

ISSN: 2036-5438

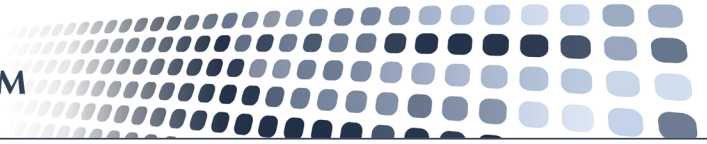
**The Regional Construction of a Citizen Participation  
Model: Experiences and Elements of the Debate on  
Participatory Democracy**

by

Rosario Tur Ausina

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





## Abstract

This study offers a reflection on the current developments in participatory democracy at the regional level. Besides providing a descriptive analysis of the instruments put into practice through different legal formulas (hard law or soft law), it intends to analyse the key features of a singular and interesting model of citizen participation using the Spanish and Italian experiences as the main focus of this study, from a perspective of the commitment to democratic regeneration and taking into consideration parameters such as control, responsibility, evaluation, dialogue and the transparency of public authority accounts.

## Key-words

Participatory Democracy; Democracy; Multilevel Constitutionalism; Regional Government; State of the Autonomies; Governance; Responsibility; Transparency



## 1. Origins and state of the issue: The suitability of the “regional” level for the development of public policies on citizen participation

Participatory democracy as *tertium genus* between direct and representative democracy emerged in the 1960s with the aim of actively asserting citizens’ opinion in the decisions that concern them. It arose from an idea of democracy that goes beyond unidirectionality to bi-directionality, so as to build a relatively effective dialogue between the citizens and the political authorities, which, otherwise, would not allow the corresponding decisions to be made based on the first concept of democracy<sup>I</sup>.

Recent experiences have shown that participatory democracy provides the local entity with indubitable leadership, and even serves, on occasion, as an inspiration for other territorial entities, far different from the leadership of state entities<sup>II</sup>. However, the precautionary regulations of instruments of citizen participation in regional decision-making have been quite recently and interestingly developed, especially with reference to the intermediate level between the central State and the local government. In recent years, conditions have arisen creating a suitable climate for the implementation of citizen participation policies, as evidenced by the models that we will use as references: Italy and Spain. In this regard, we should highlight the pioneering initiatives of some Spanish Autonomous Communities, such as those of Valencia<sup>III</sup> and the Canary Islands<sup>IV</sup>, and more recently the singular experience resulting from a local (foral) law in Guipuzcoa<sup>V</sup>, or the foral laws launched in regions and decentralised entities by other States, as in the Italian regions of Tuscany<sup>VI</sup> and Emilia-Romagna<sup>VII</sup>. However, the Foral Law on transparency and open government tabled by the Government of Navarra in January 2012<sup>VIII</sup> is particularly important, though it is still a draft bill. These regulations constitute a unique framework and innovative point of reference, since, apart from elevating participatory democracy to the status of law, they seem to recognise the doctrine of the Spanish Constitutional Court, which establishes that the *interpositio legislatoris* will go on to determine the particular mechanisms of participation (see SSTC 25/1990 and 8/1985) in accordance with the content and philosophy pervading these regulations. In other cases, however, the development of *soft law* has been chosen in matters such as the possible elaboration of a Law on Participation, as in Catalonia (*Pla interdepartamental de participació ciutadana 2008-*



2010), or in the most recent case of *Llibre verd de la qualitat democrática* and the debate arisen in 2009 and 2010 concerning the strengthening of citizen participation. Finally, it is also possible to follow the path undertaken in the experiences of participatory democracy in Aragon. In any case, this is a recent trend which is worthy of the attention of theorists of democracy.

However, at the same time, this is an unexplored field, the most recent results of which have occasionally allowed a rough outline of a participation model to be created that aspires to develop the concept of participatory democracy itself, although sometimes it has not proven to be fully effective in the measures adopted. Its suitability, however, is reflected in the following premises:

- The large shortage of “social capital” and “social wealth”, which are typical of regional entities, bearing in mind the European conception of civic citizens<sup>IX</sup> and satisfying in this way the need for social cohesion typical of European constitutionalism.

- The actions at the regional level in favour of citizen participation, which constitute strategies to overcome local diversity and heterogeneity, which are even more striking in Italy than in Spain.

- Furthermore, in connection with the previous premise, this concerns guiding participation with respect to the local entities, applying the principle of vertical subordination (i.e., from the regional level to the European supranational level) and horizontal subordination (i.e., from the citizens to the public authorities).

- This suitability is in accordance with increasing regional leadership, if the level of competences of these entities and their potential in terms of administrative resources for citizen participation are considered.

- Moreover, it is true that the regional level offers the opportunity to configure participation in the form of a subjective right, and also possibly the opportunity to configure a “participatory model”<sup>X</sup>.

- However, above all, the regions are configured as a sufficiently close-knit territorial level, making a viable participatory democracy possible, with sufficient authority to self-govern or decide as to the design of a particular participatory model that is relatively stable.

In short, it may be said that the legal development of citizen participation at the regional level transforms it into an advantageous instrument that can make these public

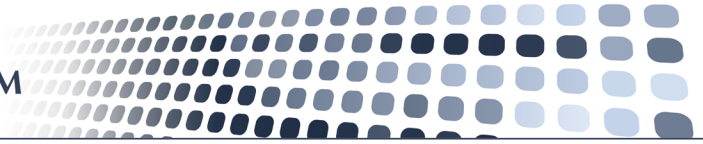


policies a reality, while, at the same time, contributing to its promotion at the local level as a space that is and has been very important for citizen participation. It is obvious that instruments of *hard law* and *soft law* are adopted, as local experience has demonstrated, which allows a model of participatory democracy to be built in both cases according to its own distinguishing features. Without going into detail about the successful efforts that have been made so far at the local level, and, what is more, about its mission, the regional perspective offers the opportunity to provide support as well as contribute to its spread throughout the municipalities, to establishing regulations for this model to the point of constructing real subjective rights of citizen participation and to achieving participation at the regional level where, bear in mind, it can gradually bring together a rather important block of competences in the most varied matters.

After this illustration of the “participation fever” which developed over the last 20 years of the past century, attention should be drawn to one final point, i.e., how paradoxical the minimization of participatory practices is, deriving from globalisation and the fact that priority is given to economics instead of democratic politics<sup>XI</sup>. On the contrary, especially in this time of economic distress, the latter should be wisely considered and weighed.

## 2. Influences: From “local” experiences to The “European reference”

Since the last decades of the past century, local experiences have been and continue to be a reference for the configuration of participatory democracy, uniquely highlighting the Anglo-Saxon experience. As a result of being pioneers in technological innovation, it should be acknowledged that in Anglo-Saxon countries factors such as greater localism, the deeply rooted practice of *self-government* and greater flexibility in the party system undoubtedly favour an attitude of openness to citizens’ opinions. Since the organised citizen juries in Germany and the United States in the 1970s, the notion of participation in the Anglo-Saxon context, in the relevant experience of Porto Alegre in Brazil (1989) and even in the putting into practice of the diverse forms of the Anglo-Saxon court, such as the *town meeting*, deliberative polls, the *electronic town meeting* and *deliberative polling* (opinion polls after informative discussions, also experimented in Denmark and Australia), refers in any



case to joint instruments of citizen participation, accurately tested by the local entities that support these public policies. As a consequence, they are not generalised throughout the totality of the local entities and are less likely to create a stable legal framework, but are absolutely decisive in the debate on the need to proceed towards democratic regeneration<sup>XII</sup>.

As has occurred in other thematic areas, the European framework also seems to provide a sort of “guide” for citizen participation policy at the regional level in regions that seem receptive to-integrating this idea, born at the heart of the Union, of opening up to new participatory experiences, with a relative amount of fortune.

In particular, attention should be drawn to the impulse provided by the White Paper on European Governance, approved by the Commission on July 25<sup>th</sup>, 2001, already backing the greater involvement of citizens in the construction of a productive social dialogue and in making the administration of the political authorities more transparent.

In fact, it refers to using regional and local democracy to reach citizens, a strategy whereby the Commission proposed that the same associations of local bodies participate in the elaboration of European policies, promoting their cooperation with the Committee of the Regions. Meanwhile, the Committee would ensure these European measures through the observation of their local and regional impact. At the same time, the States themselves also had to collaborate in the involvement of the regional and local levels in European matters. It also aimed at increasing flexibility in the application of European policies with strong territorial impact for those in direct contact with the various different levels of government. Lastly, the Commission requested policy coherence that went beyond the typically dominant sectoral logic to identify the territorial impact these policies could have.

On the other hand, it stressed the need to involve civil society, which is necessary to increase its role as a leader, albeit only at a general level, taking into consideration specifically non-governmental organisations and other social interlocutors. Therefore, adherence to the principles of governance is why it has been proposed that the Union itself promote civil society which must also act with transparency and responsibility, in addition to efficacy and with the aim of establishing links with social networks<sup>XIII</sup>.

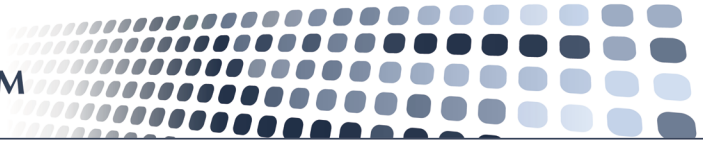
At the level of original law, the Treaty under which the 2004 Constitution for Europe was approved (a *non nato* text, however) would have to be abandoned. The 2004 Constitution for Europe mentioned participatory democracy for the first time, in addition



to representative democracy (Art. I-47), until the current Treaty of Lisbon (the consolidated version), by which the Treaty on the European Union was modified. While this did not expressly mention participatory democracy, its Title, dedicated to the Provisions on democratic principles, stipulates in Article 11.1 that: *“The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”*. While it refers to a rule that responds to the need to address the known European democratic deficit, considering also the weakness of representative democracy at the heart of the Union, the elevation of participatory democracy itself to a “fundamental principle” of the Union should be noted. In this regard, Art. 10.3 of the Lisbon Treaty (The Treaty on the European Union, TEU) should also be mentioned, which states that: *“Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen”*. Throughout the text, a general principle of EC law is affirmed that responds to a participatory dimension, overcoming the limited vision of representative democracy. However, this does not hide some weaknesses in the system. On the one hand, there is the still privileged position of representative democracy and its triumph in the representative-participatory debate. Yet, the functioning of the Union continues to be based on political representation while, in the meantime, participatory democracy is still only an ill-defined complementary effort to promote a democratic culture. On the other hand, when participatory democracy is applied, the predominance of lobbies and interest groups acting at the European level reveals one of the shortcomings of participatory democracy, i.e., its professionalisation<sup>XIV</sup>.

### **3. Decisive stimuli: statutory reforms and citizen participation as a “personal trademark”**

Democratic purposes have always been significantly mentioned in the main regulations of the Spanish Autonomous Communities and have been undoubtedly strengthened with the new wave of statutory reforms initiated in 2006<sup>XV</sup>. In fact, the scarcity of the matters under regulation in the first Statutes is in particular contrast with the generous mention of democratic purpose in these regulations.



To this regard, for example, the wording of Art. 15.1 of the Statute of Aragon should be mentioned as one of the *Estatutos* (Regional Statutes of Autonomy) of the so-called “latest generation”, which aims at establishing the right to citizen participation, stipulating that “*The Aragonese people have the equal right to participate in public matters, under the terms established by the Constitution, this Statute and by Law*” (“*Los aragoneses tienen derecho a participar en condiciones de igualdad en los asuntos públicos, en los términos que establecen la Constitución, este Estatuto y las leyes*”). Arts. 20.a), Articles 15.3 and 11.3 also address citizen participation in the form of a mandate directed to the public authority: “*The public authorities of Aragon, without prejudice to state action and within the scope of its respective competences are responsible for: a) ... facilitating the participation of all Aragonese people in political, economic, cultural and social life*” (“*Corresponde a los poderes públicos aragoneses, sin perjuicio de la acción estatal y dentro del ámbito de sus respectivas competencias: a)... facilitar la participación de todos los aragoneses en la vida política, económica, cultural y social*”) (20.a); “*The public authorities of Aragon will promote the necessary measures to effectively guarantee the exercise of these rights*” (“*Los poderes públicos aragoneses promoverán las medidas necesarias para garantizar de forma efectiva el ejercicio de estos derechos*”) (Art. 11.3); and “*The public authorities of Aragon will promote social participation in the design, execution and evaluation of public policies, as well as individual and collective participation in the civic, political, cultural and economic fields*” (“*Los poderes públicos aragoneses promoverán la participación social en la elaboración, ejecución y evaluación de las políticas públicas, así como la participación individual y colectiva en los ámbitos cívico, político, cultural y económico*”) (Art. 15.3).

Likewise, Art. 9.4 of the Statute of Valencia establishes the “right” to individual and collective participation in the political, economic, cultural and social life of the Community of Valencia of all the Valencian people. At the same time, it establishes the governing principle for the *Generalitat*, which is to promote the participation of social agents and civil society as a whole in public matters. Furthermore, Art. 1.2 of Title I stipulates that “*The Valencian Community is the expression of the democratic will and the right of self-government of the Valencian people (...)*” (“*La Comunitat Valenciana es la expresión de la voluntad democrática y del derecho de autogobierno del Pueblo Valenciano (...)*”), which must be combined with that foreseen in paragraph 3 when it emphasises that “*The Valencian Community pursues the objectives of attaining self-government under the terms of this Statute, strengthening democracy and guaranteeing the participation of all citizens in the fulfilment of its aims*” (“*La Comunitat Valenciana tiene como objetivo*





*la consecución del autogobierno en los términos de este Estatuto, reforzar la democracia y garantizar la participación de todos los ciudadanos en la realización de sus fines”).*

On the other hand, Art. 29.1 of the Statute of Catalonia more specifically stipulates that *“The citizens of Catalonia have an equal right to participate in the public matters of Catalonia, either directly or through their representatives, under the circumstances and terms established by this Statute and by Law”* (*“Los ciudadanos de Cataluña tienen derecho a participar en condiciones de igualdad en los asuntos públicos de Cataluña, de forma directa o bien a través de representantes, en los supuestos y en los términos que establecen el presente Estatuto y las leyes”).* Whereas Arts. 43.1 and 43.2 contain a mandate directed to the public authorities, according to which *“1. The public authorities shall promote social participation in the design, provision and evaluation of public policies, as well as individual and associative participation in the civic, social, cultural, economic and political fields, in full respect of the principles of pluralism, free initiative and autonomy. 2. The public authorities shall facilitate citizen and political participation and representation, giving special attention to the less populated areas of the territory”* (*“1. Los poderes públicos deben promover la participación social en la elaboración, prestación y evaluación de las políticas públicas, así como la participación individual y asociativa en los ámbitos cívico, social, cultural, económico y político, con pleno respeto a los principios de pluralismo, libre iniciativa y autonomía. 2. Los poderes públicos deben facilitar la participación y representación ciudadanas y políticas, con especial atención a las zonas menos pobladas del territorio”).*

Lastly, the Statute of Andalusia includes citizen participation as a fundamental objective of the Community (Art. 10.1), the right to political participation in different areas (Art. 30) and the governing principle of public policies when referring to the strengthening of civil society and association (Art. 37).

In Italy as well, regional regulation development has been linked to a new statutory reform process that took place at almost the same time as the Spanish reforms, for example, the Statutes of Tuscany (Regional law, February 11<sup>th</sup>, 2005, Arts. 4, 11, 58, 59 and 72), Latium (Regional law, November 11<sup>th</sup>, 2004) and Apulia (Regional law, May 12<sup>th</sup>, 2004).

In the case of Spain, in our opinion, the aforementioned Statutes so far have not adequately pursued the regeneration of autonomous politics, which has been at the core of the abovementioned statutory reform process. In any case, eventually the Autonomous Communities seem to use the Spanish Constitution as an example in their insistence on



participatory democracy, considering the well-known scarcity of democratic instruments in the Magna Carta, in addition to the predominance of direct representative democracy<sup>XVI</sup>. Therefore, only indirect participatory democracy is mentioned as a “principle”, without the possibility of referring to it as a “right to participation” to object to the action of the political authorities, as in Art. 9.2 of the Spanish Constitution. Moreover, although an indubitable “interpretative dynamism” pervades the text, the Constitutional Court does not even seem to have especially stressed the issue of participation, which could have been deduced from the parallel interpretation of Arts. 9.2 and 23 of the Spanish Constitution. Short and concise references to participatory democracy can be found in constitutional jurisprudence, although, on some occasions, it recognises the existence of a “participatory democratic principle” (SSTC 85/1988 and 67/1985), which is not further developed. Consequently, we do not know whether the Court intended to configure a constitutional principle or not, or maybe it was referring to a democratic principle, since the consequences have not been assessed. However, in a recent 2008 judgement<sup>XVII</sup>, the Court briefly mentioned participatory democracy for the first time to allow for the constitutionalisation of a general mandate directed at the public authorities to promote participation.

Furthermore, the Italian Constitution seems to have adopted the same logical approach in Article 3.2, which is similar to Art. 9.2 of the SC. In addition, with a similar dynamic, some Italian regional Statutes seem to oscillate between the generic right to participation (the Statute of Emilia-Romagna) and the declaration of “principles” for participation (the Statute of Tuscany).

Therefore, the Spanish Autonomous Communities and the Italian Regions seem to participate in the local experience regarding citizen participation in a way that is different from the example offered by the European Union. In fact, it seems as if participatory democracy provides them with an area where they can develop their own distinctive features that are different from those of the State, for whom it would otherwise be more difficult, to bring about comparatively acceptable and efficient results (given its area of action). This is the kind of politics addressed in this study. Likewise, think of how even in some cases of participatory democracy these entities have come to convert it into a “personal trademark” or a “sign of identity”, as in the French region of Poitou-Charentes under the government of Ségolène Royal, where it seemed to want to replace the lack of



capacity for self-government with the means and abilities necessary to convert participatory democracy into its own unique personal trademark, while remaining impossible to obtain regulations concerning citizen participation through legislative power. Although it is obvious, as local experience has demonstrated, that legislative power is not required to build a citizen participation model, the above-cited French case goes above and beyond, in that it attempts to seek its political identity through something as unique and impacting as participatory democracy, instead of creating cross-cutting public policies that have great legitimising weight.

#### 4. The pillars of a citizen participation model at the regional level

In order to assess the possible contents and issues of citizen participation at the regional level, we should consider the diverse elements that must be included in a comprehensive and somewhat stable participatory model, such as, aims, principles, instruments and guarantees.

The regions seem to have opened up a debate regarding the possible large blocks or elements of a regional/autonomous model of citizen participation, which entails the simultaneous configuration of their own orientation and model. In this way, the “bases” of participation at the regional level will lead to reflections on the matters of concern, i.e., the significant features related to both form (a *soft law* or *hard law* regulation and the possibility of a participatory model) and content (the great central themes).

##### *A) Hard law or soft law*

The discussion about the development of a Law on citizen participation, the intermediate option of a Plan or Programme or simply putting into practice experiences of citizen participation seem to be the first great debates arising from the initiative to promote citizen participation<sup>XVIII</sup> at the regional level. One option is connected to a kind of regional government practice that is somewhere between creating regulations with a certain permanency (taking into account that decentralised entities do not always rely on legislative



power, as in France) and simply putting it into practice. Also, bear in mind that sometimes the practice of citizen participation has been attempted through statutory regulations dictated by the Spanish local entities, which has sometimes influenced the legislative regulation subsequently dictated by the Autonomous Communities. Conscious of the enormous possibilities that may be opened up in this area, so much so that the Regions' "head regulation" seems to drive the latter to configure participatory democracy as an authentic right, the content debate seems the most likely option of the two diverse models for the regulation of citizen participation<sup>XIX</sup>:

- A "*my hands are tied approach*", since, ultimately, it is a question of "establishing" a commitment outside the realm of government concerning a certain law that enriches democracy itself. This model tends to "delegate" tasks that at first should be performed by the institutions (in short, legislative initiative, regulation initiative or citizen initiative).
- Or a "*wash your hands of it approach*", in which the government governs and exercises its mandate "in the general interest" of the citizens. For this reason, citizen participation may be considered an excessive "surrender of sovereignty", which, precisely to avoid going to such extremes, could constitute a shift in the direction of regulations that have "little to do" with participation, considering to what degree participation is then effectively "conceived". The regulations of Valencia and the Canary Islands seem to aspire to this last model, now that the configuration of participation has become dependent on the development of regulation.

The intermediate and more balanced model, which is more suitable to the need to reconcile democratic regeneration and the government's responsibilities, seems to be a "*hands free*" model, based on constant dialogue and interaction between society and authorities. This is a regional participatory model in which, although the representative institution (Parliament and/or Government) has the last word, this is only after it has simultaneously taken into consideration all the actors involved through a deliberative process that surrounds, commits and holds the relevant authority responsible. Some Italian regional experiences, and even the most recent local regulation of Guipuzcoa in Spain, may



be situated in this dynamic.

On the other hand, regarding the legal instrument utilised, although, as we have pointed out, the construction of a participatory democracy model is possible through various legal manifestations, the Italian experiences and some Spanish experiences highlight the possibilities offered by legal regulation. With the exception of statutory mandates, which, in our opinion, seem to be inclined to configure citizen participation via legal regulations, or by legally establishing it, without it being solely the “politics of legislature”, citizen participation can essentially be realised through an “authentic subjective law” via a regulation with the status of law and via channels of participation (from an “instrumental” perspective). Likewise, diverse possibilities and actions for its promotion can be realised (from a “formative” perspective). In this way, it is converted into a “Law-Code”, with a clear cross-cutting effect due to its impact on a number of public policies. This question is connected to the issue of its legal effectiveness and to the likelihood that the regulation will be truly and effectively developed and applied, while, although it may not be capable of establishing authentic “obligations” and “legal prescriptions” regarding those public policies, this also does not help its inefficiency. In addition, perhaps regarding these types of regulations, as evidenced by the Tuscan Law<sup>XX</sup>, it would be sufficient, or rather “natural” for participatory democracy itself, to opt for a system of “institutional incentives”, as evidenced by the rule of Guipuzcoa, which is closer to Italian regulation in this regard. This is because if the law does not establish incentives for participation, its content may become plagued with rules that are “principles” or excessively “generalised”, i.e., too many principles and few effective and real actions of citizen participation<sup>XXI</sup>. Consider, the regulations of Valencia and the rules of the Canary Islands, whose potential lies in the development of regulations regarding citizen participation<sup>XXII</sup>.

The option of using *soft law* instruments (White Papers, Plans, Programmes) does not imply the degradation or minimisation of its legal efficacy *per se*. On occasion, as international and Community *soft law* demonstrates, it may even be more effective and precise, because of the “weak obligation” that it entails, and also more innovative, as it may also contain para-constitutional regulations that ultimately imply an authentic constitutional change. In this way, the *soft law* instruments would pave the way for the future and the genuine legal action of *hard law* instruments<sup>XXIII</sup>. In any case, this has to do with supporting a document that truly lays a foundation that is effectively engaged, the opposite of concrete



government (consider the experience of Catalonia). It seems the logical tendency is that this *soft law* instrument serves as a test and advance for a future law on participation.

On the other hand, regarding its content, it should contain a regulation that attempts to better specify the channels and principles facilitating and promoting participation. Remember, White Papers are adequate to establish “general guidelines” and “forms” should be a process democratically legitimised by “dual” actors: the Parliament and society itself, by means of an “active process”.

### ***B) The “participatory” model***

In keeping with the outline of these public policies, it seems correct that a regional participatory model be initiated “with” citizen participation itself, but also that public actors be involved. Bear in mind that participation is achieved throughout the whole political governmental design, and the elected authorities are responsible for the “direction and administration” of regional policies when they try to influence citizens’ opinions regarding the documents directly affecting them. Moreover, greater involvement is expected when they themselves have contributed to their elaboration. This is why collaboration with the local entities is not mentioned which may be advisable - or necessary - to “commit” to the objective of elaborating a citizen participation model that is equally “homogenous” and “expansive” for the entire regional territory.

From this perspective, experiences such as those of the Canary Islands or Tuscany can be used as a reference<sup>XXIV</sup>. In addition, even once the rule is passed, the Law of Tuscany itself provides for a period of five years, after which it must be “monitored” in order to be confirmed, revised or abolished. In a similar vein, the local regulation of Guipuzcoa provides for participation in the *Juntas Generales* (General Assemblies) to proceed with the global evaluation of the system of citizen participation, through hearings with entities and the technical assistance of professional experts in participation processes, producing and determining the corresponding agreements regarding the preservation, abolition and reform of the rule.

### ***C) Principles and objectives: the configuration of a “unique” model of citizen participation***





The main themes of a participation model should be shaped based on a premise that is sometimes inexcusably ignored by laws and plans on citizen participation: the option or definition of a suitable concept or model of citizen participation, and this does not mean merely adding more instruments. Consider how the local regulation of Guipuzcoa establishes the objective and aim of citizen participation, referring to the promotion and impulse to participation, the development of democratic rights, the promotion of the consolidation of a culture of participation, the equal involvement of men and women, the increase in the transparency of government action, the creation of needs and social dynamics favouring the efficacy of political and administrative action, guaranteeing the highest levels of solidarity and social integration, the promotion of networks of associations and the diffusion of the culture of participation and participatory habits, along with the necessary collaboration with the local entities on all of these aspects.

The regional experiences highlight the great diversity and heterogeneity of participatory models, even within the same State. In fact, take the “strict” model of Catalonia, clinging to the participatory process as a “space for assembly, debate and discussion”, or the Aragon model as well as some Italian models. Likewise, the model of Guipuzcoa, while it contains a “flexibility clause”, it also allows the Local Directorate for Citizen Participation to request that a participatory process be carried out by means of other methods or instruments (Arts. 23 and 24). There are also “broad” models, such as the model of Valencia or the Canary Islands, which also include phenomena such as associating, volunteering, outside communities and consulting in some cases.

In any case, it should be clarified that the Region, through its instruments and public policies on participation, specifically formulates the main guidelines and lines of development. Perhaps, for this reason, it is useful to reflect upon the “management of participation”—in order to find out whether this envisages only one direction or acquires a “bi-directional” nature<sup>XXV</sup>:

- 1) Participation is unidirectional when it is built by the entity in the direction of the citizens: information, websites, etc.
  
- 2) Likewise, it is also unidirectional when it is configured by the citizens in the



direction of the entity: consultations, citizen initiatives.

- 3) However, in our opinion, more interestingly is that what makes participatory democracy authentic is its bi-directionality. When participation is bi-directional, it is active and generates a sense of obligation, including the negotiation, deliberation, reception and proposal of political actions, taking into consideration or rejecting citizens' opinions with the necessary motivated justification. In this last case, there is greater participation by both participants (citizens and public authorities), linking a common administration to aspects of public interest. However, this orientation should not be confused with that stated later on, since the ultimate objective of authentic citizen participation is interaction, the exchange of and agreement on ideas between the citizens and public authorities, going beyond the idea of participation as a simple procedure that has hardly any impact on the decision adopted. In fact, the risks of the "instrumentalisation" or "manipulation" of citizen participation are well-known and not infrequent and they seem to intend to legitimise decisions that have already been adopted or whose adoption has been attempted<sup>XXVI</sup>. In our opinion, these pernicious effects are in part counteracted when democracy emphasises uni-directionality and is able to clearly show if citizens' concerns are being well-channelled or not.

It is important to affirm that the Italian regional regulations focus their attention on this last concept,—as well as the delimited model of Catalonia, developed, in particular, within *Plan Interdepartmental*<sup>XXVII</sup> (abandoning other instruments in favour of differentiated regulation, as with consultations<sup>XXVIII</sup>). Within the Spanish legal system, the approach of the regulation of Guipuzcoa is equally innovative in that the Local Council is obligated to explain its motivation for shifting away from what was agreed upon by the citizens (Arts. 4.3 and 16). The fact that the regulation of Guipuzcoa configures an administrative act (in the form of a motivated resolution containing the conclusions reached in the participatory deliberation process which affects the political decision to be adopted) susceptible to appeal, is certainly worthy of positive evaluation. However, we believe that its development could still be further improved, making participatory democracy an authentic subjective right, if the legislator created a specific appeal, something more than the traditional administrative appeals and those foreseen in the regulation of the jurisdiction of adversarial





legal proceedings. In fact, this would not be unusual in a system like the Spanish one, where in the area of representative democracy there are specific appeals, like the one foreseen to appeal the decision of the Congress Board when not admitting a popular legislative initiative (Art. 6 of Organic Law 3/1984, March 26<sup>th</sup>, regulating popular legislative initiative).

In addition to the previous considerations, it is certainly very important -and above all convenient-, to outline, among the principles and objectives highlighted by the regional regulation, those concerning the two sides of the citizenry and institutional perspective.

With respect to the citizenry, a citizen participation model must reflect and address the following issues:

- Those who are entitled to or subjects of participation: individuals and groups (in the latter case, bear in mind that for citizen associations and entities a registry may be authorised), public and private actors, nationals, residents and foreign nationals<sup>XXIX</sup>. The participation of the latter is established by state regulation within the framework of the rights and freedoms of the foreign population (Organic Law 4/2000, January 11<sup>th</sup>, concerning the rights and freedoms of foreigners in Spain and their social integration).

- “Passive” participatory democracy, by providing new instruments for the development of “group” decisions and institutional support through personal resources (organisation, mediation, etc.) and material resources (areas, financing, etc.).

- “Active” participatory democracy, which entails concentrating on the (individual and collective) promotion of participation, and not only refers to “consenting” to the exercise of the right of citizen participation, but also to demonstrating a “proactive” attitude. To this end, particularly suitable instruments are, for example, citizen juries and panels (for which members are selected randomly), campaigns, websites, and precisely the leadership of local entities to which the regulation of Guipuzcoa aspires<sup>XXX</sup>.

- The commitment to disadvantaged sectors and equal participation seems to be a fundamental challenge according to the principle of equal opportunities and especially regarding primary equality, i.e., the equal rights of men and women, which the regulation of Guipuzcoa pays special attention<sup>XXXI</sup> to.

On the other hand, from an institutional perspective it seems obvious that the Regions tend to be - and need to be- “involved” along with the institutions of autonomous government, which may also be good for the local entities. Therefore, for this reason, it is



necessary to continue to pay attention to the following issues.

- Good practices and good administration with reference to transparency, impartiality, publicity, maximum diffusion and information, which implies constant and direct communication among the subjects of participation.

- By correctly defining political responsibility within the system of government, organised since it is the only way, according to representative democracy, participatory democracy clearly leads to the “enrichment” of democracy itself. Also, by seeking out complementary channels for the reassessment and improvement in the quality of democracy. This results in the absence of the “obligation” or “prescription” of participation for the public authorities. Conversely, participation is the result of commitment, political responsibility and transparency and can be achieved through institutional incentives. The objective is to “motivate participation” by setting requirements and terms with an institution or authority acting as mediator, or even providing for a “return phase” (from the public authorities to the people) or a taking into consideration phase, as foreseen in the regulation of Guipuzcoa. In the Italian case, this can occur through the regulation of public debate on large interventions, or through initiative and participation in participatory processes with regional support (see the regulations of Tuscany and Emilia-Romagna).

- Participation at the most basic level of government, i.e., the local level, is another key aspect of regional public policies on citizen participation. For obvious reasons, here participation is more feasible as it moves down to the level of government, in which the citizenry is closer to the public entities. That local autonomy should not be affected does not imply that the Regions must shift their attention away from local phenomenon<sup>xxxii</sup>. For that reason, some Regions attempt to reflect on and establish the role that regional governmental authorities can play in the matter, through the aforementioned system of institutional incentives. This way, they motivate, coordinate, promote and even “ensure” these local entities a model of citizen participation which is supported by the region. Incentives established through a Pact with the local entities to adopt the principles and processes of the regional regulation of citizen participation, or even the search for local entity involvement in a participatory process to be initiated, are options that have been developed in Italy (in the Law of Tuscany and Emilia-Romagna, in particular), thereby breaking away from the obligations that do not befit the autonomy of the local entities.



Likewise, the foreseen agreements of collaboration, providing technical assistance to local entities and even allowing the initiative of the participatory process, as provided for in the regulation of Guipuzcoa, can be adequate ways of encouraging and contributing to participatory democracy at the local level.

In general, how this involvement can be attained has been set out in the same basic regulation, (as in the case of Italian Law or the inter-departmental plan of Catalonia) which, in our opinion, is particularly appropriate, however, also the possibility of disseminating a Code of Good Practise among the local entities (in the case of Valencia) is befitting.

From this perspective, it is a question of overcoming the idea that local entities must establish participatory practices in an isolated and purely voluntary way that is within the capacity of manoeuvres that their autonomy allows for, which, in one way or another, are based on the support of the autonomous government (subsidies, good practises, etc.) to achieve a higher level of commitment and involvement within a model of participation “led” by the autonomous government itself (as in the case of the Italian Laws or, to a lesser extent, the regulation of Guipuzcoa). In this way, they adopt not only the content of the basic regulation of citizen participation for their initiatives, but they would also be able to convert themselves into “subjects” as well as “recipients” of a participatory process coordinated, motivated and supported by the autonomous government.

#### ***D) Instruments, activities and channels of participation***

The development of instruments and channels depends, to a large extent, on the technical regulation utilised to configure participatory democracy. In this way, the simple implementation of participatory instruments can vary according to the needs of the authorities regarding the concrete tools. Instruments such as White Papers, Plans and Programmes could be enough to establish a series of generic principles and guidelines without needing to develop concrete instruments, activities and institutions. In addition, when there is a vocation of regulating citizen participation, the commitment is undoubtedly more advanced and defined (however, the same happens, for example, when White Papers are expected to be a kind of “alternative” to a law). As we have underlined although the risks of a law are also evident, some laws? could serve as purely “principle” rules.

Assuming that the will of the regions is to establish participatory democracy as an



authentic right, the instruments by which they can achieve this should be assessed from a triple perspective, i.e., taking into consideration the “promoter” subject of participation, the suitability of the instruments used to “mobilise” citizens and the concrete “channels” observed. In any case, it is about stressing the idea of opening up the greatest number of and the most varied channels of participation, searching for dialogue and collaboration between public authorities and society.

*1) The “promoter” subject of participation or anyone who promotes participation. In this respect, we should distinguish between participation “by” public entities and participation by private subjects*

- Participation “by” public entities allows them to gain significant leadership, based on principles such as public responsibility and the management of matters of general interest, for which the administration is a necessary guide. This implies assessing instruments such as information, initiative foresight, or the channelling, support and “return” of the proposals put forward within a participatory process. In the same way, or perhaps, above all, it implies the idea of “bi-directionality”, the commitment to “taking into consideration” or motivating the rejection of citizens’ proposals, as well as combining channels such as citizen audience, the possibility of anticipating the notification of juries, panels, fora or public debates, the notification for the promotion of activities that give rise to participation through subsidies, the configuration of a registry of citizen entities, training and consultation (polls, surveys, etc.).

- Participation “upon the initiative” of private subjects implies that it is developed through channels such as the proposal of citizen initiatives in the participatory process, the proposal of fora or public debates and regulation or legislative initiative.

This double category deserves a series of critical reflections, in light of the obvious “limited practical effect” of private legislative initiative, the history of which might otherwise cause us to be sceptical. In our opinion, the achievement of real participatory democracy, which is effective and above all in accordance with the key elements of the functioning of the political system, such as representative democracy as the configuration priority of democracy, which is not a substitute for participatory democracy, the form of



Parliamentary government and its strict party system, requires supporting two complementary strategies. One strategy is the configuration of authentic procedural channels that support participatory processes of action proposals. The other entails foreseeing authentic possibilities of participation in processes that are engaging and promoted by the political authorities.

2) *The suitability of instruments to “mobilise” the citizens*

It seems obvious that the mere existence of some instruments established for citizen participation do not guarantee real and effective participation *per se*. In addition, the purpose of a citizen participation model which is consistent with its aim cannot only be to “provide” instruments, but also to “motivate” their use, generating a culture of democracy and promoting active citizen participation (an argument that must also involve the local entities, which should also be motivated)<sup>xxxiii</sup>. These circumstances are assessed at the regional level, regarding both the selection of instruments and channels of participation, and their concrete development.

Instruments such as citizen juries, workshops and panels, anticipated in the regulations of Valencia and the Canary Islands and developed in France, have not been properly emphasised in that only one concrete aspect of participation has been stressed, i.e., assessing a measure, doing a consultation and requesting information, which is slightly “biased” in nature. However, despite it all, it is true that from our current perspective, i.e., the possibility of “motivating” citizens, these instruments deserve rather positive judgement, since to determine their composition they randomly select people in order to correct the bias of other participatory channels, which are, nonetheless, monopolised by professional groups of participation<sup>xxxiv</sup>.

In light of these experiences, it is true that in a participatory process (as has been chosen by Italian law and the models of Catalonia, Aragon or Guipuzcoa) or a citizen initiative (resulting from a regulation or action, like in Valencia and the Canary Islands), they tend to be used mainly by the aforementioned professional groups, which is why they require foreseeing incentives for participation.



In short, in the Regions the challenge is to authorise conditions and areas that extend these channels to the “unmobilised” citizens (who are the norm). For this reason, participatory processes should be properly developed taking into account different elements, such as notification ability, institutional support (financial, organisational, etc.), the correct management of information and the transparency of political administration in general, as Italian laws and the regulation of Guipuzcoa have done.

*3) The “channels” of participation, from their form to their basic features beginning with the following categories, in the establishment of a concrete model of citizen participation, from its definition to its consequences*

- “Accurate” instruments of participation. This seems to be the dominant trend in Spanish autonomous law (the regulation of the Canary Islands states that “participatory processes” will be carried out and that, nonetheless, they will have to be devised through regulations). Within this dynamic, there is also the option of using tested instruments in comparative experiences and in autonomous regulations themselves, such as citizen juries, panels, fora or public debates (also foreseen in Italy, in the Law of Tuscany), deliberative polls (the *Electronic Town Meeting*) and citizen initiatives. However, in contrast with the abovementioned, the regulation of Guipuzcoa opts for a different model, perhaps recalling Spanish autonomous development and the debates arisen both in the tested models and the comparative perspective.

- “Comprehensive” processes. This is undoubtedly one of the most significant features of the citizen participation models foreseen in the Italian Laws. This is something that is only outlined in the regulation of the Canary Islands is being tested in the Plan of Catalonia, and that the local regulation of Guipuzcoa, paradoxically, has better developed.

Comprehensive participatory processes can be initiated by citizen initiative, by the regional entity or by public entities such as the local entity. Their most characteristic feature originates from the fact that they imply the development of a procedure completed in part by the definition of a reference mark (through precedents, agendas and guidance for the



process), by providing for locations and mechanisms for the discussion and collection of contributions (either physically and/or by telephone) and concludes with systematised proposals, their reception by the entity involved, and their return to the citizens, i.e., of a commitment to taking it into consideration and providing motivation in the event it is rejected. All this clearly requires the mediation and coordination of the authorities (either the independent authorities, as the Italian Laws seem to believe or the regional government itself, as in the case of Guipuzcoa, where their management is in the hands of the General Council). In addition, on occasion, these processes are developed through the previous work or the foundations that have already been elaborated by a committee of experts; in the case of the local regulation of Guipuzcoa, the Committee anchors itself in the Local Council, although without hierarchical submission to it. The idea is, as reflected in the regulation of Guipuzcoa, to legally outline a “protocol” that sets out citizen participation and implies a commitment that is more or less real and feasible.

- Promotion of participation. It is unlikely that citizens will be involved in participatory processes and make use of the instruments provided if there is not adequate understanding, publicity and a series of incentives. It is a question of the public authorities supporting and developing, in particular, pro-active policies on citizen participation. For this reason, it is important that the model also includes different channels, such as information, campaigns of public awareness, education and subsidies for activities to promote participation.

### *E) Institutions “facilitating” and “promoting” participation*

The effective practice of citizen participation requires institutions that make the different participatory instruments a reality, including the right to citizen participation itself. For this reason, institutional intervention is essential, without ever letting it reach the point of interfering or manipulating.

The Spanish autonomous experiences are based upon the effect of the central point that is adopted in the confirmation of a citizen participation model by the administrative organisation determined by the General Directorate, without ignoring the role that other



institutions play regarding participation, such as the Inter-Departmental Councils or Commissions.

These experiences should be compared with those offered by the other regions from the perspective of comparative law. In this regard, recall the “Regional authority for the guarantee and promotion of participation” in the Tuscany Region, configured as a kind of “parliamentary commission”, or in the case of the Emilia-Romagna Region the “Expert as a guarantor of participation”, i.e., a leader of the Regional Parliament, or the “Technical nucleus of integration with the local autonomies”. Currently, the existence of these institutions within the Italian regional models does not directly imply their automatic replication in the Spanish Autonomous Communities, with the *ex novo* creation of similar bodies. It rather involves taking into consideration the role such institutions play, which could easily be ascribed to other pre-existing institutions in the Autonomous States. All differences aside, consider the “Local technical assistance for participatory practices in the local area” which Art. 43 of the regulation of Guipuzcoa refers to, an assistance that is offered by the Local Directorate for Citizen Participation itself.

On the other hand, it is impossible to raise a debate on the suitability of each and every one of these institutions without taking into account the form of government of the political system at issue. Bear in mind that not long ago the Italian regions adopted a “neo-parliamentary” form of government, with separate elections in the electoral processes of the Presidency of the Region and the Legislative Assembly. This implies that the connections among political forces could vary and that the Executive loses autonomy in the direction of the government, which could dissolve its monopoly. In addition, this is a possible explanation why the institutions “for” participation foreseen in the Italian Laws are more separated from the regional government than in Spain, where the connection is established in accordance with the parliamentary form of government, which incorporates the Autonomous Communities.

In any case, setting aside the previous debate, rather than immediately incorporate the institution and later grant it specific competencies, if they want to develop a coherent model of citizen participation, they must consider the roles these institutions should play in





participation. All things considered, any attempt to balance these aspects will only serve to avoid, aside from this, the directionality typical of the form of parliamentary government in which the central role of the executive is clear. Later on, this is the only possible way to determine the most suitable institution, according to its nature and its ability to prove itself efficient in this duty. In this way, it can comprehend the diverse “participation tasks” that might or might not be assigned to a single institution.

- The “leadership” of participation. Like the participatory model at the heart of parliamentary government, it is clearly the opposite of a determined Government, because its implementation, to a great extent, depends on the entity managing the autonomous policies. In the case of Spain, the General Directorate of citizen participation fits this task, as does the Local Directorate in the case of Guipuzcoa, where its management is assigned to the Local Administration and in particular to the Cabinet of Representation or General Representative or to the competent department in matters of citizen participation. Although it is not integrated in its hierarchical structure, it exercises its functions with full autonomy (Art. 39). The configuration of the Italian regional model is different, however, in which leadership is not exercised by government direction (in the case of Tuscany). Moreover, while in the case of Emilia-Romagna leadership was given to the executive, it actually took place via the mediation of a Manager with a background in Parliament, where predominance over regional government is common.

- “Coordination” and “guidance” of participation. A commitment to defining organised planning to implement the instruments of citizen participation is necessary, for example, as in the role played by the “Authority” of Tuscany, the General Directorate in the cases of Catalonia and Valencia, the Local Commission of Guipuzcoa, and the Technical Nucleus of integration with the local autonomous communities in the region of Emilia-Romagna<sup>xxxv</sup>.

- “Mediation” in participation. On occasion, it may be advisable or necessary to combine efforts so that the citizen proposals are supported, obtain commitment or are taken into consideration, which does not result in complete acceptance, by the public authority. This is a task that stands out because of its absence in the Spanish autonomous



communities, perhaps due to the logical predominance of the executive, which affects the role of the autonomous authorities with respect to local entities. As a mediator *par excellence*, Managers can be appointed as guarantors in matters of participation in Emilia-Romagna.

- The “monitoring” of participation. It is well-known that the defence of public interest and government action are the responsibility of the public authorities. For this reason, as long as support needs to be provided for and coherence needs to be sought in the functioning of each and every participatory instrument, the kind of “governance” promoted in the actual process is important for implementation. Consider the Steering Committee in the case of France (the Juries and Workshops) or the Law of Emilia-Romagna, or the Citizens Council in the case of Spain (the Social Council in Guipuzcoa).

- The “evaluation” of participation. Like all public policies in general, its reassessment as well as the evaluation of the legal regulation which protects it, should experiment with a process of evaluation that would, in this case in particular, allow the degree to which citizen participation has been effective to be measured, as much *ex ante* (through a diagnostic and a mediated analysis of the different actions) as *ex post* (to assess to what extent it has responded to the objectives initially set out). Take, for example, the efforts of the Citizen Council in the regulation of Valencia, the case of the Canary Islands or the Parliament itself via its annual session in the Law of Emilia-Romagna. The regulation of Guipuzcoa has undoubtedly provided the most detailed evaluation, with authentic processes that are accurate as well as complete, as in Art. 4 of the Local (Foral) Regulation, which refers to the “*Efficacy of citizen participation*” with an express regulation regarding the Council’s obligations as to the results of the participatory processes, specifically pointing out that when the Council does not receive them, totally or partially, “*it will be obligated to explain the reasons for its decision*”. It is undoubtedly a new and committed legal precaution.



## 5. Conclusions: Rethinking democracy from a participatory democracy perspective

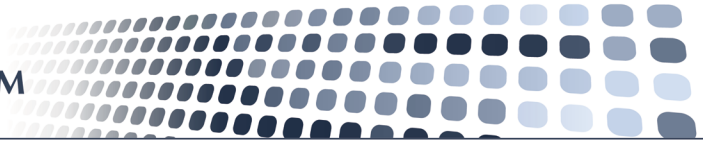
The design of regional instruments of citizen participation still have more weaknesses than strengths. Inertia due to the traditional predominance of representative democracy and some initial attempts at the heterogeneous regional configuration of participatory democracy, occasionally weighed down by excessive wilfulness and with rules that risk misinterpreting the general or principle proclamations or that contain excessive references to other regulations (whether to regulate a concrete instrument, or to clarify it in future regulations), create suspicion as to whether or not participatory democracy is really appropriate at the regional level.

However, this does not prevent us from recognising that the possibilities for a regional participatory model are promising at this territorial level, which, because it is an intermediary between state and local levels, it provides opportunities for proper democratic development. This area is dominated mainly by the notion of the proximity of the citizens to the institutions, and at the same time by an acceptable level of self-government, essentially expressed through its legislative authority.

The noteworthy experiences of *hard law* and *soft law* in the cases of Italy and Spain offer elements for debate, but above all invite us to reflect upon the conditions and central points of a citizen participation model that strives to meet concrete democratic parameters.

In recent years, the number of voices calling for democratic regeneration have significantly increased, as has been evidenced in many different States, for instance, our 15-M movement. The point is that the response to the democratic crisis must be “more democracy”, but not at any cost. The increase in quantity must be linked to better democratic quality, which obligates us to take into consideration other parameters, such as, control, responsibility, evaluation, dialogue, the transparency of public authority accounts and democracy as an authentic “bilateral process”. Consequently, it is only from this perspective that participatory democracy can be built, satisfying the need for democratic regeneration that, otherwise and in our opinion, has always been the central issue since its original configuration as a complement to other democratic channels.

The changes that participatory democracy can bring about in the theory of



democracy will not alter the basic premises. Representative democracy will continue to be at the heart of the system because it implies that it is the political representatives' responsibility to defend public interest. However, this does not mean that this decision-making cannot be enriched, according to the nature of the issue and whether or not the geographic scope makes it feasible, so that the instruments developed can generate responsibility and transparency, so that the citizens can verify the matters that concern them.

It is not at all easy to coordinate public policies regarding citizen participation via regulations with legal status. However, for this reason it is advisable, as this study has aimed to demonstrate, to carefully reflect upon which model to configure and the consequences that will result from it. If the established strategies and instruments are taken into consideration, true, egalitarian citizen participation will be achieved with the aim of not "dissolving" democracy itself. When faced with excessive principles and remission in the laws of citizen participation, we support focusing on institutional incentives. In addition, faced with uni-directionality or the monologue of participation (from the citizenry or from the public entity), we support the development of rights and institutions that are more and more committed to the dialogue between society and the public authorities, i.e. bi-directionality.

---

<sup>I</sup> In this study, we recall the definition of participatory democracy elaborated by Pizzorusso, who referred to citizen participation, in either an individual or collective form, in matters that directly or indirectly affect the citizens and that, articulated in a process, concludes with the final decision adopted by the public authorities. See Pizzorusso, 1973, 1473. Regarding democratic regeneration, see also the monograph "Repensando el Estado democrático", *Revista Catalana de Dret Públic*, No. 37, 2008; Allegretti, 2010 and Bifulco, 2010 and 2008; Reyes Alberdi, 2008; Roussopoulos – Benello, 2005; Blondiaux, 2008; Robbe, 2007.

<sup>II</sup> In this regard, consider the familiar experience of participative premises at the local level. Cf. Della Porta, 2005. See also note 12.

<sup>III</sup> Act 11/2008, July 3<sup>rd</sup>, of the *Generalitat* (Government), regarding Citizen Participation in the Valencian Community, and the Action Plan for Citizen Participation 2008-2011; [http://www.cic.gva.es/index.php?option=com\\_content&task=view&id=6&Itemid=3](http://www.cic.gva.es/index.php?option=com_content&task=view&id=6&Itemid=3).

<sup>IV</sup> Act 5/2010, June 21<sup>st</sup>, of the Autonomous Community of the Canary Islands regarding the Promotion of Citizen Participation; <http://www.gobcan.es/participacionciudadana/>.

<sup>V</sup> Foral Law 1/2010, July 8<sup>th</sup>, on citizen participation; and its Management Plan 2007-2011; <http://www.gipuzkoapartehartzen.net/>.

<sup>VI</sup> *Regional Law 69/2007, December 27<sup>th</sup>, regulating the promotion of participation in the formulation of regional and local policies.*

<sup>VII</sup> *Regional Law 3/2010, February 9<sup>th</sup>, regulating the establishment, re-organisation and promotion of consultation and participation procedures in regional and local policies.*



<sup>VIII</sup> The content of this regulation is extensive and includes among its basic objectives the promotion of ethics and transparency in government action and the right to access information, as well as the modernisation, rationalisation and simplification of administrative action and the improvement of the quality of the Administration (Open Government). However, in addition, the pillar of citizen participation and collaboration (Title IV of the Draft Bill) has also been included, providing for instruments of active citizen participation in decision-making (consultation fora, citizen panels and citizen juries), and allowing for channels of bi-directional telematic conversation as well as for participation in social networks. Likewise, the regulation refers to its future development and to the implementation of the right to participation and collaboration in the definition and evaluation of public policies. With this choice by the Government of Navarre, the regulation shifts away from the precision of the regulation of Guipuzcoa regarding the direct regulation of real participative processes. However, its major result is the provision of a report on participation and collaboration, that obligates the Administration to provide the results of participatory process, the means used and the evaluation of how this participation could have conditioned or influenced administrative action, detailing the emphasised idea of bi-directionality, which we endorse. For the purpose of this study, it is important to highlight that in the preliminary elaboration phase of this draft bill the process of participation was carried out in various different citizen participation fora. 54 suggestions were submitted, of which 33 have been taken into consideration (many of them from the 15-M Movement). Therefore, citizens have had the possibility to make their contributions through a forum.

<sup>IX</sup> The concept of “civic citizenry” was introduced in the framework of the Tampere Agreements (1999), when the Commission used this expression to refer to *European Denizenship*. What is most interesting for this study is that this notion established how a necessary, although singular, channel to integrate the immigrant population that which interests this study is that it should imply a holistic approach to integration, considering more than the mere economic and social aspects but also, and above all, the problems related to cultural and religious diversity, citizenry, participation and political rights, encouraging a sense of belonging to a community. See COM (2001)387 final, July 11<sup>th</sup>, Communication of the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions about immigration, integration and employment. See R. Zapata-Barrero, 2005, 61.

<sup>X</sup> In this regard, see the Italian law of Tuscany, which emphasises that it is not a matter of creating a new form of democracy, but of updating the current form and its institutions, and integrating it with practice, processes and instruments of participatory democracy. In a similar vein, see the Foral Law of Guipuzcoa 1/2010, July 8<sup>th</sup>, on citizen participation, whose Preamble opens with the following: “*The solid consolidation of the representative democratic systems in our environment and the full normality in which its institutions are developed has not prevented the need to confront its limits, opening the democratic experience to other forms of participation that, in a complementary way, enrich the democratic system, reaffirming its fundamentals*”.

<sup>XI</sup> See de Vega, 1997, 719.

<sup>XII</sup> See Santomer - Ganuza, 2008; Ferreboeuf, 2011, 113 ff.; Genro, De Suza, 1998; Gret, Sintomer, 2002; Sintomer, Bacqué, Rey, 2008; Koebel, 2006; Allegretti, Herzberg, 2004.

<sup>XIII</sup> Without going into exhaustive detail, this has been carried out according to many different initiatives from derived law and Community *soft law*. Consider, for example, the Communication from the Commission of December 11<sup>th</sup>, 2002 “*Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*”, as well as other initiatives on environmental matters or the “*Europe for citizens programme 2007-2013*”. On the other hand, of similar interest is the Recommendation Rec(2001)19 on citizen participation in local public life, July 2001, at the heart of the European Council, directed to Member States, which has analysed experiments in progress in some Member States, such as, citizen panels and juries, interactive websites, focus groups and workshops.

<sup>XIV</sup> On this issue, raised above all in the debate on the *non nata* European Constitution, see Moreiro González, 2004; Ridola, 2005, 21 ff.; De Miguel Bárcena, 2005, 213 ff.; Greenwood, 2009, 9 ff.

<sup>XV</sup> See Pérez Alberdi, 2008.

<sup>XVI</sup> Regarding the discussion about and the practice of participatory democracy in Spain, See Rubio Núñez, 2007, especially 96 ff.

<sup>XVII</sup> STC 103/2008, concerning the unconstitutionality appeal presented against Law 9/2008, June 27<sup>th</sup>, of the Basque Parliament, calling and regulating a popular consultation to request the citizens’ of the Autonomous Community of the Basque Country opinion on the initiation of a negotiation process to achieve peace and political standardisation.

<sup>XVIII</sup> The Spanish Autonomous regulation of the citizen participation model is, above all, sufficiently different



in terms of the legal instrument utilised to that effect: *hard law* rules in the cases of Valencia, the Canary Islands and Guipuzcoa, compared to the *soft law* rules of other Communities, especially Catalonia.

<sup>XXIX</sup> On this matter, see the thought-provoking contributions of Floridaia, 2008; and by the same author, 2007, 629 *ff.*

<sup>XX</sup> Cf. *ibid.*, 621.

<sup>XXI</sup> Consider the debate about the construction of a regional participation model that took place in the Autonomous Community of Aragon in 2009 through the “Mesa de expertos para la definición de la política normativa del Gobierno de Aragón en materia de participación ciudadana - Panel for the definition of the normative policy of the Government of Aragon on civil participation”, which led to the publication of the first issue of *Revista Deliberación*, No. 1, 2010.

<sup>XXII</sup> On the subject, see Opinion 306/2009, June 25<sup>th</sup>, of the Consultative Council of the Canary Islands.

<sup>XXIII</sup> On occasion, due to the influence of the system of European sources, the elaboration of White Papers could be preceded, as in Catalonia (2009/2010), by Green Papers or documents claiming to promote the citizen debate about public action and consultations on certain proposals regarding determined material. At the same time, the subsequent White Papers can result in the elaboration of a text that could be presented to Parliament with the aim of passing it into law, or to the Government itself with the aim of preparing a draft bill or to agree to a particular plan.

<sup>XXIV</sup> See Pizzanelli, 2008, 138 *ff.*

<sup>XXV</sup> Mori, 2006.

<sup>XXVI</sup> See Ruano de la Fuente, 2010, 104 *ff.*

<sup>XXVII</sup> See how Art. 56 of Law 12/2007, on social services in Catalonia defined an authentic “process of participation”:

*“The competent administrations must establish processes of participation in the planning, management and evaluation of social services. The term process of participation is understood, for the purpose of this Law, comprehensively including the following three phases:*

- a) *Information phase, in which citizens are informed of the project for which they intend to request participation.*
- b) *Citizen debate phase, through which, using the appropriate methods, the debate among citizens and the collection of proposals is promoted.*
- c) *Return phase, during which the participants are notified of the results of the participation process”.*

<sup>XXVIII</sup> In our opinion, citizens are a way to separate the nucleus of participatory democracy, which we defend (highlighting bi-directionality, dialogue and economic transparency) and include it in direct democracy; obviously, in such cases, it is up to entities other than the citizens to decide. This is a matter of “shaping”, and more often than not of “legitimising”, decisions adopted by the public authority. This, however, does not prevent another regulation, which is appropriate for bi-directionality, from bringing consultations closer to the above-mentioned referents of participatory democracy. This would be true if the regulation foresaw public authorities’ obligation to draft some type of memorandum after the consultation containing the reasons that have led them to accept as appropriate or to reject it, or to generally justify the impact the consultation has had on the decision finally adopted.

Some Autonomous Communities have a broader and sometimes less clear concept of participatory democracy, bringing together its various different forms. Others, however, regulate it differently, and, in some cases, enter into conflict with the instrument of the State referendum. See Law 4/2010, March 17<sup>th</sup> of Catalonia, regulating popular consultations by means of referendum, challenged by the President of the Government, whose appeal overruled the referendum of the municipality but not the autonomous community, due to a coincidence in the subject of the consultation – the electoral body – which foresees a referendum at the state level. In fact, the Government of Catalonia has recently passed (on December 26<sup>th</sup>, 2011) the elaboration of a bill resulting from a popular consultation, in this way avoiding the possible unconstitutionality of the rule, also in light of constitutional jurisprudence (STC 103/2008, in which the Court establishes the elements of the referendum: electoral body, electoral proceedings and concrete judicial guarantees). Paradoxically, the subject of the consultation cannot raise problems of unconstitutionality, for which the bill has no need to mark out a boundary beyond a generic reference to the matters of interest of the Autonomous Community or a similar formula.

Regarding popular consultations at the autonomous level *vid.*, for all, Castellà Andreu, 2011.

<sup>XXIX</sup> To this regard, observe how the Foral Law of Guipuzcoa establishes a rather strict set of rules for resident citizens.

<sup>XXX</sup> See Vila Ramos, 2008, 7 *ff.*



XXXI Ultimately, it is a question of not ceasing to consider that citizen dedication to political participation depends on such a limited resource as time, which as is well known, it is not utilised in the same way by both sexes. Cf., among other works, J. Font, “Participación ciudadana y decisiones públicas: conceptos, experiencias y metodologías”, in Ziccardi 2004 (available at [www.iis.unam.mx/pub\\_elect/zic/joanfont.pdf](http://www.iis.unam.mx/pub_elect/zic/joanfont.pdf)); Lousada Arochena, 2005; Carrasco Bengoa, 2002, available at: [http://www.inmujer.migualdad.es/mujer/mujeres/estud\\_inves/2002/577.pdf](http://www.inmujer.migualdad.es/mujer/mujeres/estud_inves/2002/577.pdf)

XXXII Remember that autonomy, which is always limited, is also advocated by local entities; and that the fact that they do not have a legislative authority, does not give them a different degree of autonomy in terms of quality. In short, the autonomy of local entities is also political and, therefore, they can make their own public policies - even in the area of participatory democracy - unlike the State and the Autonomous Communities. See Álvarez Conde, 2008.

XXXIII As Joan Font reminds us, this is because the “perfect citizenry”, which is informed, active and coherent, is “a minority expression in Western societies”. Font, 2004.

XXXIV We cannot stress enough that the above-mentioned professionalisation leads to another classic problem in the debate on participation: the rare representation of those who participate and the consequent expansion of its prominence. *Ibid.*

XXXV Regarding its composition, it is a body presided over by the Guarantee Expert in participation and integrated likewise by the Leader of the *Giunta Regionale* and two experts belonging to the local administration, designated by the Council of the Local Autonomies.

## References

- Allegretti, U., 2010, *Democrazia partecipativa: un contributo alla democratizzazione della democrazia*, in Allegretti (a cura di), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Florence University Press, Florence, 5-45
- Allegretti, U., 2008, *Democrazia partecipativa e processi di democratizzazione*, *Democrazia e diritto*, 175-217
- Allegretti, G - Herzberg, C., 2004, *Participatory budgets in Europe*, TNI Briefing Series, No. 5
- Álvarez Conde E., 2008, *Curso de Derecho Constitucional*, Tomo II, Tecnos, Madrid.
- Bifulco, R., 2010, *Democrazia deliberativa, partecipativa e rappresentativa. Tre diverse forme di Democrazia*, in Allegretti (a cura di), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Florence University Press, Florence, 65-78
- Blondiaux, L., 2008, *Le nouvel esprit de la démocratie. Actualité de la démocratie participative*, Seuil, Paris.
- Castellà Andreu, J.M., 2011, *Las consultas populares en la STC 31/2010*, in Álvarez Conde, Rosado Villaverde (Dirección), Sanjuán Andrés (Coordinador), *Estudios sobre la Sentencia 31/2010, de 28 de junio, del Tribunal Constitucional sobre el Estatuto de Autonomía de Cataluña*, IDP, Madrid, 197-234
- Della Porta D., 2005, *Democrazia in movimento: Partecipazione e deliberazione nel movimento “per la globalizzazione dal basso*, in *Rassegna Italiana di Sociologia*, 307-344
- De Miguel Bárcena, J., 2005, *La dialéctica entre la democracia representativa y participativa en el orden constitucional de la Unión Europea*, in *Revista de Derecho Político*. 213-235
- de Vega, P., 1997, *En torno al concepto político de Constitución*, in García Herrera (dir), *El constitucionalismo en la crisis del Estado Social*, Universidad del País Vasco, Bilbao, 701-719
- Ferreboeuf, G., 2011, *Participation citoyenne et ville*, L’Harmattan
- Floridia, G., 2008, *Democrazia deliberativa e processi decisionali: la legge della Regione Toscana sulla partecipazione*, in *Stato e Mercato*, 83-110
- Floridia G., 2007, *La democrazia deliberativa, dalla teoria alle procedure. Il caso de la legge regionale toscana sulla partecipazione*, in *Le istituzioni del federalismo*,. 603-681.
- Font, J., 2004, *Participación ciudadana y decisiones públicas: conceptos, experiencias y metodologías*, in A. Ziccardi (Coord.), *Participación ciudadana y políticas sociales en el ámbito local*, IIS/COMESOL/INDESOL, México, (available at [www.iis.unam.mx/pub\\_elect/zic/joanfont.pdf](http://www.iis.unam.mx/pub_elect/zic/joanfont.pdf)).



- Genro, T. - De Suza, U., 1998, Quand les habitants gerent vraiment leur ville. Le Budget Participatif: l'expérience de Porto Alegre au Brésil, Ed. Charles Léopold Mayer
- Greenwood, J., 2002, Lobbisme, governança o democracia participativa en l'elaboració de polítiques públiques de la UE, in Revista del Centre d'Estudis Jordi Pujol, 9-27.
- Gret, M. - Sintomer, Y., 2002, Porto Alegre: l'espoir d'une autre démocratie, La Découverte.
- Koebel, M., 2006 Le pouvoir local ou la démocratie improbable, Bellecombe-en-Bauges.
- Lousada Arochena, J.F., 2010, El tiempo en las leyes con perspectiva de género, in Revista de Derecho Social, 83-96.
- Moreira González, C.J., 2004, El principio de democracia participativa en el Proyecto de Tratado de Constitución Europea, in Cuadernos Europeos de Deusto, 141-161.
- Mori, L., 2006, Immaginare pratiche democratiche, Università di Pisa, Pisa.
- Pérez Alberdi, M.R., 2008, Los derechos de participación en los Estatutos de Autonomía recientemente reformados, in Revista de Derecho Político, 181-205.
- Pérez Alberdi M.R., 2008, Democracia y participación, in Revista Catalana de Dret Públic, 343-370.
- Pizzanelli, G., 2008 Alcune note di commento alla legge regionale Toscana che promuove la partecipazione all'elaborazione delle politiche regionali e locale (l.r. 27 December 2007, No. 69), Le Istituzioni del Federalismo, 129-150
- Pizzorusso A., 2003, Democrazia rappresentativa e democrazia partecipativa, in Studi in memoria di Carlo Esposito, Vol. III, CEDAM, Padova, 1473-1488
- Ridola, P., 2005, La parlamentarización de las estructuras institucionales de la Unión Europea entre democracia representativa y democracia participativa, in Revista de Derecho Constitucional Europeo, 21-41
- Robbe F., 2007, La démocratie participative, L'Harmattan, Paris.
- Roussopoulos, D. - Benello, C.G., 2005, Participatory Democracy. Prospects for Democratizing Democracy, Black Rose Books, Montréal.
- Ruano de la Fuente, J.M., 2010, Contra la participación: discurso y realidad de las experiencias de participación ciudadana, in Política y Sociedad, 93-108
- Rubio Núñez R., "La guerra de las democracias", Asamblea. Revista parlamentaria de la Asamblea de Madrid, 89-107
- Santomee, Y. - Ganuza, E., 2008, Democracia participativa y modernización de los servicios públicos. Investigación sobre las experiencias de presupuesto participativo en Europa, TNI – eBooks
- Santomer, Y. - Bacqué, M.H., Rey, H., 2008, Les Budgets participatifs en Europe. Des services publics au service du public, La Découverte, Paris
- Torns Martí, T., 2005, De la imposible conciliación a los permanentes malos arreglos, in Cuadernos de Relaciones Laborales 1, 15-33
- Carrasco Bengoa, C. (ed.), 2002, Tiempos, Trabajos y Flexibilidad: una cuestión de género, available at: [http://www.inmujer.migualdad.es/mujer/mujeres/estud\\_inves/2002/577.pdf](http://www.inmujer.migualdad.es/mujer/mujeres/estud_inves/2002/577.pdf).
- Vila Ramos, B., 2008, La formación del ciudadano. Un camino hacia la democracia participativa, in Revista Comunicación y Hombre, 3-18.
- VV.AA., 2008, Repensando el Estado democrático, in Revista Catalana de Dret Públic, No. 37
- AA.VV., 2010, Revista Deliberación, No. 1
- Zapata-Barrero, R., 2005, Una nueva "filosofía" de la UE: tradición versus innovación en la propuesta de ciudadanía cívica, in VV.AA., II Seminario Inmigración y Europa, Fundació CIDOB, Barcelona, 61-78