

Marcin Łukaszewski

Adam Mickiewicz University in Poznań

marcin.lukaszewski@amu.edu.pl

ORCID ID: <https://orcid.org/0000-0003-3332-3423>

When the People's Needs Are Not Listened to: *Istanza d'Arengo* on the Background of Other Forms of Direct Democracy in San Marino

Abstract: The subject of the article is the issue of the practice of using the *Istanza d'Arengo* institution in San Marino. The author will undertake attempts to assess to what extent this institution is used to implement ideas that were not taken up in the other two forms of direct democracy (referendum and civic legislative initiative). However, the subject of interest will not be all initiatives, but only a specific category (moral and ideological issues). The author will investigate how true the sentence is that *Istanza d'Arengo* is the best tool for the citizens of the Republic to solve world-view issues. The time range from the end of October 2012 to October 2018 was adopted for the analysis, and the comparative analysis was based on all three forms of direct democracy.

Keywords: San Marino, *Istanza d'Arengo*, referendum, popular initiative, direct democracy

Introduction

The Sammarinese constitutional system¹ provides two classic institutions of direct democracy: a referendum and a civic legislative initiative². It should be

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- 1 When comparing the four European democratic microstates (Andorra, Liechtenstein, Monaco and San Marino), it is worth noting that in the cases of Monaco and Andorra, direct democracy cannot be treated as foundation of the political system (there are no forms of direct democracy in Monaco, and in Andorra if there is a referendum and the civic legislative initiative, the practice of their use is miserable), San Marino and Liechtenstein are European leaders in the practice of using these tools.
 - 2 While referendum is understood as a way of popular vote (answering on a specific topic directly by the people - sovereign), civic legislative initiative is considered here according to the Venice Commission definition: "Legislative initiative is to be understood hereafter as the right to

mentioned that, apart from them, there is also an *Istanza d'Arengo* (hereinafter as well as *Id'A*) in San Marino³ as a special form of exercising civil rights⁴. Its functioning is undoubtedly a consequence of the centuries-old existence of the oldest form of direct democracy - the *Arengo*⁵.

The subject of this article is the issue of the practice of using the title institution. The author will attempt to assess how true is that the *Id'A* is used for realizing ideas that were not taken up earlier in the other two forms of direct democracy. Thus, the author assumes the hypothesis that *Id'A* is a form of bringing (by the citizens) issues that, on one hand, divide citizens (moral issues also called worldviews)⁶, and thus are not readily undertaken by politicians at the central level, and on the other hand due to more difficult formal requirements, submitting an appropriate application will be easier under the conditions of the *Id'A* form (while not the other two forms of direct democracy). The author will undertake to examine how true the sentence is, that the least demanding formal institution of direct democracy is the best tool for the Sammarinese citizens to solve world-view issues by submitting them to vote in parliament. What is probably more vital for the author is whether the *Id'A* is the perfect solution to force MPs (parliamentarians) to take a position on world-view issues, which without this "coercion" they probably would not like to

submit to the legislative power draft laws with a view of their adoption by the Parliament". While it is important to add "civic" to underline that definition is limited to the people's (understood as the sovereign) right to propose a draft of the legislation (beside the state bodies, etc). Study n° 446/2007 of European Commission for Democracy Through Law (Venice Commission), CDL-AD(2008)035, Report on Legislative Initiative, adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008), point 4.

3 Hereinafter as well as the Republic.

4 Firstly it should be noted that in the matter of qualifying the *Istanza d'Arengo* as a direct democracy institution there is no universal agreement. Without making a detailed analysis of the legitimacy of such doubts, it is worth mentioning that on the one hand it appears that these recognize the *Id'A* as a specific form of petition, while for others the consequences for certain state organs when they fail the application inclines to assume that the sovereign is so much empowered that the *Id'A* should be treated as a direct democracy institution along with the referendum and the citizens' initiative.

5 In English it is named as an "Assembly".

6 In literature, the term itself does not include a uniform group of cases. While it is not easy to create homogeneous catalog of issues which should be treated as moral (so these are linked more to the social and individual spheres of the people – in opposition to these which are considered as economical or political) author include the following: same-sex rights (including same-sex partnerships, same-sex marriages and adoption by persons of the same sex), divorce, abortion, euthanasia, in vitro, the death penalty. At the same time, apart from the above-mentioned cases, which largely lie on the border of ideological issues, i.e. legalization of drug possession, legalization of prostitution, place of religion in the church-state relations, sex education, have also been analyzed. At the end of this note, it should be underlined that some issues which may be considered as moral may, in the same way, be treated as economical and/or political (and vice versa).

touch. The author will also investigate to what extent the *Id'A* and two other forms of direct democracy are forms of interchangeable application in case one of them fails to achieve the goal intended by a political actor⁷.

It seems that the best time caesura for this subject would be an adoption of one full parliamentary term. Due to the fact that the Sammarinese party scene is quite unstable, and the last 3 parliamentary elections (2008, 2012, 2016) were of an early nature, the time range from the end of October 2012 (ie from the month before the elections of November 2012) until October 2018 was adopted for analysis. The proposals submitted by citizens will be compared in all three modes (referendum, civic legislative initiative and *Id'A*) for the indicated period.

1. Place of the *Id'A* in the political system of San Marino

San Marino is quite widely regarded as the oldest continuously existing republic of the world. The constitution San Marino consists of, among others Statutes (1600) supplemented by the so-called Declaration of Rights (1974)⁸. The community formed in the 4th century, until the 13th century, through the meetings of the heads of the families (*Arengo*) decided on the most important political issues. Mainly as a result of the increase in the population of San Marino, it was decided to establish a body that was to represent citizens and make decisions on their behalf. In this way the Grand and General Council (*Consiglio Grande e Generale* hereinafter as well as CGG) was established. However, with time, it became more and more oligarchic, so in 1906 *Arengo* was called again, so as to decide on a constitutional reform, as a result of which the method of creating the parliament was democratized⁹.

The *Id'A* remained in direct dependence on the functioning of the *Arengo*, as it was due to the *Arengo's* dissolution that it was decided that each of its members would have the right to apply to the Regency¹⁰ with applications that would have to be considered. Currently, the right to submit an application under the *Id'A* is given to every adult citizen with a right to vote¹¹. The application may be submitted only once

7 So in that case: citizen's perspective has been taken.

8 The last of the acts was amended several times, the most important of which was adopted in 2002.

9 It was the last assembly that was convened, hence there are doubts as to whether this institution is still functioning in the political system, or because of the democratization and real empowerment of the CGG and the adoption of legal solutions that somehow fulfill the functions of *Arengo* (ie referendum, civic legislative initiative and *Id'A*), there was no "quenching" of this institution. Answers to the question about *Id'A* current status are not facilitated by the complexity of the Sammarinese constitution. More on the political system of San Marino, see: M. Łukaszewski, *Najstarsza republika świata. Współczesny system polityczny San Marino*, Poznań 2018.

10 Captains-Regents (Regency) are two-member head of state of the Republic. They are elected by the parliament among MPs for one joint 6-month term.

11 Therefore, the right to submit applications was deprived of foreigners living in the territory of the Republic.

during the term of office of the head of state – the first Sunday after the inauguration, i.e. the first Sunday after each April 1 and October 1¹². The law requires that the application concerns an important public interest, which is important for the subject of this paper, that the intention of the legislator was to exclude from the subject of the Regency activities under this procedure, solving individual cases. In other words, the proposal aims to solve the problem of a more than individual character.

Table 1. Number of applications submitted in *Istanza d'Arengo* in 2011-2018

| The date of application submission | | Number of applications submitted | The date of application submission | | Number of applications submitted |
|------------------------------------|------|----------------------------------|------------------------------------|------|----------------------------------|
| 3 IV | 2011 | 46 | 5 IV | 2015 | 14 |
| 2 X | | 26 | 4 X | | 15 |
| 8 IV | 2012 | 32 | 3 IV | 2016 | 27 |
| 7 X | | 23 | 2 X | | 19 |
| 7 IV | 2013 | 23 | 2 IV | 2017 | 49 |
| 6 X | | 29 | 8 X | | 31 |
| 6 IV | 2014 | 24 | 8 IV | 2018 | 23 |
| 5 X | | 8 | 7 X | | 19 |

Source: own based on an official data.

The procedure for submitting applications is described in the law of 1995¹³, numbering only 9 articles, and fragmentarily – in the regulations of the parliament. The application is submitted personally at noon, the above-mentioned Sunday in the parliamentary meeting room¹⁴. It is not subject to any stamp duty. The law explicitly imposes on citizens' applications the requirement to treat them as a priority, which serves, among others, an obligation on the parliament that petitions be dealt with in the first half of the Regency's term (ie until December 31 and July 1 of each year). In a simplified way, it can be said that the parliament is responsible for responding to the citizens' postulate, while the Regency has the duty to coordinate the proceedings of the application. The decision made by the parliament is forwarded to the applicant within 15 days¹⁵. Failure to comply with the obligation to implement the petition

12 If the day of inauguration fell on Sunday, then presentation of the application of *Id'A* will take place on the following Sunday.

13 The act was amended in April 2018.

14 The meeting room of the CGG is also the seat of the head of state. It is worth mentioning that the meetings of the parliament are presided over by the Captain-Regents.

15 In addition to the petitioner, the resolution of the parliament regarding the petition is also forwarded to the government, the Castle Councils (bodies of local self-government units) and

may result in the government pulling its members to political responsibility by the parliament. A petition rejected by the parliament can not be re-submitted earlier than 1.5 years (ie after the expiration of 3 terms of the Regency)¹⁶.

In 2018, the law was amended and the almost unlimited possibility to submit applications was limited¹⁷. To a very broadly defined criterion: „In the event that the Regency declares the non-compliance with the law of the Arengo application, it does not mean it must be submitted to the examination of the Great and General Council”, it was decided to add that applications “containing expressions of incitement to hatred and racism do not cover matters of public interest. expressions of discrimination based on sex, personal, economic, social, political and religious conditions, as well as slanderous, defamatory or insulting expressions against living or deceased persons”¹⁸.

2. Place of the referendum and a civic legislative initiative in the Sammarinese system

If the application submitted via the Id'A is of a very general form (it can be, for example, only a proposal to change the policy in a specific field), a much more structured form should be linked with the citizens' legislative initiative. The rules of its formulation are defined in the qualified law of 2013. An application shall be made of a subscription of at least 60 voters, a bill and information about planned expenditures, if that project is assumed. The application is submitted to the Office of the Secretariat (*l'Ufficio di Segreteria del CGG*) by the representative clearly indicated by the subscribers. The applicant is also responsible for confirming the authenticity of the signed signatures. The law requires that the project has to be reviewed by the CGG within 180 days from the date of receipt. The Regency is responsible for submitting the project to the CGG. The practice of using this form of direct democracy is much more limited: citizens submit only a few proposals to the Parliament every year¹⁹.

parliamentary groups.

16 In the case of the renewal of the parliament, the said period is canceled.

17 The proposal was submitted by the Home Affairs' Secretary of State and the amendment was accepted with 35 MPs voting in favor, 8 against and 1 abstention.

18 F. Perotto, Fabrizio Perotto sul PdL Istanze d'Arengo, <http://www.repubblica futura.sm/perotto-istanze-arengo/> (14.10.2018).

19 M. Łukaszewski, Arengo, obywatelska inicjatywa ustawodawcza, Instancja Arengo i referendum – formy demokracji bezpośredniej w San Marino na tle rozwiązań konstytucyjnych Włoch, (in:) M. Musiał-Karg, A. Stelmach (eds.), *Uwarunkowania demokracji bezpośredniej we współczesnej Europie*, Poznań 2018, p. 29.

Table 2. Formal conditions regarding the organization of referendums

| | Application (at least) | Condition of referendum admissibility | Required majority in the parliament |
|---|------------------------|--|-------------------------------------|
| abrogative referendum (referendum abrogativo) – pursuant to its power, the act, act or norm of common law may be repealed in whole or in part | 60 voters | Signatures of 3% of the total number of voters | Simple majority |
| | 5 Township Councils | - | |
| referendum propositive (referendum propositivo o di indirizzo) – based on it, the electorate can determine the rules and the criteria governing the law to be introduced by parliament | 60 voters | Signatures of 3% of the total number of voters | |
| confirmative referendum (referendum confermativo) – applicable in cases in so far as the entry into force of the relevant legal act (refer to only about the act) must be given to citizens | 10 voters | Signatures of 3% of the total number of voters | |
| | 31 parliamentarians | - | |

Source: M. Łukaszewski, Arengo, *obywatelska inicjatywa ustawodawcza, Instancja Arengo i referendum – formy demokracji bezpośredniej w San Marino na tle rozwiązań konstytucyjnych Włoch*, (in:) M. Musiał-Karg, A. Stelmach (eds), *Uwarunkowania demokracji bezpośredniej we współczesnej Europie*, Poznań 2018, p. 30.

If the motion to call a referendum was formulated by the electorate, then the College of Guarantees²⁰ makes a formal assessment and calls on the applicants to collect the appropriate number of signatures. In all 3 cases since 2016, this figure is 3% of the total number of electorate (previously it was 1.5%). The referendum committee has 90 days to collect these signatures. If the verification of signatures made again by the CG is successful for applicants, then the Regency is obliged to issue a decree setting the date of voting²¹.

3. Practice of using a civic legislative initiative

In the discussed period, the Sammarinese were relatively often using both forms of direct democracy. In total, in the period of November 2012 - November 2018, 20 referendum initiatives and 13 bills were submitted. So far, only one bill has been

20 College of Guarantors for the Constitutionality and General Norms (*Collegio Garante della costituzionalità delle norme*) (hereinafter: the College of Guarantor / *Collegio Garantes* or CG) is one of the youngest organs of the Republic. Established in 2002 through the amendment of the Declaration of Rights, it consists of three judges, whose task is to resolve issues largely typical of the constitutional court.

21 M. Łukaszewski, Arengo, op. cit., p. 30.

rejected. It was on strengthening the benefit for unemployed citizens while looking for a job (*salario cittadinanza*).

Table 3. Bills submitted under the Citizens' Initiative procedure from October 2012 to October 2018^{*}

| date of presentation | issue | introduced by | current state |
|----------------------|---|-------------------------|---|
| 21/12/2012 | Changes to the Criminal Code and Criminal Procedure | Alvaro Selva | The initiative was withdrawn by the initiator |
| 11/03/2013 | Strengthening the benefit for unemployed citizens while looking for a job (<i>salario cittadinanza</i>) | Matteo Ciaccia | Rejected |
| 06/05/2013 | Equal mode of transmission of the surname | Vanessa Muratori | Accepted and implemented (published: 26/11/2015) |
| 19/07/2013 | Against the so-called white resignation (dimissioni in bianco) | Patricia Busignani | Accepted and implemented (published: 27/11/2014) |
| 23/04/2014 | Fight against discrimination on the Sammarinese citizenship | Otello Pedini | Pending examination at second reading |
| 27/08/2014 | Abortion law (Law on conscious and responsible procreation) | Vanessa Muratori | Pending examination in referral by the 1st and 4th Committees |
| 13/07/2015 | Law on seeds (this law protects and guarantees biodiversity) | Francesca Piergiovanni | Accepted and implemented (published: 27/07/2017) |
| 02/01/2017 | Law on single-phase credits and tax credits to banks | Karen Luisa Pruccoli | Accepted and implemented (published: 30/07/2018) |
| 01/02/2017 | To introduce the obligation to save animals in the event of an accident | Emanuela Stolfi | Accepted and implemented (published: 12/03/2018) |
| 28/11/2017 | Amending the Law on citizenship | Marino Ercolani Casadei | Waiting for the first reading |
| 28/11/2017 | Amending the Law on Township Councils (giving the right to vote in local elections for 5-year residents) | Marino Ercolani Casadei | Waiting for the first reading |
| 29/11/2017 | For the establishment of the Civil Peace Corps of the Republic of San Marino | Guido Rossi | Pending examination in referral by the 2nd Committee |
| 18/12/2017 | Law on the civil union (for two adult persons of the same sex or of different sex) | Valentina Rossi | Accepted and implemented (published: 20/11/2018)** |

* - in 2016 and from January to the end of November 2018, no one bill was submitted.

** - the law enters into force on the fifteenth day following that of its publication.

As of November 30, 2018.

Source: own based on an official data.

Looking at the other bills, 1 of them was withdrawn by the initiator (in December 2012, a draft regarding amendments to both the penal code and a code of criminal procedure was filed), and 6 were already adopted (ie already in force). Among these six acts are: Equal mode of transmission of the surname²²; against the so-called

22 Existing legislation stated that transmission of the surname of the newborn child may be done only by paternal line. After approving the new law the registration give child's parents power to

white resignation (*dimissioni in bianco*)²³; Law on seeds (to protect and guarantee biodiversity); Law on single-phase credits and tax credits to banks and a law to introduce the obligation to save animals in the event of an accident. On 20 November 2018 the Law on Civic Union was published.

All other projects are being processed by the parliament. It is worth noting that among them: one project is for the establishment of the Civil Peace Corps, another on abortion and another 3 are on naturalization and citizenship. While two of them are to fight against discrimination on the Sammarinese citizenship²⁴, the third was presented on 28/11/2017²⁵ and is to amend the Law on Township Councils thanks to which 5-year residents would be able to vote in local elections.

Probably the only bills that could be classified as ideological are those related to abortion and already adopted regarding partnerships. In the case of the first one it was presented by Ms. Vanessa Muratori on 27/08/2014 and entitled as a Law on conscious and responsible procreation. Thanks to that legislation women would be able to decide to terminate her pregnancy on a voluntary basis, even if she is a minor, during the first 90 days without being obliged to justify her choice. While it comes to the partnership law the civil union is a contract by which a family-like community is regulated composed of two adult persons of the same sex or of different sex and it must be preceded by the publications made in the appropriate register established at the Office of Civil Status²⁶.

4. Practice of using popular initiatives (referendum)

The referendum as an undoubtedly the most popular form of direct democracy in the world has a very short history in San Marino. After the organization of the

choose the surname: of the father, the mother or both in alphabetical order.

23 *Dimissioni in bianco* is an illegal practice of the employer, consisting in forcing the worker to sign a letter of resignation, to which the date will be affixed when and if a specific event occurs (pregnancy, accident, illness).

24 The first (presented by Otello Pedini on 23/04/2014) is linked with statements of children of the Sammarinese mother or/and father that their/his/her child who want to maintain the citizenship of the Republic. The second (presented by Mr. Marino Ercolani Casadei on 28/11/2017) is a little more complex and composed of 3 aims: (1) abolition of the obligation to renounce the citizenship of origin as a requirement to obtain Citizenship of San Marino by naturalization; (2) shortening the period of effective and continuous stay on the territory of the Republic for the purpose of applying for naturalization (from 25 to 15 years for residents and from 15 to 10 years for foreign spouses of the citizen); (3) elimination of the old provision about losing the Sammarinese citizenship due to the acquisition of another citizenship and/or marriage.

25 By Mr. Marino Ercolani Casadei (once again).

26 The law provides among others: formalities prior to the civil union, its definition, way of registration, causes impeding the foundation of the civil union, Rights and duties arising from this union, and provisions linked with dissolution of the partnership.

mentioned voting in 1906, the referendum as an institution expressing the will of the sovereign appeared only in 1982 (a referendum on citizenship), after which no referendums were organized for the next 1.5 decades.

It was not until 1996 that voting was held in as many as four cases (all on electoral system), after which until the end of the 20th century citizens voted in two referendums (1997 - on real estate, 1999 - once again on citizenship). In 2003 (one question) and 2005 (four questions), citizens spoke again in the matters of elections and referendums. In the following years, citizens replied five times in the referendum: 2011 (1 question), 2013 (2 questions, including one on rapprochement with the European Union), 2014 (2 questions) and 2016 (4 questions).

In the period that is of interest of the author the CG examined the referendum initiatives several dozen times. Of these, only 6 ended with the organization of voting²⁷, while of which 5 of them ended successfully (the proposal was accepted)²⁸. When it comes to other referendum initiatives: two are awaiting collection of the signatures (2018) and all others have been rejected or the referendum did not take place due to formal reasons:

- **all 3 proposals introduced in November 2013** were rejected due to the formal errors of collecting signatures of the so-called promoters) – proposals were about: reform of social security system; medical and non-medical healthcare staff and the referendum quorum;
- **3 proposal presented on 30th December 2013** (topics were the same as previously) – proposal about social security system (FONDISS) was accepted but the CG decided to change wording of the question²⁹; proposal on medical and non-medical healthcare staff (ISS) was accepted³⁰ (at the end referendum on these two topics was organized on 25th May 2014 and both proposals were accepted); proposal on referendum quorum was rejected by the CG due to the fact that promoters demanded changing the qualified law³¹ which is prohibited under the regime of the law;
- **9th April 2015 – 2 proposals were rejected and 1 was accepted: once again on the referendum quorum** – promoters decided to change type of referendum (previously it was abrogative, this time it was proposing

27 Collecting signatures for two referendum initiatives from September 2018 may increase this number to 7.

28 It should be clearly indicated that in the only referendum, in which the citizens rejected the offer, the result was minimal in favor of the opponents: 49.65% YES/FOR | 50.35% NO/AGAINST.

29 Results: 79.48% YES/FOR | 20.52% NO/AGAINST.

30 Results: 78.04% YES/FOR | 21.96% NO/AGAINST.

31 Qualified law (*Legge Qualificata*) is hierarchically a higher type of legislation, in other words it is more important than a law (*Legge*).

referendum) so the CG this time accepted this proposal³²; **proposal on changing the electoral law**³³ which was rejected by the CG due to lack of precision of the application³⁴; **proposal on reducing public funding to the political parties**³⁵;

- **10th April 2015** – 3 proposals on **prohibition of privatization of the public services network**³⁶, **pharmacies**³⁷ and **postal services**³⁸ were rejected; 1 proposal on **capping public sector salaries** at €100,000 was accepted by the CG (14 May 2015, Judgment n. 8) but later referendum was cancelled³⁹;
- **4th July 2015** – **proposal on land located in Rovereta/Falciano** was rejected by the CG⁴⁰;
- **8th July 2015** – **single preference voting** (once again)⁴¹ accepted by the CG (27 July 2015, Judgment n. 9);

32 This time promoters decided to ask two question in one referendum: about eliminating the referendum quorum and liberalizing rules of collecting the signatures of the referendum proposal.

What should be underlined is that on 31 August 2015 the Collegio Garante certified irregularities in the collection of signatures carried out as part of the referendum procedure. This decision was confirmed in the second instance on the 29th September 2015 (Judgment n. 11).

33 Wording of the question: “Do you want every voter to show a single preference for candidates belonging to the chosen list?”. On 10 November 2015 the CG certified the correctness of collecting signatures carried out as part of the referendum procedure.

34 The CG underlined that the question did not give any clue to which type of election (general, local or both) the proposal is linked. Additionally, the lack of pointing which voters (voters living inside the Republic and these living outside) would have this possibility which is crucial while these two parts of electorate were under different legal regime.

35 Wording of the question: “Do you want to reduce public funding to those political parties and movements present in the Great and General Council to 70,000 (seventy thousand) euro a year that have a council representation necessary for the formation of a Group?”. The CG rejected the proposal due to interpretative doubts that voters would might encounter.

36 Proposal on prohibition of privatization of delivery and distribution of water, electricity and gas was rejected by the CG which stated: *the fact that the question gives no indication [...] and does not allow voters to fully decide on consciousness.*

37 Question to be asked was: *Do you want the pharmacy in the Republic to be managed exclusively by the Social Insurance Institute and that the transfer, even partial, to private individuals is prohibited?* The CG rejected the proposal due to the fact that pharmacies since 1956 private individuals are not allowed to manage a pharmacy on the Sammarinese territory.

38 The question to be asked was about to let the postal and telegraph services of the Republic to be managed only by the state or directly or through a special body of the state. The CG rejected the proposal due to the similar reason as happened in the case of pharmacies referendum.

39 On 31 August 2015 the Collegio Garante certified irregularities in the collection of signatures carried out as part of the referendum procedure.

40 The text of the presented question referred to rules that are no longer in force.

41 This time promoters taking comments of the CG into account clarified that proposal is about both categories of voters (living both: outside the Republic and within its borders) and limited only to general elections (parliamentary).

- **9th October 2015** – proposal on so-called **General Regulatory Plan** (interventions for economic development)⁴²;
- **3rd November 2015** – another two tries on previous issues: **referendum quorum** (3rd); this time it was accepted by the CG⁴³ and the referendum was held on 15 May 2016. The proposal was accepted by majority⁴⁴ and the quorum of at least 25% of registered voters voting in favor was reached (the quorum was finally abolished); the other proposal was another try **on capping public sector salaries** at €100,000 – the result was the same as in the case of quorum: the CG accepted the proposal⁴⁵ and the referendum was held the same day and majority of the voting people accepted the proposal⁴⁶.

On 20 September 2018 three proposals were presented: (1) on prohibition of privatization of the public services network; (2) on changing electoral rules and rules on formulating a government coalition and (3) on prohibition to convert the tax credit granted to the banking and financial system for public debt. The second (on electoral rules) was rejected mainly because of violations of the principles of the democratic state of law and the constitutional rules enshrined in the Declaration of Rights.

5. Practice of using the *Id'A* - a review

In political practice, the number of petitions submitted in the *Id'A* mode varies from a dozen to around 30 (see Table 1). They can largely be divided into two groups: proposals encouraging the government to act or *de facto* replacing the civic legislative initiative. While in 2015 the total number of applications did not exceed 30, two years later the number of applications submitted almost tripled (up to 80). In total, in the years 2013-2018, 281 applications were submitted, which gives an average of 23.4 applications per semester. Looking at the general statistics (Table 4) of the proceedings on *Id'A*, there is a relatively small percentage of applications rejected for formal reasons (2.4%)⁴⁷ and a significant percentage of applications rejected after

42 On 1st March 2016 Collegio Garante certified the correctness of collecting signatures carried out as part of the referendum procedure. The proposal was accepted and the referendum was organized and held on 15 May 2016. The proposal was rejected by a small majority (49.65% YES/FOR | 50.35% NO/AGAINST).

43 On 1st March 2016 Collegio Garante certified the correctness of collecting signatures carried out as part of the referendum procedure.

44 58.58 % YES/FOR | 41.42 % NO/AGAINST

45 On 1st March 2016 the CG certified the correctness of collecting signatures carried out as part of the referendum procedure.

46 63.63 % YES/FOR | 36.37 % NO/AGAINST.

47 In 2014 (IV) the application was rejected because it was very similar to the previously submitted and rejected application. In 2016 (IV) two applications were rejected due to unclear wording of the application, while the last was not about general interest. In 2017 (IV) application no. 29 was

prior approval (ie rejected for substantive reasons - over 50%) . In the matter that is raised in the introduction to this paper, it is worth noting that ideological affairs play a very small percentage of citizens' cases brought in the *IdA* mode:

- in 2013, the only application of a similar nature to the worldview was application No. 8 in which the author demanded the introduction of sex education in schools in San Marino – rejected by the MPs;
- in 2014 (in both cases in April) there were two applications – Mr. Federico Podeschi presented instance no. 10 (petition for (among others) recognition of the validity of the same-sex marriages contracted abroad)⁴⁸, while Mr. Lazzaro Rossini proposed an application no. 17 (petition for the introduction of a regulation that foresees the decriminalization of the voluntary interruption of pregnancy)⁴⁹ – both were rejected by the MPs;
- in 2015 application no. 5 (for the insertion of provisions of the law on euthanasia in the Sammarinese legislation)⁵⁰ and application no. 8 (for the legalization of psychotropic substances for therapeutic use) – the first was rejected while the second is waiting for reference by the competent minister in the permanent council committee;
- in 2016 – on October there were 4 applications: 3 of them (no. 5, 6 and 7)⁵¹ were linked with the state-church relations (all of them were rejected and at the same time the government informed the parliamentarians about maintaining a dialogue with the Catholic Church) while the last (no. 4) was linked more with human dignity as a concept⁵²; on April 2016 there were many application linked with ideological (moral) dilemmas: 5 were directly linked with an abortion law (all of them were to liberalize the abortion law but with pointing out another reason to do so: no. 7 was to legalize abortion in the case of pregnancy in which there are serious health risks for the woman; no.

rejected because the application is dedicated to the issue beyond the scope of the parliamentary authority. Both applications of 2018 (IV) were rejected because being very similar to the previously submitted applications.

48 More on that case: L. Iannaccone, *Il matrimonio same sex nella Repubblica di San Marino?*, “Stato, Chiese e pluralismo confessionale” 2014, no. 24, p. 17.

49 Council of Europe: Commissioner for Human Rights, Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to San Marino from 9 to 10 June 2015, 15 October 2015, available at: <https://www.refworld.org/docid/5665a6794.html>, p. 10.

50 There was an agenda presented by the MPs for the Government to present, by December 2016, a draft law on informed consent on the declaration of anticipated will of health treatments and the use of antalgic therapies for terminal diseases.

51 The first was for the abolition religious hour run by the Curia in the public school, the second was for the introduction of a secular teaching alternative to the teaching of the Catholic religion in the public school, while the last was among others that the curia should be required to pay a reasonable rent for the occupation of public space by one his confessional activity.

52 The application (which finally was rejected) was about to explain the principle of the dignity and inviolability of human life, from conception to its natural end.

8 was to make abortion legal with reference to pregnancy cases concerning women victims of sexual violence; no. 9 linked to cases of pregnancies concerning minors; no. 10 linked to cases of pregnancies in which there are risks of serious diseases or malformations for the fetus and no. 11 to cases of pregnancies concerning women who are in conditions of marginalization or social distress)⁵³;

Table 4. Processing of the *Istanza d'Arengo* in years 2013-2018

| Direction of processing of the <i>Istanza d'Arengo</i> | | | | | |
|--|----------------------------------|---|--|--|---|
| | Number of applications submitted | Number of applications rejected for formal reasons a) | Number of applications rejected after prior approval | Number of applications waiting for consideration after prior approval b) | Number of applications accepted by the parliament |
| IV 2013 | 23 | 0 | 7 | 0 | 16 |
| X 2013 | 29 | 0 | 20 | 0 | 9 |
| IV 2014 | 24 | 1 | 18 | 0 | 5 |
| X 2014 | 8 | 0 | 3 | 0 | 5 |
| IV 2015 | 14 | 0 | 10 | 4 | 0 |
| X 2015 | 15 | 0 | 7 | 8 | 0 |
| IV 2016 | 27 | 3 | 14 | 7 | 3 |
| X 2016 | 19 | 0 | 13 | 3 | 3 |
| IV 2017 | 49 | 1 | 31 | 9 | 8 |
| X 2017 | 31 | 0 | 13 | 11 | 7 |
| IV 2018 | 23 | 2 | 8 | 13 | 0 |
| X 2018 | 19 | 0 | 0 | 19 | 0 |
| | 281 | 7 | 144 | 74 | 56 |
| | (100%) | (2.4%) | (51.2%) | (26.3%) | (19.9%) |

a) – these are applications examined together by the following: Secretary's Office (*L'Ufficio di Segreteria*), Regency and the Secretary of State for Internal Affairs (*Reggenza assieme al Segretario di Stato per gli Affari Interni*); b) – these are applications waiting for the position of the parliamentary commission/committee or government representative.

Source: own based on an official data. As of November 30, 2018.

53 It should be noted there were two other petitions in that semester which may be treated as ideological: no. 18 (for installation on all the territory - and in particular in the headquarters of the Higher Secondary Schools - of automatic vending machines for condoms) and no. 21 (why there is an obligation of closing indiscriminately for all work activities in conjunction with national day and the main days of religious festivals). The first was accepted, while the other not.

- in 2017 – there were only April applications: application no. 22 (for introduction of legislation allowing and disciplining medically assisted death) which was rejected by the MPs who at the same time asked the government to identify the rules for the protection of the “end of life”, as well as to define the operating procedures and strengthen the services for palliative care pathways; Instance of Arengo n.36 of 2 April 2017 was for the introduction of legislation that allows the donation of organs and tissues by binding the subjects who intend to do it exclusively on a voluntary basis and with the methods deemed most appropriate (its current status is: pending examination by the permanent council committee)⁵⁴;
- in 2018 – there was only one ideological Istanza d’Arengo application: Instance of Arengo n.21 was to regulate surrogate motherhood practice – it was rejected by the MPs, but they asked the government for an agenda for the introduction of the prohibition of the practice of surrogate motherhood and for a deeper knowledge on the practice of heterologous fertilization⁵⁵.

Conclusion

In conclusion, it should be noted that the greatest obstacle faced by citizens submitting applications for a referendum is the verification by the CG. It is worth noting that in the discussed period, this body repeatedly suspended (or stopped) the referendum procedure not only because of substantive comments (ie the formulation of a referendum question, which is unclear / refers to a non-existent legal order), but also errors in the procedure for collecting signatures after prior approval. But what can not go unnoticed is the fact that the citizens of San Marino are quite persistent in their efforts to hold a referendum, even if the CG finds serious drawbacks to such

54 There were two more applications which may be seen as ideological (both are linked with the state-church relations): no. 25 (to ensure the availability of an appropriate public space for the celebration of lay funeral) which was accepted and no. 29 (for the recognition of the personal and unequivocal desire to no longer be considered adherents to the religious confession denominated “Roman Catholic Apostolic Church”). The latter was rejected for formal reasons: as it does not fall within the competence of the parliament. The registration - and therefore the cancellation - of a subject from lists and lists of baptized persons held by the parish of belonging or by religious bodies, in fact belong to a different order from that of the State and therefore fall within the competence of bodies and authorities other than those of the state. The State and therefore the Great and General Council can not intervene in this regard.

55 Full name: Instance of Arengo n.21 of 8 April 2018 - for the adoption of specific legislation that establishes the prohibition of the use of so-called “hut-for-hire” practices and “heterologous fertilization” and does not make it possible for the Civil Republic of San Marino to register in its registers newborns or minors, conceived with the recourse to such practices in foreign places, within the family status of parents different from the natural ones.

a proposal. Reading the judgments allows for the subsequent preparation of the application, which is no longer free of these defects.

It is also worth paying attention to a certain trend in referring to referendum applications: applicants very often submit their proposals on the same day as other applicants. It seems that such procedure on the one hand causes mutual benefits later, because the organizers of such voting can count on greater mobilization of the electorate, and thus greater attendance, which was important in 2016, because the lack of reaching the appropriate quorum, even in the case of telling following the proposal of the majority of voters did not result in the implementation of the decision taken in the referendum.

In conclusion, it should be noted that the answer to the question raised in the introduction about how the Id'A is used to implement ideas that have not been implemented in either the referendum or the citizens' legislative initiative, is negative. However, it should be emphasized that the number of applications submitted in the Id'A mode, which is of world-view nature, is relatively small (it closes in 5-7% of all applications).

At the same time, if we note that none of the referendum applications in the analyzed period were of a world-view nature, and among the projects submitted in the citizens' legislative initiative procedure for 13 applications 2 are world-view (15%). Therefore, the hypothesis that the least demanding institution from the formal side of direct democracy is the best tool for the citizens of the Republic to solve world-view issues by submitting them to the vote in the parliament has not been confirmed.

Finally, looking at worldview issues, it is worth noting that the majority of them (and yet they are not many among all against the conclusions) are rejected by parliamentarians. Therefore, it seems that the only effective weapon in the hands of citizens (except the exchange of parliamentarians in the elections), who try to force through their solution in the legal system is a proposal for a referendum, which alone can not be *de facto* blocked by parliamentarians, and the correct formal preparation of the referendum application gives a real chance of acceptance by the CG, and thus the organization of popular vote in which citizens decide about the case.

Bibliography

Corbett J., Veenendaal W., *Democracy in Small States: Persisting Against All Odds*, Oxford 2018.

Council of Europe: Commissioner for Human Rights, Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to San Marino from 9 to 10 June 2015, 15 October 2015, available at: <https://www.refworld.org/docid/5665a6794.html>

Crescentini G., Il referendum e gli altri istituti di democrazia diretta, <http://dantealighierism.org/wp-content/uploads/2017/05/2012-11.pdf> (22.11.2018).

Czornyj M.D., Ustrój Republiki San Marino, "Przegląd Sejmowy" 2015, no. 5(130).

- Eccardt T.M., *Secrets of the Seven Smallest States of Europe: Andorra, Liechtenstein, Luxembourg, Malta, Monaco, San Marino, and Vatican City*, New York 2005.
- Iannaccone L., *Il matrimonio same sex nella Repubblica di San Marino?*, "Stato, Chiese e pluralismo confessionale" 2014, no. 24.
- Kubacki P., *Arengo – zgromadzenie ludowe San Marino jako forma demokracji bezpośredniej*, „Kortowski Przegląd Prawniczy” 2016, no. 1.
- Łukaszewski M., *Arengo, obywatelska inicjatywa ustawodawcza, Instancja Arengo i referendum – formy demokracji bezpośredniej w San Marino na tle rozwiązań konstytucyjnych Włoch*, (in:) M. Musiał-Karg, A. Stelmach (eds.), *Uwarunkowania demokracji bezpośredniej we współczesnej Europie*, Poznań 2018.
- Łukaszewski M., *Najstarsza republika świata. Współczesny system polityczny San Marino*, Poznań 2018.
- Perotto F., *Fabrizio Perotto sul PdL Istanze d’Arengo*, <http://www.repubblicafutura.sm/perotto-istanze-arengo/> (14.10.2018).
- Veenendaal W., *Politics and Democracy in Microstates*, Abingdon 2014.
- Zillman C., *Why Italy’s New ‘Fertility Day’ Campaign Is a Sexist Mess*, September 2, 2016, <http://fortune.com/2016/09/02/italy-fertility-day-birthrate-sexism/> (22.10.2018).