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REFERENCE: G/SO 215/51 ITA (17)  
MT/MMM/ma 2656/2015

13 December 2019

Dear Mr. Romano,

I have the honour to transmit to you herewith the (advance unedited) text of the Views adopted by the Human Rights Committee on 6 November 2019, concerning communication No. 2656/2015, which you submitted to the Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mario Staderini and Michele De Lucia.

In accordance with the established practice, the text of the Views will be made public.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ibrahim Salama', written over a horizontal line.

Ibrahim Salama  
Chief  
Human Rights Treaties Branch

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# International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General  
28 November 2019

Original: English

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol concerning communication No. 2656/2015\*,\*\*

<i>Communication submitted by:</i>	Mario Staderini and Michele De Lucia (represented by counsels, Professor Cesare Romano and Professor Verónica Aragón)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Italy
<i>Date of communication:</i>	17 July 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 22 October 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2019
<i>Subject matter:</i>	Unreasonable restrictions to the right to call for a popular referendum initiative
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Taking part in the conduct of public affairs
<i>Articles of the Covenant:</i>	25 (a) and (b) alone and in conjunction with 2 (1) - (3)
<i>Articles of the Optional Protocol:</i>	1, 2

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\* Adopted by the Committee at its 127th session (14 October–8 November 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos País, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. In accordance with article 108 of the Rules of Procedure of the Committee, Yuval Shani, did not participate examination of the communication.

1. The authors of the communication are Mario Staderini and Michele De Lucia, Italian nationals, respectively born on 20 April 1973 and 16 October 1972. They claim that Italy has violated their rights under article 25 (a) and (b) alone and in conjunction with article 2 (1) – (3) of the Covenant. The communication was submitted by International Human Rights Clinic of Loyola Law School on behalf of the authors, acting in their personal capacity and as representatives of the Italian Radicals.

#### **The facts as presented by the authors**

2.1 The authors are members of the Italian political non-violent movement, “Italian Radicals”. On 10 April and 9 May 2013, pursuant to article 75 of the Italian Constitution, the authors, together with twenty other citizens, filed with the Registry of the Central Bureau for the Referendum of the Court of Cassation initial requests to hold six national referenda aimed at repealing legislative provisions relating to immigration, narcotic drugs, divorce, and public funding to political parties and to the church. The authors consider that referenda have an important role in Italian politics to correct and complete representative democracy, promoting political education, and fighting the omnipotence of political parties.

2.2 Pursuant to Italian Constitutional Law No. 352/1970, the authors had to collect and file with the competent authorities at least 500,000 signatures of Italian citizens to have a referendum put on the ballot. Each signature must be collected in-person; on specific sized forms that must be dated, signed, and stamped by specific public officials.<sup>1</sup> Each signature, or each page of signatures must be authenticated by a public official: a notary, justice of the peace, court registrar<sup>2</sup>, or municipal secretary when the signature is put on the form.<sup>3</sup> Alternatively, members of the City Council or Provincial Council can perform this task.<sup>4</sup> Public officials must be compensated by the promoters of the referendum for the time they have provided to certify the signatures.<sup>5</sup> The promoters must also collect a certificate for each signatory, issued by the municipality where the voter is registered, verifying that the person in question is indeed a registered voter. The forms with the signatures must be turned in to the Registry of the Court of Cassation within three months from the day the form was certified; and, finally, signatures can only be turned in from 1 January to 30 September<sup>6</sup>, and no initiative can be started the year before elections for either of the houses of the Italian Parliament, or during the six months following the call for elections of either house.<sup>7</sup> If the Central Bureau for the Referendum declares that the 500,000 signatures have been duly collected, it refers it to the Constitutional Court, which rules on the constitutionality of the initiative, ensuring that the requested referenda do not concern any of the prohibited topics listed in the Constitution. If the Constitutional Court determines that the initiative is valid, the President of the Republic schedules the referendum for a Sunday between 15 April and 15 June. Should elections for either house of the Parliament be called while the referendum is pending, the referendum is suspended and the process leading to the vote on the referendum is restarted 365 days after the elections have been held. For an abrogative referendum to pass, a double majority is needed: first, a majority of eligible voters must have voted, and, second, a majority of the votes cast must be in favor of the referendum. A majority “yes” vote means that the law is struck down, either in whole or in part depending on the referendum.

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<sup>1</sup> According to Law 352/1970, the municipal secretary and/or the tribunal registrar are competent to certify the forms.

<sup>2</sup> Registrar of the Magistrate’s Court, the Appeals Tribunal or the Appeals Court of the circumscription in which the person that is signing resides.

<sup>3</sup> According to Law 352/1970, article 8.

<sup>4</sup> According to the opinion by the State Council (Consiglio di Stato) of 10 July 2013 (decision number 2671).

<sup>5</sup> Except for municipal secretaries, provided that this task is performed as part of their functions and within their work place.

<sup>6</sup> According to Law 352/1970, article 32, the request for a referendum has to be submitted between 1<sup>st</sup> of January and 30<sup>th</sup> of September and from 30<sup>th</sup> September, the Court of Cassation will examine the compliance of the requirements set out by the same Law.

<sup>7</sup> Article 75 of the Italian 1948 Constitution.

2.3 The authors submit that they encountered a number of arbitrary and unreasonable obstacles in the collection of signatures caused by deficiencies of the system and by actions and omissions of public authorities.<sup>8</sup> Firstly, the authors struggled to find officials available to authenticate the forms and signatures. Although by Law 352/1970 the municipal secretary and/or tribunal registrar must certify the forms within two business days,<sup>9</sup> delays were common. Since the authors bore the cost of printing enough forms to accommodate three million signatures (500,000 signatures times 6 referenda), they had to print the forms throughout the three month collection period and repeatedly take new batches to the municipal secretary for certification. Furthermore, public officials with the authority to authenticate were only available on certain weekdays, and only on the premises of municipal buildings. The city of Ferrara, for example, first banned signature collection tables set up in the streets of the city for several days, and then provided only a little-known office for the voters to sign the forms. In Naples, citizens could only sign at the city's central office, and not in any of the ten municipal offices located throughout the metropolitan area, which is home to around one million people. Many other cities only allowed citizens to sign the forms at municipal public relations offices. This made it nearly impossible to collect the necessary signatures, as collection is only effective in public spaces, such as town central squares, and on weekends, when people are actually present. Furthermore, in some major cities, public officials were unavailable for weeks to authenticate signatures. In Caserta, officials were hardly available during the entire collection period, even at the tables organized in front of municipal buildings. In Gorizia in northeast Italy, city councilmen only made themselves available for a few days between 7 June and 30 September to authenticate signatures. In Naples, the register for the Court of Appeal was only available for a few hours, and at a cost of 20 euro per hour. In Rieti, the necessary officials went on vacation in July and August and did not authorize anyone else to authenticate signatures. In Bari and Udine, the municipal secretaries refused to authenticate signatures outside the City Hall. Citizens in Rimini and Taranto visited municipal offices hoping to sign the forms but were sent home because the officials who were needed to authenticate their signatures were on vacation.

2.4 The second obstacle that the authors faced was the lack of publicly available information on when and how to sign. Neither the public television broadcasting company (Radiotelevisione Italiana, or RAI), nor the city authorities, provided information to the public on how to endorse the referenda. In June 2013, the founder of the Italian Radicals movement, Marco Pannella, requested a hearing before the RAI oversight committee (Commissione di Vigilanza), to address the public broadcaster's failure to inform viewers of the referenda. Also, municipal authorities failed to publicize the times and locations that citizens could sign the referenda requests on their municipal websites. In the province of Naples and region of Calabria, numerous municipal websites failed to make any mention of the referendum drives. In other areas, such as Ferrara, information about the signature drives was not published until the end of August, with only a month remaining in the collection period. In many instances, citizens arrived at the municipal offices wishing to sign the forms, but were told by the secretariats that the forms were unavailable — even though they had been sent by the promoters. In other cases, citizens seeking information as to how to sign the referenda requests were unable to obtain the details from their municipal officials. In the province of Caserta, for example, the Italian Radicals sent the forms on 20 June 2013 to the city of Santa Maria a Vico to be signed. As late as 26 August, voters in that city were told there were no referendum forms they could sign. Voters in the provinces of Catania, Benevento, and Verona were similarly denied the opportunity to support the referenda because their cities claimed not to have received the forms.

2.5 On 5 July 2013, the authors sent a letter to the Ministry of the Interior and the Ministry of Justice, on which the President of the Republic was copied, detailing the obstacles they were facing, including their inability to authenticate, and therefore collect, signatures and the lack of information provided to citizens. The authors argued that the State party created an obligation to collect signatures but did not provide the instruments to fulfil it. On 25 July 2013, the Italian Radicals notified the Minister of the Interior, that they would be holding a peaceful demonstration outside the Ministry of the Interior while they waited for a response.

<sup>8</sup> The authors submit a number of witness statements detailing these obstacles.

<sup>9</sup> Law 352/1970, art. 7.

On 26 July 2013, that Ministry issued a circular note to the Prefects, who are the regional representatives of the national government, advising them that the Italian Radicals were collecting signatures in relation to a referendum initiative and instructing them to ensure “as many officials as possible” were available to authenticate the signatures within or outside the municipal seat, even during the summer holidays. It also instructed the municipalities to post information about the initiative signature drive on their websites. Subsequently, a second circular note was issued on 2 August 2013 restating an opinion of 2003 of the State Council (Consiglio di Stato) that declared that the members of city and provincial councils could authenticate signatures too. On 9 August 2013, eleven members of the Italian Chamber of Deputies, asked the Ministry of the Interior what steps were being taken to take to ensure that signatures could be collected and citizens were informed of the campaign underway. The Ministry did not answer this question until 25 February 2014, long after the campaign had ended, merely restating that the Ministry of Interior had already issued the two Circular Notes.

2.6 The Ministry of the Interior did not take any steps to ensure the instructions in the two Circulars were implemented. In fact, in many major municipalities — including Bari, Brescia, Brindisi, Caserta, Grosseto, Naples, and Udine — not a single municipal officer was made available for the authentication service, despite several requests from the promoters. In addition, in many municipalities, the authentication service continued to be interrupted during summer holidays, when the qualified officials left on vacation and failed to designate a substitute to authenticate signatures. Information on institutional websites remained scarce. Only a few minor municipalities published information.

2.7 The authors submit that, as a result of these obstacles, they only collected and authenticated approximately 200,000 signatures by 30 September 2013, which was the deadline to get the referendum initiatives approved by the authorities.

2.8 On 30 September 2013, the authors nonetheless submitted the signatures to the Central Bureau for the Referendum of the Court of Cassation together with a brief with written observations contending that the unreasonable obstacles created by public officials and the inadequacy of the procedure provided by law 352/1970 had, de facto, deprived the citizens of their constitutional right to request a referendum and had discriminated against them on the basis of political affiliation and economic status. They therefore requested the Central Bureau to admit the initiatives.

2.9 By an order of 2 October 2013, communicated to the authors on 26 October 2013, the Central Bureau for the Referendum observed that the required number of signatures had not been collected. The decision did not acknowledge the brief that had been submitted explaining why the authors did not reach the amount of 500,000 signatures.

2.10 The authors submit that the decisions of the Central Bureau for the Referendum of the Court of Cassation<sup>10</sup> are final, since they cannot be challenged before any higher authority.

### **The complaint**

3.1 The authors claim that the laws and procedures to hold referenda in Italy are unduly restrictive, arbitrary, and unreasonable, providing mere lip-service to the constitutionally sanctioned right to initiate referenda, and resulting in a violation of article 25 (a) and (b), alone and in conjunction with article 2 (1) – (3) of the Covenant. The authors stress that article 25 should be interpreted in light of General Comment 25 as well as the 2007 Code of Good Practice on Referenda of the Council of Europe’s European Commission for Democracy Through Law (The Venice Commission)<sup>11</sup> since the State party is a founding member of the Council of Europe and, as such, party to the 1950 European Convention on Human Rights and Fundamental Freedoms.

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<sup>10</sup> According to article 34 of the Italian Constitution, the Central Bureau is a judicial organ.

<sup>11</sup> Eur. Comm’n for Democracy Through Law (Venice Commission), Code of Good Practice on Referenda, 13 Doc. No. CDL- AD(2007)008 (2007), available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)008-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008-e).

3.2 The authors claim that many of the restrictions imposed by the Italian legal system on the exercise of the right to take part in the conduct of public affairs directly through referenda are arbitrary and unreasonable. They are arbitrary because the limitations placed on the exercise of the right to participate directly in the conduct of public affairs, through referenda, are not justified by necessity, reason or principle.<sup>12</sup> They are unreasonable because the way in which the State party regulates the exercise of the right to participate directly in the conduct of public affairs, through referenda, goes against the stated purpose of article 75 of Italy's Constitution, namely to allow its citizens to initiate and vote on referenda. The authors note that, according to General Comment No. 25, "the allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws".<sup>13</sup> Moreover, "where a mode of direct participation is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed".<sup>14</sup> And finally, "any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria".<sup>15</sup> The State party included a provision on popular referendum in its Constitution and adopted laws to implement it. When States do provide for ways in which citizens can participate in the conduct of public affairs directly, then they arguably have an obligation to ensure citizens can effectively do so. The authors contend that, if one considers the purpose of article 75 of Italy's Constitution to allow citizens to initiate and vote on referenda, it is difficult to see how the State party achieves that goal given how referenda are regulated in law and held in practice.

3.3 Authors contend that the requirement to collect 500,000 signatures in the short period of time provided by law 352/1970 (see para 2.2 above) is arbitrary and unreasonable. Of the 197 referenda initiatives that have been started in the history of the Italian Republic, only 67 were brought before the citizens for a vote,<sup>16</sup> namely just one out of three. While some time limits are surely a reasonable restriction, the purpose and justifications of the current stringent time limits are not clear. These restrictions do not allow citizens to initiate and vote on referenda. Other States with better regulated systems of democracy have either lower thresholds (such as 100,000 signatures for Switzerland), or have thresholds directly linked to the total amount of votes casted in the previous election (such as the regulation in the State of California). In view thereof, the authors consider that the arbitrary and unreasonable requirement currently in force in the State party constitutes a violation of article 25.

3.4 The authors also submit that requirements in the process of certification of forms and signatures is unreasonable and arbitrary. Under the applicable law, the signatures can only be authenticated by designated officials or by members of the City or Provincial Council (see para. 2.2 above). While the list might seem, *prima facie*, extensive, in reality their numbers are rather small, and most of them are neither available nor have a duty to authenticate signatures. The number of notaries in the State party is relatively low and they charge hefty fees for their time; and the number of Justices of the Peace is even lower. Registrars of the Magistrates' Court, Tribunal, or Court of Appeal, are more numerous but neither Justices of the Peace nor Registrars have any spare time, considering the Italian judicial system is notoriously overwhelmed. While there is a Municipal Secretary in every municipality, they only authenticate signatures at City Hall, which means that voters who want to endorse the referendum must go and sign at the City Hall, only open during office hours. When authenticating signatures at City Hall, during office hours, Municipal Secretaries do not charge a fee, but very few signatures are collected this way. Though referendum promoters are required to authenticate every signature, the law does not require that any of the aforementioned public officials be available to authenticate the signatures.<sup>17</sup> The largest

<sup>12</sup> See the Committee's general comment No. 25 (1996) on article 25, para.6, and Human Rights Committee, *Singh Bhinder v. Canada* (CCPR/C/37/D/208/1986), para 6.2.

<sup>13</sup> See the Committee's general comment No. 25 (1996) on article 25, para 5.

<sup>14</sup> See the Committee's general comment No. 25 (1996) on article 25, para 6.

<sup>15</sup> See the Committee's general comment No. 25 (1996) on article 25, para 4.

<sup>16</sup> *Out of the 130 initiatives that failed to be put on the ballot, 60 did not obtained the required signatures, 57 were rejected by the Constitutional Court and 13 were cancelled for other reasons.*

<sup>17</sup> See law 352/1970, article 8.

group of potential authenticators is composed of members of the City or Provincial Council. However, these are politicians who, arguably, will authenticate signatures only if the referendum in question is endorsed by their party. Italian Radicals do not run for political office, locally or nationally, and thus are not represented in the City or Provincial Council. The availability of members of the City or Provincial Council is crucial. At the time of the collection of signatures, these were being collected for other six initiatives, also supported by the Italian Radicals, but also supported by a large party; in all places where all initiatives were available for signature, the signatures collected for each initiative was virtually identical, but in those places where the members of the City or Provincial Council were available to authenticate the signatures only for the six referenda supported by their party, the number of signatures collected was significantly higher. By failing to implement a scheme for collecting signatures outside of office hours, both the city and provincial governments deprived the authors of a proper authentication service. These arbitrary and unreasonable requirements therefore constitute a violation of article 25 of the Covenant.

3.5 The authors submit that the turnout quorum requirement (see para. 2.2 above) is arbitrary and unreasonable, constituting also a violation of article 25 of the Covenant. In the history of the Italian Republic, only twenty-four out of 197 referenda initiatives were voted on and approved by the citizens. According to the authors, participation quorums are controversial. Many constitutional scholars have recognized that higher turnout quorum requirements have a significant possibility of blocking most initiatives.<sup>18</sup> Additionally, data suggests that the use of turnout quorums in general may discourage people from participating in elections because opponents to the referendum can control the results by encouraging abstention from voting when they believe the majority of voters are in favour of the proposal.<sup>19</sup> Even if the Committee finds that a turnout quorum is objectively justified and reasonable, the authors contend that the requirement of 50% of registered voters is arbitrary and unreasonable, particularly when coupled with spotty updating of voters' rosters. The authors quote other systems, such as Germany's, where turnout quorum is only used at the local level, varying and taking into account the inhabitants of each community (the threshold is lower for those communities with higher population). The Venice Commission also advises States to dispense with quorum requirements,<sup>20</sup> because opponents of the referendum can control the results by encouraging abstention from voting when they believe the majority of voters are in favor of the proposal. While low quorums may sometimes be used successfully to safeguard the interests of the people overall, quorums in general can also be used to undermine the democratic process.

3.6 The authors submit that the State party failed to inform voters on where and when to sign the initiative, in violation of article 25 of the Covenant. They note that the drives to collect signatures were not covered by the public media. Coverage of the media has a significant impact. In that connection, the six other initiatives being signed at the time were submitted by Mr. Silvio Berlusconi, who owns the second largest TV network in the State party, and those initiatives collected twice as many signatures as theirs. Also, officials failed to publicize on their municipal websites the times and locations that citizens could sign the referenda request. The authors mention that in Slovenia, before the signature collection period begins, the National Assembly must by law publicize the initiative in the media.

3.7 The authors submit that the State party has not taken the necessary steps to adopt laws or measures to give effect to the right to participate in the conduct of public affairs through referenda, as required by article 25 read in conjunction with article 2.2 of the Covenant. States do not have a duty to provide direct democracy mechanisms, but when they do, as the State party does under its Constitution, then, under Article 2.2 of the Covenant, they have the duty to take the necessary steps, in accordance with its constitutional processes and with the

<sup>18</sup> See Luís Aguiar-Conraria, Pedro C. Magalhães, Christoph A. Vanberg, *Experimental Evidence that Quorum Rules Discourage Turnout and Promote Election Boycotts*, 226 EPSA 2013 ANNUAL GENERAL CONFERENCE PAPER, Jun. 11, 2013, at 1, 21.

<sup>19</sup> See Luís Aguiar-Conraria & Pedro C. Magalhães, *Referendum Design, Quorum Rules and Turnout*, AMERICAN POLITICAL SCIENCE ASSOCIATION 2009 TORONTO MEETING PAPER, Aug. 28, 2009, at 1, 3, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1451131](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1451131).

<sup>20</sup> See Council of Europe's European Commission for Democracy Through Law (The Venice Commission) (2007) Code of Good Practice on Referenda.



provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights enshrined in the Covenant. The State party regulates direct democracy and representative democracy differently, for no apparent reason other than to protect the monopoly that established parties have on the political life of the nation. In the case of national and regional elections, law 53/1990 and law 43/1995 contain a specific duty for city officials, including members of city councils, to authenticate signatures on lists of candidates, in their offices, for free, including during weekends and a duty to publicize when and where the lists can be signed. There is no such a duty in the case of referenda. Televisions (public and private) must broadcast information on where, when and how citizens can sign the lists of candidates for national and regional elections. During the campaigns leading up to elections, there are detailed regulations on the access to the media by the various parties. During elections, both the Ministry of the Interior and the Municipalities have a duty to announce on their websites where, when, and how citizens can sign electoral lists. In the case of referenda, as it was detailed above, there are no similar obligations. During elections, by law, municipalities must make city-owned facilities available to parties to carry out their campaigns. Promoters of referenda do not receive these benefits. Parties participating in elections are funded, generously, by the State<sup>21</sup> whereas, in the case of referenda, promoters are reimbursed only a fraction of the costs, and only in the case of referenda that have been actually voted on, which is rare.<sup>22</sup> Also, donations up to 30,000 euro to political parties participating in elections benefit from a 26% tax break, while donations to promoters of referenda initiatives have no tax break. Italy plainly disfavours direct democracy.

3.8 The authors further submit that they have been discriminated against on the basis of their political affiliation and economic status, in violation of article 25 in conjunction with article 2.1 of the Covenant. They note that the promoters must pay to have the signatures authenticated and, owing to flaws in the regulation, it is entirely left to the persons who certify the signatures to decide how much to charge<sup>23</sup>. When authentication is done by the Municipal Secretary at a city hall, it is usually free. However, when it is done at the point of collection, usually during weekends in the main squares of Italian cities, the officials charge for their time. Of the six named officials who can authenticate the signatures, those most frequently available are Registrars of the Magistrates' Tribunal, who volunteer to authenticate signatures at point of collection during weekends. On average, they charge twenty euro per hour. The authors allege that obtaining 500,000 signatures as requested by the Constitution result very expensive, reaching around 200,000 euros. According to the authors, in this particular case which tries to collect signatures for six initiatives at once the cost would be at least 1,200,000 euros.<sup>24</sup> The authors submit that the 2013 campaign almost bankrupted the Italian Radicals. In total, the 2013 campaign for the six referenda in question cost the Italian Radicals 155,000 euro. On the other hand, large political parties count with numerous members of the City or Provincial Councils who can authenticate the signatures at no cost. Consequently, this requirement unduly disadvantages small political parties, and discriminates them on the basis of their political affiliation and economic status because such exorbitant sums of money for authentication alone must be paid for each referendum campaign.

3.9 The authors also argue that the lack of response to their grievances by the authorities amounts to a violation of article 25 read in conjunction with article 2 (3) of the Covenant. Firstly, the authors notified on 5 July 2013 the Ministry of the Interior and the Ministry of Justice about the obstacles they were facing and how these affected their political rights. The circular by the Interior Minister shows an acknowledgement of the unreasonable difficulties that the authors encountered. However, when the Ministry of Interior issued its circular, its

<sup>21</sup> See Law 157/1999.

<sup>22</sup> *Ibid.*

<sup>23</sup> According to article 8 of Law 352/1970, the fees for notaries, justices of the peace, court registrars, or municipal secretary are as established by article 20 of the Law for the Parliamentary Elections. However, according to the authors, the table of fees attached to such law has not been updated since 1962 and it is left to each State agent to decide how much they would charge.

<sup>24</sup> It takes at least 1 minute to collect a signature, since the law requires noting down identification number, full name, date and place of birth, which translates at a very minimum to 10,000 hours to collect 500,000 signatures. At 20 euro per hour, to have those signatures authenticated, it would cost 200,000 euro. Then, each referendum needs to have its own authenticated signature.

agents failed to take any correctives to curb those violations. The State party's subsequent failure to take action and provide the authors with sufficient measures to authenticate and collect signatures amounts to a denial of an effective remedy, in violation of article 25 read in conjunction with article 2 (3) (a) and (c). Also, the lack of response by the Central Bureau for the Referendum of the Court of Cassation to their brief and the allegations made therein also amounts to a violation of article 25 read in conjunction with article 2 (3) of the Covenant. The authors note that they provided written observations contending that unreasonable obstacles created by public officials and agencies had hindered the collection of signatures. However, the Court of Cassation responded with an unmotivated decision of three sentences. Furthermore, no investigation was carried out on the authors' allegations. This response does not comply with the requirements provided for in General Comment 31.<sup>25</sup>

3.10 The authors request that the Committee recommend to the State party to strengthen the legal framework to ensure the orderly, non-discriminatory, and effective exercise of the right to participate in the conduct of public affairs through referenda, as well as implement more effective practices and policies that are conducive to this goal, including by urging it to conform to the Code of Good Practice on Referenda of the Venice Commission.<sup>26</sup> The authors consider that elections and referenda should be regulated in like-manner. In particular, the authors request the Committee to recommend the State party to take the following measures:

- i. Reduce the current obstacles preventing citizens from signing referenda by allowing electronic signatures and providing more avenues for citizens residing abroad to sign;
- ii. Simplify the process of collection of signatures by eliminating the double certification system, finding less restrictive alternatives;
- iii. Expand the number of those who can certify signatures and forms;
- iv. Expand the three-month time limit for submitting the signatures;
- v. Establish a specific duty for city officials, including members of city councils, to authenticate signatures, in their offices, for free, including during weekends, and a duty to publicize when and where the lists can be signed;
- vi. Make facilities owned by the city available to promoters of referenda to carry out their campaigns, as much as they already do in the case of elections;
- vii. Regulate access to the media during referendum campaigns (both the collection of signatures and the months leading up to the vote) in like manner, with the aim to ensuring a fair and balanced information and equality of opportunity of supporters and opponents of the campaigns to collect signatures, that the votes themselves are publicized, providing equality of opportunity to participate by all citizens;
- viii. Lower or abolish the approval quorum;
- ix. Regulate the funding and accounting of referenda campaigns in manners similar to the ones provided for in the case of elections;
- x. Make it possible to promoters of referenda to have access to public funding in ways and to an extent similar to those that political parties have during elections;
- xi. Protect the right to an effective remedy by providing timely answers when promoters of the initiatives raise concerns about the process and providing for an appeal to the decisions of the Central Bureau for the Referendum of the Court of Cassation.

<sup>25</sup> See the Committee's general comment 31: the Nature of the General Obligation Imposed on States parties to the Covenant (CCPR/C/21/Rev.1/Add. 13), para. 15.

<sup>26</sup> *Id.*

### **State party's observations on admissibility**

4.1 On 11 January and 7 July 2016, the State party submitted that the communication should be declared inadmissible on the ground that the authors failed to exhaust domestic remedies.

4.2 It notes that referenda are regulated by the Constitution, and by law 352/1970, and explains that the request to hold a referendum is subject to a double check: first by the Central Bureau for the Referendum of the Court of Cassation, which performs a mere technical check on the amount of signatures and their compliance with the formal requirements; and then, if the Court has ascertained that the legal requirements are met, by the Constitutional Court, which verifies if the referenda are admissible.

4.3 The State party also describes the role of the administrative courts in reviewing administrative acts and their legality. Administrative courts can consider the responsibility of civil servants or public officials when there exists a vice of legality for incompetence, abuse of power or violation of the law. Individuals who consider themselves wronged in their legitimate interest by an administrative measure may open proceedings before the administrative courts. Administrative courts' decisions can be appealed before the State Council. Decisions of administrative courts are immediately enforceable and are effective remedies in that they can potentially annul the impugned measure. Furthermore, if the execution of an administrative act is likely to cause serious and irreparable damage, the administrative court may decide to suspend it.

4.4 In relation to the obstacles in the collection of signatures caused by actions and omissions by the public authorities as described in the communication, the State party notes that, according to the State party's criminal code: "the offence of abuse of office emerges when a public official, in the exercise of his or her functions produces damage or a financial advantage which is contrary to the norms of law or regulations".<sup>27</sup>

4.5 As regards the authors' allegations of discrimination, the State party refers to the National Office against Racial Discrimination, which covers all grounds of discrimination, the Senate Commission on the promotion and protection of human rights, and the Human Rights Committee of the Chamber of Deputies.

4.6 In terms of public broadcasting services, the State party submits that there is a normative framework aimed at the correctness of institutional communication messages to be broadcasted through the public broadcasting service (RAI). The Department for Information and Publishing determines the messages of social utility or public interest to be broadcasted free of charge by the public broadcasting service.

### **Author's comments on the State party's observations on admissibility**

5.1 On February and 2 October 2016, the authors submitted that they have exhausted all available domestic remedies. They further contend that the burden of proof is on the State party to demonstrate what remedies would have been effective in their case<sup>28</sup> that they would have failed to exhaust.

5.2 The Central Bureau for the Referendum of the Court of Cassation is a chamber of that Court. It is a judicial body and is the last instance of jurisdictions of all decisions concerning the admissibility of the referendum initiatives. Its decisions are final and cannot be appealed. On 2 October 2013, the Central Bureau made a determination in the authors' case. The decision is therefore final and no other remedy was available.

5.3 According to the authors, the State party's description of the existing legal avenues is misleading. The Constitutional Court does not review decisions of the Court of Cassation. It only reviews a proposed referendum after it has been approved by the Court of Cassation. The sole function of the Constitutional Court in the process of a referendum initiative is to ensure that the proposed referendum does not concern one of the prohibited subjects under the Constitution, but it cannot overturn decisions of the Court of Cassation and its Central

<sup>27</sup> See Italian Criminal Code, article 323.

<sup>28</sup> See 2006 Annual Report of the Human Rights Committee (A/61/40), para. 130.

Bureau. Outside of its role in such process, the Constitutional Court has jurisdiction only over disputes on the constitutional legitimacy of laws issued by the State and Regions; disputes arising from allocation of powers of the State and those powers allocated to Regions, and between Regions; and charges brought against the President of the Republic. The question of the compatibility of a given law with the Constitution is requested by the judge, and at the sole discretion of the judge, if she or he believes there is a need for the Constitutional Court to weigh in on the question. In the present case, the lower judge is the Court of Cassation. The Court of Cassation has repeatedly stated that on matters of referendum, it is the last instance of jurisdiction. It has repeatedly declined to refer questions of unconstitutionality of law 352/1970 to the Constitutional Court. The last time it did so was by refusing the request presented by one of the authors in regard to the 2016 campaign to collect signatures for a referendum on the reform of the Constitution.<sup>29</sup> Furthermore, the time limit for collecting signatures is so short that, even if the possibility to seize the Constitutional Court existed, it would be impossible to do so within that period. In sum, appeal to the Constitutional Court is not a remedy that was available in the present case.

5.4 According to the authors, the State party's depiction of the administrative courts also seems to suggest that an administrative relief was available for the authors, which is not the case. Administrative courts have consistently declined jurisdiction over requests for judicial review of decisions of the Central Bureau,<sup>30</sup> and lack jurisdiction over the substantive claims made by the authors, which include Covenant rights.

5.5 If the State party considers that the authors should have filed a criminal complaint under the Italian Criminal Code against the various officials who omitted carrying out the actions necessary to enable them to exercise their rights under the Covenant, the authors argue that even if they suffered prejudice because of the repeated denial of remedy and the Court of Cassation's rejection to accept the signatures collected, the authors consider that a criminal procedure would not have enabled them to vindicate the rights enshrined in the Covenant because of the strict time limits imposed by law 352/1970 to collect, authenticate and deposit the signatures. Seeking remedy against each individual action by each public official, from the President of the Republic to city hall clerks, for actions and omissions while operating within a defective and arbitrary legal framework, would not have been realistic. The authors notified the Ministry of the Interior, the Ministry of Justice, and the President of the Republic of the problems they faced and made specific requests to remedy them. Most importantly, public authorities do not have a duty to authenticate signatures outside city hall. Thus, a criminal complaint for "abuse of office" under the Criminal Code would have been patently groundless.

5.6 As for the antidiscrimination bodies, the authors stress that none constitute an effective remedy as they cannot provide a recourse against unfavourable judicial decisions, and their decisions are not binding.

5.7 In relation to the Department for Information and Publishing of the Presidency of the Council of Ministers, the State party has not explained how the authors could challenge determinations by the oversight body or what recourse this body could provide. This body could in no way address the substantive claims made by the authors.

5.8 The authors conclude that the State party has not demonstrated the existence of any accessible and effective remedy that they could have exhausted. Even if they were capable of granting favourable relief to the authors, the specialised bodies referred to by the State party could only address marginal aspects of the question, but not remedy the overall issue of the authors' fundamental right to take part in the conduct of public affairs.

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<sup>29</sup> See Court of Cassation Decision of 20 July 2016.

<sup>30</sup> The authors refer to a 26 November 2015 decision by the State Council upholding the decision of the Regional Administrative Court of Latium against the Centre for Electronic Documentation of the Central Bureau for the Referendum; and to the Tribunale amministrativo regionale per il Lazio (TAR), Judgment of 9 Jan 2008, number 1101.

**State party's observations on the merits**

6.1 By Note verbale of 11 July 2019, the State party provides its observations on the merits of the communication. The State party explains the role of the Constitutional Court, which can decide on the validity of legislation, its interpretation, or on whether its implementation, in form and substance, is in line with the Constitution. The State party recalls that, according to article 1 of its Constitution, Italy is a parliamentary representative democracy, but three instruments of direct democracy exist: referenda, law of popular initiative, and petition. Further instruments of direct democracy can be introduced at the local level.

6.2 The State party submits that, since June 1946, 71 referenda have been called on, 25 of them have been approved, 17 rejected and 28 invalidated. The latest one took place on 17 April 2016 but did not reach the quorum. Furthermore, a constitutional referendum was held in October 2016. At the time of the State party's submission, another referendum initiative relating to labour law had just obtained the signatures of 3 million voters. During the last general elections, held in February 2013, there were over 50 million Italians with the right to vote. In the case of the author's initiative, the Central Bureau for Referendum found that the promoters had not reached the threshold of 500 001 valid signatures.

6.3 The State party submits that specific information on the modalities for collecting signatures was publicly available.<sup>31</sup> It concludes that none of the provisions of the Covenant has been violated.

**Authors' comments on the State party's observations on the merits**

7.1 The authors provide additional information on the most recent events related to the right to direct participation in public affairs in the State party. The authors also refer to the referendum of 17 April 2016 which proposed to repeal a law allowing gas and oil drilling companies to extract hydrocarbon within twelve nautical miles off the coast. The Government opposed this referendum and campaigned for abstention. Some of the supporters of the referendum requested it to be delayed so that it would coincide with local elections, resulting in considerable savings and a longer campaign to inform citizens. This request was rejected by the Government, who scheduled the referendum for 17 April 2016. The referendum failed to reach the quorum requirement, as only 31% of eligible voters casted a ballot, out of whom 86% voted in favour of repealing the law.

7.2 The authors also inform that a constitutional reform is being processed, that will impact the right to directly participate in public affairs negatively: this project lowers the quorum required on referenda, from 50% of all registered voters, to 50% of those who voted in the most recent elections, but this will apply only to initiatives for which 800,000 signatures have been collected. On the other hand, the reimbursement for those who manage to collect enough signatures on the ballot will increase from 50,000 euros to 150,000 euros. According to the authors, this will only contribute to the capacity of large political parties to propose referenda, in detriment of citizens belonging to other groups of different nature.

7.3 The authors also pointed out that the constitutional reform was to be voted on 4 December 2016. One of the authors, Mr. Staderini, together with other ten citizens, formed the Committee for the Freedom of Vote, and requested the unbundling of the referendum, so that the reform be voted in separate parts. Two committees supported by the Democratic party (party in government) were created: one against the referendum and one in favour. Eventually, only the Yes committee managed to collect more than 500,000 signatures. The Committee for the Right to Vote requested the Court of Cassation to raise a constitutionality question asking the Constitutional Court a ruling on the constitutionality of law 352/1970. On 20 July 2016, the Court of Cassation rejected the request saying that the Committee must gather 500,000 signatures, even if not authenticated, for it to consider the case and request the ruling from the Constitutional Court; and that, in any event, it was not going to refer the matter to the Constitutional Court because it is a prerogative of the legislator to determine the requirements to collect signatures. Moreover, on 15 June 2016, as the authors did in the

<sup>31</sup> The State party refers to an information leaflet published by the Italian Radicals on their website attached to its observations.

case of the referendum of 2013, the Committee for the Freedom of Vote wrote the Prime Minister, the Minister of Justice and the Minister for Reforms denouncing the difficulties they were experiencing authenticating signatures. The Committee for the Right to Vote did not even receive a reply from the Government. The fact that only the committee endorsed by the party in government, managed to reach the threshold of authenticated signatures is indicative of the overall issues raised by this communication. That committee had a clear advantage as it could count on tens of thousands of Members of the City or Provincial Council (members of the Democratic Party) to authenticate signatures without cost; Democratic Party headquarters located all over the country where to gather signatures; public funding, as major parties receive State contributions to finance themselves; and the Prime Minister's heavy campaigning for the Yes Committee. Although the present communication is limited to the failed referendum campaign of 2013, the foregoing facts clearly indicate that what happened in 2013 is not an isolated event, but an ongoing problem caused by a flawed law regulating the constitutionally sanctioned right to referenda, and by a deliberate campaign of actions and omissions by the authorities, at all levels, to sabotage the exercise of these rights and frustrate the rights protected by the Covenant.

7.4 The authors also note that the information publicly available on the modalities of acquiring signatures for the referendum that the State party refers to was not provided by public authorities, but by the proponents of the referendum, including the authors, at their own expenses, and was published on their website.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol.

8.2 The Committee notes, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

8.3 The Committee notes the State party's claim that the authors did not exhaust domestic remedies. The State party refers to available remedies such as the Constitutional Court, the administrative courts, criminal proceedings against the public officials that hindered the process of acquiring signatures, the National Office against Racial Discrimination, the Senate Commission on the promotion and protection of human rights, the Human Rights Committee of the Chamber of Deputies, and the Department for Information and Publishing. The Committee also notes the authors' arguments that the Court of Cassation has repeatedly rejected to raise questions of constitutionality about law 352/1970 to the Constitutional Court, that the administrative courts have no jurisdiction over their substantive claims, that criminal proceedings against State agents would not address all of their grieves and would not have been feasible within the short time limit they had before the Court of Cassation adopted a decision, and that the anti-discrimination bodies and the Department for Information and Publishing are not bodies that could provide them with the remedy searched. The authors stress that decisions by the Central Bureau for the Referendum of the Court of Cassation are final and cannot be appealed. The Committee recalls that article 5, paragraph 2 (b), of the Optional Protocol, by referring to "all available domestic remedies", refers in the first place to judicial remedies.<sup>32</sup> It also recalls that under article 5, paragraph 2 (b), of the Optional Protocol, the authors must make use of all judicial or administrative avenues that offer them a reasonable prospect of redress.<sup>33</sup> The Committee notes that, on 5 July 2013, the authors notified the Ministries of Interior and Justice about the obstacles they were facing and the possible impact these could have on their political rights and that they submitted a brief to the Court of Cassation including all the grieves now submitted to the Committee. It also notes that the Court of Cassation issued a decision on the matter, which is final as it cannot be

<sup>32</sup> See *R.T. v. France* (CCPR/C/35/D/262/1987), para. 7.4; and *Schmidl v. Czech Republic*, (CCPR/C/92/D/1515/2006) para. 6.2.

<sup>33</sup> See *Pereira v. Panama* (CCPR/C/51/D/436/1990), para. 5.2.

appealed. The Committee finally notes that, in June 2013, the founder of the Italian Radicals requested a hearing before the RAI oversight committee to address the lack of media coverage given to the initiative. The Committee concludes that the authors have exhausted those domestic remedies that were effective and available to them and that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

8.4 The Committee further notes the authors' claim that the obstacles they have faced when collecting signatures for six referenda initiatives have affected their rights under article 25 (a) and (b) of the Covenant. The Committee notes that paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs either as voters or as candidates in the conduct of elections. On the other hand, paragraph (a) of article 25 covers the exercise of legislative, executive and administrative powers, including direct participation in the conduct of public affairs when they decide public issues through a referendum. Therefore, the Committee considers that the authors' claims under article 25 (b) of the Covenant are inadmissible *ratione materiae*.

8.5 In view of the foregoing, the Committee considers that the author's communication is admissible regarding their claims under article 25 (a) alone and in conjunction with article 2 (3).

#### *Consideration of the merits*

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The Committee takes note of the authors' claims that the laws and procedures to hold referenda in Italy are unduly restrictive, arbitrary, and overall unreasonable, providing mere lip-service to the constitutionally sanctioned right to hold referenda, and resulting in a violation of article 25 of the Covenant. The authors submit that, even though States parties do not have the obligation to organise referenda, when they do provide for ways in which citizens can participate in the conduct of public affairs directly, then they have an obligation to ensure citizens can effectively do so. The Committee notes that the State party submits that Italy is a parliamentary representative democracy, and that three instruments of direct democracy exist: referenda, law of popular initiative, and petition. The Committee also notes the information provided by the State party that, since June 1946, 71 referenda have been called on.

9.3 The Committee recognises that the Covenant does not impose any particular political system and that member States may choose different forms of constitution or governments, as long as they adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights the Covenant protects. Referenda is one of the ways in which citizens may participate directly in the conduct of public affairs as provided in article 25 (a). Other forms of direct participation may be choosing or changing their constitution or deciding on public issues through electoral processes conducted in accordance with article 25 (b). Therefore, States parties do not have, under article 25 (a), the obligation to include specific modalities of direct democracy, such as referenda. However, the Committee recalls that, according to General Comment 25: "Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed".<sup>34</sup> States parties' obligation to refrain from imposing unreasonable restrictions to the right to directly participate in the conduct of public affairs shall apply both to the right to directly take part in referenda (by voting) and to other forms of participation that are open to citizens in the process, such as popular referenda initiatives. The State party has provided citizens, under article 75 of its Constitution, the right to directly participate in public affairs by promoting the organisation of referenda through the creation of a popular referendum system. It therefore has the obligation to refrain from imposing unreasonable restrictions to this participation.

<sup>34</sup> See Committee's general Comment 25 on article 25 (1996), para. 6.

9.4 The Committee recognizes that States parties have the obligation to ensure the integrity of its democratic processes, such as the process of collection of signatures, as well as its compliance with the national legislation. To do so, States may design processes for independent scrutiny of the collection of signatures and their counting, which may inevitably put restrictions on citizens promoting referendum initiatives. The State party should nevertheless ensure that these requirements are reasonable and do not constitute a barrier to the initiative. In the current case, the State party has designated a number of public officials or State agents and elected representatives to witness the collection of signatures and certify them to ensure the integrity of this process and its compliance with the applicable legislation. The Committee notes that, according to the authors, this requirement hindered the collection of signatures they had to do, as they encountered many obstacles to count with the participation of the authorized persons, in particular in public places, where more citizens are likely to contribute. In view thereof, the Committee considers that the process of authentication of signatures as determined by Constitutional Law No. 352/1970 has resulted into a restriction, with the legitimate aim of ensuring the integrity of the process. The Committee therefore proceeds to examining if such restriction is reasonable under the requirements of article 25 of the Covenant.

9.5 The Committee notes that promoters of the initiatives have the burden to ensure the presence of any of the State agents or elected representatives qualified to certify the signatures during their collection but that, in turn, those State agents and elected representatives do not have a duty to be available to witness the collection of signatures. Moreover, promoters must gather 500.000 signatures; State agents may charge for the provision of their service; and the signatures have to be turned in within a limited period of time. The authors refer to other obstacles such as the lack of information to the public and the quorum requirements. As presented by the authors, this system gave rise to obstacles for the collection of signatures in their case, while other initiatives that counted with the participation of authorized elected representatives obtained a significantly higher number of signatures.<sup>35</sup> Whilst recognizing that States parties need to manage the use of public funding and resources, the Committee considers that, in the circumstances of the present case, an imbalance exists between the requirement imposed on the authors as promoters of six referenda, to find available State agents or elected representatives qualified to certify the signatures, and the absence of any avenue to enable them to ensure the presence of any of these State agents or elected representatives. The Committee therefore finds that, in the context of this case, the requirement of collection of signature in the presence of qualified State agents or elected representatives without adequate procedure to materialize their presence constitutes an unreasonable restriction to the authors' rights under article 25 (a) of the Covenant.

9.6 The Committee takes note of the authors' argument that the lack of response to their grievances by the authorities amounts to a violation of article 2 (3) read in conjunction with article 25 of the Covenant. In that connection, the Committee notes that, according to the authors, the response by the Ministry of the Interior was insufficient. The Committee notes that the authors informed the authorities in a letter to the Ministries of the Interior and Justice about the obstacles they faced for the collection of signatures and that the obstacles persisted even after the Ministry of the Interior issued its circular note. The Committee also notes the authors' arguments that no other remedy was available to them because the administrative courts have no jurisdiction over their substantive claims and criminal proceedings against State agents would not address all of their grievances, and could not have been submitted within the short deadline they had before the Court of Cassation adopted a decision. Having found a violation of article 25 (a), the Committee considers that the allegations submitted by the author amount to a violation of article 25 (a), read in conjunction with article 2 (3) of the Covenant.

9.7 The Committee also takes note of the authors' submission that the current procedures for referendum initiatives discriminate them on the basis of their political affiliation because large parties have numerous members of the City or Provincial Council to authenticate signatures, whereas as members of the Italian Radicals, they had serious difficulties to find

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<sup>35</sup> See para. 3.4 above.



authorized persons to do so. Additionally, the authors argue that the participation of members of the City or Provincial Council is crucial and that in those places where those elected representatives were willing to authenticate the signatures only for the six referenda supported by their party, the number of signatures collected for the authors' initiatives was significantly lower. The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which "discrimination" is defined, in paragraph 7, as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". The Committee notes that the authors argue that the requirements for the collection of signatures, although apparently neutral, have a discriminatory effect on them as members of the Italian Radicals on the basis of their political affiliation. Nevertheless, it notes that other members of the Italian Radicals were promoters of the other six initiatives for which signatures were being collected during the same period. As the authors submit, these initiatives were supported by a major political party and collected comparably many more signatures than their number of members in the City or Provincial Council. These examples demonstrate that the variation of the support met by any referendum initiative is not necessarily linked to the political membership of its promoters. It is rather a direct and necessary reflection of political diversity and democracy. The information available does not enable the Committee to conclude that specific measures or decisions would have prevented other political parties and members of the City or Provincial Council from supporting the authors' initiatives on the basis of their political affiliation. In view thereof, the Committee can therefore not conclude that the distinction in the availability of members of the City or Provincial Council is based on the authors' political affiliation.

9.8 The authors also argue that the current system discriminates them on the basis of their economic status because of the high cost of compensating State agents for their time when authenticating signatures. The Committee notes that, according to the authors, there is a system for reimbursement of these costs, but that it only covers a fraction of the costs, and only in the case of referenda that have been actually voted on. The Committee agrees that the cost of the authentication procedure can result into a restriction on the authors' capacity to collect signatures based on their economic situation. Yet, not every differentiation based on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, financial status, birth or other status, as listed in the Covenant, amounts to discrimination, as long as it is based on reasonable and objective criteria in pursuit of an aim that is legitimate under the Covenant.<sup>36</sup> The Committee has found that the requirement of authentication of signatures, as applied to this case, was unreasonable. Nevertheless, the differentiation of treatment based on the author's economic status is specifically linked to the system for compensating State actors and the reimbursement of costs. The Committee considers that the restriction may have the legitimate aim of preserving and managing public resources and avoiding an excessive use of those resources to the authentication of signatures in the context of referenda initiatives in detriment of other functions of the public administration. It therefore concludes that the requirement that public officials be compensated and that reimbursements be only granted when referenda are supported by the population and are admissible is a reasonable measure in pursuit of the legitimate aim pursued. Therefore, this differentiation does not amount to a violation of article 25 (a).

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 25(a), read alone and in conjunction with article 2(3) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. The State party is under an obligation to avoid similar violations of the Covenant in the future. In this connection, the Committee reiterates that, in accordance with its obligation under article 2 (2) of the Covenant, the State party should review its legislation, with a view to ensuring that the

<sup>36</sup> FA v. France (CCPR/C/123/D/2662/2015) para. 8.11.

legislative requirements do not impose unreasonable restrictions on the citizens' participation in any of the modes of direct participation provided by the Constitution. In particular, the State party should provide for avenues for promoters of referendum initiatives to obtain authentication of the signatures collected; to collect those signatures in spaces where they can reach citizens; and to ensure that the population is sufficiently informed about those processes and its possibility to take part.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

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