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**Instruments of participation at regional level:
an introduction to the Italian framework in new
ordinary statutes**

by

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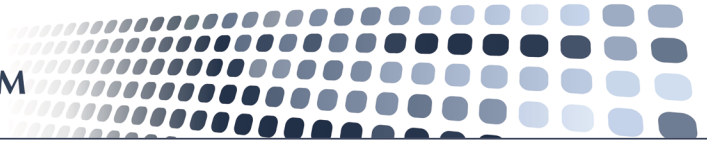


Abstract

The new ordinary statutes of Italian Regions attempt to reconcile the more traditional instruments of representative and direct democracy with the new instruments of participatory democracy. While no original aspects have emerged, a progressive shift in perspective has occurred compared to previous versions of the statutes. Participation is now the *leit motif* that characterises the relation between individuals and institutions and it brings new momentum to this otherwise worn-out relationship

Key-words

regional statute, participation, representative system, participatory democracy.



1. Introduction

The restructuring of Italy's regional system responds to an evident need to boost participation also at local level, as a means to counter a growing distrust felt by the citizens towards representative and political institutions.

This objective was pursued through actions that have reflected most evidently on the institutional plan^I rather than on the relationship between the electorate and the institutions, but the restructuring approach has not diminished the role of the civil component vis-à-vis the political one, as the new regional statutes clearly indicate (starting with the Electoral Law n. 43/1995, the Laws for the reform of the Constitution no. 1 of 1999, no. 2 and 3 of 2001, and the approval of the new ordinary statutes).

In order to fully understand the scope of this change, it is necessary to closely examine the concept of participation, a central theme in public law that has always been the object of juridical studies and that requires constant updating in order to ensure its effectiveness in the face of the challenges that arise in civil society.

In the scenario of contemporary constitutional liberal democracies, participation is no longer a concept pertaining solely to the sphere of *rights*. Participation in a constitutional democracy must be interpreted in a more co-active and mandatory form as a *duty*. Particularly at local level, participation functions as both an objective and an instrument, the epiphany of democracy and a possible way towards its implementation^{II}, through the consolidation of *citizenship awareness* that rests on a close relationship with the decision-making public institutions^{III}.

For this reason, under certain conditions, ensuring participation means focusing not only on the *instruments* that promote full and legitimate participation of the citizens in public decision-making, but on the *models* that, from the point of view of general participation theory^{IV}, are no longer to be regarded as alternative options but as integrated ones^V.

Participation is traditionally associated with three different models, based on three paradigms of public participation that differ in qualitative and quantitative terms, and that



reflect three corresponding models of democracy: representative, direct, and participatory democracy.

The characteristics, the limitations and the potential of representative and direct participation have been debated for centuries and these issues remain on the table to this day, while discussion on participatory democracy is based on the concept of “last-generation” participation and as such it is still in progress. While it is widely agreed that there is a substantial distance between this form of participation on the one hand and representative and direct ones on the other, it is also a fact that they are not perceived as antagonistic.

In its participatory form, democracy shows more clearly its ontologically and eminently dialogic and cooperative nature, taking a stance that is unmistakably different from the “one-off” events that characterize democracy in its representative and direct forms.^{VI} Additionally, the instruments of participation – unlike the more classic ones that are typical of representative democracy – contribute to qualifying the political decisions that are taken in a representative system, to ensuring institutional transparency and to attributing greater responsibility to the administration and community that participate in the decision-making process^{VII}, in a sort of democratization of the democratic process itself^{VIII}.

There is no doubt that participatory democracy requires a change of perspective, in that decision-making follows a transformative rather than an aggregative pattern. According to the former, the voter’s preference is an exogenous factor on which to base a calculation that is not subject to change in terms of content. According to the latter, the voter’s preference is but a starting point that may vary in its essence in the course of decision-making and that may evolve during decision-making and eventually result in an entirely different position as the outcome of an exchange of opinions and a progressive socialization of data and information^{IX}.

Consequently, as regards participatory forms of democracy it is not only the voting procedure and the rules that regulate the vote count that matter, but the criteria that guide the debate - the very process leading to the voting itself^X.



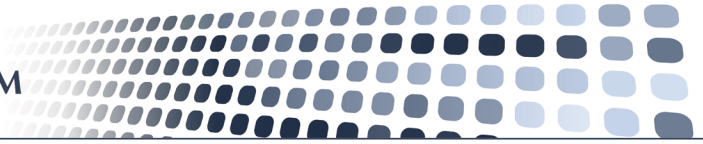
2. The paradigms of participation

In line with the purpose of this paper, it should be noted that some of the aspects presented will be analyzed in greater detail in other articles. The present analysis will aim to outline the point of view of the regional legislator – and this will be further broken down and analyzed in other papers – with respect to its statutory rather than ordinary dimension, an activity that is often fragmented and bound to specific sectors, with some notable exceptions.

Based on the premises outlined in the previous paragraph and considering the three models of democracy as concomitant rather than mutually exclusive, it is possible to analyze the choices made in the drafting of the statutes of ordinary regions as well as in the so-called “new wave” of statutes that characterize the Italian regional landscape these days. It will be immediately apparent that the instances of participatory innovations – e.g., the adoption of original instruments to encourage a more active involvement of citizens – are few and far between, but it is also true that the new wave of statutes breaks away from the traditional concept of democratic participation at local level^{XI}. When drafting the new statutes, the regional legislators have attempted - in some instances with a somewhat limited conviction – to respond to the demands for greater involvement that were voiced by several players on the social scene and to codify such measures into the legal framework. More traditional forms of representation and direct democracy have therefore been integrated with participatory democracy instruments that aim to bring to bear the experience matured at political level over the years, regardless of the haphazardness of such precedents. In addition to several examples from abroad, a case in point can be found in Tuscany, where special emphasis was placed on the need to boost participation in the forms of participatory democracy even before the revision of the regional statute.

Participation arose to the status of *leitmotiv* in the process for the renewal of the relationship between individuals and institutions, and in the wake of the Tuscan experience it could be said that participation has been adopted at statutory level as:

- *the autonomous initiative of citizens to address the public administration;*
- *to contribute to regional initiatives;*



- *to participate in official consultations;*
- *to assess the effectiveness of regional policy.*

There is no doubt that the traditional monolithic approach to participation has been replaced by a versatile and flexible one – both within and outside the procedural dimension – aiming to ensure the active involvement of civil society in the phases leading to decision-making as well as in the implementation of the decision itself.

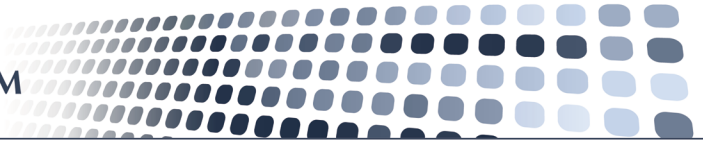
The more generic concept of participation takes the form of a series of hendiadyses that serve both to characterize its scope and to define its content and its function in the various phases of the deliberative process.

In this sense, it should be noted that participation can be ensured only if accompanied by *information* – intended as an obligation to inform and as a duty to acquire and process data and knowledge. Clearly, such emphasis on information requires a context that promotes training, planning and bureaucratic simplification^{XII}.

The role of the community in the definition of public decisions must be supported through a long-term process during which adequate instruments are made available to civil society to ensure its participation in the decisional process. In this respect it is essential to know the “when” and “how”: in other words, it is necessary to have access to several aspects that have importance when it comes to decision-making time and to be familiar with technical and political factors that come into play in the decisional process.

The combination of participation and information brings to mind two additional concepts.

First, having ascertained that information entails the possibility to access intelligible data, participation is ensured by the *transparency* of an action and of PA acts. This transparency cuts across all the phases of the decision-making process, particularly the preparatory one that precedes the actual taking of a decision^{XIII}. It is in this phase that arguments are chosen to support the decision and it is in this phase that individual citizens have the opportunity to influence the ultimate decision, by orienting the discussion that will lead to the decision itself. The debate preceding deliberation is focused on the facts that have emerged in the preliminary phase: the shared data in which dialogue is rooted will necessarily result from a selection of the wealth of available data. This selection process is hardly neutral: one finds what one is looking for.



As regards the implementation phase, according to the principle of transparency the right to participation translates into a more active involvement in the decision-making process, in line with a more democratic dimension of administrative action, thus reflecting the constitutional requirements of impartiality and good public administration practice.

At this point some considerations appear to be relevant.

The first regards the applicability of Law 241/1990 which, following the reform of title V, will inevitably lose some of its original exclusivity. Pursuant to Law 15/2005 that modifies the 1990 principles of administrative procedure, national parameters will likely be regarded as a minimum standard. It is reasonable to assume that the regional legislator will adopt the national regulation as a starting point from which to increase the level of administrative transparency and the degree of participation of citizens.

Moreover, there is an intrinsic relationship that connects participation and transparency to any administrative procedure: it is the nature of the administrative procedure – according to the scope of its implementing and administrative relevance - that calls for the close participation of the individual affected by that procedure.

Lastly, transparency must be ensured also when evaluating the effects of a decision, based on the principles of effectiveness and efficiency that cannot be disregarded in that they are enshrined in the constitution, which leads to a fourth hendiadys in which participation is connected to *control*.

It may appear redundant to evaluate the possibility to consider controlling instruments as instruments of participation. Some statutes – like the ones of Calabria and Piedmont – seem to have taken this direction in earnest.

In the overall picture that this paper aims to define, it may be useful to dwell on this point, starting from a traditional distinction of internal and external control as well as preventive versus subsequent control.

The concept of “control”, without further specification, in our regional system has always been regarded with some distrust in that it is directly related to the idea of a centralized State Government and the supremacy of the central authority over the periphery. Hence the need of the Regions, on the occasion of the constitutional reforms of 1999 and 2001, to vent their distrust and to call for an effort to overcome State controls that are regarded as an excessive constraint that limits autonomy and that are perceived as the expression of an explicit lack of confidence in the Regions’ self-government capacity.



It would be reductive and unrealistic to conclude that, following the 2001 reforms, all the issues related to control have been settled. What has happened is that the role of the State as a mere controller has been scaled down in favour of greater respect for the role of other institutional players, through the implementation of more coherent practices like concertation. Additionally, greater emphasis has been placed on internal control since external control has lost some of its primacy. Internal control – both in its pre-emptive and subsequent dimensions – is less likely to be experienced as an imposition from the top. It is rather an opportunity for the active involvement of society and it contributes to the formation of a collective political conscience that represents the foundation of an effective participation of all citizens, who acquire experience and knowledge that can be then applied in the decision-making process.

In this sense the idea of control acquires new meaning compared to the idea that refers to a more generic concept of participation viewed as mere involvement. Exercising control becomes a learning process in view of future policy-making, which also finds its place in the context of participatory democracy and as an effective instrument of extended decision-making.

Clearly, the exercise of control becomes an instrument of participation when the citizens undertake actions that are spurred by information, awareness and hard facts. In all other instances, it is reduced to an ineffective operation that is devoid of any significant value in an absolute sense.

This leads to the fifth pair of concepts that brings us back to the opening paragraphs of this paper, where it is noted that the main challenges to participation lie in the efforts that are put in place to contain the drift of democracy by proxy, that in some cases may degenerate in oligarchy and populism. Participation generates *consensus*, and consensus, in turn, facilitates participation, if the principles that have been listed above – information, transparency and control – remain standing. It is precisely in the various forms of participatory democracy that one finds the germs of plebiscitary democracy, where participation is only apparent but lacks information and leaves no room for collective reflection^{XIV}.



3. The subjects

As regards the subjects that are called to participate, the analysis of ordinary statutes shows a certain openness on the part of the regional legislator not only with reference to the involvement of individuals, according to a consolidated approach, but also to social groups.

In addition to the more traditional political rights of individuals that are recognized to all citizens – primarily by the Constitution and consequently by the Regions - the statutes envisage the involvement of *residents*, i.e. subjects that do not have Italian citizenship but that participate responsibly and fairly regularly to the life of the community. It is an approach that has been approved by the Constitutional Court in Ruling no. 379/2004, concerning the statute of Regione Emilia Romagna, with some limitations.

Called to pass judgment on the legitimacy of art. 15, par. 1 of the Statute of Regione Emilia Romagna, whereby the Region «as part of the options constitutionally allowed to it» may recognise and grant «to all those residing in a municipality of the regional territory the right to participate as set forth by this Title I, including the right to vote in *referenda* and in other forms of balloting», the Court has identified the classic instruments of participation – with an explicit reference to the abrogative vs. advisory referendum – as the natural boundary of an extensive concept of participatory rights. The result is a sort of hypothetical distinction between traditional instruments of participation and new generation ones, which rests on an idea of deliberative democracy that would allow the participation of residents regardless of their citizenship.

Nevertheless, from a merely conceptual point of view, it is the extension of the right to participation to collective entities that represents the truly original feature of some ordinary statutes.

This issue is no stranger to Italian constitutionalism. It was MP La Pira who introduced in the works of the Constitutional Assembly the issue of the representation of social groups, with special emphasis on the potential of the second Chamber, with a view to highlighting the relational context in which human beings develop, in line with the spirit of art. 2 of the Italian Constitution^{XV}. Little remains of this debate in the text of the Constitution: some



reference can be found to CNEL (National Council for Economics and Labour), but it is so marginal from an institutional point of view as to become irrelevant.

There is no doubt that the renewed interest of the Regions in the participation of collective entities in the decisional process issues from an explicit reference - that was included in the Constitution, with Constitutional Law no. 3 of 2001 - to the concept of horizontal subsidiarity. Its content has contributed to reviving the debate on social groups that are no longer viewed solely as instrumental to the development of the individual, but also as essential to good practices in public administration.

In this respect, there are two options that lay before the drafters of a regional statute, each quite different from the other, but that reflect the same determination to place greater emphasis on the action of various social components - whether institutional or spontaneous in origin - in public policy making.

First, at regional level the statutes have increased the number of advisory and supervisory bodies that may ensure greater institutional attention to the needs of the general population, as well as organisms that better reflect the needs of the citizens, also in the form of associations.

These are organisms that may not be required from a strictly constitutional point of view, some of which have been envisaged in past legislation, while others are entirely new. Witness the creation of statutory supervisory bodies, for which participation translates into consulting (preparatory phase) as well as preventive actions^{XVI}, or the constitutionally sanctioned Councils of Local Autonomies, in which the concept of participation of groups finds its full expression, while in a more limited form than the Constitution appears to envisage, as the texts indicate^{XVII}. The legislators drafting the statutes have also considered the role of advisory bodies with reference to issues related to the economy and labour, in addition to providing formal recognition and status at statutory level for figures of supervisors like the Ombudsman^{XVIII}.

In addition to an envisaged increase in the number of supervisory and advisory bodies, participation of civil society to decisional processes also entails the establishment of *public registers*, in which associations intending to participate in the various phases of the decisional process must enlist: this is the case with the Statutes of Tuscany, Emilia Romagna and Abruzzo.



The creation of public registers would appear, at first, to respond to the need to overcome the occasional nature of the participation of social groups as well as to consolidate good government practices. On the other hand, it should be noted that their appearance on the institutional scene may lead to an excessively rigid evolution of the participatory process for citizens^{xix}, characterized at least in origin by a spontaneous and supple component.

It is still early to pass a final judgment: it is a fact, however, that the registers may prove a useful instrument for rationalization, provided the weight of bureaucratic burdens in terms of registration and consultation is not overbearing. They may prove to be a good compromise between freedom and formal establishment.

If, on the one hand, participatory democracy in its various forms is difficult to codify – also in order to maintain the mouldable quality that allows the identification of approaches and actions that adhere in their content and their form to the decisions to be taken – on the other, the opening of institutions to a bottom-up approach, also through collective entities inevitably leads to a more formally structured participation.

Concerning the Constitutionality of public registers, little remains to be said, following Ruling no. 379 of 2004 by the Constitutional Court sanctioning the legitimacy of art. 19 of the Statute of Regione Emilia Romagna, that was challenged by the National Government on the belief that it violated art. 121 of the Constitution^{xx} and which, in practice, entailed a change to the representative system.

The Court rejected this argument and stated that the norm, «which does not even seem such as to hinder the functions of the regional institutions», has the sole purpose of «guaranteeing (in more substantial terms than in the past) that associative organisations representing significant fractions of the social body have the possibility to be consulted by the council organs», thus also underscoring the fact that «recognising the independence of the representative bodies and the role of the political parties is not negated by a transparent governing of the relations between representative institutions and fractions of civil society».



4. The instruments

An analysis of the instruments of participation included in the statutes of ordinary regions in Italy points towards a prevalence of more traditional ones, but some elements of originality can still be detected.

As regards the legislative initiative, analyzed in greater detail in this issue by Anna Maria Poggi^{XXI}, it remains a prerogative of citizens with the right to vote.

The number of signatures required spans from a minimum of 5,000 to a maximum of 15,000, as is the case in Puglia. High thresholds can be found also in the statutes of Regione Lazio and Campania, where popular initiatives are required to be supported by at least 10,000 signatures.

No trends emerge that break away from the past. There is, however, a tendency to take away from the scope of popular secondary initiatives, probably as a direct consequence of the fact that the regulatory power of the Council has progressively shifted to the executive power^{XXII}.

Interestingly, regional statutory legislators have worked towards restricting the scope of legislative initiative vis-à-vis the legislative power. The burdens on the Council have been increased, becoming more time-consuming and procedurally complex. Campania is a particularly telling case in point.

Art. 15 of the Statute of Campania, under the heading *Referendum for Approval*, introduces a form of legislative initiative that is almost coactive for the regional legislator^{XXIII}, similar in its substance to the provisions contained in statutes of Regions with special systems^{XXIV}. According to the statute of Campania, if the popular initiative on a law or regulation is not approved within six months of its submission or it is approved following substantial modifications, it is subject to a popular vote. In this occurrence, the proposal is approved if the quorum can be reached, i.e., if the majority of voters participate in the referendum and a majority of valid votes is reached. In this manner, the decision on the approval of draft legislation tips the balance in favour of the electoral body, leaving some room to considerations concerning the loss of power on the part of the competent authority.

The provisions of art. 15 appear to be in contrast with the constitutional provision that entrusts legislative power exclusively to the Councils, which entails at the same time



the availability of the object of the procedure for the approval of legislation and political discretionary power, which are in this case taken away from the Assembly whose decision becomes, in actual fact, superfluous.

The Constitution provides for Regions to regulate in their statute the functioning of referenda, but it does not envisage the possibility to transfer certain powers, particularly when these powers are defined by the Constitution itself. Furthermore, it cannot be ruled out *a priori* that the proposer may be using this instrument as a means to an end, namely bypassing the sitting majority and its political programme.

It is a fact that, notwithstanding the perplexities raised by the case of Campania, much could have been done to strengthen the power of legislative initiative through the referendum. This appears to be the direction taken by Regione Lazio, that imposed an obligation on the Council to consider - but not necessarily to adopt - legislative proposals that are accompanied by a request to call a referendum for its approval^{XXV}. Additionally, no mention is made as to the consequences in case this provision envisioned by the Statute is not implemented if the referendum for approval is successful, which casts some doubt on the effectiveness of the provision to begin with. This also brings back the question of the balance between the principle of the exclusivity of legislative power and the promotion of an instrument of participation like legislative initiative, which can be easily deprived of its effectiveness.

Considering the instruments of direct democracy, it should be noted that the legislator has shown a renewed interest in the petition: considering its very limited impact on the institutional level in “first generation” statutes and the absence of any constitutional indication thereof, it would have appeared reasonable to abandon it. On the contrary, except for Tuscany and, based on the text approved in the first reading, Veneto^{XXVI}, all the Regions have included provisions on the petition, both in their statutes and in the Council Regulation. The right to petition is now open to local authorities, as well as individuals who do not have Italian citizenship (the reference is to “residents” and in some cases to “anyone” or “everyone”)^{XXVII}, as well as minors, thus underscoring that second-generation statute legislators aim to grant greater political participation to subjects who are not yet entitled to exercise their political rights, but who are regarded as intellectually developed individuals.

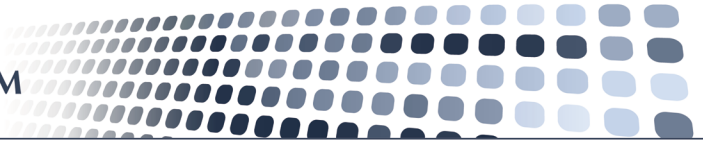


A more detailed analysis of the matter is provided in this issue by Cristina Bertolino, but it should be noted here that the petition is an extremely versatile and flexible instrument, that falls largely outside of any formal framework. Versatility and flexibility represent at the same time its main strengths and weaknesses. The petition is not subject to substantial limitations except for the requirement of regional competence and the fact that it should consist of a “request for action” or the “statement of common needs”; it may be addressed to the Legislative Assembly, the Regional Executive Committee, directly to the President of the Region or, more generally, to “regional organisms”^{xxviii}. However, presenting a petition does not entail any obligation on the part of the recipient, except for the proviso that, as stated in most Statutes, the petitioner is entitled by law to be informed on the issuing decision, not necessarily supported by a motivation.

A different approach has been adopted towards the popular referendum. Next to the referendum for proposals, that may or may not support legislative initiative procedures, the Statutes also envisage abrogative or consultative forms of referenda. The Statutes seems to have recognized that the referendum is an effective instrument of participation, probably by virtue of its immediateness and its consolidated tradition.

It is in this light that one should see the openness of the Statutes towards the consultative referendum, which marks a watershed from the past. Nevertheless, it should also be noted that some legislators have shown some reticence towards the full application of the prerogatives sanctioned by the Constitution, so that while art. 123 of the Constitution expressly envisages the extension of the object of an abrogative referendum to general administration issues, in some cases only regional legislative acts are subject to an abrogative referendum^{xxix}.

All the Statutes also show a renewed interest in the instruments that are available to the Council for the collection of data for the purpose of the adoption of single decisions – e.g., hearings, consultations, enquiry, etc. This trend may be interpreted as a means to offset the sort of personal approach that accompanied the direct election of the Regional President. It is indisputable, however, that the promotion of closer relations between public representatives and the citizens they represent in the context of the Council also serves to generate consensus towards the Council itself, whose role is rather marginalized in the framework of the regional government^{xxx}.



In this respect, one case stands out: Emilia Romagna. Art. 17 of its Statute envisages for the very first time an *istruttoria pubblica* (public examination), implemented by Law no. 8 of 2008, whereby if supported by a minimum of 50,000 signatures, a preliminary legislative proceeding may be subject to public debate with the participation of residents above the age of 16. Challenged by the National Government, this provision has been sustained by the Constitutional Court (Ruling no. 379/2004) that rejected the argument of the petitioner and stated that it does not entail an overburdening of procedural requirements, nor a violation of the principle of the good management of public administration as sanctioned by art. 97 of the Constitution.

5. Conclusions

Regardless of the specific profiles that will emerge from the following papers, one general conclusion can be formulated at this point.

An analysis of the instruments of participation that are implemented at regional level by second-generation ordinary Statutes clearly highlights that the creative streak of the legislator has in actual fact been rather restrained compared to the actual expectations and possibilities, with a few notable exceptions. This is particularly true with reference to originality and differentiation, as well as in principle. Suffice it to say that not all the Regions have included participation as one of the principles that have inspired their Statutes^{XXXI}.

It could be argued that this is due to an atavistic tendency that leads political decision-makers to resort to the instruments of participation to improve their performance, while maintaining a certain level of diffidence based on the concern that such practices would lead, over time, to a progressive weakening of political representation.

But another reason lies in the very nature of the rights to participation, against the current trends: “swiftness” seems to have become the new buzzword in politics at all levels, whereas participatory instruments tend to encourage discussion and reflection, which inevitably extend the duration of the decision-making procedure. After all, their aim is not to make decision-making swifter, but to improve political decision-making as an instrument of political integration.



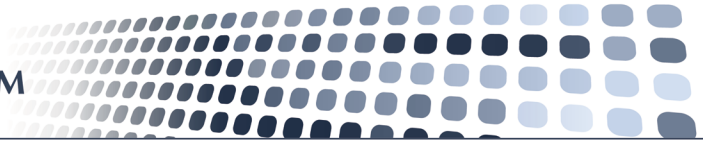
Moreover, a cognitive analysis of participatory instruments also requires an assessment of their effectiveness. In many ways it is still too early to assess the practical effects of some of these instruments, especially considering that some Statutes have been approved only in very recent times and that, in more general terms, the definition of relevant implementing legislation is being delayed.

Doubtlessly, as the number of participatory instruments increases there is the risk that they may eventually come to embody only a collective rite, and this may be reassuring for the general population but proves to be rather ineffective in terms of practical results. In this sense one useful reference can be found in Tuscany's Regional Law no. 69 of 2007 (described in detail in this issue by Cecilia Corsi^{xxxii}), approved to implement articles 3 and 72 of the Statute. This law, unlike other legislative measures approved in Italy up to this point, stands out because of its organic approach and its comprehensive scope on the issue of participation.

While it cannot be taken as a model for the definition of an effective theory of participation at regional level, this Regional Law puts the spotlight on the fragility of participatory instruments. It underscores the fact that participatory instruments – particularly the less conventional and traditional ones – rely for their effectiveness only on a sort of “pact” between the citizens and the decision-makers who commit to take into account the outcome of the relevant participatory process or to provide a motivation for partial or total rejection.

The current scenario is still far from being an explicit obligation for public administrations to take the outcome of participatory procedures into account. However, there is the symbolic weight of political commitment, guaranteed by the establishment of an authority that will safeguard and promote participation, a third guarantor that will contribute to enhance the effectiveness of the participatory instruments envisaged by Regional Statutes.

¹ For example, the introduction of the direct election of the President of the Region, that aimed to boost



public participation in the process. This initiative by the constitutional legislator remains partially unfulfilled, since it strengthened the position of the executive authority and its chief representative rather than that of the electorate, as part of a trend that is common to several systems at different levels of government. On this point, see Di Giovine, Mastromarino, 2007.

^{II} On this point Algostino, 2011, 113 and subs., points out that «participation increasingly invested with the qualification of “human rights” is proposed as an element able to revitalise democracy, build new and “more democratic” forms of it”

^{III} Significantly, the EU Commission in its 2001 White Paper on European Governance places participation at the centre of its considerations, recognising that civil society plays a fundamental role in the definition of EU policy: a role that can no longer be overlooked either by Member States or by European institutions - particularly the EU Parliament in the light of its function as a representative of all citizens. See Communication from the Commission dated 25 July 2001: COM(2001) 428 def. – Official Journal C 287 of 12.10. 2001.

^{IV} Giuseppe Coturri, 2008, 28.

^V In this sense Bifulco, 2010, 73, tries to reconcile different forms of democracy that may appear to be in contrast one with the other.

^{VI} See Valastro, 2010, 53.

^{VII} In this sense Valastro, 2010, 57, highlights the connection between participation and the concept of subsidiarity, particularly in its horizontal dimension, and underscores that «provisions that recognise, support and stress independent initiatives by citizens for performing actions of general interest should be more carefully interpreted under the principle of horizontal subsidiarity, in terms of the system component for reconstructing the connection between representation and popular power». See also Picchi, 2006, 303 ss.

^{VIII} A play on words used by Allegretti, 2010.

^{IX} See Arena, 2010, 85 ss.

^X Allegretti, 2010, 23, recalls the benefits of the instruments of participatory democracy, that he also identifies, among others, as the self-representation of society in political procedure, the reconciling of disputes, and greater confidence on the part of the general public in public action. Nevertheless, as noted by Algostino, 2011, 121, enthusiasm for the participatory forms of democracy should not overshadow the fact that they remain inevitably suspended between prospects of citizen emancipation and exploitation, between equality and elitism.

^{XI} See De Santis, 2010, 219.

^{XII} In this respect see art. 9 of the Statute of Regione Lombardia, that provides for adherence to «principles of advertising and transparency as method of one’s legislative and administrative action and as an instrument for permitting real participation of citizens in the region’s actions and in forming regional policies, Regional law promotes administrative simplification and governs the forms and conditions of participation and access by citizens, individuals and associates, in proceedings and records, also by means of more extensive use of computer technologies».

^{XIII} Statute of Regione Toscana, art. 72 and 73.

^{XIV} Algostino, 2011, 121, underscores the risk of an anti-egalitarian and radical-chic drift of participatory democracy, that may be exploited through “social marketing” by hegemonic sectors.

^{XV} Art. 2 of the Italian Constitution of 1948 states that «The Republic recognises and guarantees the inviolable rights of people, both as individuals and in social formations where they express their personality, and requires fulfilment of binding duties of political, economic and social solidarity».

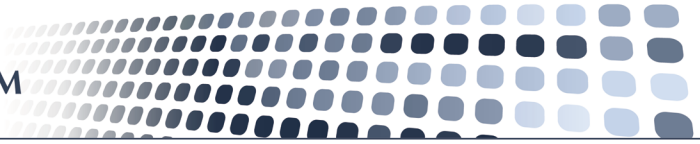
^{XVI} For an overview of statutory supervisory bodies in Italy’s regional systems, see Mastromarino, 2008, 29-47, and also, for comparison, the volume Aparicio Pérez, Barcelò i Serramalera, 2009.

^{XVII} No comprehensive overview can be provided here of the articles of statutes and implementation laws that have resulted in the establishment of the Councils of local autonomies. Suffice it to say that great emphasis was placed on the representation (i.e., participation) of local institutions, less on the so-called functional autonomies.

^{XVIII} See Bifulco, Paparella, 2006, 262 ff.

^{XIX} For example the measures adopted in this regard by Regione Emilia Romagna that provide for the drafting of a consultative protocol for each Council Commission.

^{XX} Art. 121 of the Italian Constitution of 1948 states that: «Bodies pertaining to the Region are: the Regional Council, the Committee and its president.



The Regional Council exercises the legislative powers attributed to the Region and the other functions accredited to it by the Constitution and the law. It can propose laws to the Chambers.

The Regional Committee is the executive body of the Regions.

The President of the Committee represents the Region, managing and being responsible for the policies of the Committee, enacting laws and issuing regional regulations, managing the administrative functions delegated by the State to the Region, and complying with the instructions of the Government of the Republic».

^{XXI} See the piece by Poggi in this issue

^{XXII} Among new generation statutes, only the one of Piedmont associates to the power of legislative initiative the possibility to propose administrative amendments of a general nature, as well as draft proposals to the Chambers (art. 74).

^{XXIII} Art. 15 of the Statute of Regione Campania states that: «1. Fifty thousand voters can present a proposal for a law or a regulation of the Region to be submitted for approval by popular referendum. The proposal cannot be presented in the six months prior to the end of the Regional Council's terms or in the six months following the calling of electoral meetings for forming new regional bodies.

2. The proposal is to be presented to the Council or the Committee beforehand. If the proposal is not approved within six months of being presented, or it is approved but with substantial amendments, it shall be submitted for popular vote.

3. The proposal will be approved if a majority of those with a right to vote have voted in the referendum and, of the votes cast, a majority is achieved.

4. The referendum for approval is not allowed for budgetary, fiscal, financial, territorial government, environmental protection laws or those on the juridical status of regional councillors, nor is it allowed for laws relating to international relations and those with the European Union nor on the Statute or laws for statute auditing».

^{XXIV} See in this sense art. 23 of the Statute of Regione Friuli Venezia Giulia, the provisions adopted by Regione Valle d'Aosta introduced with Law no. 5 of 2006 or, in stricter terms, the procedure envisaged by the Autonomous Province of Bolzano.

^{XXV} See art. 62 of the Statute of Regione Lazio: «1. Subjects holding powers to sponsor an abrogative referendum as per article 61 may present to the President of the Regional Council, in the ways set forth by the same article and in article 37, paragraph 4, a proposal for regional law to be submitted to popular propositional referendum.

2. If the Regional Council has not taken a decision about the proposed law to be submitted for a referendum within one year of stating the admissibility of the request, the President of the Region shall, by decree, call the popular propositional referendum on that same proposal.

3. The outcome of the referendum shall be favourable if a majority of those with a right to vote have voted and, of the votes cast, a majority is achieved.

4. Within sixty days of announcing the results of the propositional referendum, if the outcome has been favourable, the Council must examine the proposed law submitted to the referendum.

5. The law proposal to which the propositional referendum relates shall not expire at the end of the term of office but the time period, as per paragraphs 2 and 4, shall resume from the date the new Council begins.»

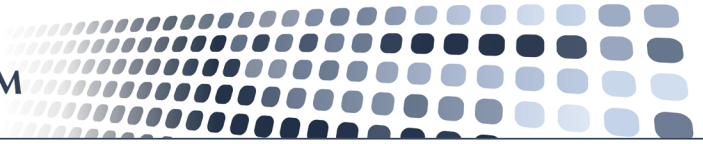
^{XXVI} The text of the new Statute of Regione Veneto (approved by the Council in its first reading on 18 October 2011) does not explicitly envisage the petition, it simply requires that the Council (art. 22) ensure the involvement of “productive categories” in the definition of policies concerning economic and labour issues. The Council Regulation sets the times and the methods to ensure the presentation of proposals and observations by the interested organisations. However, this provision is not particularly significant if compared to Advisory Committees on economics and labour that were expressly established by most regional statutes except the one of Regione Veneto.

^{XXVII} See art. 10 of the Statute of Regione Calabria; art. 16 of the Statute of Regione Emilia Romagna; art. 65 of the Statute of Regione Toscana.

^{XXVIII} With reference to the participation of “regional organisms” as such, see art. 10 of the Statute of Regione Calabria and art. 16 of the Statute of Regione Campania.

^{XXIX} The Statutes of Piedmont, Puglia and Campania provide for referenda exclusively for the purpose of abrogating regional laws in part or in full; Umbria, Tuscany and Calabria extend to Regulations, but do not include direct abrogative referenda on administrative laws.

^{XXX} See Francesca Angelini, 2010, 231 ss.



XXXI In this sense see art. 2 of the Statute of Regione Calabria, art. 1 of the Statute of Regione Campania, art. 12 of the Statute of Regione Abruzzo, art. 2 of the Statute of Regione Lombardia, as well as the text of art. 9 of the new Statute of Regione Veneto, approved in its first reading on 18 October 2011.

XXXII In this issue, see the piece by Corsi in this issue.

References

- Algostino, A., 2011, *Democrazia, rappresentanza, partecipazione. Il caso del movimento NO TAV*, Jovene, Naples
- Allegretti, U., 2010, “Democrazia partecipativa: un contributo alla democratizzazione della democrazia”, in Allegretti, U. (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze University Press, Florence, 5-45
- Angelini, F., 2010, “Consigli regionali e partecipazione”, in Allegretti, U. (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze University Press, Florence, 231-240
- Aparicio Pérez, M.A.- Barcelò i Serramalera, M. (eds.), 2009, *Los órganos garantes de la autonomía política: defensa institucional y protección de los derechos (los casos de Alemania y España)*, Atelier, Barcelona
- Arena, G., 2010, “Valore e condizioni della democrazia partecipativa”, in Allegretti U. (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze University Press, Florence, 85-88
- Bifulco, R., 2010, “Democrazia deliberativa, partecipativa e rappresentativa. Tre forme di democrazia”, in Allegretti, U. (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze University Press, Florence, 65-77
- Bifulco, R. - Paparella, E., 2006, “La partecipazione popolare tra tradizione e innovazione”, in Bifulco R.(ed.), *Gli statuti di seconda generazione. Le regioni alla prova della nuova autonomia*, Giappichelli, Turin, 257-284
- Coturri, G., 2005, “La democrazia partecipativa”, *Democrazia e diritto*, 27-40
- De Santis, V., 2010, “La spinta partecipativa negli statuti delle regioni italiane”, in Allegretti, U. (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, University Press, Firenze, 219-229
- Di Giovine, A. - Mastromarino, A. (eds.), 2007, *La presidenzializzazione degli esecutivi nelle democrazie contemporanee*, Giappichelli, Turin
- Mastromarino, A., 2008, “Gli organi di garanzia statutaria nelle regioni a regime ordinario: uno sguardo d’insieme”, *Nomos*, 29-47
- Picchi, M., 2006, “Modelli di «governance» regionale: i rapporti con la società civile”, in Carli, M. - Carpani, G. - Siniscalchi A. (eds.), *I nuovi statuti delle regioni ordinarie*, il Mulino, Bologna, 303-356
- Valastro, A., 2010, “Gli strumenti e le procedure di partecipazione nella fase di attuazione degli statuti regionali”, in Caretti, P. - Rossi, E., 2010 *Osservatorio sulle fonti 2009. L’attuazione degli statuti regionali*, Giappichelli, Turin, 51-76