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City and Democracy. Reflecting on the Constitution, general laws and institutions in these 50 years

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Resumo

Nos cinquenta anos da democracia e do dealbar da Constituição da República Portuguesa, será oportuno ponderar o significado de “Cidade” enquanto espaço e núcleo integrante e potenciador das pessoas coletivas territoriais nas quais se vivem e atuam pessoas singulares: os Cidadãos. Por seu lado, a cidadania, enquanto estatuto jurídico de relação do individuo com uma comunidade política, terá formas próprias de participação e de integração. Assim, recordam-se formas de organização política democrática descentralizada, como o referendo, desde a Constituição às normas legais e às práticas tidas, de forma objetiva e critica.

Palavras-chave: Cidade; Autarquias locais; Direito político; participação popular

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Abstract

In the fifty years since the establishment of democracy and the enactment of the Portuguese Constitution, it is time to reflect on the concept of the "City" as a space and a core that integrates and enhances territorial legal entities in which individuals – Citizens - live and engage. Citizenship, understood as the legal status governing an individual's relationship with a political community, also gives rise to distinct forms of participation and integration. This paper revisits decentralized democratic structures, such as the referendum, through the lens of the Constitution, legal frameworks, and practices, critically analysing their role and impact.

Keywords: City; Local authorities; Political law; popular participation

City and democracy

The 1976 Constitution of the Portuguese Republic (hereinafter CRP), like its “predecessors” (although the Constitutional Charter of 1826 established the “creation of chambers in all existing cities and towns and in those that will be created in future, with the economic and municipal government of the same cities and towns”.), never uses the word “City” as a structuring element of the model of political or economic organization of the country or parts of the territory.

So, in the current Constitution we only find two references to the "city":

> "Article 81 (Priority tasks of the State)
> In the economic and social field the state is under a priority duty:
> (...)
> d) To promote economic and social cohesion of the whole country by guiding development in the direction of a balanced growth in every sector and region and progressively eliminating the economic and social differences between town and country and between the coastal strip and the inland areas;
> and interestingly
> Article 227(Powers of autonomous regions)
> 1. 1.The autonomous regions are territorial legal persons and have the following powers, which shall be defined in their statutes:
> (...)
> n) To raise rural settlements to the category of town or city;”

That is, the Constitution of the Portuguese Republic establishes as an essential element the existence of a decentralized Unitary State in its Article 6, where (1.) The state is

unitary and the way in which it is organised and its functions shall respect the autonomous island system of self-government and the principles of subsidiarity, the autonomy of local authorities and the democratic decentralisation of the Public Administration. The archipelagos of the Azores and Madeira constitute autonomous regions endowed with political-administrative statutes and self-governing bodies, choosing to identify territorial legal persons (Autonomous Regions, local authorities - such as Municipalities and Parishes - in addition to the State itself) and not the identification of Cities, Towns or Villages as integral elements of such (decentralized) organization. The option is different in similar Constitutions (even contemporary ones), such as the Spanish one of 1978 where, for reasons that are now not justified, it is explained that “The cities of Ceuta and Melilla may set themselves up as Autonomous Communities if their respective Municipal Councils should so decide by means of a resolution adopted by an absolute majority of their members, and if the Cortes Generales authorise it, via an organic law, under the terms provided in Article 144”.

There is a growing trend for the world’s population to live in cities (RITCHIE; SAMBORSKA; ROSER, 2024) - “Urbanization” Published online at OurWorldInData.org. Retrieved from: 'https://ourworldindata.org/urbanization' [Online Resource], consulted on 13/07/2024). One needs to bear in mind that, in the Portuguese case, this phenomenon is not limited to the last two centuries, as there is often reference to the existence of a “macrocephaly”, in view of the importance of a City (Lisbon) in the national whole. But even this City (without forgetting it is the Capital) is a city of smaller than average dimensions on a European and global scale. In fact, note the recent Law No. 24/2024 of February 20, or Framework Law on the attribution of the categories of town or city to settlements when in Article 3 it establishes that (1) towns with more than 9000 voters, in a continuous population cluster, and that correspond to nuclei of intense urbanization, can be elevated to the category of city. (in paragraph 2, it also refers to the need for the existence of defined collective institutions or facilities).

This weighting of 9,000 voters is proportional to the way spaces are organized in Portugal, and a quick survey shows different realities are found in other countries. Take the example of “Law 57/2003, of 16 December, on measures for the modernization of the local government” in Spain, which recognizes that the “bigger Spanish cities, which have been calling for a legal framework that would enable them to deal with their hugely complex political and administrative structures. In fact, up to now urban governance has not received sufficiently specific treatment in our legal system, as a consequence of this traditional unitary treatment that has characterized our local government.” Thus, this law considers Municipalities with a large population (Article 121) as Cities, those "with a population of more than 250,000 inhabitants" (without prejudice to the same status being conferred on provincial or autonomous capitals).

In Portugal, within the territorial organization (decentralized, pursuant to Article 6 above), the role of metropolitan areas and inter-municipal communities in State taxation is highlighted, according to Article 69 of Law no. 73/2013, of 3 September, in its current wording (Financial regime of local authorities and inter-municipal entities). Even without being enshrined in the Constitution, these occupied the space of a constitutionally foreseen category of local authority - the administrative regions - which were never effectively implemented. Thus, they are a relevant element for the implementation of Article 238 (2) of the Constitution of the Portuguese Republic (“The law shall establish the local finance regime, which shall seek to ensure that public resources are justly

shared between the state and local authorities and the necessary correction of inequalities between local authorities of the same category. The metropolitan areas of Lisbon and Porto stand out, coexisting with intermunicipal communities, as polycentric territorial administrative organizations that ensure territorial cooperation between different municipalities in matters of bilateral or even multilateral interest. They have in common the "starting point", the City and its urban expansion, with newly built areas that bring new challenges and complexity: accessibility, basic sanitation, education, security, etc., that is, the creation and development of infrastructures, which can be - like the problems - common. Thus, without prejudice to the maintenance of local identities, new "Cities" emerge, such as the Metropolitan Area of Lisbon (AML), composed of eighteen municipalities and a population of about 3 million inhabitants (a quarter of the Portuguese population) and the Metropolitan Area of Porto (AMP), comprising seventeen municipalities. Metropolitan areas emerged in the early 1990s (Law No. 44/91, of August 2) being the legal regime of intermunicipal entities in Portugal, integrating metropolitan areas and intermunicipal communities in 2013: Law No. 75/2013, of 12 September ("Establishes the legal regime of local authorities, approves the statute of inter-municipal entities, establishes the legal regime for the transfer of competences from the State to local authorities and inter-municipal entities and approves the legal regime of municipal associations"), where Article 63 establishes that:

> "1 - Public associations of local authorities may be established for the joint performance of their respective tasks, under the terms of this law.
> 2 - Metropolitan areas, intermunicipal communities and associations of parishes and municipalities for specific purposes are associations of local authorities.
> 3 - The metropolitan area and the intermunicipal community are intermunicipal entities."

Thus, we have inter-municipal communities being free associations of municipalities, a supramunicipal entity to whom municipalities confer attributions or powers that are part of their legal status in order to better resolve common issues resulting from a “larger city”, under the terms mentioned above. That is, matters such as planning and management of the strategy for economic, social and environmental development of the territory covered; public supply networks, basic sanitation infrastructure, waste water and urban waste treatment; or networks of health and educational equipment and vocational training, spatial planning, nature conservation and natural resources; safety and civil protection; mobility and transport. Although there is no legal statement of the "City", one must realize that it is the development and expansion of this more densely populated urban network that implied the creation and institutionalization of Metropolitan Areas and intermunicipal entities.

The City, although it is not included in the Constitution of the Portuguese Republic (CRP) as a structuring element of the model of political or economic organization of the country or portions of the territory, nevertheless remains the relevant expression of a model of spatial organization, with specific needs or characteristics. This was recognized in the Administrative Code of 1936, which, in its Article 1 (Base I) established that the territory of the continent was divided into municipalities (which formed parishes and grouped into districts and provinces) classifying them into urban and rural and, dividing them into 1st, 2nd and 3rd order. Those with their headquarters in a City with more than 25,000 inhabitants would be urban (Article 2/§1/1). This was in force with minor changes until 1974. Today it is up to the Assembly of the Republic, within the scope of the 1976 CRP, to legislate on the organization of local authorities.

However, if there are specific needs arising from the characteristics of the Cities, with greater proximity between citizens as they are increasingly better informed, for the City of the 21st century we find instruments that enhance their democratic participation, such as the local Referendum

The Local Referendum

The Referendum is an instrument of direct, or semi-direct, democracy, by which voters are called upon to decide common issues, whether constitutionally or legally affected by this form of consultation, or in relation to which the bodies of political power wish to obtain the participation of citizens prior to the decision to be taken within the competence of local authorities.

The CRP establishes three types of referendums in terms of their scope: national, regional and local.

The local referendum was initially called "local direct consultation" as established in the first constitutional revision (1982), and only in the fourth constitutional revision (1997) was it renamed local referendum. It may have as its object issues of relevant local interest that must be decided by the municipal bodies (municipality or parish) exclusively or shared with the State or Autonomous Regions, according to Article 3 of Organic Law No. 4/2000, of 24 August:

> "1 - The local referendum can only deal with issues of relevant local interest that must be decided by the municipal or parish councils and that are part of their responsibilities, whether exclusive or shared with the State or the Autonomous Regions.
> 2 - The determination of the matters to be submitted to a local referendum complies with the principles of state unity and subsidiarity, decentralization, local autonomy and interlocal solidarity."

At the local level, the initiative, or submission of referendum proposals, is the responsibility of the Local Assembly or the Local Council (in the case of a municipal referendum), or the Parish Assembly or the Parish Council (if the initiative is for a parish referendum). It should be noted that in both cases, it may also result from the initiative of groups of citizens registered in the respective area constituted for this purpose (Organic Law 4/2000, of 24 August), according to article 10 (Power of initiative):

> "1 - The initiative for the local referendum is the responsibility of the deputies, the municipal or parish assemblies, the local council and the parish council, depending on whether it is a municipal or parish referendum.
> 2 - The initiative is also the responsibility, under the terms of this law, of groups of citizens registered in the respective area."
> I would like to highlight the following provisions of Organic Law 4/2000, of 24 August, in view of the object of this article:
> “Article 13
> Ownership
> 1 - The initiative referred to in paragraph 2 of Article 10 shall be proposed to the deliberative assembly by a minimum of 5,000 or 8 percent of the registered voters in the respective area, whichever is less.

2 - In municipalities and parishes with less than 3,750 registered citizens, the initiative in question must be proposed by at least 300 or by 20 percent of the number of those citizens, whichever is less.
3 - The proposed initiative cannot be signed by a number of citizens exceeding 50 percent, the respective minimum required limit.
Article 14
Freedoms and guarantees;
1 - No public or private entity may prohibit, prevent or hinder the exercise of the right of initiative, namely with regard to the instruction of the elements necessary for its formalization.
2 - No one may be harmed, privileged or deprived of any right by virtue of the exercise of the initiative for the referendum.
Article 15
Form
1 - The popular initiative must be made in writing, including the question or questions to be submitted to a referendum, and contain the following elements for all promoters:
Name;
Identity card number;
Signature according to the identity card.
2 - The meetings may request from the competent services of the Public Administration to verify, by sampling, the authenticity of the signatures and the identification of the signatories of the initiative.
3 - The popular initiative precludes the supervening initiative, on the same issue, either by deputies to the assembly or by the executive body.
Article 16
Representation
1 - The popular initiative must mention, in the initial part, the identification of the agents appointed by the subscribing citizens, who should number no less than 15.
2 - The agents referred to in the preceding paragraph appoint among themselves an executive committee and its president, for the purposes of responsibility and representation provided for by law.
Article 17
Procedures
1 - The popular initiative is, as the case may be, addressed to the chair of the city council or the parish council, who shall reject it outright whenever the legal requirements are not fulfilled.
2 - Once it is accepted, the chairperson shall take steps to convene the meeting, in order to allow the creation of a committee specifically constituted for this purpose.
3 - The committee shall consider the initiative within 15 days.
4 - The committee shall hear the executive committee provided for in paragraph 2 of Article 16, or whoever is designated in its place and has expressly accepted this charge, for the clarifications deemed necessary.
5 - The committee may also call for the improvement of the text presented, either in order to remedy any defects or to improve the wording of the questions presented.
6 - Once the examination is complete, the initiative, accompanied by a reasoned report, is sent to the chairman of the meeting for scheduling."

Approval for the Local Referendum is the responsibility (depending on whether it is Municipal or Parish) of the Local Council or the Parish Council. It passed by a majority of votes of the members present, with the President of the body having the casting vote. However, the person who sets the date for the referendum is the president of the executive body of the respective municipality.

The Local Referendums held are registered, within the scope of their powers by the National Electoral Commission, and can be consulted at https://www.cne.pt/content/eleicoes-referendos (the links for direct consultation are below)

Local Referendum in the parish of Mazedo e Cortes (Monção) – "Do you agree with the separation of the Union of Parishes of Mazedo e Cortes?" • 13/08/2023
Local Referendum in the parish of Benfica (Lisbon) • 12/02/2023
Local Referendum in the parish of Sacavém and Prior Velho (Loures) • 29/01/2023
Local Referendum in the municipality of Vizela 2023 • 08/01/2023
Local Referendum in the Parish of Barroselas and Carvoeiro (Viana do Castelo) • 15/08/2022
Local Referendum in the municipality of Chaves 2020 • 13/09/2020
Local Referendum of 16 September 2012 • 16/09/2012
Local Referendum in the Municipality of Cartaxo, 2011 • 18/12/2011
Local Referendum in the Municipality of Viana do Castelo, 2009 • 25/01/2009
Local Referendum in the Municipality of Tavira, 1999 • 13/06/1999
Local referendum in 1999, local referendum deliberated by the Serreleis Parish Council (on the location of a multi-sport playing field) • 25/04/1999

This kind of local referendum (national or regional) is the most powerful expression, and has the most potential in the Portuguese constitutional legal framework for the evolution of and even to guarantee democracy in Portugal, It encourages citizens to become involved in the issues concerning their city, across a very wide range of topics, without feeling separate from the public body to which they are so often only "summoned" every four years.

Participatory budgets

Participatory budgets were acknowledged as an instrument of management or municipal government in Brazilian municipalities in the late 1980s, with Porto Alegre in Rio Grande do Sul being particularly important example. They consist of a consultation with citizens about the destination of part or even all of the available public resources. They may take different formats (and may be mandatory or optional, binding or non-binding). This emerges as a mechanism of direct democracy, as a rule with an electoral universe coinciding with that of the Municipality area. Citizens can discuss and decide on the application of existing/estimated resources and influence public policies. However, it is necessary to take into account the way of choosing the works to be carried out and submitted for consultation, the asymmetry of values or charges involved, their duration, their strategic impact, which will condition the choices of citizens. Moreover, it is necessary - as in other forms of direct and indirect democracy - to ensure that popular consultation is not intended to exempt elected political leaders. Thus, voters should participate not only at the time of voting on the works to be carried out, but beforehand to identify problems and propose measures and define priorities. After voting they should also be involved in monitoring the implementation of the projects and evaluation of measures and be provided with clear and accessible information to do so.

In Portugal, the first instance of participatory budgeting was in the Municipality of Palmela, in 2002. However, Alcochete, Alvito, Aljustrel, Avis, Batalha, Braga, Cascais,

Castelo de Vide, Castro Verde, Lisbon, Marvão, Palmela, Santiago do Cacém, São Brás de Alportel, Serpa, Sesimbra, Setúbal, Vila Real de Santo António, among others, also promoted this participatory instrument.

At the same time, we have administrative procedures for public consultation defined within the framework of the land planning and urban planning policy, where citizens have the opportunity to find out about proposed territorial management instruments, but without having a right to take decisive action on them as this is maintained within the scope of the decision entrusted to a representative democracy.

Final points

I have demonstrated that democratic means have evolved, alongside the expansion of decentralization, which in itself brings political power closer to citizens but without affirming the "city" as a public entity, or a territorial legal person. At the same time, the increasing displacement of citizens to the "Cities", as a result of the dilution of their borders with neighbouring towns and villages, created new needs or greater complexity in monitoring and resolving existing ones (in areas such as education, health, transport, sanitation, environment, tourism or accessibility). This was the reason for the emergence of the intermunicipal entities following an experience with two Metropolitan Areas, themselves an expression of the importance of the City in this context: Lisbon and Porto.

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