April 1978. In that meeting, Sousa Franco clarified the divergences of the Political Commission from the Sá Carneiro line regarding some fundamental points. Sousa Franco refuted the idea that the Party should oppose the President of the Republic, and he did not demand the premature revision of the Constitution, with or without a referendum. In his view, the Constitutional revision should respect the Constitutional rules in terms of both time and procedure. In other words, such a revision should only take place after the beginning of the II Legislature, on 15 October 1980, and with a two-thirds majority, therefore excluding the referendum (Franco *et al*, 1978, pp. 21-46).

On 3 June 1978, 43 deputies and some other outstanding members of the Party, in solidarity with the National Political Commission, signed a document named Undelayable Options (*Opções Inadiáveis)*. They assumed the strategy of proposing a Constitutional revision at the right time, and by the procedure established in the Constitution. A premature revision, with or without a referendum, would be a break with the assumed commitments and a violation of the Constitution (Franco *et al*., 1978, p. 68). The defeat of these conceptions in the VI *PPD/PSD* Congress, which took place in Lisbon on 1 and 2 July 1978, provoked a division that gave rise to the emergence of a new party: the Independent Social Democrat Action (*ASDI*).

At that Congress, Sá Carneiro definitively assumed the leadership of the *PSD*. In its conclusions, the claim for a premature revision of the Constitution appeared directly, including the implicit idea of submitting the future revision to the electorate. The Constitutional revision would take place in 1980, but the participation of the *PSD* in the Government before new elections would be dependent on the commitment of the *PS*, the *CDS* and the President of the Republic with a programme

that contained fundamental proposals for the future Constitutional revision that would be submitted to the electorate (*PSD*, 1978, p. 18).

On 9 December 1978 the III Congress of the *CDS* took place, in which Lucas Pires (1979, p. 20) assumed his support for the referendum and considered it as a form of democratically granting a new Constitution. However, he supported it carefully, without ignoring that the referendum could be a double-edged sword. The referendum might save Portugal's fledgling democracy, but it might equally send the country back into a dark zone.

3.2.2. Sá Carneiro's Draft – *Uma Constituição para os Anos 80*

On 1 January 1979, Francisco Sá Carneiro published his own draft of the Constitution with the title *"Uma Constituição para os Anos 80"* (A Constitution for the 1980s), having in view the Constitutional revision after the legislative elections of 1980. He gave up the idea of a premature revision, but argued that a referendum on Constitutional revisions was necessary. (Carneiro, 1979, p. 15).

According to Sá Carneiro's (1979, p. 178) proposal, the passing of amendments to the Constitution did not require a two-thirds majority, since the absolute majority of the deputies in full exercise of their office would be sufficient. However, laws passed in parliament revising the Constitution should be submitted to a referendum within 60 to 90 days of the final voting.

In an article published in the Portuguese newspaper *Jornal de Notícias*, on 22 January 1979, the Constitutionalist and communist MP, Vital Moreira (1980, pp. 43-44), argued that Sá Carneiro's idea of changing the Constitution before 1980 and/or by plebiscite, was an unConstitutional coup d'état. In *Constituição e Revisão Constitucional*, (Constitution and Constitutional Revision) published in 1980, Vital Moreira noted that Sá Carneiro's draft seemed to abandon the idea of a premature revision by plebiscite. He explained that 'relative contention' with three factors. The first regarded the need to maintain internal order within the *PSD*. The second factor was the need to attract the support of the *PS* for an agreement on the Constitutional revision. Finally, there would be another reason of a tactical order: that draft would be the first phase of a great revision of the Constitution, with the second phase only being possible with an absolute majority (Moreira, 1980, p. 51).

In an interview to the Portuguese Broadcasting on 22 January, Sá Carneiro [1989 (VI) pp. 7-13] retreated from the idea of a premature Constitutional revision, noting the *PS* and *PCP*'s opposition to that proposal. He considered, however, that the Constitution should contain flexible devices that allowed revisions to be made by Parliament with a two-thirds majority, provided the Constitutional revision laws were submitted to a referendum.

The retreat from the demand for a referendum to advance the revision was also justified by the political lull and decrease in tension resulting from the collapse of the *PS* government and the installation of a non-partisan government. Indeed, President Eanes had designated Mota Pinto as Prime Minister. Being close to the *PSD*, he moderated Sá Carneiro's position, and was expected reinforce the *PSD* positions in the field of the Government. In those conditions, the Constitutional revision could wait until the 1980 legislative elections [Carneiro, 1989 (VI) pp. 8-9].

3.2.3. The Pressures on the President of the Republic

Nobody in the *PSD* ignored that fact that the Party was unlikely ever to reach the two-thirds majority needed to review the Constitution. Thus, its political strategy for the Constitutional revision would have to involve the President. Therefore, attention turned to President Eanes and the 1980 presidential election.

In the beginning of March 1979, an esteemed *PSD* member, Carlos Macedo, in an interview to the newspaper *Tempo*, launched a challenge on the President. According to him, the alternative to breaking the deadlock in the country would result in anticipated legislative elections, followed by a referendum for Constitutional revision on the president's initiative. It would only be possible to think about the *PSD* supporting the re-candidature of Ramalho Eanes in 1980 if he agreed to be part of that plan. This is how the *PSD* returned to the idea of the premature revision, which had apparently been laid aside by Sá Carneiro.

On 9 March 1979, Vital Moreira (1980, pp. 77-85) published an article in the newspaper *O Jornal* denouncing the campaigns to make the President of the Republic play a decisive role in the Constitutional revision, ideas that were promoted by rightist political forces. According to Moreira, those political sectors, conscious that they would not have the necessary support in the 1980 elections to force the Constitutional revision according to their perspectives, were trying to harness the democratic legitimacy of the President to those ends (Moreira, 1980, p. 78). There

were two ways to force presidential intervention. One of them would consist in demanding that the President start a premature Constitutional revision by referendum. Another one would consist in linking the presidential elections of 1980 to the Constitutional revision, with the President choosing the bearer of a Constitutional revision project (Moreira, 1980, p. 78).

Two variants would still stand out. For some, the President should propose a new draft of the Constitution, which would then be taken to referendum, as in 1933 or in Palma Carlos's project. For others, the referendum could only change the Constitutional revision procedure, in terms of the time and the form of revision, in order to eliminate the need for a two-thirds majority and abolish limits on revision. For Vital Moreira (1980, p. 79), both outcomes would be flagrantly unConstitutional. In a Constitutional State, the only forms of expression and political decision with legitimacy were those foreseen in the Constitution, and the referendum was not among them. There was already a system for revision in the Constitution, and disrespecting this would be a Constitutional break. Furthermore, the President of the Republic had no Constitutional powers to call a referendum (Moreira, 1980, p. 80).

The Socialist Party took a position on that subject in Parliament through a political declaration made by Jaime Gama on 13 March 1979 (*DAR*, 37, 14 March 1979, pp. 1263-1265), which criticised the referendary wave that tried to change electoral calendars and legitimise forms of Constitutional revision by all means. These proposals were entirely illegitimate and contrary to the democratic regime. In the parliamentary sittings that commemorated the 5th anniversary of the Constitution, all the left parties criticised the idea of a Constitutional referendum, which they considered a counter-revolutionary coup d'état under the cover of a pseudo Constitutional revision.[91]

On 18 April 1979, some campaigners, mostly from the *PS*, including two former ministers of the First Constitutional Government, António Barreto (Agriculture Minister) and José Medeiros Ferreira (Foreign Minister), signed and published the *Manifesto Reformador* (Reformer Manifesto), (Barreto *et al.*, 1979). They explicitly proposed that the referendum be an extraordinary method of popular consultation, in order that the people had the opportunity to pronounce on the parliamentary capacity to freely review the Constitution.

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[91] In that sense, see the speeches by Salgado Zenha (*PS*) and Manuel Gusmão (*PCP*), (*DAR*, 45, 3 April 1979, pp. 1597 and 1589).

Their exact purposes were: **a)** to hold a referendum that allowed the members of Parliament to freely review the Constitution, before or during the new parliamentary elections; **b)** to dispute those elections to overcome the prejudices and obstacles created by the current political forces, which were neither capable of governing Portugal, nor able to establish the necessary democratic majority; **c)** to increase the powers of the President of the Republic (Barreto *et al*., p. 15).

In that same month of April 1979, Sá Carneiro began to express concern about the leading presidential role in the political system. The government in power, led by Mota Pinto, had been appointed by the President's initiative, and occupied the same political area of the *PSD*. Moreover, the 43 *PSD* deputies who subscribed the *Opções Inadiáveis* document decided to leave the Party and assumed the status of independent deputies, in disagreement with the party's decision to vote against the Budget of State proposed by the Government.

Sá Carneiro reacted with an interview carried in the newspaper, *Tempo*, on 11 April 1979. He accused the *Inadiáveis*, Mota Pinto and the President of the Republic of intending to found a new, presidentially inspired party. He finished by demanding early elections [Carneiro, 1989 (VI) pp. 125-141]. On 28 April 1979, at a *PSD* rally in *Faro* (*Algarve*), he accused Eanes not just of intending to create a new party, but also of planning to call a referendum unilaterally. He wanted a referendum, but only if the Assembly of the Republic approved a referendum law and if the parliamentary majority decided to call a referendum [Carneiro, 1989 (VI) pp. 159-165].

In the Assembly of the Republic on 2 May 1979, Sá Carneiro gave a speech explaining his tactics. The referendum would be openly unConstitutional and undemocratic if the President of the Republic decreed it unilaterally. Therefore, the Assembly of the Republic should approve a referendum law and initiate a referendum in that framework. The responsibility of the President of the Republic would be to enact both acts (*DAR*, 54, 3 May 1979, p. 1893; Carneiro, 2000, pp. 330-345).

On 6 May 1979, at a *PCP* rally in *Almada*, Álvaro Cunhal (1980, pp. 84-85) took a position on the Constitutional referendum, expressing his Party's vehement opposition on three counts. First, the Constitution did not admit the referendum. Second, the reactionary forces wanted the referendum, not as a democratic consultation of the Portuguese people, but for an unConstitutional revision of the Constitution. And third, the referendum would defraud the popular will if handled by forces without any democratic scruples.

3.2.4. The Democratic Alliance Project

The VII *PSD* Congress on 20 June 1979 charged the party leadership with establishing contacts with the *CDS* and the *PPM*, aiming towards a cooperation agreement that expressly supported the idea of a referendum. In Sá Carneiro's closing speech, he affirmed that, in the case of an impasse, the referendum could be a democratic tool, unblocking and clarifying with a view to moving forward in the future. Nobody could deny the people's right to express their own sovereignty, ensuring the future of freedom, justice and progress. However, the referendum could be used as an act against, or for, democratic institutions. The Party would, therefore, study a bill to be introduced in the Assembly of the Republic so that the Parliament could approve a referendum law, allowing an eventual referendum in consonance between the Parliament and the President [Carneiro, 1989 (VI) pp. 225-232].

Meanwhile, after the dissolution of the Assembly of the Republic and the calling of intercalary elections for 2 December 1979, the *PSD*, the *CDS*, and the *PPM* constituted an electoral coalition named Democratic Alliance (*Aliança Democrática*).[92] According to Marcelo Rebelo de Sousa (1983, pp. 583-584), the programme of the Democratic Alliance argued for a deep Constitutional revision in order to change the economic system, to subordinate the armed forces to civilian power, and to reduce the powers of the president within the government's system. The programme argued that the referendum was a Constitutional means of revising the Constitution, and sought to surpass the deadlock between president and parliament, and provide the mandate needed for the Constitutional revision.

In the elections of 2 December 1979, the *AD* obtained an absolute majority, although by a narrow margin, in the Assembly of the Republic. They constituted the VI Constitutional Government with Sá Carneiro as Prime Minister. The Government's programme included the approval of a referendum law.

Sá Carneiro defended that idea, based on the principle that anything that is not forbidden by the Constitution is implicitly allowed [*DAR* (I) 4, 12 January 1980, p. 52). Several deputies of the opposition disputed the juridical foundations of that idea. José Tengarrinha (*MDP*) considered it clearly unConstitutional [*DAR* (I) 4, 12 January 1980, p. 59].

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[92] See the text of the *AD* Agreement, in Carneiro [1989 (VI) pp. 311-312]. The subscribers of the "reformer manifesto" took part of the coalition in places given by the *PSD*.

Veiga de Oliveira (*PCP*) considered it improper of a jurist to defend such an idea, when the Constitution says in its Article 3 that the sovereignty shall be single and indivisible and shall lie with the people who shall exercise it in the forms provided for in the Constitution [*DAR* (I) 4, 12 January 1980, p. 63]. On behalf of the *PS*, Vítor Constâncio considered that the proposal heralded a rupture in the institutional framework [*DAR* (I) 6, 17 January 1980, p. 189].

In defence of the proposal, Luís Beiroco (*CDS*) tried to separate the referendum law from the Constitutional revision, arguing that the use of the referendum to review the Constitution was not the same as using a referendum to change the Constitution itself. In his opinion, it was important to utilise an instrument to discover directly citizens' opinion on fundamental subjects of community life and the organisation of the State [*DAR* (I) 5, 16 January 1980, p. 148].

The attempt to move the question away from Constitutional revision did not persuade the opposition, which did not forget that Sá Carneiro's purpose was the approval of a referendum law as the first step of a Constitutional revision by referendum. In that sense, José Tengarrinha (*MDP/CDE*) said that the approval of the referendum law was only understandable when related with the purpose of changing the Constitutional order [*DAR* (I) 7, 18 January 1980, p. 253]. José Luís Nunes (*PS*) pointed out that the *AD* majority only intended to introduce a referendum law in order to use the unConstitutional referendum to illegally review the Constitution [*DAR* (I) 7, 18 January 1980, p. 289].

At the end of the debate, the communist leader, Álvaro Cunhal, described the attempt to introduce a referendum as a great subversive operation that would destroy the democratic regime. In addition to what has been mentioned about Article 3 beforehand, Article 111 (which is now 108) established that the political power shall lie with the people and shall be exercised in accordance with the Constitution. The Constitution did not admit the referendum, and the attempt to introduce it by ordinary law was clearly unConstitutional. If the sovereign organs could act according to the principle that the Constitution allows everything that it does expressly not forbid, then this would lead to illegality, free will and despotism [*DAR* (I) 7, 18 January 1980, p. 266]. The socialist leader Mário Soares also refuted the theory that everything that was not expressly prohibited in the Constitution was permitted. Such a doctrine could never be accepted in Public Law and, at the time the Constitution had been drawn up, the *PPD* had expressed no such idea [*DAR* (I) 7, 18 Jan. 1980, p. 272].

In the debate of a confidence motion presented by the Government, on 18 January 1980, Borges de Carvalho (*PPM*) appealed to Natural Law to justify the Constitutionality of the referendum. If the referendum was unConstitutional by the light of the Constitution, it was the Constitution that was unConstitutional and not the referendum. According to Natural Law, there were principles beyond any Constitution [*DAR* (I) 8, 6 June 1980, p. 304].

The idea that the Constitutional referendum would follow from Natural Law was not a new idea. Vital Moreira argued that the proposed referendum denied the idea of a Constitution. The Constitution, and the very idea of a Constitution, was born precisely to limit the absolute State, and to restrict what it could do. In his view, the Constitutional State could act only in the forms prescribed by the Constitution [*DAR* (I) 8, 6 June 1980, p. 317].

3.2.5. The Bills of the Referendum Law

The Reformers Group introduced the first Bill of the referendum law on 6 June 1980. Bill No. 501/I [*DAR* (II) 69, 6 June 1980, pp. 1140-1142] proposed an optional Constitutional referendum, if the Constitutional revision did not obtain the two-thirds majority in Parliament. The President of the Republic could also summon a referendum if requested by the Assembly of the Republic, or if there a minimum of 100,000 electors signed a petition.

The *PS* and the *PCP* appealed the admissibility of the Bill, [*DAR* (II) 71, 14 June 1980, p. 1214-(2)] arguing that it was unConstitutional. They based their case on three points. First, the Constitution established a framework of representative democracy that excluded the referendum. The people exercised political power in the forms provided by the Constitution, and the referendum was not one of those forms. Second, the bill gave powers to sovereignty organs that were not foreseen in the Constitution. Article 113(2) provided that the formation, composition, responsibilities, power, and *modus operandi* of the bodies that exercise sovereign power shall be those laid down by the Constitution. Third, the admission of the referendum as a form of Constitutional revision collided with the Constitutional provisions that regulated that process (Articles 286 and followings). The Assembly of the Republic only acquired revision powers in the II Legislature, and the changes required a two-thirds majority of all the members present, more than an absolute majority of all the members in full exercise of their office.

On 21 June, the Government introduced the Bill of Authorisation to Legislate No. 365/I [*DAR* (II) 74, 21 June 1980, p. 1284] to define the legal status of the referendum. The *PS* appealed to its admissibility essentially based on the same arguments [*DAR* (II) 76, 25 June 1980, pp. 1311-1312]. These initiatives were not considered due to the lack of parliamentary time in the brief I legislature, which ended on 27 June 1980.

3.2.6. The Doctrinaire Debate

The debate about the legitimacy of changing the Constitution by referendum was particularly intense during 1980. The political sectors that defended this option increased their efforts to find a juridical base for it.

In 29 May 1980, the *Instituto Democracia e Liberdade*, (Democracy and Freedom Institute), linked to the *CDS*, organised a workshop on the Constitutional revision, which invited several jurists from the political sphere of *AD*, including Barbosa de Melo, José Miguel Júdice and Marcelo Rebelo de Sousa. They supported the legitimacy of changing the Constitution by referendum, without respecting the Constitutional provisions related to the Constitutional revision. The idea was that the referendum would be a display of the original constituent power. The question would not be to review the Constitution but to make a new one.

In No. 15 of *Democracia e Liberdade* published by the *Instituto Democracia e Liberdade* in June 1980, Afonso Rodrigues Queiró, Professor of Administrative Law at *Coimbra* University, considered it heresy to say that the exercise of sovereignty was regulated and limited by the Constitution (Queiró, 1980, p. 29). According to him, the people were entitled to modify their institutions (Queiró, 1980, p. 25). The Professor thought it illegitimate to limit the exercise of sovereignty by the people to the forms foreseen in the Constitution. The Constitution, in the terms of the classic thought of Rousseau and Siéyès, cannot rule the future action of the constituent power. It is the sovereign constituent power of the people, which could not be fettered by written provisions, approves, sustains and gives the Constitution its validity. It is not the Constitution that sustains, checks competences or fastens limits to the constituent power. The conclusion was that the Constitutional provisions did not constitute a limit to the freedom of the constituent legislator (Queiró, 1980, pp. 24-25).

As to how to exercise constituent power, Afonso Queiró considered the deliberative constituent referendum to be legitimate

because the referendum was pure and simple and did not precede any resolution from the Parliament or from a Constituent Assembly. The referendum was besides and above the Constitution. The popular instance had the supreme power and could express it directly, without the representatives' intervention. The fact that the referendum is not established in the Constitution was not an obstacle because, according to the author, the people are before and above the written positive Constitution (Queiró, 1980, pp. 30-31). Afonso Queiró recognised that the referendum held dangers. To prevent those dangers, to the referendary process would need to begin with a legislative process laid down in the Constitution, to regulate the popular initiative process in the constituent domain, and to observe whenever that initiative was taken in the future. That law should regulate the right of initiative, the characteristics of the drafts submitted to the electorate, the time of their presentation, the entity responsible for receiving them, as well as the scrutiny form (Queiró, 1980, p. 32).

Finally, the author considered that it would be totally illegitimate for the President of the Republic or the Council of the Revolution to pronounce on the Constitutionality of an Assembly of the Republic decree regulating the referendary process in order to change the Constitution, since the Constitution did not foresee the referendum. The author believed that any sovereignty organ was entitled to oppose an eventual expression of the will of the people, in defence of the Constitution in force. The President of the Republic could only exercise a political veto, but the Assembly of the Republic could confirm its vote with the absolute majority of its members in full exercise of their office, and he could not refuse that enactment.

There was still one obstacle, which was the need of a two-thirds majority from Parliament to surpass the political veto of the President of the Republic on subjects regarding the electoral acts provided by the Constitution. However, not even this fact deterred the author. According to him, the referendum was not an electoral act provided for in the Constitution, simply because the Constitution did not sustain the referendum (Queiró, 1980, p. 34).

After all, Afonso Queiró's aim was to create a Constitutional doctrine in agreement with the political conveniences of the moment. The goal was to move away from the Constitution in force. In order to do that, it was necessary to find a juridical foundation, which in this case meant refusing the legitimacy of the constituent power and placing the referendum, as an expression of popular will, above it. Through a

referendum, the people could move beyond the written Constitution. However, with the lack of devices already instituted to regulate the referendum procedure, the author appealed to the Constitution after all. The only recognised usefulness of the Constitution was to supply the necessary devices to dig its own grave.

The same is true of the removal of an eventual presidential veto. According to the author, the President of the Republic could not invoke the Constitution to prevent an unConstitutional referendum, but he should be able to use the political veto within the limits of the Constitution. That is to say that the President could not invoke the Constitution in defence of Constitutional order, but he must act in accordance with it when using his own powers. Regarding electoral laws, the political veto could only be over-ruled by a two-thirds parliamentary majority. However, the author argued that, since the referendum was not foreseen in the Constitution, it could not be considered an electoral law in Constitutional terms, and thus could be over-ruled by an absolute majority. Curiously enough, it was in the Constitution that the author founded that thinking. Therefore, the validity of the Constitution was intermittent. It would be completely irrelevant where it contradicted the purposes of the author, but perfectly legitimate where the author sought to liquidate the current Constitutional order.

In the same edition of *Democracia e Liberdade*, Marcelo Rebelo de Sousa and Margarida Salema did not go so far regarding Constitutional subversion by referendum. They considered that the referendum did not respect the established rules of Constitutional revision, but it would not be of a matter of Natural Law either, because the option of semi-direct democracy, in disfavour of direct democracy or representative democracy, does not flow from Natural Law. They even recognised that the common understanding in the doctrine was that the permission of the referendum depended on the Constitution (Sousa & Salema, 1980, p. 50).

3.2.7. The *AD* Strategy

The purpose of the *AD* was to achieve a referendum before the Constitutional revision, suppressing the material limits and some of the formal limits on the exercise of the Constitutional revision power. That presupposed a parliamentary majority in the elections of October 1980, the approval of a referendum law defining the juridical outlines of that institution, and the election of a President, by the end of 1980, who accepted such a purpose (Sousa & Salema, 1980, p. 52).

Therefore, Sá Carneiro chose General Soares Carneiro as the presidential candidate for the *AD*. He was not a consensual candidate. He was too right wing, even by *AD* standards, but Sá Carneiro bet his political future on that choice, establishing a link between his continuity in the Government leadership and Soares Carneiro's victory (Manalvo, 2001, p. 89).

In the words that closed his electoral manifesto, General Soares Carneiro clearly assumed the acceptance of Constitutional change by referendum. He thought that the President should have a decisive word in the Constitutional revision. If there was no consensus in Parliament regarding the essential points, he would call a popular referendum. On that, he made his position quite clear (Carneiro, 1980, pp. 13-14).

Soares Carneiro's method of working towards the Constitutional revision was also clear. In the II Legislature, which started in October 1980, the Constitutional revision was inevitable. As the elections were so brief, the anticipation of the revision was not possible. After the election, *AD* political forces should try to reach an agreement with the Socialist Party, since they could not realistically obtain a parliamentary majority of two thirds, necessary for a possible Constitutional revision, themselves. However, the General had demands as to the contents of the revision in some essential points. If these points were not achieved, he would call a referendum.

As Article 286(4) of the Constitution denied the President the power to refuse the enactment of the Constitutional revision law, it is clear that Soares Carneiro's intentions wildely exceeded the constutional powers of the President of the Republic. The President did not have the right to evaluate concretely the contents of the revision. Neither did he have the right to react to a lack of agreement with the *PS*. The conclusion is obvious. Soares Carneiro's election would have given way to a referendum that would change the Constitution, if the Constitutional revision intended by the *AD* did not obtain the two-thirds majority in the Assembly of the Republic. Therefore, instead of defending and observing the Constitution,[93] Soares Carneiro would have changed it fundamentally.

The necessity to defend the Constitutional order mobilised opinions. In an interview given to the newspaper *Portugal Hoje*, published

[93] The sworn of the President of the Republic in his installation before the Assembly of the Republic was the following: I swear by my honour to faithfully perform the office with which I am invested and to defend and observe the Constitution of the Portuguese Republic [Article 130(3) of the Constitution].

on 17 July 1980, the French Constitutionalist Maurice Duverger expressed a contusing judgement about the possibility of Constitutional referendum. He considered the referendum proposed by the *AD* as being no more democratic than the referendums used in countries with dictatorial regimes. On 29 July, in an interview with the same newspaper, Jorge Miranda (1983, p. 364) contradicted the legitimacy of the Constitutional referendum saying that the only way to review the Constitution was provided in Articles 286 and the Articles that followed. Anything different from that would be a coup d'état, a Constitutional rupture, or a new Constitution, but not a revision of the 1976 Constitution.

From the side of the *AD*, José Ribeiro e Castro (1980, pp. 45-48), an outstanding member of the *CDS*, exposed his plan in four phases. The first phase would be the *AD* victory in the legislative elections. That would assure the identification of the Portuguese people and their majority with the vision for a Constitutional revision. The second phase would be the drawing of a 'declaration of rights' by the *AD*, which would naturally become the central document of the revision and its fundamental inspiring centre. That document should contain the lines and the fundamental characteristics of the Constitution of 1981. The third phase would be Soares Carneiro's victory in the presidential elections. As President, he would be able to decide on the referendum. The fourth and last phase would be the referendum that would approve the Constitution of 1981.

3.2.8. The Presidential Election of 1980 - The Decisive Battle

In the parliamentary elections of October 1980, the *AD* reinforced its absolute majority. The electoral result allowed it to govern alone but did not allow it to review the Constitution alone. Thus, the *PSD*'s purpose would only be possible with the commitment of the President of the Republic. This explains the declaration by Sá Carneiro the day after the elections, where he Stated that the *AD* victory would be the first ballot of the presidential elections.

At the *PSD* National Council on 18 October 1980, Sá Carneiro [1989 (VII) pp. 365-372] defined the Party's strategy. The *PSD* should try to achieve a consensus with the *PS* for the Constitutional revision. However, since consensus would be difficult to reach, the best way would be to pass a law on the referendum. With this law passed in the Assembly of the Republic and the Council of the Revolution, and therefore enacted by the President of the Republic, the *PS* would be capable of accepting a Constitutional revision agreement.

However, on 13 November 1980, the President of the Republic sent a message to the Parliament on the opening of the II Legislature, in which he made his opposition towards any Constitutional revision quite clear. As far as he was concerned, the proposal did not follow the rules Constitutionally provided, and he peremptorily refused the Constitutional referendum [*DAR* (I) 1, 14 November 1980, p. 14]. This Statement, refusing the use of the referendum to impose a Constitutional change made by the President of the Republic who was already a candidate for re-election, make it very clear what was at stake in the presidential election of December. The choice between Ramalho Eanes and Soares Carneiro was also, above all, a choice between the defence and the rupture of the Constitutional order.

As expected, the debate raged with great intensity in the Assembly of the Republic during the first sessions of the II Legislature before the presidential election. In the debate of a motion of confidence presented by the Government, on 20 November, Almeida Santos (*PS*) affirmed his opposition to the referendum, not because it was good or bad, democratic or antidemocratic, but because the Constitution did not allow it [*DAR* (I) 4, 21 November 1980, p. 61].

On 21 November, Lucas Pires (*CDS*) defended the Constitutional referendum because the people are the first and last bastion of the human will in politics. The Constitutional revision was a responsibility of the Assembly, but the referendum could make sense against hegemonic attempts on the Constitution by some Parties [*DAR* (I) 5, 22 November 1980, p. 31].

On 25 November, Jaime Gama (*PS*) said that the revision of the Constitution should be based on Constitutional arguments rather than political blackmail. For the establishment of wider consensus – the two-thirds majority – it would be necessary to discuss, negotiate and make reciprocal arrangements. The Constitutional arrogance of those who exhibited the systematic blackmail of the referendum should be substituted by a clear will of cooperation and dialogue with the opposition [*DAR* (I) 6, 26 November 1980, p. 153].

On 4 December 1980, Sá Carneiro died in a plane crash, and on 7 December 1980 General Ramalho Eanes was re-elected President of the Republic, defeating General Soares Carneiro. That first week of December 1980 closed this chapter of Portuguese political life. The possibility to review the Constitution by referendum ended then.

3.2.9. Critical Analysis

Jorge Miranda (2003, p. 379) synthesised the arguments raised about the Constitutional referendum between 1977 and the end of 1980. For this author, the referendum sought: **a)** to solve the problem of the material limits of Constitutional revision by appealing to the people as holders of sovereignty to surpass them; **b)** to overcome an ideological deadlock that the Constitution would bring; **c)** to remove the rule of the two thirds majority for the approval of Constitutional changes; **d)** to make the revision possible even if they did not have the qualified majority required in the Assembly of the Republic.

The legal arguments used to found that pretension were, in synthesis, the following: **a)** the people, in agreement with the democratic principle, would be above the Constitution and could change it without respecting the established rules; **b)** the referendum, as an expression of popular will, would belong to the Natural Law which, since it predated the Constitution, would provide a legitimate source of change; **c)** the fact that the Constitution did not foresee the referendum did not mean that it would forever be prohibited; **d)** the referendum would arise from the Constitutional principle of the direct and active participation of the citizens in public life; **e)** there were Constitutional referendums in other countries that lacked Constitutional provisions. These were even allowed in violation of Constitutional rules.

According to Jorge Miranda (2003, p. 379), the weakness of those arguments was notorious before the general rules of interpretation and the basic rules of the western Constitutionalism. All public power has to be contained in juridical rules and, in that, representative and pluralist devices prevail over those of direct democracy. Actually, all those arguments were refutable and the defenders of the Constitutional order instituted in 1976 refuted them, based on the following arguments:

- **a)** It is correct to subordinate the exercise of power by the people to the forms and terms provided in the Constitution. In a democratic State based on the rule of law, the people can only exercise its sovereign power for those forms and terms, because the law also limits its power (Miranda & Medeiros, 2007, p. 299).
- **b)** The referendum did not come from Natural Law but from positive law. The contemporary democracy is not seated in the direct democracy, but fundamentally, in the representative democracy. The referendum, as experience shows, can be a complement of representative democracy,

but it can be also an instrument in the hands of undemocratic regimes.

c) The idea that everything that is not prohibited is permitted is only valid in the domain of private law, and not in public law, otherwise there would be the risk of falling into the domain of arbitrariness. In fact, there could be no referendum without the juridical definition of who had the power to summon it and which rules would be applied for its accomplishment.

d) The active and direct participation of the citizens in public life does not necessarily presuppose the referendum. Once that principle was proclaimed, it fell upon the Constitution and the law to define the ways to operationalise it, which may or may not include the referendum.

e) The defenders of the admissibility of the Constitutional referendum gave several examples of cases of referendums verified in other countries that contradicted Constitutional provisions, or were held without Constitutional provisions. The most commonly cited example was the referendum summoned by General De Gaulle on 28 October 1962 to achieve the Presidential election by universal suffrage. However, the French example of 1962 was not comparable with the Portuguese situation of 1976-1980 because, as Vital Moreira (1980, p. 81) pointed out, the Constitution in France allowed the legislative referendum, and the President was responsible for summoning it. In the Portuguese case, the Constitution did not admit any type of referendum. Furthermore, unConstitutional acts do not become Constitutional when they are practiced. Saying that the Constitution in Portugal could be ignored, and that a referendum could be held because such a procedure, although unConstitutional, had been done in other countries, is not indeed a legal argument. For the same reason, it is not valid to argue that, in previous historical moments in Portugal, Constitutional revisions were passed without respect for the Constitutional formalities. That is true, but those facts do not make them less unConstitutional.

The conclusion is that the most important question was not a legal discussion, but a political attitude. The Constitutional revision was very clearly regulated in Articles 286 and the following of the Constitution. The revision could only happen in the II Legislature of the

Assembly of the Republic, which began in 1980. The changes of the Constitution would require a two-thirds majority of all the members in full exercise of their office. The President of the Republic could not refuse the enactment of the revision law. The revision laws would have to respect a group of principles granted in Article 290 of the Constitution, designated as material limits of the Constitutional revision.

It was obvious that, regarding the Constitutional order, the Constitutional revision should observe such rules. However, as Jorge Miranda (2003, p. 379) reminds us, the problem was not a procedure to modify the Constitution, which presupposed the acceptance of their rules, but a process for its substitution. What was being questioned was the opposition to the Constitution and the rupture of the 1976 Constitutional order or, as Vital Moreira put it, the denial of the idea of a Constitution.

3.3. The Constitutional Referendum after the 1980 Presidential Election

3.3.1. The 1982 Constitutional Revision

3.3.1.1. The Draft by B. Melo, C. Costa & V. Andrade

The presidential election of 7 December 1980 made it clear that the Constitutional revision was in agreement with the established rules. The debate from now on would concern the draft amendments to the Constitution.

In February 1981, three Professors from *Coimbra* University, António Barbosa de Melo, José Manuel Cardoso da Costa and José Carlos Vieira de Andrade, made a study for the base of the Democratic Alliance draft amendments to the Constitution (Melo *et al*, 1981). It was published under the title of *Estudo e Projecto de Revisão da Constituição da República Portuguesa de 1976* (Study and Draft Amendments to the Constitution of the Portuguese Republic of 1976).

The section referring to the political power organisation, which was under Cardoso da Costa's direct responsibility, proposed a wide Constitutional inception of the referendum with an extensive explanation on the deeply democratic nature of that institute. In this study, the referendum was conceived as a process or device that should intervene in special or even exceptional circumstances. These were characterised as follows: **a)** for a political impasse; **b)** for subjects whose magnitude and relevance justified that the responsibility of their decision was directly assumed by the people as a whole, or **c)** when it was be suspected, with a

minimum of likelihood and legitimacy, that the decisions taken by the representatives did not correspond to the feeling and common will of the citizens (Melo *et al*, 1981, p. 163).

In this manner, they proposed the possibility of Constitutional referendum when, having a clear parliamentary majority in favour of changing the Constitution, that did not reach the two thirds majority needed to approve it. The authors invoked two facts in favour of their proposal. Firstly, the fact of it being a matter that respected the organisation or the rule of the community's fundamental life, and therefore sufficiently important to justify the referendum. Secondly, the fact that the proposal for a referendum had the support of those who held major democratic offices: the majority of the Parliament and the President of the Republic, who would have the responsibility to call, after all, the referendum.

Consequently, they proposed that the alterations should require passage by a two-thirds majority of all the deputies in full exercise of their office, just as the Constitution Stated. However, the President of the Republic could decide to call a referendum on these alterations if they had not obtained the required majority, and also if they had been approved by the absolute majority of all deputies in full exercise of their office (Melo *et al*, 1981, pp. 303-304).

According to the authors' explanation, this provision opened a democratic escape valve for extreme situations which, even though exceptional, deserved Constitutional regulation. It would mean giving the same weight to the two-thirds majority on the one hand, and on the other, the sum of the will of the President of the Republic, the majority of Parliament and the majority of electors.

3.3.1.2. The *AD* draft

The draft amendments to the Constitution introduced on 25 April 1981 by the Democratic Alliance parties (*PSD*, *CDS* and *PPM*) followed the guidelines proposed in the draft, but with two main differences. The President of the Republic could summon the referendum after first consulting the Council of State (advisory body of the President of the Republic who created the draft proposed and the 1982 Constitutional revision). The referendum could not have amendments to the Constitution that modified the balance of attributions and competences between the sovereignty organs or the provisions on the statute and election of their officeholders as subjects [*AR*, 1994 (I) p. 67].

This proposal was strongly criticised in Parliament by José Luís Nunes on behalf of the *PS*, saying that the Constitutional referendum would simply break the stabiliser scheme of the Constitution of the Republic, which a majority could not change arbitrarily [*DAR* (II) 33 – Supplement, 23 December 1981, p. 26]. This possibility would mean the subordination of the parliamentary system and the delivery of powers to the President, who could then subvert the semi-presidential system, transforming it into a presidential system *tout court*.

Also on behalf of the *PS*, Luís Nunes de Almeida stressed that Constitutions were not necessary if simple majorities could change them. The ordinary law could rule everything. When the qualified majority was not obtained, the proposal for referendum would empty the sense of the word Constitution [*DAR* (II) 33 – Supplement, 23 December 1981, p. 33].

3.3.1.3. The Return to the Debate of 1980

During the debate in the Ad-Hoc Committee of Constitutional Revision, the controversy before the 1980 presidential election threatened to resurface. Everything began with Jorge Miranda's speech on 4 November 1981, where he considered the proposal for a referendum by the *AD* as a confession that the proposal introduced before the presidential election was against the Constitution and would mean an institutional rupture [*DAR* (II) 33 – Supplement, 23 December 1981, p. 28]. Before this Statement, Fernando Condesso (*PSD*) revisited the theory that the Constitution admitted the referendum even if it was not included in its provisions [*DAR* (II) 33 – Supplement, 23 December 1981, p. 30] and Luís Beiroco (*CDS*), said that the explicit inclusion of the referendum in the Constitution, in quite strict terms that prevent any doubts or doctrinal divergences as to the cases in which it can be held, did not mean that the Constitution in force prohibited the referendum [*DAR* (II) 33 – Supplement, 23 December 1981, p. 32]. These Statements caused a small storm.

Luís Nunes de Almeida considered that, before such Statements, he saw the *AD* proposal for a national referendum in a different light. If the *AD* understood the referendum as legitimate even if it was not provided by the Constitution, the referendum proposed was only one form of referendum, thus admitting the legitimacy of other forms [*DAR* (II) 33 – Supplement, 23 December 1981, p. 33]. In the next meeting, on 5 November, Nunes de Almeida (*PS*) and Vital Moreira (*PCP*) insisted on clarifying that point [*DAR* (II) 35 – Supplement, 6 January 1982, pp. 3-4]. Given that the Constitutional revision obviously needed the agreement of

the *PS* to obtain the necessary two-thirds majority, the *AD* retreated from that position. Luís Beiroco (*CDS*) declared that the *AD* accepted the results of the presidential election, and took part in the works of the Constitutional revision. Francisco Sousa Tavares (*PSD*) said that the presidential election revealed that the will of the people did not align with the *AD's* interpretation of the Constitution, and therefore the *AD* should abandon it definitively. Manuel Costa Andrade (*PSD*) was still clearer in affirming that, if the *AD* proposal were defeated, there would be no doubt that the Constitution did not allow the referendum [*DAR* (II) 35 –Supplement, 6 January 1982, pp. 3-5).

3.3.1.4. The Ending in Plenary

In the plenary sittings, the *AD* maintained its proposal of national referendum even if only symbolically. In the first article where that subject was raised (136), which related to the responsibilities of the President of the Republic, the *AD* proposed the inclusion of a new paragraph giving the President the power to call a popular referendum. That proposal obtained 98 yea votes (*PSD, CDS* and *PPM*) and 78 nay votes (*PS, PCP, ASDI, UEDS, MDP/CDE* and *UDP*). It did not have the two-thirds majority needed to pass [*DAR* (I) 116, 9 July 1982, p. 4874)]. This voting prejudiced the other proposals regarding the national referendum.

Actually, the *AD* proposal of 1982 was justified by the symbolic loyalty to its history, making it obvious that there would never be a majority of two-thirds to approve it. The defeat of Soares Carneiro during the presidential election of 7 December 1980 had decided the question. The main questions for the *PSD* in the 1982 Constitutional revision, which needed the agreement of the *PS*, were the extinction of the Council of Revolution and the end of the transitional Constitutional period. In order to achieve these important goals, they were prepared to drop their demand for the Constitutional referendum.

3.3.2. The Constitutional Referendum in the Subsequent Constitutional Revisions

In the Constitutional revision of 1989, which approved the national referendum, there was no proposal for a Constitutional referendum. The same happened in the extraordinary revision of 1992. In 1994, a process of Constitutional revision began, but did not finish due to the absence of a global agreement between the *PS* and the *PSD*. Fifteen draft amendments were presented, but only one, personally presented by

Pedro Roseta (*PSD*), proposed the Constitutional referendum (*DAR*, Off-print 24/VI, 7 November 1994, pp. 135-137).

In the 1997 Constitutional revision, the *PSD* again raised the proposal of Constitutional referendum, assuming it as a tradition of the Party (Magalhães, 1997). The proposal, introduced by Luís Marques Guedes in the Ad-Hoc Committee of Constitutional Revision, wanted the revision laws passed in the Assembly of the Republic to be subject to a binding consultation of the population before enactment as a way of democratically strengthening that change of the Constitution. He gave the example of the neighbouring Spain, where such a procedure exists (*DAR*, 11, 26 June 1996, p. 189). The proposal also excluded the need to respect the material limits of the Constitutional revision.

José Magalhães (*PS*) considered that proposal a less violent way of achieving the result wanted by Soares Carneiro in 1980. The Portuguese Constitution did not need any strengthening of legitimacy. Luís Sá (*PCP*) also expressed his opposition towards the proposal. The specification of material limits to the Constitutional revision and the request of a qualified majority for the revision were two basic lines of defence of fundamental democratic principles. The *PSD* proposal wanted to sweep away the first line. It was not a way to strengthen the direct democracy, but an instrument of Constitutional rupture (*DAR*, 11, 26 June 1996, p. 193).

The *PSD*'s insistence was weak. Barbosa de Melo soon recognised the unfeasibility of the proposal and did not want to waste any more time defending 'a lost cause' (*DAR*, 11, 26 June 1996, p. 194). Nevertheless, Vital Moreira (*PS*) gave three reasons for his opposition to the proposal. First, the Portuguese Constitutions, except for the 'sad memory' of the one in 1933, were drawn by constituent assemblies and reviewed by parliamentary assemblies. Second, it did not make any democratic sense to submit a law with 100 or 200 provisions to popular vote, mixing both essential and trifling questions. Each of the four or five million citizens would answer one question, not respecting the law as a whole but, probably, the provision that respected the conjuncture of his daily life most. Third, the referendum was against the Constitution, surpassing the material limits of the Constitutional revision. The Constitutional revision system requires that only a two-thirds majority can review the Constitution, once approved by a Constituent Assembly. It would be absurd that a relative majority of citizens, called to decide occasionally on the Constitutional revision, could defeat these changes after a required two-thirds of parliamentarians approved the amendments

to the Constitution, (*DAR*, 11 – *RC*, 26 June 1996, p. 195). The Committee refused the proposal in indicatory voting, with the *PS* and *PCP* nay voting, the *PSD* yea voting, and the *CDS-PP* abstaining (*DAR*, 14 – *RC*, 17 July 1996, p. 284).

In the VI Constitutional revision, in 2004, the *PSD* and the *CDS-PP* introduced unique draft amendments retaking the proposal for Constitutional referendum. In the terms of the proposal, a two-thirds majority would approve the amendments, which had to respect the material limits of the Constitutional revision,[94] but the respective law could be submitted to referendum by deliberation of the Assembly of the Republic (Magalhães, 2004).

The debate had no surprises or novelties, with the proposal being supported by Luís Marques Guedes and Gonçalo Capitão (*PSD*) and Diogo Feyo (*CDS-PP*) and being criticised by Alberto Martins (*PS*) and António Filipe (*PCP*). It was submitted to indicatory voting in the Committee, and the proposals had the yea votes from the *PSD* and the *CDS-PP* and the nay votes from the *PS, PCP, BE* and *PEV*.

In the plenary sittings, the proposal to remove the exclusion of the Constitutional changes from the extent of the referendum had 86 nay votes (77 *PS*, 4 *PCP*, 3 *BE*, 2 *PEV*), 107 yea votes (92 *PSD*, 13 *CDS-PP* and 2 *PS*) and one abstention from *CDS-PP* [*DAR* (I) 78, 23 April 2004, p. 4282]. It did not obtain the qualified majority required. The proposal to allow the referendum on the Constitutional revision had 89 nay votes (76 *PS*, 8 *PCP*, 3 *BE* and 2 *PEV*) and 108 yea votes (94 *PSD* and 14 *CDS-PP*). It did not obtain the qualified majority [*DAR* (I) 79, 24 April 2004, p. 4340).

In synthesis, Portuguese democracy never accepted the Constitutional referendum. The principle according to which the Constitutional revision shall observe the limits established in the Constitution, either the limits of time (requiring the elapse of five years between each ordinary revision), or the formal limits (requiring the approval of every amendment by a two-thirds majority), or even the material limits, were never removed. Despite the attempts of the right wing parties, mainly the *PSD*, to use the referendum as a way to carry out or ratify a Constitutional revision, the left wing parties, namely the *PS* and

[94] The draft, however, proposed the removal of some of the most relevant material limits for Constitutional revision.

the *PCP*, always opposed those proposals, preventing the fulfilment of the majorities needed to review the Constitution in that sense.

Chapter 2

The Local and Regional Referendum

1. Proposals to Introduce the Local Referendum Before 1982

The Constitutional draft drawn by Jorge Miranda proposed, under the title 'popular initiative', that a number of citizens (not less than one-twentieth of those who voted the last election or referendum) could submit any deliberation of the local authority bodies to a referendum under the terms laid down by law (Miranda, 1975, p. 59). This idea reinStated, to a certain extent, the models for local referendums that came from the First Republic and the beginning of the 1936 Administrative Code. A significant number of citizens could submit the local authorities' deliberations to referendum.

Jorge Miranda's proposal would have applied to all local authority deliberations. These would be provisional in nature, since they were dependent on an eventual referendum. In practice, the local referendum would be dependent on legal regulations. It was not clear if the results of the popular initiative would be binding, or if their implementation would dependend on the decision of any State body.

The same draft included two other forms of local referendum. The first was the creation or extinction of local authorities, as well alteration of their boundaries. The second was the organic statute of each municipality. The first case once again reinStated an idea that came from the First Republic, where the creation of new municipalities demanded a local referendum. Jorge Miranda's draft included that possibility, but the proposal did not seem to consider that procedure as obligatory. The idea of approving the organic statute of the municipalities through referendum would have been impracticable in any case, since the Constitution foresaw no such document. In fact, the regime of the local authorities is established in general terms by the Constitution and by law, and is the same for all the local authorities at the same level. There are no individual documents specifying the regime of each one. Nonetheless, the Constituent Assembly did not discuss Jorge Miranda's draft.

The only proposal for local referendums introduced to the Constituent Assembly appeared in the *PPD's* Constitutional draft. It proposed that the deliberations of the representative bodies of local authorities could be dependent on a resident citizens' referendum and the Government's approval. The *PPD* therefore revived the idea of the local

referendum as a way to limit the decision-making powers of the representative bodies. However, the 1976 Constitution did not allow the referendum by any means.

On 6 June 1980, the subscribers of the *Manifesto Reformador*, which were elected in the *AD* lists, introduced the first Bill of Referendum Law. This initiative, which was essentially concerned with the Constitutional referendum, was deemed unConstitutional because the Constitution did not permit the referendum. The Assembly of the Republic did not consider the bill, which contained references to the regional and local referendums.

2. The Local Consultations in the Constitutional Revision of 1982

Soon after the legislative elections of October 1980, and before the first Constitutional revision, several theoretical works proposed making provision for the local referendum in the Constitution. Jorge Miranda's draft published in 1980 included a provision under the title of 'direct local democracy', which foresaw that the law could admit referendums on deliberations taken by municipal bodies. According to the author's own note, this proposal had Article 66(4) of the Republican Constitution of 1911 as its antecedent. The idea was to test some forms of direct democracy at a local level, which, in his point of view, could be a useful experiment. (Miranda, 1980, p. 172).

Three of the five draft amendments to the Constitution introduced to the Assembly of the Republic in 1981 proposed introducing local referendums: **a)** the Draft Amendments to the Constitution No. 1/II, from the *ASDI*, which were set aside in favour of the *FRS*[95] draft. These proposed the inclusion of a new article in the Constitution and allowed popular consultations at a local level in the cases and terms established by law [*DAR* (Off-print 6/II) 26 June 1982, p. 26]; **b)** the Draft Amendments to the Constitution No. 2/II, from the *AD*, in the article on local authorities, provided that the law should determine the circumstances under which the referendum could take place at parish, municipality and regional levels when issues of important local interest were at stake [*DAR* (Off-print 6/II) 26 June 1982, p. 53]; **c)** the Draft Amendments to the Constitution No. 4/II, introduced by the *FRS*, proposed a new Constitutional provision that would allow, in the cases and terms established by law, popular consultations at a local level. These could be

[95] The *FRS* was a coalition that included the *PS*, the *ASDI* and the *UEDS* from 1980 to 1983.

held on matters that were the exclusive responsibility of the local authority bodies [*DAR* (Off-print 6/II) 26 June 1982, p. 90].

In the sub-committee's preliminary consideration of the drafts there was no consensus between the *PS* and the *PSD* regarding these proposals, with the *PCP* adopting a supportive position, in principle, towards the *FRS* proposal. The first reading in the Ad Hoc Committee of Constitutional Revision (*CERC*) showed that the divergences put the *AD* on one side, and the *PS* and the *PCP* on the other. Differences of opinion centred around three concerns.

The first question whether the designation would be a 'referendum' or a 'popular consultation'. The *PS* preferred the expression 'popular consultation' to distinguish it from the concept of referendum for known historical reasons. However, others thought the term 'consultation' was too vague. It was a wide concept that could vary according to the circumstances.[96] Deputies of *AD* argued that a vague reference to 'popular consultation' was unacceptable, and that 'popular consultation' must take the form of a direct ballot.[97]

The second divergence between the *PS* and the *PSD* was the extent of the referendum. This matter attracted much political debate. For the *PS*, consultations could only happen on matters under the exclusive auspices of the local authority bodies. The *AD* referred to questions of important local interest, which, according to Almeida Santos, could lead to a national referendum in practice through a juxtaposition of local referendums [*DAR* (II) 49 – 3rd Supplement, 5 February 1982, p. 1020-(83)].

The third problem concerned the right to initiate local referendums. In the *FRS* proposal, the popular consultation must be called at the level of local authorities and by their own bodies, in the terms established by law. The *AD* proposal allowed local referendums to be called by the State, but only if their scope was local [*DAR* (II) 3rd Supplement, 49, 5 February 1982, p. 1020-(84)].

However, Vital Moreira still posited the question of whether or not there should be prior review of the Constitutionality and legality of the local referendum before it was called in order to prevent the use of the

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[96] In this sense, see Almeida Santos's speech [*DAR* (II) 49 - 3rd Supplement, 5 February 1982, p. 1020-(85)].

[97] See Francisco Sousa Tavares's speech [*DAR* (II) 49 - 3rd Supplement, 5 February 1982, p. 1020-(85)].

referendum for aims not allowed in the Constitution or by law. It would be easier to prevent that possibility than face the results of an illegal or unConstitutional referendum. This idea received widespread acceptance [*DAR* (II) 49, 3rd Supplement, 5 February 1982, pp. 1020-(85-86)].

In an attempt to negotiate positions, Sousa Tavares declared the *AD* willing to accept the restriction of popular consultations or referendums regarding matters of exclusive responsibility to local authorities, since it was expressly Stated that the consultation should be of an electoral type [*DAR* (II) 49, 3rd Supplement, 5 February 1982, pp. 1020-(87-88)]. The question was approached again in the meeting of 13 January 1982, concerning the prior review of Constitutionality to institute in the framework of the creation of a Constitutional Court [*DAR* (II) 69 – Supplement, 20 March 1982, pp. 1288-(6-7)]. In the plenary sittings of 21 July 1982, the *AD* and the *FRS* thrashed out the points of convergence and divergence between them [*DAR* (I) 124, 22 July 1982, pp. 5231-5235].

On 26 July 1982, the Committee arrived at a text [*DAR* (II) 136 – Supplement, 3 August 1982, pp. 2438-(1-3)], sent to the plenary on 29 July for approval as Article 241(3)[98] of the Constitution. It Stated the following:

> 'The local authority bodies may submit matters that are included within its exclusive responsibilities, in such cases and under such terms with effect as the law may lay down, to the direct consultation of the citizens registered to vote in the respective area in the form of a secret ballot.'

This provision had 152 yea votes, (*PSD, PS, CDS, PPM, ASDI, UEDS* and *MDP/CDE*), one nay (*UDP*) and 34 abstentions (*PCP*).[99] Article 213d established the Constitutional Court's responsibility to conduct prior reviews of the Constitutionality and legality of direct consultations of citizens at a local level, with 34 abstentions (*PCP* and *UDP*).[100]

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[98] All references to articles of the Constitution follow the actual numbering at the time to which they referred.

[99] Concerning the declarations of vote, Amadeu Ferreira (*UDP*) considered that the direct consultations could pressure the local authorities, and Vital Moreira (*PCP*) reserved a definitive position for the moment when the law would define the concrete outlines of the popular consultations [*DAR* (I) 124, 22 July 1982, p. 5483].

[100] The abstentions of the *PCP* in all the provisions regarding the responsibilities of the Constitutional Court were explained by reticences as to its creation and composition [*DAR* (I) 124, 22 July 1982, pp. 5484-5485].

It is therefore important to systematise the Constitutional framework for local consultations, which came from the Constitutional revision of 1982 (Pinto, 1988, pp. 92-95; Bon, 1997, p. 467):

1) The responsibility to hold direct consultations of the citizens registered to vote belongs to local authority bodies. Citizens cannot make direct calls for referendums (the citizens' initiative), but they can lobby local authority bodies to that purpose.

2) The local authorities, in the terms of the Constitution, are municipalities (*municípios)*, parishes *(freguesias)* and administrative regions (Article 238). The latter were never instituted for reasons that are explained [in chapter 5]. The Constitution therefore admitted direct consultations at parish and municipal levels. If the administrative regions foreseen in the Constitution had been created, direct consultations at regional level would have been permitted by the Constitution.

3) The responsibility to promote local consultations would belong to the local authority bodies, in other words, to the deliberative bodies (*assembleia municipal* and *assembleia de freguesia*) and to the executive ones (*câmaras municipais* and *juntas de freguesia*), in accordance with their respective responsibilities.[101] The responsibility to decide on the accomplishment of the referendum rested with the body responsible for deliberating on the subject under consultation, or in the case of shared responsibilities, to both (Pinto, 1988, p. 93).

4) The right to vote should be given to the citizens registered in the area where the consultation was promoted.

5) The general provisions of electoral law established in the Constitution (Articles 49 and 116), namely the personality, universality, equality and secrecy of vote, as well as the provisions regarding the electoral registration, election campaigns, duty to cooperate with the electoral authorities

[101] Canotilho & Moreira [1993 (II) p. 39] expressed the opinion that only the deliberative bodies (the assemblies) could call local referendums. There seems to be no Constitutional basis that prevents the executive bodies of local authorities from calling local consultations on matters exclusively under their responsibility.

and correctness and validity of electoral acts, should apply to the local referendum.

6) The prior review of the Constitutionality and legality of the consultation should remain in the Constitutional Court.

7) The local consultations should concern matters included within the exclusive responsibilities of the local authority bodies that would call on them. The local consultations could not be held on subjects of relevant local interest not included in those responsibilities.

8) The Constitution did not establish other boundaries as to the matters that could be the subject of consultation. Ricardo Leite Pinto (1988, p. 87) points out, however, that the acts that in the terms of the law had to be decided on by local authorities in the exercise of bound powers and the decisions that could not be revoked as well could not be submitted to local consultations, under the penalty of illegality.

9) The Constitution was silent on whether the referendum would be binding or merely advisory, leaving such matters to be established by legislation.

3. The Attempts to Legally Regulate Local Direct Consultations

In the III Legislature, after the elections of April 1983, which gave place to a *PS/PSD* coalition Government, the first initiatives to legislate on local direct consultations were introduced. On 23 June 1983, the *UEDS* presented Bill No. 169/III [*DAR* (II) 10, 28 June 1983, pp. 424-442]. On 15 March 1984, the *CDS* presented Bill No. 302/III [*DAR* (II) 98, 16 March 1984, pp. 2500-2501]. Finally, on 21 March 1984, the *PS* and the *PSD* jointly presented Bill No. 306/III [*DAR* (II) 101, 22 March 1984, pp. 2540-2545].

The debate on the general principles of all of the bills took place on 2 May 1984 [*DAR* (I) 99, 3 May 1984, pp. 4211-4241]. All of them were approved with yea votes from the *PS, PSD, CDS, UEDS* and *ASDI.* The *PCP* voted nay. The *MDP/CDE* and independent MP António González, elected within the *PCP* list, abstained. The ad hoc committee that was created to debate the bills in detail did not finish its work, given the dissolution of the Assembly of the Republic in July 1985.

In the IV Legislature, which began in 1985 with a *PSD* relative majority, Deputy Lopes Cardoso, former leader of the *UEDS*, returned to the *PS* and introduced Bill No. 66/IV [*DAR* (II) 12, 7 December 1985, pp. 385-390] while essentially maintaining the *UEDS* bill. The *PS* presented Bill No. 107/IV [*DAR* (II) 25, 23 January 1986, pp. 784-790] reintroducing the contents of the previous *PS/PSD* bill. The *PSD*, in turn, presented Bill No. 139/IV [*DAR* (II) 34, 22 February 1986, pp. 1416-1421] containing some changes in relation to its previous position. The *CDS* presented Bill No. 146/IV [*DAR* (II) 36, 28 February 1986, pp. 1493-1495) essentially reviving the initiative of the previous legislature.

The general debate took place between 15 and 17 April 1986 and ended with the approval of all bills with yea votes from *PSD, PS, PRD, CDS, MDP/CDE* and four independent MPs, and with nay votes from *PCP* [*DAR* (I) 55, 16 April 1986, pp. 2106-2113 and *DAR* (I) 57, 18 April 1986, pp. 2164-2181 and 2193]. However, once again, the initiatives lapsed due to the dissolution of the Assembly of the Republic in April 1987, before the conclusion of the legislative procedure.

4. The Idea of Local Referendums to Create Municipalities

On 13 October 1983, the *PS/PSD* Government introduced Government Bill No. 45/III on the creation of municipalities [*DAR* (II) 38, 14 October 1983, pp. 967-970]. The Government proposed that the creation of new municipalities should be organised through a direct consultation of the citizens. The civil governor of the respective district would schedule the consultation, and the process would follow, *mutatis mutandis*, the Electoral Law for the Assembly of the Republic. Then the Government would make the necessary regulation within the 30 day time limit.

The political context of that proposal was defined by a fierce controversy over the creation of a new municipality in *Vizela*, which was bravely fought for by the local population, but that the Government wished to avoid. The idea of a local referendum as a precondition for creating new municipalities had implications not only on the creation of the municipality of *Vizela*, but also for the appearance of other proposals encouraged by that precedent.

However, there was no law, at the time, on the application of a local referendum. Furthermore, the Constitutional system, according to which the local referendum could only be held on matters within the local government bodies' exclusive responsibility, did not allow the pattern of

local referendum proposed by Government. The ultimate responsibility for the creation of a new municipality would always belong to the Parliament, as laid down in Article 249 of the Constitution. Thus, the proposal was strongly criticised in the parliamentary debate [*DAR* (I) 34, 18 October 1983, pp. 1494-1499 and *DAR* (I) 35, 19 October 1983, pp. 1505-1559], namely by the *PCP* members. The Government abandoned the idea.

5. Law No. 49/90, of 24 August, on Local Direct Consultations

In the V Legislature, after the elections of 19 July 1987, which the *PSD* won with an absolute majority, three parties introduced bills, including the *CDS* with Bill No. 86/V [*DAR* (II) 20, 11 November 1987, pp. 422-(3)-422-(5)], the *PSD* with Bill No. 200/V [*DAR* (II) 53, 4 March 1988, pp. 1032-1037] and the *PS* with Bill No. 231/V [*DAR* (II) 68, 27 April 1988, pp. 1280-1286]. The general debate on these bills took place on 20 May 1988. They were all approved with yea votes from the *PSD*, *PS*, *PRD*, *CDS* and *PEV* and with the abstentions from the *PCP* and independent MPs from the civic association of Democratic Intervention (*ID*), elected in the *PCP* lists [*DAR* (I) 91, 21 May 1988, pp. 3692-3703]. The legislative procedure ended on 25 May 1990, with the unanimous approval in the final overall vote of Law No. 49/90, of 24 August. The passing of the law finally happened eight years after its Constitutional inception.

In synthesis, the enactment of Law No. 49/90, dated 24 August, had the following consequences:

1) Local consultations could happen on matters that were the exclusive responsibility of the local authority bodies, excluding financial questions or other subjects that the local authorities were bound to decide on in the terms of the law. This also included matters that had been the subject of an irrevocable decision. The legislation excluded financial questions;[102] those questions that had a legal imperative and should be resolved by local authorities; as well as those that had been previously resolved and whose decisions could not be revoked, namely those that created new rights. The phrase that referred to topics that were inappropriate

[102] When Law No. 49/90, of 24 August was approved, the Constitutional Revision of 1989 had already enshrined the referendum at a national scope, and had also excluded the possibility of submitting financial questions to referendum.

consultation, which would indeed be unConstitutional, was not included.

2) The local consultations should be binding, with the local authority obliged to respect their results.

3) The deliberation on the holding of local consultations belonged exclusively to the deliberative bodies of the local authorities (parish and municipal assemblies).

4) The proposals for the deliberative assemblies asking for consultations belonged exclusively to the executive bodies or to a third of their members. The citizens' initiative with respect to the local authority bodies was not accepted.

5) Within eight days after deliberation, the chairperson of the local authority body should send an application to the Constitutional Court asking for a review of the Constitutional and legal conformity of the consultation. Once that conformity was verified, the president of the executive body of the local authority should set the date of the consultation within eight days, and the consultation should take place between 70 and 90 days after the date was set.

6. From Direct Consultations to Local Referendums

6.1. The Constitutional Revision of 1989

Before the final approval of Law No. 49/90, there was the second Constitutional revision. In its draft, the *PS* proposed the adoption of the term referendums to replace the designation of local consultations [Draft Amendments to the Constitution No. 3/V, *DAR* (Off-print 1/V) 31 December 1987, p. 4428].

Questions remained, however, about the precise meaning of the *PS* proposal regarding the effectiveness of the local referendum. The expression ‘consultation’ remained in the text, and it seemed that the *PS* maintained that local consultations should only be advisory. However, in the same draft of the Constitutional revision, the *PS* proposed introducing the national referendum with binding effectiveness. Moreover, when the discussion took place on 22 July 1988 (Bill No. 231/V), the *PS* admitted that the binding effectiveness of local consultations had already been approved in general terms.

In the first reading of the draft amendments to the Constitution, the *PS* representatives, Almeida Santos and António Vitorino, maintained

that the subject remained open. In their opinion, the Constitutional text in force admitted both solutions since it sent the decision on the effectiveness of the local consultations to the law. The *PS* proposed the adoption of the word 'referendum', since it would be illogical for a national referendum to have a different designation than a local consultation. Almeida Santos also admitted that it would be illogical for the national referendum to be binding if the local referendum was not. The *PS* was therefore willing to consider the binding effectiveness of local referendums [*DAR* (II) 52 – *RC*, 26 October 1988, pp. 1667-1671]. Later, the *PS* withdrew their proposal [*DAR* (II) 92 – *RC*, 27 April 1989, p. 2691). The *PRD*, created in 1985 and inspired by President Ramalho Eanes, proposed the elimination of local consultations, but was unsuccessful in this argument [Draft Amendments to the Constitution No. 9/V, in *DAR* (Off-print 1/V) 31 December 1987, p. 4480].

6.2. The Failed Constitutional Revision of 1994

In 1994, a Constitutional revision procedure failed, after few months of debates inside the Had Hoc Committee, for lack of agreement between the *PS* and the *PSD*. On that occasion, the *PS* proposed the further widening of the scope of local consultations. According to the Draft Amendments to the Constitution No. 1/VI [*DAR* (Off-print 24/VI) 7 November 1994, p. 17], the local authorities could hold direct consultations of their citizens on matters other than those of their exclusive responsibility. Consequently, the matters on which local authorities exercised some type of responsibility, although not exclusive, could be subject to local consultation. Therefore, in matters whose decision involved the local authorities and other bodies of the State (namely the Government), the local authorities could use local consultations to build pressure for a decision that suit their purposes, provided those purposes were supported by the result of the direct local consultation.

Luís Fazenda, and independent MP from the *UDP*, who was elected from the lists of the *PCP*, proposed that local authority bodies could hold direct consultations on any matters that affected the population of their respective area [Draft Amendments to the Constitution No. 13/VI, in *DAR* (Off-print 24/VI) 7 November 1994, p. 125]. In this version, the local authorities were able to promote popular consultations on matters outside their specific responsibilities, and use the popular consultations to show the popular sentiment of populations regarding decisions that might affect them.

6.3. The Legislative Procedure from 1996 to 1999

During the VII Legislature, which began in 1996 with a relative majority by the *PS*, several parties introduced legislative initiatives on the subject of local consultations. On 21 March 1996, the *PCP* presented Bill No. 128/VII [*DAR* (II-A) 31, 28 March 1996]. On 13 November 1996, the *PSD* presented Bill No. 237/VII [*DAR* (II-A) 7, 29 November 1996, pp. 101-102]. On 3 April 1997, the *PS* presented Bill No. 303/VII [*DAR* (II-A) 33, 10 April 1997, p. 511]. On 4 April 1997, the *CDS-PP* presented Bill No. 304/VII [*DAR* (II-A) 33, 10 April 1997, pp. 511-513].

A general debate took place on 9 April 1997 [*DAR* (I) 59, 10 April 1997, pp. 2063-2070], and there was unanimous approval for all the initiatives [*DAR* (I) 60, 11 April 1997, pp. 2108-2109]. However, the legislative procedure did not follow. At that time, the fourth Constitutional revision was in progress. That procedure ended in July 1997 and brought some changes regarding local consultations.

On 25 March 1999, the Government presented Government Bill No. 262/VII [*DAR* (II-A) 49, 31 March 1999, pp. 1336-1362] on the local referendum which sought the complete revocation of Law No. 49/90, having in mind the new Constitutional text. On 24 October 1999, all the initiatives lapsed due to the unexpected dissolution of the Assembly of the Republic.

6.4. The Constitutional Revision of 1997

The Fourth Constitutional Revision took place at the same time as the legislative procedure for local direct consultations, and introduced some changes in that regard. In doctrinal terms, Jorge Miranda (1996b, pp. 20-21) published a draft supporting the inclusion of the national and local referendum in the same Constitutional provision, leaving out the designation of local direct consultations. The local referendum could be held on matters not necessarily exclusive to, but within the responsibility of, the local authority bodies, and it could happen in neighbouring local authorities regarding the definition of the respective borders or the creation of a local authority. Besides this, the referendum could be held through the direct initiative of at least 5% of the citizens registered to vote in the respective territory.

When the procedure for the Constitutional revision began in the Assembly of the Republic, the *PS* revived its proposal to widen the substantial scope of local consultations, having included in the Draft

Amendments to the Constitution No. 3/VII a new provision on that subject [*DAR* (II-A) 27, 7 March 1996, p. 484-(26)]. The Draft Amendments to the Constitution No. 8/VII, presented by the independent MPs elected in the lists of the *PS*, included the very same proposal [*DAR* (II-A) 27, 7 March 1996, p. 484-(81)]. Finally, in the Draft Amendments to the Constitution No. 4/VII [*DAR* (II-A) 27, 7 March 1996, p. 484-(43)], the *PCP* proposed that the citizens initiate direct consultations in the territory where they were registered to vote, in the terms laid down by law.

In the first reading of the drafts, the *PSD* announced its support for the *PS* proposal to enlarge the substantial scope of local consultations to matters that were not the exclusive responsibility of local authorities, and for the *PCP* proposal to admit the popular initiative of local consultations.[103] Meanwhile, the chairman of the Committee, Vital Moreira, assumed the job of unifying the terminology by replacing the designation of popular consultations for local referendums [*DAR* (II – *RC*) 61, 4 December1996, p. 1849].

On behalf of the *PCP*, Luís Sá agreed with both proposals, and considered the local consultations bound to the exclusive responsibilities of the local authorities to be practically useless. Because Portugal had restricted local autonomy, the most important subjects were not within the exclusive responsibilities of the local authorities. Therefore, they were out of the referendum's remit, pitting proposals for popular consultation against the judgement of unConstitutionality by the Constitutional Court. Therefore, the way to strengthen local popular consultations would be to extend the exclusive responsibilities of local authorities, or to allow the local consultations on matters that were not within their exclusive responsibilities [*DAR* (II – *RC*) 61, 4 December 1996, p. 1851].

In that phase of the debate, the *PS*, *PSD* and *PCP* accepted the adoption of the designation 'local referendums', to include the substantial scope of the local referendums on matters not included in the exclusive responsibilities of the local authorities, and to admit the popular initiative of a local referendum in the terms laid down by law. The *PS* proposal was also accepted, so the reference to the 'local authority bodies' was replaced by reference to 'local authorities', because the substantial scope of the

[103] See the speech by Miguel Macedo (*PSD*) in *CERC*, on 3 December 1996 [*DAR* (II-*RC*) 61, 4 December1996, p. 1850]. The *PSD* draft did not include any provision on the local referendum. However, the draft introduced by a group of *PSD* deputies, members of the workers tendency (*TSD*) included a proposal on it, which was later withdrawn [*DAR* (II-A) 27, 7 March 1996, p. 484-(87)].

referendum should refer to the responsibilities of local authorities and not just the specific ones of each body.

In the second reading, the *PS* and *PSD* introduced a specific proposal that was unanimously approved. It Stated that 'in such cases, under such terms and with such effect as the law may lay down, local authorities may submit matters that are included within the responsibilities of the local authority bodies to referendum by those of their citizens who are registered to vote. The law may grant the initiative of registered electors.' [*DAR* (II – *RC*) 116, 9 July 1997, p. 3405). This proposal was unanimously approved in the plenary sittings of 30 July 1997 [*DAR* (I) 104, 31 July 1997, p. 4014].

7. Organisational Law No. 4/2000, of 24 August

7.1. The Legislative Procedure

In the VIII Legislature, the Assembly of the Republic considered three legislative initiatives on the local referendum. On 22 December 1999, the Government revived its previous initiative, introducing Government Bill No. 8/VIII [*DAR* (II-A) 12, 6 January 2000, pp. 189-216). The *PSD* presented Bill No. 85/VIII on 21 January 2000 [*DAR* (II-A) 18, 2 February 2000, p. 369], and the *PCP* presented Bill No. 108/VIII on 23 February 2000 [*DAR* (II-A) 23, 3 March 2000, pp. 471-473].

All the initiatives sought to update the regime of the local referendum, having in mind the Constitutional text approved in 1997, even if they followed different methodologies. The Government proposed to draw up a law on local referendums *ex-novo*, thus adapting the regime of the national referendum approved by Law No. 15-A/98, of 3 April and replacing Law No. 49/90, of 24 August, in its entirety. On the other hand, the *PSD* and the *PCP* proposed amendments to Law No. 49/90.[104]

7.2. The Legal System Passed

The result of the legislative procedure was Organisational Law No. 4/2000, of 24 August, which approved the legal system for the local referendum currently in force in Portugal (Rocha & Filipe, 2003, pp. 81-132). The main changes were as follows. [Amaral, 2009 (I) pp. 606-614]:

[104] On the differences among the proposals, see the report drawn for the Constitutional Affairs, Rights, Freedoms and Guarantees Committee by António Filipe (*PCP*), [*DAR* (II-A) 24, 15 March 2000, pp. 518-520].

1 – Substantial scope

The local referendum can occur on subjects of relevant local interest, which should be resolved by the local authority bodies of municipalities or parishes. Relevant topics must be included within their responsibilities, which can be either exclusive or shared with the State and/or with the autonomous regions [Article 3(1)].

Therefore, proposals submitted by local authorities could be decided by a local referendum. In that event, the deliberations of the local authority would be halted and the proposal sent to the Constitutional Court. If the Court declared the referendum valid and the referendum took place, the deliberations would resume after the refendum gave approval. (Article 5).

The following matters were excluded (Article 4):

a) Matters that are the exclusive responsibility of the sovereignty organs;
b) Matters regulated by the legislative act or by the State regulation binding the local authorities;
c) The options of the plan and the activities report by local authorities;
d) Questions and acts of budgetary, tax-related or financial contents;
e) Matters that have been the subject of an irrevocable decision, namely acts that are constitutive of rights or of legally protected interests, except in the cases where they are unfavourable to their addressees;
f) Matters that had been the subject of a judicial decision that passed a definite judgement;
g) Matters that had been the subject of a contract between the State and the local authority.

2 – Effectiveness

The referendum shall be binding on the local authority bodies if the number of voters exceeds half the number of registered electors (Article 219). If the result involved the production of an act on the question or questions submitted to referendum, the local authority that is responsible must approve it within 60 days (Article 221). During the same term of office, the local authority bodies cannot revoke or change its essential definition, and cannot approve any act opposed to the result of the referendum (Article 222). The drafts of the referendum whose answer

involved the continuity of a situation could not be renewed during the same term of office (Article 223). The disregarding of the result of the referendum by a municipal or parish assembly would be punished with the dissolution of that body, under the terms of the law (Article 220).

3 - Initiative

The initiative for the local referendum belongs to (Article 10):

a) The members of municipal assemblies (*assembleias municipais)* or parish assemblies (*assembleias de freguesia*);
b) The municipal or parish assemblies;
c) The municipal authorities (*câmaras municipais)* or the parish authorities *(juntas de freguesia)*;
d) A minimum of 5,000 (or 8%) of the citizens registered to vote in the respective area. In the municipalities and parishes with less than 3,750 registered voters, the initiative has to be proposed by at least 300 (or 20%) of local citizens (Article 13).

The deliberation regarding the holding of the referendum is always the responsibility of the municipal assembly or of the parish assembly, depending on the circumstances of the case. It must occur within 15 days after the exercise, or the reception, of the initiative, in the case of a representative initiative, or within 30 days, in the case of a popular initiative. If the question submitted to referendum is not included within the responsibility of the municipal or parish assembly, and the initiative was not taken by the body of that responsibility, the deliberation needs the opinion of the latter, which shall be sent within five days of the receipt of the request (Article 24).

4 - Other aspects

Each referendum has only one subject matter [Article 6(1)]. No referendum can include more than three questions. It must be formulated with objectivity, clarity and precision. The answers can only be ‘yes’ or ‘no’, and it is forbidden to suggest possible answers, either directly or indirectly. The questions cannot be preceded by any motives, preambles or explanatory notes (Article 7).

It is acceptable to hold several referendums during the same day and in the same autarchy, since each is formal and substantially autonomous [Article 6(2)]. There cannot be simultaneous local

referendums on the same matter, and the local referendums cannot be held alongside regional or national referendums [Article 6(3)].

Any practice of an act related to the call or the accomplishment of a local referendum between the dates of general elections for the sovereignty organs, elections for the self-government bodies of the autonomous regions, local authority bodies, members of the European Parliament, or national or regional referendums are not allowed (Article 8). The call or accomplishment of local referendums during a State of siege or a State of emergency, or before the installation or after the dissolution of elected local authority bodies, is also prohibited (Article 9).

The chairperson of the deliberative body shall send the deliberation to hold a local referendum to the Constitutional Court within eight days, and the review of the Constitutionality and legality of the referendum ought to be held by the Court within 25 days (Articles 25 and 26). If the referendum is considered Constitutional and legal, as soon as the chairperson of the deliberative body has been notified of the decision of the Constitutional Court, he/she shall notify the president of the executive body of the local authority within two days. A date for the referendum shall be set within the next five days. This should occur within 40 and 60 days (Articles 32 and 33).

8. The Specific Experience of Local Referendums

8.1. The Jurisprudence of the Constitutional Court

Between 1990 (when Law No. 49/90, of 24 August on local consultations came into force) and 2011, there were 27 deliberations from local authority bodies requesting the Constitutional Court (*TC*) to review the Constitutionality and legality of local referendums (see appendix 1 for a detailed description). The Constitutional Court declared the drafts of the local referendum unConstitutional and/or illegal in 23 cases. The *TC* permitted only four to be held.

On 30 April 1991, a few months after Law No. 49/90 came into force, the Municipal Assembly of *Peniche* deliberated on a local consultation for the first time. The proposed purpose of the consultation was the creation of a new parish.

In 1991, three deliberations on popular consultations were registered, but none were authorised by the *TC*. Only in 1998, after the Constitutional revision of 1997, did the local authorities take other deliberations that sought out local referendums: three in 1998, eight in

1999 and three in 2000. The two first referendums authorised by the Constitutional Court were deliberated in 1998 and 1999. This boom in local referendums subsequent to 1998 did not happen by chance. The referendum became increasingly important in the Portuguese political life after the first referendum of a national scope took place in 1998. Moreover, the Constitutional revision of 1997 had reformulated local referendums, seeking to make them more viable. After the introduction of Law No. 4/2000, of 24 August, which brought the legal framework up to date following the Constitutional changes of 1997, there were nine deliberations (two in 2004, one in 2006, two in 2008, one in 2009 one in 2010 and two in 2011) but the Constitutional Court only admitted two of them.

The parish assemblies took 14 deliberations and the municipal assemblies took 13. In geographical terms, more drafts were presented in the northern area. The local authorities in the northern part of the country presented 13 drafts, seven were presented in the central area, two in the surrounding areas of Lisbon, three in the southern areas and two in the autonomous regions.

The initiatives in the assemblies were taken, for the most part, by the executive bodies (in 13 cases). 11 deliberations were taken by the initiative of the members of the assemblies themselves, and in three cases the deliberations omitted the authorship of the initiative. Despite the possibility of popular initiatives on local referendums after Law No. 4/2000, this opportunity has not yet been taken up.

As to the political majorities in the local authority bodies where the deliberations were taken, there is a significant variation. Eight of the 13 deliberations taken at a municipal level, had its origin in the municipal assemblies of the *PS* majority (two in *Viana do Castelo* and two in *Cartaxo*); four in the *PSD* majority and one in the *CDU* (*PCP/PEV* coalition) majority. Four of the 12 parish assemblies[105] that approved drafts for local referendums had a *PSD* majority, another four had a *PS* majority, one of them had a coalition between *PS* and *CDS*, another one had a *CDU* majority, and still another one had a majority that resulted from a candidacy promoted by a group of citizens that were not politically affiliated.

[105] There were 14 deliberations. However, two of them were second attempts to promote the same referendum.

As to the subject proposed for the referendums, six cases concerned the creation of parishes or the transfer of parishes from a municipality to another. Two cases discussed the creation of a protected area for environmental reasons.[106] 10 cases concerned the construction, the demolition or the location of several infrastructures: in *Riba de Ave*, the construction of a treatment plant for solid residues; in *Serreleis*, the construction of a playing field in a certain location; in *Tavira*, the demolition of an inoperative reservoir of water; in *Portimão*, the demolition of an old market for a boulevard with a green area; in *Louredo*, the location of a cross; in *Barcelos*, the trajectory of a highway; in *Gaula*, the retreat of industrial units; in *Guarda*, the localization of a hospital; in *Costa da Caparica*, the construction of houses and collective equipment on parish grounds; in *Santa Cruz da Graciosa*, the demolition of a bandstand; in *Mirandela*, the maintaining of a railway line. In *Viana do Castelo*, both deliberations entailed the integration of the municipality into an intermunicipal community. The three remaining cases referred to: choosing whether to hold a municipal holiday in *Torres Vedras*; the holding of bullfights and putting the bulls to death (in the arena) in *Barrancos;* and to proposals for a private company to operate a car park in *Cartaxo*.

Finally, it is worth analysing the reasons why the Constitutional Court rejected 23 referendum drafts. The Constitutional Court declared that 10 proposals for local referendums were unConstitutional and illegal because their subject was not included within the exclusive responsibilities of the local authorities, thus infringing Article 241(3) of the Constitution and Article 2(1) of Law No. 49/90, of 24 August. These were the cases of **a)** the creation of parishes; **b)** the change of parishes from one municipality to another;[107] **c)** the construction of a treatment plant for solid residues in the parish of *Riba de Ave*; **d)** the creation of the protected area of *Corno do Bico*;[108] **e)** the bullfights with the bulls being put to death in *Barrancos*; **f)** construction on grounds belonging to the parish authority of *Costa da Caparica* in terms of a programme contracted

[106] The protected area was the same in both parishes (*Bico* and *Vascões*, in the municipality of *Paredes de Coura*). These two cases gave way to four deliberations, given that after the declaration of unConstitutionality in the first attempt, both parish assemblies moved forward with new deliberations that obtained, nonetheless, the same result.

[107] See Appendix 1, the referendums proposed by the Municipal Assembly of *Peniche*, Parish Assembly of *Arazede*, Parish Assembly of *Asseiceira*, Parish Assembly of *Caramos*, Parish Assembly of *Abação (S. Tomé)* and Parish Assembly of *Moita*.

[108] See Appendix 1for the referendums proposed twice by the Parish Assemblies of *Vascões* and *Bico*.

between the municipal authority of *Almada* and the State (*POLIS* Programme).

In Ruling No. 238/91, which refused a local consultation in *Peniche* about the creation of a new parish, Judge António Vitorino voted against the refusal and gave a dissenting judgement supporting the admissibility of that consultation. In his opinion, the Municipal Assembly of *Peniche* had the responsibility to deliberate on the process of creating that parish, even if only advisory in nature. Nothing should prevent the Assembly from consulting the population and deliberating on the agreement with the will expressed in the consultation.

António Cândido de Oliveira (1993, pp. 276-277) also criticised this *TC* decision. This author agreed with António Vitorino and considered the position of the Constitutional Court to be too restrictive. In his opinion, the popular consultation should be admitted, not only on a subject that involved just one local autarchy, but also when it involved other autarchies or sovereignty organs. He believed that a local authority body had the exclusive responsibility to take a deliberation even if it was merely advisory. The Constitutional Court, when restricting the exclusive responsibility of the local authority bodies to local subjects, risked turning the local consultations into something useless.

After the Constitutional revision of 1997, Article 240 of the Constitution Stated that the local authorities may submit matters included within the responsibilities of their bodies to referendum in the cases, terms and effects laid down by law. The reference to the exclusive responsibilities of the local authorities disappeared. In the case, for instance, of the creation of new parishes – whose procedure required the local authorities' opinion by law – nothing should prevent them from submitting the exercise of that responsibility to referendum. The results of the referendum oblige the local authority to follow the popular will. However, as the Constitution left the regulation of that matter in the hands of the law, while Law No. 49/90, of 24 August was left unchanged, the cases, the terms and the effects of the local referendums remained the same. Although the Constitution allowed other solutions from 1997 onwards, the law would have to specify them. Thus, the Constitutional Court declared some drafts for the referendum proposed even after the Constitutional revision of 1997 to be illegal, since it was considered that Law No. 49/90 was in full force despite that change.[109]

[109] In this sense, see Ruling 390/98, of 26 May 1998.

In 12 cases, the reasons for the unConstitutionality and illegality of the referendums rested on the question or questions that would be submitted to the electorate. Article 7 of Law No. 49/90 Stated that the questions submitted to the citizens be formulated in terms that allowed an unequivocal answer in the simple affirmative or negative form. Article 9 disposed that the proposals for local consultations should contain the questions to be submitted to the citizens. However, in some cases, the deliberations did not even include the questions.[110] In other cases, the formulation of the questions did not have the necessary clarity to allow an unequivocal 'yes' or 'no' answer.[111] In three specific cases, the Constitutional Court did not allow the referendums because the respective deliberations did not specify their territorial scope.[112]

Another reason for non-admission, invoked in two specific cases, was where author's origin was unclear. This was essential because Article 8 of the law only gave legitimacy to the assemblies, the executive bodies of local authorities, and a third of the members of each of those bodies. Without any reference to the origin of the initiative, it was impossible to know if the authors of the proposal had the necessary legitimacy to present it.[113] In the case of the local referendum proposed by the Municipal Assembly of *Barcelos*, one of the reasons for the non admission was that had been proposed by only one member of the Municipal Assembly.

Two drafts for local referendums were not admitted because they were proposed during the session of the assemblies where the deliberations were taken, thus contradicting the rule of Article 6(2) of Law No. 49/90. According to that rule, the deliberation should be taken

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[110] See Appendix 1 for the questions regarding the Municipal Assembly of *Torres Vedras* on the municipal holiday; the Parish Assembly of *Riba de Ave* on the treatment plant for solid residues; the Municipal Assembly of *Barcelos* on the trajectory of Highway A11/C14; the Parish Assembly of *Vascões* on the protected area of *Corno do Bico* and the Parish Assembly of *Bico* on that same question.

[111] See Appendix 1 for the following referendums: the proposal by the Municipal Assembly of *Portimão* on the demolition of an old market; the Parish Assembly of *Louredo* on the localisation of a cross; the Parish Assembly of *Moita* on its change to the municipality of *Marinha Grande*; the Parish Assemblies of *Vascões* and *Bico*, in their second attempt for a referendum on the creation of the protected area of *Corno do Bico*; the Municipal Assembly of *Viana do Castelo* on the integration in the intermunicipal community of *Minho Lima*; the Municipal Assembly of *Cartaxo* on the concession to a private company to operate a car-park.

[112] See the cases of the proposals presented by the Municipal Assembly of *Barcelos* and by the Parish Assemblies of *Vascões* and *Bico*.

[113] See the proposals of the Parish Assemblies of *Vascões* and *Bico*.

obligatorily, in an ordinary or extraordinary session, within 15 days after the reception of the proposal.[114]

Four proposals that were presented during Law No. 4/2000, of 24 August were refused because they coincided with the electoral process for the European Parliament or for the President of the Republic. The Parish Assembly of *Gaula* deliberated about a local referendum on 1 March 2004 and the Municipal Assembly of *Guarda* made the same on 5 May 2004. The Constitutional Court refused these referendums, because the elections for the European Parliament had already been scheduled for the 13 June of that year. On 16 February 2009, the Municipal Assembly of *Mirandela* decided that a local referendum and the elections for the European Parliament should both occur on 9 June. On 29 September 2010 the Municipal Assembly of *Santa Cruz da Graciosa* made a similar decision, proposing to hold both a referendum and presidential elections on 23 January 2011. All of these deliberations were refused as illegal.

8.2. The Local Referendums Actually Held

8.2.1. Serreleis

The first local referendum of the Portuguese democracy happened on 25 April 1999, in the parish of *Serreleis*, located in the north of the country, in the municipality of *Viana do Castelo*. The question submitted to the voters was the following: 'Do you agree with the construction of a playing field for several sports behind the church of *Serreleis*?'

There were 947 citizens registered to vote, and 726 of them (76.66%) voted effectively. 351 citizens voted 'yes' and 366 voted 'no'. Despite the tight margin, the negative answer prevailed and the parish did not build the playing field at that location. It is notable that the previous elections for the Parish Assembly of *Serreleis* had been won by a list of citizens outside of the parties, which obtained 64.03% of votes, against 22.21% of *PS* votes and 11.85% of *PSD* votes, having voted 78.09% of the registered citizens.[115] This unusually high turnout is evidence of high political motivation and a willingness to be mobilised to vote. Both in the

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[114] See Appendix 1 for the proposals of the Parish Assembly of *Caramos* and the Municipal Assembly of *Barcelos*.

[115] The results to the Parish Assembly of *Serreleis* on 14 December 1997 were the following: registered – 940; voters – 734 (78.09%); group of citizens – 470 (64.03%); *PS* – 163 (22.21%); *PSD* – 87 (11.85%). Electoral results available at: http://www.eleicoes.mj.pt [accessed 12 June 2011].

local election and in the local referendum, there was a strong participation of the parish voters, much higher than the national average in local elections. This is significant because national participation in the elections for parish assemblies on 14 December 1997 was 59.86%.

8.2.2. Tavira

There was another local referendum on 13 June 1999 at the municipality of *Tavira* with the following question: Do you agree with the demolition of the old water reservoir (inoperative) of *Alto de Santa Maria*? 20,948 citizens were registered to vote, and only 7,585 (36.2%) voted effectively. 2,671 citizens voted 'yes' (35.2%) and 4,122 citizens voted 'no' (54.4%). One should note that in the previous local elections for the Municipal Assembly of *Tavira*, on 14 December 1997, the turnout had been 66.58% of citizens. Consequently, the participation in the referendum did not meet expectations.[116]

8.2.3. Viana do Castelo

Law No. 45/2008, of 27 August, on the intermunicipal association, proposed that the municipality of *Viana do Castelo* should integrate a wider intermunicipal community, the Intermunicipal Community of *Minho Lima*. A significant majority of the members of the municipal bodies of *Viana do Castelo*, including the President of the local authority, deeply disagreed with that legal purpose. However, the institution of the community required the approval of its statutes by the absolute majority of the municipal assemblies.

Even before the passing of Law No. 45/2008 in the Assembly of the Republic, which happened on 11 July 2008, the municipal bodies of *Viana do Castelo* refused the integration of the Intermunicipal Community of *Minho Lima*. On 13 June, the municipal authority decided that, if Parliament passed the Law on the intermunicipal association, as had been proposed, the municipality of *Viana do Castelo* would propose holding a local referendum on that subject.

When the law came into force, the Municipal Assembly passed a proposal for a local referendum aimed at refusing the integration of the municipality in the Intermunicipal Community. It was sent to the Constitutional Court, but wasn't admitted for lack of an objective, precise

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[116] The results for the Municipal Assembly of *Tavira* on 14 December 1997 were the following: registered – 21,474; voters – 14,298 (66.58%); *PSD* – 7,176 (41.15%); *PS* – 5,883 (33.42%); *CDU* – 893 (6.25%).

and clear question (see Appendix 1 and Ruling 524/2008 of the *TC*). The Municipal Assembly was then invited to reformulate the question, which it did on 5 November 2008. On 19 November, the *TC* admitted the referendum, which was scheduled for 25 January 2009.

On 25 January 2009, the municipality of *Viana do Castelo* held its first local referendum with the following question: 'Do you agree that the municipality of *Viana do Castelo* integrate the Intermunicipal Community of *Minho Lima*?' From the 88,114 registered electors, only 27,101 (30.76%) voted effectively. 9,934 voted 'yes' (37.80%) and 16,347 voted 'no' (62.20%). The refusal of the integration in the proposed Community was clear, but the participation in the referendum was very low, particularly if we consider that in the local elections for the Municipal Assembly held on 9 October 2005, 51,450 electors exercised their right to vote, which means 64.89% of the registered citizens.[117]

8.2.4. Cartaxo

On 1 September 2011, the Municipal Assembly of *Cartaxo*, a municipality of *PS* majority in the centre of the country, unanimously passed a *BE* proposal to hold a local referendum on the intention expressed by the Mayor to privatise 620 parking places, scattered in the streets surrounding the centre, for a period of 30 years. That proposal was sent to the Constitutional Court, which judged it illegal because it lacked a clear and objective question.[118] The process returned to the Municipal Assembly and new proposal was passed, reformulating the question in terms accepted by the Court.

The referendum was made on 18 December 2011, with the following question: 'Do you agree that the Municipal Authority of *Cartaxo* should sign a contract to grant exploitation of public park in covered parking, and over 620 parking places scattered in the streets surrounding the urban centre, for a period of 30 years to a private company?'

The turnout was incredibly low. From the 20,886 registered voters, only 2,629 (12.59%) took part in the referendum. 2,484 (95.32%) voted 'no' and only 122 (4.68%) voted 'yes'. There were nine blank and

[117] The results to the Municipal Assembly of *Viana do Castelo* on 9 October 2005 were the following: registered – 79,292; voters – 51,450 (64.89%); *PS* – 22,544 (43.82%); *PSD* – 16,383 (31.84%): *CDU* – 3,706 (7.20%); *CDS-PP* – 2,534 (4.93%); *BE* – 2,478 (4.82%); group of citizens – 1,474 (2.86%).
[118] See the question in Appendix 1.

14 null votes.[119] The option No, won easily, and the reason is easy of explain. In fact, during the process, the Mayor who had proposed to privatise the parking spaces, resigned before the referendum, and his successor gave up on the idea. On the day of the referendum, all the political groups of the Municipal Assembly supported the option 'no'. Consequently, the privatisation process had no support and defeat was easy. The result was perfectly foreseeable, so the turnout was low. While the vast majority of local residents saw it as a waste of time and money, the opposition used the referendum as leverage whenever proposals to privatise parking were revived.

9. The Constitutional Inception of the Regional Referendum

9.1. The Concept of a Regional Referendum

The first Constitutional revision, in 1982, allowed local direct consultations on matters of the exclusive responsibility of local authorities. In Constitutional terms, there are three layers of local authorities in Portugal: the parishes, the municipalities and the administrative regions. However, while the municipalities and the parishes, which already existed before the Constitution of 1976, were adapted to the new democratic Constitutional framework, and started to work in new terms with bodies being democratically elected and with a new board of responsibilities laid down by law, the administrative regions were never instituted. Regional referendums, in the sense of referendums at the level of the administrative regions, would have been permitted by the Constitution as types of local referendums if the administrative regions had been instituted. However, in the absence of a regional structure, the law only refers to local referendums at the level of the municipality and parish.

After the 1997 amendments, the Constitution stipulated that the creation of administrative regions depends on regional referendums, which should be held simultaneously, at the national level, in each of the proposed regions. This referendum will be treated as a national referendum and discussed more fully in chapter 5. The referendum on the eventual creation of administrative regions, anticipated in the Constitution, has a national scope, in spite of its projection at the level of each region. It is a national referendum on the creation of the regions and not a referendum in the regions.

[119] Results available on http://www.dgai.mai.gov.pt [accessed 3 March 2012].

Therefore, the regional referendums treated in this chapter are those located at the level of the autonomous regions. The Portuguese Constitution of 1976 established the existence of two regions endowed with political and administrative autonomy and self-government bodies, in the archipelagos of Madeira and The Azores. Those referendums are not local ones, because the autonomous regions are not local authorities, but regional referendums in the sense of autonomic referendums, that is, each one is held in an autonomous region.

9.2. Bill No. 501/I

Although no type of referendum was permitted by the 1976 Constitution,[120] the subscribers of the *Manifesto Reformador* introduced Bill No. 501/I, on 6 June 1980, which sought to regulate the referendum. This was never discussed. That Bill included the idea of a referendum to approve the political and administrative statute of each of the autonomous regions.

The Constitution of 1976 established a regime of political and administrative autonomy, taking into account the distinct geographic, economic, social and cultural characteristics of The Azores and Madeira archipelagos, and the historic traditions of autonomy of the island populations. The system of autonomy, which was deepened in subsequent Constitutional revisions, establishes the existence of self-government bodies in the regions (Legislative Assembly and Regional Government) and the political and administrative statutes of the regions. The drawing of the drafts of statutes is the exclusive responsibility of the regions' legislative assemblies, but final approval defers to the Assembly of the Republic.

9.3. The Constitutional Revision of 1997

The subject of the referendum in the autonomous regions returned in 1994, with discussions over the fourth Constitutional revision. Then, two draft amendments to the Constitution, presented by *PSD* and *PS* deputies elected by the electoral constituency of Madeira, proposed the inception of the referendum at the level of the autonomous regions.

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[120] The draft of the Constitution from the *CDS* laid down that the Parliament, with two-thirds of the full number of its members, could decide to submit any previously approved law to popular referendum of a national or regional scope, except those on tax-related issues. The proposal did not explain the regional level it referred to (autonomous regions or administrative regions). It is clear that the submission of laws to a regional referendum could only consider regional effects. This proposal, however, was not accepted.

That Constitutional revision procedure was never completed, so the matter of the regional referendum re-emerged in 1996. At that time, seven draft amendments to the Constitution proposed the inception of the referendum in the autonomous regions: Draft No. 1/VII from the *CDS-PP* (Article 233-A);[121] Draft No. 3/VII from the *PS* (Article 235-A); Draft No. 5/VII from the *PSD* [Article 118(11)]; Draft No. 6/VII from the *PSD*/Madeira (Article 236-C);[122] Draft No. 7/VII from the *PS*/Madeira;[123] Draft No. 9/VII from the deputies from the *PSD* members of *TSD* [article 118 (6)(8)]; Draft No. 10/VII from *PEV* [Article 118(9)].[124]

After a first reading happened in the *CERC* on 28 November 1996 [*DAR* (II – *RC*) 60, 29 November 1996, pp. 1809-1818], which maintained the discussion on the main aspects unfinished, the *PS* and the *PSD* agreed on a formulation that they introduced together in the second reading on 3 July 1997 [*DAR* (II-RC) 114, 4 July 1997, pp. 3363-3364]. The plenary sittings of 30 July 1997 passed that proposal with the yea votes from the *PS, PSD* and *CDS-PP* and nay votes from the *PCP* and *PEV* [*DAR* (I) 104, 31 July 1997, p. 4009].

The formulation passed as Article 232(2) on the responsibilities of the Regional Legislative Assembly. It Stated the following: the Legislative Assembly of each autonomous region shall be responsible for submitting a draft regional referendum by means of which the President of the Republic may call upon the citizens, who are registered to vote in the region's territory, to pronounce themselves in a binding fashion on questions that are of importance and specific interest to the region. The provisions of Article 115 (on national referendums) shall apply to such referendums, *mutatis mutandis*.

As for the power to decide on the referendum, the option that prevailed and was supported by the *PS* and the deputies of Madeira, gave this right to the President of the Republic. The *PSD*'s initial proposal to delegate that power directly to the Regional Legislative Assemblies was declined. The *PCP* declared its opposition towards any of the solutions, and defended the possibility, informally suggested by Vital Moreira, of

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[121] Article 233-A did not take part of the first version of the draft introduced by the *CDS-PP* on 26 January 1996 [*DAR* (II-A) 21- Supplement, 1 February 1996), having been introduced later as addition on 4 March 1996.

[122] Subscribed by Deputies Guilherme Silva, Correia de Jesus and Hugo Velosa.

[123] Subscribed by Deputies António Trindade and Isabel Sena Lino.

[124] The Draft Amendments to the Constitution No. 2/VII to No. 11/VII are published in *DAR* (II-A) 27- Supplement, 7 March 1996.

giving that power to the Representatives of the Republic[125] in the autonomous regions [*DAR* (II – *RC*) 60, 29 November 1996, p. 1810].

The initiative to propose the referendum to the President of the Republic is an exclusive responsibility of the regional legislative assemblies. The Constitution does not establish who can initiate the procedure in the legislative assembly, since it is up to the law to decide this matter. It is obvious that the deputies and the parliamentary groups of the legislative assemblies of the autonomous regions must have that prerogative. Legislators should decide if that power must also be given to the regional governments, and if (and how) the popular initiative of regional referendum is admitted. The responsibility to legislate on regional referendums was the exclusive responsibility of the Assembly of the Republic, as it happens with the national and local referendums (Article 164b). The law on regional referendums must observe the form of organisational law [Article 166(2)].

The regional referendum can happen on subjects relevant to the regions' specific interests. This delimitation of the subject demands some remarks. Unlike what happens at the level of the organs of sovereignty, in that both Parliament and the Government hold legislative responsibilities, at the level of the autonomous regions only the Legislative Assembly holds these responsibilities. Because the Constitution attributes the exclusive initiative of a referendum to the Legislative Assemblies of the regions, it unavoidably binds its extent. It would not make sense for the Legislative Assembly to propose a subject on which it could not legislate to the voters. Therefore, the regional referendum can only happen on matters whose decision is restricted to the regional legislative competence. As Jorge Miranda and Rui Medeiros (2007, p. 418) highlight, the popular consultation involves the power to legislate on the matter submitted to the electors. Therefore, the holding of a referendum by the region is only understandable if, after the consultation, the regional bodies could act in accordance with the respective result. As a result, the scope of regional referendums is limited to their specific responsibilities.

In the sixth Constitutional revision from 2004, which introduced profound alterations regarding the autonomous regions, the Constitutional regime of the local referendum remained the same. It was approved with only one abstention. There was also reference to the regional referendum in Article 115 of the Constitution, which refers to the referendum in general [*DAR* (I) 78, 23 April 2004, p. 4282]. Nonetheless, regional

[125] The Representatives were at that time Ministers of the Republic.

referendums must be regulated by organisational law, as laid down in the Constitution [Articles 166(1) and 164b]. Even now, the Assembly of the Republic has not passed such a regulation, despite the Bills introduced by the *PCP* in June 2008 and October 2010. The only legal reference to the regional referendums appears in the political and administrative statutes of both autonomous regions.

9.4. The Regional Referendum in the Statutes of the Autonomous Regions

9.4.1. Madeira

The Political and Administrative Statute of the Autonomous Region of Madeira (Law No. 130/99, of 21 August) refers to the regional referendum in Article 9, which reproduced the Constitutional provision in essence: **a)** the referendum may happen on a question that is important and of a specific interest to the region; **b)** the right to propose belongs to the legislative assembly of the region; **c)** the decision to call the referendum belongs to the President of the Republic; **d)** the referendum has binding effectiveness; **e)** the right to vote is given to the citizens registered to vote in the region; **f)** the Constitutional provisions on the national referendum shall apply to the regional referendum, *mutatis mutandis*.

9.4.2. The Azores

The Political and Administrative Statute of the Autonomous Region of The Azores, in the first version passed in the Assembly of the Republic [Decree No. 217/X, *DAR* (II-A) 121, 27 June 2008, pp. 6-130], included several provisions on the regional referendum. The Constitutional Court declared one of them unConstitutional, which referred to the initiative of citizens. In fact, the text proposed by the Legislative Assembly of The Azores and passed in Parliament established that the referendary initiative of the citizens should be subscribed by a minimum of 3,000 registered electors in the Region. The *TC* declared this rule to be formally unConstitutional. The autonomous regions did not have the power to vary the Organisational Law, which was laid down at the national level. (Ruling No. 402/2008). The President of the Republic vetoed the Statute before that decision.

This question is fundamental from the Constitutional point of view. The Constitution provides that the law on referendums, besides being the exclusive responsibility of the Assembly of the Republic, must assume the form of organisational law, which possesses superior force to

any laws made in the regions. Besides being discussed in detail, and voted on in the plenary session, they have to be approved in final overall vote by the absolute majority of all members in full exercise of their office. The political and administrative statutes of the autonomous regions must obey some formalities in their legislative process. The legislative assemblies of the regions are the only bodies that have the power to initiate the procedure to change their own governing statute, but in the end these acts do not assume the nature of organisational law.

Therefore, the approval of provisions regarding the regional referendums inside the political and administrative statute is a formal unConstitutionality, because that legislative act does not assume the form of organisational law required by the Constitution. In addition, the introduction of draft amendments to the political and administrative statute of a region is the exclusive responsibility of the respective legislative assembly. If such matters were included in the statute, the legitimacy of the Assembly of the Republic to legislate on it without any proposal by the regional legislative assembly could be called into question.

The final version of the Statute, after the expunction of the unConstitutional rules (Law No. 2/2009, of 12 January), permits the regional referendum as follows: **a)** the Legislative Assembly may propose regional referendums to the President of the Republic; **b)** the electoral universe includes the citizens registered to vote in the region; **c)** the regional referendum may ask questions that are of importance and specific interest to the region; **d)** the regional referendum shall be regulated by law; **e)** the right of initiative belongs to the deputies, parliamentary groups, Regional Government and groups of citizens; **f)** no draft to the referendum could involve an increase in the region's expenditure or a decrease in its revenues as set out in the budget; **g)** draft referendums definitively rejected may not be resubmitted in the same legislative session; **h)** draft referendums that are not put up for vote in the legislative session in which they are submitted shall not require resubmission in the following legislative sessions; **i)** the government drafts shall lapse upon its resignation.

Other aspects of legal regulation, besides the Constitutional text, may only be established by organizational law passed by the Assembly of the Republic. Without this law, it is not possible to hold regional referendums.

9.5. Bills No. 545/X and 439/XI (*PCP*)

On 26 June 2008, the *PCP* introduced the first draft of an organisational law on regional referendums, which was Bill No. 545/X [*DAR* (II-A) 122, 28 June 2008). That initiative aims to implement the Constitutional commands regarding the regional referendum. The legislative assembly of each autonomous region shall be responsible for submitting the drafts on regional referendums to the President of the Republic, who may call upon the citizens registered to vote in the region to pronounce themselves on questions that are of importance, and of specific interest to the region. The provisions regarding the national referendum shall apply to the regional referendum.

The regional referendum can happen on matters in which the legislative assembly may legislate by regional legislative decrees, excluding the subjects under the strict responsibility of sovereignty organs and budgetary, tax-related or financial matters. The initiative in the legislative assembly belongs to the regional government, to parliamentary groups or to groups of citizens with at least 3,000 signatures. The regional referendum has to be submitted to the Constitional Court for a prior review of its Constitutionality and legality, which shall be demanded by the representative of the Republic in the region. If the *TC* considers the draft Constitutional and legal, the decision belongs exclusively to the President of the Republic. Nevertheless, the legislature ended before the discussion of the bill.

In the XI Legislature, the *PCP* revived the initiative, introducing Bill No. 439/XI [*DAR* (II-A) 19, 21 October 2011, pp. 50-95] with the same contents. *PCP* groups in the Legislative Assemblies of Madeira and The Azores introduced similar initiatives. They sought to pass them locally, introducing the idea of regional parliaments to the Assembly of the Republic. However, more than 15 years after the Constitution permitted regional referendums, none had ever been hald because of the lack of an organisational law that actually allowed them.

Chapter 3

The National Referendum

1. The Attempts to Introduce the National Referendum: 1975-1989

1.1. The Drafts of the Constitution

1.1.1. The Doctrinaire Drafts

The doctrinaire drafts of the Constitution introduced to the Constituent Assembly contained allusions to the national referendum. The draft of the Constitution drawn by Jorge Miranda (1975) included several possible models for national referendums. These include: **a)** any law or executive law (except on financial matters) within 90 days after its approval or ratification by the Parliament if proposed by twenty percent of voters in the previous election or referendum; **b)** the general principles and purposes of the Plan; **c)** any law (except tax-related issues) proposed by two-thirds of the deputies in full exercise of their office. In case of rejection, the President of the Republic could dissolve Parliament within 15 days after the counting of votes; **d)** international treaties that involved restrictions on sovereignty.

The author did not formally introduce this draft to the Constituent Assembly and his party, the *PPD*, did not adopt it. It was, however, an example of a proposal of wide and ambitious scope for referendary processes. The referendum could happen on many themes, such as international treaties, the general purposes of the Plan, and laws in general; with the matter of taxes being the only exclusion (Urbano, 1998, pp. 115-118). Nonetheless, the popular initiative proposed was hardly practicable, given the high number of signatures required. The first free elections in Portugal, in 1975, had 5,666,696 voters. Consequently, 1,133,340 signatures would be needed to call a referendum.

An essay written by Lucas Pires formed the basis of a future Constitutional draft for the *CDS*, and it included several possibilities for national referendum. Regarding the State's foreign affairs, the author supported the need for an approval of any decision through a national plebiscite. This would include matters related to the international integration process or any privileged agreement with great powers, especially in the military domain. The integration would modify the contract of sovereignty that bounds the representatives, raising a new Constitutional dependence that needed the people's agreement (Pires, 1975, p. 106; Urbano, 1998, p. 118).

Lucas Pires (1975, p. 109) also supported the possibility of referendums on treaties or legislative acts according to the criterion of the President of the Republic. However, the Constitutional extent of this rule could be restricted to a certain number of matters in order to avoid the opportunism of its use as a super-survey, or the attraction of a plebiscitary democracy.

Finally, regarding the national referendum, the author proposed – although in undefined terms – to give the President of the Republic the power to call a referendum to evaluate the trust of the voters towards himself. That power could represent, according to Maria Benedita Pires Urbano (1998, p.119), a way to exercise a scrutiny upon the Head of State, but it contained evident caesarism stains, and had obvious potential for the plebiscitary approach to be abused (Pires, 1975, p. 143).

1.1.2. The Drafts Introduced to the Constituent Assembly

According to the *CDS* draft of the Constitution (*DAC,* 13 – Supplement, 7 July 1975, p. 14), Parliament could decide to submit any previously approved law to a popular referendum of a national scope, except tax-related matters, provided it had a two-thirds majority (Urbano, 1998, pp. 113-114). The draft of the Constitution introduced by the *UDP* proposed to re-examine all the treaties and cultural agreements in the domain of the economy, culture and cooperation made by the fascist regime. It would submit them to a wide debate and popular examination, leaving it to the people to decide on their repeal, revision or confirmation (*DAC,* 13 – Supplement, 7 July 1975, p. 28). The draft did not explain, however, how to proceed with that re-examination.

Despite these suggestions, the Constitution of 1976 did not include any type of referendum.

1.2. The Attempts to Introduce the National Referendum by Law

The debate on the national referendum was revived after the elections of 2 December 1979, when the *AD* (*PSD/CDS* coalition) obtained an absolute majority. The programme of the VI Constitutional Government, led by Sá Carneiro, included the approval of a referendum law. However, that proposal sought, first and foremost, to open the way to the Constitutional revision by referendum. It is true that, in debates about the Government's programme, Luís Beiroco (*CDS*) tried to separate the two issues, stating that the only thing under discussion was the introduction of a privileged instrument of direct consultation of the

popular will, which would enable the government to know the citizens' opinion on fundamental subjects related to the community's life or the organisation of the State (*DAR* [I] 5, 16 January 1980, p. 148). Nevertheless, nobody approached the subject in those terms, because everybody knew that Sá Carneiro's main purpose was a referendum on the Constitution.

It was, however, through the Parliamentary Group of the 'Reformers' that the first bill proposing a national referendum (Bill No. 501/I) appeared. However, the Bill was contested because it did not comply with the Constitution, and it was not discussed as a result. On 20 June 1980, near the end of the I Legislature, the Government introduced Bill No. 365/I (*DAR* [II] 74, 21 June 1980), which requested authorisation to legislate in order to define the regime of the referendum. The left opposition impugned the Constitutionality of that Bill, and it was never discussed. The Bill did not include any mention of the regulation wanted by the Government.

1.3. The National Referendum in the Constitutional Revision of 1982

1.3.1. The Drafts

In the book published in early 1980, *Uma Constituição para os Anos 80* (A Constitution for the 1980s), Sá Carneiro advanced the guidelines for the Constitutional revision in the II Legislature. That draft gave the President of the Republic the responsibility to submit laws of Constitutional revision, laws of the Assembly of the Republic, executive-laws of the Government, and the important issues concerning national interest to popular referendum.

According to that draft, the laws of the Assembly of the Republic could also be submitted to referendum, by a two thirds deliberation of the deputies in full exercise of their office. This may be done before sending for enactment, or by request of the citizens in a number not less than 1/20 of the total number of voters, within 90 days after its publication in the official journal. The Government's executive-laws, except the ones on tax-related matters, may be submitted to referendum through the citizens' request, in the same terms of the laws of the Assembly of the Republic.

On 19 July 1980, Pedro Santana Lopes introduced a draft amendment to Sá Carneiro's draft (Lopes & Barroso, 1980, pp. 173-224) that proposed three relevant modifications. In the political referendum, the

President of the Republic would remain responsible for calling it, but the Government could propose submitting important issues concerning the national interest to referendum. The author thought that, since the Government was responsible for leading the internal and foreign politics of the country, it could be convenient to establish the popular will before taking any measures of exceptional importance (Lopes & Barroso, 1980, p. 188).

For the legislative referendum by parliamentary initiative, it would not be necessary to have a deliberation taken by a two-thirds majority of the members since the absolute majority would be enough. Santana Lopes (1980, p. 198) did not see any reason to prevent the parliamentary majority from asking for popular support of their measures when it would have enough power to approve them in Parliament. Moreover, he reduced the time limit needed for the decision about the legislative referendum from 90 days to 30. He thought that this period would be enough to evaluate the implications of any law, and that it would also save time. There was also the mere convenience that it would be possible to relight the debate on previously discussed subjects (Lopes & Barroso, 1980, pp. 221-222).

The draft amendments to the Constitution personally published by Jorge Miranda (1980) excluded the national referendum and only included the possibility of local referendums. The change of position assumed by the author, in relation to his draft of the Constitution published in 1975 that contained referendum proposals at several levels, is easily explicable by the political evolution of the second half of the 1970s. The national referendum had been used as a weapon by right-wing forces, and particularly by the *PPD/PSD* against the 1976 Constitution, who sought to use it to press for a Constitutional rupture. That subject brought about a deep divergence between Jorge Miranda and the *PPD/PSD*, which led this professor and constituent deputy to leave that party and found the *ASDI*. In the appendix to his draft amendments to the Constitution, Jorge Miranda (1980, p. 210) explained his sympathy towards the referendum as a democratic method. However, he thought that the referendum had to be surrounded by very strong warranties, and that it could only be used safely in countries where democracy was consolidated, which was not the case in Portugal at the time.

The work published in February 1981 by Professors Barbosa de Melo, Cardoso da Costa and Vieira de Andrade (Melo *et al*, 1981), which formed the base of the draft amendments by the *AD*, proposed two other

types of national referendum that needed the decision of the President of the Republic: the political referendum and the legislative referendum.

Regarding the political referendum, the President of the Republic could submit the decision on important issues concerning the national interest and transcendent political importance to popular referendum, when such an action was requested of him by the Government or by the Assembly of the Republic, through deliberation passed by the majority of members in full exercise of their office. According to the authors, the political referendum should be exceptional, and it should only take place in very special circumstances, as long as those circumstances were appraised by the President of the Republic and by the Assembly of the Republic or by the Government, as authors of the proposals. The authors were sought to avoid leaving the decision in the hands of a single sovereignty organ (Melo *et al*, pp. 185-186).

As for the legislative referendum, any law approved by the Assembly of the Republic, except on budgetary or tax-related matters, would be submitted to popular referendum. It could be totally or partially repealed if requested by at least 100,000 citizen voters within six months after publication.

According to the authors, the legislative referendum was a '*pouvoir démpêcher*' given to the citizens before the Assembly of the Republic. It was not an instrument of positive popular participation, but a way for citizens to act against parliamentary decisions that they disliked. The referendum would always have a sense of repeal, even if only partially.

However, by not converting the referendum into an instrument of common use, the authors provided several conditions: **a)** a high number of proponents; **b)** the exclusion of budgetary and tax-related matters; **c)** the setting of a deadline to request the referendum (Melo *et al*, 1981, p. 212). The holding of this referendum depended exclusively on the popular decision, and became obligatorily provided the proponents observed the Constitutional and legal conditions (Melo *et al*, 1981, p. 186).

In relation to the legislative referendum, the authors did not follow Sá Carneiro's draft in two specific points. They did not propose that the Assembly of the Republic could raise a legislative referendum before the sending of laws for enactment. If the parliamentary majority wanted to submit one of its own subjects to referendum, it should make the respective proposal to the President of the Republic. For that same

reason, the authors did not propose that the Government could submit its executive-laws to referendum, given that there would always be the possibility of the Assembly of the Republic pronouncing itself on them before any direct intervention of the citizens (Melo *et al*, 1981, pp. 212-213). This draft still maintained that a referendum would be required before administrative regions could be created.

By the end of January 1981, Diogo Freitas da Amaral introduced draft amendments to the Constitution from the *AD* parties (*PSD*, *CDS* and *PPM*), which he had written for the incumbency of the *AD* summit in December 1980. In that draft, the President of the Republic would have the responsibility of submitting decisions about any important issues of national interest to popular referendum, in the terms requested of him by the Government or by the Assembly of the Republic, through deliberation passed by the majority of members in full exercise of their office (Amaral, 1984, pp. 21 and 123).

The Draft Amendments to the Constitution No. 2/II (*DAR*, Off-print 6/II, 26 June 1981, pp. 31-58) finally introduced by the *AD*, followed Freitas do Amaral's proposal, including the national referendum, in addition to the already mentioned Constitutional referendum and the local consultations. It would be a political referendum, which did not happen on routine legislation but on important issues concerning national interest, giving it an exceptional nature. The power of decision belonged exclusively to the President of the Republic, but the power of initiative belonged to the Government and to Parliament, by decision taken by the majority of the members in full exercise of their functions (Urbano, 1998, pp. 130-131). The Draft Amendments to the Constitution from the *AD* also provided that the actual institution of every administrative region would depend on a referendum in each respective area, a matter that will be discussed further ahead.

1.3.2. The Debates

The first discussion on the proposals of the *AD* draft occurred in a subcommittee created within the *CERC*. On 16 October 1981, the proposal for national referendum had the total opposition of the *PS*, the *PCP*, the *ASDI* and the *MDP/CDE* (*DAR*, 6 – Supplement, 28 October 1981, p. 78). The debate on the referendum in the first Constitutional revision was centred on the Constitutional referendum, which made any idea of introducing the national referendum unfeasible from the very beginning. However, the *AD* kept its proposal and tried, during the debates, to separate those two types of referendum.

During the meeting of the *CERC*, on 4 November 1981, Luís Beiroco (*CDS*) pleaded for the *AD*'s proposal, pointing out the safeguards that that proposal assumed. All sovereignty organs would need to agree before a referendum could be called, and ultimately leaving that power to the President of the Republic (*DAR*, 33 – Supplement, 23 December 1981, pp. 25-26). However, in that same committee meeting, several members of the *PS* and the *ASDI* harshly criticised the possibility of a national referendum (*DAR*, 33 – Supplement, 23 December 1981, pp. 26-32).

The socialist José Luís Nunes assumed a radical position against the referendum and considered it a permanent coup d'état (*DAR*, 33 – Supplement, 23 December 1981, p. 27), with the following arguments: **a)** to give the President of the Republic powers to call referendums would mean to give him institutional leadership over the Assembly of the Republic and the Government; **b)** the proposal placed the Assembly of the Republic and the Government at the same level regarding the referendum initiative, which meant that in case of disagreement, any one of those bodies could appeal to the President of the Republic and propose that he call a referendum; **c)** once the President of the Republic was granted the possibility to call a referendum, nothing could prevent him from calling a referendum despite the established rules; **d)** the definition of what could be considered an important issue concerning national interest and could later be submitted to referendum would be decided by the pressures on the street.

Nunes concluded that the consequence of the introduction of the national referendum, as proposed by the *AD*, would be the refusal of the Constitutional rule that says that sovereignty shall lie with the people, who shall exercise it in the forms provided for in the Constitution. The referendum would bring total and complete legislative instability, in short, institutional chaos (*DAR*, 33 – Supplement, 23 December 1981, pp. 26-27).

In the plenary sitting of 8 July 1982, the *AD* only kept a proposal regarding the responsibilities of the President of the Republic (Article 136), which included the responsibility to call referendums. That proposal was rejected, obtaining only 98 yea votes (*PSD, CDS* and *PPM*) and 78

nay votes (*PS*, *PCP*, *ASDI*, *UEDS*, *MDP/CDE* and *UDP*). Therefore, it did not obtain the qualified two-thirds majority for its approval.[126]

1.3.3. The Conclusion

The national referendum was not introduced to the Constitution by the Constitutional revision of 1982. The problem was not so much the regime's proposal for a legislative referendum, or for the referendum on important matters concerning national interest, but fundamentally the threat of the *AD*'s proposal for Constitutional referendum. In the context of the *AD*'s absolute majority in Parliament, all the parties on the left were afraid of the abusive use of the national referendum to change the Constitution. Indeed, the Constitutional revision through a referendum was very much associated with the *AD* parties, and it was a source of controversy in Portuguese politics between the end of the 1970s and the beginning of the 1980s, causing major polarisation between left and right wing parties.[127]

The way the debate was framed condemned the national referendum to a postponement that would only end the 1989 Constitutional revision. With the exception of the radical opposition from the socialist MP José Luís Nunes, almost all the speeches against the national referendum in 1982 did not refuse the referendum as an instrument of direct democracy, or as a complement of a representative democracy. However, the idea that the referendum could be used to achieve antidemocratic and unConstitutional end, a double-edged sword, condemned it. Some of the arguments against the referendum in 1982, such as the institutional leadership of the President of the Republic, legislative instability, or the difficulty of defining what was an important issue concerning national interest, had faded in significance by 1989 because the political context had changed. The problem in 1982 was that the national referendum was still inextricably linked with the consitutional referendum. It would be necessary to wait for the second Constitutional revision in 1989 so that everything could change.

2. The National Referendum in the Constitutional Revision of 1989

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[126] See the declarations of vote from Luís Nunes de Almeida (*PS*), António Vitorino (*UEDS*), Luís Beiroco (*CDS*), Jorge Miranda (*ASDI*), Vital Moreira (*PCP*), Luís Coimbra (*PPM*), and Francisco Sousa Tavares (*PSD*) in *DAR* (I) 116, 9 July1982, pp. 4871-4874.

[127] Luís Nunes de Almeida referred in the meeting of 4 November 1981that what public opinion thought about the referendum did not have anything to do with the true concept of the referendum, but with that which the *AD* had been defending for two years (*DAR*, 33 - Supplement, 23 December 1981, p. 32).

2.1. The Antecedents

The debate on the second Constitutional revision began long before 1989. The revision would be possible without the Assembly of the Republic assuming extraordinary powers of Constitutional revision by a four-fifths majority of the members in full exercise of their office. The right wing Portuguese parties, the *PSD* and the *CDS*, never accepted the Constitution of 1976, and as they were dissatisfied with the Constitutional revision of 1982. They demonstrated their hope for an extraordinary Constitutional revision early on. The referendum had a secondary role in this context. The clearly assumed main purpose was a deep change of the part of the Constitution regarding the organisation of the economy, putting an end to the principle of the irreversibility of nationalisations that had been decided during the revolutionary period, and opening up the doors for privatisation of basic sectors of the economy.

It is true, however, that the purposes announced by some parties as to the second Constitutional revision, independently of its moment, included the enshrinement of the national referendum. In the very beginning of 1984, the National Council of the *PSD* rejected a proposal by two of its members (Santana Lopes and Conceição Monteiro), who argued that the extraordinary revision of the Constitution must be a purpose of the party. In their view, it was essential to change the economic part of the Constitution and the electoral system, and to introduce the referendum (Magalhães, 1989, p. 119).

The *CDS* also proposed that the Assembly of the Republic assume extraordinary revision powers through Draft Resolution No. 23/III, which was rejected on 12 June 1984 with nay votes from the *PS*, the *PCP*, the *MDP*, the *UEDS* and the *ASDI* and yea votes from the *PSD* and the *CDS* [*DAR* (I) 123, 14 June 1984, pp. 5261-5314]. In the next legislative session, the *CDS* introduced Draft Resolution No. 43/III, with the same purpose, and it was rejected on 23 May 1985 with the same result [Magalhães, 1989, p. 129; *DAR* (I) 84, 24 May 1985, pp. 3175-3202]. Still before the second Constitutional revision, the *PSD*, the *PS*, the *CDS* and the *PRD* admitted the inclusion of the referendum among their purposes for the second Constitutional revision in their programmatic documents, although in different ways (Magalhães, 1989, pp. 196, 198, 212, 241 and 252).

2.2. The Draft Amendments to the Constitution

The Draft Amendments to the Constitution No. I/V from the *CDS*, opened the Constitutional revision procedure on 17 October 1987.[128] These included two types of national referendum, both decided by the President of the Republic: **a)** on important national matters when that was requested by the Government or by the Assembly of the Republic, through deliberation approved by the absolute majority of members in full exercise of their office; **b)** on the approval of international conventions that assigned the exercise of the Portuguese State's responsibilities to an international organisation, if the respective approval in the Assembly of the Republic did not obtain the two-thirds majority, but still had affirmative votes from the absolute majority of members in full exercise of their office (*DAR*, Off-print No. 1/V, 31 December 1987, pp. 140-141).

In terms of the Draft Amendments to the Constitution No. 3/V presented by the *PS*, **a)** the power to call the referendum was not given to the President of the Republic, but to the Assembly of the Republic by a qualified majority; **b)** the referendum should have binding effect; **c)** the right of initiative belonged exclusively to the Government and to a fifth part of the members of Parliament, with the popular initiative being excluded; **d)** the referendum should not be directly about international agreements or legislative acts, but on matters upon which the Assembly of the Republic or the Government must decide by passing an international agreement or legislation; **e)** the referendum could not happen on a significant group of matters; **f)** temporary limits for calling and holding referendums were imposed; **g)** the Constitutional Court had the responsibility to review the Constitutionality and legality of the referendums. (*DAR*, Off-print No. 1/V, 31 December 1987, pp. 50 and 56).

According to the Draft Amendments to the Constitution No. 4/V, from the *PSD*, the President of the Republic could submit matters of great national interest and superior political importance to binding referendum, upon the Government's request or by deliberation approved in the Assembly of the Republic by the absolute majority of members in full exercise of their office. The budgetary and tax-related matters, and those whose purpose was to increase the State's expenditure or decrease its income, could not be subject to a referendum (*DAR*, Off-print No. 1/V, 31 December 1987, p. 63).

The Draft Amendments to the Constitution No. 9/V (*PRD*) was the most expansive as to the national referendum. It included a political

[128] Regarding the Portuguese Constitution, once a draft amendment was introduced to the Constitution, any others also had to be introduced within 30 days.

referendum and a legislative referendum. In the first case, the President could submit a political decision of fundamental importance to referendum if this was requested by the Assembly of the Republic with a two-thirds majority. In the second case, the President of the Republic could submit to referendum any decree that he had received from the Assembly of the Republic to enact as law, or from the Government as executive-law emitted in the use of legislative authorisation of the Assembly of the Republic (*DAR*, Off-print No. 1/V, 31 December 1987, pp. 110-111).

2.3. The First Reading in the *CERC*

The first reading of the proposals happened in the *CERC* on 29 July 1988. It was not a conclusive meeting, but it established some approaches as to how matters would proceed. The main divergence between the *PS* and the other parties that proposed the referendum (*PSD*, *PRD* and *CDS*) were the presidential responsibilities. The *PS*, unlike the other parties, did not give the President of the Republic the power to decide on the referendum, but only the right of veto on proposals that he had received.[129]

Another divergence concerned the parliamentary majority needed to propose a referendum. The *PS* and the *PRD* supported the need for a two-thirds majority, while the *PSD* and the *CDS* considered that demand unnecessary. They argued that an absolute majority of the members in full exercise of their office to be enough for that effect.[130] The demand of a two-thirds majority was based on the idea that the referendum should not be an instrument of power utilised by a parliamentary majority against a minority Government, but a political instrument usable just when there was a wide consensus as to its necessity.[131] There was some consensus as to the exclusion of referendums on some matters, such as the indispensability of the prior review of the referendum's Constitutionality and legality, as well as the convenience of time limits to call and hold referendums.[132]

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[129] See speech by António de Almeida Santos in the *CERC* (*DAR* [II] 56 – *RC*, 8 November 1988, p. 1800).
[130] See speeches by Rui Machete (*PSD*) and Nogueira de Brito (*CDS*) in *DAR* (II) 56 – *RC*, 8 November 1988, pp. 1802 and 1813.
[131] See speeches by Miguel Galvão Teles (*PRD*) and Almeida Santos (*PS*), in *DAR* (II) 56 – *RC*, 8 November 1988, p. 1803-1804.
[132] See speeches by Almeida Santos (*PS*), Miguel Galvão Teles (*PRD*) and Rui Machete (*PSD*) in *DAR* (II) 56 – *RC*, 8 November 1988, p. 1800-1805.

The *PRD* proposal for a legislative referendum, instead of the presidential veto, did not obtain any support. The proponent himself did not support it in a convincing way because Miguel Galvão Teles recognised the sensitivity of the proposal and he did not insist on it.[133]

2.4. The *PS/PSD* Political Agreement

On 14 October 1988, the *PS* and the *PSD* signed a political agreement for the second Constitutional revision. In this document, they agreed to introduce in the Constitution the deliberative referendum on matters that should be the subject of common legislative acts or international agreements. The President of the Republic would call the referendum under the Government's or Parliament's proposal with deliberation taken by an absolute majority (Magalhães, 1989, p. 167). That agreement gave way to a joint *PS/PSD* proposal regarding the national referendum, which was discussed and passed in the *CERC* on 7 March 1989 [*DAR* (II) 103, 15 May 1989, pp. 2922-2934]. This gave origin to the text passed in the plenary sitting of the 23 May [*DAR* (I) 86, 24 May 1989, pp. 4239-4230].

2.5. The Constitutional Text Passed

The text passed as the new Article 118 of the Constitution,[134] regarding the national referendum, Stated the following:

1) In the cases provided for, and as laid down by the Constitution and law, following a proposal from the Assembly of the Republic or the Government, the President of the Republic may decide to call upon citizens who are registered to vote in the Portuguese territory to directly and bindingly pronounce themselves through referendum.[135]

2) The object of a referendum shall be limited to important issues concerning the national interest upon which the Assembly of the Republic or the Government must decide by passing an international agreement or legislation.

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[133] See speeches by Miguel Galvão Teles, Rui Machete and Almeida Santos as to the legislative referendum in *DAR* (II) 56 – *RC*, 8 November 1988, pp. 1801-1803.

[134] In the Constitutional revision this text was passed as Article 112-A. In the final wording, it was numbered as Article 118.

[135] This provision had nay votes from the *PCP*. José Magalhães, in his explanation of the vote, affirmed that the *PCP* did not saw reasons to change the refusal of the introduction of the referendum in 1976 and 1982, but it voted for all of the cautions introduced to avoid plebiscitary perversions [*DAR* (I) 84, 20 May 1989, pp. 4123-4128].

3) The referendum could not concern, namely, the alterations to the Constitution, the matters included in Articles 164 and 167 of the Constitution and the issues and acts with a budgetary, tax-related or financial content.[136]

4) Each referendum shall address only one matter. Questions shall be objectively, clearly and precisely formulated, in terms of yes or no answers, and shall not exceed a maximum number to be laid down by law. The law shall also lay down the other terms governing the formulation and holding of referendums.

5) Referendums shall not be called or held between the dates on which general elections for sovereign organs, the self-government bodies of the autonomous regions, local authority bodies and members of the European Parliament are called and those on which they are held.

6) The President of the Republic shall submit all draft referendums submitted to him by the Assembly of the Republic or the Government, to a compulsory and prior review of their Constitutionality and legality.

7) The provisions of Article 116(1), (2), (3), (4) and (7) shall apply to referendums, mutatis mutandis.[137]

8) Draft referendums that are refused by the President of the Republic or by the electorate through negative answer shall not be resubmitted during the same legislative session, except new elections to the Assembly of the Republic, or until the Government resigns or is removed.

In Article 170, on the power of initiative, the following provisions on the referendum were passed: **a)** the power to initiate referendums shall lie on members of Parliament, parliamentary groups and the Government (No. 1); **b)** no member or parliamentary group shall submit a draft referendum which, during the current financial year, involves an increase in the State's expenditure or a decrease in its revenues as set out in the Budget (No. 3); **c)** draft referendums that are definitively rejected may not be resubmitted in the same legislative session, unless a new Assembly of the Republic is elected (No. 4); **d)** draft

[136] This provision had the abstention from the *PEV*, because this party believed that there were too many matters that could not be the object of referendum. It defended, however, that international agreements, namely those regarding the integration of Portugal in the European Communities should be the object of referendum. See speech by Herculano Pombo in *DAR* (I) 84, 20 May 1989, pp. 4068-4069. Articles 164 and 167 established the matters that were the exclusive responsibility of the Assembly of the Republic.

[137] Article 116 established the general principles of electoral law.

referendums that are not put to the vote in the legislative session in which they are submitted shall not require resubmission in the following legislative sessions, unless the legislature itself comes to an end (No. 5); **e)** draft referendums shall lapse upon the resignation or removal of the Government (No. 6); **f)** parliamentary committees may submit replacement texts without prejudicing the draft referendums to which they refer, unless they are withdrawn (No. 8).

2.6. Remarks on the Constitutional System Passed in 1989

The national referendum was one of the most important innovations of the second Constitutional revision. The system that was implemented had the following key features.

The electoral universe included the citizens registered to vote in the national territory. Therefore, Portuguese citizens registered abroad were excluded. The reason for that exclusion was to avoid important issues of national interest being decided by the large number of citizens who had lived abroad for a long time, and were therefore far removed from the problems of the country. However, the Constitution refers only to Portuguese citizens, keeping the door open for the eventual participation of foreign citizens living in Portugal who are originally from Portuguese-speaking countries. Article 15(3) of the Constitution allows that, through international agreement, and in reciprocal conditions, those citizens could have some rights that are not offered to other foreign citizens (Canotilho & Moreira, 1993, p. 531).

The referendum has binding effect. Advisory referendums were excluded. According to Gomes Canotilho and Vital Moreira (1993, p. 531), this meant that: **a)** it would not be possible to approve laws or international conventions that contradicted the decision of the referendum; **b)** the Assembly of the Republic or the Government would be forced to approve, within a reasonable time, the legislative act or the corresponding international convention that had been decided by the poll; **c)** the President of the Republic would not be able to use the political veto on legislative acts decided by referendum. Neither could he refuse to ratify nor sign international conventions designed to convert the results of the referendum into juridical rules.

The exclusive responsibility for calling the referendum rested with the President of the Republic, following a proposal by the Assembly of the Republic or the Government. Such a proposal had to be made in accordance with the terms laid down in the Constitution and by law. Referendums could not be called by popular initiative.

The President of the Republic had the final decision about calling the referendum. The presidential refusal could not be over-ruled, unlike the veto. If the Constitutional Court declared the draft resolution for referendum unConstitutional or illegal, that decision would be binding. The national referendum, as foreseen in 1989, was always optional. The decision to hold a referendum rested entirely in the hands of the sovereignty organs (Canotilho & Moreira, 1993, p. 530).

The Constitution premitted referendums by the initiative of the Assembly of the Republic and the Government near the President, according to the responsibilities of each one. The Assembly of the Republic could not propose draft referendums on subjects of the exclusive responsibility of the Government.[138] However, the Government, in cooperation with the President of the Republic, and without Parliament, could propose a referendum that would be binding on the Assembly of the Republic (Magalhães, 1989, pp. 91-92). Thus, a referendum to decide matters of exclusive responsibility to the Assembly of the Republic had to be promoted by the Assembly itself. However, the Government could introduce draft referendums on these matters to the Assembly of the Republic, but the final deliberation always belonged to Parliament.

The parliamentary initiative was also subject to specific rules. It belonged to parliamentary groups or individuals, i.e. members of Parliament. They could not submit draft referendums that involved an increase in State expenditure or a decrease in its revenues, as set out in the Budget during that financial year. That limitation generally applied to parliamentary legislative initiatives, except for the Government's initiatives. Only the Government could introduce proposals to change the State Budgets approved.

Draft referendums that had been definitively refused could not be resubmitted during the same legislative session,[139] except where new elections to the Assembly of the Republic had been held.[140] Similar to the situation with legislative initiatives, draft referendums that were not voted on in the legislative session in which they are submitted would not require resubmission in the following legislative sessions, unless the legislature

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[138] The exclusive responsibility of the Government to legislate only regards its own organization and working.

[139] The legislative session has the lasting period of one year and began on 15 October. Nowadays it begins on 15 September.

[140] This formulation would later raise the doubt about when in case of premature elections it would begin a new legislative session or if the previous one would be prolonged. The Constitutional Court was called to decide on that subject concerning a draft referendum.

itself ended. The draft referendums introduced by the Government would lapse upon its resignation or removal. As with legislative initiatives, the parliamentary committees could submit replacement texts of the proposals introduced to them.

Parliamentary deliberation would not need absolute majority. Unless the Constitution specified otherwise, the general rule applied, i.e that a simple majority sufficed, with the abstentions not being counted for the result.

The referendum would happen where important issues of national interest were at stake, upon which the Assembly of the Republic or the Government were required to assent to an international agreement or associated legislation. The referendum would not necessarily pertain to the Act itself (the passing of the law, the executive law or the international agreement), but would consider the issues included in those Acts. A negative referendum result would not necessarily prevent the approval of the Act, unless the subject submitted to referendum is essential required such approval. However, the content would need to be altered to correspond with the sentimet expressed by the voters. This provision, in addition to considering the referendum as being relatively exceptional (since it could only happen on important issues of national interest), forbids the referendum abrogative, given that it must always occur before the passing of the act to which it refers. This rule equally assured that voters would not be given the role of approving or rejecting general politics, issues of political leadershis or projects without concretely defined outlines (Magalhães, 1989, p. 92).

The referendum could not be called to solve hypothetical or abstract questions, but could only concern concrete and existing subjects, normally included in pending legislative initiatives or in international conventions under negotiation or already adjusted and waiting for approval (Canotilho & Moreira, 1993, p. 532). The referendum was forbidden in the following cases: **a)** alterations to the Constitution, with the Constitutional referendum being expressly rejected; **b)** matters provided for in Article 164 of the Constitution,[141] which referred to the political and legislative responsibilities of the Assembly of the Republic;[142] **c)** matters provided for in Article 167 of the Constitution,[143]

[141] Current Article 161.

[142] This provision made the referendum impossible on **a)** the political and administrative statutes of the autonomous regions; **b)** the statute of the territory of Macau, which was then under Portuguese administration; **c)** the granting of generic amnesties and pardons; **d)** the laws on the Major Options of the National Plans and the State Budget; **e)** the contract

which are the exclusive responsibility of the Assembly of the Republic to legislate;[144] **d)** issues and acts with a budgetary, tax-related or financial content. Even when the Constitution excluded 'namely' these matters, it did not prevent the exclusion of other matters by law.

The express exclusion of the Constitutional referendum implied, according to José Magalhães (1989, p. 92), other exclusions on related or connection matters, or regarding the indirect protection of the Constitution. An ordinary law, whose content was against the Constitution or Constitutionally bound, could not be submitted to referendum. The Constitution provided clear requirements on that question. Referendum questions could only address one matter, and should not exceed a maximum number of questions laid down by law. The questions should be objectively, clearly and precisely formulated, and should allow a 'yes' or 'no' answer (Canotilho & Moreira, 1993, p. 534).

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and granting of loans and the engagement in other lending operations; **f)** the passing of treaties that address matters which are the exclusive responsibility of the Assembly of the Republic; **g)** the passing of treaties that entail Portugal's participation in international organisations, friendship, peace, defence, the rectification of borders or military affairs; **h)** the authorisation and confirmation of the declarations of State of siege or State of emergency; **i)** the authorisation to declare war or to make peace. As to the generality of the Constitutional doctrine, it does not make sense to think that the Constitution forbids referendums on all subjects referred in Article 164, given that the same article refers to the responsibility of the Assembly of the Republic to legislate on all matters (Canotilho & Moreira, 1993, p. 534).

[143] Current Article 164.

[144] This provision included the following matters: **a)** elections for officeholders of sovereignty organs; **b)** the regime of referendum; **c)** the organisation, operation and proceedings of the Constitutional Court; **d**) the organisation of national defence, the definition of the duties derived there from and the basic general elements of the organisation, operation, re-equipping and discipline of the Armed Forces; **e)** rules governing States of siege and States of emergency; **f)** the acquisition, loss and re-acquisition of Portuguese citizenship; **g)** the definition of the limits of territorial waters, the exclusive economic zone and Portugal's rights to the adjacent seabed; **h)** political associations and parties; **i)** basic elements of the educational system; **j)** election of members from the self-government bodies of the autonomous regions; **l)** election of local government officeholders and other elections conducted by direct, universal suffrage, as well as elections for the remaining Constitutional bodies; **m)** status and role of the officeholders of sovereignty organs and local government officeholders, as well as the officeholders of the remaining Constitutional bodies and all those who are elected by direct, universal suffrage; **n)** inclusion of serious crimes capable of being equalled to essentially military crimes in the jurisdiction of military courts; **o)** rules for the creation, abolition and modification of local authorities; **p)** the regime of local referendum; **q)** restrictions on the exercise of rights by full-time military and militarised personnel in active service.

The Constitution also set time limits for the calling and holding of referendums, which could not happen between the dates on which elections for the President of the Republic, self-government bodies of the autonomous regions, local authority bodies and members of the European Parliament were called and the date on which those elections were held. A prior review of the Constitutionality and legality of any referendum was compulsory. The President of the Republic must send any draft referendum to the Constitutional Court and, in case of unConstitutionality or illegality, must refuse to call the referendum.

The following general principles of electoral law are applicable to the referendum: **a)** suffrage is direct and secret; **b)** electoral registration is official, compulsory, permanent and single for all the elections held by direct and universal suffrage; **c)** campaigns are governed by the principles of freedom of propaganda, equality of opportunities and treatment of all options; **d)** public bodies must be impartial **e)** campaign accounts are submitted to scrutiny; **f)** citizens shall possess the duty to cooperate with the electoral authorities; **g)** the power to rule on the correctness and validity of the referendary process acts shall pertain to the courts.

The legal regime of the referendum is provided by organisational law. That means that the passing of the referendum law requires the absolute majority of the members in full exercise of their office in the final overall vote, and the vote on the details shall occur in a plenary sitting. A prior review of its Constitutionality can be requested, not only by the President of the Republic, but also by the Prime Minister, or even by a fifth of the members of Parliament. The political veto by the President of the Republic can only be surpassed by a majority that is at least equal to two thirds of all members present and greater than an absolute majority of all members in full exercise of their office.

Luís Barbosa Rodrigues (1994, pp. 152-153) synthesises the contribution of each party in the final drawing of the Constitutional rules passed in 1989. The object of the referendum (on legislative acts and international agreements), the time (before the approval of the acts), the limits and restrictions (for material, temporary, formal and organisational reasons), were from the *PS* draft. Giving the power of initiative to the Assembly of the Republic and the Government, the power of decision to the President of the Republic, and the option for a referendum to legitimise the majority through governmental or parliamentary initiative passed by a simple majority, came from the *PSD* and the *CDS* drafts. The prior and compulsory review of the referendum's Constitutionality came from the *PRD* draft.

The unanimous approval of the national referendum in 1989 was a result of its very careful terms. As an instrument of direct democracy, the referendum maintained a secondary position to the principle of representative democracy (Canotilho & Moreira, 1993, p. 530).

3. Organisational Law No. 45/91, of 3 August

3.1. The Bills Introduced

In 1990, the *PS* and the *PSD* introduced the first bills of organisational referendum law (Urbano, 1998, pp. 155-169). In February, the *PS* introduced Bill No. 473/V [*DAR* (II-A) 18, 17 February 1990, pp. 781-802). In April, the *PSD* introduced Bill No. 515/V [*DAR* (II-A) 33, 18 April 1990, pp. 1112-1140). Regarding those initiatives, there were some remarks on the Opinions drawn on behalf of the Constitutional Affairs, Rights, Freedoms and Guaranties Committee of the Assembly of the Republic.

The Opinion on the *PS* bill, from Luís Pais de Sousa (*PSD*) mentioned the fact that the text of the bill did not clearly State the consequences of the declaration of unConstitutionality or illegality of the referendum by the Constitutional Court. According to that Opinion, the law should clarify the impossibility of holding the referendum in those cases [*DAR* (II-A) 44, 25 May 1990, pp. 1366-1367].

The opinion on the *PSD* bill, drawn by Alberto Martins (*PS*) hinted at four unConstitutionalities: **a)** that the President of the Republic was not obliged to ask for a prior review of the Constitutionality and legality of a draft referendum if it had been reformulated after being declared unConstitutional or illegal by the Constitutional Court; **b)** that electoral capacity should be given to all Portuguese citizens, and not just to citizens registered to vote in the national territory; **c)** that the President of the Republic could not exercise the political veto on a legislative act or international convention related to the questions submitted to referendum. The referendum should judge on concrete subjects put to the voters, and not on the legal form of how to interpret those answers at the legislative level; **d)** the lack of prior review of the legislative act or international convention reproduced, developed or materialised following an affirmative answer to a referendum. In that case, any law or convention that corresponded to the voters' answer would be protected, even if it included unConstitutional rules [*DAR* (II-A) 44, 25 May 1990, pp. 1367-1369].

The bill from the *PSD* was widely inspired by a draft made by Jorge Miranda (1991) upon the Government's request by the end of 1989, with only some differences (Urbano, 1998, pp. 162-163). Jorge Miranda **a)** clearly Stated which matters had to be excluded from referendum; **b)** extended the time limits to hold referendums, not allowing them within the six months after the election of the Assembly of the Republic; **c)** admitted only the participation of the citizens registered to vote in the national territory; **d)** broke up with the monopoly of the political parties in the campaign for the referendum, thus allowing specific campaign activities to be carried out by groups of citizens as well.

3.2. The Legal System Passed

On 24 May 1990, Parliament discussed and passed the general terms of the bills of organisational referendum law introduced by the *PS* and the *PSD* [*DAR* (I) 78, 25 May 1990, pp. 2595-2612]. The *PSD*, the *PS* and the *PRD* voted for both bills. The *PEV* voted for the *PS* bill and against the *PSD* bill. The *PCP* abstained on the *PS* bill and voted against the *PSD* bill [*DAR* (I) 78, 25 May 1990, pp. 2613]. The Constitutional Affairs, Rights, Freedoms and Guaranties Committee proceeded to fuse both bills in a common text, which was approved in the final overall vote on 23 April 1991 [*DAR* (I) 67, 24 April 1991, p. 2278). The *PSD*, the *PS*, the *PRD*, the *CDS* and the independent MPs José Magalhães, Jorge Lemos and Herculano Pombo voted yea; the *PCP* and the independent MP Raul de Castro abstained. Law No. 45/91, of 3 August, introduced the national referendum to Portugal for the first time.

The essential lines of the approved legal system were the following: [145]

1) **Object -** As to the object, the law (Article 2) reproduced the Constitutional text [Article 118(2)]: the object of a referendum shall be limited to important issues concerning national interest upon which the Assembly of the Republic or the Government must decide by passing an international agreement or legislation.

2) **Excluded matters -** The following matters were excluded from the subject of referendums (Article 3): **a)** alterations to the Constitution; **b)** matters provided for in Articles 164 and

[145] For more details on Law No. 45/91, of 3 August, see Urbano (1998, pp. 171-302); Rodrigues (1994, pp. 157-240); Suordem (1997, pp. 15-234).

167 of the Constitution,[146] which referred respectively to the matters included in the political responsibilities and in the Assembly of the Republic's exclusive responsibility to legislate; **c)** issues and acts with budgetary, tax-related or financial content; **d)** matters regarding the organisation and proceedings of the Assembly of the Republic, Government and Courts, and to the statute of the respective officeholders, as well as to the organisation and responsibilities of the Public Prosecutors Office and their public prosecutors.

3) **Delineation of responsibilities -** Article 5 of the law delimited the responsibilities of the Assembly of the Republic and Government as to the respective drafts of referendum. The Assembly of the Republic can approve draft referendums **a)** on international convention whose matters are included in its partially exclusive responsibility to legislate; **b)** on international conventions not excluded from referendum that are submitted by the Government for approval; **c)** on any legislative matters not excluded from referendum. The Government, without prejudicing the Assembly of the Republic's right of initiative, can propose directly to the President of the Republic referendums on **a)** international conventions whose approval is not the responsibility of the Assembly of the Republic or that had not been submitted to it; **b)** legislative acts on matters not included in the Assembly of the Republic's exclusive legislative responsibility.

4) **Formulation of the questions -** Each referendum can only consider a single matter (Article 6), and it cannot pose more than three questions [Article 7(1)]. The questions are formulated in terms of 'yes' or 'no' answers. They must be objective, clear and precise without suggesting, directly or indirectly, a particular answer [Article 7(2)]. The questions cannot be preceded by any considerations, preambles or explanatory notes [Article 7(3)].

5) **Temporary and circumstantial limits -** No act related to the calling or holding of a referendum can be practiced **a)** between the dates on which general elections for the organs of sovereignty, self-government bodies of the autonomous

[146] Current Articles 161 and 164.

regions, local authority bodies and Members of the European Parliament are called and those on which they are held (Article 8); **b)** within three months after a referendum (Article 8); **c)** during the forced States of siege or emergency (Article 9).

6) **The Assembly of the Republic's initiative -** The deputies, parliamentary groups or Government, can take the referendum initiative in the Assembly of the Republic (Article 10). The deputies and the parliamentary groups cannot submit draft referendums that, during the current financial year, involve an increase in the State's expenditure, or a decrease in its revenues as set out in the State Budget (Article 11). The draft referendums that are not put to the vote in the legislative session in which they are submitted shall not require resubmission in the following legislative sessions, unless the legislature itself ends. The draft referendums definitively refused shall not be resubmitted in the same legislative session (Article 12). The approval is made with a simple majority, without counting the abstentions (Article 13).

7) **The Government's initiative -** The draft referendums from the Government are approved by the Council of Ministers' Resolution (Article 15) and shall lapse upon the resignation or removal of the Government (Article 16).

8) **Prior review of Constitutionality and legality -** Within eight days of the publication of the Resolution by the Assembly of the Republic or the Government, the President of the Republic asks the Constitutional Court to conduct a prior review of the Constitutionality and legality of the draft referendum (Article 17). The Constitutional Court shall decide within the time limit of 25 days, which can be shortened by the President of the Republic in the case of urgency. If the Constitutional Court declares the unConstitutionality or illegality of the draft referendum, the President of the Republic shall not call the referendum, and must return the draft to the organ that passed it. The Assembly of the Republic or the Government can reformulate the draft, expunging it of the unConstitutionality or illegality. In those cases, the drafts should be resubmitted,

and reviewed afresh by the Constitutional Court (Article 19).

9) **Calling or refusing the referendum -** The President of the Republic decides whether to call the referendum within eight days of the publication of the Constitutional Court's decision, provided it had not declared any unConstitutionality or illegality (Article 25). The decree of the President of the Republic should include the formulated questions and the date of the referendum, which should happen between the sixty and ninety days of the date of publication (Article 26). If the President of the Republic decides not to call the referendum, he should communicate that decision to the Assembly of the Republic in writing, setting out the reasons, or to the Government, in a written document explaining the refusal. The refused draft shall not be resubmitted in the same legislative session (Article 27).

10) **Electoral universe -** The right to take part in referendums was given to the citizens registered to vote in the national territory, therefore excluding Portuguese emigrants (Article 28). The right to vote of the citizens of other Portuguese-speaking countries who lived in the national territory was also admitted. These citizens benefit from a special statute of equal political rights, as laid down by a reciprocal international agreement, since they are registered to vote in the national territory (Article 29).

11) **Campaigning for the referendum -** The referendum involves an electoral campaign of 10 days (Article 38), the same terms as electoral processes, in order to allow the explanation and debate of the questions submitted to referendum [Article 31(1)]. The campaign is carried out by the legally constituted political parties, or by permanent coalitions, which declare their intent to take a position on the questions submitted to the voters (Articles 31 and 32) to the National Elections Commission (*CNE*) within 30 days of the referendum being called.

12) **Effectiveness of the referendum -** The results of the referendum are binding on the Assembly of the Republic and the Government (Article 231), regardless of the number of voters, or the number of valid, blank or null ballot papers

(Article 232). If the affirmative answer wins, the Assembly of the Republic or the Government shall approve the corresponding international convention or legislative act within 60 days (Article 233). The President of the Republic cannot refuse the ratification of the international convention or the enactment of the legislative act, based on the part corresponding to the answers given in the referendum (Article 234). The Assembly of the Republic or the Government shall not approve international conventions or legislative acts, nor resubmit draft referendums, corresponding to the questions that had a negative answer from the voters in the same legislative session, except in cases of a new election of the Assembly of the Republic, or formation of a new Government (Articles 235 and 236).

4. The Initiatives for Referendum from 1991 to 1993

4.1. The Drafts Preceding Law No. 45/91, of 3 August

The imminent approval of the referendum law inspired the appearance of several related initiatives in the beginning of 1991. Before the approval of the law on 23 April 1991, two initiatives for referendum were introduced in the Assembly of the Republic. The independent MPs, José Magalhães and Jorge Lemos, former members of the *PCP*, introduced Draft Resolution No. 77/V, on 5 February 1991, proposing a national referendum on the Portuguese Language Orthographic Agreement of the [*DAR* (II-A) 25, 9 February 1991, pp. 795-797].

The Draft for the Unified Orthography of the Portuguese Language was an international agreement drawn by delegations from Portugal, Brazil, Angola, Cape Verde, Guinea-Bissau, Mozambique and Sao Tome and Principe, in order to unify the orthography of the Portuguese language. Delegations from those States signed the agreement on 16 December 1990. In 1991, the Government announced the introduction of that Agreement to the Assembly of the Republic for approval with the intention that it should come into force on 1 January 1994. Invoking the lack of a national debate on that Agreement, and coinciding with a strong public controversy surrounding some of its terms, José Magalhães and Jorge Lemos moved forward with the draft resolution for a national referendum that would pose the following question to the electors: 'Shall the Portuguese Language Orthographic Agreement, as it is written, be approved and ratified by the Portuguese organs of sovereignty?'

On 7 March 1991, also before the approval of Law No. 45/91, three independent MPs, Herculano Pombo, Valente Fernandes and Helena Roseta,[147] introduced the second draft referendum, through Draft Resolution No. 80/V [*DAR* (II-A) 32, 16 March 1991, p. 918] which sought to submit the issue of nuclear power to referendum, placing voters with the following question: 'Shall the installation of nuclear power plants for energy purposes be authorised in the national territory?'

Parliament never discussed these drafts. At the time of their introduction, there was no legal basis for holding referendums of a national scope. By the time the legal framework had been published, on 3 August 1991, the Assembly of the Republic had already finished its term prior to the 6 October 1991 general election.

The review of the Constitutionality of these draft referendums would have been interesting because the referendum was designed for considering important issues of national interest, upon which the Assembly of the Republic or the Government should decide prior to passing an international agreement or legislation. Being sure that the object of the referendum should be issues, and not acts themselves, the Constitutionality of these draft referendums would be certainly have been contested. The question of the first was the approval and ratification of the Orthographic Agreement itself. As for the second, the question would be to know if the nuclear option was a subject that could be decided on by passing legislation. In both cases, the initiatives lapsed before they were scheduled for debate.

4.2. The Drafts Introduced After Law No. 45/91, of 3 August

In the VI Legislature, two draft referendums were introduced after the entry into force of the referendum law. On 8 April 1992, the *PS* introduced Draft Resolution No. 17/VI [*DAR* (II-A) 32, 11April 1992, pp. 613-614]. The subject was the independence of the broadcasting stations, both public radio and television services.

The dependence of the broadcasting stations, public radio and television services (*RDP* and *RTP*) on political power, and particularly on the Government, gave rise to a strong debate, and even to a message addressed to the Assembly of the Republic by President Mário Soares. In the VI Legislature, the second with a *PSD* absolute majority, the Government decided to introduce Government Bill No. 6/VI [*DAR* (II-A)

[147] Herculano Pombo and Valente Fernandes became independent after their break with the *PEV*. Helena Roseta was an independent MP inside the Parliamentary Group of the *PS*.

9, 21 December 1991, pp. 196-203] on the statute of *RTP*, which turned that station into a limited company of public capital, with its managers appointed by the Government. The State, as the only shareholder, appointed all members of the board of directors. The opposition from the left, which had supported different options in their own bills, contested that option. The *PCP*, through Bill No. 36/VI [*DAR* (II-A) 10, 8 January 1992, pp. 215-225], argued that four of the five members of the board of directors should be elected by a general council with 25 elements representing several entities, with the final board member elected by workers of the station. The *PS*, which introduced Bill No. 37/VI, [*DAR* (II-A) 10, 8 January 1992, pp. 225-232] supported that two of the members be appointed in General Assembly and that the remainder, including the president, be elected by an opinion council representing several entities.

The discussion of these initiatives on the general principles occurred on 7 January 1992 [*DAR* (I) 18, 8 January 1992, pp. 412-434], and the voting took place on 9 January [*DAR* (I) 19, 10 January 1992, pp. 412-434]. The Parliament passed the Government Bill[148] and rejected the bills from the *PS* and the *PCP*.[149] Meanwhile, the *PS* introduced Draft Resolution No. 17/VI proposing a referendum with the following question: 'Shall the stations of public radio and television service, to ensure their independence from political power, namely from the Government and direct or indirect public administration, have their bodies constituted from opinion assemblies whose composition is plural and representative of several sectors from civil society?'

The debate on this draft took place on 28 April 1992. Leonor Beleza, on behalf of the *PSD*, strongly criticised the proposal, and totally disapproved of it. The main objections from the *PSD* were the following: **a)** the question was not important enough to be the subject of a referendum. It was long and imperceptible for the majority of electors, rested on an organisational and formal matter, and suggested the answer; **b)** that referendum subverted the primacy given by the Constitution to the representative democracy; and **c)** it was inopportune, because it would

[148] The Government Bill had yea votes from *PSD, CDS* and *PSN*, and nay votes from *PS, PCP* and the independents João Corregedor da Fonseca (*ID*) and Mário Tomé (*UDP*), [*DAR* (I) 19, 10 January 1992, p. 458].

[149] The *PCP* Bill had yea votes from the *PCP* and independent MPs, nay votes from the *PSD* and the *CDS* and abstentions from both *PS* and *PSN*. The *PS* Bill had nay votes from the *PSD*, yea votes from *PS, CDS, PSN* and Mário Tomé, and abstentions from the *PCP* and João Corregedor da Fonseca [*DAR* (I) 19, 10 January 1992, pp. 458-459].

take place in the second week of July [*DAR* (I) 55, 29 July 1992, pp. 1731-1736].

On behalf of the *CDS*, Narana Coissoró also disagreed with the proposal, taking into consideration that the *PS* wanted to nullify the voting already done on Government Bill No. 6/VI regarding the *RTP* statute, and to make its bill on the same subject reappear. It was rejected in the meanwhile [*DAR* (I) 55, 29 July 1992, pp. 1742-1743]. The *PCP* abstained, considering that the lack of independence of the broadcasting stations of public radio and television service was an actual and pertinent question, but disagreeing that a referendum was the appropriate response. It thought that the first national referendum demanded a careful reflection on the subject, an accurate formulation of the question and a suitable insertion in the country's electoral schedule. Octávio Teixeira believed that the referendum proposed by the *PS* did not fulfil these requirements [*DAR* (I) 55, 29 July 1992, pp. 1744-1745).

Thus, the draft was rejected, with yea votes from the *PS* and Mário Tomé, nay votes from the *PSD*, the *CDS* and the *PSN*, and abstentions from the *PCP* and Raúl de Castro (*ID*), [*DAR* (I) 55, 29 July 1992, p. 1745]. The Government Bill regarding the statute of *RTP* passed in the final overall vote on 25 June 1992, with yea votes from the *PSD* and the *CDS*, nay votes from the *PS*, the *PCP* and independent MPs, and abstention from the *PSN* [*DAR* (I) 80, 26 June 1992, p. 2694).

On 17 December 1992, the independent MP Mário Tomé (*UDP*) introduced the second draft referendum after the coming into force of Law No. 45/91. The subject was the creation of the administrative regions [Draft Resolution No. 42/VI, *DAR* (II-A) 14, 9 January 1993, p. 265] which will be treated further ahead.

5. The National Referendum in the Constitutional Revision of 1997

5.1. Antecedents

5.1.1. The Extraordinary Constitutional Revision of 1992

The third Constitutional revision was extraordinary in nature. With the conclusion of the second revision in 1989, the subsequent ordinary revision could only take place, as laid down by the Constitution, in 1994. However, the signature of the Maastricht Treaty on 7 February 1992 created a Constitutional problem because some of its fundamental provisions were opposed to Constitutional rules. So, the procedure to pass the Treaty by the Assembly of the Republic, in order for its ratification by

the Portuguese State, was suspended until a Constitutional revision changed the rules of the Constitution. This prevented the European Union Treaty from coming into force in the Portuguese juridical order.

On 11 June 1992, the Assembly of the Republic passed Resolution No. 18/92 with a four-fifths majority of the members in full exercise of their office, as demanded in article 284(2) of the Constitution, to assume extraordinary powers for Constitutional revision [*DAR* (I-A) 135 – Supplement, 12 June 1992]. In that Constitutional revision procedure, the subject of the referendum had special importance because the draft amendments to the Constitution introduced by the *PCP*, the *CDS*, the *PSN*, and the independent Mário Tomé, sought precisely to alter the Constitution in order to allow a referendum on the ratification of the European Union Treaty. This matter will be treated further on.

However, the *CDS* draft included, with regard to the referendum, provisions not bound to that particular subject, which had other implications for the general legal system of the national referendum. The Draft Amendment to the Constitution No. 5/VI (*DAR*, Off-print 12/VI, 9 October 1992, pp. 11-15) proposed a deep alteration to the ratification procedure of international treaties, suggesting a strong referendary component. The Constitution excluded the referendum on international agreements that addressed matters which are the exclusive responsibility of the Assembly of the Republic. These entailed Portugal's participation in international organisations, friendship, peace, defence, the rectification of borders or military affairs, or others deemed fit by the Government to submit to the Assembly.

The *CDS* draft eliminated the exclusion of these matters from the referendary scope, allowing the referendum on the ratification of conventions and international treaties, but with different legal frameworks. It would be obligatory for treaties that transferred responsibilities from the Portuguese State to an international organisation to be decided by referendum. The President of the Republic should submit the approval of such treaties to popular referendum, without any intervention of the Assembly of the Republic or the Government, and without any review of Constitutionality or legality by the Constitutional Court. Other treaties would be decided according to the general legal framework applying to referendums, provided in article 118 of the Constitution and by law. In addition, the *CDS* draft eliminated the adverb 'namely' in the provision regarding the matters excluded from referendum, so that only the matters expressly excluded by the Constitution could be excluded by law.

This proposal was criticised in the debates of the *CERC*, above all for proposing the obligatory referendum on a series of international treaties that barely been proposed. Even treaties of mere cooperation between Portugal and other States could transfer the exercise of responsibilities of the Portuguese State to international organisations. On the other hand, the proposal deprived the organs of sovereignty of their decisive powers in relation to the referendum.[150]

The *CDS* proposal was refused in the *CERC* session of 28 October 1992, with nay votes from the *PSD* and the *PS* and yea votes from the *CDS* and the *PCP* and the abstention from the *PSN* [*DAR* (II) 11 – *RC*, 29 October 1992, p. 173].[151] In the plenary sittings of 17 November 1992, the proposal by the *CDS* had 192 nay votes (132 *PSD* and 60 *PS*), 20 yea votes (13 *PCP*, four *CDS*, one *PSN* and the independent João Corregedor da Fonseca), and one abstention from the independent Mário Tomé [*DAR* (I) 14, 18 November 1992, p. 455].

5.1.2. The Failure of the Constitutional Revision in 1994

In 1994, the Assembly of the Republic started to assume ordinary powers of Constitutional revision. With this in mind, the parliamentary groups and other individual deputies introduced 13 draft amendments to the Constitution. Seven of them included provisions on the national referendum (Suordem, 1997, pp. 39-49).

The Draft Amendments in this case were the following: No. 1/VI (*PS*), 2/VI (*CDS*), 3/VI (*PSN*), 8/VI (*JSD*), 9/VI (*PEV*), 10/VI (*PCP*), 13/VI (*UDP*), (*DAR*, Off-print 24/VI, 7 November 1994). However, the revisions failed due to a lack of agreement between the *PS* and the *PSD*, and the VI Legislature ended without Constitutional revision. The procedure was carried over to the next legislature, after the elections of 1995, which gave victory to the *PS*, with a relative majority.

5.2. The Preparatory Works for the Constitutional Revision of 1997

5.2.1. The Initiatives

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[150] See debates in the *CERC* session of 7 October 1992, namely the speeches by Nogueira de Brito (*CDS*), Jorge Lacão, José Magalhães and Almeida Santos (*PS*) and Costa Andrade (*PSD*), in *DAR* (II) 5 – *RC*, 8 October 1992, pp. 74-83.

[151] The *PCP* voted yea, considering that the main subject in discussion was the call for referendum on the Maastricht Treaty.

In 1996, the Assembly of the Republic received several civic initiatives in connection with the Constitutional revision (Magalhães, 1997). Four of them included provisions regarding the Constitutional framework of the referendum.

Professor Jorge Miranda (1996b) sent his contribution to the Ad Hoc Committee of Constitutional Revision (*CERC*) on 5 February. Miranda proposed a significant expansion of the material scope of the national referendum, and a triple system of calling a referendum (by the President of the Republic, Parliament or through the citizens' own initiative). Isaías de Sousa sent a draft amendment on 23 February 1996 in which he proposed that referendums should be permitted by initiative of 25,000 citizens. José da Silva Pereira proposed that a referendum should be held when requested by 100,000 citizens. The civic association Politics XXI, in the draft sent to the Assembly of the Republic on 4 March 1996, proposed a referendum by popular initiative of 50,000 citizens, who should sign a petition sent directly to the President of the Republic.

The fourth Constitutional revision opened at the beginning of 1996, with the introduction of the Draft Amendment to the Constitution No. 1/VII [*DAR* (II) 21 – Supplement, 1 February 1996), by the *CDS-PP*, which was followed by 10 other drafts. Nine of the 11 drafts introduced contained rules on the national referendum: No. 1/VII (*CDS-PP*), 2/VII (*JSD*), 3/VII (*PS*), 4/VII (*PCP*), 5/VII (*PSD*), 8/VII (independent MPs from the *PS* Group),[152] 9/VII (*TSD*), 10/VII (*PEV*), 11 /VII (*ID*).

5.2.2. The First Reading in the *CERC*

At the start of the fourth Constitutional revision, both main parties (*PS* and *PSD*) agreed that the consideration of the draft amendments to the Constitution began with the proposals concerning regionalisation and the legal framework of the national referendum. The definition of the referendum's legal framework was urgent, because the *PS*, the *PSD* and the *CDS-PP*, had previously agreed that the creation of the administrative regions should be preceded by a referendum, and because the possibility of submitting eventual alterations to the Treaty of the European Union to referendum was still in the open [*DAR* (II) 3 – *RC*, 18 May 1996, p. 34]. For those reasons, with the first reading on the appreciation of the provisions concerning the creation of administrative regions being finished, the discussion of the proposals regarding the general legal system of the national referendum began on 18 June 1996.

[152] Cláudio Monteiro, Jorge Goes and Maria do Rosário Carneiro.

In the session of 18 June 1996, there was a consensus against the Politics XXI and Jorge Miranda's proposals of joining the national and local referendum in the same Constitutional rule, given the special demands of the national referendum legal framework.[153] As to the initiative for a referendum, there was a wide consensus on the approval of the popular initiative. The fundamental difference was whether initiative should be addressed to the Assembly of the Republic, as supported by the *PSD* and the *PCP*, or directly to the President of the Republic, as proposed by the *PS*, the *PEV* and the *TSD*. This latter solution would change an important aspect of the political system, reinforcing the powers of the President of the Republic, allowing him to call the referendum even against the opposition of the Assembly of the Republic and jeopardising the primacy of representative democracy.[154]

The first reading was inconclusive as to the initiative for referendum. The *CDS-PP* was the only party that proposed a decision on initiating referendums that was exclusively presidential. The *PSD* and the *PCP* admitted the popular initiative addressed to the Assembly of the Republic. The *PS* admitted the popular initiative for referendum directly addressed to the President of the Republic, demanding however a higher number of signatures. The *PSD* believed that the Government should not have the power to propose referendums to the President of the Republic, owing such responsibility to be exclusive of the Assembly of the Republic. There was little consensus around the proposals [*DAR* (II) 10 – *RC*, 22 June 1996, p. 171).

The proposals from the *CDS-PP* demanding an absolute majority for the deliberation of the Assembly of the Republic to propose a referendum was not accepted by the other parties. The same happened to the proposal from the *TSD* members, which demanded a two-thirds majority for that purpose.[155] The proposal included in the *PS* and *PCP* drafts was unanimously accepted. It Stated that the resolutions on referendums taken by the Assembly of the Republic or by the Government should only happen on matters included in the respective responsibilities, clarifying in the Constitution something that was already clear in the law [*DAR* (II) 10 – *RC*, 22 June 1996, pp. 175-176).

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[153] See speeches by José Magalhães (*PS*), Luís Marques Guedes (*PSD*) and Luís Sá (*PCP*), in *DAR* (II) 9 – *RC*, 19 June 1996, pp. 156-157.

[154] See the speeches by Luís Sá (*PCP*), Miguel Macedo (*PSD*), and Luís Marques Guedes (*PSD*), in *DAR* (II) 9 – *RC*, 19 June 1996, pp. 159-161.

[155] See speeches by Luís Marques Guedes (*PSD*) and Luís Sá (*PCP*), in *DAR* (II) 10 – *RC*, 22 June 1996, pp. 173-174.

The next discussion was about a proposal from the *CDS-PP* to make a referendum obligatory for the approval of international treaties that sent any responsibilities from the organs of sovereignty of the Portuguese State to international organisations. This proposal had the purpose of compelling the approval of the treaty that changed the European Union Treaty to referendum. However, in spite of the availability declared by all the other parties to accept a referendum on that matter, the proposal was not accepted for two other reasons. The first was the disagreement on whether or not the referendum would be strictly compulsory (in spite of the agreement between the *PS* and the *PSD* on a compulsory referendum about the administrative regions), and the second was the fact that the proposal from the *CDS-PP* could be applied to an indefinite number of international agreements and not only to the Treaty of the European Union [*DAR* (II) 10 – *RC*, 22 June 1996, pp. 176-180].

The *PSD*'s proposal to allow emigrants' to vote in national referendums obtained explicit support from the *CDS-PP* and several objections from the *PS*. The question was not the principle, which the *PS* accepted, but its inception in unrestricted terms that gave the right to vote to emigrants in every national referendum [*DAR* (II) 10 – *RC*, 22 June 1996, pp. 180-184].

In the next session, on 25 June 1996, the object of the referendum was discussed. The *PS* proposed that matters included in international treaties, except those concerning peace and the rectification of borders, could be the object of referendum. They also accepted the referendum on issues surrounding the educational system, in spite of their inclusion within the exclusive legislative responsibilities of the Assembly of the Republic. The *PCP* proposed only to make a referendum possible on the revision of the European Union Treaty. The *PSD*, in addition to allowing the Constitutional referendum and the referendum on decisive subjects of the treaties with Portuguese participation in international organisations, proposed that other issues could be the subjects of a national referendum. These matters included all those that were the exclusive legislative responsibility of the Assembly of the Republic, except those regarding national defence and military justice. However, the *PSD* cut the reference to the referendum on matters included in the political responsibilities of the Assembly of the Republic (Article 164), regarding those matters as unsuitable subjects for a referendum.[156] The independent members of the *PS* Parliamentary Group moved forward with the widest proposal of the scope of the referendum, allowing it in almost

[156] See speech by Luís Marques Guedes in *DAR* (II) 11 – *RC*, 26 June 1996, pp. 189-190.

all the matters included in the legislative responsibilities of the Assembly of the Republic.[157]

As for the possibility that the acceptance of conventions and international treaties could be put to a referendum, the argument was between those who wanted to make the referendum possible only with regard to the constituent treaties of the European Union, and those who wanted to make that possibility extensive to other treaties. The PCP argued for the former scenario. The *PS* wanted to enlarge the scope of the referendum to the treaties and international conventions, only excluding those concerning peace and the rectification of borders. The *PSD* had a more moderate position in relation to treaties, accepting the referendum only on the decisive subjects of treaties regarding Portuguese participation in international organisations. Luís Marques Guedes considered that the possibility to submiting any international agreements to referendum would jeopardise the negotiation capacity of the Portuguese State at an international level [*DAR* (II) 11 – *RC*, 26 June 1996, pp. 198-199). The debate gave rise to a consensus around the idea of widening the scope of the referendum to all the treaties regarding Portuguese participation in international organisations or their alterations. The possibility of enlargement remained in the open [*DAR* (II) 11 – *RC*, 26 June 1996, p. 199).

Another subject was to know if the object of the referendum would be the treaties themselves or the issues included in them. The *PSD* proposed that only the decisive issues included in international agreements could be submitted to referendum, but the debate was not conclusive [*DAR* (II) 11 – *RC*, 26 June 1996, pp. 200- 204].

On behalf of the *JSD*, Pedro Passos Coelho introduced a proposal to submit the compulsory or voluntary nature of military service to referendum [*DAR* (II) 11 – *RC*, 26 June 1996, pp. 204-205). That proposal, however, did not obtain the official support of the *PSD*. That party, in spite of admitting to widen the scope of the referendum to matters that were of the exclusive legislative responsibility of Parliament, did not admit the referendum on the organisation of national defence.[158]

As to the prior review of the Constitutionality of the referendum, the members of *JSD* proposed to deal with this issue last. The *PSD* proposed that the decision of the Constitutional Court should merely be

[157] See speech by Cláudio Monteiro in *DAR* (II) 11 – *RC*, 26 June 1996, p. 191.
[158] See speech by Barbosa de Melo, in *DAR* (II) 11 - *RC*, 26 June 1996, p. 207.

advisory. As Barbosa de Melo explained, the *PSD* proposed the end of the prior review of Constitutionality of the acts submitted to the enactment of the President of the Republic. However, they thought that the prior review of the Constitutionality and legality of the referendum was justified. In this way, the result of that prior review should be legally binding, but if the Constitutional Court said that a referendum was against the Constitution, the President of the Republic would no longer have sufficient power to call that referendum [*DAR* (II) 11 – *RC*, 26 June 1996, p. 209]. These proposals were not accepted by the *PS* and the *PCP*.[159]

The next subject was the demand for minimum participation so that the referendum would be binding, which appeared in the drafts from the *PS* and the *PSD*. The *PS* linked that proposal with another one which foresaw the possibility of referendum by direct request of popular initiative.[160] The reply to that possibility came from the *PCP*, having in mind the existence of a technical abstention of 10% or over, and the fact that that rule would penalise participating citizens, who would see their vote cancelled out by abstentions.[161]

5.2.3. The Second Reading

The second reading concerning the proposals on the national referendum began before the first reading of the other matters, given the great weight that the referendum on regionalisation and the eventual referendum on the European Union Treaty assumed in the Constitutional revision process. On 16 and 17 July 1996, the *CERC* proceeded with the indicative vote of the proposals regarding Article 118 of the Constitution.

The *CERC* rejected the proposals from the *CDS-PP*, **a)** so that the President of the Republic could call a referendum through his own initiative;[162] **b)** so that the President was compelled to call the referendum when it was proposed by the Government or by the Assembly of the Republic through deliberation approved by an absolute majority of the members in full exercise of their office;[163] **c)** so that the President of the Republic was compelled to submit the passing of treaties for the joint exercise of sovereign powers to national referendum, as provided in

[159] See speeches by José Magalhães (*PS*) and Luís Sá (*PCP*) in *DAR* (II) 11 - *RC*, 26 June 1996, p. 209.
[160] See speech by José Magalhães in *DAR* (II) 11 - *RC*, 26 June 1996, p. 211.
[161] See speech by Luís Sá in *DAR* (II) 11 - *RC*, 26 June 1996, pp. 213-214.
[162] Nay votes from *PS*, *PSD* and *PCP* and yea votes from *CDS-PP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 252].
[163] Same voting.

Article 7 of the Constitution.[164] The *CERC* also rejected the proposals from the *PSD* and the *JSD*, so that only the Assembly of the Republic, and not the Government, had the power to propose referendums.[165]

As for the popular initiative of the referendum, the *CERC* rejected the proposal from the *PEV* to make it possible to have a referendum by direct initiative of citizens addressed to the President of the Republic, without specifying the number of subscribers needed for that.[166] The proposal from the *PS* stating that 100,000 citizens could address a draft referendum directly to the President of the Republic was approved, without obtaining the two-thirds majority needed to pass.[167]

The *CERC* passed a proposal so that the citizens could propose a referendum to the Assembly of the Republic[168] without any conclusion about the number of signatures required. The proposal from the *PCP* that the Assembly of the Republic had to decide on the popular initiative within the time limit of 60 days was not welcomed, having been reformulated as suggested by Vital Moreira, in order to establish the setting of a time limit for the law. It was approved, however, without obtaining the necessary two-thirds majority.[169] The proposals from the *PS* and the *PCP* were approved unanimously. These included the referendum proposals passed by the Assembly of the Republic and by the Government, which had only matters regarding their respective responsibilities as the subject [*DAR* (II) 14 - *RC*, 17 July 1996, p. 259). The referendum law already contained such a rule.

As for the electoral universe, the *PS* introduced a new proposal in order that Portuguese citizens who lived in Member States of the European Union could take part in referendums on matters concerning rule by the treaties referred in Article 7(6) of the Constitution, in other

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[164] Nay votes from the *PS* and the *PSD* and yea votes from the *CDS-PP* and the *PCP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 283]. The *CDS-PP* reformulated the proposal, adding reference to Article 7 of the Constitution, through *PCP's* suggestion, to make the yea votes from this party possible.

[165] Nay votes from the *PS*, the *PCP* and the *CDS-PP* and yea votes from the *PSD* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 283].

[166] Nay votes from the *CDS-PP*, yea votes from the *PEV* and Vital Moreira (*PS*), and abstentions from the *PS*, the *PSD* and the *PCP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 254].

[167] Yea votes from the *PS*, nay votes from the *CDS-PP* and the *PEV* and abstentions from the *PSD* and the *PCP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 254].

[168] Yea votes from the *PS*, the *PSD*, the *PCP* and the *PEV* and nay votes from the *CDS-PP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 255].

[169] Yea votes from the *PS*, the *PCP*, and the *PEV* and abstentions from the *PSD* and the *CDS-PP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 258].

words, the agreements for the exercise of joint powers needed to construct and deepen the European Union [*DAR* (II) 14 – *RC*, 17 July 1996, p. 259]. That proposal opposed the *PSD* one, which called for a more general right to vote in national referendums for the Portuguese citizens. Both proposals were rejected.[170]

As to the widening of the substantial scope of the referendum, proposals were rejected **a)** from the independent members of the *PS* Parliamentary Group, to add all the matters included in the exclusive legislative responsibility of the Assembly of the Republic (Article 167), without prejudicing the exceptions expressly foreseen in the Constitution[171] **b)** from the *PSD*, to add all matters included in the exclusive responsibility of Parliament (Article 167) except for military ones [paragraphs d), e), m) and p)];[172] from the *CDS-PP*, to include a legal framework for the creation, abolition and territorial modification of local authorities;[173] the rules governing the financial relationships between the State and the autonomous regions, the statute of local authorities, including the local finances;[174] **c)** from the *JSD*, to hold referendums on matters regarding the duties of national defence, with a view to a referendum on the compulsory nature of military service;[175] **d)** from the independent deputies from the *PS*, to add all the matters included in the political and legislative responsibilities of the Assembly of the Republic (Article 164) apart from the exceptions expressly foreseen in the Constitution.[176]

The proposal from the *PS* to widen the scope of the national referendum in order to include the topic regarding the educational system

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[170] Nay votes from the *PS* and the *PCP* and yea votes from the *PSD* and the *CDS-PP*. The proposal from the *PS* had nay votes from the *PSD*, the *PCP* and the *CDS-PP* and yea votes from the *PS* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 282].

[171] Nay votes from the *PSD*, the *PCP* and the *CDS-PP*, and yea votes from the *PS* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 284].

[172] Nay votes from the *PS* and the *PSD*, yea votes from the *PSD* and Cláudio Monteiro (independent from the *PS*) and abstentions from the *CDS-PP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 284].

[173] Nay votes from the *PS* and yea votes from the *PSD*, the *CDS-PP* and Cláudio Monteiro [*DAR* (II) 14 - *RC*, 17 July 1996, p. 284].

[174] Nay votes from the *PS* and the *PSD* and yea votes from the *CDS-PP* and Cláudio Monteiro [*DAR* (II) 14 - *RC*, 17 July 1996, p. 285]. The *CDS-PP* supported the inclusion of these matters in the exclusive legislative responsibilities of the Assembly of the Republic.

[175] Nay votes from the *PS*, the *PSD*, the *CDS-PP* and the *PCP* and one yea vote from Cláudio Monteiro in the absence of the authors [*DAR* (II) 14 - *RC*, 17 July 1996, p. 285].

[176] Nay votesfrom the *PS*, the *PSD*, the *CDS-PP* and the *PCP*, and one yea vote from Cláudio Monteiro [*DAR* (II) 14 - *RC*, 17 July 1996, p. 285].

(Article 167i)[177] and the proposal from the *PSD* to cut the word 'namely' in Article 118(3), so that only matters explicitly referred in the Constitution were excluded from referendum, were both passed.[178] As for the referendum on treaties and international conventions, there were rejections **a)** from the *CDS-PP*, which made it possible to hold referendums on important issues concerning the national interest included in treaties and international conventions whose responsibility of approval belonged to the Assembly of the Republic (Article 164j);[179] **b)** from the *CDS-PP*, so that the approval of treaties themselves should be the subject of referendum, since it gave international organisations some responsibilities of the sovereignty organs of the Portuguese State;[180] **c)** from the *PCP*, for making it possible to hold referendums on treaties concerning the integration process in the European Union, in order to also allow the referendum on treaties in force in Portugal.[181]

A proposal from Vital Moreira that synthesised the *PS* and the *PSD* proposals was passed. The *PS* proposed that the referendum could have as its subject 'questions concerning matters' that should be the object of conventions or treaties, while the *PSD* referred to 'decisive issues' of the treaties with Portuguese participation in international organisations. The synthesis would include a reference to 'important issues concerning the national interest that should be the object of international agreements, pursuant to Article 164j, except when they concern peace or the rectification of borders'.[182] Still regarding Article 118, the *CERC* rejected the proposals **a)** from the *JSD*, to eliminate the prior review of Constitutionality and legality of the referendum, and **b)** from the *PSD*, so that the prior review would give way to a mere opinion from the Constitutional Court.[183]

5.2.4. The *PS/PSD* Political Agreement

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[177] Yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 285].
[178] Unanimously approved [*DAR* (II) 14 - *RC*, 17 July 1996, p. 302].
[179] Nay votes from the *PS* and the *PSD*, yea votes from the *CDS-PP* and Cláudio Monteiro and abstentions from the *PCP* [*DAR* (II) 14 - *RC*, 17 July 1996, p. 287].
[180] Nay votes from the *PS* and the *PSD* and yea votes from the *CDS-PP* and the *PCP* [*DAR* (II) 15 - *RC*, 18 July1996, p. 300].
[181] Nay votes from the *PS* and the *PSD*, yea votes from the *PCP* and abstentions from the *CDS-PP* [*DAR* (II) 15 - *RC*, 18 July 1996, p. 301].
[182] Yea votes from the *PS* and the *PSD* and nay votes from the *CDS-PP* and the *PCP* [*DAR* (II) 15 - *RC*, 18 July1996, p. 303].
[183] Nay votes from the *PS*, the *PCP* and the *PEV* and yea votes from the *PSD* [*DAR* (II) 15 - *RC*, 18 July1996, p. 303].

On 7 March 1997, the leaders of the *PS* (António Guterres) and the *PSD* (Marcelo Rebelo de Sousa) and the respective parliamentary leaders (Jorge Lacão and Luís Marques Mendes) signed a political agreement for Constitutional revision in a public ceremony. This agreement was controversial and caused great turbulence within the Socialist Party. As a consequence, Vital Moreira left Parliament and the chairmanship of the *CERC*, and Jorge Lacão also felt compelled to resign from the post of parliamentary leader of the *PS*.[184]

Regarding the referendum, both parties agreed **a)** to admit referendums by popular initiative addressed to the Assembly of the Republic; **b**) to make it possible to hold referendums on matters included in treaties to celebrate, specifically allowing a referendum on European issues; **c)** to allow the participation of Portuguese citizens registered to vote outside the national territory in referendums that address matters of specific concern to them. To that effect, citizens registered up to 31 December 1996 were immediately considered as voters, as well as those that came to be considered as having ties that effectively link them to the Portuguese community, by a law passed by a two-thirds majority.

5.2.5. *CERC*'s Work after the *PS*/*PSD* Agreement

After the agreement for Constitutional revision between the *PS* and the *PSD*, the *CERC* resumed its work on 11 April 1997, passing the proposals **a)** from the *PSD* and the *CDS-PP* to include in Article 10, the referendum as one of the ways to exercise political power by the people, side by side with the universal, equal, direct, secret and periodic suffrage [*DAR* (II) 75 – *RC*, 16 April 1997, p. 2156]; **b)** from the *PSD*, with drafting improved in the *CERC*, to include within the powers of the members of Parliament (Article 159) the introduction of draft resolutions, namely for referendums, given that the deliberations of the Assembly of the Republic regarding the calling of referendums should assume the form of a Resolution [*DAR* (II) 104 – *RC*, 18 June 1997, p. 3082]; **c)** from the *PS* and the *PSD*, to introduce in Article 170 a reference to the popular initiative on referendums, given that, in that same rule, the possibility of legislative initiatives introduced by citizens was foreseen.[185]

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[184] Jorge Lacão substituted Vital Moreira as chairman of the *CERC*. For details on the negotiations of the agreement see Sousa (1997, pp. 49-62).

[185] Yea votes from the *PS* and the *PSD*, and abstentions from the *PCP* [*DAR* (II) 107 - *RC*, 21 June 1997, p. 3142]. Luís Sá justified the *PCP*'s abstention for disagreeing with the indefinite terms foreseen in the citizens' legislative initiative.

In the *CERC* session of 12 June 1997, the *PS* and the *PSD* introduced two new proposals for Article 118 as a consequence of the political agreement for Constitutional revision: **a)** to improve the drafting of No. 1, according to which the national referendum be called by decision of the President of the Republic, in cases provided for and as laid down by the Constitution and the law, following a proposal from the Assembly of the Republic or the Government in relation to matters that fall under their respective responsibilities; **b)** to add a new item, according to which, the referendum may also be held by the citizens' initiative when submitting a request to the Assembly of the Republic. Such requests shall be submitted and considered under the terms and within the time limits laid down by law.[186]

In that session, José Magalhães (*PS*) introduced a single *PS*/*PSD* proposal in order to allow citizens living abroad to participate in national referendums, provided the citizens who resided abroad were properly registered to vote under the provisions of Article 124(2), and are called upon to take part in referendums that addressed matters specifically concerning them.[187] Article 124(2) would concern the election for the President of the Republic, and it would establish that the right to vote of citizens living abroad would be ruled by law, in consideration of the existence of ties effectively linking them to the Portuguese community [*DAR* (II) 102 – *RC*, 12 June 1997, p. 3009].

Still regarding the possibility of residents abroad participating in national referendums, the *PS* and the *PSD* proposed that this should be included in the responsibilities of the Constitutional Court (Article 225). This would involve the prior review of Constitutionality and legality of the national, regional and local referendums, including the judgement of the requirements regarding the electoral universe. It was unanimously approved [*DAR* (II) 111 – *RC*, 28 June 1997, p. 3268].

5.3. The Constitutional Rules Passed

The debate in the plenary sittings confirmed the positions taken by the several parties in the *CERC*. Thus, the proposals of the *CDS-PP* and the *PCP* regarding Article 118 were rejected, with the proposals in the *CERC* being passed by an indicative two-thirds majority. In addition to

[186] The first proposal was approved unanimously. The second received the yea votes from *PS*, *PSD* and *PCP*, the nay votes from *CDS-PP* and the abstentions from *PEV* [*DAR* (II) 102 - *RC*, 12 June 1997, p. 2992].

[187] The proposal had the yea votes from *PS*, *PSD* and *CDS-PP* and the nay votes from *PCP* [*DAR* (II) 102 - *RC*, 12 June 1997, p. 3012].

the introduction of an obligatory referendum on the institution of the administrative regions, which will be treated further ahead, the Constitutional revision of 1997 significantly altered the extent of the Constitutional rules of the national referendum.[188]

The most important innovations introduced were as follows:[189]

1) The inception of the referendum by the citizens' initiative addressed to the Assembly of the Republic. That request shall be submitted and considered under the terms and within the time limits laid down by law [Articles 118(2) and 170(1)(3)].

2) The acceptance of referendums on matters regarding integration in the European Union, through the admission of referendums on important issues concerning national interest that should be the object of international agreement, except when they concern peace or the rectification of borders [Articles 118(5) and 164j)].

3) The passing of the rule according to which the referendum shall only be binding in the event that the number of voters exceeds half of the number of registered electors [Article 118(11)].

4) The recognition of the citizens who reside abroad to have the right to vote in referendums that address matters of specific concern to them. The electoral universe includes the citizens registered abroad up to 31 December 1996 and those that are considered as having ties that effectively link them to the Portuguese community [Articles 118(12), 124 and 297].

5) The attribution to the Constitutional Court of the responsibility to previously review requirements concerning the electoral universe of the referendum [Article 225(2)f)].

Although less significant, the plenary passed other provisions:

6) Article 10 was amended to contain a reference to the referendum as one way of exercising political power by the people, providing that the people shall exercise political

[188] On the Constitutional system passed in 1997, see Canas (1998, pp. 7-46) and Miranda & Medeiros [2007 (II) pp. 295-313].

[189] The Constitutional revision of 1997 altered the numbering of some articles of the Constitution. Article 118 changed to 115, 124 to 121, 159 to 156, 164 to 161, 167 to 164, 170 to 167, and 225 to 222. The above mentioned numbers were the previous ones.

power by means of universal, equal, direct, secret and periodic suffrage, referendum and the other forms provided for in the Constitution.

7) Article 118(1) made it clear that the Assembly of the Republic and the Government could only propose draft referendums to the President of the Republic on matters included in the respective responsibilities.

8) The cast of matters excluded from the referendum started to be categorical, due to the suppression of the adverb 'namely' in Article 118(3);

9) The referendum on the bases of the educational system was allowed [Articles 118(4) and 167i)].

10) No. 6 of Article 118 (previously No. 4) was improved. It had the following drafting: each referendum shall only address one matter. Questions shall be objectively, clearly and precisely formulated, by soliciting yes or no answers, and shall not exceed the maximum number to be laid down by law. The law shall also lay down the other terms governing the formulation and holding of referendums.

11) The introduction of draft resolutions, namely of referendums within the powers of MPs was included (Article 159b).

The Constitutional revision of 1997, bringing more matters under the exclusive legislative responsibility of the Assembly of the Republic, consequently extended the matters excluded from the scope of the referendum. Since then, the Constitution excluded referendums on rules governing: **a)** the appointment of members of European Union bodies, with the exception of the Commission; **b)** the Republic's intelligence system and State secrets; **c)** the drawing up and organisation of the budgets of the State, the autonomous regions and local authorities; **d)** the national symbols; **e)** the finances of the autonomous regions; **f)** the police forces and security services; **g)** the organisational, administrative and financial autonomy of the President of the Republic's support services (Article 164p).[190]

6. From the Constitutional Revision of 1997 to the Referendums of 1998

6.1. Antecedents

[190] See the debates and voting in the plenary sittings in *DAR* (I) 94, 16 July 1997, pp. 3379-3380; 95, 17 July 1997, p. 3461; 100, 24 July 1997, pp. 3754-3756; 104, 31 July 1997, pp. 3997-3998 and 4005.

The Constitutional revision of 1997 revived already existing proposals for referendums, decisively influencing their work and determining, to great extent, their approved texts. The revision process was induced, since the very beginning, by the claim by the right wing parties that a referendum was necessary to institute the administrative regions. This gave rise to a special regime for referendums on regionalisation. In addition, since 1992, several political forces, from the left to the right, demanded a referendum on Portuguese participation in the European integration process.

In 1997, all the parties agreed to hold a referendum on European issues, with differences remaining on what issues should be submitted to referendum. On 20 December 1996, the *PSD* introduced Draft Resolution No. 38/VII in the Assembly of the Republic, asking for a referendum on the alteration of the law on abortion. Soon after the Constitutional revision, on 3 September 1997, by which time it looked certain that one or more referendums would be held in a short term, it was deemed urgent to pass legislation to adapt the never applied Law No. 45/91, of 3 August, to the new Constitutional rules of the national referendum.

6.2. The New Organisational Referendum Law

6.2.1. The Introduced Initiatives

On 6 October 1997, the *PSD* introduced the first initiatives to change the Organisational Referendum Law: Bill No. 416/VII, which was intended to adapt the current law to the new Constitutional rules [*DAR* (II-A) 3, 17 October 1997, pp. 17-19], and Draft Resolution No. 66/VII, which established the requirements of the referendum from a popular initiative in Parliament's Rules of Procedure [*DAR* (II-A) 3, 17 October 1997, p. 59]. On the same day, 6 October 1997, the *PSD* introduced Draft Resolution No. 67/VII, asking for a referendum on the revision of the European Union Treaty.

A few days later, on 9 October 1997, the socialist Government introduced Bill No. 145/VII to amend the Organisational Referendum Law [*DAR* (II-A) 3, 17 October 1997, pp. 30-58, corrected in *DAR* (II-A) 18, 19 December 1997, pp. 243-244], based on a draft drawn by Luís Barbosa Rodrigues (1998) upon the Government's request. On 11 November 1997, the *CDS-PP* introduced Bill No. 429/VII [*DAR* (II-A) 11, 15 November 1997, pp. 212-214].

6.2.2. The Parliamentary Debate

On 19 November 1997, Barbosa de Melo drew an Opinion on all of the legislative initiatives introduced, [*DAR* (II-A) 13, 24 November 1997, pp. 243-248] synthesising the main subjects in the debate: **a)** the rules for the popular initiative of the referendum, namely the minimum number of signatures required, the organisation of the proposing group and the rules of procedure; **b)** the prior review of Constitutionality and legality of the draft referendum, regarding the procedure and time limits for the Constitutional Court decision, the scrutiny of the electoral universe and the effects of that decision; **c)** the terms of recognition of the right of the citizens who reside abroad to vote in national referendums; **d)** the participation of the citizens' groups in the campaign for the referendum; **e)** the effects of the referendum in the cases of affirmative or negative answers; and **f)** the special rules for the referendum on the institution of administrative regions.

The debate on the legislative initiatives took place during the plenary sittings of 20 November 1997 [*DAR* (I) 16, 21 November 1997, pp. 614-638] and the voting was on the 27th. The *PS*, the *PSD* and the *CDS-PP* made the respective bills viable with mutual abstentions, while the *PCP* and the *PEV* voted against all the initiatives introduced by the other parties [*DAR* (I) 19, 28 November 1997, pp. 711-712). This position was essentially due to the rules regarding the referendum on the administrative regions, which was also under debate. That debate was based on options taken in the Constitutional revision, in spite of the *PCP's* opposition.

The detailed debate was held on 4 March 1998 [*DAR* (I) 44, 5 March 1998, pp. 1470-1495].[191] On that occasion, the understanding between the *PS* and the *PSD* as to the referendums to hold and their respective timings was already clear. Both parties agreed to propose to the President of the Republic the holding of a referendum on the decriminalisation of abortion at the end of the first semester of 1998, and to hold referendums on regionalisation and European integration in the last quarter of that year. The perspective of those referendums, which were convenient to both parties, was very influential in the final solutions passed by law.

The detailed debate followed the preparatory work of the Committee, and focussed on the proposals that the parties wanted to keep for the voting. The main divergences among the parties became very clear

[191] As laid down in Article 168(4) of the Constitution, the detailed debate of the referendum law happens obligatorily during a plenary sitting.

at this point. The *PS* and the *PSD* agreed to remove the prohibition of any act to call or hold a referendum within three months of holding a referendum, as laid down in Article 8 of the law in force. The *PCP* was opposed to this idea.[192] The aim was to achieve a schedule in which the referendums could coincide in a short time, and to allow more than one national referendum to be held in the same day.

The text passed the demand of 75,000 signatures for the popular initiative of the referendum. The *PCP*, which proposed 25,000, was against this proposal, which obtained favourable votes from the *PS*, the *PSD* and the *CDS-PP*.[193] The initiative must explicitly enclose the question or questions to submit to the voters and the identification of the acts of procedure in the Assembly of the Republic. When there is no procedure for any act on which a referendum can happen, the popular initiative must enclose a draft on the matter submitted to the referendum.[194] The proposals for shortening the time limits introduced by the *CDS-PP* were rejected, having just obtained the support of the *PSD* and its proponents [*DAR* (I) 44, 5 March 1998, pp. 1475-1476].

The *PCP* and the *CDS-PP* strongly contested a last minute proposal from the *PS* and the *PSD* as to party participation in referendum campaigns. Law No. 45/91, of 3 August, in its Article 31(2), lays down that the political parties taking a position on the subjects submitted to the electors would carry out the campaign. According to the proposed alteration, the campaign would be carried out by the parties or coalitions that declared their intention to participate in the explanation of the subjects submitted to the electors. Thus, the parties would always have access to means of campaigning, namely on the radio and in television, even if they did not support any of the positions in question. The *PCP* and the *CDS-PP* contested such a possibility because, in their opinion, it could prejudice the conditions of equality that should be insured between the positions of yes and no.[195] However, the reason for that proposal was precisely the internal division of the *PS* and the *PSD* as to the referendum on the decriminalisation of abortion. For that reason, the *CDS-PP* and the *PCP* proposals to maintain the rule then in force had the yea votes from

[192] See speech by António Filipe (*PCP*) in *DAR* (I) 44, 5 March 1998, p. 1471.
[193] The proposal from the *PCP* was rejected with nay votes from the *PS*, the *PSD* and the *CDS-PP* and yea votes from the *PCP* and the *PEV* [*DAR* (I) 44, 5 March 1998, p. 1474].
[194] The *PCP* and the *PEV* voted against these demands [*DAR* (I) 44, 5 March 1998, p. 1474].
[195] See speeches by António Filipe (*PCP*) and Jorge Ferreira (*CDS-PP*) in *DAR* (I) 44, 5 March 1998, pp. 1476-1479.

the *PCP*, the *CDS-PP* and the *PEV* and nay votes from the *PS* and the *PSD* [*DAR* (I) 44, 5 March 1998, p. 1480].

The same question arose concerning the participation of citizen groups in the referendum campaign because the proposed formulation was identical. In other words, 5,000 citizens could constitute a group to intervene in the campaign, bearing in mind that they would take part in the explanation of the subjects submitted to referendum, even without a concrete position on these subjects. The proposals from the *PCP* and the *CDS-PP* were rejected, having had yea votes from these parties and the *PEV* and nay votes from the *PS* and the *PSD*. The proposal passed with diametrically opposed votes [*DAR* (I) 44, 5 March 1998, p. 1481].

The proposal for Article 243 concerning the duty of the Assembly of the Republic in the case of a negative answer also had the *PCP*'s disagreement. The Government bill initially Stated that the Assembly of the Republic or the Government could not approve an international convention or legislative act corresponding to the questions that had garnered a negative answer with binding effectiveness in the same legislative session, except with the election of a new Assembly of the Republic or new a Government. However, in the final drafting, the *PS* recalled the reference to the same legislative session. Therefore, in the case of a negative answer in the referendum with binding effectiveness, it would be possible to legislate on the same subject only after a new election of the Assembly of the Republic or new referendum with an affirmative answer. This allowed for a fresh referendum. The *PCP* assumed the Government's original proposal, which was rejected. This proposal had yea votes from the *PCP* and the *PEV* and nay votes from the *PS*, the *PSD* and the *CDS-PP*. The proposal that passed had an opposite voting [DAR (I) 44, 5 March 1998, p. 1485].

Another divisive subject was the allocation of the broadcasting time. According to the proposal passed, the broadcasting time would be divided into two blocks. One block was divided equally among the parties or coalitions with current parliamentary representation. Another block was divided between the parties without parliamentary representation, and the citizen groups constituted for that effect. In the case of referendums from popular initiatives, the author of the citizen group's initiative shares the first block of broadcasting time in the same position of the parties with parliamentary representation. The *PCP* contested this proposal, arguing that the broadcasting time should be distributed equally between the two opposing positions (yes and no), with the broadcasting time for each position distributed equally among the parties, coalitions and citizen

groups that supported it. The proposal had yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP* and the *PEV*. The proposal from the *PCP* obtained the opposite voting [*DAR* (I) 44, 5 March 1998, p. 1492]. In the final overall vote, the legal framework for the new Organisational Referendum Law had yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP* and the *PEV* [*DAR* (I) 44, 5 March 1998, p. 1492].

6.2.3. Organisational Law No. 15-A/98, of 3 April

The main innovations in the new referendum law (Organisational Law No. 15-A/98, of 3 April) were the following:[196]

1) The passing of a special legal system on the institution of the referendum on administrative regions, which will be treated ahead [Articles 1(2) and 245 to 251].

2) The widening of the material scope of the referendum with the admission of referendums on matters until then excluded, like **a)** the bases of the educational system; **b)** important issues concerning the national interest such as the object of international agreement except when they concern peace or the rectification of borders; **c)** the organisation of the courts and the organisation and responsibilities of the Public Prosecutors Office and their Public Prosecutors; **d)** the organisation and procedures of the Assembly of the Republic and the Government (Article 3).[197]

3) The prohibition of passing initiatives for the referendum between the dates on which general elections for the sovereignty organs, the self-government bodies of the autonomous regions, local authority bodies and Members of the European Parliament are called and those on which they are held (Article 8).

4) The elimination of the prohibition to call or hold a referendum within the first three months after a referendum (Article 8).

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[196] For the referendum's legal system after Organisational Law No. 15-A/98, of 3 April, see Canas (1998, pp. 7-46) and Mendes (2006).

[197] The matters referred in c) and d) were expressly excluded by paragraph d) of Article 3, Law No. 45/91, of 3 August. As the Constitutional cast of the excluded matters became categorical with the elimination of the adverb 'namely' in Article 115(4) of the Constitution, that paragraph was removed, which can raise problems (Canas, 1998, pp. 12-13).

5) The admission of the referendum by popular initiative in the following terms: **a)** the initiative shall be written; **b)** addressed to the Assembly of the Republic; **c)** subscribed by at least 75,000 citizens registered to vote; **d)** containing the full name and identity card number of all of them;[198] **e)** as well as the question or questions to submit to referendum, with the indication of the acts under consideration in the Assembly of the Republic; **f)** when no act for referendum in being considered, the popular initiative shall include a draft regarding the subject of the referendum; **g)** within the time limit of two days the President of the Assembly of the Republic asks the responsible committee for an opinion on the initiative, setting a time limit for that; **h)** once the opinion is received, he admits the initiative or orders the representative of the citizen group to be notified in order to improve the text within 20 days; **i)** once admitted, the initiative is sent to the responsible committee; **j)** the committee hears the representatives of the proposing citizens for the explanations necessary to understand and formulate the questions; **k)** within the time limit of 20 days, the committee draws the draft resolution and addresses it to the President of the Assembly for scheduling; **l)** the draft resolution shall be scheduled for one of the 10 following plenary sittings; **m)** the initiatives that are not voted do not lapse with the end of the legislature, with the procedure restarting in the next one (Articles 10 and 16 to 22).

6) The compulsory nature of the Resolutions of the Assembly of the Republic and the Government proposing referendums to contain the questions to ask and the definition of the respective electoral universe, with this being the object of prior review by the Constitutional Court [Articles 12(2), 24 and 26].

7) Extending the time limit given to the President of the Republic to decide on whether to the call the referendum from eight to 20 days after the decision of the Constitutional Court verifying the Constitutionality and legality of the draft (Article 34).

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[198] The Assembly of the Republic may request the administrative check from public administration by simply authenticating signatures and identifying the subscribers.

8) The possibility of changing the day of the referendum in case of dissolution of the Assembly of the Republic or dismissal of the Government [article 35(3)].

9) The possibility of participation by citizens residing abroad, including citizens registered up to 31 December 1996 and those that come to be considered by law as having ties that effectively link them to the national community [reference to Articles 121(2) and 297 of the Constitution].[199]

10) The campaign for the referendum is carried out by **a)** the political parties or coalitions (directly) or through citizen groups or entities designated by them; **b)** groups of at least 5,000 citizens that declare the purpose of taking part in the explanation of the subjects submitted to referendum (Articles 39 to 41).

11) The proposal for broadcasting times to be distributed in an equalitarian way between the supporters of the 'yes' and the 'no' camps was defeated. One block of broadcasting times would be distributed among the parties represented in the Assembly of the Republic, which is jointly attributed to the parties that take part in a coalition. Another block would be distributed among the other parties and the citizen groups. In the case of a referendum of popular initiative, the author of the citizen group's initiative shares the first block in the same conditions of the parties or coalitions with parliamentary representation (Article 61).

12) The referendum would only be binding in the event that the number of voters exceeded half of the number of registered electors (Article 240).

13) The enlargement from 60 to 90 days for the time limit given to the Assembly of the Republic to pass the law or the corresponding international agreement with an affirmative answer from the electorate with binding effect (Article 241).

14) The prohibition of the approval by the Assembly of the Republic or the Government of law or international agreement regarding the questions that received a negative answer with binding effect, except new election of the Assembly of the Republic or new referendum with an affirmative answer (Article 243).

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[199] In Ruling No. 288/98, of 17 April, the Constitutional Court judged that there would be a specific interest in the emigrants' participation if the legal treatment of the matters would have a particular incidence regarding the interests of Portuguese emigration.

7. Subsequent Evolution

7.1. Abortion, Regionalisation and the European Union - Remission

The entry into force of Law No. 15-A/98, of 3 April, almost one year after the Constitutional revision of 1997, concluded the legal framework needed for the first referendum of the Portuguese democratic period. After the law passed, on 4 March, and following multiple vicissitudes, the Assembly of the Republic passed a resolution approved on 19 March that proposed a referendum on the alteration of the law on abortion, which took place on 28 June of that year. On 8 November, the referendum on regionalisation was held. Its draft had been approved in the Assembly of the Republic on 29 June. An eventual referendum on the European Union Treaties had been imminent in Portuguese political life since the Maastricht Treaty of 1992. It reappeared in 1998 as a true possibility with the Amsterdam Treaty, and again in 2001 with the Nice Treaty. In 2005, there was the European Constitutional Treaty, and finally in 2008 the Lisbon Treaty. However, the referendum was never held.

The referendums on the decriminalisation of abortion, the creation of the administrative regions and participation in the European integration process, defined the future debates and referendum initiatives that were proposed and passed in Portugal as a national referendum. It is therefore justified to analyse in detail each one of these three main themes of the referendum in Portugal in the following chapters. Other unsuccessful referendum proposals were proposed during the last few years. These were always about less peaceful questions such as drug consumption, medically assisted procreation and gay marriage.

7.2. The referendum proposals on the decriminalisation of drug consumption

In 2000, the *CDS-PP* and some *PSD* members belonging to the *JSD*, proposed a referendum on the decriminalisation of drug consumption. On 25 February 2000, the Left Block (*BE*) introduced Bill No. 113/VIII on the separation of narcotic markets and the struggle for drug addiction, aiming to separate the markets between the so-called soft and hard drugs. Soft drugs would become legal, and the public healthcare system could supply substances like heroin and cocaine to the citizens who needed them, under medical supervision. The State would control the trade, importation and distribution of such substances [*DAR* (II-A) 23, 3 March 2000, pp. 479-488]. A few days later, on 2 March, the *PCP*

introduced two bills on the legal system of drugs. Bill No. 120/VIII on the decriminalisation of drug consumption, and Bill No. 119/VIII established the system of administrative sanctions applicable for that consumption. According to the bills, the mere consumption of drugs would not be a crime, with dissuasion used instead of criminal sanctions [*DAR* (II-A) 24, 15 March 2000, pp. 521-524].

On 11 May, some *PSD* members belonging to the *JSD* introduced Bill No. 210/VIII on 'drugs and the struggle against addictions', supporting the decriminalisation of soft drug consumption, and the medical prescription of other drugs needed by the addicted as a result of their addiction [*DAR* (II-A) 41, 18 May 2000, pp. 1506-1508]. Finally, on 1 June, the *PS* Government introduced Government Bill No. 31/VIII defining the legal system of drug consumption and the health and social care of people who consume such substances without medical supervision. Drug consumption would be decriminalised, giving way to merely administrative sanctions [*DAR* (II-A) 47, 8 June 2000, pp. 1594-1599]. The plenary debate was scheduled by the *BE*, which allowed the discussion of all bills already introduced. It took place on 21 June 2000.

During the previous week, on 15 June, the *CDS-PP* introduced Draft Resolution No. 59/VIII proposing a referendum on the decriminalisation of drug consumption. The two proposed questions were the following [*DAR* (II-A) 50, 17 June 2000, pp. 1658-1659]: '**1)** Do you agree that the consumption of the so-called soft drugs should stop being punished by the State? **2)** Do you agree that the consumption of the so-called soft drugs should stop being considered a crime, giving way to merely administrative sanctions?'

The *CDS-PP* wanted to hold the debate on its referendum proposal on the same day of the debate on the bills, but the *BE* did not accept that proposal. On the eve of the debate, the *JSD* members introduced their referendum proposal, through Draft Resolution No. 63/VIII, including the following questions [*DAR* (II-A) 51, 24 June 2000, p. 1668]: '**1)** should the consumption of 'soft' drugs (cannabis and by-products) in establishments expressly authorised for that effect be decriminalised and regulated? **2)** Should the medical prescription of 'hard' drugs (methadone, heroin and/or similar substances) to citizens who need them be allowed, with the State controlling the trade, importation and distribution of such substances?

The proposals had different purposes. The *CDS-PP* wanted to avoid the decriminalisation of drug consumption, which was foreseeable in the bills introduced by the Government, the *PCP*, the *BE* and even the

JSD members. The decriminalisation had wide support in Parliament. The only solution for the *CDS-PP* was to appeal to voters, and this was why it insisted on holding the referendum proposal and the wider debate on the same day. The *JSD* proposal had another purpose, which was to give way to the *PSD* Bill No. 210/VIII. This *JSD* bill did not have universal approval within the *PSD*. On the contrary, the majority of the party and the parliamentary group were clearly against it. Given the divided opinions on the bill, the appeal to hold a referendum was the common denominator able to unite the party.

The *CDS-PP*'s draft referendum was not formally accepted for consideration.[200] However, it was present in the debate. The *BE* criticised it with a political declaration[201] and the *CDS-PP* supported it in the same way.[202] In the debate, the idea of referendum was always present having been supported by the *PSD* and *CDS-PP* members and rejected by the others [*DAR* (I) 81, 23 June 2000, pp. 3161-3177 and 3180-3198]. The proposals were not submitted to vote. The bills were sent to the Committee for a fresh discussion, and a replacement text emerged with majority support. On 6 July, the bills from the *BE* and the *PSD* were rejected and those by the Government and the *PCP* were passed.[203] The replacement text passed by the Committee had yea votes from the *PS*, the *PCP*, the *BE* and the *PEV* and nay votes from the *PSD* and the *CDS-PP*.

However, given the lack of prior consultation with the self-government bodies of the autonomous regions regarding a law whose regulation in the regions would be under the responsibility of the legislative assemblies, the President of the Republic vetoed the law on 24 July 2000,[204] sending it back to Parliament for further consideration, which happened on 18 October [*DAR* (I) 89, 27 July 2000, pp. 3549-3550]. During this time, the *CDS-PP* and the *PSD* made several appeals for the acceptance of their proposal for referendum. In the plenary sittings of 26 July 2000, when the presidential veto was announced, the *PSD* leader appealed for the referendum with a political declaration [*DAR* (I)

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[200] The proposal from the *PSD*, introduced only on the eve of the debate had no legal conditions for appreciation.
[201] See speech by Luís Fazenda in *DAR* (I) 81, 23 June 2000, pp. 3150-3151.
[202] See speech by Basílio Horta in *DAR* (I) 81, 23 June 2000, pp. 3155-3156.
[203] The *BE* bill had yea votes from the *BE*, the *PEV* and 14 *PS* members, nay votes from the *PSD*, *CDS-PP* and three *PS* members, and abstentions from the *PS*, the *PCP* and six *PSD* members. The *JSD* bill had only 14 yea votes from *PSD* members, the abstentions from the *BE* and 16 *PS* members, and nay votes from the others. The Government and *PCP* bills had yea votes from the *PS*, the *PCP* and the *PEV*, nay votes from the *PSD* and the *CDS-PP* and abstentions from the *BE*.
[204] See the reasons for the veto in *DAR* (II-A), 61, 28 July 2000, p. 1976.

89, 27 July 2000, pp. 3549-3550], thus starting the *PSD* political campaign with the purpose of addressing public opinion.

On that same day, a movement called 'Drug, All for the Referendum' sent a letter to the Assembly of the Republic requesting the suspension of the new appreciation of the law, and the *PSD* and the *CDS-PP* demanded a referendum before the final decision.[205] Nobody requested to set the proposals of referendum in the order of business. However, on the day after the debate, 19 July, during the final overall vote, the *PSD* and the *CDS-PP* introduced a proposal to add a provision in order to make the introduction of the law conditional on the holding of a referendum. The *PS* refuted that proposal, arguing that is was unConstitutional because the decision on the holding of a referendum required a specific initiative and a specific procedure of approval. For that reason, no law could include a provision where its entry into force was conditional on an eventual referendum, whose initiative could not even be considered by Parliament. The appeal by the *PS* was supported by the *PCP*, the *BE* and the *PEV*. Consequently, the Parliament did not admit the proposal for discussion.[206] In the event, Parliament passed Law 30/2000, of 29 November, which decriminalised the consumption of drugs. The proposals for referendum introduced by the *PSD* and the *CDS-PP* were never discussed as laid down by the Constitution.

7.3. The Initiative for a Referendum on Medically Assisted Procreation

Another proposal for referendum, this time by popular initiative, referred to the techniques of medically assisted procreation. On 19 July 2005, the *BE* introduced Bill No. 141/X in order to regulate the medical applications of assisted procreation [*DAR* (II-A) 34, 20 July 2005, pp. 62-69]. After that, there three other initiatives were introduced: on 28 July 2005, Bill No. 151/X (*PS*) regulated the techniques of medically assisted procreation [*DAR* (II-A) 47, 7 September 2005, pp. 20-29]; on 6 October, Bill No. 172/X (*PCP*) covered the techniques of medically assisted reproduction [*DAR* (II-A) 55, 13 October 2005, pp. 66-75]; and on 14 October, Bill No. 176/X (*PSD*) was on the legal system of medically assisted procreation [*DAR* (II-A) 59, 22 October 2005, pp. 36-46].

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[205] See speeches by Telmo Correia (*CDS-PP*) and Durão Barroso (*PSD*) in *DAR* (I) 12, 19 October 2000, pp. 437-439 and 440-441.

[206] See speeches from Luís Marques Guedes (*PSD*) and Telmo Correia (*CDS-PP*) supporting the proposal and from Jorge Lacão (*PS*), António Filipe (*PCP*) and Luís Fazenda (*BE*) refuting it for being unConstitutional [*DAR* (I) 13, 20 October 2000, pp. 489-491].

All these drafts were discussed in plenary sittings, passing the general principles on 10 November 2005,[207] and then sent to the Health Committee for a detailed discussion, which finished on 23 May 2006.[208] On the very same day of the final overall vote, 25 May, a so-called 'Pro Referendum Movement on Medically Assisted Procreation' addressed the Assembly of the Republic with a petition signed by 78,333 citizens, asking for the suspension of the final overall vote and the calling of a referendum on that subject. Also on the same day, the *CDS-PP* introduced a request to delay the final overall vote for a week, which was rejected by the *PS*, the *PCP*, the *BE* and the *PEV*, and was supported by the *PSD*, the *CDS-PP* and two *PS* members. In the final overall vote, Law No. 32/2006 of 26 July, on medically assisted procreation, had yea votes from the *PS*, the *PCP*, the *BE*, the *PEV* and eight *PSD* members; the nay votes came from the *PSD*, the *CDS-PP* and three *PS* members; and the abstention from 21 *PSD* members [*DAR* (I) 127, 26 May 2006, p. 5859].

The questions for the referendum proposed by the petition were the following: **1)** Do you agree that the law should allow the creation of more human embryos than those immediately transferred to the mother? **2)** Do you agree that the law should allow the conception of a child without a biological father and mother united through a stable relationship? **3)** Do you agree that the law should allow surrogate motherhood, allowing a woman to become pregnant with a child that was not biologically her own?

The day after, the President of Parliament sent the petition to the Health Parliamentary Committee to give an opinion on its admission. On 6 July, the Committee passed an opinion made by Manuel Pizarro (*PS*), expressing doubts on the admission of the petition and requesting the President to send the petition to the Constitutional Affairs Committee for opinion. On 21 June, the opinion of this last Committee, drawn by Vitalino Canas (*PS*) considered the petition as illegal and unable for admission.

The Referendum Law lay down in article 4(1) that only issues included in international agreements or legislative acts in procedure can be the subject of referendum, since they were not definitively passed.

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[207] The votings were the following: *BE* bill: yea – *PS, PCP, BE, PEV*, two *PSD*; nay – *PSD, CDS-PP*, three *PS*; abstentions – 15 *PSD*. *PS* bill: yea - *PS, PCP, BE, PEV;* nay – *CDS-PP*; abstentions – *PSD*, three *PS*. *PCP* bill: yea - *PS, PCP, BE, PEV*; nay – *PSD, CDS-PP*, three *PS*; abstentions – 17 *PSD*. *PSD* bill: yea – *PSD*; nay – *PCP*, *CDS-PP*, *PEV*; abstentions – *PS, BE* [*DAR* (I) 127, 26 May 2005, pp. 2823-2824].

[208] See Opinion by the Health Committee in *DAR* (II-A) 114, 25 May 2006, pp. 2-17.

Therefore, once the final overall vote of the bills concerning medically assisted procreation was held, the act was definitively passed. It could not be submitted to referendum.

On 22 June, the President of the Assembly of the Republic sent the opinion of the Constitutional Affairs Committee to the Health Committee so that it could finish its own opinion. On 27 June, the Health Committee considered the petition illegal and unable to be admitted.

However, the President did not follow the opinion of the committees and, on 28 June, he decided to notify the representatives of the group of citizens who had taken the initiative giving them the opportunity to perfect the initiative. The reason was that, as laid down by article 17(4) of the Referendum Law, the initiative of citizens should be followed by a bill, which should put forward the subject that they want to submit to referendum.

The *PCP* appealed against that decision, following the opinions passed by the parliamentary committees and considering that the introduction of a bill was useless given that this could not be submitted to referendum since a law on that same subject had been passed. The Constitutional Affairs Committee was requested to give its opinion on this incident. This time, Paulo Rangel (*PSD*) drew an Opinion draft where he refused the appeal, considering that the opinion of the Parliamentary Committees on the admission of initiatives was not binding and that the decision of the President was not final and definitive.

The subscribers of the popular initiative took advantage of the opportunity and addressed Parliament with a draft on medically assisted procreation. President Jaime Gama admitted the initiative of a referendum on 16 July 2006 and sent it to the Health Committee in order for the draft resolution to be drawn as laid down by law.

On 13 October 2006, the Health Committee presented Draft Resolution No. 159/X, which gave a legal form to the popular initiative. It was submitted to the plenary sittings of the Assembly of the Republic and proposed a national referendum on the subject of medically assisted procreation [*DAR* (II-A) 11, 21 October 2006, pp. 26-27]. The debate took place on 15 November 2006 and the initiative was rejected, with nay votes from the *PS*, the *PSD*, the *PCP*, the *BE* and the *PEV*, and yea votes from

the *CDS-PP*, two from the *PS*, one from the *PSD*, and one abstention from the *PS*.[209]

This initiative was taken by the most conservative sectors of Portuguese society and its purpose was to prevent the passing of legislation for medically assisted procreation. They did not keep, however, within the deadline. After the legislative procedure opened in July 2005 and finished in May 2006, which was when the final overall vote was scheduled, the petition for referendum was presented and requested the suspension of the voting. Once the voting was held, the admission of that initiative was unfeasible. This was the opinion of the Parliamentary Committees, but the President of the Assembly did not follow it and admitted the petition.

In spite of the clear illegality of the proposal, the President preferred to admit it, worried that public opinion would react badly to a refusal based entirely on procedural reasons. He preferred therefore to allow the appreciation of the matter. The proposal was refused, having had only yea votes from the *CDS-PP* and three isolated votes from the *PS* (two) and the *PSD* (one). The same majority, which passed the law on medically assisted procreation, also rejected a referendum that only wanted to refuse that law.

7.4. The Popular Initiative for a Referendum on Gay Marriage

The last attempt to hold a referendum in the first decade of the 21th century regarded the legal admission of gay marriage. It was a popular initiative that wanted to be a last appeal to prevent the passing of legislation on that matter. However, without great expectations as to the result, it was clear from the start that the majority who passed the law would reject the idea of a referendum.

This question arose in 2006 when the *BE* introduced Bill No. 206/X [*DAR* (II-A) 85, 11 February. 2006, pp. 8-10] on 7 February which proposed the alteration of the Civil Code in order to allow gay marriage. It was soon followed on 3 March by the *PEV* which introduced Bill No. 208/X [*DAR* (II-A) 93, 11 March 2006, pp. 9-12] under the title of universal and equal access to marriage. The difference between both initiatives was the right to adopt. While the *BE*, saying nothing, admitted the adoption of children by married people of the same sex, the *PEV*

[209] See the debate in *DAR* (I) 20, 16 November 2006, pp. 54-61 and the voting in DAR (I) 21, 17 November. 2006, p. 86.

allowed the possibility of adoption only to married people of a different sex.

The discussion on the general principles of both bills took place on 10 October 2008, and both were rejected [*DAR* (I) 12, 11 October 2008, pp. 19-29]. The bill of the *BE* had nay votes from the *PS*, the *PSD* and the *CDS-PP*, abstentions from the *PCP*, the *PEV* and one *PSD* member, and yea votes from the *BE* and the independent MP Luísa Mesquita (ex-*PCP*). The bill from the *PEV* also had nay votes from the *PS*, the *PSD* and the *CDS-PP*, the abstentions of eight *PSD* members and Luísa Mesquita, and the yea votes from the *PCP*, the *PEV*, two *PS* and one *PSD* members [*DAR* (I) 12, 11 October 2008, p. 42]. The reason for the different voting was the different option of each bill regarding the adoption.

The rejection of the initiatives by the *PS*, which held the absolute majority, was justified by reasons of timing. The *PS* affirmed itself in favour of gay marriage, but considered that the civil law should only be changed in that sense after new elections, when that proposal had appeared expressly in the candidates' programmes.[210] Consequently, the bills introduced in the X Legislature were rejected and nobody proposed any referendum.

In the XI Legislature, which began in 2009, the question was different, given that the *PS*, which remained as a major party although without an absolute majority, decided to move forward with the legal acceptance of the gay marriage, excluding, however, the possibility of adoption by gay couples. The right wing parties (*PSD* and *CDS-PP*) maintained their opposition. The *PEV* evolved to the position of the *BE*, supporting the possibility of adoption. The *PCP* adhered to the solution proposed by the *PS* Government, admitting marriage but not adoption.

The legislative procedure was resumed on 16 October 2009, with the introduction of Bill No. 14/XI by the *BE* [*DAR* (II-A) 4, 12 November 2009, pp. 40-43]. The *PEV* introduced Bill No. 24/XI on 30 October, [*DAR* (II-A) 4, 12 November 2009, pp. 71-74] and the *PS* Government introduced Government Bill No. 7/XI on 21 December [*DAR* (II-A) 18, 22 December 2009, pp. 37-40]. The *PSD* introduced Bill No. 119/XI on 4 January 2010 [*DAR* (II-A) 21, 7 January 2010, pp. 62-65] proposing the existence of a civil union registered between two persons of

[210] See speech by Jorge Strecht in *DAR* (I) 12, 11 October 2008, pp. 25-26.

the same sex as an alternative to marriage.[211] The discussion on the general principles was scheduled for 8 January 2010.

Meanwhile, on 5 January 2010, the President of the Assembly of the Republic received a popular initiative of referendum, signed by 90,785 citizens (according to the account of the proponents). They proposed the holding of a national referendum through which the Portuguese citizens could say whether they agreed or not that marriage could be celebrated between persons of the same sex. The President admitted the initiative immediately and sent it urgently to the Constitutional Affairs Committee to issue an opinion, within 24 hours. The entire procedure, necessary to make the joint discussion of the referendum and the bills proposed on 8 January, was now ready to begin.

The Committee did just that. The President dispensed the legal time limit of two days to send the initiative to the Constitutional Affairs Committee, sending it on the very same day. The Committee did not use the time limit of 20 days to issue its opinion on the admission of the initiative, doing it in 24 hours. The Assembly did not use the legal procedure to verify the veracity of the signatures, giving credit to the proponents. The procedure that followed was exceptional. Having in mind the popular nature of the initiative and the social and political sensibility of the subject, Parliament wanted to avoid any accusation of having refused the debate on the initiative because of formal reasons. Everything was put in place to allow the debate on 8 January.

The Constitutional Affairs Committee considered there were no Constitutional or legal obstacles to the admission of the initiative[212] and, according to its responsibility, after first consulting the representatives of the proponents, it drew Draft Resolution No. 50/XI [*DAR* (II-A) 22, 18 January 2010, pp.10-11] to submit to the plenary. The draft included the following question: 'Do you agree that marriage could be celebrated between persons of the same sex?'

The referendum was not at the centre of the parliamentary debate of 8 January, which was opened by the Prime Minister, José Sócrates, who introduced the Government bill. The only express support

[211] On the contents and Constitutional framework of the initiatives introduced, see the opinion drawn for the Constitutional Affairs Committee by António Filipe (*PCP*) in *DAR* (II-A) 23, 9 January 2010, pp. 2-22.
[212] See the opinion drawn by António Filipe (*PCP*) for the Constitutional Affairs Comittee in *DAR* (II-A) 23, 9 January 2010, pp. 44-48.

for the referendum came from the *CDS-PP*.[213] The other parties, did not even refer to it, or did so briefly just to register their positions. Being sure that the proposal would be defeated, given the known positions of the *PS*, the *BE*, the *PCP* and the *PEV*, the debate would centre on the introduction of gay marriage, and the different conceptions of the parties regarding that question, and not the referendum. The popular initiative had been taken by the most conservative sectors of Portuguese society, some of them tied to the Catholic Church, having the clear support of the *CDS-PP* and the more discreet support of the *PSD*. The aim of the initiative was to put pressure on Parliament to block the passage of legislation enabling gay marriage, but it had no prospect from the beginning of being politically viable.

The Government proposal was passed with yea votes from the *PS*, the *PCP*, the *BE* and the *PEV*, nay votes from the *PSD*, the *CDS-PP* and two *PS* members, and seven abstentions from *PSD* members. The other initiatives were rejected.[214] The draft resolution for the referendum was also rejected, with yea votes from the *PSD*, the *CDS-PP* and two *PS* members, nay votes from the *PS*, the *BE*, the *PCP*, the *PEV*, and the abstentions from three *PSD* members [*DAR* (I) 20, 9 January 2010, p. 59].

7.5. The Alterations to the Referendum Law

The only alteration to Law No. 15-A/98, of 3 April, happened in 2005. This happened because of controversies surrounding the call of a second referendum on the decriminalisation of abortion. On 20 April 2005, the Assembly of the Republic passed the proposal for a new referendum on that subject. However, on 5 May, the President of the Republic, by message addressed to the Parliament, announced the refusal of that proposal. In response, the *PS* introduced Bill No. 122/X on 28 June. The party aimed at holding that referendum in 2005 and this bill facilitated the procedures to hold referendums.

The Assembly of the Republic passed that bill in general terms on 8 July [*DAR* (I) 40, 9 July 2005, pp. 1782-1783] and in a final overall vote on 28 July 2005 [*DAR* (I) 42, 29 July 2005, pp. 1917-1918] with yea votes from the *PS* and the *BE* and nay votes from the other parties. Therefore, Organisational Law No. 4/2005, of 8 September, changed

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[213] See speech by José Ribeiro e Castro in *DAR* (I) 20, 9 January 2010, pp. 35-37.

[214] The *BE* and *PEV* bills had the same voting: yea – *BE*, *PEV*, eight *PS* and one *PSD* members; nay – PS, *PSD*, *CDS-PP*; abstentions – *PCP* and one *PSD* member. The *PSD* bill had yea votes from *PSD* and *CDS-PP*, nay votes from *PS*, *BE*, *PCP*, *PEV*, two *CDS-PP* and one *PSD* members, and abstentions from *PSD* and eight *CDS-PP* members [*DAR* (I) 20, 9 January 2010, p. 59].

several time limits established in the Referendum Law, in the Law of the Electoral Registration and in the Electoral Law for the President of the Republic. The referendum started to be allowed between the 40th and the 180th day after publication of the decree that called it (until then it should happen between the 60th and the 90th day). The new law also changed some intermediate time limits of the Referendum Law and of the Law of Electoral Registration, in order to contain the whole referendary procedure inside the minimum time limit allowed, which was 40 days.[215] That attempt, however, was fruitless due to the unConstitutionality of the draft referendum. The alterations introduced in the law did not have the intended practical effects.

8. Defining the Portuguese National Referendum

Considering the national referendum, as it is enshrined in Portugal by the Constitution and by the law, in the context of the typologies adopted by several authors as described in Part I, we can define the Portuguese national referendum as follows:

According to Jorge Miranda (1996a, pp. 237-238) it is **a)** internal; **b)** national; **c)** legislative, except in the case of the referendum on European Union, which would be political; **d)** optional, except in the case of the referendum on the administrative regions, which is mandatory; **e)** of parliamentary initiative; **f)** binding; **g)** positive; and **h)** resolutive.

According to Maria Luísa Duarte (1987, pp. 207-208) it is **a)** legislative, except in the case of the referendum on the European Union, which would be on an international issue; **b)** national; **c)** optional, except in the case of the referendum on the administrative regions, which is mandatory; and **d)** binding.

According to Butler and Ranney (1978, pp. 23-24), it is a government-controlled referendum because the majority of the Parliament, which supported the Government, has the power to decide whether a referendum will be held. However, the Portuguese Government cannot decide on wheter the effect of the referendum is binding or merely advisory, because the binding effect is directly established by the

[215] Bearing in mind that in the beginning of 2006 there would be the election of the President of the Republic, the *PS* approved in the same Organizational Law No. 4/2005, of 8 September, an alteration to the Electoral Law for the President of the Republic, shortening the minimum antecedence for setting that election from 80 to 60 days, in order to make the referendum possible in 2005.

Constitution. In the case of the creation of the administrative regions, the referendum is Constitutionally required.

Regarding the classifications of Gordon Smith (1976, p. 6), the Portuguese referendum is controlled, having in mind the degree of government control exercised on its holding. However, as to the consequences, as we will see in the next chapters, the first referendum on the decriminalisation of abortion and the referendum on the administrative regions were anti-hegemonic referendums. The second referendum on the abortion was pro-hegemonic.

According to Uleri (1996, pp. 6-7), the Portuguese referendum is **a)** prescribed; **b)** optional, except in the case of the referendum on the creation of the administrative regions; **c)** binding; and **d)** decision-controlling vote, given the coincidence between the promoter of the consultation and the author of the decision put to vote.

Finally, according to LeDuc (2003, p. 39), the Portuguese referendum is **a)** mandatory Constitutional, having in mind the binding effect, and **b)** a resource of the parties, considering the political function of the referendum. Regarding the typology proposed by LeDuc (p. 39) the Portuguese referendum is on public policy questions, except the referendum on the European Union, which would be on an international treaty.

Chapter 4

The Referendums on the Decriminalisation of Abortion

1. Antecedents

1.1. I Legislature: 1976-1980

On 8 March 2007 Parliament passed Law No. 16/2007 of 17 April decriminalising abortion. The result of the referendum held on 11 February that year, ended a long process of heated discussions, both inside and outside the Parliament, legal proceedings and human dramas. In that process, the referendum had a leading and decisive role. It was used to block, and later enabled the adoption of legislative measures to decriminalise abortion up to the tenth week of pregnancy. Long before the Constitutional possibility of holding referendums in Portugal, the issue of abortion was already referred to as a prototypal example of the kind of question that justified the appeal to referendum.

Portugal criminalised abortion with the Penal Code of 1886, which kept the legal system in force since the Penal Code of 1852, and remained in force up to 1982. According to Article 358 of that Code, a pregnant woman who aborted, using for that purpose violence, beverages, medicines, or any other means, should be condemned to a prison penalty from 2 to 8 years. The same penalty would be applied to any woman who consented to actually have the abortion through those means, or who voluntarily tried to abort herself (Decree of 16 September 1886, *DG*, 20 September 1886).

Close to the end of the I Legislature, in June 1980, deputy Mário Tomé (*UDP*) introduced Bill No. 500/I [*DAR* (II) 69, 6 June 1980, pp. 1138-1140], which was the first parliamentary initiative to put an end to the criminalisation of abortion. That bill revoked Article 358 of the 1886 Penal Code and allowed a pregnant woman to request an abortion as long as it was carried out by qualified personnel, in either a public or private hospital, or in a properly equipped health centre within the first 12 weeks. The bill specified the reasons that could justify the termination of pregnancy, but gave women the right not to reveal those reasons. The legislative session ended without any discussion of that bill, and it automatically lapsed.

1.2. II Legislature (1980-1983): The Debate of 1982

In the II Legislature, which began after the elections of 5 October 1980, which resulted in an absolute majority for the *AD*, Parliament revived the issue of abortion with the introduction of Bill No. 309/II, on 4 February 1982 by the *PCP* [*DAR* (II) 50, 6 February 1982, pp. 1034-1041]. In that bill, the *PCP* proposed the revocation of Article 358 of the Penal Code and the legalisation of abortion in certain conditions. The pregnant woman could request a termination of the pregnancy within the first 12 weeks and under the direction of a doctor, in a public or private health establishment especially authorised for that purpose, when: **a)** the pregnancy was the result of rape or another act that could be considered a violation of the woman's freedom; **b)** the termination of the pregnancy was a suitable means of removing a serious danger or harm to the woman's physical or psychological health; **c)** there was a serious risk that the child could suffer a severe illness or malformation; **d)** the woman, due to her familial situation or serious lack of economic resources, was unable to assure reasonable living conditions and education for the child, or the pregnancy would put her in a social and economic situation which was unbearable.

On the other hand, the pregnancy could be terminated at any time when, according to the rules and knowledge of medicine, **a)** it was necessary to take action to remove the danger of death or serious harm to the pregnant woman; **b)** there was a serious probability of illness or malformation for the child that was not detected within the first 12 weeks. Anyone who conducted an abortion outside of these permitted circumstances would be punished with a jail sentence of up to one year if the woman had consented, or from 2 to 8 years if there was no consent, and from 8 to 12 years in the case of death or serious damage to the woman's health. In other cases the woman would not be punished. The discussion on the general principles happened for the first time on 2 March 1982 [*DAR* (I) 59, 3 March 1982, pp. 2392-2420].

On 22 May 1982, while the procedure of the *PCP* bill was pending, the Government introduced Bill No. 100/II [*DAR* (II) 94, 22 May 1982] asking for authorisation to legislate in order to draw a new Penal Code. This gave rise to the 1982 Penal Code published on 23 September (Executive Law No. 400/82). That Code laid down that, anyone who conducted an abortion on a woman without her consent should be punished with between 2 and 8 years in prison. Abortion with the woman's consent should be punished with prison sentence of up to 3 years, and the same penalty should be applied to any woman that aborted her own child or gave her consent for someone else to conduct the abortion. The penalty should only be up to 2 years in prison if the abortion

was carried out to hide the woman's dishonour. If the abortion led to the woman's death or serious harm, or if the person conducting the abortion did so frequently or for purposes of gaining profit, the penalty should be even more severe. That penalty, however, should not be applied to the woman.

Bill No. 309/II was discussed again, in general terms, on 9 November 1982 and rejected on 11 November. The voting was nominal, and the bill had 127 nay votes (from the *PSD*, the *CDS*, the *PPM* and the *ASDI*) and 105 yea votes (from the *PS*, the *PCP*, the *UEDS*, the *MDP/CDE*, the *UDP* and one from the *PSD*), [*DAR* (I) 12, 12 November 1982, p. 406]. During the procedure, Teresa Ambrósio (*PS*), [*DAR* (I) 10, 10 November 1982, p. 261], Helena Roseta [*DAR* (I) 59, 3 March 1982, pp. 2412-2413] Amadeu dos Santos (*PSD*) and the *PPM* members [*DAR* (I) 12, 12 November 1982, pp. 417-418] defended a referendum on the decriminalisation of abortion, expressing regret that the Constitution did not allow it.

1.3. III Legislature (1983-1985): Law No. 6/84, of 11 May

In the III Legislature, after the 25 April 1983 elections, and under the *PS*/*PSD* Government, the *PCP* revived plans to decriminalise abortion through the introduction of Bill No. 7/III [*DAR* (II) 1, 1 June 1983, pp. 23-31], on 31 May 1983, thus resubmitting the contents of the previous *PCP* bill. On 12 January 1984, the *PS* introduced Bill No. 265/III [*DAR* (II) 73, 14 January 1984, pp. 1955-1957], which excluded certain cases of abortion from illegality. It also proposed that no punishment should be handed down to a doctor for carrying out an abortion in a health establishment provided the consent of the pregnant woman had been obtained and, according to the knowledge and experience of medicine: **a)** it was the only means to remove the danger of death or serious and irreversible harm to the body or the physical or psychological health of the pregnant woman; **b)** it was suitable to avoid the danger of death or durable harm to the body or the physical or psychological health of the woman, and the abortion was conducted within the first 12 weeks of pregnancy; **c)** there were good reasons to predict that the child would suffer from a serious and incurable disease or malformation, and the abortion was conducted within the first 12 weeks of pregnancy; **d)** there were evidence that the pregnancy had been the result of rape and the abortion was made within the first 12 weeks of pregnancy. Besides that, the penalties laid down in the Code remained essentially the same. The only changes were that the penalty of up to 2 years in prison, which formerly applied if the abortion had been conducted to hide the woman's dishonour, would be

replaced by prison of up to one year if the abortion had been conducted to prevent the woman experiencing social blame, or if there was another reason that could sensibly decrease the agent's guilt.

On 25 and 26 January 1984, the general principles of both bills were discussed. Through nominal voting, the *PCP* bill was rejected. It had 128 nay votes (from the *PSD*, the *CDS*, 24 from the *PS* and two from the *ASDI*), 44 yea votes (from the *PCP*, the *UEDS* and the *MDP/CDE*) and 63 abstentions (from the *PS* and one from the *PSD*). The general principles of *PS* bill was passed with 132 yea votes (from the *PS*, the *PCP*, the *UEDS*, the *MDP/CDE*, one from the *ASDI* and one from the *PSD*), 102 nay votes (from the *PSD*, the *CDS* and one from the *ASDI*) and with one abstention from a *PS* member [*DAR* (I) 67, 26 January 1984, pp. 2886-2948 and 68, 27 January 1984, pp. 2953-3070].

In the debate of 26 January 1984, António Marques Mendes, on behalf of the *PSD*, expressed his regret that a referendum was not permitted by the Constitution because it would shed light on the true feelings and will of the Portuguese people towards the abortion issue [*DAR* (I) 68, 27 January 1984, p. 3060]. That same position was Stated in the declarations of vote by the *PSD* members Agostinho Branquinho and Luís Monteiro [*DAR* (I) 68, 27 January 1984, pp. 3077-3078]. In the final overall vote, on 14 February 1984, the bill was passed with yea votes from the *PS*, the *PCP*, the *UEDS*, the *MDP/CDE* and one from the *ASDI*. The nay votes were from the *PSD*, the *CDS* and two *ASDI* members, and there were two abstentions from *PS* members [*DAR* (I) 75, 15 February 1984, p. 3292].

Thus, Law No. 6/84, of 11 May, changed Articles 139, 140 and 141 of the 1982 Penal Code in the sense of the *PS* proposal.[216] The enactment of this law was not peaceful. The President of the Republic Ramalho Eanes requested a prior review its Constitutionality by the Constitutional Court, and even suggested an extraordinary Constitutional revision to allow a referendum on the abortion issue. In the event, the Constitutional Court did not declare the law unConstitutional.[217]

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[216] In the case of eugenic abortion, with the possibility of a serious disease or malformation of the child, the abortion could be made within the first 16 weeks and not only within the first 12 weeks as had been previously proposed.

[217] See Ruling No. 25/84, of 19 March. The Ombudsman (*Provedor de Justiça)* also requested the review of Constitutionality of Law No. 6/84, of 11 May, which was confirmed by Ruling No. 91/85, of 18 June 1985. See the synthesis of the Constitutional jurisprudence on this subject in the report on Bills No. 177/VII, 235/VII and 236/VII,

1.4. VI Legislature (1991-1995): The Reform of Criminal Law in 1994

During the VI Legislature (1991-1995), the second with a *PSD* absolute majority, the abortion issue reappeared with Government Bill No. 92/VI, which authorised a review of the Penal Code. This bill was introduced on 16 February 1994 [*DAR* (II-A) 24 – Supplement, 24 February 1994, pp. 380(2-45)]. In the debate on the general principles, on 29 June 1994, the Justice Minister, Laborinho Lúcio, answered a question from Mário Tomé by declaring that the issue of abortion decriminalisation should be submitted to popular consultation, i.e. through a referendum [*DAR* (I) 85, 30 June 1994, p. 2751].

On 13 July 1994, in the detailed debate of the Government Bill, the *PCP* requested a discussion of its proposal to exclude abortions made within the first 12 weeks from the Penal Code, provided they had been requested by the woman. They also proposed to lengthen the time limit for eugenic abortion from 16 weeks to 22 weeks, and to decriminalise the behaviour women who had abortions outside the circumstances laid down in Article 142 of the Penal Code. The requirement was rejected with nay votes from the *PSD* and the *CDS*, but had yea votes from the *PS*, the *PCP*, the *PEV*, the *PSN*, the *UDP* and the *ID* [*DAR* (I) 91, 14 July 1994, p. 2976].

Executive-Law No. 48/95, of 15 March, published under the Authorisation given by Law No. 35/94, of 15 September, which changed the Penal Code, was submitted to parliamentary consideration.[218] On that occasion, the *PS* and the *PCP* proposed to change the legal framework of abortion criminalisation, but the parliamentary majority rejected these proposals. The issue of abortion was neither in the core of the debate of the 1994 reform of criminal law, nor was it the subject of significant public discussion at that time, even if it was not exactly absent. The legal framework introduced a small amount of flexibility, but it was discreet and made no controversy or had important social impact.[219]

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made for the Youth Parliamentary Committee by Luís Pedro Martins (*PS*), [*DAR* (II-A) 22, 20 February 1997, pp. 329-331].

[218] See *Ratificação* No. 138/VI [*DAR* (II) 26, 8 April 1995, p. 126] and the respective debate [*DAR* (I) 76, 13 May 1995, pp. 2463-2474].

[219] In this sense, see the Report by José Magalhães (*PS*) for the Committee of Constitutional Affairs, Rights, Freedoms and Guaranties on Bills No. 177/VII, 235/VII and 236/VII [*DAR* (II-A) 21 - Supplement, 21 February 1997, pp. 358(12-16)].

After the 1994 reform, the Penal Code retained the criminalisation of abortion in Article 140. Anyone who, by any means, and without the woman's consent, aborted an unborn child, should be sentenced to between 2 and 8 years in prison (No. 1); anyone who, by any means, and with the woman's consent, conducted an abortion, should be imprisoned for up to 3 years (No. 2); the woman who gave consent for the abortion, conducted by a third person or, through her own initiative or through a third person's, aborted an unborn child herself, should be punished with prison up to 3 years (No. 3).

Article 141(3) strengthend the penalties when the abortion or the means used to case an abortion resulted in the death, or caused significant harm to the pregnant woman's health, or when the agent dedicated himself to the usual practice of abortions, or conducted abortions for purpose of gaining a profit. Finally, Article 142(1) laid down that the abortion was not punishable when it was made by a doctor, or under his direction, in an official or officially recognised health establishment, and with the pregnant woman's consent, provided, according to the knowledge and experience of medicine **a)** it was the only means to remove the danger of death or serious and irreversible harm to the body or physical and/or psychological health of the pregnant woman; **b)** it was appropriate to avoid the danger of death or serious and irreversible harm to the body, or to the physical or psychological health of the pregnant woman, and it was made within the first 12 weeks of pregnancy; **c)** there were sure reasons to believe that the child would suffer from a serious and incurable disease or malformation, and the abortion was conducted within the first 16 weeks of pregnancy; **d)** there were serious signs that the pregnancy had been the result of a crime against the woman's sexual freedom and self-determination, and it was made within the first 12 weeks of pregnancy. This was the starting point at the beginning of the VII Legislature.

1.5. VII Legislature: 1995-1999

1.5.1. The Attempt to Decriminalise Abortion in 1996-1997

On 20 June 1996, the *PCP* revived the initiative on the decriminalisation of abortion, introducing Bill No. 177/VII [*DAR* (II-A) 51, 22 June 1996, pp. 985-987]. In this bill, the *PCP* proposed **a)** the decriminalisation of abortion conducted within the first 12 weeks of pregnancy upon the woman's request; **b)** the extension of the time limit to 16 weeks if the pregnant woman was addicted to drugs; **c)** a further extension from 16 to 22 weeks in the case of eugenic abortion, including cases when the child could be infected with AIDS; **d)** an extension the period when the abortion could be made without penalties from 12 to 16

weeks to avoid danger of death or serious and durable harm to the body or physical and psychological health of the pregnant woman; **e)** the extension from 12 to 16 weeks in the cases where the woman had been the victims of crimes against her sexual freedom and self-determination, and up to 22 weeks where the women was younger than 16 or mentally handicapped; **f)** the decriminalisation of the behaviour of the woman who consented to the abortion outside of the time limits laid down by law. The *PSD* proposed a referendum on the subject. This idea was strongly criticised in the Assembly of the Republic by Odete Santos (*PCP*), [*DAR* (I) 5, 25 October 1996, pp. 176-178].

On 30 October 1996, socialist members introduced two different bills on abortion. Bill No. 235/VII [*DAR* (II-A) 5, 9 November 1996, pp. 60-62], subscribed at first by Manuel Strecht Monteiro, proposed **a)** the decriminalisation of abortion, without a time limit, if the child was unfeasible; **b)** the extension from 16 to 24 weeks in the cases of eugenic abortion, where the problem had been confirmed by an ultrasound; **c)** the extension from 12 to 16 weeks for abortions without punishment in the cases of crimes against the sexual freedom and self-determination and those younger than sixteen or mentally handicapped. Bill No. 236/VII [*DAR* (II-A) 5, 9 November 1996, pp. 62-66], whose first subscriber was the Secretary General of the Socialist Youth (*JS*), Sérgio Sousa Pinto, proposed **a)** the exclusion of the illegality of abortion made within the first 12 weeks upon the woman's request, when she deemed herself unable to exercise a conscious motherhood; **b)** the extension of the time limit from 12 to 16 weeks when the abortion was recommended to avoid the danger of death or serious harm to the body or the physical and psychological health of the pregnant woman; **c)** the extension of the time limit from 12 to 16 weeks in the cases of crimes against sexual freedom and self-determination, and up to 18 weeks when these crimes were committed against those younger than 16 or mentally handicapped.

1.5.2. The Bills' Discussion and Voting

The joint discussion and the nominal voting of the bills took place on 20 February 1997 [*DAR* (I) 42, 21 February 1997, pp. 1480-1545]. The *PCP* Bill No. 177/VII was rejected with 99 yea votes, 115 nay votes and 12 abstentions. The yea votes came from all the *PCP* members (13) and the *PEV* (2), as well as the *PS* (80) and the *PSD* (4). 15 members from the *CDS-PP*, 84 from the *PSD* and 16 from the *PS* voted nay. The 12 abstentions came from *PS* members. The *PS* Bill No. 326/VII was also rejected by a margin of one single vote. It received 111 yea votes, 112 nays and three abstentions. The yea votes came from 93 *PS* members, 13

PCP members, two *PEV* members, and three *PSD* members. 83 *PSD* members, 15 from the *CDS-PP* and 14 *PS* members voted nay. The abstentions came from the *PS* (two) and the *PSD* (one). Only Bill No. 235/VII was passed in general terms, with 155 yea votes (106 from the *PS*, 34 from the *PSD*, 13 from the *PCP* and two from the *PEV*), 47 nay votes (34 from the *PSD* and 13 from the *CDS-PP*), and 24 abstentions (19 from the *PSD*, three from the *PS* and two from the *CDS-PP*).

While three parties stood united in their voting (*PCP*, *CDS-PP* and *PEV*), the *PSD* and especially the *PS*, were divided. In the case of the *PSD*, four members voted affirmatively on the *PCP* bill, three members voted affirmatively on the bill from the young socialists and one member abstained. As for the Strecht Monteiro bill, 34 members from the *PSD* voted in favour and 19 abstained.

The deepest divisions, however, were within the *PS*. Although the majority position inside the party favoured relaxing the law that criminalised abortion to some extent, the opposition of the leader and Prime Minister, António Guterres, was well known. That division was clear since the introduction of the two different bills, and the *JS* bill, were rejected by one vote due to the abstentions from three *PS* members. The division of the Socialist field was actually induced by the position of the Catholic sectors, which strongly opposed the decriminalisation of abortion.

Nonetheless, Bill No. 235/VII was passed. After the detailed voting in the Committee on 17 June 1997 [*DAR* (II-A) 53, 19 June 1997, pp. 1047-1048], it was submitted to a final overall vote on 26 June 1997, having been passed with 118 yea votes (*PS*, *PSD*, *PCP* and *PEV*), 36 nay votes (*PSD* and *CDS-PP*) and 11 abstentions (*PS*, *PSD*, *CDS-PP*), [*DAR* (I) 86, 27 June 1997, p. 3047]. Assent was therefore given to Law No. 90/97, of 30 July, which changed the time limits for the exclusion of illegality in some cases of abortions foreseen in Article 242 of the Penal Code. Being certain that the child would suffer from an incurable and serious congenital disease or malformation, the time limit for abortion without punishment was lengthened from 16 to 24 weeks of pregnancy, except in the cases of an embryo that was not viable, which could be aborted at any time. Given serious signs of crime against sexual freedom or self-determination, the time limit for an unpunished abortion was extended from 12 to 16 weeks.

1.5.3. The Draft Referendum

Meanwhile, on 20 December 1996, the *PSD* proposed a referendum on abortion, introducing Draft Resolution No. 38/VII [*DAR* (II-A) 12, 9 January 1997, p. 200]. The *PSD* considered that the position on the legal framework for abortion was not a normal ideological or partisan situation because it was essentially a matter of individual conscience, based on personal convictions and attitudes towards values and fundamental rights. On the other hand, the *PSD* thought that some of the proposed bills would mean a liberalisation of abortion although limited in time, and that question should be decided by the Portuguese people through a referendum. They argued that this would represent a fundamental change of the law in force, that it would essentially touch on values and fundamental rights, and that these decisions should be based on the free and intimate convictions of each Portuguese citizen. The question proposed was the following: 'Should the right to have an abortion, without any medical reasons, be free within the first 12 weeks?'

The debate of the *PCP* and *PS* bills was scheduled for 20 February 1997. The *PSD* wanted its draft referendum to be previously debated, but it did not have *PS* or *PCP* support for that. However, by the end of January, the *PS* announced the acceptance of the referendum, but never before the general debate of the bills. This position, although criticised by the *PSD*, which insisted on a referendum before any parliamentary position on the bills, reflected the weight of those who opposed the decriminalisation of abortion inside the *PS*.

The referendum would be held only if any bill was passed in principle because, if bills were rejected, their renewal would not be possible in the same legislative session. Thus, if the decriminalisation was passed in principle in Parliament, the voters could contradict that decision by referendum and withdraw it. However, if Parliament rejected the decriminalisation, the voters would not have the possibility to pronounce themselves in opposition to this decision.[220] Nevertheless, the *JS* and the *PCP* bills were rejected in general on 20 February 1997, and consequently, Draft Resolution No. 38/VII, which proposed the referendum, was not discussed.

1.5.4. A New Attempt at Decriminalisation: 1997-1998

In the very beginning of the next legislative session, the *PCP* revived the initiative, introducing Bill No. 417/VII in 7 October 1997

[220] See speeches by Correia de Jesus (*PSD*) and Jorge Lacão (*PS*) on 30 January 1997 [*DAR* (I) 33, 31 January 1997, pp. 1222-1226].

[*DAR* (II-A) 3, 17 October 1997, pp. 19-32] essentially with the same content of Bill No. 177/VII but with some adjustments resulting from Law No. 90/97, of 30 July. On the contrary, the *CDS-PP* introduced Bill No. 448/VII on 14 January 1998, which proposed the change of Article 66 of the Penal Code in order to establish the beginning of the legal personality from the moment of conception [*DAR* (II-A) 24, 17 January 1998, pp. 441-445].

The *PS* introduced two different bills once again. On 23 January, Bill No. 451/VII [*DAR* (II-A) 27, 29 January 1998, pp. 478-480] had the Secretary General of the *JS* as the first subscriber. It essentially recycled the content of Bill No. 236/VII, but shortened the proposed period when abortion would not be illegal from 12 weeks to 10 weeks after the advice of a family consultancy centre. According to the subscribers, the new time limit only had a political reason, with the purpose of obtaining parliamentary support for its approval.

On 28 January 1998, two *PS* members, António Braga and Eurico Figueiredo, introduced Bill No. 453/VII [*DAR* (II-A) 28, 31 January 1998, pp. 555-559] proposing to add a new cause of exclusion of the illegality of abortion to the Penal Code. The legal framework proposed was as follows: **a)** the illegality of abortion would be excluded if realised within the first 12 weeks, rightly authorised by a Commission of Motherhood Protection, upon a woman's request, and only for social and economic reasons; **b)** if the pregnant woman was underage, the request should be made with the legal representatives' consent; **c)** in every district or region there would be a Commission of Motherhood Protection, which would be responsible for assessing the reasons for the request and promoting the right conditions for the pregnancy or abortion, and inform the requester of the meaning and consequences of the abortion; **d)** the Commission should authorise or refuse the abortion requested within five days, leaving the requesters with the chance to appeal to the Justice Minister or to the Supreme Administrative Court; **e)** the Commission would have five members: an obstetrician, a psychiatrist, a psychologist, a magistrate and a social service technician; **f)** the abortion requests would be free, urgent and confidential.[221]

After the *PCP* bill, and once the *PS* bill was announced proposing the exclusion of the illegality of abortion up to the 10th week with the woman's request, the *PSD* introduced Draft Resolution No.

[221] See Report drawn by José Magalhães (*PS*) for the Constitutional Affairs, Rights, Freedoms and Guaranties Committee on Bills No. 417/VII, 451/VII and 453/VII [*DAR* (II-A) 29, 5 February 1998, pp. 567-576].

75/VII [*DAR* (II-A) 23, 15 January 1998, pp. 434-435]. One of the reasons called upon by the *PSD* was the position taken by the *PS* in 1997 in favour of a referendum if any initiative aimed at the decriminalisation of abortion passed in general terms. The *PSD* argued that any decision substantially changing the philosophy of the legal framework for abortion should be taken by the Portuguese citizens, through a referendum, before any parliamentary decision was made. However, if the parliamentary majority did not agree and sustained that the decision should be taken by Parliament, then, in the worst case scenario, the referendum should be made soon after the decision and discussed in detail until it is held.

On 4 February 1998, all of the general terms of the bills were discussed. The *PSD* Draft Resolution No. 38/VII, the first that proposed the referendum, remained valid and it was also discussed. Meanwhile, the appreciation of the second draft resolution on the referendum was scheduled for 19 February. In the 4th of February debate, Sérgio Sousa Pinto (*PS*) criticised the *PSD* proposal and rejected the idea of a referendum aiming to bypass the Assembly of the Republic if the *PS* bill passed. According to him, that was a weapon against the democratic legitimacy of the Assembly, and behind the referendum was a hidden hope to delay, which would prevent any legal evolution [*DAR* (I) 36, 5 February 1998, p. 1171].

Given the predicable rejection of Draft Resolution No. 38/VII, the *PSD* did not submit it to voting, announcing immediately that if any decriminalisation bills passed in general terms, it would forward a new referendum proposal. The voting was nominal. The *PCP* Bill No. 417/VII was rejected, with 107 yea votes, 110 nays and nine abstentions. The yea votes were from the *PCP* (13), the *PEV* (2), the *PS* (89) and the *PSD* (3). The nay votes were from the *CDS-PP* (15), the *PSD* (85) and the *PS* (10). The abstentions were only from *PS* members. The *CDS-PP* Bill No. 448/VII was rejected, with only 14 yea votes, all of them from the *CDS-PP*, 24 abstentions (22 from the *PSD*, one from the *PS* and one from the *PSD*) and 188 nay votes [*DAR* (I) 36, 5 February 1998, pp. 1209-1211]. Bill No. 453/VII subscribed by António Braga and Eurico Figueiredo was not submitted to nominal voting, because no one requested that, but it was also rejected with only yea votes from both subscribers, a few abstentions from *PS* and *PSD* members, and nay votes from all parties [*DAR* (I) 36, 5 February 1998, p. 1214]. Meanwhile, Bill No. 451/VII was passed in general terms, with 116 yea votes (98 from the *PS*, 13 from the *PCP*, two from the *PEV* and three from the *PSD*), 107 nays (74 from the *PSD*, 15 from the *CDS-PP* and eight from the *PS*), and three *PS* abstentions [*DAR* (I) 36, 5 February 1998, p. 1211-1213].

2. The Referendum of 1998

2.1. The Procedure

One day after the passing, in general, of *PS* Bill No. 451/VII, the socialist leadership announced an agreement with the *PSD* to hold a referendum on the decriminalisation of abortion. The counterpart to this agreement was a compromise on the composition of the Constitutional Court and the *PSD* acceptance that the referendums on the European Union and regionalisation could be held on the same day. The election of judges to the Constitutional Court by the Assembly of the Republic (10 in 13) demanded a two-thirds majority, which involved an agreement between the *PS* and the *PSD*. In the beginning of 1998, an impasse between both parties meant that several unoccupied judge positions went unfilled. The *PS* leadership considered yielding to the *PSD* on the abortion referendum in exchange for an agreement that would lift the blockade on the Constitutional Court's composition. This *PS* position, in response to the *PSD* referendum proposal, which denied all the arguments of its deputies during the discussion the day before, was strongly criticised in Parliament by *CDS-PP* and *PCP* members, who accused the socialists of withdrawing a Statement and giving up on principles in exchange for a beneficial deal.[222]

In the plenary sittings of 19 February 1998, the *PSD* Draft Resolution No. 75/VII was discussed [*DAR* (I) 42, 20 February 1998, pp. 1409-1423]. After that, the *PSD*, hoping that the proposal would be strictly discussed in the committee in order to obtain the clearest and most objective question to submit to the citizens, requested the sending of the draft to the Constitutional Affairs, Rights, Freedoms and Guaranties Committee, for four weeks, so that the final overall vote could happen up to 19 March 1998. The request was passed with the yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP* and the *PEV* [*DAR* (I) 42, 20 February 1998, p. 1423].

On 19 March, the plenary of the Assembly of the Republic discussed the question (or questions) to submit to the voters [*DAR* (I) 51, 20 March 1998, pp. 1743-1750]. The *PSD* and the *CDS-PP* proposed to replace the first *PSD* proposal with the following questions: **1)** 'Do you agree that the abortion should be free within the first 10 weeks of pregnancy?' **2)** 'Do you agree that economic and social reasons may justify an abortion as being a serious danger to the woman's health?'

[222] See speeches by Jorge Ferreira (*CDS-PP*) and Octávio Teixeira (*PCP*) on 11 February 1998 [*DAR* (I) 39, 12 February 1998, pp. 1290-1291 and 1293-1294].

Submitted to vote, these questions were rejected with nay votes from the *PS*, the *PCP* and the *PEV*, and yea votes from the *PSD*, the *CDS-PP* and two *PS* members (Claúdio Monteiro and Maria do Rosário Carneiro), [*DAR* (I) 51, 20 March 1998, p. 1750]. After that, the *PS* submitted its proposal for the referendum question, which was the following: 'Do you agree with the decriminalisation of abortion where a woman can choose to abort within the first 10 weeks of pregnancy, in a legally authorised health establishment?' This question was passed with yea votes from the *PS*, nay votes from the *PCP*, the *PEV* and two *PS* members, and abstentions from the *PSD*, the *CDS-PP* and 12 *PS* members [*DAR* (I) 51, 20 March 1998, p. 1750]. The *PS* also proposed that only registered voters in the national territory could vote in the referendum. This proposal had yea votes from the *PS* and the *PSD*, nay votes from the *PCP*, the *PEV* and two *PS* members, and the abstention from the *CDS-PP* [*DAR* (I) 51, 20 March 1998, p. 1750].

Therefore, the *PS* accepted the referendum imposing, however, its own question, and refusing the *PSD* and *CDS-PP* proposal. These parties, in spite of their disagreement regarding the question, abstained from the *PS* proposal, thus showing their support for the referendum. The *PCP* and the *PEV*, voted against all the proposals in disagreement with the referendum on abortion, considering that the decision on that subject should be taken by Parliament.

On 31 March, Resolution No. 16/98, including the referendum proposal [*DR* (I-A) 76, 31 March 1998, p. 1414] was published. On 2 April 1998, the President of the Republic submitted it to the Constitutional Court for the prior review of the referendum's Constitutionality and legality, including its electoral universe.

The Constitutional Court, through Ruling No. 288/98 [*DR* (I-A) 91, 18 April 1998], concluded that the proposal for referendum was according to the Constitution and the law. The decision was taken by seven judges against six, which considered that the Constitution did not allow the decriminalisation of abortion, so that the affirmative answer would be unConstitutional. Given the Constitutional Court's decision, the President of the Republic called the referendum for 28 June 1998 [*DR* (I-A) 98 – Supplement, 28 April 1998].

Ten political parties and seven citizen groups declared their intention to take part in the campaign to the National Elections Commission. The parties were all the parliamentary parties (the *PS*, the *PSD*, the *PCP*, the *CDS-PP* and the *PEV*), the *PPM*, the *PCTP/MRPP*

(former Maoist party), and three parties that would later create the Left Block (the *PSR*, the *UDP* and the *Politics XXI*). As for the citizen groups, four of them supported the negative answer ('Abortion by request? No!', 'North Life'; 'Solidarity and Life Platform'; and 'Together for Life') and three of them supported the affirmative answer, being all of them named 'Yes, for Tolerance', but having different subscribers. On 28 June 1998, the results were as follows:[223]

Table 3

National Results of the 1998 Referendum on Abortion

Registered voters	Actual Voters		Abstentions		Blank ballot papers		Null ballot papers	
	Total	%	Total	%	Total	%	Total	%
8,496,089	2,709,503	31.89	5,786,586	68.11	29,057	1.07	15,562	0.57

YES Votes		NO Votes	
Total	%	Total	%
1,308,130	48.28	1,356,754	50.07

2.2. Analysis of the Results

The main point to note regarding the results of the first national referendum during the democratic period is the high rate of abstention. In fact, an absention rate of 68.11% was a historical low for electoral participation. In the three previous elections, the rate of participation was much higher. In the parliamentary elections of 1 October 1995 the abstention rate was 33.70%; in the presidential election of 14 January 1996 33.71% of the registered voters abstained; and in the local elections of 14 December 1997 the abstention rate was 39.90%. The abstention in the 28 June referendum even passed the highest rate of abstention in national elections in history, which was 64.46% for the European Parliament election of 12 June 1994.

Michael Baum and André Freire (2003a) considered the abstention as the most remarkable fact of this referendum, given its extremely high rate. The abstention rate was more than twice the rate of the 1995 legislative elections in Portugal and it was about twice as high as the abstention rate in national referendums in other western democracies.

[223] Available at http://eleicoes.cne.pt/raster/index.cfm?dia=28&mes=06&ano=1998&eleicao=re1 [accessed 17 June 2011].

The authors suggested three main explanations for the abstention. First, divisions within the Socialist Party forced the party to present a campaign that was simultaneously for and against the decriminalisation. Second, the efforts of the Catholic Church that used the pulpit and media as a way of getting their message across. And third, the erroneous pre-announcement of the 'yes' victory by the polls without verification of the ballots (Freire & Baum, 2003a, p. 15).

Table 4

Results of the 1998 Referendum on Abortion, by Districts and Autonomous Regions

	% Abstention	% Yes	% No		% Abstention	% Yes	% No
Aveiro	69.4	32.3	67.7	***Lisboa***	65.7	68.5	31.5
Beja	77.0	78.2	21.8	***Portalegre***	75.9	67.7	32.3
Braga	60.5	22.7	77.3	***Porto***	66.6	42.4	57.6
Bragança	71.4	26.3	73.8	***Santarém***	70.2	56.6	43.4
C.Branco	71.2	47.2	52.8	***Setúbal***	66.6	81.9	18.1
Coimbra	72.7	52.9	47.1	***V. Castelo***	65.9	26.2	73.8
Évora	73.3	73.0	27.0	***Vila Real***	68.7	24.0	76.0
Faro	77.6	69.6	30.4	***Viseu***	69.6	24.2	75.8
Guarda	68.0	29.9	70.1	***Açores***	72.8	17.2	82.8
Leiria	70.6	48.3	51.7	***Madeira***	67.2	24.0	76.0

Regarding the positions of the main parties in the referendum, it there were several important aspects. On the left, the *PCP* was for decriminalisation but against the referendum, thinking that the Assembly of the Republic should directly assume the responsibility of changing the criminal law, and considering the referendum as an attempt to block the decriminalisation by Parliament. The right wing, both the *PSD* and the *CDS-PP*, assumed a position against decriminalisation and tried to use the referendum as a means to avoid it. The *PSD* favoured a referendum but were divided over the preferred answer. Several well known members supported the affirmative option and actively took part in its campaign, in spite of having a large majority inside the party against decriminalisation. However, there was no serious division inside the *PSD*, whose members regarded the referendum as a useful tool to weaken the *PS* in the upcoming 1999 elections. The *CDS-PP* was united around the 'no'.

The *PS* was, in fact, the most divided party, and its positions suffered the greatest changes. One should be reminded that, less than 24

hours after the passing of the *PS* bill in Parliament, in which several *PS* members strongly criticised the *PSD* for supporting a referendum in debate, an agreement between both leaders precisely about the referendum was announced. The positions of the Prime Minister and the *PS* Secretary General, António Guterres, and the Catholic sectors of the party against decriminalisation, were well known. The majority of the party supported the 'yes' campaign in the referendum, but there was no official position and the party's division prejudiced the commitment of the party in the campaign and confused the voters.

As Freire and Baum (2003a, pp. 11-12) highlight, the division within the *PS* encouraged abstention, and was decisive for the result. They demonstrated that the municipalities with a *PS*/*PCP* majority had highter abstention rates than municipalities with a *PSD/CDS-PP* majority. In the 1995 parliamentary elections, the left parties were stronger in the municipalities with higher participation, unlike the ones on the right. In the abortion referendum, these correlations inverted. The higher abstention rate took place precisely in the left municipalities and, given the tight margin that decided the referendum, it is clear that the abstention played a decisive role.

Another influential factor in the campaign, and surely in the result, was the Catholic Church's involvement. Despite some moderate voices, several bishops and priests used religious services and the media to address extremist messages against the liberalisation of abortion. That involvement converged with the active participation of the rightist parties in the campaign, aiming to second the Church efforts and to give the idea that the referendum was a religious matter.

The fact that every poll on the referendum predicted a 'yes' victory could also have acted to demobilise voters. On the one hand, they had the *PS* divided between the 'yes' and the 'no', and the *PCP* struggling actively for the 'yes' but not very enthusiastic as for the referendum itself. On the other hand, they had the right sectors strongly committed, supported by the Catholic Church activism. The result was the disinterest of some sectors potentially in favour of the decriminalisation during the referendum day, which contributed to the tangential victory of the 'no' campaign, contradicting all opinion polls.

The geography of the referendum shows that, besides the higher abstention in the regions with greater influence of the 'yes' parties, there was a clear victory of the 'no' in the seven northern districts (*Aveiro, Braga, Bragança, Guarda, Viana do Castelo, Vila Real* and *Viseu*) and in Madeira and The Azores Islands, with results higher than 67%. In the

Oporto district, the 'no' campaign won tangentially, while the 'yes' campaign won in the city and in the surrounding areas. In two districts of the central region (*Castelo Branco* and *Leiria*), the 'no' campaign won by a slight margin. The 'yes' campaign gained a narrow victory in two other districts of the central region (*Coimbra* and *Santarém*) and clearly won in Lisbon (with results over 67%) and in all south districts (*Setúbal*, *Portalegre*, *Évora*, *Beja* and *Faro*).

Table 5

Comparative Results of the 1998 Referendum and Parliamentary Elections[224]

	% Yes Parties 1995	% Yes	% Yes Parties 1999	% No Parties 1995	% No	% No Parties 1999
Aveiro	44.0	32.3	45.4	54.0	67.7	52.2
Beja	78.9	78.2	78.6	19.3	21.8	18.4
Braga	48.8	22.7	51.8	48.9	77.3	45.9
Bragança	43.7	26.3	43.8	54.2	73.8	53.8
C. Branco	58.2	47.2	58.8	39.7	52.8	38.7
Coimbra	55.9	52.9	55.9	41.5	47.1	41.6
Évora	72.6	73.0	73.5	25.7	27.0	24.1
Faro	59.5	69.6	60.1	37.5	30.4	36.8
Guarda	47.3	29.9	48.2	49.9	70.1	49.0
Leiria	42.8	48.3	44.7	54.7	51.7	52.2
Lisboa	59.0	68.5	60.8	38.4	31.5	36.2
Portalegre	67.5	67.7	68.7	29.7	32.3	28.8
Porto	53.7	42.4	57.1	44.3	57.6	40.5
Santarém	57.5	56.6	58.6	39.7	43.4	46.3
Setúbal	71.8	81.9	73.2	26.0	18.1	24.1
V. Castelo	44.5	26.2	47.1	53.7	73.8	50.3
Vila Real	43.4	24.0	44.5	53.8	76.0	52.9
Viseu	41.4	24.2	42.0	55.7	75.8	55.1
Açores	40.5	17.2	56.4	57.1	82.8	41.3
Madeira	37.6	24.0	39.1	59.0	76.0	57.1
Total National	54.2	49.1	56.3	43.3	50.9	41.0

[224] Parties voting 'yes' in 1995: *PS*, *CDU* (*PCP*/*PEV*), *PCTP/MRPP*, *PSR* and *UDP*. Parties voting 'yes' in 1999: *PS*, *CDU* (*PCP*/*PEV*), *BE*, *PCTP/MRPP* and *POUS*. Parties voting 'no' in 1995: *PSD*, *CDS-PP* and *PPM/MPT*. Parties voting 'no' in 1999: *PSD*, *CDS-PP* and *PPM*.

Seeking to determine the relation between the parties' influence in the parliamentary elections immediately before and after the referendum and the referendum results, we drew Table 5. In nine districts in the north and the autonomous regions, the 'yes' result in 1998 was lower than the sum total of the 'yes parties' in the 1995 and 1999 elections. In the three districts of *Alentejo (Portalegre, Évora* and *Beja),* the results were closer to the ones of the parties, but in the Lisbon area (Lisbon and *Setúbal* districts), *Leiria* and *Faro* the 'yes' result largely exceeded the result of its party's supporters. The conclusions from these facts are merely tendencies, given the high rate of abstention. However, it seems clear that many *PS* voters in the north of the country decided to vote 'no', while mainly in the urban centres, but also in the *Leiria* and *Faro* districts, the number of *PSD* voters who voted 'yes' was significant. It also seems clear that the cultural influence of the Catholic Church was important in the northern districts and in the autonomous regions.

Finally, it is possible to conclude that the citizen groups did not replace the political parties as the main mediators between the State and civil society. The Referendum Law gave an important role to the parties in the referendum campaign, but also, as Freire and Baum (2003a, p. 16) remark, the traditional political culture in Portugal overlapped the new democratic possibilities opened by the referendum. The faithful partisans were, after all, decisive in the voting, and when partisanship broke down, the voters decided to abstain.

The 28 June 1998 referendum halted the legislative process on decriminalisation of abortion. Constitutionally, the referendum had no binding effect because more than 50% of the registered voters did not vote. However, that effect was politically recognised. The bill passed in Parliament to decriminalise abortion up to the 10th week of pregnancy was not discussed in detail and lapsed by the end of the legislature.

3. Between Two Referendums: 1998-2007

3.1. VIII Legislature: 1999-2001

In the VIII Legislature, the *PCP* once again introduced its bill to decriminalise abortion on 17 November 1999 [Bill No. 9/VIII, *DAR* (II-A) 5, 27 November 1999, pp. 53-55]. Meanwhile, the *BE*, now a constituted political party that obtained parliamentary representation in the October 1999 elections, introduced a bill on the same subject on 10 January 2000 [Bill No. 64/VIII, *DAR* (II-A) 14, 13 January 2000, pp. 265-267]. These initiatives were never discussed and lapsed on 4 April 2002 following the dissolution of Parliament. However, the issue of abortion did not

disappear from the media agenda or political discourse. On 18 October 2001, 17 women were submitted to trial, at the *Maia* court, and charged with abortion in a lawsuit where 43 people were accused. The impact of this trial activated the debate on the need to change the criminal law.[225]

3.2. IX Legislature (2002-2005): The Majority against the Referendum

During the IX Legislature, under a *PSD/CDS-PP* coalition Government, the issue of abortion returned to the political agenda. The first bill of that legislature, introduced by the *PCP* on 10 April 2002, tackled the abortion issue head on [Bill No. 1/IX, *DAR* (II-A) 4, 9 May 2002, pp. 32-34], reviving the contents of previous bills from that party. Four years after a referendum without binding effect, the Assembly of the Republic had total legitimacy to change the criminal law without a referendum. The Penal Code, which punished abortion, remained unchanged. The criminal prosecution of women charged with abortion had followed. These facts were the reasons why the *PCP* decided to revive the initiative, proposing to decriminalise abortion, upon the woman's request, within the first 12 weeks of pregnancy.

On 18 April, the *PS* introduced Draft Resolution No. 3/IX [*DAR* (II-A) 4, 9 May 2002, p. 63] on the accomplishment of Laws No. 6/84, of 11 May, and No. 90/97, of 30 July, on backstreet abortion in Portugal, proposing that the Assembly of the Republic should commission a study by an external entity, namely a university, in order to assess as objectively as possible the situation in Portugal as to that subject. The discussion took place on 16 May 2002 and the draft was sent to the Work and Social Affairs Committee for detailed consideration before voting. There, the *PS*, the *PSD* and the *CDS-PP* arrived at an agreement that significantly extended the scope of the study.[226] This text was passed as Resolution No. 57/2002, of 17 October, with the only opposition of the *PCP* and the *PEV* which saw that Resolution as a way to delay the passing of legislation. The study, however, was never made.

On 27 June 2002, the *BE* introduced its first bill on abortion proposing, like the *PCP*, the decriminalisation of abortion upon a woman's request within the first 12 weeks of pregnancy [Bill No. 89/IX, *DAR* (II-A) 17, 29 June 2002, pp. 512-517]. On 4 December 2003, there was a new trial against seven women charged with abortion.

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[225] See parliamentary speeches by Francisco Louçã (*BE*), Helena Roseta (*PS*), Margarida Botelho (*PCP*) and Isabel Castro (*PEV*), [*DAR* (I) 14, 19 October 2001, pp. 466-468].
[226] See the Committee's Report [*DAR* (II-A) 30, 8 October 2002, pp. 931-517].

In Parliament, the issue of abortion was again revivived at the beginning of 2004. The *PS* introduced the Bill No. 405/IX on 20 January [*DAR* (II-A) 31, 14 January 2004, pp. 1755-1757], which excluded illegality in certain cases of abortion, and Draft Resolution No. 203/IX [*DAR* (II-A) 31, 14 January 2004, p. 1760] proposing a referendum on the decriminalisation of abortion within the first 10 weeks of pregnancy. The *PS* introduced a bill on decriminalisation, but proposed at the same time that the solution be submitted to referendum. In their view, any change of law would depend on a referendum that overturned the decision of the voters taken in 1998, in spite of its non-binding effect and the recognition of the legitimacy of Parliament to change the law without referendum.

On 30 January 2004, the *PEV* introduced Bill No. 409/IX [*DAR* (II-A) 33, 5 February 2004, pp. 1795-1797] essentially agreeing with the solution proposed by the *PCP* and the *BE*. On 11 February 2004, the Assembly of the Republic received the first popular initiative for referendum. 121,151 citizens used the power of initiative that the Constitution and the law gave them to propose, to the Assembly, a fresh referendum on the decriminalisation of abortion. The Constitutional Affairs, Rights, Freedoms and Guaranties Committee unanimously considered that the initiative met the conditions to be admitted, and assumed, as laid down by law, the responsibility of drawing the respective draft resolution.[227] The question was the following: 'do you agree that an abortion carried out within the first 10 weeks of pregnancy with the woman's consent in a legal health establishment should cease being considered a crime?'

On 17 February, the *PSD* and the *CDS-PP*, acting together, introduced Draft Resolution No. 225/IX [*DAR* (II-A) 37, 19 February 2004, pp. 1926-1928] on preventive measures for abortion, including several recommendations for the Government in the areas of education, motherhood support, family planning, and the guarantee of law enforcement. On that same day, the *BE* introduced Draft Resolution No. 227/IX [*DAR* (II-A) 37, 19 February 2004, p. 1929] proposing a referendum in the terms of the popular initiative that had already introduced.

On 3 March 2004, the *PCP* used its right to schedule the order of business in the Assembly of the Republic, setting the discussion of its Bill No. 1/IX. As laid down by the Rules of Procedure, the Group holder of the initiative can allow the discussion of bills introduced by other

[227] See Draft Resolution No. 230/IX [*DAR* (II-A) 41, 4 March 2004, pp. 2015-2020].

parties for a common discussion. The *PCP* allowed the discussion of the bills and draft resolutions on the referendum proposed by the *PS*, the *BE* and the *PEV*. It did not allow the discussion of the *PSD* and the *CDS-PP* draft resolution since it thought that its subject was not the decriminalisation of abortion. However, the parliamentary majority forced a new interpretation of the Rules of Procedure, compelling the holder of the schedule to accept the discussion of other initiatives even against its will. Despite the *PCP*'s protest, and even without ruling grounds, the majority imposed itself and the *PSD* and *CDS-PP* draft resolution was also scheduled for 3 March 2004.[228]

In the end, the *PSD/CDS-PP* majority rejected all the bills that proposed the decriminalisation of abortion and did not even allow the nominal voting proposed by the *PS* and the *PCP* [*DAR* (I) 58, 4 March 2004, p. 3256]. The *PCP*, *BE* and *PEV* bills were rejected with nay votes from the *PSD*, the *CDS-PP* and nine *PS* members, abstention from three *PS* members and yea votes from the *PS*, the *PCP*, the *BE* and the *PEV*. The *PS* bill was also rejected by the majority and four *PS* members, with abstentions from two *PS* members. The draft resolutions proposing referendums were also rejected by the negative votes from the *PSD*, the *CDS-PP* and three *PS* members. The *PS*, the *PCP*, the *BE* and the *PEV* voted affirmatively on all of them.

As we can see, the party positions towards the referendum changed from 1998. The *PS* and the *BE* supported the change of the law as long as it was preceded by a referendum, and they proposed that referendum because it actively supported the gathering of signatures for the popular initiative. The *PCP* and the *PEV* supported the change of the law without a referendum. However, once the parliamentary majority had rejected all the bills on decriminalisation, they voted in favour of the draft resolutions for referendum since that was the only way to change the law during that legislature. The *PSD* and the *CDS-PP* believed that the law must not be changed without referendum, but they voted against all the draft resolutions for referendum, finding them inopportune.

In the *PS* strategy, the referendary option was heavier than decriminalisation. The party majority supported the decriminalisation of abortion, but they did not want to assume that responsibility without the legitimacy given by a new referendum. The *BE*, not even divided as to the decriminalisation, decided to bet on the referendum as a way to overcome it. The *PCP* and the *PEV*, who were against the referendum in 1998 since

[228] See debate [*DAR* (I) 58, 4 March 2004, pp. 3204-3273].

they believed that it had been called precisely to avoid decriminalisation, voted for it in 2004 because it would not be possible to decriminalise abortion through a parliamentary decision during that legislature because of the position of the majority. The *PSD* and the *CDS-PP* made their option against decriminalisation clear. They wanted the referendum in 1998 to avoid decriminalisation, and they rejected it in 2004 with exactly the same purpose. In 2004, the right wing parties' intentions were clear: neither a law nor a referendum was acceptable.

Only the draft resolution by the *PSD* and the *CDS-PP* passed with both party votes, nay votes from the *PS*, the *PCP*, the *BE* and the *PEV*, and the abstention of 33 *PS* members. The decriminalisation of abortion was rejected and no proposal for referendum was passed.

3.3. X Legislature (2005-2009): A Troubled Procedure

3.3.1. The First Attempt for Referendum

On the very first day of parliamentary work, on 16 March 2005, the *PCP*, the *PEV* and the *BE* introduced their bills to decriminalise abortion once again.[229] On that same day, the *BE* introduced Draft Resolution No. 7/X which proposed the referendum [*DAR* (II-A) 4, 2 April 2005, p. 107]. On 22 March 2005, the *PS* introduced Bill No. 19/X on the exclusion of the illegality of certain cases of abortion [*DAR* (II-A) 4, 2 April 2005, pp. 98-100] and Draft Resolution No. 9/X [*DAR* (II-A) 4, 2 April 2005, pp. 109-110] which proposed a referendum on the decriminalisation of abortion within the first 10 weeks of pregnancy. On that same day, the independent MPs, Maria do Rosário Carneiro and Teresa Venda, who had been elected on the *PS* ticket but were members of a Christian movement named Humanism and Democracy, which was against decriminalisation, introduced Bill No. 20/X [*DAR* (II-A) 4, 2 April 2005, p. 101]. It mandatorily stipulated the provisional suspension of the criminal proceedings on certain cases of abortion.[230]

The initiatives of the *PCP*, the *PEV*, the *BE* and the *PS*, essentially revived the bills introduced by these parties and refused by the parliamentary majority in the previous legislature. The bill introduced by the Humanism and Democracy Movement reflected the disquiet of significant sectors of Portuguese society. Even those who declared

[229] See Bills No. 1/X (*PCP*), No. 6/X (*PEV*) and No. 12/X (*BE*), in *DAR* (II-A) 4, 2 April 2005, respectively pp. 3-5, 28-31 and 38-44.

[230] This bill was not included in the order of business with the others and was later removed for being considered useless.

themselves against the decriminalisation of abortion, and supported the criminal censure of its practice, sometimes felt uncomfortable with the practical consequences of that censure. In fact, the trials after the 1998 referendum, in which were amplified by the media, specifically in the *Maia* and *Aveiro* Courts, proved that criminalisation was not innocuous, and that the women, even if found not guilty, which was never sure, were submitted to police prosecution and public humiliation during the trial.

To sum up, according to the *PCP* and the *PEV*, the Assembly of the Republic should decriminalise abortion without a referendum, because it was not Constitutionally or politically required, and they introduced bills with that purpose. The *PS* and the *BE* supported the decriminalisation of abortion, but it should depend on a referendum to supersede the 1998 result. They accepted that the referendum was not Constitutionally required, but they thought that a political decision taken by referendum should only be changed by another referendum. Maria do Rosário Carneiro and Teresa Venda considered that, with a new referendum in sight, the criminal proceedings against women accused of abortion should be provisionally suspended.

The general debate was held on 20 April 2005, and the *PS* [*DAR* (I) 10, 21 April 2005, pp. 347-376] agreed to discuss the bills of the *PCP*, the *PEV* and the *BE*. The yea votes from the *PS*, the *PCP*, the BE, the *PEV* and four *PSD* members passed the *PS* bill in general terms. It had nay votes from the *PSD*, the *CDS-PP* and four *PS* members, and abstentions from one *PS* and one *PSD* members [*DAR* (I) 10, 21 April 2005, p. 376]. The other bills were rejected.[231]

The position of the *PS*, holder of an absolute majority, was decisive. Insofar as the option to pass the law after a referendum that legitimised it, the *PS* decided to pass only its bill, in order to make the question proposed in the referendum and the wording proposed in the law coincide, that is, the decriminalisation of abortion in the first 10 weeks of pregnancy. Thus, the *PS* voted against the *PCP* bill, rejecting it, and abstained in the *BE* bill, leading to its rejection by the right wing parties. The difference of attitude from the *PS* towards the *BE* and *PCP* bills is explained by the difference of opinions that these parties held towards the

[231] The *PCP* bill had nay votes from the *PS*, the *PSD* and the *CDS-PP*, and abstentions from 10 *PSD* members. The *PEV* bill had nay votes from the *PS*, the *PSD* and the *CDS-PP*, yea votes from the *PCP*, the *BE* and the *PEV* and abstentions from seven *PSD* members. The *BE* bill had nay votes from the *PSD*, the *CDS-PP* and four *PS* members, yea votes from the *PCP*, the *BE* and the *PEV*, and abstentions from the *PS* and seven *PSD* members [*DAR* (I) 10, 21 April 2005, p. 376].

referendum. While the *PCP* refused the referendum and accused the *PS* of trying to escape from its responsibility to decriminalise abortion and passing it on to Parliament (Filipe, 2007), the *BE* proposed the referendum as well and accepted the *PS* proposal in that sense.

The draft resolutions from the *PS* and the *BE* on the referendum were discussed on the same day, 20 April 2005 [*DAR* (I) 10, 21 April 2005, pp. 377-396]. The *BE* withdrew its draft and the *PS* draft was passed with yea votes from the *PS* and the *BE*, nay votes from the *PCP*, the *CDS-PP*, the *PEV*, one from the *PS* and one from the *PSD*, and abstentions from the *PSD* and one *PS* member [*DAR* (I) 10, 21 April 2005, p. 396].

The *CDS-PP*, taking into consideration that the *PS* bill, included a provision in which abortion could be decriminalised when it was appropriate to avoid the danger of death or serious and durable harm to the body, or physical and psychological health of the pregnant woman, including for economic and social reasons, within the first 16 weeks, thought that the question was not about abortion up to 10 weeks, but actually up to 16 weeks. Thus, it introduced an amendment to the *PS* draft, replacing the question for the following: 'do you agree with the decriminalisation of abortion within the first 16 weeks of pregnancy, with the woman's consent, in a legal health establishment?' This *CDS-PP* proposal was undermined by the previous passing of the *PS* proposal, which led to the Resolution of the Assembly of the Republic No. 16-A/2005, of 26 April.

However, the President of the Republic, Jorge Sampaio, decided to use his power to refuse to hold the referendum. On 2 May 2005, he transmitted that decision with a message addressed to Parliament [*DAR* (II-A) 12, 7 May 2005, p. 2]. Taking into consideration the time limits in force, the proposed referendum would need to happen on a Sunday in July. For that reason, the President of the Republic thought that the minimum conditions for a significant participation did not exist. In his message, Jorge Sampaio reminded Parliament of the weak participation in the 1998 referendum. He was concerned that, if such a low turnout were repeated, it could fundamentally jeopardise the institution of the referendum itself. Therefore, the President's refusal should not be seen as a political rejection of the proposal, but as an appeal to hold a referendum in better circumstances, encouraging a more active and participative citizenship.

The reading of the presidential message on 5 May, gave rise to a brief debate in Parliament. The *BE* disagreed with the President, and

believed that the Assembly of the Republic should move forward with decriminalising abortion if no referendum was held in 2005.[232] The *PSD* and the *CDS-PP* applauded the President's decision.[233] From the left, the *PCP* and the *PEV* welcomed the decision, and challenged the *PS* to reintroduce the legislative procedure in Parliament, given the impossibility of making a referendum during the first legislative session. If the *PS* insisted on the referendum, the decriminalisation of abortion would be delayed for a very long time.[234] The *PS* understood the President's worries, but reasserted again its compromise to have the referendum.[235]

3.3.2. The Change of the Legal Time Limits

On 28 June 2005, the *PS* introduced Bill No. 122/X [*DAR* (II-A) 31, 2 July 2005, pp. 8-10] to solve the problem of the time limits for the referendum and other electoral acts, with a view to calling a referendum on the decriminalisation of abortion. The *PS* proposed at this time to change the time limits regarding referendums. The Referendum Law (Organisational Law No. 15-A/98, of 3 April) laid down in Article 35(2) that the referendum should happen between the 60th and the 90th day after the President of the Republic decreed on it. The bill proposed a new time limit that spanned between the 40th and the 180th days.

In addition, the *PS* proposed to change some intermediate time limits established in the law: **a)** the time limit for parties, coalitions and citizen groups to declare their participation in the campaigns would be changed from the 15th to the 30th day before the referendum (Articles 40 and 41); **b)** the time limit to fix the polling stations would be changed from the 35th to the 30th day before the referendum (Article 77); **c)** the time limit to stipulate the location of the polling stations would be changed from the 25th to the 30th day before the referendum [Article 79(1)]; **d)** the time limit to publicise the location of the polling stations would be changed from the 28th to the 23th day before the referendum [Article 79(2)].

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[232] See speeches by Luís Fazenda and Francisco Louçã [*DAR* (I) 16, 5 May 2005, pp. 593 and 596-598].
[233] See speeches by Nuno Melo (*CDS-PP*) and Luís Marques Guedes (*PSD*), [*DAR* (I) 16, 5 May 2005, pp. 593-594 and 595].
[234] See speeches by Heloísa Apolónia and Francisco Madeira Lopes (*PEV*) and Bernardino Soares (*PCP*), [*DAR* (I) 16, 5 May 2005, pp. 592-593, 600-601 and 598-600].
[235] See speech by Alberto Martins (*PS*), [*DAR* (I) 16, 5 May 2005, pp. 595-596].

Some time limits laid down in the Electoral Registration Law (Law No. 13/99, of 22 March) would be changed, with the referendum being called with less than 55 days of antecedence. The Electoral Law to the President of the Republic would also be changed so that it could be scheduled with 60 days of antecedence, lowering the time limit from 80 days.[236] The idea was to hold a referendum in 2005, a race against time and the time limits. Given that no referendum could be called or held after elections for sovereignty organs had been called, it was necessary to shorten the time limits for holding referendums and for calling elections, keeping in mind that local elections were due to be held in October 2005.

The first reading debate and the general voting of that bill happened on 8 July 2005 [*DAR* (I) 40, 9 July 2005, pp. 1762-1783]. The *PS* and the *BE* passed the bill, despite the votes against it from other parties. The opponents accused the *PS* of trying to condition the free decision of the President of the Republic, making him responsible for the eventual refusal of holding the referendum in 2005. Even if the President of the Republic and the Constitutional Court did not use up the time available to make their decisions and accepted to make them earlier, the referendum could hardly take place before 19 December; neither could it occur after 9 January, because the presidential elections would then need to be called. Therefore, the referendum could not be held in conditions would guarantee high levels of citizen participation.[237]

The *BE* were in favour of the *PS* bill, and considered that a decision to decriminalise abortion without referendum could be an ephemeral and unsafe solution, susceptible to being overturned by another parliamentary majority. However, the *BE* declared that it would support the referendum only if it were held before the presidential elections. A second failed referendum should lead to the only acceptable alternative, which was through a legislative procedure in Parliament.[238]

In the detailed debate, on 20 July 2005, the *PS* made some changes on the Referendum Law that were not in the initial text: **a)** Article 8 allowed the introduction of referendum initiatives even after the calling of elections for the sovereignty organs, self-government bodies of the autonomous regions, local authorities and the European Parliament; **b)** Article 35(2) fixed a special time limit for calling referendums with the

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[236] See Executive-Law No. 319-A/76, of 3 May, article 11.

[237] See speeches by Vitalino Canas (*PS*) supporting the bill [*DAR* (I) 40, 9 July 2005, pp. 1762-1764] and Luís Marques Guedes (*PSD*), António Filipe (*PCP*) and Pedro Mota Soares (*CDS-PP*) in the opposite sense [*DAR* (I) 40, 9 July 2005, pp. 1768-1776].

[238] See speech by Fernando Rosas (*BE*), [*DAR* (I) 40, 9 July 2005, p. 1778-1779].

participation of emigrants, which would be between the 55th and the 180th days.

All provisions had the yea votes from the *PS* and the *BE* and nay votes from all other parties [*DAR* (II-A) 40, 30 July 2005, pp. 6-9]. The same happened in the final overall vote on 28 July [*DAR* (I) 42, 29 July 2005, pp. 1917-1918]. Organisational Law No. 4/2005 was passed on 8 September.

3.3.3. The Second Attempt for a Referendum

At the beginning of the parliamentary sittings, on 15 September, the *PS* re-introduced the initiative for a referendum by introducing Bill No. 69/X [*DAR* (II-A) 50, 22 September 2005, pp. 22-23], thus creating a Constitutional problem. Article 115(10) of the Constitution specified that a draft referendum refused by the President of the Republic could not be resubmitted during the same legislative session, except when there had been new elections for the Assembly of the Republic. Article 171(1) laid down that 'the legislature shall last for four legislative sessions' and Article 171(2) laid down that in the event of the dissolution of the Assembly, the newly elected Assembly shall commence a new legislature, with the amount of time needed being extended to complete the period that corresponded to the legislative session that was in progress at the date of the election.

This meant that the *PS* draft referendum should be accepted, since a new legislative session had begun on 15 September 2005. Based on Article 115(10) of the Constitution, the *PS* thought that the prohibition laid down in such a provision did not exist in the event of a new election of the Assembly of the Republic. The opposition parties, except for the *BE*, did not think that way. Based on Article 171, and given that the 2nd legislative session had began on 15 September, the legislature would not have four, but five legislative sessions. Obviously, the problem existed because there were elections on 20 February 2005 as a result of the dissolution of the Assembly.

On 21 September 2005, the *CDS-PP* appealed against the admission of the *PS* draft resolution [*DAR* (I) 47, 22 September 2005, pp. 2124-2125], but the appeal was rejected with the passing of an opinion drawn by Vitalino Canas on 22 September. The conclusion, with affirmative votes from the *PS* and the *BE* and negative votes from all the other parties, was that the legislative sessions lasted one year, and their beginning was always the 15th of September. The holding of elections

does not interrupt the ongoing legislative session. Therefore, on 15 September 2005 a new legislative session had began and Draft Resolution No. 69/X could be introduced.[239]

The draft resolution was discussed in plenary sittings on 28 September 2005, and passed with the votes from the *PS* and the *BE*, with all the other parties and Teresa Venda, elected as an independent in the *PS* lists, having voted against it. Maria do Rosário Carneiro, also elected in the *PS* lists, abstained [*DAR* (I) 50, 29 September 2005, p. 2204]. This gave rise to the Resolution of the Assembly of the Republic No. 52-A/2005, of 29 September, proposing a referendum to the President of the Republic, through which the registered voters in the national territory were called to decide on the following question: 'do you agree with the decriminalisation of abortion, if the woman chooses to abort within the first 10 weeks in a legally authorised health establishment?' Meanwhile, considering the position taken by the majority in Parliament, according to which a new legislative session had begun, the *PCP* introduced its bill on the decriminalisation of abortion once again [Bill No. 166/X, *DAR* (II-A) 55, 13 October 2005, pp. 40-43].

After the resolution was submitted to a prior review, the Constitutional Court decided on 28 October, with Ruling No. 578/2005, that the first legislative session of the X Legislature would only finish on 15 September 2006, according to Article 171 of the Constitution. The Assembly elected on 20 February 2005 had begun a new legislature whose duration was added to the time needed to finish the ongoing legislative session. Consequently, the Constitutional Court considered that the two resolutions regarding the referendum on abortion were passed in the same legislative session, despite the prohibition of Article 115(10) of the Constitution and 36(3) of the Referendum Law. The proposed referendum was judged unConstitutional and illegal[240] and the President of the Republic sent it back to Parliament on 10 November 2005 [*DAR* (I) 59, 10 November 2005, pp. 2664-2665].[241] Given the Constitutional Court decision as to the beginning of the first legislative session, the *PCP* withdrew Bill No. 166/X [*DAR* (II-A) 62, 12 November 2005, p. 4]. It was necessary to wait for the second legislative session to see more developments.

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[239] See the opinion text [*DAR* (II-A) 51, 24 September 2005, pp. 6-8] and the debate in plenary session [*DAR* (I) 48, 23 September 2005, p. 2204].

[240] The decision was taken by seven votes against six [*DR* (I) 220, 16 November 2005].

[241] See the debate on the presidential message addressed to Parliament [*DAR* (I) 65, 9 December 2005, pp. 3099-3108].

3.4. The Referendum of 2007

3.4.1. The Procedure

On the very first day of the second legislative session, on 15 September 2006, the *PCP* introduced Bill No. 308/X [*DAR* (II-A) 2, 21 September 2006, pp. 14-18] re-introducing the contents of its previous initiatives.[242] The *PEV* introduced Bill No. 309/X [*DAR* (II-A) 2, 21 September 2006, pp. 18-19]. The *PS* introduced Draft Resolution No. 148/X [*DAR* (II-A) 2, 21 September 2006, p. 42] proposing again the referendum on the decriminalisation of abortion within the first 10 weeks. On 27 September the *BE* introduced Bill No. 317/X [*DAR* (II-A) 5, 6 October 2006, pp. 13-19].[243]

The debate and passing of Draft Resolution No. 148/X took place on 19 October 2006. The *PS*, the *BE* and the *PSD* voted yea. The *PCP*, the *PEV*, Matilde Sousa Franco (*PS*) and Pedro Quartin Graça (*PSD*) voted nay. The *CDS-PP*, two *PS* members and one *PSD* member, abstained [*DAR* (I) 14, 20 October 2006, pp. 6-28]. The question that passed was as follows: 'do you agree with the decriminalisation of abortion, when a woman decides to abort within the first 10 weeks in a legally authorised health establishment?[244] The *CDS-PP* introduced a draft replacement for the question, replacing the word 'decriminalisation' for 'liberalisation' [*DAR* (II-A) 12, 28 October. 2006, p. 11].

It is important to highlight the evolution of the right wing parties' thought, particularly the *PSD*, to become more favourable towards the referendum. This can be explained by several factors. Essentially, the *PSD* did not change its position regarding the referendum. The circumstances, however, had changed. In 1998, the *PSD* had been the first to support the referendum as a way to prevent the passing of a law that decriminalised abortion. In the IX Legislature, with a *CDS-PP* coalition and a majority able to prevent decriminalisation, the *PSD* opposed the referendum. In the X Legislature, there was a majority with a tendency towards decriminalisation, and the *PSD* had nothing to lose with the referendum. On the *PS* draft referendums, the *PSD* abstained on the first and voted against the second, not so much for being against the referendum, but given the weaknesses of the proposals regarding the

[242] This bill expired on 22 November 2007 because the decriminalisation of abortion passed in the meanwhile.
[243] This bill expired on 3 October 2007 because the decriminalisation of abortion passed in the meanwhile.
[244] See the Assembly of the Republic Resolution No. 54-A/2006, of 20 October.

calendar, which eventually led to their failure. Once these obstacles were gone, the *PSD* put aside its opposition to the referendum. Meanwhile, the position of that party as to the main question had also changed. The *PSD* did not adopt an official position against the decriminalisation of abortion any longer, having recognised the freedom of vote of its militants in the referendum and of its members in Parliament. The *CDS-PP* moved towards abstention because since the parliamentary majority was in favour of decriminalisation, and the best hope of avoiding that outcome would a victory for the 'no' campaign in the referendum, as in 1998.

On the left, the positions remained the same. The *PCP* and the *PEV* continued to oppose the referendum, thinking that Parliament should assume the responsibility of deciding on the decriminalisation. The *BE* supported the *PS* position on the referendum. This tactic caused problems for the *BE*, keeping in mind that there was some similarity between the *BE* and *PS* positions regarding the referendum, and the confusion that the latter party embroiled in the process. In fact, by accepting the idea supported by the *PS* that the decriminalisation of abortion should be decided by referendum, the *BE* became dependent on the socialist strategy. When the *PS* went forward with draft referendums that were clearly weak and always counted on the support of the *BE*, but delayed decriminalisation given the refusal of the referendums by the President of the Republic, the *BE* itself was targeted by the *PCP* critics, who thought the referendum was not essential for decriminalisation. For that reason, the *BE* position was accused of being hesitant and ambiguous, somewhere between full support for the referendum and the admission that, if the referendum was impossible, Parliament should change the law.

In a prior review, the Constitutional Court judged the draft referendum as being Constitutional and legal with Ruling No. 617/2006, taken on 15 November.[245] Consequently, the President of the Republic elected in the meantime, Aníbal Cavaco Silva, scheduled the referendum for 11 February 2007 (Decree No. 117-A/2006, of 30 November).

All the parties represented in Parliament (the *PS*, the *PSD*, the *PCP*, the *CDS-PP*, the *BE* and the *PEV*) declared their intention to participate in the campaign to the National Election Commission (*CNE*). The Humanist Party (*PH*), the National Renovator Party (*PNR*), the Worker Party of Socialist Unity (*POUS*) and the Popular Monarchist Party (*PPM*), did the same. The number of citizen groups created to take part in

[245] The decision was taken by seven votes against six. Some judges disagreed of the decision regarding essentially the requirements of objectivity, clearness and precision of the question and the conformity of the positive answer as to the Constitution.

the campaign was the highest ever. 19 groups were constituted, with five for the 'yes' campaign and fourteen for the 'no'.[246] Three parties fought for the answer 'no' (the *CDS-PP*, the *PPM* and the *PNR*) and six fought for the answer 'yes' (the *BE*, the *PH*, the *PCP*, the *PEV*, the *POUS* and the *PS*). The *PSD* did not take an official position. André Freire (2007, pp. 108-109) stresses the great increase of civic mobilisation compared to 1998, mainly in the 'no' field, with several movements linked to the Catholic Church.

3.4.2. Analysis of the Results

Table 6

National Results of the 2007 Referendum on Abortion[247]

National results								
Registered Voters	**Actual Voters**		**Abstentions**		**Blank ballot papers**		**Null ballot papers**	
	Total	**%**	**Total**	**%**	**Total**	**%**	**Total**	**%**
8,814,016	**3,840,176**	**43.57**	**4,973,840**	**56.43**	**48,094**	**1.25**	**25,884**	**0.67**

YES Votes		**NO Votes**	
Total	**%**	**Total**	**%**
2,231,529	**59.25**	**1,534,669**	**40.75**

The first data to note is the inversion of the results in relation to the 1998 referendum. The substantial reduction of abstentions, by 11.7%, contributed decisively in that respect. There were 1,130,673 more voters than in 1998. The 'yes' campaign had 923,399 more votes than in 1998 (a relative increase of 10.1%) and the 'no' had 177,915 more votes (a relative decrease of 10.1%). The speculation after the 1998 referendum that the high abstention rate had decisively harmed the 'yes' option was proven entirely true in 2007. On the other hand, while in 1998 the 'no' campaign had won narrowly, by 1.89%, in 2007 the 'yes' won a decisive victory with an advantage of 18.16%.

[246] Full list available at http://www.cne.pt/index.cfm?sec=0306000000&EleicaoID=49&Eleicao2ID=0 [accessed 18 June 2011].

[247] Results available at http://eleicoes.cne.pt/raster/index.cfm?dia=11&mes=02&ano=2007&eleicao=re1 [accessed 18 June 2011].

The results of the districts (Tables 7 and 8) revealed that the 'yes' campaign, besides strengthening the districts where it had clearly won in 1998, also clearly won in the *Coimbra* and *Santarém* districts. In *Castelo Branco, Leiria* and Oporto districts, there was an inversion of the results, with the victory of 'yes'. The 'no' campaign won again in the seven districts of the north, except in Oporto (*Viana do Castelo, Braga, Vila Real, Bragança, Guarda, Viseu, Aveiro*), and in the Autonomous Regions of The Azores and Madeira.

Table 7

Results of the 2007 Referendum on Abortion, by Districts and Autonomous Regions

	% Abstentions	% YES	% NO		% Abstentions	% YES	% NO
Aveiro	57.7	44.6	55.4	***Lisboa***	51.3	71.5	28.5
Beja	60.2	83.9	16.1	***Portalegre***	61.1	74.4	25.6
Braga	53.6	41.2	58.8	***Porto***	55.1	54.4	45.6
Bragança	65.6	40.8	59.2	***Santarém***	55.9	65.1	34.9
C.Branco	59.4	61.6	38.4	***Setúbal***	51.5	82.0	18.0
Coimbra	59.9	62.9	37.1	***V. Castelo***	60.4	40.4	59.6
Évora	57.0	78.4	21.6	***Vila Real***	64.8	38.1	61.9
Faro	61.2	73.6	26.4	***Viseu***	62.3	38.5	61.5
Guarda	61.5	46.7	53.3	***Açores***	70.5	30.7	69.3
Leiria	56.1	58.3	41.7	***Madeira***	61.4	34.6	65.4

Table 8 compares the results of the 1998 and the 2007 referendums in each district.

In addition to the inversion of results in three districts, that inversion also became apparent in three district capitals (*Aveiro, Guarda* and *Leiria*) and in 37 municipalities. In 1998, the 'no' had won in 184 municipalities and the 'yes' in 124. In 2007, the situation was the opposite: the 'yes' won in 161 municipalities and the 'no' in 147.

Table 9 shows the relation between the abstention, the 'yes' vote and the 'no' vote in both referendums. This table shows that, despite the reduction of abstentions in all districts of the country, the reduction was more substantial in the districts where the 'yes' vote won and where the left parties are more influential, with reductions of over 14% in the eight southern districts.

In the districts with the 'no' vote, the reduction of abstention was less significant, given that in 1998 there was a greater mobilisation of voters in these regions. However, the most significant increase of the 'yes' vote took place precisely in the strongest districts of the 'no', where the positions were inverted or the differences were significantly reduced, as in Oporto, *Leiria* and *Castelo Branco*.

Table 8

Comparative Results of the Referendums on Abortion, by Districts and Autonomous Regions

	YES		NO		Abstentions	
	1998	2007	1998	2007	1998	2007
	%	%	%	%	%	%
Aveiro	32.3	44.6	67.7	55.4	69.4	57.7
Beja	78.2	83.9	21.8	16.1	77.0	60.2
Braga	22.7	41.2	77.3	58.8	60.5	53.6
Bragança	26.3	40.8	73.8	59.2	71.4	65.6
Castelo Branco	47.2	61.6	52.8	38.4	71.2	59.4
Coimbra	52.9	62.9	47.1	37.1	72.7	59.9
Évora	73.0	78.4	27.0	21.6	73.3	57.0
Faro	69.6	73.6	30.4	26.4	77.6	61.2
Guarda	29.9	46.7	70.1	53.3	68.0	61.5
Leiria	48.3	58.3	51.7	41.7	70.6	56.1
Lisboa	68.5	71.5	31.5	28.5	65.7	51.3
Portalegre	67.7	74.4	32.3	25.6	75.9	61.1
Porto	42.4	54.4	57.6	45.6	66.6	55.1
Santarém	56.6	65.1	43.4	34.9	70.2	55.9
Setúbal	81.9	82.0	18.1	18.0	66.6	51.5
Viana do Castelo	26.2	40.4	73.8	59.6	65.9	60.4
Vila Real	24.0	38.1	76.0	61.9	68.7	64.8
Viseu	24.2	38.5	75.8	61.5	69.6	62.3
Açores	17.2	30.7	82.8	69.3	72.8	70.5
Madeira	24.0	34.6	76.0	65.4	67.2	61.4
Total National	49.1	59.2	50.9	40.8	68.1	56.4

Table 9

Evolution of Results in the Referendums on Abortion

	% Abstention	% YES	% NO		% Abstention	% YES	% NO
Aveiro	▼ 11.7	▲ 12.3	▼ 12.3	***Lisboa***	▼ 14.4	▲ 3.0	▼ 3.0
Beja	▼ 16.8	▲ 5.7	▼ 5.7	***Portalegre***	▼ 14.8	▲ 6.7	▼ 6.7
Braga	▼ 6.9	▲ 18.5	▼ 18.5	***Porto***	▼ 11.5	▲ 12.0	▼ 12.0
Bragança	▼ 5.8	▲ 14.5	▼ 14.5	***Santarém***	▼ 14.3	▲ 8.5	▼ 8.5
C.Branco	▼ 11.8	▲ 14.4	▼ 14.4	***Setúbal***	▼ 15.1	▲ 0.1	▼ 0.1
Coimbra	▼ 12.8	▲ 10.0	▼ 10.0	***V. Castelo***	▼ 5.5	▲ 14.2	▼ 14.2
Évora	▼ 16.3	▲ 5.4	▼ 5.4	***Vila Real***	▼ 3.9	▲ 14.1	▼ 14.1
Faro	▼ 16.4	▲ 4.0	▼ 4.0	***Viseu***	▼ 7.3	▲ 14.3	▼ 14.3
Guarda	▼ 6.5	▲ 16.8	▼ 16.8	***Açores***	▼ 2.3	▲ 13.5	▼ 13.5
Leiria	▼ 14.5	▲ 10.0	▼ 10.0	***Madeira***	▼ 5.8	▲ 10.6	▼ 10.6
Total National	▼ 11.7	▲ 10.1	▼ 10.1				

In Table 10, we make an extrapolation of tendencies between the vote in the 2007 referendum and the results of the previous legislative elections, which happened in February 2005. There are two new data for analysis: first, the fact that the *PSD* did not take an official position, recognising the freedom of vote of its militants, which is obviously important, in spite of the participation of the leader in the 'no' campaign. Second, there were the good results of the *PS*, which for the first time in its history won the absolute majority. What we see, however, is that in the districts south of *Coimbra*, except in *Castelo Branco*, the percentage of 'yes' votes, is higher than the percentage of the parties that supported the

'yes' votes. In the north and in the islands, the percentage of 'no' votes is higher than the sum of the *PSD* and the *CDS-PP* votes. This means that in the north, many socialist voters voted 'no', and on contrary many rightist voters in the centre and in the south voted 'yes'. The traditional influence of the Catholic Church in the north of the country remained powerful.

Table 10

Comparative Results of the 2007 Referendum and the 2005 Parliamentary Elections[248]

	% YES Parties 2005	% YES	% NO Parties 2005	% NO
Aveiro	50.6	44.6	45.6	55.4
Beja	81.9	83.9	15.4	16.1
Braga	56.0	41.2	40.8	58.8
Bragança	47.5	40.8	48.9	59.2
Castelo Branco	64.5	61.6	32.2	38.4
Coimbra	58.3	62.9	37.5	37.1
Évora	76.9	78.4	20.5	21.6
Faro	65.3	73.6	30.6	26.4
Guarda	54.2	46.7	42.0	53.3
Leiria	46.8	58.3	48.9	41.7
Lisboa	64.0	71.5	32.1	28.5
Portalegre	72.7	74.4	24.6	25.6
Porto	61.7	54.4	34.6	45.6
Santarém	62.6	65.1	33.5	34.9
Setúbal	75.5	82.0	21.4	18.0
Viana do Castelo	51.4	40.4	45.1	59.6
Vila Real	49.7	38.1	47.1	61.9
Viseu	46.9	38.5	49.0	61.5
Açores	58.2	30.7	38.5	69.3
Madeira	44.1	34.6	51.8	65.4
Total National	60.2	59.2	36.2	40.8

André Freire (2007, pp. 97-122), in a work that analyses the connections between the referendum results, the religious practice and the partisanship vote, concludes that religious practice is strongly and positively correlated with the 'no' vote, and negatively and strongly correlated with the 'yes' vote. Regarding the partisanship vote, the author concludes that there were changes of intensity, but the general pattern of

[248] Yes parties: *PS*, *CDU* (*PCP*/*PEV*), *BE* and *PCTP/MRPP*; No parties: *PSD* and *CDS-PP*.

distribution of partisan votes remained unaltered. The greatest differences are connected to abstention. In 1998, the more religious zones were participated more actively, while in 2007 the contrary occurred. In 2007, abstention was higher in the *PSD* bastions.

3.4.3. Comparative Analysis of the Referendums on Abortion

Several factors led to the change of results between 1998 and 2007. The first factor was the real situation of clandestine abortion and the criminalisation of women. This situation did not change for the better between 1998 and 2007, and obtained more visibility in the meantime. The trials of women accused of abortion, in the *Maia, Aveiro* or *Setúbal* courts, were widely reported in the media, and demonstrated to the public that criminalisation was neither merely symbolic nor irrelevant. Even without condemnations, there were judicial inquests, charges, trials and humiliations that shocked public opinion, which even led some supporters of the 'no' campaign to separate themselves from the criminal consequences of the law that they supported to maintain.

The second factor is the changing of the political and partisanship situation. Unlike the situation in 1998, the *PS* appeared as a united party that supported the 'yes' vote. While in 1998 the leader of the party and Prime Minister publicly supported the 'no' vote, which did not happen in 2007, isolating those who supported the 'no' vote inside the *PS*. On the other hand, the *PSD* did not assume an official position in favour of the 'no'. Although the leader, Marques Mendes, publicly supported the 'no', several MPs and outstanding militants assumed a defence of the 'yes' vote, and were more intensively committed to the campaign than in 1998. On the left, the *PCP*, despite its position against the referendum, was committed to the 'yes' campaign, just as in 1998, and the *BE*, which had consolidated itself as a party with significant parliamentary representation, also participated actively in the campaign.

Finally, the complacenly that contributed to the defeat of the 'yes' campaign in 1998 did not occur in 2007 for obvious reasons. Participation in the referendum increased and, consequently, the 'yes' votes increased as well. Although participation was still less than a half of the registered voters, and consequently the referendum was non-binding from the legal point of view, its political efficacy was entirely recognised.

3.4.4. Consequences of the Referendum

On 7 and 8 March the *PS* Bill No. 19/X was discussed in detail [*DAR* (II-A) 51, 8 March 2007, pp. 1-12]. Then, the *PSD* and the *CDS-PP* still tried to include in the law some schemes to make it difficult for the woman to freely choose to abort. On the 8 March plenary sittings, these proposals were rejected. At the final overall vote, Law No. 16/2007, of 17 April was passed with yea votes from the *PS*, the *PCP*, the *BE*, the *PEV* and 21 *PSD* members, nay votes from the *PSD*, the *CDS-PP* and three *PS* members, and abstentions from three *PSD* members [*DAR* (I) 58, 9 March 2007, pp. 42-44]. Law No. 16/2007, of 17 April, which excludes the illegality of some cases of abortion, changed Article 242 of the Penal Code in order to consider abortion not punishable when performed by a doctor, or under his direction in an officially recognised health establishment, and with the woman's consent, when carried out within the first 10 weeks of pregnancy.

4. In conclusion

The decriminalisation of abortion will take its place in history as the most important issue of the Portuguese referendary experience. The subject gave the Portuguese political agenda moments of particular intensity, with passionate debates flaring up since the beginning of 1980s. From 1998 onwards, the issue of decriminalising abortion was always connected to the referendum. This, imposed initially by the *PSD* and later accepted by the *PS*, hindered the decriminalisation in 1998 due to the tangential and non-binding victory of the negative answer. In the IX Legislature, the referendum would come to be proposed by the *PS*, the *BE* and by a popular initiative, but was rejected by the *PSD/CDS-PP* majority. In the X Legislature, the *PS*, in which by then had a majority, sought to decriminalise abortion if the Portuguese citizens favoured this course of action in a referendum. Given several ups-and-downs, the referendum was only held on the third attempt. However, the decriminalisation of abortion was, in the event, decided through a referendum.

The referendum on abortion was also an important test of this institution as it related to political parties, citizens and the Portuguese political system. The experience of the referendums on abortion demystified the referendum, showing that it was sometimes revered with an excessive importance as an instrument of expression of popular will. Indeed, the will of Portuguese citizens to express themselves through referendum was not confirmed by effective participation when the referendums were held. The participation of Portuguese citizens, particularly in the first referendum held in 1998, did not meet

expectations, and was lower than participation in elections for the representative bodies. Nonetheless, within the first 38 years of Portuguese democracy, the decriminalisation of abortion was the only case of optional referendum actually carried out. It gave rise to two referendums with different results, and produced real consequences at the level of politics, legislation and civilisation.

Chapter 5

The Referendum on the Administrative Regions

1. The Administrative Regions in the 1976 Constitution

The democratic Constitution of 1976 enshrined the autonomy of local authorities as a fundamental principle. The territorial organisation of the State included a system of political and administrative autonomy for the island regions of The Azores and Madeira. It considered them as autonomous regions, holding self-government bodies with legislative powers. This reflected their geographic, economic, social and cultural characteristics, as well as the island populations' historical aspirations for autonomy.

In the mainland, however, where such conditions do not exist, the Constitution only foresees that local authorities can hold their own representative bodies, seeking to pursue the interests of local people, without any power to legislate (Article 237). For the mainland territory, the Constitution defined three categories of local authorities: the parishes (*freguesias)*, the municipalities (*municípios*) and the administrative regions (*regiões administrativas*) (Article 238).[249]

Title VIII on the organisation of political power, which is dedicated to local government, has a chapter on each of the local authority categories. Therefore, chapter IV was entirely dedicated to the administrative regions, establishing that the regions have the task of coordinating and supporting the municipalities' action, and public service management, as well as take part in the making and execution of regional plans (Article 257). The representative bodies of the regions are: **a)** the regional assembly, which included members directly elected by the citizens, and a lower number of members indirectly elected by the municipal assemblies (Article 259); **b)** a regional junta, as the executive body, elected by the regional assembly through a secret ballot amongst their members (Article 260); **c)** a regional council, as an advisory body, representing the cultural, social, economic and professional organisations of the respective area (Article 261). In each region, the Government has a delegate appointed by the Council of Ministers (Article 262).

[249] In the autonomous regions of The Azores and Madeira, the Constitution established only parishes and municipalities in order to avoid any overlapping between the autonomous regions and the administrative regions.

As for the regions' institutional setup, **a)** the regions shall be instituted simultaneously, and the regional statute of each one can be different from the others; **b)** the regional areas shall be the same as the 'plan-regions'; **c)** the actual institution of each region shall depend on the passing in the majority of municipal assemblies, since they represent the greatest part of the population (Article 256).[250]

The regionalisation process would have two different moments: the simultaneous creation of all regions by law in Parliament; and, after that, the municipal assemblies should pronounce themselves on the actual institution of their own regions. The regionalisation process would be implemented if approved by the majority of municipal assemblies, representing the majority of the population. This second phase did not demand simultaneity [Sá, 1989, p. 25; Canotilho & Moreira, 1993 (II) p. 409].

Changing the parishes and municipalities that already existed in the local authorities was easy. The revolutionary power instituted on 25 April 1974 ratified provisional structures for the election of local governments through popular meetings, which replaced the office-holders appointed by the dictatorship. That worked until the first election of democratic local government bodies, as provided by the Constitution, on 12 December 1976.

As to the administrative regions, they should be instituted as laid down in the Constitution. However, the process was more complex, since this went beyond creating new bodies based on territorial constituencies that already existed, like the municipalities or parishes. The administrative regions would be new structures, built on territorial bases that did not previously exist. They would be instituted by an unprecedented process of organic referendums in the municipal assemblies. The administrative regions would be local government structures occupying an intermediate level between the municipalities and the central public administration. However, they would be institutionally and territorially different from any previously existent intermediate structure.

The territorial division inherited from the 19th century included an intermediate territorial division known as the district. These structures had an irregular existence, local government authorities in historical times of decentralisation and mere administrative subdivisions in times of centralization (Oliveira, 1993, pp. 48-55; Sá, 1989, pp. 65-68). When the

[250] All these provisions were passed unanimously in the Constituent Assembly. On the administrative regional Constitutional system in 1976, see Sá (1989, pp. 21-24).

democratic revolution broke out, the districts were mere extensions of the central State, led by civil governors with the regime's confidence, and with some functions of an administrative and security nature. The choice of the Constituent Assembly in 1976 was to provisionally keep the districts, while the administrative regions were not constituted. In each district, there would be a deliberative assembly composed by the municipalities' representatives, and the civil governor would stay as the Government's representative (Article 263).

It is important to distinguish the administrative regions from the regional structures of planning, which were geographically removed from the central administration of the State. On 20 December 1967, Law No. 2133 passed the bases of the organisation and execution of a so-called 'Foment Plan' for 1968-1973, giving the responsibility to approve a plan for regional development to the Council of Ministers for Economic Affairs. The organisational structure to execute such a plan was defined in 1969 with the creation of the plan-regions, through Executive Law No. 48.905, of 11 March. In the mainland territory, four plan-regions were created (North, Centre, Lisbon and South),[251] with regional advisory commissions whose presidents were appointed by the Government, with the other members being appointed by the districts. These commissions had a mere advisory role towards the governmental decisions on regional planning (Oliveira, 1996b, pp. 495-499).

The 1976 Constitution, within the Title on economic planning, retained the idea of dividing the country into plan-regions (Article 95) in order to assure the balanced development of the country. It was up to the law to determine which regions would be created, and which bodies they should have. The administrative regions foreseen in the Title of the Local Government would be something different. They should have the same territory as the plan-regions, but they should be indeed local authorities at a regional level, with bodies legitimised through democratic elections. They should also replace the districts, and they should have specific responsibilities established by law. However, there was a long way to go before these would be introduced.

2. The Troubled Process of Institution

2.1. I Legislature: 1976-1980

In the I Legislature, on 15 June 1977, the *PCP* took the first step for the institution of the administrative regions by introducing Bill No. 68

[251] The Azores and Madeira also had plan-regions.

/I [*DAR*, 120, 16 June 1977, 7th Supplement, pp. 4130-(135-142)]. The *PCP* proposed the institution of eight administrative regions (*Alentejo, Algarve, Beira, Estremadura e Vale do Tejo, Lisboa, Minho, Douro e Trás-os-Montes*, and *Porto*). With 30 days of the publication of the law, the municipal assemblies should give their opinion on the proposed boundaries and the date of the regional assembly election. This election would take place on 2 April 1978 if the majority of the municipal assemblies did not oppose it. The *PCP* considered it fundamental to institute the administrative regions so that the political and institutional framework established in the Constitution would be complete. However, Parliament never discussed that bill.

In January 1979, Sá Carneiro (1979, p. 161) proposed in his draft amendment to the Constitution, to change the Constitutional system to introduce the administrative regions. The organic or indirect referendum of the municipal assemblies should be replaced by a popular referendum of the registered citizens of each regional area.

On 21 March 1979, the *PS* introduced Bill No. 226/I, [*DAR* (II) 43, 22 March 1979, pp. 914-920] on the plan-regions and on the regional planning organisation. It was not on the institution of administrative regions, but on the division of the country into plan-regions as laid down in Article 95 of the Constitution. According to this article, the area of the administrative regions and of the plan-regions should be the same. Therefore, the *PS* proposed the division of the country into seven plan regions: (*Norte Litoral, Norte Interior, Beira Litoral, Beira Interior, Estremadura e Vale do Tejo, Alentejo* and *Algarve*). The procedure regarding the establishment of local authorities at a regional level should be wisely considered. This bill was never discussed either. Meanwhile, the V Constitutional Government, led by Maria de Lourdes Pintasilgo and created to last a hundred days up to the elections of 2 December 1979, passed Executive Law No. 494/79, of 21 September, turning the Regional Planning Commissions into Regional Coordination Commissions.

After the elections, the *AD* (*PSD*/*CDS/PPM*) Government drew the 'Regionalisation White Book'. It was not a document that would serve as a base for the advancement of the regionalisation process, but a general reflection on the subject, with a view to the next elections, which were due in October 1980, as was Constitutionally demanded (Sá, 1989, pp. 75-76).

Still in the I Legislature, on 13 June 1980, the *PS* introduced its bill on plan-regions and regional planning organisation once again (Bill No. 505/I), [*DAR* (II) 71, 14 June 1980, pp. 1195-1201], proceeding with

Bill No. 506/I [*DAR* (II) 71, 14 June 1980, pp. 1202-1206] to create a pilot administrative region in the *Algarve*. They considered that this region had been defined for centuries, and had a strongly defined regional identity. For these reasons, it would provide the perfect conditions for a pilot study on regionalisation. This Bill was obviously unConstitutional because it did not respect the Constitutional rule that the administrative regions must be created simultaneously. However, it was not discussed in that legislature or the next one when it was introduced again (Bill No. 102/II), [*DAR* (II) 17, 9 January 1981, pp. 299-304].

2.2. II Legislature: 1980-1983

In the II Legislature, which commenced after the 5 October 1980 elections with a new absolute majority for the *AD*, the Assembly of the Republic assumed Constitutional revision powers. On 25 April 1981, when the Government of Pinto Balsemão was already in office, the *AD* introduced its draft amendments to the Constitution, reviving the idea of a referendum for the institution of administrative regions as proposed by Sá Carneiro. It was the only draft that included changes regarding the administrative regions, and as to their institution it proposed the end of the organic referendum foreseen in Article 256. The actual institution of each region needed the approval of the registered citizens living in the regional area, but it did not require the audition of the municipal assemblies before the simultaneous creation of the administrative regions by law. The *AD* also proposed to remove the territorial correspondence between the plan-regions and the future administrative regions.

After a political crisis in the summer of 1981, the VIII Constitutional Government, led once again by Pinto Balsemão, promoted regionalisation of the mainland as one of its priorities. During the debate of its Programme before the Assembly of the Republic, on 14 September 1981, the Prime Minister admitted an eventual referendum on the regionalisation process. The Government would send the legislative acts needed to start the regionalisation process to the Assembly of the Republic. As for the creation of the administrative regions in the mainland, the regional elections and popular participation at that level of power (particularly through referendums), these would all be topics of a deep reform of the institutions and of Portuguese democracy in the 1980s [*DAR* (I) 94, 15 September 1981, pp. 3944-3945].

On 29 October 1981, the Council of Ministers passed organisational measures that had the regionalisation process in view. Resolution No. 231/81, published on 16 November, created four structures

in the governmental range: **a)** there would be a working group chaired by the Secretary of State for Regional and Local Administration that would globally supervise the regionalisation process and propose political measures to the Council of Ministers; **b)** there would be a Supreme Council for Regionalisation Affairs, chaired by the Prime Minister or by the Home Minister under his delegation, composed by 12 to 15 members appointed by the Prime Minister; **c)** there would be Technical Staff for the Regionalisation, as a support unity of coordination and planning for the regionalisation process; **d)** there would be a Commission for Administrative Devolution. These structures should be created before the end of 1981.

On 16 December 1981, the Council of Ministers passed Resolution No. 1/82 of 4 January, which defined and scheduled several phases of the regionalisation process in the mainland. What should happen from January to June 1982 included: **a)** the conclusion of the debate on the 'White Book'; **b)** the consultation of the majority and opposition parties; **c)** the Government introduction of bills on several subjects regarding the statute and functioning of local authorities; **d)** the definition of the role of the districts up to the institution of the administrative regions; **e)** the study of the transfer of powers, services, and human, material and financial resources to the regions; **f)** the study of technical and administrative services to create support for the regional bodies; **g)** the development of actions to value regionalism and to increase the consciousness of the regionalisation process; **h)** the introduction of the Bill of Framework Law on the Administrative Regions to the Assembly of the Republic.

What should happen between July and December 1982 included: **a)** the reconsideration of the regionalisation policy in light of the Constitutional revision; **b)** the schedule of transfer of powers, services and resources to the regions; **c)** the definition of the transfer of State and district property goods to the regions; **d)** the definition of the statute of civil governors as coordinators of the peripheral administration of the State; **e)** the introduction of a Government Bill including the regional division of the mainland territory.

What was scheduled to happen between January and December 1983 included: **a)** the institution of each region through votes by the municipal assemblies or, eventually through regional referendums; **b)** the appointment of installation commissions for each region; **c)** the re-examination of regionalisation policies in light of the agreement to join

the European Community; **d)** the publication of the legislation and complementary rules needed for the regionalisation.

The following developments were scheduled for between January and October 1984: **a)** the election of the representative bodies of the regions and the installation of their holders; **b)** the extinction of the Regional Coordination Commissions; **c)** the extinction of the districts.

Meanwhile, the Constitutional revision process was proceeding. The first reading of the *AD* proposals was held in a sub-committee on 16 November 1981. The referendum proposal had opposition from the *PS* and the *PCP*. The *ASDI* and the *UEDS* reserved their position for a later moment [*DAR* (II) 19, 25 November 1981, 3rd Supplement, pp. 432-(63)]. In the *CERC* meeting, the *PS* and the *PCP* explained the reasons for their disagreement. Luís Nunes de Almeida (*PS*) considered that the replacement of the organic referendum of the municipal assemblies, which demanded a double majority (the majority of the municipalities representing the majority of the population) through a direct referendum, could lead to a regionalisation process against the will of the municipalities [*DAR* (II) 50, 6 February 1982, 1062-(34)].[252] Amândio de Azevedo (*PSD*) recognised that the proposal seemed unviable, since it could not be sustained if other *AD* proposals regarding the referendum were not accepted [*DAR* (II) 50, 6 February 1982, 1062-(35)].

The *CERC* proposal submitted to the plenary sitting passed unanimously on 21 July 1981. It laid down that the regions should be created simultaneously, after consulting the municipal assemblies, and that the law may lay down differences between the rules applicable to each one [*DAR* (I) 124, 22 July 1982, p. 5259]. The *AD* proposal to abolish the need for contiguous boundaries between the plan-regions and the future administrative regions did not have the required two-thirds majority. It only had 100 yea votes, from the *PSD*, the *CDS* and the *PPM* and 77 nay votes from the *PS*, the *PCP*, the *ASDI*, the *UEDS*, the *MDP/CDE* and the *UDP*. The *PS* proposal on the territorial coincidence between the administrative regions and the plan-regions passed with negatives votes only from the *PPM*. The *AD* proposal on the referendum was sent again to the Committee for appreciation, with the *PCP* being the only party that abstained [*DAR* (I) 124, 22 July 1982, p. 5259]. In the meeting of 29 July the *CERC* rejected the proposal [*DAR* (II) 134, 30 July 1982, p. 2392].

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[252] See also the speech by Vital Moreira on behalf of the *PCP* [*DAR* (II), 50, 6 February 1982, pp. 1062-(36-37)].

In the last plenary sitting for the detailed vote on the Constitutional revision, the *PS* proposal, introduced only a few days before, on 27 July, was considered. It had a new provision that allowed the exceptional creation of pilot regions in zones that would surely become administrative regions. That creation would depend on three cumulative conditions: **a)** the region should be a distinct territorial unit, historically speaking, **b)** its population should have its own social, cultural and economic identity, and **c)** its creation should reflect the historic and general will of the population. That proposal was defeated, with 104 yea votes (*PS*, *PCP*, *PPM*, *UEDS*, *MDP/CDE* and *UDP*), 80 nays (*PSD*, *ASDI* and 15 *CDS*) and the abstentions from the remaining *CDS* members [*DAR* (I) 132, 13 August 1982, p. 5562]. By the end of 1982, after a long political crisis, the Prime Minister resigned and the Assembly of the Republic was dissolved, without any concrete announcement as to the process of regionalisation.

2.3. IV Legislature: 1985-1987

Only on 22 April 1986, during the IV Legislature, with a minority Government in office led by Cavaco Silva, whose programme said nothing about regionalisation, the issue returned to the Assembly of the Republic with the introduction of Bill No. 187/IV by the *PCP* [*DAR* (II) 57, 26 April 1986, pp. 2022-2036]. After the introduction of the *PCP* bill, the Internal Affairs and Local Government Committee approved a schedule for the regionalisation, foreseeing the introduction of bills up to 15 January 1987, and the opinions of municipal assemblies up to 15 March.

By the end of 1986, eight other initiatives were introduced: Bill No. 320/IV (*PRD*) on 12 December [*DAR* (II) 21, 17 December 1986, pp. 886- 896]; Bill No. 330/IV (*MDP/CDE*) on 6 January 1987 [*DAR* (II) 27, 9 January 1987, pp. 1291-1309]; Bill No. 334/IV (MP Gonçalo Ribeiro Teles) on 13 January [*DAR* (II) 30, 16 January 1987, pp. 1492-1506]; Bills No. 337/IV and 338/IV (*PS*), [*DAR* (II) 31, 17 January 1987, pp. 1526-1533]; Bill No. 340/IV (*CDS*), [*DAR* (II) 31, 17 January 1987, pp. 1534-1539] and Bill No. 341/IV (*PSD*), [*DAR* (II) 31, 17 January 1987, pp. 1539-1549], all on 15 January; and finally Bill No. 399/IV (*PEV*) on 25 March 1987 [*DAR* (II) 59, 23 March 1987, pp. 2398-2411].

With its initiative, the *PCP* wanted to unblock the regionalisation process, which had been a problem since 1976 due to a lack of political will. According to the *PCP*, the difficulties that allegedly resulted from the Constitutional demand of simultaneity, the divergences on the regional division or different conceptions as to the nature and

responsibilities of the future regions were all false arguments used to as cover for the lack of will to move forward with the regionalisation process.[253]

The *PCP* bill assumed the districts as a starting point. Then, the municipal assemblies should give their opinions within the time limit of 90 days, taking one of the following positions: **a)** agreement with the proposed division; **b)** fusion with the contiguous regions; **c)** integration of their municipality into another region. After verifying the municipal assemblies' opinions, the Assembly of the Republic should pass the laws instituting each one of the administrative regions.

The *PRD* bill proposed nine regions (*Entre Douro e Minho, Trás-os-Montes, Beira Litoral, Beira Interior, Estremadura, Ribatejo, Alto Alentejo, Baixo Alentejo* and *Algarve*). The municipal assemblies should give their opinions within the time limit of 90 days and the Assembly of the Republic should then pass the laws instituting each one of the administrative regions.

The *MDP/CDE* bill proposed 10 regions (*Noroeste, Nordeste Transmontano, Beira Ocidental, Beira Interior, Centro Litoral, Alto Alentejo, Baixo Alentejo, Algarve, Zona Metropolitana do Porto* and *Zona Metropolitana de Lisboa*). The hearing procedure of the municipal assemblies was the same as the one proposed by the *PCP*.

The independent MP, Gonçalo Ribeiro Teles, proposed eight regions (*Entre Douro e Minho, Trás-os-Montes e Alto Douro, Litoral Atlântico, Beira Alta, Beira Interior, Lisboa e Vale do Tejo, Alentejo* and *Algarve*). The institution of each one would be dependent on the vote, with an absolute majority, by the municipal assemblies. The fusion of regions after their institution would demand a consultation of the voters in the regions that wanted it. This could be requested to the Constitutional Court by 5% of the voters of each of the municipalities in those regions. It is obvious that direct consultation was not Constitutionally allowed.

The *PS* introduced a Bill of Basic Law for Regionalisation without any territorial division, characterising only the principles of the administrative regions. It simultaneously introduced a Bill of Framework Law for Administrative Devolution.

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[253] See in this sense the speech by João Amaral [*DAR* (I) 34, 23 January 1987, pp. 1342-1342].

The *CDS* did not propose any regional division either, leaving it for a future law by Parliament. Following the legislative initiatives regarding the regions would depend on the express agreement of at least two thirds of the municipal assemblies of each proposed region. The actual institution of each region would depend on the will of the respective population expressed through a binding referendum. This procedure was obviously not Constitutionally permitted.

The *PSD*, in its Bill of Framework Law of Administrative Regions, did not introduce any regional division in the institution process. That bill only ruled on the decision procedure of the municipal assemblies as laid down in the Constitution.

The final bill, presented by the *PEV*, proposed 11 regions (*Minho, Porto, Trás-os-Montes, Beira Litoral, Oeste, Beira Interior, Ribatejo, Lisboa, Alto Alentejo, Baixo Alentejo* and *Algarve*). The hearing process of the municipal assemblies was similar to the one proposed by the *PCP*.

Seeing the contents of the initiative, we can see that the process would not be easy, not only because of the difference among the territorial divisions that was proposed, but essentially because of the abstention from the two main parties (the *PS* and the *PSD*) to introduce any real solution. They preferred to address it at a later and indeterminate moment. No party defined itself against the regionalisation, but having in mind the *PS*, *PSD* and *CDS* bills, it was clear that the process did not have any conditions to move forward during the IV Legislature.

In a speech given on behalf of the *PS* on 8 January 1987, Eduardo Pereira referred to the difficulties of the process, which in his opinion would last many years to build and would go through three phases: the first included discussing the bases of the regionalisation; the second was to define the specific principles for creating the several regions; and the third, to institute each region. He even admitted that the regionalisation process could include a direct consultation of the citizens, in addition to a wide-ranging institutional and autarchic consultation. He finally announced that the *PS*, in the next Constitutional revision, would propose the removal of the Constitutional obstacles for to regionalisation [*DAR* (I) 28, 9 January 1987, pp. 1178-1180].

Meanwhile, the *PS* and the *PSD* obstructed the legislative procedure. On 22 January 1987, they decided to create an Ad Hoc

Parliamentary Committee for the Regionalisation,[254] while several senior members of the *PS*, the *PSD* and the *CDS* declared that regionalisation was not a priority and postponed it for after the Constitutional revision, meaning after 1987.[255] In the end, the fall of the *PSD* minority Government and the dissolution of the Assembly of the Republic in April 1987 ended the IV Legislature.

2.4. V Legislature: 1987-1991

2.4.1. The Bills

After the elections of 19 July 1987, which resulted in an absolute majority for the *PSD*, the *PCP* raised the issue of the regionalisation again, presenting the Draft Deliberation No. 3/V [*DAR* (II-A) 10, 17 October 1987, pp. 108-109] on 15 October 1987. It proposed the creation of a new ad hoc committee for the regionalisation and the scheduling of the legislative procedure. The bills should be presented up to 15 November 1987 and the municipal assemblies should give their opinions between 1 January and 31 March 1988. On 27 October, this draft was discussed and rejected with nay votes from the *PSD*, the *PS* and the *CDS*, yea votes from the *PCP*, the *PRD*, the *ID* and the *PEV* and abstentions from three independent deputies elected by the *PS* [*DAR* (I) 15, 28 October 1987, pp. 320-329].

Meanwhile, all parties reintroduced their bills on the regionalisation. On 15 October, the *PS* presented Bill No. 45/V (Framework Law for Regionalisation) and Bill No. 46/V (Framework Law for Administrative Devolution). On 22 October, the *PRD* presented Bill No. 60/V (Framework Law for the Administrative Regions). On 23 October, the *CDS* presented Bill No. 69/V (Basic Law for Regionalisation). On 11 December, the *PEV* presented Bill No. 129/V (Framework Law for the Administrative Regions). On 15 December, the *PCP* presented Bill No. 130/V (Creation and Institution Process of the Administrative Regions) and Bill No. 134/V (Framework Law for the Administrative Regions). Almost five months later, on 6 May 1988, the

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[254] This Committee was created through the passing of Draft Resolution No. 33/IV introduced and passed with yea votes from the *PSD*, the *PS*, the *PRD*, the *CDS* and the *MDP/CDE*, but with the abstentions from the *PCP*, which remained sceptical on that process [*DAR* (I) 34, 23 January 1987, p. 1353].

[255] See Sá (1989, pp. 92-93) for those declarations with examples published by the press. Also see the speech by Eduardo Pereira and Hernâni Moutinho (*CDS*) supporting the reconsideration of regionalisation in the Constitutional revision, which was applauded by Duarte Lima (*PSD*), [*DAR* (I) 31, 16 January 1987, p. 1268].

PSD presented Bill No. 240/V (Framework Law for the Administrative Regions), (*DAR*, Off-print 5/V, 23 June 1988).

The *PS* bill proposed the creation of the regions by law, which would divide the respective territories, establish their powers and define the election system, as well as the organisation and responsibilities of their bodies. The bills would be sent to a parliamentary committee, which would prepare a hearing of the municipal assemblies, upon which the Government would organise a national public discussion. The whole process should be concluded within the time limit of 120 days. After that, the parliamentary committee would present a report, which would allow the approval of a provisional scheme for territorial division by the Assembly of the Republic. Then the assemblies of the municipalities near the frontier of each region could give their opinion on their inclusion in a neighbouring region within the time limit of 60 days. Finally, the Assembly of the Republic would pass the law to create the administrative regions.

The next step would be the actual institution of the regions. The Government, within 30 days after the publication of the law to create the regions, should appoint a delegate for each region, to initiate the process. Each delegate should solicit the deliberations of the municipal assemblies on the institution of the region within the time limit of 60 days. In case of an affirmative vote from the majority of the municipal assemblies, the delegate should send a report to the Government within the next 15 days, which, in turn should send it to the Assembly of the Republic within the next eight days. After that, the Assembly of the Republic should pass the law instituting the region. In case there is no affirmative vote, the delegate should bring a new hearing process within the next month. If the negative position remained, the process could only be opened again if requested by the majority of the municipal assemblies or after new national elections in the municipal assemblies. The refusal of a region did not jeopardise the others.

The *PRD* maintained the regional division and the institution process it had proposed in the last legislature. The *CDS* insisted on its proposal for binding referendums in each region before proceeding with implementation. The *PEV* also essentially re-submitted its previous proposal. The *PSD* bill did not include any regional division. The Framework Law of the Administrative Regions ruled only on the formal terms of the consultation in the municipal assemblies in order to institute each region after the approval of the law to create the regions by Parliament. The *PCP* presented two bills re-introducing the same

solutions as Bill No. 187/IV. Bill No. 130/V dealt with the process of instituting the administrative regions and Bill No. 134/V of Framework Law for the Administrative Regions, defined the statute of the regions, as well as the composition, form of election, powers and responsibilities of the respective bodies.

The general debate of the bills happened, with a *PS* initiative, on 17 May 1988. A request subscribed by all parliamentary groups was passed. It sent the bills to the Local Government Parliamentary Committee without being voted. The Committee, within the next month, should proceed to the hearing on the topic of the municipal assemblies. That hearing should be concluded by November 1988, and the Committee should then present a report to the plenary up to the end of the year [*DAR* (I) 89, 18 May 1988, pp. 3597-3630].

2.4.2. The 1989 Constitutional Revision

The Constitutional revision process elapsed simultaneously with the introduction of draft amendments between October and November 1987. From the 10 drafts introduced, eight proposed amendments to Articles 256 on the institution of regions, in the following terms:

On the creation of the regions – The *CDS* proposed that the law should define which municipalities should take part of each region, require the previous agreement of at least two thirds of them, and define the areas with reference to the geographic, natural, social, historical and cultural nature of the territory, taking into consideration its balanced development and the needs and interests of the population. The *PCP*, the *PS*, the independent Helena Roseta, the *ID*, the *PEV* and the *PRD* proposed the end to the legal obligation to create the regions simultaneously. The *PCP* proposed that the law defined the powers of the regions, as well as the responsibilities of their bodies and their financial regime. The *PS* proposed that the powers of the regions, as well as the composition, responsibilities and working of their bodies were defined by law. The *PRD* proposed that the creation, organisation and working system of the regions should be defined by law.

On the actual institution of the regions - The *CDS* proposed that the actual institution of each region be approved by a binding referendum from the citizens living in the respective regional area. The *PCP* proposed that the institution of each region could not be refused if the majority of the municipal assemblies representing the majority of the population had given their opinion in favour of the proposed regional area.

On other subjects – The *CDS*, the *PCP*, the *PSD* and the *PRD* proposed the end of correspondence between the administrative regions and the plan-regions. The *PCP* proposed to establish, in the Constitution, an obligation for the Assembly of the Republic to approve the general system of mainland regions within 90 days of the Constitutional revision coming into force. The *PS* proposed the same obligation, but with a time limit of one year.

The debate on these proposals took place in the first reading of the *CERC* during the session of 27 July 1988 [*DAR* (II) 54 – *RC*, 2 November 1988, pp. 1676-1688] and the second reading was on 16 February 1989 [*DAR* (II) 93 – *RC*, 28 April 1989, pp. 2704-2719]. In this session, the proposals were submitted to indicate the voting, with a *PS*/*PSD* joint proposal being passed in favour of Article 256. According to that Article, the administrative regions would be created simultaneously, and by law. It also defined the respective powers, composition, responsibilities and working of their bodies, being able to establish differences as to the applicability of the regime for each one (No. 1). The institution of each administrative region, which would be made by law, would depend on that law and on the affirmative vote of the majority of the municipal assemblies representing the most part of the population of the regional area (No. 2).[256] The removal of the territorial correspondence between the administrative regions and the plan-regions was unanimously approved.

The rest of the proposals were rejected. The *CDS* proposals, including the referendum for the institution of the regions, received nay votes from the *PSD*, the *PS* and the *PCP*. The *PCP* proposals received nay votes from the *PSD*[257] and abstentions from the *PS*. Helena Roseta's proposal to remove the demand of simultaneity for the creation of the regions received nay votes from the *PS* and the *PSD* and yea votes from the *PCP*. The proposals from the *PRD*, the *PEV* and the *ID* received yea votes from the *PCP* and nay votes from the *PS* and the *PSD*.

The plenary sitting of 30 May 1989 ratified the proposals passed in the *CERC*. No. 1, with yea votes from the *PS*, the *PSD* and the *CDS* and nay votes from the *PCP*, the *PRD*, the *PEV*, the *ID* and Mendes Bota (*PSD*). No. 2 only had abstentions from the *PEV* and Mendes Bota. The proposals from the *PCP*, the *PRD*, the *PEV*, the *ID* and Helena Roseta

[256] In the *CERC*, only the *PCP* voted against No. 1 and abstained in No. 2.

[257] The *PSD* abstained in the proposal that prohibited the refusal of the institution of a region that had obtained the favourable vote of the majority of the municipal assemblies that were consulted.

were rejected by the *PS*, the *PSD* and the *CDS*, having had yea votes from the rest of the parties. The proposals to settle a time limit for the approval of the law to create the regions were also rejected, with nay votes from the *PSD*, yea votes from the rest of the parties and abstentions from four *PSD* members elected in the Madeira region. In the meanwhile, a proposal introduced by the *PS* members elected by the *Algarve* constituency was rejected. It would have allowed the Assembly of the Republic to approve the creation of pilot regions before the law was passed to create the regions in general, as long as it had a two-thirds majority and obtained the approval of the municipal assemblies in the terms provided for in the Constitution. This last proposal had nay votes from the *PSD*, yea votes from the *PS*, the *PCP*, the *PRD*, the *PEV*, the *ID* and six *PSD* members, and abstentions from the *CDS* and two *PSD* members.

The 1989 Constitutional revision did not contain any significant innovations as to the regionalisation, not even removing the demand for the simultaneous creation of the regions, which had been considered before as an obstacle to the advance of the process. It is true that the *PS* and the *PSD* dissociated themselves from the settling of a time limit for the regionalisation and the possibility of creating pilot regions. It is also true that the fundamental contents of the Constitutional revision were the result of an agreement between both parties, and the *PS* accepted it knowing that its proposals were not accepted by the *PSD*.

2.4.3. The Framework Law for the Administrative Regions

On the same day that the Constitutional revision was concluded, 30 May 1989, the general debate of Bills No. 45/V (*PS*), 60/V (*PRD*), 69/V (*CDS*), 129/V (*PEV*) and 134/V (*PCP*) on regionalisation took place, and they were approved. The *PCP* and the *PS* forced the subject onto the order of business. This occurred five months after the time limit established for the introduction of a report on the consultation of municipal assemblies in the plenary by the Committee. The announcement of a new debate on the regionalisation by the Government, and the imposition of a new time limit for the Committee of the end of 1989, gave rise to the imposition of the debate by the opposition parties. Until then, 171 municipal assemblies (out of 305), representing 80% of the country's entire population, had expressed their opinion, and only in two cases was that opinion against the creation of the administrative regions. The *PSD* decided not include its bill in the order of business, but decided to vote for the others, which were unanimously approved in general [*DAR* (I) 89, 31 May 1989, pp. 4377-4397].

After the conclusion of the 1989 Constitutional revision, and the passage of five bills on regionalisation, the *PCP* wanted to revive the process presenting, on 23 January 1990, Draft Decision No. 71/V which scheduled the parliamentary work to make the Framework Law for the Administrative Regions. The *PCP* proposed to set 30 March 1990 as the time limit for the conclusion of the works by the Parliamentary Committee and the month of April for the final overall vote in plenary [*DAR* (II-A) 15, 27 January 1990, pp. 686-687].

At the end of the time limit proposed, without any discussion on the decision of the draft, the *PCP* insisted on the introduction of Draft Decision No. 107/V, which established a new schedule for the conclusion of the approval process for the law to create the administrative regions at the beginning of the next legislative session, on 3 October 1990 [*DAR* (II-A) 68, 4 October 1990, pp. 1838-1839]. On 19 October, the *PS* introduced Draft Decision No. 111/V on the methodology and schedule for regionalisation [*DAR* (II-A) 5, 26 October 1990, p. 86].

According to the *PCP* proposal, the framework law for the regions should be passed by January 1991 and the matter regarding territorial limits by the end of April. The *PS* proposed that the detailed voting on the hanging framework law bills be finished up to 20 December 1990 in a committee, so that the respective text could be analysed and voted in a plenary sitting during January 1991. Before the end of April, the law to create the administrative regions would be passed, so that the municipal assemblies could give their opinions, allowing the process to be concluded up to the end of the V Legislature. Both drafts, which essentially converged on the time limits, were submitted to debate on 9 November 1990 [*DAR* (I) 10, 10 November 1990, pp. 275-282] and rejected on 28 November, with nay votes from the *PSD* and the approval from all the other parties [*DAR* (I) 18, 29 November 1990, p. 610].

On 3 December 1990, the *PSD* Government introduced a Government Bill of Framework Law for the Administrative Regions in order to institute the regions, but hardly anything went forward. Besides reproducing the Constitutional terms, it established the formal terms of the hearing of the municipal assemblies, just as the *PSD* had previously proposed [*DAR* (II-A) 12, 3 December 1990, pp. 223-231].

On 28 February 1991, the *PCP* introduced Draft Decision, No. 129/V. It proposed the Constitution of an ad hoc committee for the regionalisation, to prepare the voting of the Framework Law for the Regionalisation up to 15 May 1991. The time limit was 30 May for the final overall vote, so within that legislature, which would end in July

1991, they could begin the phase of the territorial division of the regions [*DAR* (II-A) 31, 9 Mar. 1991, p. 895].

On 11 April 1991, the Government Bill of Framework Law for the Administrative Regions was debated and passed in general, with only abstentions from the *PCP* and José Magalhães, who had become an independent MP in the meantime [*DAR* (I) 62, 12 April 1991, pp. 2052-2076]. The *PS* and the *PCP* introduced a motion, so that the responsible parliamentary committee would proceed, within 20 days, with the detailed discussion on the bills for the Framework Law of the Administrative Regions, which was unanimously passed. On 6 June 1991, the first phase of the procedure was concluded, with the unanimous approval of Law No. 56/91, of 13 August [*DAR* (I) 89, 7 June 1991, pp. 2964-2966]. The Government bill was accepted in its entirety, and became law.

According to the law of the Assembly of the Republic, the regions should be created simultaneously. It should also institute each region, with the laws of institution being dependent on the law of creation and the affirmative vote of the majority of the municipal assemblies, since they represent the majority of the population of the area included in the region. The Assembly of the Republic should promote the consultation of the municipal assemblies. The decisions regarding the municipal assemblies should be taken in extraordinary public sessions, exclusively summoned for that purpose, and with a minimum notice period of 30 days. The decisions should be communicated to the Assembly of the Republic within 30 days. If no decision was reached in the region, the Assembly of the Republic should promote a fresh consultation one year later. After that, a new consultation process could only be opened after general elections for the local authority bodies. A few days before the elections, the first phase finished, but there was still a long way to go before the regionalisation of Portugal moved from an aspiration in the Constitution to reality.

2.5. VI Legislature: 1991-1995

At the very beginning of the VI Legislature, after the October 1991 elections, which gave a new absolute majority to the *PSD* of Cavaco Silva, the *PS* and the *PCP* again revived the process of creating administrative regions. On 30 January 1992, the *PS* presented Bill No. 67/VI for the creation of the administrative regions [*DAR* (II-A) 16 – Supplement, 1 February 1992, pp. 312-(3-14)] and Draft Decision No. 18/VI, which proposed a schedule for the process [*DAR* (II-A) 16 – Supplement, 1 February 1992, pp. 312-(46)]. The following month, on 25

February, the *PCP* presented Bill No. 91/VI on the process for the creation and institution of the administrative regions [*DAR* (II-A) 20, 29 February 1992, pp. 272-274] and Draft Decision No. 19/VI to define a schedule for the regionalisation [*DAR* (II-A) 20, 29 February 1992, pp. 402-403].

The *PS* bill proposed the creation of eight administrative regions: *Entre Douro e Minho, Trás-os-Montes e Alto Douro, Beira litoral, Beira Interior, Estremadura e Ribatejo, Alto Alentejo, Baixo Alentejo* and *Algarve.* The institutionalisation process would depend on the affirmative vote of the municipal assemblies. Draft Decision No. 18/VI proposed the approval of the law to have the administrative regions created by the Assembly of the Republic before March 1992, and the final overall vote before 15 June. The adjustments made following the consultations should be concluded before 15 June 1993.

The *PCP* re-introduced its proposal from the previous legislatures. It assumed the division of the districts as a starting point, and allowed the municipal assemblies to give their opinions, showing their adhesion to the division proposed, proposing the fusion between contiguous regions, or proposing the integration of their municipality inside other contiguous regions within 90 days after the publication of the law. The proposed schedule foresaw the discussion of the bills to create the regions in March 1992, the final overall vote by15 June, and the hearing process for the municipal assemblies before 31 December. The draft decisions regarding the schedule were discussed on 17 March 1992. They were inserted in a debate on several bills regarding local authorities [*DAR* (I) 41, 18 March 1992] and were rejected in 26 March with opposition from the *PSD* and abstentions from the *CDS* and the *PSN* [*DAR* (I) 44, 27 March 1992, p. 1371].

On 17 December 1992, the *UDP* deputy, Mário Tomé, elected as an independent in the *PCP* lists, introduced Draft Decision No. 42/VI [*DAR* (II-A) 14, 9 January 1993, p. 265], which called for a referendum by the President of the Republic on the administrative regionalisation. The proponent did not want to ask to the Portuguese if they agreed with the regionalisation, because that was already established from the Constitutional point of view. The subject of the proposed referendum would be the schedule. Frustrated the attempts of the *PS* and the *PCP* to pass a schedule for regionalisation, the *UDP* proposed to ask the Portuguese people, through a referendum, if they agreed that the regions be created up to the end of 1994. The Assembly did not discuss that draft decision.

On 14 January 1993, the *PS* set in the order of business the general debate of its bill to create the administrative regions and Draft Decision No. 52/VI for the creation of an Ad Hoc Committee for the Administrative Devolution [*DAR* (I) 15, 16 January 1993, p. 280] introduced a few days before. The debate also included the *PCP* bills on the creation and institution of the administrative regions and on the finances and powers of the regions [*DAR* (I) 29, 15 January 1993, pp. 1028-1063]. All bills were rejected, with nay votes from the *PSD* and the *CDS*, an abstention from Freitas do Amaral[258] and yea votes from the rest of the parties. The draft decision was rejected with nay votes only from the *PSD*, with all of the other parties having voted yea.

On 2 March 1993 the *PSD* presented Draft Resolution No. 53/VI [*DAR* (II-A) 23, 6 March 1993, pp. 463-464] to create a Committee for the Reform of Town and Country Planning, which was discussed on 12 May [*DAR* (I) 69, 13 May 1993, pp. 2210-2222] and passed with abstentions only from the *PCP* and the *ID* [*DAR* (I) 71, 14 May 1993, p. 2256]. This resulted in the Assembly of the Republic Resolution No. 16/93, of 3 June. That Committee was entrusted to introduce a preliminary report and a proposal on the next phase of the reform preparatory works within one year.

On 9 February 1994, the *PCP* introduced Draft Resolution No. 87/VI [*DAR* (II-A) 23, 12 February 1994, pp. 361-362], proposing a new schedule for the regionalisation. The discussion of the bills to create the administrative regions should be in April 1994, with the respective final overall vote happening up to 15 June. The municipal assemblies should give their opinions during that time for the detailed discussion. The hearing for the actual institution of the regions should happen up to 31 December 1994. This bill was never discussed. On the same day, the *PCP* introduced Bill No. 379/VI [*DAR* (II-A) 23, 12 February 1994, pp. 355-356] on the process to create and institute the administrative regions, except for other initiatives on the finances and powers of the administrative regions which were not discussed. The *PCP* kept the division of the districts as a starting point.

Between July and September 1994, the draft amendments regarding the IV Constitutional Revision, failed in that legislature for lack of agreement between the *PS* and the *PSD*, including some proposals regarding the creation of the administrative regions. The Constitutional

[258] Freitas do Amaral returned to the *CDS* leadership to dispute the 1991 elections, having left it before the electoral results and taking upon the parliamentary seat as an independent MP for a short period.

revision failed, but there was also no progress on the regionalisation process in that legislature. After the approval of the Framework Law for the Administrative Regions on the eve of the 1991 elections, the process ground to a halt. The *PSD*, which had an absolute majority, postponed the process in the V Legislature, saying that it was in favour of a more reflective and wise process. However, they refused to carry it through in the VI Legislature, assuming a position against the regionalisation, in accordance with the positions repeatedly advocated by the Prime Minister Cavaco Silva.

2.6. VII Legislature: 1995-1999

After the 1 October 1995 elections, which gave a relative majority to the *PS*, the *PCP* introduced Draft Decision No. 2/VII [*DAR* (II-A) 2, 8 November 1995, p. 26], on 7 November, proposing the adoption of a new schedule for the regionalisation in order to 'break the blockade' that obstructed this crucial reform. That draft proposed the introduction of bills on the creation of the administrative regions up to 15 December 1995, and their submission to public consultation up to 30 March 1996. The debate, and vote on the law, should occur before the end of June and the municipal assemblies should give their opinions up to 30 November. In the case of an affirmative response, the law for the institution of the region should be published up to 31 December 1996.

On 15 December 1995, the *PCP* introduced Bills No. 49/VII, 50 /VII and 51/VII [*DAR* (II-A) 11, 21 December 1995, pp. 207-213] on the powers, the finances of the regions, and the transfer of services and property from the central administration to the administrative regions. They also introduced Bill No. 94/VII [*DAR* (II-A) 24, 17 February 1996, pp. 374-376] on the creation and institution process of the administrative regions on 7 February 1996. In this last bill, the *PCP* re-submitted the institution building process introduced in the previous legislatures, but changed the geographical division to be based on nine regions: *Minho; Porto e Douro Litoral; Trás-os-Montes e Alto Douro; Beira Litoral; Beira Interior; Alta Estremadura, Oeste e Ribatejo; Região Metropolitana de Lisboa e da Península de Setúbal; Alentejo; Algarve.*

On 11 April 1996, the *PS* introduced its bills. Bill No. 136/VII proposed changes to the Framework Law of the Administrative Regions and Bill No. 137/VII [*DAR* (II-A) 34, 13 April 1996, pp. 602-613] proposed the creation of nine administrative regions: *Entre Douro e Minho; Trás-os-Montes e Alto Douro; Beira Litoral; Beira Interior; Estremadura e Ribatejo; Lisboa e Setúbal; Alto Alentejo; Baixo Alentejo; Algarve.* Both the *PS* and the *PCP* proposed the creation of nine regions

as a starting point, but with differences: while the *PCP* divided the North into two regions (*Minho*, with *Braga* and *Viana do Castelo* districts and *Porto e Douro Litoral* with the Oporto district), the *PS* proposed a single region including the three districts. As for the *Alentejo*, the *PCP* proposed a single region while the *PS* proposed two regions (*Alto Alentejo* and *Baixo Alentejo*).

The *PS* retained the hearing procedure for the municipal assemblies foreseen in the Constitution and the Framework Law, but in the preamble of Bill No. 136/VII it said that it was able to welcome the way of popular consultation if admitted in time in the Constitution. The *PS* also presented Draft Decision No. 10/VII [*DAR* (II-A) 34, 13 April 1996, p. 619] in order to assure the fit transparency and participation in the legislative procedure regarding the mainland regionalisation, through the hearing of the national association's representatives of local authorities.

On 23 April 1996, the *PEV* introduced Bills No. 143/VII and 144/VII [*DAR* (II-A) 37, 27 April 1996, pp. 650-656] on the creation and institution process of the administrative regions and their respective powers. The *PEV* also proposed the creation of nine regions, adhering to the solution of geographic division proposed by the *PCP*.

The discussion of the bills and draft decisions on the regionalisation was set for 2 May 1996 [*DAR* (I) 65, 3 May 1996, pp. 2077-2134]. The *PSD* tried to delay the debate and the legislative procedure, giving priority to the Constitutional revision in order to reach its goal of making the institution of the administrative regions depend on the holding of a referendum. In the *PSD* Congress, held in *Santa Maria da Feira* in the end of March 1996, Marcelo Rebelo de Sousa elected the Constitutional revision as a priority and threatened to boycott the regionalisation process if the Constitutional revision that imposed the referendum on the administrative regions was not concluded before. Given the need for an agreement between the *PS* and the *PSD* for the Constitutional revision to proceed, that speech was a true ultimatum addressed to the *PS*, making the Constitutional revision itself dependent on the *PS* acceptance of the referendum in the regions (Sousa, 1999, p. 13).

Thus, the *PSD* presented, on 26 April, Draft Decision No. 11/VII [*DAR* (II-A) 37, 27 April 1996, pp. 657-658] proposing the suspension of the debate on the regionalisation, and giving priority to the Constitutional revision in order to institute the national referendum as a

previous condition for the regionalisation. The debate was held on 2 May, with the general appreciation of the bills and draft decisions introduced by the *PS*, the *PCP* and the *PEV* on the administrative regions. The *PS*, as holder of the order of business, demanded the voting of the initiatives.

The *PSD* and the *CDS-PP* refused to take part in the voting as a way of protesting that their proposal, to suspend the legislative procedure until a decision on the referendum had been reached in the Constitutional revision, had been rejected. Thus, the parliamentary groups of the *PSD* and the *CDS-PP* left the room before the voting, with only the parliamentary leader of the *CDS-PP*, Jorge Ferreira staying in his place.

The bills were approved in general, with yea votes from the *PS*, the *PCP* and the *PEV*, and with only one nay vote from Jorge Ferreira. Draft Decision No. 10/VII (*PS*) on the following of the legislative procedure was also approved. The *PCP* gave up on its Draft Decision No. 2/VII, having introduced amendments to the *PS* draft. The proposal that let the Assembly of the Republic, during the time of public debate on the approved bills, promote the hearing of experts and debates on television about the subject of regionalisation was also approved. The *PS* rejected the schedule proposed by the *PCP*. The *PCP* proposed the final overall vote of the law to create the administrative regions up to 16 October 1996, the hearing of the municipal assemblies up to the end of 1996, and in the case of an affirmative result, the publication of the law to institute the regions up to 31 January 1997. The *PS* did not accept that schedule, and for that reason, the *PCP* abstained in the final vote on the decision, which was published on 9 May.

Under the terms of Decision No. 12-PL/96, the public consultation should happen within the time limit of 90 days after the general approval of the law to create the administrative regions [*DAR* (II-A) 40, 9 May 1996, p. 40]. This happened indeed, having the respective results and the opinion drawn by the Parliamentary Committee of Local Authorities being put in a report dated 11 March 1997 (*AR*, 1997).

3. The Referendum on the Administrative Regions

3.1. The 1997 Constitutional Revision

The draft amendments to the Constitution were in the meanwhile introduced with several positions as to the regionalisation.[259] The *CDS-PP*

[259] All the draft amendments to the Constitution are published in the *DAR*, Off-print No. 6/VII, 8 April 1996.

(Draft Amendment to the Constitution No. 1/VII), proposed the complete removal of the regionalisation chapter (Articles 255 to 262) retaking the proposal that the regionalisation of the mainland territory be submitted to the previous referendum held under the terms of Article 118 of the Constitution. The *PS* (Draft Amendment to the the Constitution No. 3/VII), proposed that the institution of each administrative region be submitted to the previous referendum of registered citizens in the respective area. The draft from the independent MP elected by the *PS* (Draft Amendment to the Constitution No. 8/VII) proposed to remove the demand that the administrative regions should be introduced simultaneously, and admitted that their institution could be submitted to a previous direct consultation of the registered citizens in the included areas of the regions under the terms to establish by law. The drafts introduced by *PSD* members included three different solutions: the draft from the members elected by the constituency of Madeira (Draft Amendment to the Constitution No. 6/VII) proposed a Constitutional transitory rule so that the regionalisation process in the mainland would be concluded up to the end of 1996; the draft of *JSD* members (Draft Amendment to the Constitution No. 2/VII) proposed the same solution as the *PS* draft; the official draft of the *PSD* (Draft Amendment to the Constitution No. 5/VII), proposed the end of regionalisation as a Constitutional command.

According to the *PSD* draft, the law could foresee ways for the administrative regionalisation of the mainland, starting with the municipalities and their associations or federations. The law should define the territory of each region and its powers, such as the composition, responsibilities and working of their bodies. That law should be submitted to a national referendum and should be enacted only if voted affirmatively by more than half of the registered citizens. After that, the law should decide on the actual institution of each region and each law of institution should be submitted to referendum for the registered citizens of each region, and it could only be enacted if voted affirmatively by more than half of the registered citizens. Therefore, the *PSD* proposed a double referendum: one of national scope for the law to create the regions; and one of regional scope for each one of the regions. Furthermore, they proposed a deliberative quorum that was particularly hard to please, involving not only the participation of more than half of the citizens in the referendum, but also the affirmative vote of more than half of those citizens. In practice, the abstentions would be counted as negative votes.

Given the lack of response to Marcelo Rebelo de Sousa's ultimatum, the Constitutional revision works began without the *PSD* members, who followed a successful strategy that lead the *PS* to yield to

it. In the second *CERC* session, on 13 May 1996, Jorge Lacão, on behalf of the *PS*, assumed the acceptance of the referendum on the creation of the regions and advanced with the questions that the *PS* would propose as soon the law for the creation of the regions was passed and the holding of a referendum was admitted by the Constitution.

The referendum would have two questions: 'first – do you agree with the institution of the administrative regions? Second – do you agree with the region created in your area of electoral registration?' Under these terms, the institution of the regions would only proceed if there were an affirmative answer to the first question, and the institution of each region would depend on the affirmative answer to the second question [*DAR* (II) 2 – *RC*, 14 May 1996, p. 17].

The *CDS-PP* welcomed the *PS* position, which had been the subject of talks between them. In spite of having decided to assume a position against the regionalisation, after an internal referendum, the *CDS-PP* supported the referendum with the obvious purpose of preventing the creation of the administrative regions. As a way of protest against what they considered an abusive manipulation of the *CERC* for a 'press conference', the *PCP* and *PEV* members left the room. In the next session, on 17 May, all the parliamentary groups were present, and the *PSD* obtained another goal: to begin discussing the referendum on the regionalisation.

In the 21 May session, the *PS* introduced its proposal for a referendum on the regionalisation in the following terms: **a)** the law of institution for each region would depend on the law that created the regions, and the affirmative vote of the majority of the citizens registered in the national territory, and in each regional area that took part in a direct consultation; **b)** when the majority of the participants in the referendum did not State that they were in favour of the question at a national scope, the affirmative answers to the question of a regional scope could only be effective after the holding of a new referendum; **c)** the consultations would take place under the terms and conditions laid down by organisational law, by the decision of the President of the Republic, through a proposal by the Assembly of the Republic, which would be applicable, with the due adaptations, to the regime established in Article 118 of the Constitution; **d)** The referendums would be binding when they had the participation of at least half of the registered voters, without damaging, in the case of no institution of the administrative regions, the efficacy of the affirmative answers regarding the questions at a regional

scope, that could be submitted by law to a time limit of caducity [*DAR* (II) 4 – *RC*, 22 May 1996, p. 52].

In the 4 June session, the *PSD* introduced a counterproposal in the following terms: the institution of the administrative regions, which would be done by law, would depend on the holding of a national referendum on the law that would create the regions, and on the affirmative vote of the majority of the registered citizens in each of the respective regional areas through a regional referendum. The regional referendums would depend on the affirmative result of the national referendum and would be held after them within a time limit established by law [*DAR* (II) 7 – *RC*, 5 June 1996, p. 106].

The *PSD* proposed that the law creating the regions, as well as the institution of each one, would be submitted to referendums. The *PS* proposed that only the institution be submitted to referendum. However, according to the *PS* proposal, the referendum on the institution would have two questions, being one of a national scope and the other of a regional scope. The *PSD* proposed two referendums at two different moments. However, in the session of 12 June, Marques Guedes (*PSD*) announced that, bearing in mind the receptivity of the *PS* towards the proposal of referendum, and with the holding of the referendum being the essential question, the *PSD* gave up its proposal and accepted the second *PS* proposal [*DAR* (II) 8 – *RC*, 13 June 1996, p. 120].

The second reading and vote of the proposals happened on 2 July [*DAR* (II) 13 – *RC*, 13 July 1996, pp. 234-244]. The *CDS-PP* proposal to remove the chapter on regionalisation was rejected, with affirmative votes only from the proponent party and negative votes from all the other parties. The proposal from the independent deputies of the *PS* was also rejected. Its intention was to remove the demand for the simultaneous creation of the regions, and it received nay votes from the *PSD*, the *CDS-PP*, the *PEV* and Vital Moreira. The *PS* and the *PCP* abstained believing that the question would be surpassed with the approval of the law to create the regions. Thus, Article 255 of the Constitution, on the creation of the regions, did not change.

As for Article 256, it only subsisted for voting the *PS*'s proposal, with all the rest being withdrawn or invalidated. No. 1, according to which the institution of the administrative regions, and the approval of the law of institution for each one, depended on the law of creation, and on the affirmative vote expressed by the majority of registered voters in each regional area of the national territory who took part in the direct

consultation, had yea votes from the *PS* and the *CDS-PP* and nay votes from the other parties. The *PSD* voted nay because it disagreed with the reference to the registered citizens in the national territory, arguing that emigrants should vote on the question regarding national scope. The *CDS-PP* thought the same but, in spite of that, voted in favour of the *PS* proposal.

The next items had nay votes from the *PCP* and the *PEV* and yea votes from the *PS*, the *PSD* and the *CDS-PP*. It was approved that, when the majority of the voters in the referendum did not respond affirmatively to the question of national scope on institution of the administrative regions, the answers regarding each region created by law should not produce any effect. The citizens would be consulted in the conditions and terms laid down by organisational law, through a decision by the President of the Republic, under a proposal by the Assembly of the Republic, which would be applicable, with the due adaptations, to what was established in Article 118. The last item of the *PS* proposal, on the eventual caducity of the affirmative answers to the questions of regional scope, in case the national question was refused, was also withdrawn.

On 12 October 1996, the *PS* introduced Draft Decision No. 24/VII, proposing the extension to 60 days for the term established by Decision No. 12-PL, regarding public consultation on the bills for the regionalisation. This draft was discussed on 16 October [*DAR* (I) 1, 17 October 1996, pp. 39-45] and passed on 17 October with yea votes from the *PS*, abstentions from the *PSD* and nay votes from the *CDS-PP*, the *PCP* and the *PEV* [*DAR* (I) 2, 18 October 1996, p. 89]. It was published on 19 October as No. 23-PL/1996.

The Constitutional revision proceeded up to the end of July 1997. In the 30 July plenary sitting, the proposal by *CERC* regarding Article 256 of the Constitution had yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP* and the *PEV* [*DAR* (I) 104, 31 July 1997, pp. 3937-3952, and 4016]. The text that passed is as follows:

> **1.** The institution of the administrative regions by means of the individual laws instituting each one shall depend on the law provided for in the previous article,[260] and on the casting of an affirmative vote by the majority of the registered voters who cast their votes in a direct national ballot covering each of the regional areas.

[260] It is the law that creates the administrative regions.

2. In the event that the majority of the registered voters who cast their votes did not respond affirmatively to the question on a national scope regarding the institution of the administrative regions, the answers to such questions as may be put in relation to each region that is created by law shall not take effect.

3. The consultation of registered voters provided for in the previous paragraphs shall take place in accordance with the provisions of an organisational law and by decision of the President of the Republic, upon a proposal from the Assembly of the Republic. The system derived from Article 115 shall be applied mutatis mutandis.

Jorge Miranda and Rui Medeiros [2007 (III) p. 537] highlight the main aspects of the Constitutional system that was instituted: **a)** the holding of the referendum is obligatory in the sense that, without its holding, it is not possible to institute the regions; **b)** the initiative is exclusive to the Assembly of the Republic, but it can receive proposals from the Government or citizens; **c)** the President of the Republic must call the referendum because it is a Constitutional institution; **d)** the binding effect of the referendum does not depend on the votes of more than half of the registered citizens, but on the affirmative votes of the majority of voters who took part in the referendum; **e)** in the event of a negative result, Parliament cannot decide on the subject, but can only propose that a fresh referendum be called.

As for the relation between the questions at the national and regional level, the same authors referred that **a)** the popular decision at a national scope prevails the decision at a local scope; **b)** in the event of an affirmative answer of national scope, the map of regions is approved; **c)** in the event of a positive national answer and a negative answer on the question regarding the regional scope, another regional referendum will be held so that the administrative region can be created [Miranda & Medeiros, 2007 (III) p. 538].

3.2. The Conclusion of the Legislative Procedure

On 9 October 1997, the text drawn up by the Local Authorities Committee (on the creation of the administrative regions in the sequence of the approval of the *PS*, *PCP* and *PEV* bills) was submitted to the plenary of the Assembly of the Republic for detailed discussion and final overall voting. The proposal that was passed divided the territory into eight administrative regions: *Entre Douro e Minho; Trás-os-Montes e Alto*

Douro; Beira Litoral; Beira Interior; Estremadura e Ribatejo; Lisboa e Setúbal; Alentejo; Algarve. It represented a compromise between the *PS* and the *PCP*. The *PS* accepted the *Alentejo* as a single region, and the *PCP* accepted the *Entre Douro e Minho*, including Oporto, *Braga* and *Viana do Castelo* districts, as a single region. A provision, proposed jointly by the *PS*, the *PCP* and the *PEV* was also included. It Stated that after the direct consultation in the terms of Article 256 of the Constitution, the instituted boundaries of the administrative regions could be Constitutionally changed through an organisational law by the Assembly of the Republic, which would ensure that the procedure included hearing the views of the municipal assemblies and the regional assemblies of the regions involved. Nonetheless, these changes should always respect the principle of territorial contiguity [*DAR* (I) 2, 10 October 1997, pp. 48-81]. In the final overall voting, the law creating the administrative regions was approved with yea votes from the *PS*, the *PCP*, the *PEV* and Mendes Bota (*PSD*). The nay votes came from the *PSD* and the *CDS-PP*, with the abstentions from three *PSD* members elected in the *Algarve*.[261]

3.3. The Special System of the Referendum on Regionalisation

In October 1997, the legislative procedure to change the Organisational Law of the Referendum began, including a special part regarding the referendum on the administrative regions, given its Constitutional specificity. Government Bill No. 145/VII [*DAR* (II-A) 3, 17 October 1997, pp. 30-58] introduced on 9 October 1997, included a specific chapter on that subject, since it was the only case of an obligatory referendum in Constitutional terms. The subject of that referendum would be the institution of the administrative regions, including two questions, one of a national scope and another regarding each regional area. In the autonomous regions, the referendum would only have the question of a national scope. The right to vote would be given to Portuguese citizens who resided in the national territory. They would be allowed to vote on the national scope, and in the regional area in which they were registered, according to the geographic division established in the law for the creation of the administrative regions.

In the case of a negative answer regarding the question of a national scope, the answers on the regional question would not produce any effect. If the answer regarding the national scope was affirmative and the answer on the regional question was negative in a region, this would

[261] António Vairinhos, Cabrita Neto and Macário Correia.

not be instituted until a new referendum, restricted to that region, had an affirmative answer. In the case of an affirmative answer, the referendum would be binding only if the number of voters was more than half of the registered citizens.

On 15 October, the *PSD* introduced Bill No. 420/VII [*DAR* (II-A) 4, 18 October 1997, pp. 67-68) which was specifically about the referendum on regionalisation. The *PSD* proposed a two-stage referendum, with the regional referendums taking place 14 days after the national one, if the majority of voters had responded affirmatively. In this case it would have a binding effect. The referendum of a national scope should also allow Portuguese citizens living abroad to take part. In the case of affirmative answers, the law to institute each region should be approved within 60 days. The *PSD* bill included the questions all at once. The national question would be: 'do you agree with the institution of the administrative regions, as they are enshrined by law?' The question at a regional scope would be: 'do you agree with the institution of the administrative region as enshrined by law for your area of residence?'[262]

On 6 November, the *PCP* introduced Bill No. 428/VII [*DAR* (II-A) 11, 15 November 1997, pp. 210-211]. According to the bill, in the event of an affirmative answer in the consultations at both national and regional scopes, the laws of institution for the regions should be passed within 90 days.

The general debate on the initiatives took place on 20 November 1997 [*DAR* (I) 16, 21 November 1997, pp. 614-638] and the voting on the 27th. The Government bill passed with yea votes from the *PS*, nay votes from the *PCP* and the *PEV* and abstentions from the *PSD* and the *CDS-PP*. The *PSD* bill was rejected, with yea votes from the *PSD*, nay votes from the *PS*, the *PCP* and the *PEV* and abstentions from the *CDS-PP*. The *PCP* bill passed with yea votes from the *PCP* and the *PEV*, nay votes from the *CDS-PP* and abstentions from the *PS* and the *PSD* [*DAR* (I) 19,

[262] In the dispatch of the admission of the bill, the President of the Assembly of the Republic, Almeida Santos, Stated the difficulty to join in the same legislative initiative matters which should be the subject of organisational law and matters which should be the subject of a resolution, because the respective system of Constitutional review should be different. He also raised objections as to the Constitutionality of the participation of emigrants [*DAR* (II-A) 4, 18 October 1997, p. 68). In the report made for the Constitutional Affairs, Rights, Freedoms and Guaranties Committee on these legislative initiatives, Barbosa de Melo referred to the objections, recognising that the inclusion of matters that should be the subject of a resolution into a bill was technically less blissful and considering that the inclusion of emigrants in the electoral universe was a question of reasoning [*DAR* (II-A) 13, 24 November 1997, p. 248].

28 November 1997, p. 711]. However, the law to create the administrative regions would suffer one more setback. Both the President of the Republic and 54 *PSD* deputies requested the prior review of its Constitutionality by the Constitutional Court, which pronounced on it in Ruling No. 709/97 on 10 December 1997 [*DR* (I-A) 20 January 1998].

The Constitutional Court declared the law unConstitutional on two points. First, it laid down that the law of institution for the regions could establish different legal systems for each one of them. The Court held that such diversity could only be established by the law that created the administrative regions, since only an organisational law could be submitted to referendum. Second, it considered any change of the territorial division of the regions to be unConstitutional after the referendum. Given that the territorial division of the regions is mandatorily submitted to referendum, its subsequent change could only be made after a new referendum, which would give it legitimacy.[263]

Consequently, the President of the Republic vetoed the law and his decision was announced to the Assembly of the Republic on 17 December [*DAR* (II-A) 18, 19 December 1997, p. 334]. The deletion of the unConstitutional provisions took place in the plenary sittings of 26 March 1998 [*DAR* (I) 53, 27 March 1998, pp. 1798-1806 and 1808]. On 28 April 1998 Law No. 19/98, on the Creation of the Administrative Regions, was published. The referendum on their institution could finally move forward.[264]

Meanwhile, on 4 March there was a detailed discussion and the final overall vote for the Organisational Law of the Referendum, which had yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP* and the *PEV* [*DAR* (I) 44, 5 March 1998, pp. 1470-1492]. The provisions for Law No. 15-A/98, of 3 April, regarding the referendum on the regions followed directly from the Government bill. The approved legal framework was essentially the following:

1) The referendum has a mandatory nature (Article 245), by Constitutional command, being the only case of an obligatory referendum in Portuguese law.[265]

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[263] The Constitutional Court decision was taken by seven votes against five.

[264] On 4 February, the leader of the *PSD* Marcelo Rebelo de Sousa (1999, p. 95) suggested the holding of the referendum on abortion before the summer and the referendums on the regions and Europe after the summer. This became true regarding the abortion and the regions.

[265] On the meaning of that obligation, see Miranda & Medeiros [2007 (III) p. 537].

2) The subject of the referendum is the institution of the administrative regions (Article 246) as laid down by the Framework Law for the Administrative Regions (Law No. 56/91, of 3 August) and by the Law for the Creation of the Administrative Regions (Law No. 19/98, of 28 April).

3) The referendary initiative belongs to the President of the Republic through a proposal by the Assembly of the Republic (Article 247).

4) The Constitutional Court proceeds with the prior review of the Constitutionality and legality of the referendum, including requirements on the electoral universe (Article 248).

5) The referendum has two questions, one of a national scope and another regarding each regional area. The questions are the same in the entire national territory and there is a single ballot paper. Outside of the regional areas in question (which was the case of the Autonomous Regions of The Azores and Madeira), the referendum only has the question of national scope (Article 249).

6) As for the question regarding each region, only registered citizens in each region can take part (Article 250).

7) The approval of laws for the institution of each region depends on the affirmative vote of the majority of citizens who take part in the referendum [Article 251(1)].

8) In the event of an affirmative answer, the referendum only has binding effect if the number of votes cast is more than 50% of the registered citizens [Article 251(2)].[266]

9) If the answer to the question of a national scope is affirmative and the answers to the question of a regional scope are negative in one or more regions, these cannot be instituted until new referendums restricted to this region or regions obtains an affirmative answer [article 251(3)].[267]

3.4. The Referendum Procedure

The next step would be the approval of the resolution on the referendum. Working towards that, the *PSD* introduced Draft Resolution No. 89/VII [*DAR* (II-A) 55, 30 May 1998, p. 1201] on 27 May, the *PS*

[266] Miranda & Medeiros consider this provision unConstitutional, given that Article 256 of the Constitution refers only that the actual institution of the administrative regions depends on the casting of an affirmative vote by the majority of the registered voters who cast their votes, without any requirement of quorum in relation to the number of registered citizens.

[267] See the note on this legal system in Mendes & Miguéis (1998, pp. 145-152).

introduced the Draft Resolution No. 93/VII [*DAR* (II-A) 62, 25 June, p. 1386] on 19 June 1998 and the *CDS-PP* introduced Draft Resolution No. 95/VII [*DAR* (II-A) 62, 25 June, pp. 1388-1389] on 23 June. The main difference among them was in relation to the electoral universe: the *PSD* and the *CDS-PP* proposed the participation of Portuguese emigrants in the question of a national scope.[268]

The consideration of the draft resolutions was held on 29 June [*DAR* (I) 86, 30 June 1998, pp. 2963-2970]. The *PSD* draft was rejected with nay votes from the *PS* and abstentions from the *CDS-PP*, the *PCP* and the *PEV*. The *PS* draft was passed. However, in the section regarding the electoral universe, the draft received nay votes from the *PSD*, the *CDS-PP* and Helena Roseta (*PS*), with abstentions from the *PCP* and the *PEV*. The section regarding the question had yea votes from the *PS* and the *CDS-PP*, with abstentions from the *PSD*, the *PCP* and the *PEV* and a nay vote from Helena Roseta [*DAR* (I) 86, 30 June 1998, pp. 3003-3004]. The *CDS-PP* draft was considered useless. The *PS* only voted in favour of its own proposal. The *PSD* voted against the electoral universe proposed by the *PS* and abstained on the question, preferring its own wording (which was not substantially different). The *CDS-PP* adhered to the question proposed by the *PS*, disagreeing, however, about the electoral universe. The *PCP* and the *PEV* decided to abstain on all proposals, disagreeing with the referendum but recognising that it was mandated by the Constitution. Helena Roseta voted against, arguing for a postponement. In her view, the weak participation in the referendum on abortion (which had been held the day before) justified further reflection on decisions about any other referendums.

Yet, the resolution was passed. All registered citizens in the national territory would be asked: 'do you agree with the institution of the administrative regions?' Registered citizens in each of the regions created by Law No. 19/98, of 28 April, would be asked: 'do you agree with the institution of the administrative region in your area of electoral registration?' The ballot papers in the autonomous regions would only include the first question (Resolution No. 36-B/98), [*DR* (148 – Supplement) 30 June 1998].

On the very same day, the *PS* introduced the bills for the institution of each of the proposed regions: Bill No. 544/VII (*Estremadura*

[268] In the report drawn for the Constitutional Affairs, Rights, Freedoms and Guaranties Committee, António Filipe (*PCP*) pronounced himself for the Constitutionality and pertinence of the solution proposed by the *PS*, which did not allow the participation of emigrants in the referendum [*DAR* (II-A) 65, 1 July 1998, pp. 1491-1492].

e Ribatejo), 545/VII (*Beira Litoral*), 546/VII (*Alentejo*), 547/VII (*Lisboa e Setúbal*), 548/VII (*Trás-os-Montes e Alto Douro*), 549/VII (*Entre Douro e Minho*), 550/VII (*Algarve*), 551/VII (*Beira Interior*).

The Constitutional Court, in the prior review made under the Constitutional terms on the Assembly of the Republic Resolution decided, through Ruling No. 757/98 of 29 July 1998 [*DR* (I-A) 174, 30 July 1998], to declare the proposed referendum Constitutional and legal.[269] On 1 September, the President of the Republic set the referendum for 8 November 1998 (Decree of the President of the Republic No. 39/98), [*DR* (I-A) 201, 1 September 1998].

The intention to take part in the referendum campaign was declared by all the parliamentary parties (*PS*, *PSD*, *CDS-PP*, *PCP* and *PEV*), nine parties without representation in Parliament (*MPT*, *MUT*, *PCTP/MRPP*, *PDC*, *PPM*, *PSN*, *PSR*, *Política XXI and UDP*) and 20 groups of citizens (9 for 'yes' and 11 for 'no').[270] Five of the groups for 'yes' assumed a regional form, supporting the creation of their region, and four assumed a national scope, supporting regionalisation as a whole. From the 'no' side, six assumed a regional form, against the region proposed in their area, and five were against the regionalisation from a national perspective. Although the number of movements had been larger in the referendum on regionalisation than in the referendum on abortion, André Freire and Michael Baum (2003a, p. 16) noted that the relative influence of the parties was greater in the referendum on regionalisation, given the greater weight of the Catholic Church in the referendum on abortion.

From the side of the main parties, the *PCP* and the *CDS-PP* assumed clear positions and kept their internal cohesion: the *PCP* in favour and the *CDS-PP* against. The *PCP* had supported the creation of

[269] Five of the 13 judges voted against the decision. The more controversial item was the clearness and objectivity of the questions.

[270] Groups for the 'yes': *Alentejo*, Yes to the Regionalisation, for Portugal; Movement for the Creation of the Region of *Algarve*; Movement for the Region of *Trás-os-Montes e Alto Douro*; Movement Yes for the Regionalisation – Yes for *Algarve*; In *Minho*, for the Regionalisation; For a Portugal with Cohesion, Yes to the Regionalisation; Portugal Plural; Solidarity Portugal – Movement for *Beira Interior*; Yes to the Regions, Better Portugal. Groups for the 'no': *Aveiro* says No to the Regionalisation; Give Strength to the Municipalism, for *Leiria* District; *Minho* for No to the Regionalisation; Unique Portugal Movement; Movement Regionalisation, Not Like This; United Nation: A Portugal; No to this Regionalisation and No to the Region of *Beira Interior*; No to this Regionalisation and No to the Region of *Estremadura e Ribatejo*; No to the Region of *Beira Litoral*; Municipalist Platform; Regionalisation? We pass! The initial number of citizen groups was 25. Five of them, however, were excluded for not fulfilling the legal requirements.

administrative regions since 1976, and the *CDS-PP* assumed a position that was clearly against the regionalisation after an internal referendum on that subject. The *PS* assumed an official position in favour, but there were some audible voices of dissent, not so much against regionalisation as a whole, but above all against the solutions proposed for specific regions. At the national level, the *PS* and its Government assumed a position in favour. However, there were dissenting voices. While all the northern leaders vocally supported the proposed new regions, some critics, like Mário Soares, did not hide their scepticism in relation to the regionalisation, and in some regions the socialist structures showed their disagreement towards the proposed regional map. Inside the *PSD*, the situation was the opposite. The party supported the 'no' campaign, disagreeing with both the procedure followed and the proposed map. Opposition to the idea of regionalisation had a decisive majority in the *PSD*, especially with Cavaco Silva against it. Nevertheless, the negative position of the *PSD* had the main purpose of weakening the *PS* government, which favoured regionalisation. The idea was to impose a fresh defeat, building pressure following the failed abortion referendum.[271]

The reasons given by the supporters of the regionalisation were based on the full realisation of the Constitution, which had enshrined the administrative regions since 1976; on the democratic legitimacy of the exercise of regional power, which would stop being an arm of the central administration and become a result of the popular vote; on the need to ensure national cohesion and reduce the regional asymmetries which resulted from a centralist organisation of the State; and following the example of the European Union, where the existence of intermediate levels of power between the central administrations and the municipalities is practically general.

Among the supporters of the negative answer, we can distinguish those who were simply against the existence of administrative regions and those who were against the procedure which led to the drawing of the regional map and/or the map itself. Some people, although regionalists, swelled the ranks of the 'no' campaign because they disagreed with the region that was proposed to them. The reasoning by the opponents was that Portugal was a small country, which meant there was no need for an intermediate level of power between the Government and the municipalities; the idea that the regionalisation would lead to the

[271] See the detailed exposition of the *PSD* position expressed by the leader himself in the National Council of 29 July 1998, in Sousa (1999, pp. 87-116).

increase of regional rivalries which could be dangerous for national unity; the opposition to the creation of new political posts, which meant more public expenses; the idea that the regionalisation would simply create new patronage structures; or opposition to the regional map that had been proposed.[272]

3.5. Analysis of the Results

The first aspect to stress regarding the results of the referendum on the regionalisation is the high rate of abstention (see Table 11). The participation was higher than in the referendum on abortion, but not enough to guarantee the binding effect of the referendum in the event of a 'yes' victory, given that the Referendum Law laid down that in the case of an affirmative answer, the referendum only has binding effect when the number of voters is higher than 50% of the registered citizens.[273] Abstention was about 20% higher than in the previous parliamentary elections (Freire & Baum, 2003a, p. 10).

André Freire and Michael Baum (2003a, p. 12) point out to the poor handling of the regionalisation campaign by the *PS* as a first reason for abstention. The strong division within that party explains the high abstention rate to a great extent.

Table 11

National Results of the Referendum on the Institution of the Administrative Regions

Registered electors	Voters		Abstentions		Blank ballot papers		Null ballot papers	
	Total	%	Total	%	Total	%	Total	%
8,632,842	4,171,099	48.29	4,465,743	51.71	57,050	1.37	77,420	1.86
National question				Regional questions				
YES		NO		YES		NO		
Total	%	Total	%	Total	%	Total	%	
1,458,132	34.96	2,537,822	60.84	1,386,718	33.25	2,457,604	58.92	

As for the regional distribution of abstentions (Table 12), the salient fact is the extremely weak participation in the autonomous regions.

[272] On the arguments used in the campaign, see, Barreto (1998); Sá *et al* (1998); *Ministério do Equipamento, Planeamento e Administração do Território* (1998); Lacão (1998); Lourenço (1998); Sousa (1999, pp. 87-116); Nascimento *et al* (1998) among many others.

[273] Jorge Miranda and Rui Medeiros consider this demand to be unConstitutional with good reasons.

It is easily explained given that the subject of the referendum was only the creation of the administrative regions in the mainland. There was no question about the creation of any administrative region in the territory of the autonomous regions; consequently, the citizens registered there were called to decide on regions that were irrelevant to them, and naturally they were disinterested. The greatest problem was that the abstention of the citizens from the autonomous regions could be decisive in making the creation of the administrative regions on the mainland unviable.

Table 12

Participation in the Referendum for the Institution of the Administrative Regions

by Districts and Autonomous Regions

	% Voters	% Abstentions		% Voters	% Abstentions
Aveiro	51.03	48.97	***Lisboa***	48.72	51.28
Beja	47.60	52.40	***Portalegre***	49.73	50.27
Braga	52.17	47.83	***Porto***	49.22	50.78
Bragança	44.72	55.28	***Santarém***	48.76	51.24
C.Branco	50.80	49.20	***Setúbal***	46.91	53.09
Coimbra	46.69	53.31	***V. Castelo***	49.32	50.68
Évora	50.90	49.10	***Vila Real***	45.97	54.03
Faro	44.46	55.54	***Viseu***	49.77	50.23
Guarda	55.66	44.34	***Açores***	22.15	77.85
Leiria	53.12	46.88	***Madeira***	36.38	63.62

Nonetheless, the negative answer won with 60.84% of the votes regarding the question on national scope and 58.92% in the total number of the questions at a regional scope. The victory of the 'no' campaign on the national question made the institution of any region impossible.

In terms of districts (Tables 13 and 14), the affirmative answer on the national scope only won in three districts (*Setúbal*, *Évora* and *Beja*). The affirmative answer for the question at a regional scope only won in the district of *Évora*. In the case of *Beja*, the difference of votes between the two questions was very significant, revealing the non-acceptance of the idea of a single *Alentejo* region.

Only in the district of *Faro* was the number of affirmative votes in the regional question higher than in the national one. In all the other districts, the rejection of the proposed region was greater than the

rejection of the idea of regionalisation in general. The number of blank votes was significantly higher on the questions of a regional scope.

Table 13

Results of the Referendum on the Institution of the Administrative Regions

by Districts and Autonomous Regions (Question of a National Scope)

	% YES	% NO	% Blank		% YES	% NO	% Blank
Aveiro	22.89	73.44	0.86	***Lisboa***	35.61	60.22	0.84
Beja	56.82	38.90	1.14	***Portalegre***	42.37	53.28	1.14
Braga	32.43	63.41	1.20	***Porto***	43.38	52.61	0.95
Bragança	32.47	62.98	1.17	***Santarém***	29.60	65.62	1.30
C. Branco	31.61	63.93	1.19	***Setúbal***	50.23	45.76	0.87
Coimbra	29.97	65.15	1.12	***V. Castelo***	30.20	65.40	1.05
Évora	54.85	40.93	1.09	***Vila Real***	30.17	65.25	1.17
Faro	43.28	51.72	1.47	***Viseu***	20.12	75.76	1.04
Guarda	17.91	78.10	1.06	***Açores***	36.72	58.81	2.09
Leiria	19.14	77.13	0.84	***Madeira***	27.91	67.53	2.47

Table 14

Results of the Referendum on the Institution of the Administrative Regions by Districts

(Questions of a Regional Scope)

	% YES	% NO	% Blank		% YES	% NO	% Blank
Aveiro	20.94	74.38	1.86	***Leiria***	16.73	78.41	1.97
Beja	47.72	46.91	2.23	***Lisboa***	35.42	59.52	1.72
Braga	31.66	63.14	2.24	***Portalegre***	41.42	53.20	2.16
Bragança	32.02	61.77	2.83	***Porto***	43.06	52.04	1.84
C. Branco	29.77	64.66	2.30	***Santarém***	28.47	65.61	2.44
Coimbra	28.47	65.45	2.31	***Setúbal***	49.81	45.50	1.55
Évora	54.24	40.60	2.04	***V. Castelo***	29.14	65.01	2.50
Faro	46.07	47.97	2.43	***Vila Real***	29.82	64.19	2.58

If we consider the voting in relation to the proposed regions (Tables 15 and 16) we can see that only in the *Alentejo* did the 'yes' campaign win, and even so, only on the question of a national scope.

Table 15

Results of the Referendum on the Institution of the Administrative Regions

by Administrative Region (Question of a National Scope)

	% YES	**% NO**	**% Blank**
Entre Douro e Minho	38.84	57.06	1.04
Trás-os-Montes e Alto Douro	29.68	65.82	1.17
Beira Litoral	23.37	72.51	0.97
Beira Interior	25.09	70.68	1.13
Estremadura e Ribatejo	24.29	71.49	1.06
Lisboa e Setúbal	39.06	56.81	0.84
Alentejo	51.56	44.19	1.10
Algarve	43.28	51.72	1.47

Table 16

Referendum results on the institution of the administrative regions

by administrative region (question of a regional scope)

	% Yes	**% No**	**% Blank**
Entre Douro e Minho	38.37	56.54	2.03
Trás-os-Montes e Alto Douro	29.28	64.79	2.61
Beira Litoral	21.65	73.15	2.06
Beira Interior	22.23	72.58	2.09
Estremadura e Ribatejo	22.46	72.19	2.18
Lisboa e Setúbal	38.89	56.15	1.67
Alentejo	47.98	46.76	2.10
Algarve	46.07	47.97	2.43

If we compare the results of the referendum on the regionalisation and the results of the parliamentary elections held immediately before and immediately after (Tables 17 and 18) we verify that the total number of votes for the parliamentary parties that supported the 'yes' campaign (*PS* and *PCP*/*PEV*) was largely greater than the actual

votes in favour of regionalisation. Therefore, the 'no' votes were greater in all districts than those obtained jointly by the *PSD* and the *CDS-PP*.[274]

Table 17

Comparative Results of the Referendum on the Institution of the Administrative Regions and the Parliamentary Elections of 1995 and 1999 (Question of a National Scope)

	% *PS* + *PCP/PEV* 1995	**% YES**	**% *PS* + *PCP/PEV* 1999**	**% *PSD* + CDS 1995**	**% NO**	**% *PSD* + CDS 1999**
Aveiro	42.98	22.89	43.71	53.83	73.44	51.86
Beja	75.00	56.82	75.05	19.30	38.90	18.38
Braga	47.45	32.43	49.74	38.20	63.41	45.60
Bragança	42.25	32.47	42.36	54.16	62.98	53.76
C. Branco	56.66	31.61	56.87	39.34	63.93	38.20
Coimbra	54.20	29.97	53.27	41.52	65.15	41.17
Évora	69.47	54.85	70.30	25.40	40.93	23.72
Faro	57.38	43.28	56.67	37.52	51.72	36.76
Guarda	45.94	17.91	46.52	49.86	78.10	48.99
Leiria	41.24	19.14	42.07	54.73	77.13	52.52
Lisboa	56.32	35.61	54.99	38.37	60.22	35.76
Portalegre	64.42	42.37	66.20	29.73	53.28	28.38
Porto	52.71	43.38	54.23	44.11	52.61	40.19
Santarém	55.31	29.60	55.63	39.73	65.62	38.29
Setúbal	68.65	50.23	68.49	25.62	45.76	23.65
V. Castelo	43.33	30.20	45.21	53.35	65.40	49.80
Vila Real	41.92	30.17	43.17	53.84	65.25	52.37
Viseu	40.15	20.12	40.34	55.74	75.76	54.77
Açores	39.31	36.72	55.03	57.15	58.81	41.34
Madeira	34.17	27.91	37.87	59.01	67.53	57.06
Total	52.33	34.96	53.05	43.17	60.84	40.66

In seeking to explain the results, André Freire and Michael Baum (2003a, p. 13) referred to, besides the unskilful leading of the

[274] In this comparison, only the votes of the parliamentary parties were counted, excluding the *BE*, because the parties that take part in it assumed divergent positions in the referendum on regionalisation (the *UDP* and the Politics XXI for the 'yes' and the *PSR* for the 'no'). For a more detailed comparison, see Freire and Baum (2003a, pp. 13-15).

process by the *PS*, the fact that the arguments of the rightist opposition against the regionalisation (fewer politicians, less public spending, less corruption) were easier for the public to grasp than the arguments promised by the 'yes' supporters. The consequence of the 1998 referendum was the unfeasibility of the institution of the administrative regions enshrined in the Constitution, while those who worked for that purpose held precisely that goal in mind. Actually, in spite of its enshrinement in the Constitution in 1976, the regionalisation always found obstacles that were not always assumed, but always decisive.

Table 18

Comparative Results of the Referendum on the Institution of the Administrative Regions and the Parliamentary Elections of 1995 and 1999 (Questions of a Regional Scope)

	% *PS* + *PCP/PEV* 1995	**% YES**	**% *PS* + *PCP/PEV* 1999**	**% *PSD* + *CDS* 1995**	**% NO**	**% *PSD* + *CDS* 1999**
Aveiro	42.98	20.94	43.71	53.83	74.38	51.86
Beja	75.00	47.72	75.05	19.30	46.91	18.38
Braga	47.45	31.66	49.74	38.20	63.14	45.60
Bragança	42.25	32.02	42.36	54.16	61.77	53.76
C. Branco	56.66	29.77	56.87	39.34	64.66	38.20
Coimbra	54.20	28.47	53.27	41.52	65.45	41.17
Évora	69.47	54.24	70.30	25.40	40.60	23.72
Faro	57.38	46.07	56.67	37.52	47.97	36.76
Guarda	45.94	14.08	46.52	49.86	81.13	48.99
Leiria	41.24	16.73	42.07	54.73	78.41	52.52
Lisboa	56.32	35.42	54.99	38.37	59.52	35.76
Portalegre	64.42	41.42	66.20	29.73	53.20	28.38
Porto	52.71	43.06	54.23	44.11	52.04	40.19
Santarém	55.31	28.47	55.63	39.73	65.61	38.29
Setúbal	68.65	49.81	68.49	25.62	45.50	23.65
V. Castelo	43.33	29.14	45.21	53.35	65.01	49.80
Vila Real	41.92	29.82	43.17	53.84	64.19	52.37
Viseu	40.15	19.26	40.34	55.74	75.54	54.77

In 1976, all parties supported the regionalisation as it was in the Constitution. In the early 1980s, the *PSD/CDS* Governments assumed the purpose of moving forward with the institution of the administrative regions, but in all truth they continuously delayed the process. At the start

of the 1990s, the rightist parties clearly assumed positions against regionalisation. The *PSD* made it unviable until 1995, while it was in Government, and only began to support the holding of a referendum with the arrival of the *PS* in 1995. At this time it created conditions that, in principle, could lead to the institution of the regions.

The Socialist Party, being in favour of the institution of the regions in principle, remained ensnared in indecisions and contradictions that never allowed the decisive advance of the process. The acceptance of the referendum, as the rightist parties claimed, and the erratic and contradictory behaviour of the *PS* during the entire referendum procedure, paved the way for the negative result, which meant a clear victory for those who saw the referendum as a way to prevent the regionalisation process in years to come. *PCP*'s parliamentary activism on the institution of the regions was not enough to surpass the opposition from the right-wing parties and the contradictions of the *PS* regarding the regionalisation.

3.6. The Deadlock of the Regionalisation after the Referendum

About two month after the referendum, on 14 January 1999, the *CDS-PP* introduced Bill No. 604/VII **[***DAR* (II-A) 31, 21 January 1999, p. 851] to repeal the regionalisation laws.[275] The general principles were discussed on 11 March 1999, and the bill was rejected with nay votes from the *PS*, the *PCP* and the *PEV*, having obtained yea votes from the *PSD* and the *CDS-PP* [*DAR* (I) 58, 12 March 1999, pp. 2157-2166 and 2174]. An identical initiative was revived in the next legislature, on 8 November 1999, through Bill No. 9/VIII [*DAR* (II-A) 3, 11 November 1999, pp. 26-27], which lapsed on 4 April 2002 without having been discussed. The regionalisation laws were kept in force, being sure that the institution of the regions depended on holding a new referendum, which would have an affirmative response in that sense.

In the VI Constitutional Revision on 14 November 2003, the Draft Amendment to the Constitution No. 2/IX, introduced jointly by the *PSD* and the *CDS-PP*, then allies in the Government, proposed the removal of Articles 256 to 265 of the Constitution regarding the administrative regions, and proposed a new wording for Article 255, providing that **a)** the law can provide forms of administrative

[275] These laws were, obviously, the Framework Law of the Administrative Regions (Law No. 56/91, of 13 August) and the Law of the Creation of Administrative Regions (Law No. 19/98, of 28 April).

regionalisation in the mainland; **b)** that law defines the territory of each region and the respective powers, and rules the composition, the way of Constitution, the responsibilities and working of their bodies; **c)** the approval of the law depends on more than half of the registered voters pronouncing favourably in a national referendum. It returned with the *PSD* proposal removing the regionalisation as a Constitutional command, turning it instead into a mere faculty given to the legislator and making it depend on a referendum where more than 50% of the registered citizens would need to vote affirmatively. As for the abstentions, they would have the same value as negative votes. In the *CERC* session of 16 April 2004 these proposals had yea votes from the *PSD* and the *CDS-PP* and nay votes from the *PS*, the *PCP*, the *BE* and the *PEV*. In the plenary sittings of 23 April, these proposals did not obtain **t**he qualified two-thirds majority needed for their approval. 89 Members voted nay (76 *PS*, eight *PCP*, three *BE* and two *PEV*) and 108 voted yea (93 *PSD*, 14 *CDS-PP* and one *PS*), (Magalhães, 2004).

On 19 July 2005, the *PCP* introduced a new initiative in favour of regionalisation, introducing Draft Resolution No. 54/X [*DAR* (II-A) 36, 22 July 2005, pp. 24-25] and setting a schedule for the institution of the administrative regions during 2007. The *PCP* proposed that, up to the end of 2007, two possible maps for the regions be submitted to the municipal assemblies: the map of eight regions laid down in the Law for the Creation of the Administrative Regions approved in 1998 and the map corresponding to the five plan-regions. The municipal assemblies should give their opinions up to the end of the first semester of 2006. In the second semester there would be the approval of the map of the regions to be submitted to referendum in the first quarter of 2007. This bill was never discussed.

In 2008, a civic movement named 'Regions, Yes!', formed by citizens from different political sectors who assumed themselves as supporters of a model of regionalisation based on the five plan-regions, gathered signatures with the aim of presenting a petition to the Assembly of the Republic. With a view to future Constitutional revision, it appealed to the parties to remove the excessive conditions that had created obstacles to the creation of the administrative regions. These namely involved removing the obligation of the simultaneous creation of the regions, and the demand that the number of voters in the referendum be more than 50% of the registered citizens to have binding effect.[276]

[276] As previously Stated, Jorge Miranda and Rui Medeiros consider that the demand for 50% of participants to assure the binding effect of the referendum is not a Constitutional

Without aiming to predict the destiny of any future initiative attempting to move the institution of the administrative regions forward, it is clear that the success of such a proposal seems to be, at least, remote. The Constitutional demand of a referendum for the institution of the regions, and the experience of 1998, makes it clear that the regionalisation of the Portuguese mainland territory will not be possible without a wide consensus among the political parties, as well as on regional boundaries, and the nature and powers of the administrative regions to institute. Since that consensus is far from being achieved, the possibility of a new referendum, whose result would be any different from the previous one, is remote. The referendum of 1998, and the Constitutional framework, had the effect of delaying the institution of the administrative regions *sine die*.

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demand in relation to the referendum on the administrative regions. That demand only appears in the Referendum Law, which in that point is unConstitutional.

Chapter 6

The Question of the Referendum on the European Union

1. The Question of the Referendum on the Maastricht Treaty

1.1. Antecedents

When, on 1 January 1986, Portugal became a member of the European Community, there was no Constitutional possibility of submitting the decision to a referendum, and there was no proposal to make a referendum possible. The political forces that supported the Constitutional introduction of the referendum in Portugal were also enthusiastic supporters of accession to the European Community, so the idea of submitting the decision to a referendum was never even discussed.

The idea of subjecting certain international agreements to a referendum was first suggested in 1975, during discussions about the new Constitution. Jorge Miranda (1975, pp. 82-83), in Article 166 of his draft, proposed the institution of a referendum on international agreements that involved restrictions on sovereignty within their scope of contents. In Miranda's view, these treaties should have been subject to a popular referendum after being passed in Parliament. The essay by Lucas Pires (1975, p. 106), which served as a contribution to the future draft of the Constitution from the *CDS* included, besides several types of referendum, the need for approval through a national plebiscite, of any decision to be taken or already taken, regarding the international integration process, or any privileged agreement with great powers, especially within the military domain. Integration would change the sovereign contract between the people and their representatives, meaning the Portuguese people would become EEC subjects, and the voice should be heard (Urbano, 1998, p. 118). However, none of these ideas were enshrined in the Constitution.

Several voices raised the idea of a referendum in Portugal on the European integration process. On 17 March 1977, calling upon the *PS* Government on its economic policy, the MP Acácio Barreiros from the *UDP*, supported the need of a referendum on the EEC adhesion (*DAR* 87, 18 March 1977, p. 2966). Three months later, on 3 May, he re-affirmed that position during the debate on a *CDS* proposal to create a parliamentary committee on European affairs (*DAR* 104, 4 May 1977, p. 3515). However, that idea did not have any Constitutional support.

In the 1989 Constitutional revision, even after Portuguese adhesion to the EEC, the *CDS* proposed that the conclusion of treaties which transferred State power to an international organisation should be passed by the Assembly of the Republic by a two-thirds majority of members in full exercise of their office. If a treaty in this case did not obtain the two thirds majority, but received the affirmative vote from the absolute majority of the members in full exercise of their office, the President of the Republic could submit the decision to national referendum [*DAR* (Off-print 1/V) 31 December 1987, p. 11]. This proposal was rejected.

The 1989 Constitutional revision introduced the national referendum, but expressly forbid its use to deliberate on international treaties. Article 118(3) of the Constitution excluded matters referred in Article 164, which included the approval of treaties regarding Portuguese participation in international organisations. The question of the referendum on the Portuguese participation in the European Community forced itself onto the political agenda only after the Maastricht Treaty signature in 1992, and it became especially intense with the holding of the French and Danish referendums.

In Portugal, the opportunity to participate in decision-making on the European integration process through referendums was something new, but there were several precedents in Europe. Besides the example that immediately inspired the proposers of a referendum in Portugal, which was undoubtedly the Danish referendum on the Maastricht Treaty on 2 June 1992, the European integration process had several examples of 'European referendums' in different countries.

Soon after the first enlargement process, in 1972, several adhesion treaties were submitted to referendum: in Ireland, on 10 May 1972, with 83% affirmative answers; in Denmark, on 26 September, with 63.5% affirmative answers; in Norway, on the very same day, where the negative answer prevailed, with 54% of the votes cast making it unfeasible for that country to adhere to the European Community. Curiously, France submitted the adhesion treaties of those three countries, and also the accession of Great Britain, to a referendum. It was held on 23 April 1972, and had 68% of the affirmative answers.

In Great Britain there was no referendum on accession, although the Labour opposition demanded one. In October 1971, there was a vote in the House of Commons on the adhesion to the Community, which

resulted in 356 yea votes, 244 nays and 22 abstentions. The vote on the ratification itself, on 13 July 1972, was even more finely balanced (301 yea votes and 284 nay votes), (Ribeiro, 1994). After the electoral victory of the Labour Party in 1974, the new Prime Minister, Harold Wilson, who had strongly criticised the Conservatives for signing the treaty, arguing that it would be economically disastrous for Great Britain, proposed a national referendum on the renegotiated accession conditions. This took place on 5 June 1975, with 67% of the affirmative votes against 32% of the negative answers.

The Maastricht Treaty sparked a second wave of referendums. The 'yes' vote won easily in Ireland on 18 June, but 'no' prevailed in Denmark on 2 June 1992. In France, on 20 September 1992, there was a narrow victory for the 'yes' campaign (51.04%). A referendum was held on the European Union in Italy on the same day as the 1989 parliamentary elections, with the affirmative answer winning, but without reference to any specific treaty. In Portugal, the idea that it was possible to hold a referendum on the European Union Treaty appeared when the *PS* and the *PSD* recognised that its ratification demanded an extraordinary Constitutional revision.

1.2. The 1992 Constitutional Revision

1.2.1. The Decision

In early May 1992, the President of the *PSD* and the Secretary General of the *PS* openly expressed a common understanding from both parties that the ratification of the Maastricht Treaty would demand a Constitutional revision. Therefore, Cavaco Silva and António Guterres agreed on a Constitutional revision that would be restricted to the provisions in conflict with the treaty, without supporting the idea of a referendum (Magalhães, 1997).

The collision between the Maastricht Treaty and the Constitutional provisions in several countries such as France, Spain, Germany, The Netherlands and Belgium had already led to Constitutional revisions in order to make it viable. That problem also existed in Portugal. The *PSD* and *PS* leaders had two possibilities: to immediately review the Constitution, or to maintain a future Constitutional battle that would lead to an uncertain result. In the end, they decided to review the Constitution.

Meanwhile, other parties proposed that the Constitutional revision should include changes that would enable a referendum for the European Union Treaty. The *PSN*, which had a member in the Assembly

of the Republic between 1991 and 1995 (Manuel Sérgio), introduced a Draft Resolution No. 25/VI on 12 May 1992 to create an Ad Hoc Committee for the Constitutional Revision [*DAR* (II-A) 39, 23 May 1992, p. 760]. On 15 May, the *CDS* proposed that the Assembly of the Republic take powers of Constitutional revision through Draft Resolution No. 26/VI [*DAR* (II-A) 39, 23 May 1992, pp. 760-761]. It must be noted, however, that none of these parties opposed the European Union Treaty. The *PSN* was in favour, and the *CDS* carried out a process of internal debate.

These draft resolutions were discussed on 22 May and they were rejected, with the only affirmative votes coming from the proposers [*DAR* (I) 67, 23 May 1992, pp. 2186-2196]. The *PS* refused to Constitutionally reconfigure the referendum, but admitted to review the Constitution only insofar as it was strictly necessary to make ratification of the Maastricht Treaty possible.[277] The *PSD*, which also voted against the referendum, considered that it could only be justifiable if there was a deep division in the Portuguese society about the general problem of being for or against the European Community.[278] The *PCP* and the *UDP*, which had not yet decided to support the referendum, argued that it was necessary to hold a wide national debate before any decision on the ratification of the Maastricht Treaty.[279]

Before long, the question arose again in the Assembly of the Republic. On 26 May, the Government submitted Draft Resolution No. 11/VI to Parliament in order to approve the European Union Treaty signed in Maastricht on 7 February 1992 [*DAR* (II-A) 40 – Supplement, 27 May 1992]. In the admission dispatch to the draft, the President of the Assembly raised doubts about its Constitutionality and admitted it provisionally, requesting an opinion from the Constitutional Affairs, Rights, Freedoms and Guaranties Committee.

A majority passed the opinion, drawn by Rui Machete (*PSD*), on 1 June 1992.[280] It considered that the provisions of the treaty on the single currency, the European System of Central Banks, the European Central Bank, the financial, monetary and exchange policies, the electoral capacity, the restrictions to the admission of foreigners from third countries and the issuing of visas might be incompatible with Portuguese

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[277] See speech by Alberto Costa [*DAR* (I) 67, 23 May 1992, p. 2190].
[278] See speech by Rui Machete [*DAR* (I) 67, 23 May 1992, p. 2192-2193].
[279] See speeches by João Amaral (*PCP*) and Mário Tomé (*UDP*), [*DAR* (I) 67, 23 May 1992, pp. 2195 and 2192].
[280] The opinion got yea votes from the *PSD*, the *PS* and the *CDS* and nay votes from the *PCP*, [*DAR* (II-A) 42, 5 June 1992, pp. 807-808].

Constitutional rules. This opinion summed up the consensus between the two main parties as to the scope of the revision to be made. Before its approval, the President of the Assembly decided to suspend consideration of the draft resolution approval of the treaty until the Constitutional revision procedure, which had begun a few days earlier, was concluded.

Indeed, between 26 and 27 May, the *CDS*, the *PSD* and the *PS* introduced draft resolutions to open an extraordinary Constitutional revision procedure in order to make the ratification of the Maastricht Treaty Constitutionally viable.[281] In the debate of these drafts, and under the influence of the referendum held two days before in Denmark, the question for a referendum was presented again with the support of the *CDS*.[282]

The *PSD* and the *PS* maintained their positions of against such a referendum.[283] The *PCP*, in spite of its vote against all the draft resolutions, favoured holding a referendum for the first time. In their opinion the referendum should be a pre-condition to any type of Constitutional revision.[284]

The vote took place on 11 June, with the *CDS* draft having been rejected and all the others passed.[285] This resulted in Resolution No. 18/92 of 12 June, through which the Assembly of the Republic assumed powers of Constitutional revision [*DAR* (II-A) 135 – Supplement, 12 June 1992].

1.2.2. The European Referendum in the Draft Amendments to the Constitution

Between 11 June and 15 July the Draft Amendments to the Constitution No. 1/VI (*PSD*), No. 2/VI (Mário Tomé), No. 3/VI (*PS*), No. 4/VI (*PCP*), No. 5/VI (*CDS*) and 6/VI (*PSN*) were introduced.[286] Four of them proposed that a referendum should be held.

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[281] See Draft Resolutions No. 29/VI (*CDS*), 30/VI (*PSD*) and 31/VI (*PS*), [*DAR* (II-A) 41, 30 May 1992, pp. 781-782].
[282] See speech by Adriano Moreira [*DAR* (I) 73, 5 June 1992, pp. 2393-2395].
[283] See speeches by Rui Machete (*PSD*) and Jaime Gama (*PS*), [*DAR* (I) 73, 5 June 1992, pp. 2398-2399 and 2401-2403].
[284] See speech by Octávio Teixeira [*DAR* (I) 75, 12 June 1992, p. 2463].
[285] With yea votes from the *PSD*, the *PS*, the *CDS* and the *PSN* and nay votes from the *PCP*, the *PEV* and two independent MPs elected in the *PCP* lists (204 votes against 15, which guaranteed the necessary majority of four fifths).
[286] All draft amendments to the Constitution are published in *DAR*, Off-print 12/VI, 9 October 1992.

The draft from Mário Tomé (*UDP*) proposed to add a single provision to the Constitution over-riding the interdiction of submitting the ratification of international treaties to referendum, laid down in Article 118(3), in this specific instance. The purpose was to temporarily lift the Constitutional obstacle to a referendum on matters relating to the European Union Treaty.

The *PCP* draft also included a single provision stating that the exclusions laid down in Article 118(3) of the Constitution were not valid regarding changes to the European Community Treaties, including the creation of a European Union. The *PCP* proposed that the only purpose of the Constitutional revision procedure was to make the referendum possible, as it was the only way to carry out a Constitutional revision procedure aimed at removing the Constitutional obstacles to the ratification of the treaty.

The *CDS* proposed to introduce in Article 118 of the Constitution, a provision stating that the President of the Republic should submit the approval of treaties to national referendum when they gave an international organisation the right to exercise powers that previously belonged to the Portuguese State. In addition, they proposed that the approval of conventions and international treaties should not be excluded from the scope of the referendum. Finally, the *PSN* proposed that the European Union Treaty, given its exceptional influence on the destiny of the country, should not be excluded in Article 118(3) of the Constitution.

Thus, the *PCP*, Mário Tomé and the *PSN*, supported the idea that the Constitutional revision should first be used to make the referendum viable. Only if the referendum gave an affirmative answer should it pose the question of changing other provisions in order to adjust the Constitution and the treaty. The *CDS* proposed the revision of other aspects of the Constitution. As for the referendum, they proposed that it should always be compulsory when the transfer of powers for the Portuguese State to an international organisation was under discussion. It was not an exceptional and transitory provision, but a general rule which would also be applied towards the European Union Treaty.

1.2.3. The Constitutional Revision Works

The first meeting of the *CERC* was held on 21 September and its work lasted until 12 November. At the very beginning, the *PCP* introduced a proposal of methodology. According to this proposal, the Committee should only consider proposals of transitory provisions aimed at allowing a referendum on the European Union Treaty. The Committee

should address a report to the President of the Assembly with the discussion of these proposals, requesting the call for a plenary sitting to discuss and vote on them. That proposal was rejected, with nay votes from the *PSD*, the *PS* and the *PSN*, abstentions from the *CDS* and yea votes from the proposers and the *PEV* [*DAR* (II-A) 2 – *RC*, 24 September 1992, pp. 18-24].

After that event closed, the leading question of the referendum was discussed exhaustively during the 7 October session.[287] It was submitted in the end to an indicative voting in the *CERC*, with all of the proposals for a referendum being rejected. The *PSD* and the *PS* voted against all of them. The *PCP* and the *CDS* voted in favour of all. The *PSN* abstained in the *CDS* proposal, voted against the *PCP* and Mário Tomé's proposals, and voted affirmatively on its own [DAR (II) 11 – *RC*, 29 October 1992, pp. 173-174].[288]

In the final plenary debate, on 17 November, the question was discussed once again. The *PCP* proposed the previous discussion of the referendum issue. That proposal was refused such as in the *CERC*. During the debate, several voices spoke out on the referendum. João Amaral, who supported the *PCP* proposal, considered that the priority was not the Constitutional revision procedure but the holding of a wide national debate that would conclude with the referendum. That was the reason for the *PCP* proposal for a Constitutional revision that covered only the referendum, with the aim of making this a condition of any institutional procedures that would review the Constitution and ratify the Treaty [*DAR* (I) 14, 18 November 1992, p. 420]. Nogueira de Brito supported the *CDS* proposal, stressing the referendum as one of its main purposes. For that, the *CDS* proposed that the restrictions imposed by Article 118 of the Constitution be removed, thus allowing a referendum on the ratification of international treaties [*DAR* (I) 14, 18 November 1992, p. 423].

The parties that were against the referendum gave less importance to the question in their speeches. Nonetheless, they still referred to it. Costa Andrade (*PSD*) first refuted the proposals to allow a referendum on the Maastricht Treaty alone. He believed that that matter should not be the subject of a referendum. As for the *CDS* proposal, he

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[287] See speeches by MPs Nogueira de Brito (*CDS*), João Amaral and António Filipe (*PCP*) and Mário Tomé (*UDP*) supporting the referendum, and Rui Machete, Costa Andrade and Luís Pais de Sousa (*PSD*), Almeida Santos, Jorge Lacão and José Magalhães (*PS*) against it [*DAR* (II) 5 – *RC*, 8 October 1992].

[288] Mário Tomé did not have the right to vote because he was not a member of the Committee, but he took part in the debate as the author of a proposal.

refused it since it exceeded the scope of the Constitutional revision. The *PSD* wanted to restrict the adjustment made to the Constitution during the creation of the European Union [*DAR* (I) 14, 18 November 1992, p. 438]. Jorge Lacão explained the *PS* position. He criticised the *PCP* proposal, considering it a change of the *PCP* position towards the referendum. As for the *CDS* position, he considered it untenable to support a compulsory referendum [*DAR* (I) 14, 18 November 1992, pp. 439-440].

The destiny of the proposals was decided. After the 1992 Constitutional revision, it continued to be forbidden in the Constitution to hold a referendum on the European Union Treaty. The Treaty itself was passed for ratification on 10 December that same year, with 200 yea votes (*PSD*, *PS* and Freitas do Amaral) and 21 nay votes (*PCP*, *CDS*, *PEV*, Mário Tomé and Corregedor da Fonseca), [*DAR* (I) 19, 11 December 1992, pp. 697-698].

1.3. The Reasons for the Refusal

The ratification of the Maastricht Treaty was the first time that the question of a referendum on the Portuguese participation in the European integration process was intensively discussed. The opponents of the ratification of the Treaty, encouraged by the negative vote in the Danish referendum and the narow victory of the affirmative answer in France, saw in the referendum the chance to reject it, or at least, to create trouble for its supporters. They knew that the two main parties in Parliament (*PSD* and *PS*) would no problems approving it.

The request for a referendum on the Maastricht Treaty was widely supported by the public, and not just by opponents of the Treaty. The *CDS*, sustaining an ambiguous position on the Treaty, used the proposal for a referendum as an element of differentiation from the *PS* and the *PSD*, considering it essential to have popular legitimacy regardless of the outcome. But even some voices close to the *PS* and the *PSD*, including the President of the Republic, Mário Soares, supported the referendum as a way to strengthen the legitimacy of Portugal's European choice.

A few years later, José Magalhães (1997) admitted in his Dictionary of the IV Constitutional Revision that, in many countries, supporters of the referendary cause tended to favour the 'no' campaigns. He also Stated that there was a fear of submitting a group of obscure changes that were open to varying interpretations to a referendum. In his view, it was risky: there was too much at stake. As the favourable position was revealed by President Soares several times, the bipartisan refusal can only be understood because the *PS* had, at the time, considerable problems

in consolidating its new leadership, and because the *PSD* was afraid that the referendum would be a motion of no confidence against the Government.

2. The Failed Referendum on the Amsterdam Treaty

2.1. The Referendum in the 1994 Draft Amendments to the Constitution

After the intense controversy about the ratification of the Maastricht Treaty, the idea of a referendum on the European integration would come to be discussed in the Assembly of the Republic some years later, although in a completely different context. In the draft amendments introduced at the time of the failed Constitutional revision in 1994, some provisions foresaw the possibility of submitting questions regarding the European treaties to referendums.[289]

The Draft Amendment to the Constitution No. 1/VI, from the *PS*, admitted the holding of referendums on issues that were the subject of conventions and treaties regarding Portugal's participation in international organisations, agreements of friendship, defence, military affairs, and others submitted by the Government to the Assembly of the Republic. The exclusion of issues that were the object of conventions or agreements concerning peace or rectification of borders should be kept. However, the *PS* did not propose the possibility of referendums directly on the ratification of agreements, but only on issues included in them. The *CDS*, in its Draft Amendment to the Constitution No. 2/VI, insisted on the proposal that agreements transferring powers from the Portuguese State to international organisations should be submitted compulsorily to referendum. The Draft Amendment to the Constitution No. 3/VI, from the *PSN*, only excluded changes to the Constitution and the issues and acts with a budgetary, tax-related or financial implications from the scope of the referendum. The *PSD* draft did not contain any proposal regarding the referendum, but the Draft Amendment to the Constitution No. 8/VI, subscribed by several members of the *JSD*, proposed referendums on international agreements through which Portugal agreed to jointly exercise the powers needed to construct and strengthen the European Union. The Draft Amendment to the Constitution No. 13/VI, from Luís Fazenda (*UDP*), proposed a compulsory referendum to approve agreements on the participation of Portugal in international organisations where powers would be transferred from the Portuguese State. Finally, the Draft

[289] All drafts are published in *DAR*, Off-print 24/VI, 7 November 1994.

Amendment to the Constitution No. 14/VI, from the *PSD* member Pedro Roseta, only excluded issues and acts that were of a budgetary, tax-related or financial nature from the scope of the referendum.

2.2. The *PCP* Proposal for an Extraordinary Constitutional Revision

As soon as the VII Legislature began, after the October 1995 elections, the *PCP* introduced Draft Resolution No. 1/VII [*DAR* (II-A) 2, 8 November 1995, p. 25]. With the forthcoming revision of the European Union Treaty, the *PCP* considered it essential to invite the Portuguese people to participate in a great national debate, and to express their views on the revision of the European Union Treaty through a referendum. Therefore, the *PCP* proposed to alter Article 118 of the Constitution through an extraordinary revision procedure.

This situation was unusual because the *PCP* proposed a Constitutional revision procedure for the first time. Previous Constitutional revisions had always been initiated by agreements between the *PS* and the *PSD*, with strong opposition from the *PCP*. In addition, there was also the fact that an extraordinary revision was being proposed when the Assembly of the Republic already had the necessary powers to make an ordinary revision.

The *PCP* wanted a Constitutional revision that allows a referendum on the revision of the European Union Treaty, but did not wish to initiate a process that would go encourage further Constitutional tinkering. Thus, citing the urgency of making the referendum Constitutionally possible, the *PCP* sought to disconnect that issue through an extraordinary revision that, once concluded, would not jeopardise a further procedure of ordinary revision. The proposal did not find any objections as to its Constitutionality, but it was never discussed in the plenary sittings because the ordinary revision procedure began on 26 January 1996. [290]

2.3. The European Referendum in the 1997 Constitutional Revision

[290] See report and opinion by Laborinho Lúcio (*PSD*), [*DAR* (II-A) 14, 6 January 1996, pp. 237-240].

The draft amendments to the Constitution,[291] introduced by the *CDS-PP*, *PS*, *PCP*, and *JSD* members,[292] revived the 1994 proposals. The *PSN* and the *UDP* failed to gain representation in Parliament. For the first time, the *PSD* draft proposed a referendum on decisive issues regarding agreements on the participation of Portugal in international organisations, or on amendments to such agreements, before their approval by the Assembly of the Republic.[293] The draft from the independent MPs elected by the *PS* implicitly allowed the referendum on European treaties, given that they only excluded alterations to the Constitution, amnesties and generic pardons, acts of budgetary, tax-related or financial contents, and declarations of war, peace, State of siege or emergency from the scope of the referendum.[294] The *PEV* draft was essentially similar to the *PCP* one.[295]

In this Constitutional revision procedure, the innovation of civic initiatives was introduced. These were publicly presented by their authors in Parliament, and were the object of consideration. Regarding the European referendum, a proposal from Professor Jorge Miranda was also favourable. It removed the exclusion of referendums on international agreements, only excluding alterations to the Constitution, amnesties and generic pardons, decisions of budgetary, tax-related or financial contents, and decisions which during the financial year involved an increase in the State's expenditure or a decrease in its revenues. It also excluded the organisation of the courts and the Public Prosecutors Office (Magalhães, 1997).

The work of the IV Constitutional Revision began with a discussion of the referendum proposals. The *CDS-PP* proposal was discussed in the 21 June 1996 session. It suggested that the referendum be compulsory when it entailed agreements that transferred the powers of Portuguese sovereign bodies to international organisations. This was opposed by all the other parties for the reasons explained above [*DAR* (II) 10 – *RC*, 22 June 1996, pp. 176-180].[296] In the 25 June session other

[291] The Draft Amendment to Constitution No. 1/VII (*CDS-PP*) is published in *DAR* (II-A) 21 – Supplement, 1 February 1996, and the other drafts are published in *DAR* (II-A) 27 – Supplement, 7 March 1996.
[292] Draft Amendments to the Constitution No. 1/VII, 3/VII, 4/VII and 2/VII, respectively.
[293] Draft Amendments to the Constitution No. 5/VII.
[294] Draft Amendments to the Constitution No. 8/VII.
[295] Draft Amendments to the Constitution No. 10/VII.
[296] See page 286. In spite of the availability declared by all the other parties to accept a referendum on the European Treaty, the proposal was not accepted for two other reasons: the disagreement on whether or not the referendum would be strictly compulsory and the

proposals on the European referendum were discussed. The discussion produced a consensus on the enlargement of the referendary scope to all agreements regarding the participation of Portugal in international organisations, or their alterations, with the possibility of enlarging it even further. The question on whether the subject of referendum should be the specific agreement itself, or the broad concept of the agreement, remained inconclusive [*DAR* (II) 11 – *RC*, 26 June 1996, pp. 200-205].

The *CDS-PP* and *PCP* proposals were rejected in the indicative voting during the *CERC* meetings on 16 and 17 July [*DAR* (II) 14 – *RC*, 17 July 1996, pp. 283 e 287 and 15 – *RC*, 18 July 1996, pp. 300-301]. The proposal that prevailed synthesised the *PS* and *PSD* proposals drawn by Vital Moreira, according to which the referendum would be held on important issues of national interest were the object of international agreements, in the terms of Article 164 (j) of the Constitution, except when they concerned peace or the rectification of borders [*DAR* (II) 15 – *RC*, 18 July 1996, p. 303].

After a political agreement was signed between the *PS* and the *PSD* on the Constitutional revision, on 7 March 1997, it became possible to include matters relating to the ratification of international agreements, making the holding of a referendum on European issues viable. In the 23 July plenary sittings, the parties confirmed the positions taken in the *CERC*. The *CDS-PP* and *PCP* proposals for Article 118 were rejected and the proposals that came from the *CERC* with a two thirds majority were passed [DAR (I) 100, 24 July 1997, pp. 3754-3756]. Thus, Article 118(5), which would be renumbered as 115(5), admitted referendums on important issues concerning national interest, which had to be the object of international agreement except when they concerned peace or the rectification of borders.

2.4. The Attempts to Submit the Amsterdam Treaty to Referendum

2.4.1. The Draft Resolutions

Parliamentary initiatives regarding the referendum were introduced soon after the signature of the Amsterdam Treaty, on 2 October 1997. The Government introduced the first on 6 October, (Draft Resolution No. 71/VII). It proposed including Portuguese citizens registered to vote in the national territory and in the other Member States

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fact that the proposal from the *CDS-PP* could be applied to an indefinite number of international agreements and not only to the European Union Treaty.

of the European Union. The proposed referendum would ask whether Portugal should continue its participation in the construction of the European Union resulting from the Amsterdam Treaty [*DAR* (II-A) 3, 17 October 1997, pp. 60-61].

On the very same day, the *PSD* introduced Draft Resolution No. 67/VII, which proposed a referendum in which Portuguese citizens registered to vote in Portugal and abroad would participate. There were three questions: **1)** 'do you agree with deepening the integration of Portugal in the European Union, according to the Amsterdam Treaty?' **2)** 'Do you agree with the reinforcement of the European cooperation of security forces in the struggle against drug trafficking, mafias and others forms of organised crime?' **3)** Do you agree with the reinforcement of European cooperation in the struggle against unemployment, without prejudicing the main responsibility of the Member States?' [*DAR* (II-A) 3, 17 October 1997, pp. 59-60].[297]

On 16 October the *PCP* introduced Draft Resolution No. 69/VII, which had the following question: 'do you agree that the evolution of European integration involves a greater transfer of national sovereignty, including the replacement of the *escudo*[298] and the imposition of fines on countries that do not fulfil the Maastricht criterions, up to and including the new transfers foreseen in the Amsterdam Treaty?' [*DAR* (II-A) 7, 25 October 1997, pp. 121-122]. On 4 March 1998, the *CDS-PP* presented Draft Resolution No. 82/VII so that the Portuguese citizens registered to vote in Portugal and abroad would answer the following question: 'do you agree that the evolution of European integration, resulting from the Amsterdam Treaty, be made through a progressive transfer of sovereign powers, in agreement with the federal pattern?' [*DAR* (II-A) 36, 12 March 1998, pp. 871-873].

On 27 May 1998 the *PSD* introduced Draft Resolution No. 91/VI replacing the previous one [*DAR* (II-A) 55, 30 May 1998, pp. 1202-1203]. The reason given was related to the change of the calendar anticipated for referendums in 1998. The *PSD* had introduced Draft Resolution No. 67/VII in October, aiming to hold the referendum in the spring of 1998. However, the agreement with the *PS* for a referendum on abortion in June included the postponement of the referendums on regionalisation and European integration, which would be held on the

[297] In the admission dispatch of this draft, the President of the Assembly of the Republic, Almeida Santos, was doubtful that the three questions could be considered on the same subject [*DAR* (II-A) 3, 17 October 1997, p. 60].
[298] The Portuguese currency prior to the introduction of the euro.

same day, after summer. The *PSD* understood that holding two referendums simultaneously demanded a simplification of the European question. Therefore, *PSD's* new draft question was: 'do you agree with deepening the integration of Portugal in the European Union, in agreement with the Amsterdam Treaty?'

Finally, on 23 June, the *CDS-PP* introduced Draft Resolution No. 94/VII, replacing the previous one, and including the following questions: **1)** 'do you agree with the participation of Portugal in the European construction within the framework of the Amsterdam Treaty?' **2)** 'Do you agree that the evolution of the European construction be based on the reinforcement of the national States, in the cooperation and solidarity among Governments, and in the democratic scrutiny of the communitarian decisions, in rather than following a pattern of political federalism?' [*DAR* (II-A) 62, 25 June 1998, pp. 1386-1388]. The new draft of the *CDS-PP* reflected the change of the party's leadership, with Paulo Portas taking the place of Manuel Monteiro, and replacing the latter's anti-federalist approach with a more pro-European stance. Therefore, the substitution of the question was controversial within the *CDS-PP* Parliamentary Group, and was opposed by members that were faithful to the defeated former leadership.

The drafts that were introduced had significant differences. As for the electoral universe, the *PSD* and *CDS-PP* drafts proposed the participation of all emigrants registered anywhere around the world. The Government draft proposed, on the other hand, the participation of emigrants registered in other Member States of the European Union, while the *PCP* draft was not specific on that point.

The contents of the questions were also significant. Both the *PS* Government and the *PSD* wanted to lead voters to an affirmative vote, asking them about the participation of Portugal in the construction of European Union. The acceptance of that integration would necessarily involve the acceptance of the Amsterdam Treaty. In the initial phase, the *PSD* still added questions that were hardly refusable, like the struggle against crime or unemployment, trying to link such aims to the Amsterdam Treaty. However, the *PSD* retreated from those additional questions, moving towards acceptance of the Government's question. On its side, the *PCP's* draft questions tried to introduce points that were critical of the European integration process, aiming to lead voters to the negative answer. Thus, the *PCP* draft referred to the transfer of national sovereignty, the end of the national currency, and the fines applied to the countries that did not fulfil the Maastricht criterions. The *CDS-PP* was

undergoing an internal transition process, and this flux was reflected in the draft resolution. The party evolved from an anti-federalist position, expressed in Draft Resolution No. 82/VII, to an acceptance of the Amsterdam Treaty. The latter, more pro-European, stance was seen in the first question of Draft Resolution No. 94/VII, which approached the question supported by the *PS* and the *PSD*, reflecting the change of leadership in the party.[299]

All of the referendum drafts attempted to avoid an obvious problem, which came from the terms adopted in the 1997 Constitutional revision: the fact that the Constitution did not allow referendum directly on the approval of international agreements, but only on the broad issues that such agreements raised. Although everyone had the Amsterdam Treaty in mind, there was doubt about the effect of a negative answer, since the ratification of the referendum could still proceed.

2.4.2. The Proposal

On 29 June, the plenary of the Assembly of the Republic discussed Draft Resolutions No. 69/VII, 91/VII and 94/VII and Government Draft No. 71/VII [*DAR* (I) 86, 30 June 1998, pp. 2970-2981]. The *PCP* draft was rejected with nay votes from the *PS*, *PSD* and *CDS-PP*, but had yea votes from the *PCP* and *PEV* [*DAR* (I) 86, 30 June 1998, pp. 3005]. The *CDS-PP* draft had nay votes from the *PS*, *PCP* and *PEV* and abstentions from the *PSD*, having also been rejected [*DAR* (I) 86, 30 June 1998, pp. 3005].

As for the Government draft, the *PS* introduced two draft alterations. The first agreed with the *PSD*, and proposed to ask: 'do you agree with the following of the participation of Portugal in the European Union within the framework of the Amsterdam Treaty?' It had yea votes from the *PS* and *PSD*, abstentions from the *CDS-PP* and nay votes from the *PCP*, *PEV* and the *PS* member Helena Roseta [*DAR* (I) 86, 30 June 1998, pp. 3004].[300] The second draft alteration was about the electoral universe and proposed the participation of registered citizens in the national territory and in the Member States of the European Union. It had yea votes from the *PS*, nay votes from the *PSD* and Helena Roseta and

[299] In the voting of Draft Resolution No. 94/VII, on 29 June, six *CDS-PP* members explained that they had voted yea due to the partisan discipline, in spite of their disagreement with the drafting of the first question [*DAR* (I) 86, 30 June 1998, pp. 3020-3024].

[300] The negative vote from Helena Roseta was justified due to the disagreement towards the decision of holding new referendums without a reflection on the scarce participation in the referendum on the abortion held two days before.

abstentions from the *CDS-PP*, *PCP* and *PEV*. The *PSD* submitted the electoral universe to voting on its draft, proposing to include all Portuguese citizens registered abroad. It had the yea votes from the *PSD* and the *CDS-PP* and nay votes from the *PS*, *PCP* and *PEV*, which led to its rejection [*DAR* (I) 86, 30 June 1998, pp. 3005].

Thus, the final text passed included the *PS/PSD* question ('do you agree with the following of the participation of Portugal in the European Union within the framework of the Amsterdam Treaty?') and the electoral universe proposed by the *PS*, giving the right to vote only to the Portuguese citizens registered to vote in the Member States of the EU.

2.4.3. The Refusal

After the draft referendum was passed through Resolution No. 36-A/98, of 30 June, it was submitted to the Constitutional Court. The Court decided, in Ruling No. 531/98, of 29 July, that the draft referendum passed by the Assembly of the Republic did not observe the requirements of objectivity, clarity and precision demanded by Article 115(6) of the Constitution and by Article 7(2) of the Referendum Law. Consequently the draft was considered neither Constitutional nor legal [*DR* 174 (I-A) Supplement, 30 July 1998].

The Court rejected the question because they considered that it was not formulated with clarity or precision, and it could be interpreted in more than one way. According to one interpretation, the focus of the question was the participation of Portugal in the construction of the European Union, with reference to the framework of the Amsterdam Treaty as a circumstantial, complementary or explanatory element. According to another interpretation, the subject of the referendum was the approval of the Amsterdam Treaty, with the first part of the phrase being a circumstantial, complementary or explanatory element.

The Court also considered that the question was not objectively formulated. They held that the term 'following' in the expression 'following of the participation of Portugal in the construction of the European Union within the framework of the Amsterdam Treaty' could lead the voters to misinterpret the consequences of rejecting the Treaty, thus influencing their answer. The Court was concerned that the wording of the question might lead less informed voters to assume that a negative answer implied a withdrawal from the European Union. Therefore, the question was formulated to lead the voters who wanted Portugal to continue its participation in the construction of the European Union to vote affirmatively in the referendum. This downplayed the essence of the

changes that were proposed, which related to the Amsterdam Treaty rather than the European Union itself.[301]

This attempt to hold a referendum failed, with consequences regarding the ratification of the Amsterdam Treaty by Portugal. The question in 1998 was different from the one that had shaken the country in 1992 regarding the Maastricht Treaty. At that time, the question that divided the parties and the country was the referendum itself. The political forces and Portuguese society were divided between favouring and rejecting the very idea of a referendum. In 1998 all the political forces agreed that there should be a referendum, but they were divided about 'which referendum'. The *PCP* wanted to focus on Portuguese participation in the single currency, and tried to achieve a formula to attack it through the Amsterdam Treaty. The two main parties tried, on the other hand, to compromise by offering a referendum but leading voters towards a pro-integration response.

In the end, the question about the eventual referendum on the Amsterdam Treaty was a way to heal the wounds of Maastricht. However, as Maria Luísa Duarte wrote (1998, p. 60), the removal of the Constitutional obstacle was late. Important, and even irreversible, decisions were taken at the time of the Maastricht Treaty: new political structures were built that was not merely economic in nature, but also set boundaries on the powers of the Member States in the areas of traditional sovereignty. Contrarily to what happened in other States, namely in France and in Denmark, it was not possible at that time to ask the Portuguese people if they agreed or not on the creation of a single currency. It is even questionable whether a referendum on the Amsterdam Treaty was really desired by its proposers, since it is hard to see that the potential advantages of holding a referendum justified the potential political and financial costs. Therefore, Duarte suggests that the Portuguese Government hoped that the Constitutional Court would block this politically inopportune referendum. (Duarte, 1998, p. 62).

Therefore, calls to hold a referendum on the Amsterdam Treaty failed. On 10 August 1998, Draft Resolution No. 118/VII was introduced in the Assembly of the Republic. This ratified the Amsterdam Treaty. It was passed on 6 January 1999 with yea votes from the *PS*, *PSD* and *CDS-PP* and nay votes from the *PCP*, *PEV* and nine members from the *CDS-PP* [*DAR* (I) 31, 7 January 1999, p. 1178].

[301] The decision was taken by eight votes against five.

3. The Referendum Proposals on the Nice Treaty

3.1. The European Referendum in the 2001 Constitutional Revision

In 2001, the Portuguese Constitution was again reviewed through an extraordinary procedure. That year, the Government submitted the Rome Statute of the International Criminal Court to the Assembly of the Republic for approval. The ratification of that agreement by the Portuguese State was inconsistent with some Constitutional provisions at that time. As a result, the amendment was supported by the *PS*, the *PSD* and the *CDS-PP*. Given that the previous ordinary Constitutional revision had been in 1997, less than five years before, the revision would only be possible through an extraordinary procedure.

That procedure began on 2 March 2001 when the *PS* introduced a draft resolution so that the Assembly of the Republic could take up extraordinary powers for Constitutional revision. This was followed by a similar initiative from the *PSD*. Both parties finally agreed on a joint resolution, which was passed on 29 March and gave permission to commence the V Constitutional Revision. Only the *PS*, the *PSD* and the *CDS-PP* introduced draft amendments to the Constitution.

In the event, the Constitutional revision was not limited to its initial purpose. Using the Constitutional cover of the International Criminal Court jurisdiction, the revision also changed Constitutional provisions regarding **a)** the Constitutional status of citizens from the member States of the *CPLP* (Community of Portuguese Language Countries) living in Portugal; **b)** the allowance of the application of rules on judicial cooperation in criminal matters established in the European Union; **c)** the Constitutional rule of home inviolability which was now broken; **d)** amended provisions on the restrictions of the exercise of rights by military personnel and members of the security forces and services; and **e)** qualified Portuguese as the official language of the Republic (Magalhães, 2004).

Before the unexpected widening of the Constitutional revision, the *PCP* went forward in the *CERC* meeting of 27 September 2001 with a proposal that allowed the Constitution to hold referendums on agreements related to the participation of Portugal in the European Union. This was proposed with a view to submitting the ratification of the Treaty of Nice to a referendum. It had been signed on 26 February and introduced for approval in the Assembly of the Republic since 25 May by Draft Resolution No. 59/VIII [*DAR* (II-A) 62 – Supplement, 31 May 2001].

The *PCP* proposal had the same intention as the ones introduced in previous revisions: it kept the Constitutional interdiction of referendums on the ratification of international agreements, except for the agreements through which Portugal agreed to jointly exercise the powers needed to construct and strengthen the European Union. Submitted to an indicative voting in the *CERC*, the proposal was rejected with yea votes from the *PCP*, nay votes from the *PS* and *PSD* and abstentions from the *CDS-PP* and *BE* [*DAR*, 18 – *RC*, 27 September 2001, p. 274]. In the first plenary sittings held on 4 October, which closed the Constitutional revision, the proposal had nay votes from the *PS* and *PSD*, yea votes from the *PCP*, *BE* and *PEV* and abstentions from the *CDS-PP* [*DAR* (I) 9, 6 October 2001, p. 302].

Despite this conclusion, the *BE* introduced Draft Resolution No. 155/VIII on the Nice Treaty [*DAR* (II-A) 7, 16 October 2001, p. 106]. This draft included a proposal for a referendum, in which Portuguese citizens living in Portugal and abroad would take part, with the following question: 'do you agree with the changes introduced in the European Union, resulting from the Nice Treaty?' This initiative was never discussed. The Nice Treaty was passed for ratification in the Assembly of the Republic on 25 October 2001, with yea votes from the *PSD*, *PS* and *CDS-PP* and nay votes from the *PCP*, *BE* and *PEV* [*DAR* (I) 17, 25 October 2001, p. 591].

4. The Question of the Referendum on the European Constitutional Treaty

4.1. The Proposal for a Referendum on the Same Day of the European Elections

On 8 October 2003, the *PSD*, after a meeting of its National Council, announced its position in favour of a referendum in Portugal to follow the revision of the European Treaties, which would be passed in the Intergovernmental Conference. They proposed that the referendum should be held on the very same day as the elections for the European Parliament on 13 June 2004. This announcement was made in the Assembly of the Republic by the parliamentary leader, Guilherme Silva. With that in mind, the National Council of the *PSD* assigned the parliamentary group to propose the Constitutional alterations needed for that in the Assembly of the Republic [*DAR* (I) 9, 9 October 2003, pp. 436-438]. The proposal was supported by the *CDS-PP*[302] and opposed by all

[302] See speech by Telmo Correia [*DAR* (I) 9, 9 October 2003, pp. 438-439].

the other parties,[303] which accused the *PSD* of aiming to distract attention from the troubles of the *PSD*/*CDS-PP* coalition Government.

Indeed, the proposal was soon condemned to defeat. Given that the Constitution expressly forbids the coincidence of the referendum and the elections for the European Parliament, the success of the proposals would depend on a Constitutional revision that removed that forbiddance, which would only be possible with the *PS* agreement. However, on the very same day the proposal was announced, the *PS* member António Costa peremptorily rejected the idea [*DAR* (I) 9, 9 October 2003, p 442]. There would be no referendum on 13 June 2004.

Despite that refusal, Prime Minister Durão Barroso, in the monthly debate in Parliament two days later – on 10 October 2003 – insisted on proposing the referendum and the European elections simultaneously, for three reasons: firstly, because the European elections would set the stage for the great European debate; secondly, because there would be more popular participation; thirdly, because in 2004 there would be at least two elections, one for the European Parliament and another for the Regional Assemblies of The Azores and Madeira [*DAR* (I) 11, 11 October 2003, p. 533]. The proposal was again refused by the *PS* leader Ferro Rodrigues. He expressed his support for referendum if the Treaty involved significant changes in the share of sovereignty between Portugal and the European Union, but he reasserted the *PS* position that the referendum should not be on the same day as the European elections [*DAR* (I) 11, 11 October 2003, p. 536].

In the event, the deadlock over the final treaty draft, which became stuck at the European Council in Brussels on 12 and 13 December 2003, meant that a referendum and European elections on the same day would not be possible. This was recognised by the Prime Minister in the monthly debate of 18 December 2003, whose subject was precisely the deadlock of the Intergovernmental Conference.

4.2. The Draft Referendum on the Main Choices of the Treaty

A few days later, as soon as the works on the Convention calling for a draft on the Constitution for Europe were finished, and the works for the Intergovernmental Convention opened, the *BE* introduced Draft Resolution No. 185/IX proposing a referendum on the main choices of the

[303] See speeches by Isabel de Castro (*PEV*), Bernardino Soares (*PCP*), Francisco Louçã (*BE*) and António Costa (*PS*), [*DAR* (I) 9, 9 October 2003, pp. 438-443].

Treaty Establishing a Constitution for Europe [*DAR* (II-A) 10, 25 October 2003, p. 394]. This draft, introduced on 22 October, assumed that all Portuguese politicians with responsibilities would support the holding of a referendum on the fundamental choices of the so-called European Constitution, considering it desirable that the Portuguese people should decide if the Government should sign the treaty, or not.

The question proposed included three questions: **1)** 'do you agree with the institution of a Constitution of the European Union, which will prevail over the Constitution of the Portuguese Republic?' **2)** 'Do you agree with the creation of the post of President of the European Council, replacing the rotational presidencies by all Member States of the European Union?' **3)** 'Do you agree with the increase of responsibilities and powers of the European Union in the sphere of defence?'

Thus, the *BE* wanted to position itself in relation to the other parties by proposing the referendum. This would anticipate the treaty itself. The proposition to hold a referendum on some questions discussed in the works of the Convention, that would be included in the future treaty, would stimulate opposition to its ratification. For that matter, the *BE* selected the question on the primacy of the European Constitution over the Portuguese Constitution, the end of the rotational presidencies and the European policy of defence.

The draft was discussed on 3 December 2003 at the *BE*'s initiative. The *PS* expressed itself in favour of a referendum, but only after knowing the contents of the treaty and without any Constitutional revision being necessary.[304] The *PSD* was also in favour of a referendum on the European construction, stressing that it did not seek to avoid the Portuguese people's consultation. Having in mind that the new European treaty would be adopted soon, the *PSD* considered that the moment of the consultation was near, and that moment should be the same as the elections for the European Parliament in June 2004, as had been suggested in October 2003. Regarding the *BE* proposal, the *PSD* considered it improper, both in terms of time and form, because the treaty was not yet finalised, and because it placed separate questions, chosen without criterion and logic.[305]

The *CDS-PP* followed the *PSD* position: the referendum should be on the same day of the European elections in June.[306] The *PCP*

[304] See speech by António José Seguro [*DAR* (I) 27, 4 December 2003, p. 1566].
[305] See speech by Pedro Duarte [*DAR* (I) 27, 4 December 2003, pp. 1572-1573].
[306] See speech by Diogo Feyo [*DAR* (I) 27, 4 December 2003, pp. 1576-1577].

strongly opposed the treaty that was being drawn, and criticised the *PS* and *PSD* for having approved a Constitutional provision in 1997 that made a referendum on the European Treaties impracticable. They also supported its revision and rejected the idea of simultaneously holding the referendum and the European elections. However, the *PCP* did not support the *BE* draft. In spite of supporting a referendum, the *PCP* also considered that it should only take place when the ratification procedure was underway, prior to the decisive moment of binding the draft to the Portuguese State. The *PCP* also raised objections as to the Constitutionality of the proposed questions.[307] The *PEV* agreed on the need for the referendum, but considered the *BE* proposal premature: a referendum before the conclusion of the Intergovernmental Conference could be ineffective.[308]

The *BE* draft was submitted to voting and rejected with the only yea votes coming from the *BE*. The *PSD*, the *PS* and the *CDS-PP* voted nay and the *PCP* and the *PEV* abstained [*DAR* (I) 27, 4 December 2003, p. 1594].

4.3. The Resolution on the European Constitution

On 3 December 2003, the European Affairs and Foreign Policy Committee[309] introduced Draft Resolution No. 194/IX [*DAR* (II-A) 19 – Supplement, 6 December 2003, pp. 701-702] on the European Constitution. This took into consideration the works of the Intergovernmental Conference, and the holding of a European Council summit in December. It proposed that the Assembly of the Republic should 'consider it desirable' to hold a referendum in Portugal before agreeing to the further evolution of the European Union.

This draft, introduced after a report on the works of the Convention (which approved the draft of Treaty Establishing a Constitution for Europe, drawn by António José Seguro (*PS*) for the European Affairs and Foreign Policy Committee), was discussed on 12 December (Seguro, 2004). In the debate, members of the *PCP*, *BE* and *PEV* criticised the terms referred in the draft resolution regarding the referendum, where it was considered 'desirable'. For these parties, the

[307] See speech by Bernardino Soares [*DAR* (I) 27, 4 December 2003, pp. 1582-1583].
[308] See speech by Heloísa Apolónia [*DAR* (I) 27, 4 December 2003, p. 1584].
[309] In the IX Legislature (2001-2004) the Assembly of the Republic decided to join the Committees of European and Foreign Affairs. That solution would be changed in the next legislature, in 2005.

resolution that came to be passed should be unambiguos the need of the referendum.[310]

4.4. The European Referendum in the 2004 Constitutional Revision

The procedure which led to the VI Constitutional Revision began on 7 October 2003, with the introduction of the Draft Amendment to the Constitution No. 1/IX (*PS*), and finished on 23 April 2004. Three of the draft amendments included provisions regarding the referendum, having in mind especially the referendum on the European Constitutional Treaty, given the compromise assumed by all of the parties.

The *PS* and *BE* drafts did not include any change in the Constitutional provisions on the referendum, on the grounds that holding a referendum would not require any Constitutional change.[311] The Draft Amendment to the Constitution No. 3/IX, which was jointly introduced by the *PSD* and the *CDS-PP* [*DAR* (II-A) 14, 21 November 2003, pp. 564(9-24)] proposed the elimination of the Constitutional provision that forbade the calling and holding of referendums between the date of calling and holding of general elections for the sovereignty organs, or the self-government bodies of the autonomous regions and the local authorities, as well as the members of the European Parliament [Article 115(7)]. The reason for this proposal was obvious: it wished to give Constitutional covering to the proposal announced by the *PSD* in October 2003 to hold the referendum and the elections for the European Parliament on the same day.

The Draft Amendment to the Constitution No. 4/IX (*PCP*), [*DAR* (II-A) 14, 21 November 2003, pp. 564(24-35)] wished to allow, in line with the proposals made on the 1997 and 2001 revisions, the appeal for the referendum on all subjects that were considered fundamental for the participation of Portugal in the European Union. Taking into consideration that the Constitutional text only allowed the referendum on important issues concerning the national interest which were included in an international agreement, the *PCP* wanted to widen its scope to enable an explicit referendum about whether or not Portugal should be bound to a new treaty, or its refusal. They argued that it was important to make the

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[310] See speeches by Honório Novo (*PCP*), Luís Fazenda (*BE*) and Heloísa Apolónia (*PEV*), [*DAR* (I) 31, 12 December 2003, pp. 1789, 1790 and 1797].

[311] See Draft Amendments to the Constitution No. 1/IX [*DAR* (II-A) 8 – Supplement, 18 October 2003, pp. 338(2-7)] and No. 2/IX [*DAR* (II-A) 14 – Supplement, 21 November 2003, pp. 564(2-9)].

question specific so that the results of the referendum could translate into clear action. The Draft Amendment to the Constitution No. 6/IX (*PEV*), although different, aimed at a similar purpose [*DAR* (II-A) 14, 21 November 2003, pp. 564(39-45)].

In the *CERC* meeting of 21 April 2004 the *PSD* and the *CDS-PP* withdrew their proposal to have the referendum and the elections for the European Parliament coincide, given that it was already too late to arrange both elections on the same day. The *PCP* and *PEV* proposals were rejected with yea votes from the *PCP*, *BE* and *PEV* and nay votes from the *PS*, *PSD* and *CDS-PP* [*DAR* (II − *RC*) 10, 22 April 2004, pp. 318-319]. On 22 April the texts were discussed and voted in plenary sittings. The *PCP* proposal was rejected by 173 nay votes (87 *PSD*, 73 *PS* and 13 *CDS-PP*), and 13 yea votes (four *PCP*, three BE, two *PEV*, two *PSD* and two *PS*).

4.5. The Draft Referendums on the European Constitutional Treaty

4.5.1. The Antecedents

The approval of a draft agreement in the Intergovernmental Conference on 18 June 2004 was the starting point of a new phase on the debate about the referendum in Portugal. On 23 June there was an emergency debate in the Assembly of the Republic requested by the *BE* on the European Constitution and the referendum in Portugal [*DAR* (I) 99, 24 June 2004, pp. 5371-5391]. On that occasion, the requesting party urged the Government to define its position by holding referendum before the spring of 2005, and formulating a viable, clear and explanatory question.[312] In response, the Foreign Minister, Teresa Patrício Gouveia, announced that, by September 2004, the Government would introduce to the Assembly of the Republic a proposal for a referendum during 2005 [*DAR* (I) 99, 24 June 2004, pp. 5374].

Meanwhile, the appointment of Prime Minister José Manuel Durão Barroso as President of the European Commission forced the formation of a new Government under the leadership of Pedro Santana Lopes. Confronted with the European referendum, during the debate on the Government's Programme on 27 July, the new Prime Minister was less peremptory. He affirmed his will to hold a referendum, but this conditional on unspecified agreements and other vague conditions. He

[312] See speech by Luís Fazenda [*DAR* (I) 99, 24 June 2004, p. 5372].

refused to assume any concrete compromise on behalf of the Government.[313]

A clearer position on behalf of the Government was taken on 15 September by the Parliamentary Affairs Minister, Rui Gomes da Silva. Taking into consideration the foreseeable approval of the Constitutional Treaty in the European Council of October, the Government announced its intention to propose the referendum for 5 June 2005 [DAR (I) 1, 16 September 2004, p. 42].

4.5.2. The Drafts

On 29 October 2004, the Treaty Establishing a Constitution for Europe was signed in Rome. Consequently, on 18 November, Draft Resolutions No. 290/IX (*BE*), 291/IX (*PCP*) and 292/IX (*PSD*, *PS* and *CDS-PP*) were introduced in the Assembly of the Republic, in order to submit that Treaty to referendum [DAR (II-A) 17, 20 November 2004, pp. 111-113].

The question in the *BE* draft was the following: 'do you agree with the alteration of the institutions and responsibilities of the European Union, in the terms of the Treaty Establishing a Constitution for Europe?' The *PCP* question was: 'do you agree with binding Portugal to the new treaty that institutes a Constitution for Europe?' In explaining its draft, the *PCP* called attention to the risk of unConstitutionality in the questions, regretting that the Constitutional revision had not clarified matters. They were critical of the possibility of adopting a question that would lead to an ambiguous situation regarding the effect of the referendum on the ratification of the Treaty. The question of the common draft by the *PSD*, *PS* and *CDS-PP* was the following: 'do you agree with the Charter of Fundamental Rights, the rules of voting by a qualified majority and the new institutional framework of the European Union, in the terms of the Constitution for Europe?'

The debate about the drafts took place on 18 November 2004, and it is important to compare the positions of the different parties [DAR (I) 18, 19 November 2004, pp. 1028-1041]. The *PSD* declared that it had done everything to hold a referendum on the Constitution for Europe. It had assumed since the beginning of the works of the Convention that if the result was the approval of a text which included important advances in the rights of the European citizens and in the definition of new rules

[313] See speech by Francisco Louçã (*BE*) and the Prime Minister's response [DAR (I) 106, 28 July 2004, pp. 5712-5714].

which significantly modulated the working and the institutions of the European Union, it would demand the holding of a referendum. However, the *PSD*, tried to show some distance as to the question they had subscribed, expressing their preference for the questions proposed by the *PCP* and by the *BE* because it was a simple and linear question. They even declared a willingness to make an express Constitutional authorisation, if needed.[314]

The *PS* supported the proposal that had been subscribed jointly by the *PSD* and the *CDS-PP*, despite stating that it was not 'its own question'. The criterion, according to the *PS* Statement, was innovation. The idea was to consult the Portuguese people on the new matters included in the Treaty, which would be the extension of the rule of qualified majority and the Charter of Fundamental Rights.[315] The *CDS-PP* renewed its position in favour of the referendum and supported the question that they had subscribed as the 'possible question', despite having participated in the meetings with the *PS* and the *PSD* where the question was drawn up.[316]

The *BE* declared itself perplexed by the question proposed by the *PS*, the *PSD* and the *CDS-PP*, expressing concern that it could, once again, lead to the frustration of the referendum. The question was not precise because it included not one but three questions. It was also not objective because it focused on some of the Treaty's innovations while neglecting to mention others. Finally, the question was not impartial because it suggested an affirmative answer by selecting on the aspects of the Treaty that were likely to prove more attractive to the people.[317]

The *PCP* accused the *PS*, the *PSD* and the *CDS-PP* of seeking to avoid the referendum. These parties had refused a Constitutional revision six months before that would have allowed the referendum on the Constitutional Treaty without any doubt. Furthermore, the question that they proposed clearly ran the risk of being refused by the Constitutional Court because it was not objective, clear and precise. On the other hand, the *PCP* accused the proposers of not clarifying the practical effect of an eventual negative answer, which also meant that they were not clearly assuming that in that case the Treaty could not be ratified by Portugal. For

[314] See speech by Luís Marques Guedes [*DAR* (I) 18, 19 November 2004, p. 1028].
[315] See speech by António José Seguro [*DAR* (I) 18, 19 November 2004, p. 1029].
[316] See speech by Miguel Anacoreta Correia [*DAR* (I) 18, 19 November 2004, p. 1030].
[317] See speech by Luís Fazenda [*DAR* (I) 18, 19 November 2004, p. 1030-1031].

the *PCP*, the proposed referendum would be a 'make-believe' referendum.[318]

The draft resolutions from the *PCP* and *BE* were rejected, with yea votes from both parties and the *PEV* and nay votes from the *PS*, the *PSD* and the *CDS-PP*. The draft resolution subscribed by these parties had the respective affirmative votes and negative votes from the others [*DAR* (I) 18, 19 November 2004, p. 1041].[319]

The draft referendum was submitted to the prior review of the Constitutional Court on 25 November 2004. As predicted, it was judged unConstitutional and illegal because of its lack of clarity, and because the question was not formulated for a 'yes' or 'no' answer.[320] The Court considered that the question was not clear, because it contained three different questions. The referendum addressed a global judgement – whether or not there should be a Constitution for Europe – but the question was not clear in that respect. On the other hand, by including three autonomous questions, it was clear that the question was not formulated for a 'yes or no' answer. Consequently, the President of the Republic did not call the referendum and announced his decision to the Assembly of the Republic on 6 January 2005 [*DAR* (I) 22, 7 January 2005, p. 1413].

4.5.3. The Outcome of a Failed Referendum

The outcome of the draft referendum on the European Constitutional Treaty in the IX Legislature justified the suspicions of those who had argued that the question (jointly subscribed and passed by the *PSD*, the *PS* and the *CDS-PP*) was condemned, from the start, to being declared unConstitutional. Thus, the *PCP*, the *BE* and the *PEV* accused the proposers of concealing their true lack of will to submit the ratification of the European Constitutional Treaty to the popular verdict, hiding behind a false referendum proposal.

The *PSD* refuted these accusations, accusing the *PS* of formulating the question alone. Guilherme Silva, the parliamentary leader of the *PSD* at that time, later described the arrangements between the *PSD*/*CDS-PP* parliamentary majority and the *PS* regarding the question to adopt:

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[318] See speech by Bernardino Soares [*DAR* (I) 18, 19 November 2004, pp. 1031.1032].
[319] The resolution is published in *DAR* (II-A) 20, 3 December 2004, p. 2.
[320] See Ruling No. 704/2004 [*DR* (I-A) 304, 30 December 2004]. The decision was passed by 12 votes against one.

When the works of the Convention were still running we thought that, if the result of these works were significant changes in the framework of the functioning of the European Union, as an actual result of the European Constitutional Treaty, it would be imperative to consult the Portuguese people, by referendum, on that subject. And we said from that very instant that a Constitutional revision was needed. It was not thinkable to formulate a clear question on that subject without a Constitutional revision.

We insisted near the leadership of the Socialist Party, to move forward with a Constitutional revision that would allow an exceptional solution, but we found a barrier of opposition from the PS. The Secretary General of the PS himself said the following to my party's leadership, in my presence: we accept a Constitutional revision only if it demonstrated that we cannot do this referendum in the framework of the Constitution in force. We then began the fate and the torment of the question.

In that sense, we posed the Socialist Party with a very clear question: we feel that it is difficult to find a question that, in the present framework, could be Constitutional. If you found it, we would agree with it. If you gave us the guarantee of its Constitutionality, we shall not touch it or even add a comma. As we wanted to make this consultation by any means, we were even confronted with the following demand from the Socialist Party: 'this is our question, but we don't want to subscribe it. Do it yourself in your draft resolution.' At last, the deal was known, that is, the draft resolution was subscribed by the PSD, the PS and the CDS-PP.[321]

4.6. The Extraordinary Constitutional Revision of 2005

4.6.1. Preliminaries

In the X Legislature, on 16 May 2005, the *PSD* introduced Draft Resolution No. 5/X [*DAR* (II-A) 4, 2 April 2005, pp. 105-106] so that the Assembly of the Republic could assume extraordinary powers for a Constitutional revision. For the proposing party, the idea was to overcome the Constitutional blockade that existed on the possibility of a referendum on the European Constitutional Treaty, which subsisted in the previous legislature because of *PS*. On 30 March, the socialist parliamentary majority took a similar initiative, through Draft Resolution No. 12/X [*DAR* (II-A) 4, 2 April 2005, p. 111], recognising the difficulty of holding

[321] This Statement was uttered during the debates of the VII Constitutional Revision on 31 May 2005 [*DAR* (II – *RC*) I June 2005, pp. 14-15].

the referendum if some changes were not made to the existing Constitutional system. The draft resolutions were discussed on 7 April 2005 and passed unanimously, with the respective text being unified under a proposal by the President of the Assembly [*DAR* (I) 6, 8 April 2005, pp. 197-209].

The only real disagreement of the debate was on the date of the referendum, given that the *PS* started to support that the European referendum be on the same day as the elections for local authorities in October 2005. This proposal had been announced by the Prime Minister, José Sócrates in the Government's Programme debate on 21 March 2005 [DAR (I) 3, 22 March 2005, p. 53]. Regarding that, the *PCP* expressed its disagreement and stressed that such a proposal meant a change of opinion from the *PS*, which a few months before had contested the *PSD* proposal to make the referendum and the elections for the European Parliament coincide.[322]

4.6.2. The Draft Amendments to the Constitution

Six draft amendments to the Constitution were introduced.[323] The *PS* draft, introduced on 8 April, included two provisions:[324] one of them removed the prohibition of coincidence between the day that national referendums and elections for local authority bodies were held; the other added a transitory provision allowing a referendum on the approval of the Treaty Establishing a Constitution for Europe, making an exception in the Constitutional provision that only allowed the referendum on issues which should be the object of agreements and not the agreements themselves.

The *PCP* draft, introduced on 13 May, aimed only to change Article 115 of the Constitution. It exempted the construction and strengthening of the European Union in the prohibition of submitting international agreements to referendum.[325] The *PSD* draft, introduced on

[322] See speeches by António Filipe (*PCP*) and Guilherme de Oliveira Martins (*PS*), [*DAR* (I) 3, 22 March 2005, pp. 205-206 and 211].
[323] One of the drafts, introduced by monarchist members elected by the *PSD* did not make reference to the subject of the referendum and was only aimed at removing the Constitutional reference to the republican form of government as a matter that any Constitutional revision must respect.
[324] See Draft Amendment to Constitution No. 1/X [*DAR* (II-A) 15, 19 May 2005, p. 2].
[325] See Draft Amendment to the Constitution No. 2/X [*DAR* (II-A) 15, 19 May 2005, pp. 3-5].

the same day,[326] included two provisions: a transitory provision, in order to allow the referendum on the Treaty Establishing a Constitution for Europe, signed in 2004, and its future alterations, and another provision in order to allow the coincidence between the holding of only this referendum, and the elections for local authority bodies. The *CDS-PP* draft,[327] also introduced on 13 May, included a provision that was not on the European referendum but insisted on the allowance of a Constitutional referendum, which only excluded matters in which the Constitutional revision would be restricted to in the terms of Article 288.

Regarding the European referendum, the *CDS-PP* proposed that the Treaty Establishing a Constitution for Europe be considered an issue of important national interest in order to be submitted to referendum. The *CDS-PP* also proposed to make it possible to hold a referendum and local elections simultaneously. On the very same day, the *CDS-PP* introduced Bill No. 79/X, which changed the Referendum Law in terms that reflected its draft amendments to the Constitution [*DAR* (II-A) 17, 21 May 2005, pp. 21-22]. The *PEV* draft, introduced on 16 May, only proposed an exception in the interdiction of submitting international agreements to referendum in order to allow the referendum on the European Constitutional Treaty.[328]

4.6.3. The Vicissitudes of the Final Decision

In the works of the *CERC* which took place on 1 June, a common proposal from the *PS*, the *PSD* and the *CDS-PP* was introduced. It replaced the draft amendments from the three parties. Thus, a transitory provision would be introduced in the Constitution in order to expressly allow the Assembly of the Republic to call and hold a referendum on the Treaty Establishing a Constitution for Europe or its alterations. This referendum could be held on the same day as the general elections for the local authority bodies. The proposal had yea votes from the *PS*, the *PSD* and the *CDS-PP* and nay votes from the *PCP*, the *BE* and the *PEV*. The main criticism from these parties, besides the disagreement as to the coincidence with the local elections, was the direct reference to the European Constitutional Treaty, at a moment when, due to the holding of referendums in France (on 29 May) and in The Netherlands (on the very

[326] See Draft Amendment to the Constitution No. 3/X [*DAR* (II-A) 15, 19 May 2005, pp. 5-6].
[327] See Draft Amendments to the Constitution No. 4/X [*DAR* (II-A) 15, 19 May 2005, pp. 6-7].
[328] See Draft Amendment to the Constitution No. 6/X [*DAR* (II-A) 15, 19 May 2005, pp. 8-9].

same day, 1 June) with negative results for the ratification of the Treaty, its viability was obviously prejudiced. The *PCP* and the *PEV* did not give up on their drafts, which had affirmative votes from the proposers and the *BE* and negative votes from the *PS*, *PSD* and *CDS-PP*.[329]

The debate on the Constitutional revision in plenary sittings took place on the same day as the debate on the European Council of Brussels (16 and 17 June 2005), which, after the referendums of France and The Netherlands, had decided to halt the ratification process of the European Constitutional Treaty. In that debate, the Parliamentary Affairs Minister, Augusto Santos Silva, proposed the postponement *sine die* of the national referendum foreseen for October, but he reaffirmed the Government's commitment to submit the Treaty to referendum, taking into consideration that any other solution would be unacceptable and would be contrary to the growing interest of the Portuguese people in the European questions [*DAR* (I) 32, 23 June 2005, p. 1288]. This position of the Portuguese Government was accepted by the opposition on the right (*PSD* and *CDS-PP*) but criticised by the opposition on the left (*PCP*, *BE* and *PEV*). The latter opposed the Treaty, and considered that, after the French and Dutch referendums, the implementation of the Constitutional Treaty had been shelved. As a result, insisting it be submitted to a referendum did not make any sense.[330]

At the beginning of the debate in the plenary, the proposal that had been passed in the *CERC* was withdrawn by its proponents and replaced with another one. The chance of having a referendum in October was out of the question. Therefore, holding a referendum simultaneously with the local elections did not make sense, and the proposal to make this possible was withdrawn. On the other hand, since there was a strong possibility that the ratification of the European Constitutional Treaty would be scrapped and another treaty drawn on same topic, it was necessary to create structures that would guarantee that any future treaty be submitted to a binding referendum.

For that reason, the final proposal allowed the calling and holding of a referendum on the approval of any treaty that had as its purpose the construction and strengthening of the European Union. According to Vitalino Canas (*PS*), the Portuguese people would be asked if they agreed that the Assembly of the Republic approve a treaty whose

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[329] See debate and voting in *DAR* (II – *RC*) 3, 3 June 2005.

[330] See speeches by Honório Novo (*PCP*), Luís Fazenda (*BE*) and Heloísa Apolónia (*PEV*), [*DAR* (I) 32, 23 June 2005, p. 1293-1296].

purpose was the construction and strengthening of the European Union [*DAR* (I) 32, 23 June 2005, p. 1311].

In the final vote, the *PCP* and *PEV* drafts had 174 nay votes (101 *PS*, 63 *PSD* and 10 *CDS-PP*) and 20 yea votes (11 *PCP*, seven *BE* and two *PEV*). A *BE* proposal, submitted directly to the plenary, aimed to allow the referendum on any international agreements except when they concerned peace or rectification of borders, had the same 174 nay votes, seven7 yea votes (from the *BE*) and 13 abstentions (*PCP* and *PEV*), [*DAR* (I) 32, 23 June 2005, pp. 1320-1322]. The joint *PS*, *PSD* and *CDS-PP* proposal was passed with 180 yea votes (*PS*, *PSD*, *CDS-PP* and *BE*) and 13 abstentions (*PCP* and *PEV*), [*DAR* (I) 32, 23 June 2005, p. 1327]. With the possibility of holding a referendum on the European Constitutional Treaty being removed, since the ratification process was stopped, the question of the referendum emerged again with the Lisbon Treaty, which replaced it.

5. The Question of the Referendum on the Lisbon Treaty

5.1. From the European Council of June to the Signature of the Treaty

In the second half of 2007 Portugal took the presidency of the European Union, with the main purpose of reforming the treaties. With that in mind, the European Council of Brussels on 21 and 22 June 2007 decided that the next presidency would be in charge of drawing up a new draft treaty, to be submitted to the Intergovernmental Conference, which should be opened in July. This should complete its work before the end of 2007 so that the ratification of the treaty could be concluded before the European election of June 2009.

When the Prime Minister announced the Programme of the Portuguese Presidency of the EU to the Assembly of the Republic on 27 June, there was a conviction, or at least a strong suspicion, that the European Heads of Government would agree to avoid holding referendums on the future treaty. The *PSD* leader, Marques Mendes, wanted to know if any agreement among the Heads of Government had been made to avoid referendums on the future treaty, and reaffirmed the *PSD's* commitment to a referendum in Portugal on the future treaty. He announced that the *PSD*, at the right moment, would formalise that proposal [*DAR* (I) 99, 28 June 2007, p. 9]. In response, the Prime Minister denied the existence of any agreement on the referendum, but refused to take any position before knowing the contents of the future treaty [*DAR* (I) 99, 28 June 2007, p. 13].

The *BE*, the *PCP* and the *PEV* explicitly accused the Portuguese Government of seeking to avoid a referendum. Francisco Louçã (*BE*) spoke about a 'conspiracy of instantaneous ratification' fed by the refusal of a referendum by all means. Agostinho Lopes (*PCP*) accused the political heads of the European Union of making-up the Constitutional treaty to avoid the ratification by referendum, and Álvaro Saraiva (*PEV*) concluded that everything was set out as a stratagem from several countries to avoid the referendum [*DAR* (I) 99, 28 June 2007, pp. 27-30].

On 19 October 2007, in a parliamentary debate with the participation of the Parliamentary Affairs Minister, Augusto Santos Silva, several deputies that supported the referendum tried to obtain a commitment from the Government.[331] They also confronted the Government with the compromise inserted in its Programme, in which the approval and ratification of the treaty should be preceded by a popular referendum. In addition, they pointed to the similarity of the essential contents between the new treaty and the Constitutional Treaty. The Minister addressed the decision for a moment after the signature of the treaty, which would take place on 13 December [*DAR* (I) 12, 20 October 2007, p. 8].

The change in the *PSD's* position on the referendum, reflecting the replacement of Marques Mendes by Luís Filipe Menezes in the partisan leadership on 28 September 2007, was also expressed in that debate. On 19 October, the speech by Pedro Santana Lopes as parliamentary leader was very distant from the position in favour of the referendum which had been expressed by the former leadership [*DAR* (I) 12, 20 October 2007, pp. 28-29]. The doubts expressed by the President of the Republic, Cavaco Silva, on the European referendum, and the commitment of the former leader of the party, Durão Barroso, as President of the European Commission, to approve the Lisbon Treaty, influenced that change of position.

5.2. The Draft Referendums and the Debate on the Ratification of the Treaty

On the very same day as the signature of the Lisbon Treaty, 13 December 2007, the question of the referendum returned to the Portuguese Parliament. The *PCP* announced the immediate presentation

[331] See speeches by Bernardino Soares (*PCP*), [*DAR* (I) 12, 20 October 2007, p. 7]; Luís Fazenda (*BE*), [*DAR* (I) 12, 20 October 2007, p. 11]; Heloísa Apolónia (*PEV*), [*DAR* (I) 12, 20 October 2007, pp. 13-14]; António Filipe (*PCP*), [*DAR* (I) 12, 20 October 2007, pp. 19-20]; and Honório Novo (*PCP*), [*DAR* (I) 12, 20 October 2007, pp. 29-30].

of Draft Resolution No. 241/X, proposing the holding of a referendum with the participation of all Portuguese citizens registered to vote in the national territory, or in other Member States of the European Union, with the following question: 'do you approve of the Lisbon Treaty which alters the European Union Treaty and the Treaty that Institutes the European Community?' [*DAR* (II-A) 51, 2 February 2008, pp. 22-24].[332]

On 20 December, a week after the signature of the Treaty, a parliamentary debate with the Foreign Minister Luís Amado took place. The Government was again asked about its position on the ratification of the Lisbon Treaty.[333] Despite the insistence, the Government refused to make a decision before the beginning of 2008 [*DAR* (I) 29, 21 December 2007, p. 26].

On 21 December, the *BE* also introduced Draft Resolution No. 246/X with the purpose of submitting to referendum the approval of the Lisbon Treaty, and with the same question proposed by the *PCP* [*DAR* (II-A) 51, 2 February 2008, p. 24]. The *CDS-PP* took a similar initiative through Draft Resolution No. 248/X, whose question was the following: 'do you agree with the approval of the Lisbon Treaty?' [*DAR* (II-A) 51, 2 February 2008, pp. 24-25]. On 8 January, the *PEV* introduced Draft Resolution No. 250/X with the following question: 'do you agree with the contents of the Lisbon Treaty (which alters the Treaties of the European Union and the European Community)?' [*DAR* (II-A) 51, 2 February 2008, p. 25-26].[334]

Finally, on 9 January 2008, Prime Minister José Sócrates announced in the Assembly of the Republic the refusal of the referendum on the Lisbon Treaty for three main reasons: **1)** It is not justified to hold a referendum when there is a wide consensus in the Portuguese society as to the European project and the Lisbon Treaty itself. The main Portuguese institutions and political forces agree with the ratification of the Treaty. There is, therefore, no reason of doubt that the wide consensus in

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[332] See the political Statement by António Filipe (*PCP*) in support of the referendum [*DAR* (I) 26, 14 December 2007, pp. 12-14].

[333] See speeches by Honório Novo (*PCP*), [*DAR* (I) 29, 21 December 2007, p. 27]; Heloísa Apolónia (*PEV*), [*DAR* (I) 29, 21 December 2007, pp. 27-28]; Diogo Feyo (*CDS-PP*), [*DAR* (I) 29, 21 December 2007, p. 30]; and João Semedo (*BE*), [*DAR* (I) 29, 21 December 2007, pp. 32-33].

[334] The admission of the draft resolutions by the President of the Assembly of the Republic occurred only on 31 January 2008, after the presentation of Draft Resolution No. 68/X, through which the Government proposed the approval of the Lisbon Treaty for ratification to the Assembly of the Republic (*DAR* (II-A) 51 – Supplement, 2 February 2008, pp. 27-(2-272)].

Parliament expresses the major will of the Portuguese people. **2)** Ratification by Parliament is as legitimate and democratic as the ratification by referendum. The holding of a referendum in Portugal would keep in check, without any reason, the full legitimacy of the ratification by the national parliaments, as carried out in all other European countries. **3)** The Treaty of Lisbon is different from the former draft of the Constitutional Treaty, and the electoral compromise of the *PS* on the referendum expressly respected the Constitutional Treaty and not any other [*DAR* (I) 32, 10 January 2008, pp. 7-9].

The announcement of the Government's refusal to accept a referendum on the Lisbon Treaty resulted in the presentation of a motion of no confidence by the *BE*, in order to confront the Government with the non fulfilment of its compromise to submit the Treaty to referendum. The motion was discussed on 16 January and rejected by nay votes from the *PS*, having obtained yea votes from the *BE*, the *PCP* and the *PEV* and abstentions from the *PSD* and the *CDS*-PP [*DAR* (I) 35, 17 January 2008, pp. 6-52].

The discussion of the draft referendums took place on 7 February 2008 at the *PCP*'s initiative [*DAR* (I) 45, 8 February 2008, pp. 6-43]. In that debate, the proposers of the referendum refuted the Prime Minister's arguments that the referendum was not necessary, considering that refusal a serious non-fulfilment of a compromise inserted in the Electoral Programme of the *PS* and in the Programme of the Government. They argued that this reflected the broad consensus in Parliament, and in the country, on the European integration process. The right of the Parliament to ratify the Treaty without a referendum had been surrendered when the *PS* promised, in the Programme of the Government, that a referendum would be held, and when they promoted the 2005 Constitutional revision with the express purpose of enabling such a referendum. The idea that the Lisbon Treaty was substantially different from the European Constitutional Treaty was also refuted. Statements from several European leaders affirming that the treaties were similar in substance were quoted.[335]

The *CDS-PP* position, supporting its draft resolution, diverged from the *PS* and *PSD* views as to the referendum, and also diverged from the *PCP*, *BE* and *PEV* as to the answer to give if the referendum took

[335] See speech by Agostinho Lopes (*PCP*) who, quoting Statements from José Luís Zapatero, Angela Merkel and Romano Prodi, considered that the new treaty was nothing but a Constitutional Treaty with a new name that had been exclusively changed to try to avoid new popular rejections [*DAR* (I) 45, 8 February 2008, pp. 6-7].

place. While the left parties proposed the referendum and assumed the refusal of the Treaty, the *CDS-PP* supported the referendum because it wanted to remain faithful to the compromise it had made with the Portuguese people. They hoped that the Portuguese people would favour the ratification of the Treaty, rejecting the argument by the *PS* and *PSD* that the supporters of the referendum only wanted to attack the European integration process. [336]

The draft resolutions were rejected. The *PCP*, the *CDS-PP*, the *BE* and the *PEV* voted affirmatively on all the drafts, as well as the *PS* MP António José Seguro, two members of the Party of the Land Movement (*MPT*) and two *PPM* members elected by the *PSD*. The *PS* MP Manuel Alegre abstained. The *PS* and *PSD* members voted negatively, although four *PS* members and nine *PSD* members sent explanations of vote expressing their disagreement towards the positions taken by their parties.[337]

Nonetheless, the approval of the Lisbon Treaty for ratification would be made in the Assembly of the Republic on 23 April 2008, with yea votes from the *PS*, *PSD* and *CDS-PP* and nay votes from the *PCP*, *BE*, *PEV* and one member of the *MPT* elected by the *PSD* (Pedro Quartin Graça). Manuel Alegre (*PS*) and nine *PSD* members tempered their yea votes with Statements of regret that the approval of the Treaty had not been preceded by a referendum [*DAR* (I) 75, 24 April 2008, pp. 43-48].

5.3. Some Remarks on the Refusal of the Referendum on the Lisbon Treaty

The referendum on the Lisbon Treaty was refused following a change of *PS* and *PSD* positions, which was denied by the *PS*, but admitted by the *PSD* in respect to itself. It is undeniable that the allegation concerning the compromise of the *PS* and its Government with the referendum only respected the European Constitutional Treaty is not believable. It is obvious that when those programmes were drawn the only treaty that was foreseeable and could be submitted to referendum was the Constitutional Treaty, but it is not less true that when the 2005 Constitutional revision was concluded, with the only purpose of making possible the referendum supported by all Portuguese parties, the ratification of the Constitutional Treaty was already out of question. The last minute change of the Constitutional provision that had been passed

[336] See speech by Diogo Feyo (*CDS-PP*), [*DAR* (I) 45, 8 February 2008, pp. 13-14].
[337] See voting and the explanations for the vote in *DAR* (I) 45, 8 February 2008, pp. 34-43].

had the only intention of making it possible to hold a referendum on another treaty, which would replace the Constitutional Treaty, and that treaty is none other than the Lisbon Treaty.

It is also not true that the Lisbon Treaty is substantially different from the Constitutional Treaty. Firstly, because such an idea is sufficiently denied by a lot of Statements from European leaders confirming the substantial identity of both treaties; secondly, because if in Portugal José Sócrates refused the referendum because the treaties were different, in Spain, Zapatero refused a new referendum because the treaties were similar; thirdly, because the three questions chosen by the *PS* to include the draft referendum on the Constitutional Treaty and that justified a referendum for being innovative, went through the Lisbon Treaty. The truth is that the victory of the negative answer in the referendum held in France and in The Netherlands on the Constitutional Treaty threw some panic among the supporters of the European construction process drawn on that Treaty. Therefore, it was obvious that the mandate given to the Portuguese Presidency in the European Council of Brussels of June 2007, presupposed an agreement that was not publicised among the European leaders with the purpose of avoiding by all means the holding of referendums in the ratification process of the next treaty. It is exactly what happened. Only in Ireland was there a referendum by Constitutional imperative and the result allowed us to understand the fear of European leaders in holding other referendums.

In Portugal, the parties that supported a referendum on the European integration process since the Maastricht Treaty, the *PCP*, the *CDS-PP*, the *PEV*, and the *BE* since its creation, all tried within their powers to submit the Lisbon Treaty to referendum. The left parties, assumed the proposal of a referendum and the struggle against the Treaty. The *CDS-PP* assumed the proposal of a referendum and the support of the Treaty. The *PS* and the *PSD* preferred to avoid the risk of a referendum with an uncertain result and changed their positions. For both parties, the ratification of the Lisbon Treaty was too important to run the risk of its refusal by referendum.

6. The Ghost of the European Referendum in the Portuguese Political Life

Since 1992, the referendum on the participation of Portugal in the European integration process has hovered, like a spectre, over Portuguese political life. The referendum was proposed and gave rise to a particularly intense debate regarding the Maastricht Treaty; it was again

proposed on the Amsterdam Treaty; it was present, although less intensively, on the Nice Treaty; it came burst back on to the agenda over the Constitutional Treaty and the Lisbon Treaty. However, this referendum never happened.

The proposal for a referendum on the Maastricht Treaty was born on the political right wing. The *CDS-PP* was the first parliamentary party to propose the idea, during a 'euro-sceptic' phase of this party, under the leadership of Manuel Monteiro. The idea would soon be supported by the left, who saw in the referendum a possibility to contradict, through a popular vote, an approval in Parliament by an expressive majority. This idea was encouraged by the victory of the 'no' campaign in Denmark and by the narrow affirmative result in France. That was the position of the *PCP* and the *PEV*, which from this time forward, always supported the referendum when dealing with the ratification of a new European treaty. Much like the *PCP* and the *PEV*, the *BE* consistently supported the referendum since its creation, and followed the positions of the political forces which took part in it. This included the referendum on the European treaties, even if they were not as critical of the European integration process as the *PCP*, defining themselves as the 'Europeanists of the left'.

On the right, the *CDS-PP* was consistently in favour of the European referendum. Despite their abandonment of euro-sceptic positions at the beginning of 1990's, it assumed a favourable position towards the European integration process once again. The *CDS-PP* remained faithful to the idea that the international agreements, including the European treaties, should be the object of referendum.

The positions of the centrist parties were always more contradictory. Assuming an essential political convergence as to the European integration, the *PS* and the *PSD* kept an adjusted position on the possibility of a referendum. In 1992, they jointly refused the referendum on the Maastricht Treaty, rejecting the proposal introduced in the Constitutional revision. In 1997, they adopted a Constitutional formula that supposedly allowed a referendum aimed indirectly at European treaties, but which achieved opposite result. In spite of their Statements supporting a referendum on the European integration process, the *PSD* and the *PS* prevented it in practice, with the Constitutional text they adopted and with the unConstitutional and illegal questions which they agreed to put forward, first with the referendum on the Amsterdam Treaty, and later on the Treaty Establishing a Constitution for Europe. Meanwhile, both refused a Constitutional proposal that would allow a

referendum on the Nice Treaty in 2001. With the referendum on the European Constitutional Treaty, which all parties promised to submit to referendum, the *PSD* laid the blame on the *PS* for the failure of their common draft for the referendum, for having refused to change the Constitution and for having 'imposed' a question that was clearly unConstitutional. But, the truth is that the *PSD* subscribed to the question, and when the decisive moment for the Lisbon Treaty arrived, it was again in agreement with the *PS* in refusing the referendum.

The single conclusion to take is that in Portugal there was never a referendum on the European integration process because neither the *PS* nor the *PSD* wanted to hold one. Despite having admitted to its convenience in 1998 and having assumed the compromise of holding it in 2004, the truth is that they obstructed it. While they declared themselves supportive of the democratic value of the referendum, they placed greater importance on the European integration process, which always had an enthusiastic support from both parties.

Final Notes and Conclusions

1. The Constitutional Monarchy

The referendum was an unfamiliar institution to Portuguese monarchic Constitutionalism. In the 88 years from the first Portuguese Constitution, which came into force on 23 September 1822, to the republican revolution on 5 October 1910, Portugal did not adopt any device of semi-direct democracy. There was never any direct consultation of the people when approving any of the three Constitutions or their amendments, called Additional Acts. Moreover, Parliament never approved any legislation foreseeing referendums, either national or local in scope.

In fact, the Portuguese monarchic Constitutional liberalism, established with the triumphant liberal revolution of 1820 or, more precisely, with the liberal victory at the end of the civil war in 1834, always maintained the representative principle as a matter of fundamental principle. It is true that historically the nature of the elections was merely instrumental. They served more to legitimate Governments than to choose them. In 45 general elections, the Government lost only twice (Proença & Manique, 1992, pp. 20-21). The debates on the electoral system were always on the more or less restrictive character of the suffrage, on the direct or indirect nature of the representatives' election, on the existence of one or two parliamentary chambers, and on the elective or hereditary nature of the High Chamber. Only in the last quarter of the 19th century, in 1872, did a concrete proposal to introduce the referendum in the Constitution first appear. The idea of introducing the popular ratification of Constitutional reforms did not proceed.

The political process of 19th century Portugal allows us to understand this option. From the start, the liberal victory was a difficult and troubled process. In a first phase, the Portuguese liberals were focused on the survival of the regime itself, threatened by successive waves of absolutist reaction. The country had a strong tradition of clerical influence and agrarian dominance. Under these circumstances, any direct consultation of the people would hardly have been favourable to the interests of a bourgeoisie that was essentially urban, composed of merchants, industrialists and liberal professionals, and who followed revolutionary ideals and tried to substitute the power of the old nobility and the clergy, who supported the ancient regime.

After defeating the counter-revolution at the end of the civil war in 1834, the most powerful liberal forces imposed a highly restricted suffrage and the contradictions between the liberal establishment and the popular aims led to an upsurge in huge popular revolts, mainly in the 1840s. When, at the end of the 19th century, demands for wider suffrage grew substantially, with demands to move straight to universal suffrage (which would not, in fact, arrive in Portugal until much later), the fear of republican influence amongst urban voters led to a suffrage restriction. The aim was to delay the fall of an increasingly contested Monarchy for as long as possible.

2. The First Republic

The idea of a plebiscite, which was raised during the First Portuguese Republic, is inevitably linked with the aim of monarchic restoration. Paiva Couceiro wanted the plebiscite as a way to avoid the fall of the Monarchy, and revived that idea as a possible way to restore it. In 1911, he addressed an ultimatum to the new republican authorities, demanding their voluntary retirement from power. He assumed an armed struggle in the north of the country on behalf of the plebiscite. The neutral nature of that movement, downgrading the monarchic restoration as an immediate purpose and making it depend on an expression of popular will by plebiscite, divided the royalists more than it disturbed the republicans. When Couceiro was defeated militarily, Dom Manuel II firmly expressed himself against any chance of a plebiscite.

In the following years, during the deepest republican crises, when the monarchic hopes reappeared, the idea for a plebiscite reappeared as well. This happened in 1918, during Sidónio Pais's presidency, when the royalists challenged the President to call a plebiscite on the regime. It happened again, before the uncertainties after Sidónio Pais's murder. That question also divided the supporters of the monarchic cause during that time. Dom Manuel II, who never agreed with the plebiscite, supported by the royalists who were against his recognition as King. The plebiscite was contested by principle reason that it denied the Monarchy's own basis. It was defended for pragmatic reasons, as a way of opposing and challenging the Republic, and trying to probe its eventual weaknesses and divisions. It was a proposal by someone who had nothing to lose, and who obviously had no other chance of obtaining a good reception from the republican power. However, the idea was as far as ever from uniting the monarchists.

The constituent republican representatives of 1911 refused to consider a national referendum. They did not reject the referendum institution in principle, but feared its practice in the current Portuguese conditions. In fact, Switzerland's democracy appears in the speeches of several representatives as an admired example, but was considered possible in Switzerland due to the high civic and political culture of its people. In Portugal, the referendum would lead to the desegregation of the republican regime, given the general lack of culture. It was indeed the same fears that led the Portuguese republicans to restrict the right to vote instead of widening it, which is what they had intended to do. The truth is that, as Vasco Pulido Valente explains (2004, pp. 152-154), the republican' support was an urban phenomenon, with solid roots in Lisbon but weak support elsewhere in the country.

The Republican Constitution of 1911 laid down the referendum only at a local level, allowing two modalities:

a) the municipal authorities could hold an organic referendum on some deliberations from district authorities, and parish authorities could also have organic referendums on some deliberations from municipal authorities;
b) the popular referendum was optional on some deliberations from municipal authorities, and mandatory on some deliberations from parish authorities. It was a necessary condition for the approval of statutes regarding the creation, annexation or disunion of administrative circumscriptions.

Due to the political instability of the First Republic, but also to the sluggish legislative procedure that intervened with symmetrical powers, the two Chambers of the Parliament with a clear supremacy over the Executive in terms of legislation, the regulation of the local referendum also dragged slowly for several years, paralysing its application and creating doubts about its compulsory nature.

Nonetheless, the local referendum did exist in the First Republic. During its 16 years, the republican authorities created several municipalities and parishes, and the administrative bodies took several decisions on financial matters, with and without a referendum. This will not be surprising if we think, not just about the long legislative indecisiveness of that period, but also the fact that the country was several times in a State of siege and that dictatorial decrees dissolved the administrative bodies twice. Despite those vicissitudes, after the regulation of its procedure in 1916, the local referendum played a

contradictory role. Instead of being a genuine way of delegating decision-making to the people, the local referendum was restricted to limited spheres. Local government could not take certain decisions without a referendum, most importantly when they wanted to impose duties on the taxpayers. Afterwards, the claim for the regulation of local referendums led to calls for its scope to be restricted, leaving the administrative bodies free to take certain decisions.

It seems clear that referendums under the conditions of the First Republic would suffer some democratic deficit but, in all probability, neither more nor less than the other electoral acts. Similarly, the wisdom of submitting certain decisions from the administrative bodies to a referendum is evidently questionable, especially when the decisions imposed financial duties on the citizens.

The experience of local referendums in the First Republic was not wholly satisfactory. It could hardly have been so. In the Deputies Chamber session of 5 March 1926, less than three months before the beginning of 48 years of dictatorship, Alfredo Guisado appealed for the approval of a new Administrative Code. He deplored that, after 16 years of a Republic, Portugal was still ruled by ragged monarchic codes, and wished that something new and useful could be done with the parish authorities' functions, given that, even the referendum which had been given to them by law, was no more than a gag (*DCD*, 47, 5 March 1926, p. 9).

This frustration is not surprising. In a historical period like the First Portuguese Republic, where few political experiences were satisfactory, we cannot be surprised that the experience of the referendum was problematic.

3. The Dictatorship of the New State

The dictatorship established in Portugal used the plebiscite for Constitutional legitimisation. It was not an expression, or even a consultation, of the popular will, but rather a process that avoided the election of a Constituent Assembly and imposed a Constitution that the dictator put in place.

Portugal lived under a dictatorship from May 1926 until April 1974. Oliveira Salazar ascended to power by undermining democratic principles. With a restricted group of collaborators, he drew up a Constitutional draft that was submitted to a pale discussion involving only those loyal to the regime. A plebiscite followed.

The plebiscite did not even have a democratic appearance. There were neither alternative proposals, nor the freedom to debate the proposed draft due censorship and the prohibition of civil liberties. The vote was obligatory, not secret, and abstentions counted as favourable votes. The plebiscite on the Constitution of 1933 was no more than a farce, as were other electoral acts held by the dictatorship during its existence.

After approving the Constitution through a plebiscite, the regime never again used a similar device. The first version of the Administrative Code approved in 1936, kept the local referendum as it had been during the First Republic, although it placed more limitations on the right to vote (which was not free and restricted to the heads of family loyals to the regime). However, the definitive version of that Code, approved in 1940, removed even that possibility. The Constitutional revision of 1935 gave the President the power to summon a plebiscite if the National Assembly intended to review the Constitution, in the part respecting the legislative power, but he never used that possibility. All the other proposals to hold referendums during the 48 years of dictatorship took place only in the 1960s, mainly to resolve the colonial problem.

4. The Referendum on the Colonial Problem

Except for the plebiscite of 1933, which was held to give formal legitimacy to the dictatorship, almost every proposal, or mere suggestion, of a referendum during the 48 years of fascism, were focused on Portugal's colonial policy. In the early 1960s, before the the invasion of the 'Portuguese State of India' by the Indian Union was imminent, the Secretary of State of the Army, Francisco da Costa Gomes, proposed the holding of a referendum to Salazar, hoping to allow for an honourable withdrawal, without any illusions as to the result. Salazar peremptorily refused that option. Some disperse references, found in the international press after the fall of Goa, Daman and Diu, referred to a supposed Portuguese referendary proposal. However, these are not credible. The Indian Union would never have accepted such a proposal, but the Portuguese Government never made it.

After the outbreak of the wars in the African colonies, with an international situation that was clearly favourable to the liberation movements, several plans were made by the US Administration to solve the Portuguese colonial problem, which included the proposal of referendums. Convinced that Portuguese colonialism was condemned to failure in the near future, they tried to achieve a solution of self-determination in such a way that would safeguard the American interests

and prevent the Soviet Union from expanding its sphere of influence. The Sakva Plan, drawn in 1962, foresaw the holding of referendums in 1967. In 1963, George Ball, on behalf of the Kennedy Administration, made a similar proposal that was unsuccessful. In 1965, under the Johnson Administration, the Ambassador in Lisbon, George Anderson, introduced a similar plan, without the conviction of a positive answer.

Salazar's answer was always peremptorily negative. In August 1963 he encouraged speculation as to the eventual admission of a plebiscite, alluding to the advantage of a 'solemn and public act' through which the country could pronounce itself on the overseas policy of the Government. However, it quickly became clear that such an initiative was never in the dictator's mind.

Meanwhile, some sectors of the non-communist opposition cherished the idea of a referendum. Humberto Delgado supported the creation of a Federal Republic of the United States of Portugal, by plebiscite, in 1960. That proposal was as unrealistic as the General's expectations of overthrowing the regime by a military coup, which he would lead from exile. Inside Portugal, the Communist Party, in its 5th Congress held in 1957, decided to support actively the struggle for the total independence of the colonies. However, some elements of the republican and liberal opposition supported a referendum on the colonial policy. This proposal was ignored by the Government, and had no echo in the rest of the opposition, which reflected all the hesitations of the proponents. The purpose was to keep some distance towards the Government and its colonial policy, but they were also hesitant to recognise the rights of the peoples under colonial rule to self-determination.

At the start of the 1970's, the idea of a referendum on the colonial policy was raised again, this time from the regime's ranks. General António de Spínola proposed this in his book *Portugal e o Futuro*. His aim was to find a solution for autonomy that would be sanctioned by a referendum prepared by the regime and accepted by the international community, being sure that the colonial problem could not have an honourable military solution for the Portuguese Government. However, nobody welcomed the proposal. The regime wanted to resist, militarily, at all costs. The opposition unanimously recognised the right of the people from the colonies to self-determination and independence. For the liberation movements, independence was only a matter of time.

In the first months of the Portuguese democratic revolution, the holders of the new political power were deeply divided as to the solution for the overseas problem. The excessive vagueness of the *MFA* Programme, in the compromise version negotiated on the nights of the 25th to the 26th of April 1974, reflected precisely those divergences.

The Coordinating Commission of the *MFA*, and the more progressive political forces, extolled the immediate recognition of the right of the people from the colonial territories to self-determination and independence. They also recognised the liberation movements as legitimate representatives of the respective people. General António de Spínola, his military followers, the Prime Minister of the First Provisional Government (Adelino da Palma Carlos) and the more conservative political parties that had been recently constituted (namely *PPD* and *CDS*), defended popular consultations in the territories. These consultations should involve not only the liberation movements, but also new political forces supported by Portugal, and also the communities of Portuguese residents in the territories.

This disagreement meant that the decolonisation process was delayed for several months. The talks between the Portuguese authorities and the liberation movements remained inconclusive, and the war continued on the ground. The publication of Law No. 7/74, of 27 July, by which the Portuguese State formally accepted the independence of the overseas territories, meant the defeat of Spínola's project.

In July 1974, with the resignation of the Prime Minister Palma Carlos after a failed Constitutional coup, António de Spínola lost his main support. The Coordinating Commission of the *MFA* and the left parties increased their influence over those in power, with immediate effects on the decolonisation process. On the other hand, the combined pressures from the United Nations, the liberation movements that continued the war, and the Portuguese troops in the territories that refused to fight and threatened to recognise the respective independence on their own, created the necessary conditions for a fast progression of the decolonisation processes.

In the territories where the military ending was imminent, Guinea-Bissau and Mozambique, the negotiations excluded any concept of popular consultations. The Portuguese Government recognised the *PAIGC* and the *FRELIMO* as legitimate representatives of their peoples, and those new countries proclaimed independence, on 10 September 1974 and 25 June 1975, respectively.

In two territories where there was no colonial war but where intense claims for independence existed (Cape Verde and Sao Tome and Principe), the independence foresaw, not exactly popular consultations under the form of a referendum, but some form of popular consultation through the direct election of constituent assemblies. The candidates were formally presented by the citizens' groups, which certainly meant that they were, in practice, promoted by the liberation movements (the *PAIGC* in Cape Verde and the *MLSTP* in Sao Tome and Principe).

In the case of Angola, considered the jewel of the crown of Portuguese colonialism due to its immense natural resources, the situation was more difficult. There were three liberation movements competing in the territory, and the process became internationalised, given the direct involvement of the regional and world powers in the support of the several movements. Furthermore, even after Law No. 7/74, António de Spínola insisted on leading the process, and he did not give up on this until his resignation in the end of September 1974.

The *Alvor* Agreement, signed by the Portuguese Government and the three liberation movements, established the date of 11 November 1975 for the independence of Angola. It foresaw the election of a Constituent Assembly by October 1975, prepared jointly by the three movements and contested only among them. Before the signature of the *Alvor* Agreement, the liberation movements refused an informal proposal made by António de Almeida Santos. The idea was to hold a referendum on a Constitutional draft which would be drawn by the three movements, foreseeing a tripartite form of sharing power in order to create peaceful conditions for future elections. In fact, the power system of the *Alvor* Agreement did not work due to the belligerent situation in the territory. However, the strong implantation of the *MPLA* in the area of Luanda allowed this movement to proclaim the independence of Angola in the capital, in the foreseen date.

East Timor was therefore the only Portuguese colony that achieved independence through a popular consultation, after a long and stormy process. The first idea for a referendum, through which the Timorese people would decide between independence, a connection to Indonesia, and a connection to Portugal, was set out in 1975. However, the unilateral proclamation of independence by the *FRETILIN*, after having defeated an attempt of the *UDT* to take power, provoked the invasion and military occupation of the territory by Indonesia.

During the 25 years of occupation, Indonesian forces conducted genocide of Timorese people, with more than 200,000 people killed. However, the resistance to the occupants remained unbroken. The guerrillas' fight in the mountains, the clandestine action among the populations and the action taken by the international community, with the support of Portugal as the administrative power recognised by the United Nations, finally gained results.

Particularly after the international repercussion of a massacre perpetrated in 1991 by the Indonesian Army in *Santa Cruz*'s cemetery in Dili, the cause of the East Timorese people became more visible to the world, and the condemnation of the Indonesian invasion became louder and more widespread in the international community. Moreover, the political changes in Indonesia by the end of the 20th Century, with the fall of Suharto and his substitution by Habibie, created the necessary conditions for an agreement obtained in the United Nations, between the Portuguese and the Indonesian Governments, as to a popular consultation in East Timor.

In spite of the violence exercised against the pro-independence activists by pro-integration militia, the choice of the Timorese people was overwhelmingly in favour of independence. On 30 August 1999, and through popular consultation, the East Timorese recovered the independence lost in 1975, proclaiming it again on 20 May 2002. East Timor was, thus, the only former Portuguese colony that achieved independence through a referendum. However, this happened 25 years after the Portuguese withdrawal from the territory, and no longer against the Portuguese colonial rule, but actually against Indonesian occupation.

5. The Referendum in the Portuguese Democracy

5.1. The Primacy of the Representative Democracy

At the time of the 1974 revolution, Portuguese democrats had bad memories of referendums. The only plebiscite in Portuguese history was used by the dictator to give himself formal legitimacy in the 1933 Constitution. In the context of a military dictatorship, without public freedoms or any chance to present alternatives, the plebiscite of 1933 only had a vague appearance of a popular consultation. The Constitutional text that was adopted as a result served as formal frame for the repressive dictatorship, from which Portugal was only able to rid itself from 41 years later.

At the beginning of the democratic regime, the institution of the referendum was not rehabilitated. Any suggestion of a referendum was treated with suspicion that the proposer wished to undermine Portugal's fledgling democracy. Firstly, there were Spínola's attempts to overthrow the Armed Forces Movement Programme through a referendum, by replacing the Constituent Assembly election for a provisional Constitution. He also attempted to prevent the unavoidable decolonisation process by holding referendums in the former colonies. Both attempts were rejected by the revolutionary soldiers and the political forces. The soldiers consequently identified themselves more with democratic revolution, and then committed themselves in defending it.

After the approval of the 1976 Constitution, the Constitutional referendum became a goal supported by the opponents of the economic, social and political changes that were Constitutionally enshrined. The parties that were against the 1976 Constitution, including not only the *CDS*, which had voted against its approval, but mainly the *PSD*, which despite having voted for the Constitution never accepted its contents, tried to over-rule the demand of a two-thirds parliamentary majority needed for the Constitutional revision, through a referendum.

The aim of changing the Constitution through a referendum, which contradicted the established rules for the Constitutional revision, was clearly assumed by the candidate for President of the Republic in 1980 supported by the *PSD* and the *CDS*. This fact made that election primarily about the defence of the 1976 Constitution. With the re-election of Ramalho Eanes, representative democracy also defeated the referendary temptation.

The leftist parties never accepted the Constitutional referendum, but after 1980 the *PSD* and/or the *CDS* persisted in proposing it even if they had no hope of obtaining approval. Insofar as the *PS* was converging with the *PSD* and the *CDS* in their aim to alter important aspects of the 1976 Constitution, the rightist parties stopped agitating for a referendum and started to pressure the *PS* to sign Constitutional revision agreement, adding up to the necessary two-thirds majority. However, the insistence of the Portuguese right in the use of the referendum as an instrument to change the Constitutional system opened wounds that were hard to heal, and contributed to the fact that only in the 1989 Constitutional revision did the *PS* give up its position against the national referendum and allow it to be introduced, even if in extremely careful terms.

5.2. The Weak Experience of Local Referendums

In almost 40 years of the Portuguese democratic system, there was never great enthusiasm for local referendums. Several reasons can help explain this fact. Jorge Miranda and Rui Medeiros [2007 (III) p. 482] attribute the tiny number of local referendums to citizens' lack of interest in participating, local authority bodies' reluctance to submit their proposals to popular vote, and to a very restrictive interpretation of the legislation by the Constitutional Court.

The weak referendary tradition in Portugal, both at the national and local level, is a reality that can help to explain the weak popular enthusiasm for local referendums. It is also significant that the possibility of local referendums did not appear immediately after the transition to democracy. The Constitution only started to admit local consultations in 1982, and the law did not enable them until 1990, and then with very restrictive terms.

Moreover, experience reveals that the Constitutional Court judged most of the few subjects that raised the interest for calling local referendums as being unConstitutional or illegal. The restrictive nature of the Constitutional and legal enshrinement of the local referendum, with the backup of a restrictive jurisprudence of the Constitutional Court, greatly limited the opportunities for referendums being held. On the other hand, the deliberations taken in order to call local consultations or referendums revealed, for the most part, great ignorance about the legal circumstances in which they could be held. If such ignorance can be understandable in some of the cases of the deliberations taken by assemblies of small parishes, municipal assemblies had less of an excuse.

In the four local referendums actually held, we can verify a seemingly contradictory phenomenon. In the case of the parish of *Serreleis*, there was substantial electoral participation. In the cases of the municipalities of *Tavira*, *Viana do Castelo* and *Cartaxo*, turnout was very low. The difference can be explained by the relative importance attributed by the voters to the matter under consultation. While in a small village like *Serreleis*, the subject of the location of the playing field assumed considerable local relevance, for most of the population of *Tavira* and *Viana do Castelo*, the eventual demolition of an old water reservoir, or the integration of the municipality into an intermunicipal community, were almost irrelevant subjects. In the case of *Cartaxo*, even though the privatisation of car parking sparked great interest, the absolute consensus among the political forces, who also opposed the privatisation, surely demobilised the voters.

5.3. The Careful Inception of the National Referendum

The national referendum was protected by extreme safeguards both in the Constitution and by law. There could only be a legislative referendum. In other words, referendums could only occur on matters upon which the Assembly of the Republic or the Government can decide by passing an international agreement or legislation. Many matters were excluded from the referendum's scope. The referendum could not happen on alterations to the Constitution, or on issues and acts with a budgetary, tax-related or financial content, or on the Parliament's most important issues of political and legislative responsibility.

The referendum is, in general, optional. The only case of an obligatory referendum was established in the 1997 Constitutional revision, and regarded the de facto institution of the administrative regions. The referendum could only occur on acts in progress, and never on acts definitively passed within the same legislative session, thus making it impossible to hold referendums to revoke legislation that had already been approved by Parliament. The way that the national referendum was established was designed to emphasise the primacy of the representative bodies.

In addition, the referendum could not be used to stoke conflict between the sovereignty organs. The referendum initiative belonged to the Government, the MPs and 75,000 citizens, but the decision to propose a referendum to the President of the Republic was the exclusive responsibility of Parliament. The decision to call a referendum belonged exclusively to the President of the Republic, and that decision was free and unfettered. Meanwhile, the President could only call a referendum if it was not declared unConstitutional or illegal by the Constitutional Court, a review that was obligatory. The referendum could not be called by the Government or by the Parliament against the President of the Republic, or by the President of the Republic against the Government or Parliament. Nonetheless, despite the admission of the referendum through popular initiative and the admission of the autonomous participation of the citizen groups in the referendum campaign, the decisive role was reserved for political parties, in both the calling the referendum, which required a parliamentary majority, and the campaign itself, where the parties were guaranteed a prominent position.

Other important conditions were also established. The referendum could not coincide with national elections, in order to avoid electoral behaviour being contaminated by acts of a different nature. The

questions had to meet certain criteria: the referendum could be held on a single matter, and have a maximum of three questions, which had to be objective, and clearly and precisely formulated for 'yes' or 'no' answers.

These conditions help to explain the scarce use of the national referendum since it was introduced in into the Constitution. Nonetheless, before drawing a conclusion, it is important to consider the specific data, summed up in appendix 2, regarding the incidence of the referendum in the Portuguese democracy.

5.4. The Referendum Proposals in the Portuguese Parliament

5.4.1. The Issues

From 1989 up to 2011, the Parliament received 39 referendum proposals that related to nine different matters: 15 proposals were about European Union Treaties, 13 on the decriminalisation of abortion, four on the institution of administrative regions, two on the decriminalisation of drugs, one on the Portuguese Language Orthographic Agreement, one on the building of nuclear power plants, one on the appointment of the directors of public radio and television service, one on medically assisted procreation, and one on gay marriage. Three of these nine matters were never submitted to any parliamentary decision (the Orthographic Agreement, the nuclear power plants and the decriminalisation of drugs). From the six proposals remaining, three were rejected by Parliament: the appointment of directors to the public radio and television services; medically assisted procreation; and the referendum on gay marriage. Parliament approved the holding of referendums on three matters (the European Union Treaties, the decriminalisation of abortion and regionalisation), although only two of them were actually submitted to referendum.

The referendum on the regionalisation was proposed four different times. It was not even discussed the first time (1992). It was rejected the second time (proposed by the *PSD* in 1998). It was passed the third time that it was proposed, by the *PS* in 1998, through an agreement with the *PSD* and the *CDS-PP*, which invalidated a *CDS-PP* proposal.

The referendum on the decriminalisation of abortion was proposed 13 separate times. The first proposal (from the *PSD* in 1996) was withdrawn given the rejection of the bills that were introduced. In 1998, a *PSD* proposal was not submitted to vote, after a joint proposal

from the *PSD* and the *CDS-PP* was rejected and a *PS* proposal was passed. There is no doubt that the divergence between the *PS* and the rightist parties related to the specific question, since the principle of holding the referendum had been agreed between the *PS* and the *PSD*. In 2004, Parliament rejected proposals introduced by the *PS*, the *BE* and through popular initiative.

In April 2005 a *PS* proposal was passed, after a *BE* proposal had been withdrawn and a *CDS-PP* proposal had been invalidated. The proposal that was passed, however, was refused by the President of the Republic. In September 2005, a new *PS* proposal was passed, but it was declared unConstitutional. In 2006, a *PS* proposal was passed, invalidating a proposal by *CDS-PP*, and a referendum was held in early 2007.

The referendum on the European Union was proposed 15 separate times. On the Amsterdam Treaty, in 1997, two *PSD* proposals and one from *CDS-PP* were withdrawn; two proposals from the *CDS-PP* and the *PCP* were rejected and a *PS* proposal was passed, which would come to be declared unConstitutional. On the Nice Treaty a *BE* proposal was introduced but it was never discussed. On the European Constitutional Treaty, a *BE* proposal was rejected in 2003; the *BE* and *PCP* proposals were rejected in 2004, and in that same year a joint proposal from the *PS*/*PSD*/*CDS-PP* that had passed would later be declared unConstitutional. On the Lisbon Treaty the proposals from the *PCP*, the *BE*, the *CDS-PP* and the *PEV* were rejected.

5.4.2. The Authorship

The authorship of the proposals was nearly always from the parliamentary groups. Only one of them, on the Amsterdam Treaty, was introduced in 1997 by the *PS* Government of António Guterres. Three proposals were introduced by independent deputies and neither was discussed. One proposal was introduced by a group of 14 *PSD* members and it was not discussed. The popular initiatives for a referendum on the decriminalisation of abortion in 2004, medically assisted procreation in 2006, and gay marriage in 2010 were all rejected.

33 of the 39 proposals were introduced to Parliament by the parliamentary groups. Seven of them were never discussed. Eight of them were discussed, but they were not voted on. 16 were rejected. Seven were passed (three on the decriminalisation of abortion, one on regionalisation and three on the European treaties). Seven proposals were submitted to the President of the Republic. One of them was refused without being sent to the Constitutional Court. Six were submitted to the Court and three of

them were declared unConstitutional. Three referendums were held. Two of them had a negative answer, and the other an affirmative one. In none of the referendums did more than 50% of the registered voters take part, and consequently none of them could be considered legally binding.

We can conclude, therefore, that despite a significant number of proposals submitted to Parliament, the number of proposals passed was relatively scarce and fell upon only three matters. The criteria for passing were very restrictive and always decided according to partisan convenience.

5.4.3. The Limits of a Popular Initiative

The popular initiative was not very significant. The demand for 75,000 signatures to propose a referendum to Parliament, in a country where a political party is legally constituted with 7,500 signatures, is clearly out of proportion and acted as a deterrent. Furthermore, that only entitled the proposers to see their draft discussed and voted upon. The fact that all the initiatives were rejected soon discouraged citizens from using this right of initiative.

The right to create citizen groups to take part in the campaign was taken up in the three campaigns held, but the political parties had a decisive role in creating citizen groups that supported their own positions. Nonetheless, the participation of citizens in the three referendums was lower than predicted by those who had argued that the referendum would be an instrument of participation and expression of popular will. There was a clear contradiction between citizens who claimed, when asked by opinion pollsters, that they enthusiastically supported referendums, and claimed to favour of holding referendums on several matters, and the low turnout when the referendums actually took place.

5.5. The President of the Republic and the Proposals for Referendum

The President of the Republic maintained a relatively low profile in relation to the referendum. Since the initiative belonged to Parliament, only once out of seven times did the President of the Republic (in this case, Jorge Sampaio) assume the political decision to refuse a referendum. In that case, he considered that the proposed date of the referendum, in the middle of summer, would not be conducive to high levels of participation.

As for the other cases, the President of the Republic merely followed the decisions of the Parliament or the Constitutional Court. In the three cases of unConstitutionality, the President had no option but to refuse, and in the others, the President called the referendum.

The Constitutional Court's decisions reflect the restrictive terms under which the referendum was established by the Constitution and the law, and none of the declarations of unConstitutionality were a surprise. Where proposals were made for referendums on the Amsterdam Treaty and the European Constitutional Treaty, the formulated questions were so obviously unConstitutional that it is legitimate to doubt if their proponents actually wanted the referendum. In the case of the referendum on the decriminalisation of abortion, there were some voices that warned about the formal unConstitutionality of the proposal, since it had been introduced in the same legislative session as another referendum on the same subject had been refused.

5.6. The Political Parties and the Referendum

5.6.1. *PS*

The *PS* introduced nine proposals for referendum on four different matters: **a**) on the appointment of directors to the public radio and television services, which was rejected; **b)** on the regionalisation, which was approved; **c)** on the decriminalisation of abortion on five separate occasions: the first was approved in 1998 and gave origin to the first referendum; the second was rejected in 2004; the third was approved in 2005 and refused by the President of the Republic; the fourth was approved in 2005 and declared unConstitutional; and the fifth was approved in 2006 and gave origin to the second referendum; **d)** twice on European Treaties, both of which were declared unConstitutional.

It is noteworthy that all the proposals for referendum that passed in Parliament were based on *PS* proposals, and they always occurred with a *PS* majority, even when original proposal for a referendum on a subject had come from a different source. The rightist majorities rejected two *PS* proposals, and all the rest were passed. The referendum on regionalisation was agreed with the *PSD*, but the question was agreed with the *CDS-PP*. As for the referendum proposals on abortion, the first was agreed with the *PSD*, but the question was passed with the abstentions from the *PSD* and the *CDS-PP*; the second was rejected by the *PSD* and the *CDS-PP*, despite the affirmative votes from the *PCP*, the *BE* and the *PEV*; the three remaining proposals were approved: the third was passed with the *BE* but it was refused by the President of the Republic; the fourth was also passed

with the *BE* but it was declared unConstitutional; the fifth was approved with the *BE* and the *PSD* and gave rise to the second referendum on the decriminalisation of abortion. The *PS* proposed two referendums on European treaties, both of which were approved: the first on the Amsterdam Treaty was passed with *PSD* support, and the second on the Constitutional Treaty, which was passed with *PSD* and *CDS-PP* support. Both, however, were declared unConstitutional.

Besides having voted affirmatively on its nine proposals, the *PS* supported proposals for a referendum on the the decriminalisation of abortion, introduced in 2004 by the *BE* and by means of a popular initiative. However, the *PS* voted against the proposals referendums on 13 separate occasions. Eight of those occasions were against proposals for referendum on European Treaties: the Amsterdam Treaty introduced by the *CDS-PP* and the *PCP*; the European Constitutional Treaty introduced by the *BE* (twice) and the *PCP*; the Lisbon Treaty introduced by the *PCP*, the *CDS-PP*, the *BE* and the *PEV*. It also voted against a joint *PSD*/*CDS-PP* proposal for a referendum on the decriminalisation of abortion in 1997, a *PSD* proposal for referendum on the regionalisation in 1998 and the proposals for referendum on the medically assisted procreation and gay marriage introduced by means of a popular initiative.

The *PS* was behind the first proposal for referendum voted in Parliament, in 1992, which was rejected by the *PSD*'s absolute majority. However, the *PS* position would be decisive in all the referendums actually held. The *PS* agreed with the *PSD* about the holding of referendums on the decriminalisation of abortion and regionalisation, and it always kept a convergent position with the *PSD* as for the European Treaties: they agreed not to allow the referendums on the Treaties of Maastricht in 1992, of Nice in 2001 and of Lisbon in 2008; and they cooperated on proposals for referendum on the Amsterdam Treaty and the Constitutional Treaty, which were declared unConstitutional.

As of 2004, the *PS* insisted on the need to hold a new referendum on the decriminalisation of abortion as a condition to approve any legal change. While it was in minority, its proposal for referendum was rejected. When it gained majority, it maintained its position that the law should not be changed without a referendum, and insisted on successive proposals for referendum until one was held.

In the three referendums held, the *PS* defended the affirmative answer in all of them, and was defeated twice. The acceptance of referendums on the decriminalisation of abortion and on regionalisation in

1998 meant that the *PS* has changed its positions, given that a few times before it had refused *PSD* proposals on the same topic. The results of the referendums in 1998 were *PSD* victories and *PS* defeats. The *PSD* insisted on holding the referendums and the results corresponded to its positions. The fact that a governing party agreed to hold two referendums and lost in both cases, resulting in political embarrassment, is somewhat strange. However, the 1998 referendums reflected the contradictions and the divisions within the *PS*, which the *PSD* cleverly exploited. On the decriminalisation of abortion, the leader himself contradicted the official position of the party. On regionalisation, there were also dissenting voices inside the *PS*, as was the case of the historic leader Mário Soares. The divisions inside the *PS* resulted in the acceptance of the referendums, a lack of commitment to the campaigns, and the negative results.

5.6.2. *PSD*

The *PSD* introduced eight proposals for referendum. The proposals on the decriminalisation of abortion in 1996, the Amsterdam Treaty and the decriminalisation of soft drugs were never discussed. Two proposals for referendums, on the liberalisation of abortion and the Amsterdam Treaty, were discussed but not voted. Two proposals were rejected: the joint proposal with the *CDS-PP* on the liberalisation of abortion and a first version of the proposal for referendum on regionalisation. By initiative of the *PSD,* only the proposal for referendum on the European Constitutional Treaty was approved, and it was declared unConstitutional.

The *PSD* has voted negatively on most of the proposals for referendum submitted to vote. It voted affirmatively on six proposals: **a)** its three proposals, on the decriminalisation of abortion (joint proposal by the *PSD*/*CDS-PP*), on regionalisation, and on the European Constitutional Treaty (joint proposal by the *PS*/*PSD*/*CDS-PP*); **b)** the *PS* Government proposal for a referendum on the Amsterdam Treaty; **c)** the proposal for a referendum on the decriminalisation of abortion in 2006; and **d)** the proposal for a referendum on gay marriage.

However, the *PSD* has voted negatively on 15 proposals for referendum: **a)** the proposal for a referendum on the appointment of the directors to the public radio and television services; **b)** five proposals for a referendum on the decriminalisation of abortion, with three being from the *PS*, one from the *BE* and one by means of a popular initiative; **c)** eight proposals for a referendum on European Treaties: from the *PCP* on the Amsterdam Treaty, from the *BE* (two proposals) and from the *PCP* on the

Constitutional Treaty, and from the *PCP*, *CDS-PP*, *BE* and *PEV* on the Lisbon Treaty; **d)** the proposal, by means of a popular initiative, on medically assisted procreation. On three occasions, the *PSD* abstained: on the proposals for a referendum from the *PS* on the regionalisation and the Amsterdam Treaty and on the *CDS-PP* proposal on the Amsterdam Treaty.

The *PSD* saw the Constitutional introduction of the referendum in 1989 as its victory, since it was its most insistent proposer. It never obtained what it wanted, which was the Constitutional referendum, but obtained the legislative referendum. However, while the *PSD* only initiated specific proposals for referendums, in 1996 and in 1998, it obtained a significant victory in terms of referendums. It imposed referendums on the *PS* about regionalisation and the decriminalisation of abortion, as it wanted to, and it ended up winning both, despite belonging to the opposition. The *PSD*'s purpose was to fight for the referendums in the hope of preventing regionalisation and the decriminalisation of abortion. This weakened the *PS* government's position by inflicting two embarrassing defeats.

On European issues, the *PSD's* position was similar to the *PS*. Both parties refused to hold referendums on the Treaties of Maastricht, Nice and Lisbon, and they cooperated on the questions about the Amsterdam Treaty and the Constitutional Treaty, which were declared unConstitutional.

The *PSD* never accepted referendums when it was in Government. In 1992 it voted negatively on the referendum proposed by the *PS* about the public radio and television services, and in 2004 it voted negatively on all the proposals for referendums on the decriminalisation of abortion. In 2006, sensing a parliamentary majority with a tendency to decriminalise abortion, it assumed the compromise of accepting a referendum, and it voted affirmatively on the *PS* proposal in that sense.

5.6.3. *CDS-PP*

The *CDS-PP* introduced nine proposals for referendum. One of them, on the decriminalisation of drugs, was not discussed. Four proposals were not voted: on abortion (twice), the Amsterdam Treaty and regionalisation. Three proposals were rejected: on abortion, the Amsterdam Treaty and the Lisbon Treaty. A joint proposal with the *PS* and the *PSD* on the European Constitutional Treaty was approved, but it would be declared unConstitutional.

The *CDS-PP* voted affirmatively on 10 proposals for referendum: **a)** the proposal for referendum on the abortion that was subscribed with the *PSD* in 1998; **b)** the *PS* proposal for referendum on regionalisation; **c)** its own proposal for a referendum on the Amsterdam Treaty; **d)** the proposal for a referendum, which was subscribed with the *PS* and the *PSD*, on the European Constitutional Treaty; **e)** the proposal by means of a popular initiative on medically assisted procreation; **f)** all the proposals for a referendum on the Lisbon Treaty; and **g)** the proposal by means of a popular initiative for a referendum on gay marriage.

The *CDS-PP* voted against proposals for referendum on 10 separate occasions. It voted against **a)** the *PS* proposal on the appointment of the directors of public radio and television service; **b)** the *PCP* proposal on the Amsterdam Treaty; **c)** the *BE* and *PCP* proposals for a referendum on the European Constitutional Treaty; **d)** the three proposals for a referendum on the decriminalisation of abortion in 2004; and **e)** the two *PS* proposals in 2005 on the same subject. It abstained four times: **a)** on the *PS* proposal for a referendum on the Amsterdam Treaty; **b)** on the *PSD* proposal for a referendum on regionalisation and on the *PS* proposal on the decriminalisation of abortion in 1998 and, **c)** in the last proposal for a referendum on the decriminalisation of abortion in 2006.

The *CDS-PP* was the first party to support the holding of a referendum on the Maastricht Treaty in 1992, and from that time on it supported the holding of referendums on all treaties regarding the participation of Portugal in the European Union. It proposed the referendum on the Amsterdam Treaty, subscribed the draft referendum on the Constitutional Treaty and maintained that position regarding the Lisbon Treaty. As for regionalisation, it assumed a position against its institution, and supported the referendum as a way to prevent that purpose. Concerning the decriminalisation of abortion, the *CDS-PP* was again opposed, and used the referendum as a platform for that opposition. When there was a parliamentary majority with the tendency to decriminalise abortion, the *CDS-PP* was not against the referendum, hoping to prevent it through those means. When there was a majority in Parliament that could prevent the decriminalisation, the *CDS-PP* did not accept the referendum, in order to avoid the possibility of an affirmative answer.

5.6.4. *PCP*

The *PCP* has always maintained reservations about the referendum, very much influenced by opposition to the *PSD*'s aspirations

for a Constitutional referendum. For that reason, the *PCP* did not follow the *PS*, *PSD* and *CDS* positions in the 1989 Constitutional revision, voting against the admission of the national referendum. The only exception is with regard to the treaties on Portugal's participation in the European Union. The *PCP* argued for the institution of a referendum on the Maastricht Treaty in the 1992 Constitutional Revision, and from that time on it has proposed holding referendums on the Amsterdam Treaty, the Constitutional Treaty and the Lisbon Treaty. It also argued for the 2001 Constitutional Revision to allow a referendum on the Nice Treaty. The *PCP* introduced three referendum proposals, all of which were refused.

The *PCP* voted affirmatively on 10 proposals for referendum. Regarding the European Treaties, it voted affirmatively on **a)** its three proposals, and the Amsterdam, Constitutional and Lisbon Treaties; **b)** the second *BE* proposal for a referendum on the Constitutional Treaty; and **c)** all the proposals for referendum on the Lisbon Treaty. In addition, it voted in favour of the proposals for referendum on the decriminalisation of abortion introduced in 2004 (from the *PS*, the *BE* and by means of popular initiative) after the rejection of the decriminalisation by the majority in Parliament.

The *PCP* voted against 10 proposals for referendum: **a)** on the Amsterdam Treaty presented by the *PS* and the *CDS-PP*, because it disagreed with the formulated question, and the same happened regarding the joint *PS*/*PSD*/*CDS-PP* proposal on the Constitutional Treaty; **b)** on the decriminalisation of abortion in 1998 (*PSD*/*CDS-PP* and *PS* proposals), in 2005 and 2006 (three *PS* proposals); **c)** on the medically assisted procreation; and **d)** on gay marriage.

The *PCP* abstained four times: **a)** on the *PS* proposal for a referendum on public radio and television services; **b)** on the proposals for a referendum on regionalisation in 1998 (although it was against the referendum on regionalisation in the 1997 Constitutional Revision, it recognised in 1998 that the referendum was Constitutionally obligatory and it abstained for that reason); and **c)** on the first *BE* proposal for referendum on the main choices of the European Constitutional Treaty, which were considered to be premature.

Up to 1989, the *PCP* kept a position against the Constitutional acceptance of the national referendum. Once the referendum became a reality, it assumed a pragmatic position about the use of the instrument. The *PCP* supported the holding of referendums on the European treaties, seeing them as a way to contradict the parliamentary hegemony of the

pro-European parties. If the approval of the treaties regarding the participation of Portugal in the European Union were submitted to Parliament, they would be easily have been passed by the large majority of parliamentarians without any hesitation. The use of the referendum, having in mind the examples of Denmark, France and The Netherlands, where the popular will expressed by the referendums did not coincide with the parliamentary expression of the pro-European parties, were seen as a useful and legitimate tool in the struggle against the ratification of the treaties. For that reason, the *PCP* always assumed that the holding of a referendum would be a means to make the refusal of the treaties possible.

As for the decriminalisation of abortion, the position was the opposite. The *PCP* always considered that Parliament should assume the responsibility of decriminalising abortion and strongly criticised the *PS*'s surrender to the *PSD* by accepting to submit that legislative option to referendum. In 2005 and 2006 the *PCP* was once more against the referendum, and supported the legitimacy of Parliament to legislate without a referendum. It also criticised the *PS* and the *BE* for making the decriminalisation of abortion depend on a referendum to over-rule the voters' option in 1998. The *PCP* voted affirmatively on the referendum to decriminalise abortion only in 2004, in the IX Legislature, when there was a rightist majority in Parliament, making decriminalisation by the Assembly of the Republic impossible.

5.6.5. *BE*

Since first winning parliamentary representation in 1999, the *BE* has been the most enthusiastic party in its appeals for referendums. It introduced six draft referendums: **a)** on the Nice Treaty in 2001; **b)** on the European Constitutional Treaty (in 2003 and 2004); **c)** on the Lisbon Treaty (in 2008); and **d)** on the decriminalisation of abortion (in 2004 and 2005). The proposal on the Nice Treaty was not discussed. The 2005 proposal for the referendum on abortion was set aside in favour of the *PS* proposal. The rest were rejected.

The *BE* participated in 16 votings on referendum proposals. It has voted affirmatively on 13 and negatively on three. It voted against the popular initiatives for a referendum on medically assisted procreation and gay marriage, and the joint *PS*/*PSD*/*CDS-PP* proposal on the European Constitutional Treaty. It voted affirmatively on: **a)** its own four proposals; **b)** the proposals for a referendum on the decriminalisation of abortion introduced by the *PS* in 2004, 2005 and 2006, and the proposal by means of a popular initiative in 2004; **c)** the *PCP* proposal on the European

Constitutional Treaty; and **d)** all the proposals for a referendum on the Lisbon Treaty.

While generally favouring referendums, the *BE* opposed the referendum on medically assisted procreation, since it was otherwise flagrantly unConstitutional. It raised doubts about the question formulated by the *PS*, the *PSD* and the *CDS-PP* on the European Constitutional Treaty, which was also declared unConstitutional. Only one refusal for a referendum was politically motivated, and that referred to the popular initiative for a referendum on gay marriage. As for the rest, the *BE* supported all the referendum initiatives on the European treaties, and all the referendum initiatives on the decriminalisation of abortion, even a majority in Parliament declared itself in favour of decriminalisation. As for this last question, the *BE* position was to accept the *PS* idea that the decriminalisation of abortion should only be decided by Parliament after a referendum to reverse the 1998 result. This was only achieved in February 2007.

5.7. Final Note

More than 33 years have passed on the Constitutional admission of the national referendum in Portugal, and the experience has been relatively disappointing for those who hoped that the referendum would strengthen the direct participation of citizens in political life, surpassing the inherent limitations of the representative democracy and reducing the decisive role of the parties in the political system. Political parties have approached the referendum with extreme caution, preventing the possibility of its use against the representative democracy.

A parliamentary majority is always needed to propose referendums, and they always demand the free decision of the President of the Republic and the previous review of their Constitutionality. The referendum was rarely understood as an end in itself by the Portuguese political forces. Asides from rare exceptions, the proposals for referendums were usually negative, i.e. designed to prevent the approval of something that would probably be approved if the decision were taken exclusively by Parliament. Since the appeal to the direct decision of the people, through referendums, was used as a tool against parliamentary majorities, they may be seen as an opposition tactic. For those who have nothing to lose, the proposal of a referendum gives the parliamentary majority the burden of refusing ‘to give the floor’ to the people for fear of a negative result. This, in turn, inclines parliamentary majorities to refuse proposals for referendums.

The decision to ask the President of the Republic to hold a referendum always belongs to the parliamentary majority, which can be rejected if it considers that the referendum would weaken its position or contradict its political goals. There are two reasons why a parliamentary majority might accept a referendum: **a)** the majority is so confident in a positive result that it goes forward with the referendum without hesitations, thus withdrawing any advantage that the opposition could have in the case of a refusal; or **b)** the majority is so divided on a certain question that is prefers to delegate decision-making to the people. In the latter case, the holding of a referendum demonstrates that the majority is divided and weak. The Portuguese democratic experience gives examples of both cases.

The referendums on the decriminalisation of abortion and on regionalisation are examples of division and contradictions inside the majority. Both were accepted by the *PS*, under strong pressure, in the first case, by the Catholic sectors of the party, and in the second case, by the anti-regionalist sectors. The *PS* preferred to accept the results of referendums, rather than having its official positions defeated, thus avoiding the consequences of its own division.

The referendums approved on European Treaties were designed to demonstrate wide support for the approval of the treaties. Both in the case of the Amsterdam Treaty and in the case of the European Constitutional Treaty, the convergence of the *PS*, the *PSD* and the *CDS-PP* in favour should have guaranteed an easy victory in the referendum. Conscious of the frustration expressed by many Portuguese about not having had the chance to pronounce themselves on the integration of Portugal in the European Union through a referendum, the supporters of the integration process could have addressed those complaints by allowing a referendum. However, the referendums of Denmark and France in 1992, and France and The Netherlands in 2005, discouraged any excess of confidence, since support for pro-European parties did not necessarily translate into support for the treaties.

As a result, the questions submitted to the Constitutional Court, both in the case of the referendum on the Amsterdam Treaty, and in the case of the referendum on the European Constitutional Treaty, were designed to lead to an affirmative answer. However, they were ruled unconstitutional. The parliamentary majorities, which passed such proposals, did not want the referendum, so they passed responsibility for its refusal to the Constitutional Court.

In the three referendums held, popular participation did not reach expectations. The enthusiasm for the referendums, which seemed to exist up to 1998, was revealed to be an illusion given the low turnout in all the cases. The fact that the first referendum in democracy had a registered participation rate of 30% was a huge frustration to the referendum enthusiasts. The next referendums, despite the fact that participation was greater, were not enabling the democratic and participative merits of the referendum. In spite of the dissatisfaction often expressed by citizens regarding representative democracy, not to mention the small space reserved for citizens in the political system and the non-fulfilment of promises by power holders, the Portuguese did not find in the referendum to be an antidote for the well-known crisis of representative democracy.

Out of 39 proposals for referendums introduced in the Portuguese Parliament, seven were approved and three were held with very low levels of participation, with apparent enthusiasm giving way to evident scepticism. The refusal to hold a referendum on the Lisbon Treaty dashed any hopes of submitting Portugal's participation in the European integration process to a referendum. In 2009, the distant possibility of a new referendum on the institution of the administrative regions was spoken about once again, but in different terms from the last one. There are also proposals for a referendum on gay marriage, which is currently impossible given the declared opposition from the *PS*, the *PCP* and the *BE*. However, it is unlikely that any referendum in the near future will mobilise public opinion, and encourage the civic participation of citizens. The experience of the referendum in Portuguese democracy is very far from being a success.

Bibliography

Almeida, J., 1937. *Visão do Crente – Ao Serviço do Império.* 2nd ed.. Porto: Livraria Tavares Martins.

Almeida, M. A., 2004. Almeida, José Bento Ferreira de. In: M. F. Mónica ed., 2005. *Dicionário Biográfico Parlamentar* (I). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República, pp. 138-141.

Almeida, P. T., 1998. *Legislação Eleitoral Portuguesa (1820-1926).* Lisboa: Presidência do Conselho de Ministros e Imprensa Nacional – Casa da Moeda.

Almeida, P. R., 1999. *Salazar – Biografia da Ditadura.* Lisboa: Edições Avante.

Amaral, D. F., 1984. *A Revisão Constitucional de 1982 – Textos e Projectos.* Lisboa: Instituto Democracia e Liberdade.

Amaral, D. F., 1994. *A Tentativa Falhada de Um Acordo Portugal – EUA Sobre o Futuro do Ultramar Português (1963).* Coimbra: Coimbra Editora.

Amaral, D. F., 1996. *O Antigo Regime e a Revolução – Memórias Políticas (1941-1975).* Venda Nova: Bertrand/Nomen.

Amaral, D. F., 2009. *Curso de Direito Administrativo,* 3rd ed.. Coimbra: Almedina.

Antunes, J. F., 1991. *Kennedy e Salazar – O Leão e a Raposa.* Lisboa: Difusão Cultural.

Antunes, E. M., 2004. A descolonização. In: J. Medina ed., 2004. *História de Portugal* (XVIII). Amadora: Ediclube, pp. 329-414.

Araújo, A. C. B., 1993. As invasões francesas e a afirmação das ideias liberais. In: J. Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 17-43.

Assembleia da República, 1990. *Trabalhos Preparatórios da Revisão Constitucional, Segunda Revisão, 1989.* Lisboa: Assembleia da República.

Assembleia da República, 1991. *Timor Leste – Factos e Documentos.* Lisboa: Assembleia da República.

Assembleia da República, 1993. *Trabalhos Preparatórios da Revisão Constitucional, Terceira Revisão, 1992.* Lisboa: Assembleia da República.

Assembleia da República, 1994. *Trabalhos Preparatórios da Revisão Constitucional, Primeira Revisão, 1982.* Lisboa: Assembleia da República.

Assembleia da República, 1997. *Consulta Pública sobre a Regionalização – Relatório e Parecer.* Lisboa: Assembleia da República.

Assembleia da República, 2000. *Os 25 Anos da Questão de Timor-Leste no Parlamento Português.* Lisboa: Assembleia da República.

Assembleia da República, 2004. *Constituições Portuguesas* (I). Lisboa: Assembleia da República.

Assembleia da República, 2011. *A Assembleia Constituinte e a Constituição de 1911.* Lisboa: Assembleia da República.

Aubert, J.-F., 1978. Switzerland. In: D. Butler & A. Ranney eds., 1978. *Referendums – A Comparative Study of Practice and Theory*. Washington, D.C.: American Enterprise Institute for Public Policy Research, pp. 39-66.

Avillez, M. J., 1996. *Soares – Ditadura e Revolução.* Lisboa: Público.

Bainville, J., 1931. *Napoléon*. Paris: Arthème Fayard.

Baiôa, Manuel, 2000. A administração e o poder local na transição da I República para a ditadura militar. *Revista de Administração Local*, 180 (Nov./Dec. 2000), pp. 775-788.

Balão, S., 2001. *A Fórmula do Poder – Elite, Partidos, Democracia e Corrupção Política no Pensamento de Moisei Ostrogorski.* Lisboa: Instituto Superior de Ciências Sociais e Políticas.

Barbosa, J., 1911. *Projecto de Constituição de José Barbosa, Deputado pelo Círculo Ocidental de Lisboa.* Lisboa: Tipografia Bayard.

Barreto, A. *et al*, 1979. *Manifesto Reformador apresentado ao país em 18 de Abril de 1979.* Lisboa: author's edition.

Barreto, A. ed., 1998. *Regionalização: Sim ou Não?* Lisboa: Publicações Dom Quixote.

Bon, P., 1997. Le referendum dans les droits ibériques. *Revue Française de Droit Constitutionel,* 31 (1997), pp. 451-480.

Braga, T., 1911. *Discursos sobre a Constituição da República Portuguesa.* Lisboa: Livraria Ferreira.

Brito, C., 1999. Um golpe em falso (o chamado golpe Palma Carlos). *O Militante,* 241 (Jul./Aug.), pp. 32-34.

Bryce, J., 1921. *Modern Democracies.* London: Macmillan.

Burdeau, G., 1950. *Il Regime Parlamentare nelle Costituzione Europee del Dopoguerra.* Milano: Edizione di Comunità.

Butler, D. & Ranney, A. eds., 1978. *Referendums – A Comparative Study of Practice and Theory*. Washington, D.C.: American Enterprise Institute for Public Policy Research.

Butler, D. & Ranney, A. eds.,1994. *Referendums Around the World – The Growing Use of Direct Democracy*. Washington, D.C.: American Enterprise Institute for Public Policy Research.

Cabral, A., 1932. *As Minhas Memórias Políticas: Em Plena República.* Lisboa: Author edition.

Caetano, M., 1956. *A Constituição de 1933 – Estudo de Direito Político.* Coimbra: Coimbra Editora.

Caetano, M., 1974. *Depoimento.* Rio de Janeiro/São Paulo: Distribuidora Record.

Caetano, M., 1977. *Minhas Memórias de Salazar*. Lisboa: Editorial Verbo.

Caetano, M., 1991. *Manual de Direito Administrativo* (I), 5th ed. revised and actualised by D. F. Amaral. Coimbra: Livraria Almedina.

Caldeira, A. M., 2004. Guimarães, João Antunes (1877-1951). In: M. B. Cruz & A. C. Pinto eds., 2004. *Dicionário Biográfico Parlamentar, 1935-1974* (I). Lisboa: Instituto de Ciências Sociais/Assembleia da República, pp. 762-764.

Câmara, J. B., 1993. *Análise Estrutural Contemporânea, a Emergência de Um Modelo – Louis Althusser.* Lisboa: Instituto Superior de Ciências Sociais e Políticas.

Câmara, J. B., 1995. *Saussure, Chess and Time – The Role of an Analogy in a Scientific Revolution.* Lisboa: Instituto Superior de Ciências Sociais e Políticas.

Câmara, J. B., 1997. *Noites de San Casciano – Sobre a Melhor Forma de Governo.* Lisboa: Vega.

Câmara, J. B., 1997. *Parecer sobre o Anteprojecto de Reforma da Lei Eleitoral para a Assembleia da República.* Coimbra: Presidência do Conselho de Ministros, Ministério da Ciência e Tecnologia, Faculdade de Direito da Universidade de Coimbra, 1997, pp. 85-420.

Câmara, J. B., 2005. *De Saramago a Maquiavel e Outros Estudos de Sociologia.* Lisboa: Mapa das Ideias.

Câmara, J. B. & Martins, M. M., 1998. *Sociologia Política e Reforma do Sistema Eleitoral.* Lisboa: Instituto Superior de Ciências Sociais e Políticas.

Campinos, J., 1975. *A Ditadura Militar – 1926/1933.* Lisboa: Publicações Dom Quixote.

Campinos, J., 1978. O *Presidencialismo do Estado Novo.* Lisboa: Perspectivas e Realidades.

Canas, V., 1998. *Referendo Nacional – Introdução e Regime*. Lisboa: Lex.

Canotilho, J. J. G. & Moreira, V., 1978. *Constituição da República Portuguesa Anotada.* 1st ed.. Coimbra: Coimbra Editora.

Canotilho, J. J. G., 1993. As Constituições. In: J. Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 149-165.

Canotilho, J. J. G. & Moreira, V., 1991. *Fundamentos da Constituição.* Coimbra: Coimbra Editora.

Canotilho, J. J. G. & Moreira, V., 1993. *Constituição da República Portuguesa Anotada.* 2nd ed., Coimbra: Coimbra Editora.

Canotilho, J. J. G., 1998. *Direito Constitucional e Teoria da Constituição.* Coimbra: Almedina.

Canotilho, J. J. G., 1999. T. C., Acórdãos n.º 288/98, n.º 531/98 e n.º 532/98. (A jurisprudência constitucional referendária em 1998). *Revista de Legislação e de Jurisprudência,* 1 (Jan.-Mar. 1999), pp. 266-350.

Cardoso, F. L. Costa, R. J. P. & Tomé, J. L., 1991. *Timor-Leste, Factos e Documentos.* Lisboa: Assembleia da República.

Cardoso, F. L., 1992. *Referendo – Uma Questão Actual.* Lisboa: Publicações Dom Quixote.

Carneiro, F. S., 1978. *Impasse.* Lisboa: Edições Macroplan.

Carneiro, F. S., 1979. U*ma Constituição para os Anos 80 – Contributo para um Projecto de Revisão.* Lisboa: Publicações Dom Quixote.

Carneiro, F. S., 1989. *Textos*. Lisboa: Edições Progresso Social e Democracia.

Carneiro, F. S., 2000. *Intervenções Parlamentares.* Lisboa: Assembleia da República.

Carneiro, S., 1980. *Soares Carneiro, Manifesto Eleitoral.* Lisboa: Candidatura do General Soares Carneiro.

Carvalho, L., 2000. *1969: Um Marco no Caminho para a Liberdade.* Lisboa: Edições Avante.

Carvalho, M. V., 1980. O referendo nas Constituições Portuguesas. *Nação e Defesa*, 15 (Jul./Sep. 1980), pp. 95-113.

Castanheira, J. P., 1994. A reunião que veio tarde demais. *Expresso,* 26 Mar., pp. 30-42.

Castro, J. R., 1980. Para a Constituição de 1981. *Democracia e Liberdade,* 16 (Nov. 1980), pp. 39-48.

3.º Congresso da Oposição Democrática, 1973. *Conclusões. Aveiro, Portugal, 4-8 Abril 1973*. Lisboa: Seara Nova.

Correia, P. P., 1991. *Descolonização de Angola: A Jóia da Coroa do Império Português*. Lisboa: Editorial Inquérito.

Correia, P. P., 1994. A descolonização. In: A. Reis ed., 1994. *Portugal, 20 Anos de democracia.* Lisboa: Círculo de Leitores, pp. 40-73.

Correia, S., 1982. *Noções de Direito Administrativo.* Lisboa: Editora Danúbio.

Couceiro, H. P., 1917. *A Democracia Nacional.* Coimbra: França e Arménio.

Cronin, V., 1979. *Napoleon*. Harmondsworth: Penguin Books.

Cruz, C. B., 1975. *S. Tomé e Príncipe: do Colonialismo à Independência.* Lisboa: Moraes Editores.

Cruz, M. B. & Pinto, A. C. eds., 2005. *Dicionário Biográfico Parlamentar, 1935-1974.* Lisboa: Instituto de Ciências Sociais/Assembleia da República.

Cruzeiro, M. M., 1998. *Costa Gomes – O Último Marechal*. Lisboa: Editorial Notícias.

Cruzeiro, M. M., 2002. *Vasco Gonçalves – Um General na Revolução.* Lisboa: Editorial Notícias.

Cunhal, A., 1974. *Rumo à Vitória – As Tarefas do Partido na Revolução Democrática e Nacional*. Porto: Edições A Opinião.

Cunhal, A., 1975. *Relatório da Actividade do Comité Central ao VI Congresso do PCP*. Lisboa: Edições Avante.

Cunhal, A., 1976. *A Revolução Portuguesa – O Passado e o Futuro.* Lisboa: Edições Avante.

Cunhal, A., 1980. *Discursos Políticos* (14). Lisboa: Edições Avante.

Cunhal, A., 2007. *Obras Escolhidas* (I). Lisboa: Edições Avante.

Delgado, H., 1974. *Memórias.* Lisboa: Edições Delfos.

Denquin, J. M., 1976. *Référendum et Plebiscite – Essai de Théorie Générale*. Paris: Librairie Générale de Droit et de Jurisprudence.

Deploige, S., 1892. *Le Référendum en Suisse.* Bruxelles: Société Belge de Librairie.

Dias, C. M., 1912. *O Estado Actual da Causa Monárquica.* Lisboa: author's edition.

Dicey, A. V., 1890. Ought the referendum be introduced in England? *Contemporary Review* (1890).

Dicey, A.V., 1894. The Referendum. *National Review,* 23 (Mar. 1894).

Dicey, A. V., 1910. The referendum and its critics. *Quarterly Review,* 423 (Apr. 1910).

Dicey, A. V., 1915. *Introduction to the Study of the Law of the Constitution.* 8th ed.. London: MacMillan & Co., limited.

Duarte, M. L., 1987. O referendo e a representação política. *Revista Jurídica da Associação Académica da Faculdade de Direito de Lisboa,* 9-10 (Jan./Jun. 1987), pp. 195-254.

Duarte, M. L., 1998. União Europeia e consulta referendária – a propósito do Acórdão n.º 531/98 do Tribunal Constitucional. *Direito e Justiça,* XII (2), pp. 59-69.

Duguit, L., 1923. *Manuel de Droit Constitutionel.* Paris: Ancienne Librairie Fontemoing.

Esmein, A., 1894. Deux formes de gouvernement. *Revue du Droit Public et de le Science Politique en France et à l´´etranger,* I (Jan./Jun. 1894).

Fernando, E., 2005. *O Último Adeus Português – História das Relações entre Portugal e Angola do Início da Guerra Colonial Até à Independência.* Lisboa: Oficina do Livro.

Ferreira, J. M., 1993. *Portugal em Transe.* In: J. Mattoso ed., 1993. *História de Portugal* (VIII). Lisboa: Círculo de Leitores.

Ferreira, J. P., 1970. *As Eleições de Outubro de 1969: Documentação Básica.* Lisboa: Publicações Europa-América.

Ferro, A., 1933. *Salazar, o Homem e a Sua Obra.* Lisboa: Empresa Nacional de Publicidade.

Filipe, A., 2002. *As Oposições Parlamentares em Portugal – Práticas e Intervenções (1976-2000).* Lisboa: Vega.

Filipe, A. 2005. A União Europeia e os Parlamentos Nacionais. *Res-Publica – Revista Lusófona de Ciência Política e Relações Internacionais,* 1, pp. 61-77.

Filipe, A., 2007. Supremacia democrática do referendo relativamente à aprovação de uma lei? In: Filipe, A. *et al. Sim! Despenalizar o Aborto, Proteger a Maternidade e Paternidade, Garantir o Planeamento Familiar e a Educação Sexual.* Lisboa: Edições Avante, pp. 85-88.

Franco, A. S. *et al*., 1978. *Opções Inadiáveis.* Lisboa: Centro do Livro Brasileiro.

Franco, M. ed., 2006. *Portugal, os Estados Unidos e a África Austral.* Lisboa: Instituto Português de Relações Internacionais/Fundação Luso-Americana para o Desenvolvimento.

Freire, A. & Baum, M. A., 2001a. Partidos políticos, movimentos de cidadãos e referendos em Portugal: os casos do aborto e da regionalização. *Análise Social,* XXXVI (158-159), pp. 9-41.

Freire, A. & Baum, M. A., 2001b. *Referenda Voting When Civil Society is Weak: The Portuguese Case.* Lisboa: Departamento de Sociologia do ISCTE.

Freire, A. & Magalhães, P., 2002. *A Abstenção Eleitoral em Portugal.* Lisboa: Instituto de Ciências Sociais.

Freire, A. & Baum, M., 2003a. 1998 Portuguese referendums – Explaining the results and speculating on the future of direct democracy in Portugal. *Portuguese Journal of Social Science,* 2 (1), pp. 5-19.

Freire, A. & Baum, M. A., 2003b. Referenda voting in Portugal, 1998: The effects of party sympathies, social structure and pressure groups. *European Journal of Political Research,* 42 (1).

Freire, A., 2007. *Crónicas Políticas Heterodoxas.* Lisboa: Sextante Editora.

Gaitonde, P. D., 1987. *The Liberation of Goa: a Participant's View of History*. London: Palgrave.

Gallagher, M., 1996. Conclusion. In: Gallagher, M. & Uleri, P. V. eds., 1996. *The Referendum Experience in Europe.* London: Macmillan Press Ltd. New York: St. Martin's Press, Inc., pp. 226-252.

Gallagher, M. & Uleri, P. V. eds., 1996. *The Referendum Experience in Europe.* London: Macmillan Press Ltd. New York: St. Martin's Press, Inc.

Garcia, F. P., 2003. A política interna portuguesa e as ópticas quanto ao Ultramar. *Estratégia* (XIV), pp. 47-83.

González, J. L. L., 2005. *El Referéndum en el Sistema Español de Participación Política.* Valencia: Universidad Politécnica de Valencia.

Gouveia, J. B., 2010. *Manual de Direito Constitucional*. 3rd ed., Coimbra: Almedina.

Grémio Montanha, 1911. *Projecto de Constituição Portuguesa Enviado ao Parlamento pelo Grémio Montanha*. Lisboa: Tipografia Liberty.

Guedes, A. M., 1978. *Ideologias e Sistemas Políticos.* Lisboa: Instituto de Altos Estudos Militares.

Guedes, L. M., 1997. *Uma Constituição Moderna para Portugal.* Lisboa: Grupo Parlamentar do PSD.

Guimarães, F. A., 2006. Os Estados Unidos e a descolonização de Angola: as origens de uma política falhada. In: L. N. Rodrigues ed., 2006. *Regimes e Império: As Relações Luso-Americanas no Século XX*. Lisboa: Fundação Luso-Americana/Instituto Português de Relações Internacionais, pp. 163-194.

Gusmão, Xanana, 1994. *Timor Leste – Um Povo, Uma Pátria.* Lisboa: Edições Colibri.

Hauriou, M., 1929. *Precis de Droit Constitutionel,* 2nd ed., Paris: Sirey.

Holsteyn, J., 1996. The Netherlands: national debate and local experience. In: M. Gallagher & P. V. Uleri eds., 1996. *The Referendum Experience in Europe.* London: Macmillan Press Ltd, pp. 126-138.

Lacão, J., 1998. Regionalização e Modernidade. *Finisterra* 27/28. Lisboa: Fundação José Fontana, pp. 49-76

(Lavradio), J. L. A., 1942. *Memórias do Sexto Marquês do Lavradio.* Lisboa: Edições Ática.

Leal, Cunha, 1957. *As Minhas Razões e as Razões dos Outros.* Lisboa: author edition.

LeDuc, L., 2003. *The Politics of Direct Democracy – Referendums in Global Perspective.* Toronto: Broadview Press.

Léonard, Y., 1999. Le Référendum au Portugal, quel avenir? *Lusotopie*, 7 (1999), pp. 37-54.

Lijphart, A., 1984. *Democracies.* Yale: Yale University Press.

Lipset, S. M., 1964. *Introduction* to Ostrogorski, M., 1902. *Democracy and the Organization of Political Parties.* Chicago: Quadrangle Books.

Lobo, M. C., 2004. Fratel, Manuel Joaquim (1869-1938). In: M. B. Cruz & A. C. Pinto eds., 2004. *Dicionário Biográfico Parlamentar, 1935-1974* (I). Lisboa: Instituto de Ciências Sociais/Assembleia da República, pp. 672-673.

Lock, Grahame, 2005. The Concept of Europe. *Res-Publica – Revista Lusófona de Ciência Política e Relações Internacionais*, 1, pp. 23-32.

Lock, Grahame, 2006. Watching out for 'governance': the nature and future of an illusion. *Episteme - Revista de Epistemologia e História das Ciências*, VI (15-16-17), pp. 19-37.

Lock Grahame, 2008. *Political philosophy: an audio course on Western political theory*. The Hague: Home Academy Publishers.

Lopes, F. F., 1992. Um regime parlamentarista de partido dominante. In: A. Reis ed., 1992. *Portugal Contemporâneo* (III). Lisboa: Publicações Alfa, pp. 85-100.

Lopes, J. V., 1996. *Cabo Verde – Os Bastidores da Independência.* Praia/Mindelo: Instituto Camões.

Lopes, P. S. & Barroso, J. M. D., 1980. *Sistema de Governo e Sistema Partidário*. Lisboa: Livraria Bertrand.

Lourenço, E., 1998. A propósito da regionalização: para quê tentar o diabo? *Finisterra,* 27/28. Lisboa: Fundação José Fontana, pp. 7-12.

Machado, F. A., 2001. *Rousseau em Portugal*. Porto: Campo das Letras.

Machado, F. B., 1911. *Constituição ou Código Fundamental da República Portuguesa – Projecto Apresentado à Assembleia Nacional Constituinte pelo Deputado por Lisboa Fernão Botto-Machado.* Lisboa: Tipografia Bayard.

MacQueen, N., 1997. *The Decolonization of Portuguese Africa.* London: Longman.

MacQueen, N., 2006. Marcelismo, Africa and the United Nations. In: *Portugal, os Estados Unidos e a África Austral.* Lisboa: Instituto Português de Relações Internacionais/Fundação Luso-Americana para o Desenvolvimento, pp. 101-117.

Magalhães, J., 1989. *Dicionário da Revisão Constitucional.* Lisboa: Publicações Europa-América.

Magalhães, J., 1997. *Dicionário da Revisão Constitucional* [CD-ROM]. Lisboa: Editorial Notícias.

Magalhães, J., 2004. *Constituição da República Portuguesa 2004* [CD-ROM]. Lisboa: Público/Microsoft.

Malberg, C., 1931. Considérations théoriques sur la question de la combinaison du referendum avec de parlementarisme. *Revue du Droit Public et de la Science Politique en France et à L´etranger*, 48th , pp. 15-27.

Maltez, J. A., 2004. *Tradição e Revolução – Uma Biografia do Portugal Político do Século XIX ao XXI* (I – 1820-1910). Lisboa: Tribuna da História.

Maltez, J. A., 2005. *Tradição e Revolução – Uma Biografia do Portugal Político do Século XIX ao XXI* (II – 1910-2005). Lisboa: Tribuna da História.

Manalvo, N., 2001. *PSD – A Marca dos Líderes.* Lisboa: Editorial Notícias.

Marques, A. H. O. ed., 1978. *História da Primeira República Portuguesa.* Lisboa: Iniciativas Editoriais.

Marques, A. H. O., 1991. Portugal da Monarquia para a República. In: J. Serrão & A. H. O. Marques eds., *Nova História de Portugal.* Lisboa: Editorial Presença.

Marques, A. H. O., 1998. *História de Portugal* (III). 13rd ed., Lisboa: Editorial Presença.

Marques, A. H. O. Guinote, P. Mesquita, P. T. & Dias, J. J. A., 2000. *Parlamentares e Ministros da 1ª República (1910-1916).* Lisboa: Assembleia da República/Edições Afrontamento.

Marques, F. P., 1992. Do vintismo ao cabralismo. In: A. Reis ed., 1992. *Portugal Contemporâneo* (I). Lisboa: Publicações Alfa, pp. 23-106.

Marques, F. P., 2005. O Tratado Constitucional e o Futuro da UE. *Res-Publica – Revista Lusófona de Ciência Política e Relações Internacionais,* 1, pp. 9-13.

Marques, V. S. & Duarte, J. C. S., 2011. *O Federalista* (Translation, Introduction and Notes of Hamilton, A., Madison, J. & Jay J, *The Federalist Papers*). Lisboa: Fundação Calouste Gulbenkian.

Martin, Ian, 2001. *Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention.* Boulder: Lynne Rienner Publishers.

Matos, A. C., 2005. Gusmão, Joaquim de Vasconcelos (1837-1912). In: M. F. Mónica ed., 2005. *Dicionário Biográfico Parlamentar* (II). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República, pp. 403-405.

Matos, S. C., 2004. A crise da monarquia constitucional (1890-1906). In: J. Medina ed., 2004. *História de Portugal* (XI). Amadora: Ediclube, pp. 381-414.

Maxwell, K., 1995. *The Making of Portuguese Democracy*. Cambridge: Cambridge University Press.

Maxwell, K., 2006. Os Estados Unidos e a descolonização portuguesa. In: L. N. Rodrigues ed., 2006. *Regimes e Império: As Relações Luso-Americanas no Século XX*. Lisboa: Instituto Português de Relações Internacionais/Fundação Luso-Americana para o Desenvolvimento, pp. 195-242.

Medina, J., 2004. A Carbonária Portuguesa e o derrube da monarquia. In: J. Medina ed., 2004. *História de Portugal* (XII). Amadora: Ediclube, pp. 355-390.

Melo, A. M. B. Costa, J. M. C. & Andrade, J. C. V., 1981. *Estudo e Projecto de Revisão da Constituição da República Portuguesa de 1976.* Coimbra: Coimbra Editora.

Melo, M. J. H., 1962. *Portugal, o Ultramar e o Futuro.* Lisboa: author edition.

Mendes, M. F. A., & Miguéis, J., 1998. *Lei Orgânica do Regime do Referendo Anotada e Comentada.* Vila Franca de Xira: authors edition.

Mendes, M. F. A., 2006. *Lei Orgânica do Regime do Referendo Actualizada, Anotada e Comentada.* Lisboa: author edition.

Menezes, F.R., 2011. *Paiva Couceiro – Diários, Correspondência e Escritos Dispersos*. Lisboa: Publicações Dom Quixote.

Mercier, A.-C., 2003. Le référendum d'initiative populaire, un trait méconnu du genie de Condorcet. *Revue Française de Droit Constitutionnel*, 55 (2003), pp. 483-512.

Michels, R., 2009. *Political Parties – A Sociological Study of the Oligarchic Tendencies of Modern Democracy.* 6th printing. New Brunswick, New Jersey: Transaction Publishers.

Ministério do Equipamento, do Planeamento e da Administração do Território, 1998. *Descentralização, Regionalização e Reforma Democrática do Estado.* Lisboa: Ministério do Equipamento, do Planeamento e da Administração do Território.

Ministério do Interior, 1911. *Projecto de Código Administrativo – Elaborado pela Comissão Nomeada por Decreto de 25 de Outubro de 1910*. Lisboa: Imprensa Nacional.

Ministério dos Negócios Estrangeiros, 1967. *Vinte Anos de Defesa do Estado Português da Índia (1947-1967).* Lisboa: Ministério dos Negócios Estrangeiros.

Miranda, J., 1974. A Revolução de 25 de Abril e o Direito Constitucional. *Boletim do Ministério da Justiça,* 242 (Off-print).

Miranda, J., 1975. *Um Projecto de Constituição.* Braga: author edition.

Miranda, J., 1976. *Constituição e Democracia.* Lisboa: Livraria Petrony.

Miranda, J., 1978a. *Fontes e Trabalhos Preparatórios da Constituição.* Lisboa: Imprensa Nacional – Casa da Moeda.

Miranda, J., 1980. *Um Projecto de Revisão Constitucional*. Coimbra: Coimbra Editora.

Miranda, J., 1981. *Manual de Direito Constitucional* (I). Coimbra: Coimbra Editora.

Miranda, J., 1983. *Revisão Constitucional e Democracia*. Lisboa: Rei dos Livros.

Miranda, J., 1991. Um anteprojecto de proposta de lei do regime do referendo. *Revista da Faculdade de Direito da Universidade de Lisboa,* XXXII, pp. 515-631.

Miranda, J., 1993. O Tratado de Maastricht e a Constituição Portuguesa. *Brotéria*, 136 (1993), pp. 363-380.

Miranda, J., 1996a. *Ciência Política – Formas de Governo.* Lisboa: Pedro Ferreira – Editor.

Miranda, J., 1996b. *Ideias para uma Revisão Constitucional em 1996.* Lisboa: Edições Cosmos.

Miranda, J., 1998. Sobre a Proposta de Lei Orgânica Relativa ao Regime do Referendo Previsto nos Artigos 115.º e 256.º da Constituição (após 1997). *Scientia Iuridica – Revista de Direito Comparado Português e Brasileiro,* XLVII (271-273), pp. 21-29.

Miranda, J., 2003. *Manual de Direito Constitucional* (I), 7th ed., Coimbra: Coimbra Editora.

Miranda, J. & Medeiros, R., 2007. *Constituição da República Portuguesa Anotada.* Coimbra: Coimbra Editora.

Mirkine-Guetzévitch, 1931. Le referendum et le regime parlementaire. *Revue Politique et Parlementaire,* CXLVI (Jan./Mar. 1931).

Moncada, A. C., 1996. Reflexões acerca do referendo em Portugal. *Estado e Direito – Revista Semestral Luso-Espanhola de Direito Público,* 17-18 (1996), pp. 131-168.

Mónica, M. F., 1999. *Fontes Pereira de Melo.* Lisboa: Edições Afrontamento.

Mónica, M. F. ed., 2004. *Dicionário Biográfico Parlamentar* (I). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República.

Mónica, M. F. ed., 2005. *Dicionário Biográfico Parlamentar* (II). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República.

Morais, C. A., 1995. *A Queda da Índia Portuguesa – Crónica da Invasão e do Cativeiro*. Lisboa: Editorial Estampa.

Moreira, A., 1992. A crise: do "terramoto Delgado ao golpe de Beja". In: A. Reis ed., 1992. *Portugal Contemporâneo* (V). Lisboa: Publicações Alfa, pp. 21-36.

Moreira, F., 2004. Corte Real, José Luciano de Castro Pereira (1834-1914). In: M. F. Mónica ed., 2004. *Dicionário Biográfico Parlamentar* (I). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República, pp. 836-839.

Moreira, F., 2005. Melo, António Augusto Ferreira de (1838-1891). In: M. F. Mónica ed., 2005. *Dicionário Biográfico Parlamentar* (II). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República, pp. 818-821.

Moreira, V., 1980. *Constituição e Revisão Constitucional*. Lisboa: Editorial Caminho.

Moreira, V., 2004. O sistema jurídico-constitucional do Estado Novo. In: J. Medina ed., 2004. *História de Portugal* (XV). Amadora: Ediclube, pp. 405-454.

Namorado, M. & Pinheiro, A. S., 1998. *Legislação Eleitoral Portuguesa – Textos Históricos (1820-1974).*Lisboa: Comissão Nacional de Eleições.

Nascimento, U. *et al.*, 1998. Regionalização e Referendo. *Seara Nova*, 61 (Jul.-Sep. 1998).

Nogueira, F., 1979. *Diálogos Interditos – A Política Externa Portuguesa e a Guerra de África* (I). Braga/Lisboa: Editorial Intervenção.

Nogueira, F. 1986. *Um Político confessa-se (Diário: 1960-1968)*. Lisboa: Livraria Civilização.

Nogueira, F., 2000a. *Salazar* (II) – *Os Tempos Áureos.* 2nd ed., Porto: Livraria Civilização.

Nogueira, F., 2000b. Salazar (V) – *A Resistência.* 4th ed., Porto: Livraria Civilização.

Oliveira, A. C., 1993. *Direito das Autarquias Locais.* Coimbra: Coimbra Editora.

Oliveira, C., 1924. *Código Administrativo – Leis n.ºs 88, 621 e 1453, de 7 de Agosto de 1913, 23 de Junho de 1916 e 26 de Julho de 1923 anotadas*. Coimbra: Lúmen.

Oliveira, C., 1992. Da Ditadura Militar à implantação do salazarismo. In: A. Reis ed., 1992. *Portugal Contemporâneo* (IV). Lisboa: Publicações Alfa, pp. 13-32.

Oliveira, C., 1993. *Os Anos Decisivos – Portugal 1962-1985, Um Testemunho.* Lisboa: Editorial Presença.

Oliveira, C., 1996a. A República e os Municípios. In: C. Oliveira ed., 1996. *História dos Municípios e do Poder Local – Dos Finais da Idade Média à União Europeia.* Lisboa: Círculo de Leitores, pp. 243-283.

Oliveira, C., 1996b. O Estado Novo e os municípios corporativos. In: C. Oliveira ed., 1996. *História dos Municípios e do Poder Local – Dos Finais da Idade Média à União Europeia.* Lisboa: Círculo de Leitores, pp. 285-325.

Osório, H. S., 1988. *Palma Carlos – Um Só Rosto, Uma Só Fé.* Lisboa: Referendo.

Ostrogorski, M., 1970. *Democracy and the Organization of Political Parties.* New York: Haskell House Publishers Ltd., Publishers of Scarce Scholarly Books (1st ed.: 1902).

Partido Comunista Português, 1981. *60 Anos de Luta ao Serviço do Povo e da Pátria.* Lisboa: Edições Avante.

Partido Social Democrata, 1978. *Documentos do VI Congresso.* Lisboa: Serviço de Informação e Relações Públicas do PSD.

Pereira, Z., 2005. Lobo, Abílio Eduardo da Costa (1849-1908). In: M. F. Mónica ed., 2005. *Dicionário Biográfico Parlamentar* (II). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República, pp. 599-602.

Pimenta, A., 1937. *Nas Vésperas do Estado Novo.* Porto: Livraria Tavares Martins.

Pinto, A. C., 2001. *O Fim do Império Português.* Lisboa: Livros Horizonte.

Pinto, R. L., 1988. *Referendo Local e Descentralização Política (Contributo para o Estudo do Referendo Local no Constitucionalismo Português).* Coimbra: Almedina.

Pires, F. L., 1975. *Uma Constituição para Portugal.* Coimbra: Imprensa de Coimbra.

Pires, F. L., 1979. *O CDS e a Situação Política Nacional.* Lisboa: Edições Juventude Centrista.

Pires, F. L., 1980. Consenso e referendo. *Democracia e Liberdade,* 16 (Nov. 1980), pp. 49-52.

Pires, M. L., 1981. *Relatório do Governo de Timor (Período de 13 de Novembro de 1974 a 7 de Dezembro de 1975).* Lisboa: Presidência do Conselho de Ministros.

Pires, M. L., 1991. *Descolonizar Timor, Missão Impossível.* Lisboa: Publicações Dom Quixote.

Praça, L., 1894. *Colecção de Leis e Subsídios para a História do Direito Constitucional Português* (II). Coimbra: Imprensa da Universidade.

Proença, M. C. & Manique, A. P., 1992. Da reconciliação à queda da monarquia. In: A. Reis ed., 1992. *Portugal Contemporâneo* (II). Lisboa: Publicações Alfa, pp. 13-100.

Queiró, A. R., 1980. Da licitude de uma reforma da Constituição. *Democracia e Liberdade,* 15 (Jun. 1980), pp. 13-35.

Quermone, J.-L., 1985. Le référendum: éssai de typologie prospective. *Revue du Droit Public en France et à L'étranger,* 3, (May/Jun. 1985), pp. 577-590.

Qvortrup, M., 2005. *A Comparative Study of Referendums,* 2nd ed., Manchester: Manchester University Press.

Ramos, R., 1994. *A Segunda Fundação (1890-1926).* In: J. Mattoso ed., 1994. *História de Portugal* (VI). Lisboa: Círculo de Leitores.

Ranney, A., 1978. The United States of America. In: D. Butler & A. Ranney eds., 1978. *Referendums – A Comparative Study of Practice and*

Theory. Washington, D.C.: American Enterprise Institute for Public Policy Research, pp. 67-86.

Rappard, W. E., 1912. The Initiative and Referendum in Switzerland. *American Political Science Review,* 6, (Aug. 1912), pp. 345-366.

Raposo, H., 1945. *Folhas do Meu Cadastro, I (1911-1925)*. Lisboa: Edições Gama.

Reis, A. ed., 1992. *Portugal Contemporâneo*. Lisboa: Publicações Alfa.

Reis, A. ed., 1994. *Portugal, 20 Anos de democracia.* Lisboa: Círculo de Leitores,

Ribeiro, M. M. T., 1993a. A restauração da Carta Constitucional: Cabralismo e anticabralismo. In: J. Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 107-119.

Ribeiro, M. M. T., 1993b. A Regeneração e o seu significado. In: J. Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 121-129.

Ribeiro, M. M. T., 2004. A nova ordem liberal (1834-1851): reformas, dificuldades e sobressaltos político-militares. In: J. Medina ed., 2004. *História de Portugal* (X). Amadora: Ediclube, pp. 329-397.

Ribeiro, S., 1994. *Décadas de Europa*. Lisboa: author edition.

Riscado, F. A. Vicente, P. Melo, J. G. & Pecoreli, C. S. C., 1981. *Relatório da Comissão de Análise e Esclarecimento do Processo de Descolonização de Timor*. Lisboa: Presidência do Conselho de Ministros.

Rocha, J. A. O. & Filipe, A., 2003. *Legislação Fundamental de Governo Local e Administração Autárquica.* Coimbra: Coimbra Editora.

Rodrigues, L. B., 1994. *O Referendo Português a Nível Nacional.* Coimbra: Coimbra Editora.

Rodrigues, L. B., 1998. Regime do referendo de âmbito nacional – Anteprojecto de Proposta de Lei Orgânica. *Revista da Faculdade de Direito da Universidade de Lisboa,* XXXIV (1), pp. 327-395.

Rodrigues, L. N., 2002. *Salazar-Kennedy: A Crise de Uma Aliança*. Lisboa: Editorial Notícias.

Rodrigues, L. N., 2004. Missão impossível: O Plano Anderson e a questão colonial portuguesa em 1965. *Relações Internacionais*, 1 (Mar. 2004), pp. 99-112.

Rodrigues, L. N., 2006a. Os Estados Unidos e a questão colonial portuguesa na ONU (1961-1963). In: M. Franco ed., 2006. *Portugal, os Estados Unidos e a África Austral*. Lisboa: Instituto Português de Relações Internacionais/Fundação Luso-Americana para o Desenvolvimento, pp. 61-100.

Rodrigues, L. N., 2006b. A Administração Johnson e a questão colonial portuguesa: O Plano Anderson. In: L. N. Rodrigues ed., 2006. *Regimes e Império: As Relações Luso-Americanas no Século XX*. Lisboa: Instituto Português de Relações Internacionais/Fundação Luso-Americana para o Desenvolvimento, pp. 89-112.

Rolo, A. R., 2004. Abreu, Augusto Cancela de, In: M. B. Cruz & A. C. Pinto ed., 2004. *Dicionário Biográfico Parlamentar, 1935-1974* (I). Lisboa: Instituto de Ciências Sociais/ Assembleia da República, pp. 85-88.

Rosas, F., 1994. *O Estado Novo.* In: J. Mattoso ed., 1994. *História de Portugal* (VII). Lisboa: Círculo de Leitores.

Rosas, F., 1996. Constituição Política de 1933. In: F. Rosas & J. M. B. Brito ed., 1996. *Dicionário de História do Estado Novo* (I). Venda Nova: Bertrand Editores, pp. 198-205.

Rousseau, J. J., 1762. *The Social Contract and Discourses.* Translated from French by G. D. H. Cole., 1973. London: Everyman's Library.

Sá, L., 1989. *Regiões Administrativas – O Poder Local que Falta.* Lisboa: Editorial Caminho.

Sá, L., 1994. *O Lugar da Assembleia da República no Sistema Político.* Lisboa: Editorial Caminho.

Sá, L. Serrano, A. & Branco, D., 1998. *As Regiões Administrativas – Democracia e Desenvolvimento.* Lisboa: Editorial Caminho.

Salazar, A. O., 1956. *Portugal, Goa e a União Indiana*. Lisboa: Agência Geral do Ultramar.

Salazar, A. O., 1962. *Ocupação e Invasão de Goa pela União Indiana.* Lisboa: Secretariado Nacional da Informação.

Salazar, A. O., 1967. *Discursos e Notas Políticas* (VI). Coimbra: Coimbra Editora.

Samuels, M. A. & M. Haykin, S. M., 1979. The Anderson Plan: an American attempt to seduce Portugal out of Africa. *Orbis*, 23 (3), pp. 649-669.

Santos, A. A., 1972. *Já Agora.* Lourenço Marques: Minerva Central.

Santos, A. A., 2006. *Quase Memórias – do Colonialismo e da Descolonização.* Lisboa: Casa das Letras.

Santos, A. P. R., 1990. *A Imagem do Poder no Constitucionalismo Português*. Lisboa: Instituto Superior de Ciências Sociais e Políticas.

Santos, M., 1911. *Projecto de Estatuto Nacional para Servir de Elemento de Estudo da Futura Organização Política a Promulgar*. Lisboa: Tipografia Liberty.

Santos, M. D., 2005. *Os Monárquicos e a República Nova*. Coimbra: Quarteto Editora.

Schmitt, C., 1988. *The Crisis of Parliamentary Democracy*. (Translated by Ellen Kennedy). Baskerville: Massachusetts Institute of Technology.

Secretariado Nacional da Informação, Cultura Popular e Turismo, 1962. *Invasão e Ocupação de Goa – Comentários da Imprensa Mundial*. Lisboa: Secretariado Nacional da Informação, Cultura Popular e Turismo.

Seguro, António José, 2004. *Relatório sobre os Trabalhos da Convenção que Aprovou o Projecto de Tratado que Estabelece uma Constituição para a Europa*. Lisboa: Assembleia da República.

Serra, J. B., 1992. Do 5 de Outubro ao 28 de Maio: a instabilidade permanente. In: A. Reis ed., 1992. *Portugal Contemporâneo* (III). Lisboa: Publicações Alfa, pp. 13-84.

Serrão J. & Marques A. H. O. eds., 1991. *Nova História de Portugal.* Lisboa: Editorial Presença.

Serrão, J. V., 1983. *História de Portugal* (VII). 3rd ed., Lisboa: Editorial Verbo.

Sharp, C. D., 1911. The Case against the Referendum. *Fabian Tract*, 155. London: The Fabian Society.

Silva, A. F., 2005. Fuschini, Augusto Maria (1843-1911). In: M. F. Mónica ed., 2005. *Dicionário Biográfico Parlamentar* (II). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/Assembleia da República, pp. 262-269.

Silva, A. M., 1993. A vitória definitiva do liberalismo e a instabilidade constitucional: cartismo, setembrismo e cabralismo. In: J. Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque, (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 89-105.

Silva, J. R., 2004. O rotativismo monárquico-constitucional. Eleições, caciquismo e sufrágio. In: J. Medina ed., 2004. *História de Portugal* (XI). Amadora: Ediclube, pp. 185-225.

Silva, M. ed., 1976. *José Félix Henriques Nogueira - Obra Completa.* Lisboa: Imprensa Nacional – Casa da Moeda.

Silveira, J., 1992. As guerras coloniais e a queda do Império. In: A. Reis ed., 1992. *Portugal Contemporâneo* (V). Lisboa, Publicações Alfa, pp. 71-106.

Smith, G., 1976. The functional properties of the referendum. *European Journal of Political Research*, 4 (1976), pp. 1-23.

Soares, M., 1969. *Escritos Políticos.* Lisboa: Editorial Inquérito.

Soares, M., 1974. *Portugal Amordaçado.* Lisboa: Arcádia.

Soares, M. I., Melo, Joaquim Ferreira de. In: M. F. Mónica ed., 2005. *Dicionário Biográfico Parlamentar* (II). Lisboa: Instituto de Ciências Sociais da Universidade de Lisboa/ Assembleia da República, pp. 850-851.

Sousa, M. R. & Salema, M., 1980. A revisão constitucional e os partidos políticos. *Democracia e Liberdade*, 15 (Jun. 1980), pp. 47-58.

Sousa, M. R., 1983. *Os Partidos Políticos no Direito Constitucional Português.* Braga: Livraria Cruz.

Sousa, M. R., 1992. Da crispação institucional ao equilíbrio de poderes. In: A. Reis ed., 1992. *Portugal Contemporâneo* (V). Lisboa, Publicações Alfa, pp. 61-70.

Sousa, M. R., 1997. Prefácio. In: Partido Social Democrata ed., 1997. *Uma Constituição Moderna para Portugal.* Lisboa: Grupo Parlamentar do PSD, pp. 9-68.

Sousa, M. R., 1999. *História (Política) da Revisão Constitucional de 1997 e do Referendo da Regionalização.* Venda Nova: Bertrand Editora.

Souza, M., 1913. *Comentário à Constituição Política da República Portuguesa.* Coimbra: F. França Amado - Editor.

Spínola, A., 1974. *Portugal e o Futuro.* Lisboa: Arcádia.

Spínola, A., 1976. *Ao Serviço de Portugal.* 2nd ed., Lisboa: Ática/Bertrand.

Spínola, A., 1978. *País Sem Rumo.* Lisboa: Editorial Scire.

Stocker, M. M., 2005. *Xeque-mate a Goa.* Lisboa: Temas e Debates.

Suordem, F. P. S., 1997. *Legislação do Referendo Anotada.* Coimbra: Almedina.

Teixeira, C. P., 2000. *Robert Michels – A Teoria e a Política da Democracia.* Lisboa: Instituto Superior de Ciências Sociais e Políticas.

Teles, P. G., 1999. Autodeterminação em Timor Leste: dos Acordos de Nova Iorque à consulta popular de 30 de Agosto de 1999. *Documentação e Direito Comparado,* 79/80. Lisboa: Procuradoria Geral da República, pp. 381-423.

Telo, A. J., 2004. O modelo político e económico da Regeneração e do Fontismo. In: J. Medina ed., 2004. *História de Portugal* (X). Amadora: Ediclube, pp.115-156.

Uleri, P. V., 2003. *Referendum e Democrazia – Una Prospettiva Comparata.* Bologna: Il Mulino.

Uleri, P. V., 1996. Introduction. In: M. Gallagher & P. V. Uleri eds., 1996. *The Referendum Experience in Europe.* London: Macmillan Press Ltd. New York: St. Martin's Press, Inc.

United Nations, 2000. *The United Nations and East Timor – Self Determination Through Popular Consultation.* New York: United Nations Department of Public Information.

Urbano, M. B., 1998. *O Referendo – Perfil Histórico-Evolutivo do Instituto. Configuração Jurídica do Referendo em Portugal*. Coimbra: Coimbra Editora.

Urbano, M. B., 2004. Os limites materiais à (ir)realização do referendo de âmbito nacional (anotação ao Acórdão TC n.º 704/2004). *Jurisprudência Constitucional*, 4 (Oct.-Dec. 2004) pp. 14-29.

Valente, V. P., 2004. *O Poder e o Povo.* 5th ed., Lisboa: Gradiva.

Valente, V. P., 2006. *Um Herói Português – Henrique Paiva Couceiro (1861-1944).* Lisboa: Aletheia Editores.

Vargues, I. N., 1993. O processo de formação do primeiro movimento liberal: A revolução de 1820. In: José Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 45-64.

Vargues, I. N. & Torgal, L. R., 1993. Da Revolução à contra-revolução: vintismo, cartismo, absolutismo. Exílio político. In: José Mattoso ed., 1993. *História de Portugal* [V – L. R. Torgal & J. L. Roque (dir.). *O Liberalismo (1807-1890)*]. Lisboa: Círculo de Leitores, pp. 65-87.

Vega, P., 1985. *La Reforma Constitucional y la Problematica del Poder Constituyente.* Madrid: Tecnos.

Ventura, A., 2004a. Da revolução vintista à guerra civil (1820-1834). In: J. Medina ed., 2004. *História de Portugal* (X). Amadora: Ediclube, pp. 157-192.

Ventura, A., 2004b. Paiva Couceiro. In: J. Medina ed., 2004. *História de Portugal* (XIV). Amadora: Ediclube, pp. 181-187.

Vicente, A. P., 2004. As invasões francesas. In: J. Medina ed., 2004. *História de Portugal* (X). Amadora: Ediclube, pp. 7-20.

Weber, M., 1991. Politics as a vocation. In: *Essays in Sociology*. New Edition (1st ed: 1948). Oxon: Routledge, pp. 77-128.

Wheeler, D., 1978. *Republican Portugal – A Political History, 1910-1926.* Madison: University of Wisconsin Press.

Wright, V., 1978. France. In: D. Butler & A. Ranney eds., 1978. *Referendums – A Comparative Study of Practice and Theory*. Washington,

D.C.: American Enterprise Institute for Public Policy Research, pp.139-167.

Institutional Sources

Diário da Assembleia Constituinte. 1975-1976. Lisboa: Imprensa Nacional.

Diário da Assembleia Nacional Constituinte. 1911. Lisboa: Imprensa Nacional.

Diário da Assembleia da República. 1976-2011. Lisboa: Imprensa Nacional.

*Diário da Câmara dos Deputados.*1911-1926. Lisboa: Imprensa Nacional.

Diário da Câmara dos Senhores Deputados. 1835-1910. Lisboa: Imprensa Nacional.

Diário da República. 1974-2011. Lisboa: Imprensa Nacional.

*Diário das Cortes Geraes e Extraordinárias da Nação Portuguesa.*1821-1823. Lisboa: Imprensa Nacional.

Diário das Sessões da Assembleia Nacional. 1933-1974. Lisboa: Imprensa Nacional.

Diário do Governo. 1869-1976. Lisboa: Imprensa Nacional.

Diário do Senado. 1911-1926. Lisboa: Imprensa Nacional.

Electronic Sources

Assembleia da República, 2008. *Debates Parlamentares.* [Online]. (Updated 2011).
Available at: http://debates.parlamento.pt
[accessed 8 March 2011]

Biblioteca Nacional de Portugal, 2006. *Materiais para a História Eleitoral e Parlamentar Portuguesa - 1820-1926.* [Online]. (Updated 2007).
Available at: http://purl.pt/5854/1/ [accessed 14 March 2011]

Centre for Research on Direct Democracy, 2009. *Direct Democracy Databases.* [Online]. (Updated 2011).
Available at: http://www.c2d.ch/index.php

[accessed 27 February 2011].

Comissão Nacional de Eleições, 2006. *Referendo Nacional em 2007*. [Online]. (Updated 2011).
Available at http://www.cne.pt/index.cfm?sec=0306000000&EleicaoID=49&Eleicao2ID=0
[Aceessed 18 June 2011].

Comissão Nacional de Eleições, 2007. *Resultados Eleitorais*. [Online]. (Updated 2009).
Available at http://eleicoes.cne.pt/sel_eleicoes.cfm?m=raster#ref
[Accessed 18 June 2011].

Direcção Geral de Administração Interna, 2010. *Eleições – Resultados dos Escrutínios Provisórios.* [Online]. (Updated 2011).
Available at: http://www.eleicoes.mj.pt/
[Accessed 12 June 2011].

Direcção Geral da Administração Interna, 2010. *Participação Eleitoral.* [Online]. (Updated 2011). Available at http://www.dgai.mai.gov.pt
[Accessed 3 March 2012].

Dighitèque de Matériaux Juridiques et Politiques, 1998. *Project de Constitution "Girondin" de 1793.* [Online]. (Updated 2009).
Available at: http://mjp.univ-perp.fr/france/co1793pr.htm#8
[Accessed 10 February 2011].

Pennsylvania State University, 2001. *The Federalist Papers – A Penn State Electronic Classics Series Publication.* [Online]. (Updated 2001).
Available at: http://www2.hn.psu.edu/faculty/jmanis/poldocs/fed-papers.pdf
[Accessed 11 June 2012].

Portal da História, 2000. *Bases da Constituição Política da Monarquia Portuguesa, 10 de Março de 1821*. [Online]. (Updated 2009).
Available at: http://www.arqnet.pt/portal/portugal/liberalismo/bases821.html
[Accessed 8 March 2011].

The Online Library of Liberty, 2011. *1793: French Republic Constitution of 1793.* [Online]. (Updated 2011).
Available at:

http://oll.libertyfund.org/index.php?option=com_content&task=view&id=862&Itemid=264 [Accessed 10 February 2011].

United Nations, 2011. *Question Relating to Territories under Portuguese Administration.* [Online]. (Updated 2011).
Available at:
http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/200/53/IMG/NR020053.pdf?OpenElement
[Accessed 28 April 2011].

United Nations, 2010. *Resolution 3485 (XXX): Question of Timor.* [Online]. (Updated 2011).
Available at:
http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/98/IMG/NR000198.pdf?OpenElement
[Accessed 19 May 2011].

United Nations, 2009. *Resolution 384: East Timor (22 Dec).* [Online]. (Updated 2011).
Available at:
http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/782/32/IMG/NR078232.pdf?OpenElement
[Accessed 19 May 2011].

United Nations 2009. *Resolution 389: East Timor (22 Apr).* [Online]. (Updated 2011).
Available at:
http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/294/77/IMG/NR029477.pdf?OpenElement
[Accessed 19 May 2011].

Zentrale für Unterrichstmedin, 1997. Weimar Constitution. [Online]. (Updated 2011).
Available at: http://www.zum.de/psm/weimar_vve.php
[accessed 15 February 2011].

Glossary

AD – Aliança Democrática (Democratic Alliance)

AIDS – Acquired Immune Deficiency Syndrome

APODETI – Associação Popular Democrática Timorense (Timorese Popular Democratic Association)

AR – Assembleia da República (Assembly of the Republic)

ASDI – Acção Social Democrata Independente (Independent Social Democrat Action)

ASDT – Acção Social Democrata Timorense (Timorese Social Democrat Action)

ASP – Acção Socialista Portuguesa (Portuguese Socialist Action)

BC – Before Christ

BE – Bloco de Esquerda (Left Block)

CDE – Comissões Democráticas Eleitorais (Electoral Democratic Commissions)

CDS-PP – Centro Democrático e Social – Partido Popular (Democratic and Social Centre – Popular Party)

CDU – Coligação Democrática Unitária (Democratic Unitarian Coalition)

CERC – Comissão Eventual de Revisão Constitucional (Ad hoc Committee of Constitutional Revision)

CEUD – Comissão Eleitoral de Unidade Democrática (Electoral Commission of Democratic Unity)

CIA – Central Intelligence Agency

CLSTP – Comité de Libertação de São Tomé e Príncipe (Commitee for the Liberation of Sao Tome and Principe)

CNE – Comissão Nacional de Eleições (National Election Commission)

CPLP – Comunidade de Países de Língua Portuguesa (Community of Portuguese Speaking Countries)

DAC – Diário da Assembleia Constituinte (Official Journal of the Constituent Assembly)

DANC – Diário da Assembleia Nacional Constituinte (Official Journal of the National Constituent Assembly)

DAR – Diário da Assembleia da República (Official Journal of the Assembly of the Republic)

DC – Diário do Congresso (Official Journal of the Congress)

DCD – Diário da Câmara dos Deputados (Official Journal of the Chamber of Deputies)

DCGENP – Diário das Cortes Gerais e Extraordinárias da Nação Portuguesa (Official Journal of the General and Extraordinary Courts of the Portuguese Nation)

DCSD – Diário da Câmara dos Senhores Deputados (Official Journal of the Chamber of Deputies)

DG – Diário do Governo (Official Journal of the Government)

DR – Diário da República (Official Journal of the Republic)

DS – Diário do Senado (Official Journal of the Senate)

DSAN – Diário das Sessões da Assembleia Nacional (Official Journal of the National Assembly)

EEC – European Economic Community

EU – European Union

EUA – Estados Unidos da América (The United States of America)

FNLA – Frente Nacional para a Libertação de Angola (National Front for the Liberation of Angola)

FRELIMO – Frente de Libertação de Moçambique (Front of Liberation of Mozambique)

FRETILIN – Frente Revolucionária de Timor Leste Independente (Revolutionary Front of Independent East Timor)

FRS – Frente Republicana e Socialista (Republican and Socialist Front)

ID – Intervenção Democrática (Democratic Intervention)

INTERFET – International Force East Timor

JS – Juventude Socialista (Socialist Youth)

JSD – Juventude Social Democrata (Social Democrat Youth)

JSN – Junta de Salvação Nacional (Junta of National Salvation)

MANU – União Nacional Africana de Moçambique (African National Union of Mozambique)

MDP – Movimento Democrático Português (Portuguese Democratic Movement)

MFA – Movimento das Forças Armadas (Armed Forces Movement)

MING – Movimento para a Independência Nacional da Guiné (Movement for the National Independence of Guinea)

MLSTP – Movimento de Libertação de São Tomé e Príncipe (Liberation Movement of São Tome and Principe

MNE – Ministério dos Negócios Estrangeiros (Portuguese Foreign Office)

MP – Member of Parliament

MPLA – Movimento Popular para a Libertação de Angola (Popular Movement for the Liberation of Angola)

MPT – Movimento Partido da Terra (Earth Party Movement)

MNI – Movimento Nacional Independente (Independent National Movement)

MUT – Movimento Unitário dos Trabalhadores (Workers Unitarian Movement)

NATO – North Atlantic Treaty Organization

NUT – Nomenclatura de Unidades Territoriais (Nomenclature of Territorial Unities)

ONU – Organização das Nações Unidas (The United Nations Organization)

PAIGC – Partido Africano para a Independência da Guiné e Cabo Verde (African Party for the Independence of Guinea and Cape Verde)

PCP – Partido Comunista Português (Portuguese Communist Party)

PCTP/MRPP – Partido Comunista dos Trabalhadores Portugueses / Movimento Reorganizativo do Partido do Proletariado (Communist Party of the Portuguese Workers / Movement Reorganizer of the Proletariat Party)

PDC – Partido da Democracia Cristã (Christian Democracy Party)

PEV – Partido Ecologista "Os Verdes" (Ecologist Party "The Greens")

PH – Partido Humanista (Humanist Party)

PNR – Partido Nacional Renovador (National Renovator Party)

POUS – Partido Operário de Unidade Socialista (Worker Party of Socialist Unity)

PPD/PSD – Partido Popular Democrático/ Partido Social Democrata (Popular Democratic Party/ Social Democrat Party

PPM – Partido Popular Monárquico (Popular Monarchic Party)

PRD – Partido Renovador Democrático (Renovator Democratic Party)

PS – Partido Socialista (Socialist Party)

PSN – Partido da Solidariedade Nacional (National Solidarity Party)

PSR – Partido Socialista Revolucionário (Socialist Revolutionary Party)

RC – Revisão Constitucional (Constitutional Revision)

RDP – Radiodifusão Portuguesa (Portuguese Broadcasting)

RTP – Radiotelevisão Portuguesa (Portuguese Radiotelevision)

SEDES – Associação para o Desenvolvimento Económico e Social (Economic and Social Development Association)

SNI – Secretariado Nacional para a Informação (National Secretariat for the Information)

TC – Tribunal Constitucional (Constitutional Court)

TSD – Trabalhadores Sociais Democratas (Social Democrat Workers)

UDENAMO – União Democrática Nacional de Moçambique (National Democratic Union of Mozambique)

UDP – União Democrática Popular (Popular Democratic Union)

UDT – União Democrática de Timor (Democratic Union of Timor)

UEDS – União da Esquerda para a Democracia Socialista (Left Union for the Socialist Democracy)

UK – United Kingdom

UN – United Nations

UNAMET – United Nations Mission in East Timor

UNAMI – União Nacional Africana para Moçambique Independente (African National Union for Independent Mozambique)

UNITA – União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola)

UNTAET – United Nations Transitional Administration in East Timor

UPA – União dos Povos de Angola (Union of the Peoples of Angola)

US – United States

USA – Unites States of America

USSR – Union of the Socialist Soviet Republics

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Appendix 1

Local Referendums
Jurisprudence of the Constitutional Court (*TC*)

Municipality of *Peniche*

Deliberation	Municipal Assembly of *Peniche*
Initiative	Nine members of the Municipal Assembly of *Peniche*
Date of deliberation	30 April 1991
Majority	*PSD*
Subject	Creation of parish
Question	Do you desire to see the creation of a new parish that includes the populations of *Bufarda, Casal do Veríssimo, Alto Foz* and *Carqueja*?
Decision from the *TC*	Not admitted, for not being a matter included within the exclusive responsibility of the municipality
Date of decision	29 May 1991
Ruling No.	Ruling No. 238/91

Parish of *Arazede*

Deliberation	Parish Assembly of *Arazede* (*Montemor-o-Velho*)
Initiative	Parish Authority of *Arazede*
Date of deliberation	20 May 1991
Majority	*PS*
Subject	Creation of parish
Question	Do you want to continue belonging to the Parish of *Arazede*? Do you want to take part of the new Parish of *Tojeiro*?
Decision from the *TC*	Not admitted, for not being a matter included within the exclusive responsibility of the parish
Date of decision	12 June 1991
Ruling No.	Ruling No. 242/91

Municipality of *Torres Vedras*

Deliberation	Municipal Assembly of *Torres Vedras*
Initiative	Municipal Authority of *Torres Vedras*
Date of deliberation	6 June 1991
Majority	*PS*
Subject	Choice of the municipal holiday among three dates (3 February, 27 October or 11 November)
Question	Not formulated
Decision from the *TC*	Not admitted, for not including the actual questions and for not allowing a 'yes' or 'no' answer
Date of decision	9 June 1991
Ruling No.	Ruling No. 360/91

Parish of *Riba de Ave*

Deliberation	Parish Assembly of *Riba de Ave (Famalicão)*
Initiative	*PSD* Group in the Parish Assembly of *Riba de Ave*
Date of deliberation	28 September 1991
Majority	*CDU (PCP/PEV)*
Subject	Construction of a treatment plant for solid residues
Question	Not formulated
Decision from the *TC*	Not admitted, for not including the actual question and for not being a matter included in the exclusive responsibility of the parish
Date of decision	14 November 1991
Ruling No.	Ruling No. 432/91

Parish of *Asseiceira*

Deliberation	Parish Assembly of *Asseiceira (Tomar)*
Initiative	Three members of the Parish Assembly
Date of deliberation	30 April 1998
Majority	*PS*
Subject	Creation of parish
Question	Do you agree with the creation of the parish of *Linhaceira*?
Decision from the *TC*	Not admitted, for not being a matter included in the exclusive responsibility of the parish
Date of decision	26 May 1998
Ruling No.	Ruling No. 390/98

Parish of *Caramos*

Deliberation	Parish Assembly of *Caramos (Felgueiras)*
Initiative	President of the Parish Authority of *Caramos*
Date of deliberation	12 May 1998
Majority	*PS*
Subject	Change of parish to another municipality
Question	Do you agree with the integration of the Parish of *Caramos* in the future municipality of *Lixa*?
Decision from the *TC*	Not admitted, given that the proposal of the President of the parish authority was introduced during the session. It did not respect the formalities to call the Assembly
Date of decision	26 May 1998
Ruling No.	Ruling No. 391/98

Parish of *Serreleis*

Deliberation	Parish Assembly of *Serreleis (Viana do Castelo)*
Initiative	Four members of the Parish Assembly of *Serreleis*
Date of deliberation	20 December 1998
Majority	Group of Citizens
Subject	Construction of a playing field in certain place
Question	Do you agree with the construction of a playing field for several sports behind the church of *Serreleis*?
Decision from the *TC*	Admitted
Date of decision	13 January 1999
Ruling No.	Ruling No. 30/99

Parish of *Abação (S. Tomé)*

Deliberation	Parish Assembly of *Abação (S. Tomé), (Guimarães)*
Initiative	Three members of the Parish Assembly of *Abação (S. Tomé)*
Date of deliberation	6 February 1999
Majority	*CDS-PP*
Subject	Creation of parish
Question	Do you agree with the creation of the parish of *Abação (S. Cristóvão)*, with the geographic boundaries corresponding to the respective ecclesiastic parish?
Decision from the *TC*	Not admitted for not being a matter included in the exclusive responsibility of the parish
Date of decision	24 February 1999
Ruling No.	Ruling No. 113/99

Municipality of *Tavira*

Deliberation	Municipal Assembly of *Tavira*
Initiative	Municipal Authority of *Tavira*
Date of deliberation	26 February 1999
Majority	*PSD*
Subject	Demolition of an inoperative reservoir of water
Question	Do you agree with the demolition of the old reservoir of water (inoperative) of *Alto de Santa Maria*?
Decision from the *TC*	Admitted
Date of decision	17 March 1999
Ruling No.	Ruling No. 187/99

Municipality of *Portimão*

Deliberation	Municipal Assembly of *Portimão*
Initiative	Municipal Authority of *Portimão*
Date of deliberation	28 May 1999
Majority	*PS*
Subject	Demolition of an old market
Question	Do you agree with the construction of a boulevard in the *República* square, between *Diogo Tomé* and *França Borges* streets, with the creation of a wide green and leisure zone, which involves the demolition of the old vegetable market?
Decision from the *TC*	Not admitted for lack of objectivity and clearness of the question
Date of decision	23 June 1999
Ruling No.	Ruling No. 398/99

Parish of *Louredo*

Deliberation	Parish Assembly of *Louredo (Santa Maria da Feira)*
Initiative	Parish Authority of *Louredo*
Date of deliberation	25 August 1999
Majority	*PSD*
Subject	Localisation of cross
Question	1 – Do you agree that the works be made exactly as they appear in the project approved by the parish authority and the parish assembly with the cross remaining in the place where it is already implanted? 2 – Do you want the cross to be placed inside the roundabout? 3 – Do you want the cross to be placed in the square, near the school of *Vila Seca,* in such a way that it can be bordered?
Decision from the *TC*	Not admitted, for lack of precision of the questions, which does not allow a 'yes' or 'no' answer.
Date of decision	15 September 1999
Ruling No.	Ruling No. 495/99

Parish of *Moita*

Deliberation	Parish Assembly of *Moita (Alcobaça)*
Initiative	Three members of the Parish Assembly of *Moita*
Date of deliberation	6 September 1999
Majority	*PS*
Subject	Change of parish to another municipality
Question	Do you agree with the change of the parish of *Moita* to the municipality of *Marinha Grande*?
Decision from the *TC*	Not admitted, for not being included in the exclusive responsibility of the parish and for lack of precision of the question
Date of decision	22 September 1999
Ruling No.	Ruling No. 518/99

Municipality of *Barcelos*

Deliberation	Municipal Assembly of *Barcelos*
Initiative	Member of *CDU* in the Municipal Assembly of *Barcelos*
Date of deliberation	3 December 1999
Majority	*PSD*
Subject	Trajectory of a highway
Question	Not formulated
Decision from the *TC*	Not admitted, for being introduced during the session, making it impossible to uphold the convocation formalities since it was not subscribed by a third of the members of the Assembly; for the questions not being formulated and the territorial scope of the consultation was not defined
Date of decision	22 December 1999
Ruling No.	Ruling No. 694/99

Parish of *Vascões*

Deliberation	Parish Assembly of *Vascões (Paredes de Coura)*
Initiative	Not specified
Date of deliberation	5 December 1999
Majority	*PSD*
Subject	Creation of an environmental protected area
Question	Not formulated
Decision from the *TC*	Not admitted, for not making it clear who took the initiative, for not formulating the questions and for not defining the territorial scope.
Date of decision	4 January 2000
Ruling No.	Ruling No. 1/2000

Parish of *Bico*

Deliberation	Parish Assembly of *Bico (Paredes de Coura)*
Initiative	Not specified
Date of deliberation	6 December 1999
Majority	*PSD*
Subject	Creation of an environmental protected area
Question	Not formulated
Decision from the *TC*	Not admitted, for not making it clear who took the initiative, for not formulating the questions and for not defining the territorial scope.
Date of decision	4 January 2000
Ruling No.	Ruling No. 2/2000

Municipality of *Barrancos*

Deliberation	Municipal Assembly of *Barrancos*
Initiative	Municipal Authority of *Barrancos*
Date of deliberation	7 January 2000
Majority	*CDU (PCP/PEV)*
Subject	Bulfights with death of bulls
Question	Do you agree with the integral continuation of the Festival of August, just as tradition calls for, without any exception? Do you agree that the unConstitutionality be required by omission to the Constitutional Court, through the President of the Republic, in order to turn legal the death of the bulls in the framework of the Festival of August? Do you agree that the abstract review of the Constitutionality of Executive Law No. 15355 which prohibits the death of bulls, without exception, be required to the Constitutional Court, through the President of the Republic, the Attorney General, or one tenth of the members of the Assembly of the Republic?
Decision from the *TC*	Not admitted, for having in view a purpose prohibited by law and for not being included within the exclusive responsibility of the municipality
Date of decision	15 February 2000
Ruling No.	Ruling No. 93/2000

Parish of *Bico*

Deliberation	Parish Assembly of *Bico (Paredes de Coura)*
Initiative	Parish Authority of *Bico*
Date of deliberation	16 January 2000
Majority	*PSD*
Subject	Creation of an environmental protected area
Question	Do you agree with the creation of the protected área of *Corno do Bico*?
Decision from the *TC*	Not admitted, for not being a matter included in the exclusive responsibility of the parish and for lack of clearness of the question
Date of decision	16 February 2000
Ruling No.	Ruling No. 94/2000

Parish of *Vascões*

Deliberation	Parish Assembly of *Vascões (Paredes de Coura)*
Initiative	Parish Authority of *Vascões*
Date of deliberation	16 January 2000
Majority	*PSD*
Subject	Creation of an environmental protected area
Question	Do you agree with the creation of the protected area of *Corno do Bico*?
Decision from the *TC*	Not admitted, for not being a matter included in the exclusive responsibility of the parish and for lack of clearness of the question
Date of decision	16 February 2000
Ruling No.	Ruling No. 95/2000

Parish of *Gaula*

Deliberation	Parish Assembly of *Gaula (Santa Cruz)*
Initiative	Parish Authority of *Gaula*
Date of deliberation	1 March 2004
Majority	*PS/CDS-PP*
Subject	Localisation of industrial units
Question	Do you agree with the retreat of all the units of transformer industry (stonebreakers, asphalt and concrete centrals and other equipment of this type) in *Vale do Porto Novo – Gaula*?
Decision from the *TC*	Not admitted, due to the proximity of the elections for the European Parliament
Date of decision	14 April 2004
Ruling No.	Ruling No. 259/2004

Municipality of *Guarda*

Deliberation	Municipal Assembly of *Guarda*
Initiative	Not specified
Date of deliberation	5 May 2004
Majority	*PS*
Subject	Localisation of hospital
Question	Not formulated
Decision from the *TC*	Not admitted, due to the proximity of the elections for the European Parliament
Date of decision	11 May 2004
Ruling No.	Ruling No. 328/2004

Parish of *Costa da Caparica*

Deliberation	Parish Assembly of *Costa da Caparica (Almada)*
Initiative	Three *PSD* members in the Parish Assembly of *Costa da Caparica*
Date of deliberation	17 May 2006
Majority	*PSD*
Subject	Construction of housing and equipment in a certain place
Question	Do you agree with the construction of any kind of housing on the grounds of the *Junta de Freguesia* of *Costa da Caparica* property? Do you agree with the construction of three tennis-courts, two restaurants, a park for lunch, a skating-rink and a picnic area, on the grounds of the *Junta de Freguesia* of *Costa da Caparica* property?
Decision from the *TC*	Not admitted, for not being a matter included in the exclusive responsibility of the parish and for being ruled by a regulatory act of the State that is binding for the local authority
Date of decision	8 June 2006
Ruling No.	Ruling No. 359/2006

Municipality of *Viana do Castelo*

Deliberation	Municipal Assembly of *Viana do Castelo*
Initiative	Municipal Authority of *Viana do Castelo*
Date of deliberation	6 October 2008
Majority	*PS*
Subject	Integration in an Intermunicipal Community
Question	Do you agree that the municipality of *Viana do Castelo* integrate the Intermunicipal Community of *Minho Lima* constituted by the municipalities of the respective NUT III – *Arcos de Valdevez, Caminha, Melgaço, Monção, Paredes de Coura, Ponte da Barca, Ponte de Lima, Valença, Viana do Castelo* and *Vila Nova de Cerveira*, in the frame of Law No. 45/2008?
Decision from the *TC*	Not admitted, for lack of clearness, objectivity and precision of the question.
Date of decision	29 October 2008
Ruling No.	Ruling No. 524/2008

Municipality of *Viana do Castelo*

Deliberation	Municipal Assembly of *Viana do Castelo*
Initiative	Municipal Authority of *Viana do Castelo*
Date of deliberation	5 November 2008
Majority	*PS*
Subject	Integration in an Intermunicipal Community
Question	Do you agree that the municipality of *Viana do Castelo* integrate the Intermunicipal Community of *Minho Lima*?
Decision from the *TC*	Admitted.
Date of decision	19 November 2008
Ruling No.	Ruling No. 559/2008

Municipality of *Mirandela*

Deliberation	Municipal Assembly of *Mirandela*
Initiative	Municipal Authority of *Mirandela*
Date of deliberation	16 February 2009
Majority	*PSD*
Subject	Maintaining of the *Tua* Railway Line
Question	Do you agree with the maintaining of the *Tua* Railway Line?
Decision from the *TC*	Not admitted, due to the proximity of the elections for the European Parliament
Date of decision	3 March 2009
Ruling No.	Ruling No. 100/2009

Municipality of *Santa Cruz da Graciosa*

Deliberation	Municipal Assembly of *Santa Cruz da Graciosa*
Initiative	*PSD* Group in the Municipal Assembly of *Santa Cruz da Graciosa*
Date of deliberation	29 September 2010
Majority	*PS*
Subject	Demolition of a bandstand
Question	Do you agree with the demolition of the bandstand placed in the *Fontes Pereira de Melo Square*, in *Santa Cruz da Graciosa*?
Decision from the *TC*	Not admitted, due to the proximity of the elections for the President of the Republic
Date of decision	19 October 2010
Ruling No.	Ruling No. 394/2010

Municipality of *Cartaxo*

Deliberation	Municipal Assembly of *Cartaxo*
Initiative	*BE* Group in the Municipal Assembly of *Cartaxo*
Date of deliberation	1 September 2011
Majority	*PS*
Subject	Granting exploitation of a municipal car-park to a private company
Question	Do you agree that the Municipal Authority of *Cartaxo* should sign a contract to grant exploitation of public park in covered parking, and over 620 parking places scattered in the streets surrounding the urban centre, which are now public, for a period of 30 years to a private company? Do you agree that the management of parking in public places in the municipality of *Cartaxo* should be made by the municipal services, and revenues thereof, shall revert to the municipality?
Decision from the *TC*	Not admitted, for lack of clearness, objectivity and precision of the question.
Date of decision	3 October 2011
Ruling No.	Ruling No. 435/2011

Municipality of *Cartaxo*

Deliberation	Municipal Assembly of *Cartaxo*
Initiative	*BE* Group in the Municipal Assembly of *Cartaxo*
Date of deliberation	14 October 2011
Majority	*PS*
Subject	Granting exploitation of a municipal car-park to a private company
Question	Do you agree that the Municipal Authority of *Cartaxo* should sign a contract to grant exploitation of public park in covered parking, and over 620 parking places scattered in the streets surrounding the urban centre, for a period of 30 years to a private company?
Decision from the *TC*	Admitted.
Date of decision	19 October 2011
Ruling No.	Ruling No. 486/2011

Appendix 2
National Referendum Proposals

Subject	**Portuguese Language Orthographic Agreement**
Date of introduction	5 February 1991
Author of the initiative	Independent MPs José Magalhães & Jorge Lemos
Assembly of the Republic's decision	Not discussed

Subject	**Installation of nuclear power plants**
Date of introduction	7 March 1991
Author of the initiative	Independent MPs Helena Roseta, Herculano Pombo & Valente Fernandes
Assembly of the Republic's decision	Not discussed

Subject	**Appointment of the directors of public radio and TV services**
Date of introduction	8 April 1992
Author of the initiative	*PS*
Assembly of the Republic's decision	Rejected on 28 April 1992
Party positions	Yea: *PS* Nay: *PSD, CDS, PSN* Abstentions: *PCP*

Subject	**Creation of administrative regions**
Date of introduction	17 December 1992
Author of the initiative	Independent MP Mário Tomé (*UDP*)
Assembly of the Republic's decision	Not discussed

Subject	**Liberalisation of abortion up to 12 weeks of pregnancy**
Date of introduction	20 December 1996
Author of the initiative	*PSD*
Assembly of the Republic's decision	Withdrawn on 4 February 1998

Subject	**Amsterdam Treaty**
Date of introduction	6 October 1997
Author of the initiative	*PS* Government
Assembly of the Republic's decision	Passed on 29 June 1998
Party positions	Question: Yea: *PS, PSD* Nay: *PCP, PEV,*1 *PS* Abstentions: *CDS-PP* Electoral universe: Yea: *PS* Nay: *PSD*, 1 *PS* Abstentions: *PCP*, *CDS-PP*, *PEV*
Constitutional Court's decision	Declared unconstitutional on 29 July 1998
President of the Republic's decision	No calling

Subject	**Amsterdam Treaty**
Date of introduction	6 October 1997
Author of the initiative	*PSD*
Assembly of the Republic's decision	Replaced on 27 May 1998

Subject	**Amsterdam Treaty**
Date of introduction	6 October 1997
Author of the initiative	*PCP*
Assembly of the Republic's decision	Rejected on 29 June 1998
Party positions	Yea: *PCP, PEV* Nay: *PS, PSD, CDS-PP*

Subject	**Amsterdam Treaty**
Date of introduction	4 March 1998
Author of the initiative	*CDS-PP*
Assembly of the Republic's decision	Replaced on 23 June 1998

Subject	**Liberalisation of abortion up to 12 weeks of pregnancy**
Date of introduction	9 January 1998
Author of the initiative	*PSD*
Assembly of the Republic's decision	Sent to the Committee without voting on 19 February 1998

Subject	**Liberalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	19 March 1998
Author of the initiative	*PSD* and *CDS-PP*, replacing the *PSD* proposal
Assembly of the Republic's decision	Rejected on 19 March 1998
Party positions	Yea: *PSD*, *CDS-PP*, 2 *PS* Nay: *PS*, *PCP*, *PEV*

Subject	**Decriminalisation of abortion**
Date of introduction	19 March 1998
Author of the initiative	*PS*, replacing the *PSD* proposal
Assembly of the Republic's decision	Passed on 19 March 1998
Party positions	Yea: *PS* Nay: *PCP*, *PEV*,2 *PS* Abstentions: *PSD*, *CDS-PP*, 12 *PS*
Constitutional Court's decision	Declared constitutional on 18 April 1998
President of the Republic's decision	Calling for 28 June 1998
Result	**No: 50.9%** Yes: 49.1%

Subject	**Institution of the administrative regions**
Date of introduction	27 May 1998
Author of the initiative	*PSD*
Assembly of the Republic's decision	Rejected on 29 June 1998
Party positions	Yea: *PSD* Nay: *PS* Abstentions: *CDS-PP, PCP, PEV*

Subject	**Amsterdam Treaty**
Date of introduction	27 May 1998
Author of the initiative	*PSD*
Assembly of the Republic's decision	Question withdrawn and electoral universe rejected on 29 June 1998
Party positions	Electoral universe: Yea: *PSD, CDS-PP* Nay: *PS, PCP, PEV*

Subject	**Institution of the administrative regions**
Date of introduction	19 June 1998
Author of the initiative	*PS*
Assembly of the Republic's decision	Passed on 29 June 1998
Party positions	Yea: *PS, CDS-PP* Nay: 1 *PS* Abstentions: *PSD, PCP, PEV*
Constitutional Court's decision	Declared constitutional on 29 July 1998
President of the Republic's decision	Calling for 8 November 1998
Result	**No: 60.8%** Yes: 34.9%

Subject	**Institution of the administrative regions**
Date of introduction	23 June 1998
Author of the initiative	*CDS-PP*
Assembly of the Republic's decision	Invalidated on 29 June 1998

Subject	**Amsterdam Treaty**
Date of introduction	23 June 1998
Author of the initiative	*CDS-PP*
Assembly of the Republic's decision	Rejected on 29 June 1998
Party positions	Yea: *CDS-PP* Nay: *PS, PCP, PEV* Abstentions: *PSD*

Subject	**Decriminalisation of drug consumption**
Date of introduction	15 June 2000
Author of the initiative	*CDS-PP*
Assembly of the Republic's decision	Not discussed

Subject	**Decriminalisation of soft drugs and therapeutic administration of hard drugs**
Date of introduction	20 June 2000
Author of the initiative	14 *PSD* MPs
Assembly of the Republic's decision	Not discussed

Subject	**Nice Treaty**
Date of introduction	10 October 2001
Author of the initiative	*BE*
Assembly of the Republic's decision	Not discussed

Subject	**Main choices of the European Constitutional Treaty**
Date of introduction	22 October 2003
Author of the initiative	*BE*
Assembly of the Republic's decision	Rejected on 3 December 2003
Party positions	Yea: *BE* Nay: *PSD, PS, CDS-PP* Abstentions: *PCP, PEV*

Subject	**Decriminalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	20 January 2004
Author of the initiative	*PS*
Assembly of the Republic's decision	Rejected on 3 March 2004
Party positions	Yea: *PS, PCP, BE, PEV* Nay: *PSD, CDS-PP*

Subject	**Decriminalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	11 February 2004
Author of the initiative	Popular Initiative
Assembly of the Republic's decision	Rejected on 3 March 2004
Party positions	Yea: *PS, PCP, BE, PEV* Nay: *PSD, CDS-PP*

Subject	**Decriminalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	17 February 2004
Author of the initiative	*BE*
Assembly of the Republic's decision	Rejected on 3 March 2004
Party positions	Yea: *PS, PCP, BE, PEV* Nay: *PSD, CDS-PP*

Subject	**Treaty Establishing a Constitution for Europe**
Date of introduction	18 November 2004
Author of the initiative	*BE*
Assembly of the Republic's decision	Rejected on 18 November 2004
Party positions	Yea: *PCP, BE, PEV* Nay: *PSD, PS, CDS-PP*

Subject	**Treaty Establishing a Constitution for Europe**
Date of introduction	18 November 2004
Author of the initiative	*PCP*
Assembly of the Republic's decision	Rejected on 18 November 2004
Party positions	Yea: *PCP, BE, PEV* Nay: *PSD, PS, CDS-PP*

Subject	**Treaty Establishing a Constitution for Europe**
Date of introduction	18 November 2004
Author of the initiative	*PSD, PS, CDS-PP*
Assembly of the Republic's decision	Passed on 18 November 2004
Party positions	Yea: *PSD, PS, CDS-PP* Nay: *PCP, BE, PEV*
Constitutional Court's decision	Declared unconstitutional on 17 December 2004
President of the Republic's decision	No calling

Subject	**Decriminalisation of abortion up to 12 weeks of pregnancy**
Date of introduction	16 March 2005
Author of the initiative	*BE*
Assembly of the Republic's decision	Withdrawn on 20 April 2005

Subject	**Decriminalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	22 March 2005
Author of the initiative	*PS*
Assembly of the Republic's decision	Passed on 20 April 2005
Party positions	Yea: *PS, BE* Nay: *PSD, CDS-PP, PCP, PEV*
Constitutional Court's decision	Not submitted
President of the Republic's decision	No calling

Subject	**Decriminalisation of abortion up to 16 weeks of pregnancy**
Date of introduction	19 April 2005
Author of the initiative	*CDS-PP*, replacing *PS* proposal
Assembly of the Republic's decision	Invalidated

Subject	**Decriminalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	15 September 2005
Author of the initiative	*PS*
Assembly of the Republic's decision	Passed on 28 September 2005
Party positions	Yea: *PS*, *BE* Nay: *PSD*, *CDS-PP*, *PCP*, *PEV*, 1 *PS* Abstention: 1 *PS*
Constitutional Court's decision	Declared unconstitutional on 28 October 2005
President of the Republic's decision	No calling

Subject	**Medically assisted procreation**
Date of introduction	25 May 2006
Author of the initiative	Popular Initiative
Assembly of the Republic's decision	Rejected on 15 November 2006
Party positions	Yea: *CDS-PP*, 2 *PS*, 1 *PSD* Nay: *PS*, *PSD*, *PCP*, *BE*, *PEV* Abstention: 1 *PS*

Subject	**Decriminalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	15 November 2006
Author of the initiative	*PS*
Assembly of the Republic's decision	Passed on 19 October 2006
Party positions	Yea: *PS*, *PSD*, *BE* Nay: *PCP*, *PEV*, 1 *PS*, 1 *PSD* Abstentions: *CDS-PP*, 2 *PS*, 1 *PSD*
Constitutional Court's decision	Declared Constitutional on 5 November 2006
President of the Republic's decision	Calling for 11 February 2007
Result	**Yes: 59.2%** No: 40.8%

Subject	**Liberalisation of abortion up to 10 weeks of pregnancy**
Date of introduction	19 October 2006
Author of the initiative	*CDS-PP*, replacing *PS* proposal
Assembly of the Republic's decision	Invalidated

Subject	**Lisbon Treaty**
Date of introduction	14 December 2007
Author of the initiative	*PCP*
Assembly of the Republic's decision	Rejected on 7 February 2008
Party positions	Yea: *PCP*, *CDS-PP*, *BE*, *PEV*, 4 *PSD*, 1 *PS* Nay: *PS*, *PSD* Abstention: 1 *PS*

Subject	**Lisbon Treaty**
Date of introduction	21 December 2007
Author of the initiative	*BE*
Assembly of the Republic's decision	Rejected on 7 February 2008
Party positions	Yea: *PCP*, *CDS-PP*, *BE*, *PEV*, 4 *PSD*, 1 *PS* Nay: *PS*, *PSD* Abstention: 1 *PS*

Subject	**Lisbon Treaty**
Date of introduction	21 December 2007
Author of the initiative	*CDS-PP*
Assembly of the Republic's decision	Rejected on 7 February 2008
Party positions	Yea: *PCP*, *CDS-PP*, *BE*, *PEV*, 4 *PSD*, 1 *PS* Nay: *PS*, *PSD* Abstention: 1 *PS*

Subject	**Lisbon Treaty**
Date of introduction	8 January 2008
Author of the initiative	*PEV*
Assembly of the Republic's decision	Rejected on 7 February 2008
Party positions	Yea: *PCP*, *CDS-PP*, *BE*, *PEV*, 4 *PSD*, 1 *PS* Nay: *PS*, *PSD* Abstention: 1 *PS*

Subject	**Gay marriage**
Date of introduction	5 January 2010
Author of the initiative	Popular Initiative
Assembly of the Republic's decision	Rejected on 8 January 2010
Party positions	Yea: *PSD*, *CDS-PP*, 2 *PS* Nay: *PS*, *BE*, *PCP*, *PEV*. Abstentions: 3 *PSD*

Curriculum Vitae

Name	**António Filipe Gaião Rodrigues**
Date of birth	28 January 1963
Place of birth	Lisbon (Portugal)
Qualifications	
1980-1986	*Universidade de Lisboa, Faculdade de Direito* (University of Lisbon, Faculty of Law) - Licentiate Degree in Law.
1999-2001	*Universidade Lusófona de Humanidades e Tecnologias* (Lusófona University of Humanities and Technologies): Masters Degree Course in Political Science, Citizenship and Governance.
Professional Duties	
1989-present	Member of the Portuguese National Parliament (*Assembleia da República*). Vice-President from 2004.
1993-2001	Member of the *Amadora* Municipal Assembly.
2000-2002	Adviser of the Secondary Teaching Department, Portuguese Ministry of Education, for Law subject program making.
2005-present	Member of the *Sintra* Municipal Assembly.
2001-2012	Professor at Lusófona University of Humanities and Technologies, Lisbon, (Political Science).
2012-present	Professor at European University/Laureate International Universities, Lisbon, (Law).
2005-present	Political commentator in Portuguese televisions (RTPI, TVI24, SICN).