



ISSN: 2036-5438

The Legislative Hearings as a Mechanism of Participation

by

Maria Jesús Larios

Perspectives on Federalism, Vol. 4, issue 1, 2012





Abstract

The mechanisms of citizen participation in lawmaking can be considered as mechanisms of participatory democracy. These institutions enable citizens to submit proposals or opinions in the process of decision-making by governments, so they must be taken into account, even if not being bound by them, ranking them among the institutions of representative democracy and those of direct democracy. These activities are developed by citizens, individually and especially through representatives of social formations, in order to influence the actions of public authorities. The mechanisms that citizens have at their disposal to take part in the legislature are usually citizens' initiatives that are presented to the parliaments. However, this article is concerned about other forms of participation in the development of bills when they are being handled by the legislative chambers. These instruments, in Spain, are taken into account by citizens or associations being heard in the legislative committees, initially in some autonomous standing orders and more recently in Statutes of Autonomy.

The legislative hearings of citizens or associations are not provided at national level because the standing orders of the Spanish Parliament, the Congress and the Senate, only provide hearings of authorities or experts. This article analyzes these mechanisms and their most recent reforms as ways of opening the legislative process to persons and groups outside the chamber, as an additional form of pluralism

Key-words

citizen participation, representative democracy, public hearings, pluralism
legislative process



1. Introduction

The mechanisms that citizens have at their disposal to take part in the legislature are usually citizens' initiatives that are presented to parliament. However, we should also refer to other forms of participation in the development of bills when they are being handled by the legislative chambers. These instruments, in Spain, are taken into account by citizens or associations being heard in the legislative committees, initially in some autonomous standing orders and more recently in Statutes of Autonomy.

It is interesting to note that legislative hearings of citizens or associations are not provided at national level. The standing orders of the Spanish Parliament, the Congress and the Senate, only provide hearings of authorities or experts. Therefore, progress in the participatory rights in Parliament has come from the regulations of the autonomous regions.

Next, we analyze these mechanisms and their most recent reforms as ways of opening the legislative process to persons and groups outside the chamber, as an additional form of pluralism. The intrinsic purpose of the legislative process, regardless of the specific procedures, is the performance of political pluralism and openness, which are a counterweight to the rule of the majority decision and are essential principles for the functioning of democratic Parliament. The legislative procedure expresses the political pluralism because it allows involvement in the development of the rule by various political forces present in the House; this adds further legitimacy as it implies that there has been a deliberation, where there has been the integration of different interests, understood as the possibility of different political forces to express their views, proposals and participate in the deliberation and final vote. Enabling the participation of citizens most directly affected in this discussion is to increase the pluralism that is characteristic of the institution of parliament.

The mechanisms of citizen participation in lawmaking can be considered as mechanisms of participatory democracy as described by Italian doctrine, as they are defined as procedures that give citizens the opportunity to participate in public affairs by themselves or by groups. These institutions enable citizens to submit proposals or opinions



in the process of decision-making by governments, so they must be taken into account, even if not being bound by them, ranking it among the institutions of representative democracy and those of direct democracy. These activities are developed by citizens, individually and especially through representatives of social formations, in order to influence the actions of public authorities. The relationship between representative and participatory democracy is not alternative but complementary and intended to give a greater role to civil society, either individually or through groups, creating the will of the state. It does not seek the participation of all citizens but of those that are interested in the process of decision-making primarily through organizations representing social interests.

Next, the legislative hearings are analyzed.

2. The hearing of citizens in the legislative process

The establishment of a process of hearing of social organizations in the legislative process, either directly or through social organizations has been incorporated in some autonomous standing orders. Indeed, the rules of Andalusia, Asturias and more recently the Standing order of the Catalan Parliament, establish a phase of legislative procedure, processing on commission, where the hearings of the citizens take place. However, it is to be noted that such participatory forms originating in the standing orders have been welcomed as a manifestation of the right of political participation in some of the Statutes of Autonomy reformed since 2006, incorporating the catalogue of rights that include the right to political participation. The Catalan Statute of 2006 was the first statutory provision which recognized that citizens have the right to participate, directly or through representatives, in the process of preparing acts of Parliament, through the procedures established by the Regulation (Article 29.4). Subsequently, it was also recognized in Andalucía Statutes (art. 30.b), Balears (art. 15.2.b) and Aragon (art. 15.2). Therefore, the standing order from these Parliaments must establish this procedure to be part in the legislative process. But, so far, only Catalonia and Andalusia regulations contemplate this procedure, which had been established prior to the statutory provision. Regardless of this regulation, the recognition of the right in the statute to elevate the category of right was previously a decision from the Parliament.



Now, we will analyze the most relevant aspects of the regulation regarding legislative hearings in autonomous Parliament.

a). Legal grounds for the request

A legislative hearing can be requested by parliamentary groups and parliament members in Andalusia and Asturias and only groups in the case of the Catalan Parliament. In Catalonia and Andalusia the request must be approved by majority decision. Instead, in Asturias the regulation is that the decision of the majority of the commission is not necessary when one fifth of the members of the commission or two parties make the request. Such regulation, which allows a qualified minority to request a binding hearing, is more respectful of pluralism and minority rights than decisions taken by the majority. Also, if only the majority has the right to decide on the hearings, it would make it possible to call only those that are most similar or, in any case, elude the most antagonistic. However, ensuring no distortion of parliamentary work requires a qualified minority that can apply and enforce a hearing. A correct criterion is to enforce a portion of the commission members (such as a fifth or a quarter) and two parties. In comparative law, such provision is found in the Regulations of the German Bundestag, which gives binding force to the request to a hearing for a quarter of the members of the commission (art. 51).

On the other hand, the social organizations can request to be heard in any way at Parliament. It would be more appropriate to have a more specific procedure, especially in communities where participation in the legislative process is recognized as a right in their statutes.

b. Subjects

The legislative hearings respond to the need to supplement the general interest that Parliament represents for those groups of citizens interested in or affected by the law being developed.

The existing regulations refer to "social agents and organizations" (Article 113 Andalusia Regulation), "corporations, associations, bodies or groups representing affected



interests" (art. 67. F) Regulation of Asturias) and interested organizations and social groups (art. 106.1 Catalan Regulation).

Therefore, they are generally representatives of collective entities, primarily social organizations or entities, exceptionally some persons can appear as individual. The most suitable for the parliamentary and legislative process, and the most appropriate form of organization of interests in society, is that such participation is conducted through social organizations or groups, to which the Constitution recognizes the right to defend collective interests (art. 7, 51.2, 105c) EC). As to which organizations can be called, there should be no restrictions of access to organizations recognized by law (as is done in the 105th article of the Constitution). It should be the decision of the parliamentary groups to call the interested organizations of their choice. However, to better organize the selection of organizations it is recommendable to create a register - as with the German Bundestag - and register these entities willing to be heard in the Parliament in order to limit the number of organizations. Moreover, this register makes it possible to find out the existing partnerships in the various parliamentary groups, their representation and legal status, among other main facts, as well as their willingness to appear in Parliament. Other than that, there should be no further limitation to the free choice of the parliamentary groups. The fact that they can be requested by a minority in Parliament, as has been stated in the previous section, is a guarantee to ensure the plurality of entities to be called to appear. Notwithstanding this, the appropriateness that certain organizations must be heard in Parliament should be questioned. Hearings of organizations like unions (Article 7 EC), consumer organizations and users (art. (51.2 EC), professionals(36) and in the field of education associations of parents and students (27.5 EC) should be mandatory to legislation. This would not only act on constitutional principles of participation and political pluralism but also bring to Parliament some players who exert considerable influence in government and are actively involved in public debate. However, unlike what was said above, in cases of an obligatory hearing, it must be strictly defined which organizations should necessarily appear.

Standing orders in autonomic parliaments establish hearings without making them obligatory for some organizations, except the Catalan rule, which provides that the organizations, that defend the interest of municipalities, must be heard in bills that directly affect them (art. 106.3).



c. Time and place to provide the hearings

Hearings should be provided in a time prior to the amendments, so that the social sectors can be involved in the regulation; at the same time the hearings can serve to inform the committee that is preparing the law. It is also suitable to be held after a first debate where all the principles and general options of the bill have been discussed. This is the rule in Andalusian and Catalan regulation, according to which, after full debate and hearings, the deputies or the parliamentary groups can present amendments to the articles, which may collect the contributions made by social organizations in the hearing (art. 114 RPA and 106 RPC).

As shown the experience in other parliaments, the stage of legislative procedure more appropriate for holding the hearing is in a commission.

d. The hearings in the legislative process and his contributions

After analyzing its regulation, we should note the positive elements that legislative hearings can provide.

In general, this way of participation can contribute to the integration of interests in Parliament. In a parliamentary democracy this integration is usually achieved through the action of the parliamentary groups and political parties. By means of the hearings, the groups of citizens directly affected by a regulation can promote the defence of their rights and interests. In general, the first contribution of hearings in the legislative process is to strengthen the principles of participation and pluralism in the legislative process; it also contributes to realize the constitutional principle, also in some Statutes of Autonomy, which sets the mandate to empower citizen participation in political, economic, cultural and social issues.

In addition to this general contribution, there are other positive aspects given to the legislative process, and which differ substantially from those developed in government consultation. These positive aspects are the following: better information about the Chambers, intensifying the principle of transparency and publicity of legislative activity and enhancing the legitimacy of laws and their effectiveness.



Obtaining information is not configured as a parliamentary function in itself but as an instrumental technique for the exercise of all parliamentary functions. Such an instrument is so essential that the Constitutional Court has considered that the right of the deputies to obtain information is integrated in the status of the parliamentary member as a part of the right of political participation (art. 23.2 of the Spanish Constitution, cfr STC 57/2011). The limits of this right are exclusively the inevitable restrictions to safeguard other constitutional rights.

In relation to the legislative function, to obtain information on the matter to be regulated is absolutely fundamental. To exercise the legislative function in the complex societies of today, where the law is characterized by specialization and precision, it is absolutely necessary to have appropriate information. Parliament should have access not only to information that may be provided by the executive and the administration but should also obtain it through other ways. This is essential for the discussion, amendment, improvement and adoption of laws. Direct consultation on Parliament, through public hearings with social organizations representing their interests, is directly linked to the provision of information necessary for the exercise of the legislative function. This information is valuable not only because it is expert information but also because it is information that comes from the interest groups and, therefore, is also an important way for parliaments to know the state of opinion in the social sectors directly affected. On the other hand, obtaining information through hearings can somehow contribute to reduce the distance of human and technical resources between parliament and government in order to exercise their functions.

Secondly, the hearings can help to improve the principle of transparency and parliamentary publicity, which are fundamental principles of Parliament's legitimacy and the necessary connection between parliament and citizens.

The parliamentary public sessions provide to the people information about the various positions in Parliament. In the legislative procedure the different positions and transactions will be known because they are seen in the different stages through different mechanisms. A system of public legislative hearings helps to increase the transparency of the legislative process as it contributes to improve information on conflicting interests. The publicity of hearings allows some control over the possible influence of the participation. Also, from the communication point of view between Parliament and society,



the hearing can contribute to better understanding by the citizens of the functions of social organizations in public decision making and, in general, the whole process of the decision. Also, the sectors involved will be able to have knowledge not only of the activity and position of the political parties but also on the organizations themselves.

Thirdly, the legislative hearings contribute to increase the legitimacy of the law. The legitimacy of parliamentary decisions also depends on the connection and communication between Parliament and society. Formally, strictly following the theory of representation, the law does not require adding democratic legitimacy because this comes from the representative status of Parliament. If the affected sectors, through representative organizations, are heard in public, probably they will perceive the decision as more justified or legitimized. Thus, while pluralism implies that various positions are present in the chamber - because they are defended by the various parliamentary groups - the intervention of social organizations will provide another form of legitimacy.

Finally, it should be mentioned the increase of efficiency in the application of laws. This can be derived from a participatory process, since it can lead to greater acceptance and understanding of the law in the affected sector of society and therefore increase efficiency in their application. In the pluralist State, the implementation of laws depends greatly on how they are affected by the overlapping of the sectors concerned in society. The fact that citizens are involved in the process of making the laws, through the representative organizations of interest, increases the acceptance of the law of all sectors concerned. For example, laws aimed at consumers show how certain necessary protective measures are difficult to apply when no strong organization can be mobilized in that interest. Actually, the laws that have been developed without the participation of affected sectors and organizations now have great difficulty being accepted. Bringing the participation of those affected to Parliament will increase the chances of consensus and, therefore, laws will be implemented effectively.

References

- Appoldt, F.W, 1971. *Die Öffentlichen Anhörungen ("Hearings") des Deutschen Bundestages*, Berlin
- Aragón, M., 1990, "La función legislativa de los parlamentos y sus problemas actuales", in Garrorena, A. (ed.), *El parlamento y sus transformaciones actuales*, Madrid, 129-143
- Barber, B., 1984, *Strong Democracy: Participatory Politics for a New Age*, Berkeley
- Pateman, C., 1970, *Participation and Democratic Theory*, Cambridge





- Elvira, A., 1997, "Las decisiones extraparlamentarias condicionantes de la decisión legislativa", in *V Jornadas de Derecho Parlamentario. El procedimiento legislativo*, Congreso de los Diputados, Madrid, 35-60
- Fernández Segado, F., 1997, "La dinamización de los mecanismos de garantía de los derechos y de los intereses difusos en el Estado social", in AA.VV, *Estudios de Derecho Público. Homenaje a J. J. Ruiz Rico*, v. I, Madrid, 897-948
- Haberle, P., 1991, "La jurisprudencia constitucional de los derechos fundamentales. Efectividad de los derechos fundamentales", in López Pina, A., (ed.), *La garantía constitucional de los derechos fundamentales*, Madrid, 328 ff.
- Habermas, J., 1994, *Historia y crítica de la opinión pública*, Gili, Mexico D.F.
- Lavilla Rubira, J.J., 1997, "La audiencia a los interesados en el procedimiento legislativo", *V Jornadas de derecho parlamentario. El procedimiento legislativo*, Madrid, 195-204
- Lucas, P., 1982, "Problemas actuales de la institución parlamentaria", *Revista de política comparada*, núm. 9, 11-76
- Maestro, G., 1991, "Negociación y participación en el proceso legislativo", *Revista de Derecho Político*, 55-118
- Ossenbühl, F., 1988, "Verfahren der Gesetzgebung", in Isensee/Kirchhof (Hrgs), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Heidelberg, 1988, 335 ff.
- Pendas, B. - Murillo De La Cueva, P.L., 1993, "El Estatuto como programa y el control y la participación en la política económica y social como exigencias del Estado social", in Cámara, G., Cano, J., (eds.), *Estudios sobre el Estado social. El Estado social y la Comunidad Autónoma de Andalucía*, 141 ff.
- Pizzorusso, A., 1982, "Democrazia partecipativa e attività parlamentare" in *Studi in onore di Antonio Amorth*, Milan, 517-518
- Schneider, H.P., 1994, "Developing Trends of Parliamentarism in Germany", *JStVwWiss*, 225 ff
- Schröder, H.J., 1976, *Gesetzgebung und Verbände. Ein Beitrag zur Institutionalisierung der Verbandsbeteiligung an der Gesetzgebung*, Berlin
- Stark, C., 1979, *El concepto de ley en la Constitución alemana*, Madrid
- Terrón, J., 1995, "Opinión pública y negociación en el procedimiento legislativo", in Pau, F., (ed), *Parlamento y Opinión pública*, Madrid
- Von Beyme, K., 1997, *Der Gesetzgeber. Der Bundestag als Entscheidungszentrum*, Opladen
- Zampeti, P., 1968, "Il nuovo concetto di democrazia partecipativa", in *Studi per il XX anniversario dell'Assamblea costituente*, IV, Florence, 520 ff.