



ISSN: 2036-5438

**Legislative initiative and popular participation in the
1948 Constitution and its transposition in the first
generation**

by

Anna Maria Poggi

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





Abstract

The instruments of people's participation found in the "first generation" Statutes (1971) were initially perceived as a further possible link between politics and civil society, in line with the overall favourable opinion that was attributed to people's participation mechanisms in every field of social life in those years.

However, Regions thwarted the hope that people's participation instruments would become a second channel of participation in politics. The instruments described in the State model did not ensure the results hoped for and political parties remained the main way of participating in political life.

At the beginning of the Nineties, the Public Administration proceedings were amended and some instruments of citizens' participation were introduced. These changes influenced the future discipline of legislative proceedings.

After the first reform of Title V of the Constitution (1999), the new text referring to art. 123 described the instruments for regional people's participation as the previous one had done but the other significant changes introduced by the constitutional reforms in 1999 and 2001 permitted this norm to be interpreted differently. The difference may be based on three grounds: 1. the new presidential form of government, which implied research into closer links between Government Bodies and civil society; 2. greater legislative powers assigned to Regions, giving those Bodies more power to exert their influence on citizens' lives; 3. "disaffection" with politics, as participation in the legislative process might become an alternative channel to traditional political representation.

Therefore, in the "second generation" Statutes, instruments of people's participation were described as "broad concepts" or as instruments strictly linked to their purpose.

Regional norms encourage legislative initiative (provided that technical assistance for those who are promoting a law project is free, the costs sustained for collecting signatures are not charged to promoters, people's legislative projects do not lapse at the end of legislation, some promoters are allowed to explain the project to the Regional Council, and if the project has not been discussed by a precise day, it is automatically



registered in the agenda of the Regional Council). The limits of that instrument consist in: 1. a number of issues where the initiative cannot be exercised; 2. a minimum number of signatures are requested.

Despite the guarantees mentioned above, people's legislative initiative has not been exercised a great deal. This is mainly due to the fact that the norm found in most of the related provisions foresees that the Council cannot amend the projects presented by promoters.

However, the new Statutes guarantee other forms of people's participation in legislative proceedings, such as cognitive hearings, preliminary investigations, the opportunity to propose issues of great interest to the Council and the Registers of Associations, which are gaining considerable success.

Another way of participation consists of establishing Bodies representing the economic or social parts of society but their implementation has been very unassuming up to now.

To sum up, there are two models of people's participation: the first one, comprising the initiative, is based on the principle of separation; the second one, comprising the other instruments, is based on the principle of integration/concerted action. The Constitutional Court has recognized the importance of the statutory provisions that refer to people's participation institutes, therefore asserting their "juridical" nature

Key-words

legislative initiative, popular participation, Italy, regional system



Preliminary Remarks

The “first” regional statutory events in 1971 produced a time of hope for public participation institutions.

It was expected that the statutes would create links between political and civil society, with the essentially representative form of the regional government structure and thanks to a provision of the Constitution that provided ample opportunities for implementation in such terms. Moreover, article 123, par.1 of the Constitutional law provides that “*The statute defines the exercise of initiative and of referendum on regional laws and regional administrative decisions*” hence making provisions for popular votes. In fact we know that legal theory considered this passage as the clearest evidence of the originality in the approach of the Constitution, indicating the expectation that the future statutes would deliver a meaningful response and signifying the need for the links the new political entities (Regions) were to create with local communities. Against this backdrop, nascent Italian regionalism faced the challenge of drafting statutory charters that would provide an answer to the participation and emancipation expectations that had arisen during the 1968 revolutionary movement and were the basis for the country’s political and institutional debate (Barrera 2006: 117). It was a time in which “the main elements of the constitutional republican edifice” all “unfroze” simultaneously. These were the years during which elections were first held in the “ordinary” regions and the Law on referendums was adopted. The subsequent political events – the first memorable referendum on divorce in 1974, the regional elections in 1975 and the political elections in 1976 – highlighted the new political mood the Nation was experiencing.

During those same years, in other but equally important areas, ordinary legislation aimed to extend the principle of participation to all areas of associative life: from schools (with the introduction of parent and student participation in the school bodies) which until then had been the prerogative of teachers only, to districts in large cities (where representative political assemblies were established), to work places (with trade union representation in all workplaces) and, keeping to the best known instances, to the



organisation of healthcare, actually introducing the principle of City Councils taking on the role of administrating the health service.

In the early 70s the climate was unquestionably favourable to seizing the constitutional invitation to endow regional statutes with institutions that might act as bridges between political and civil society. In such a context, “Planning” and “Participation” were seen to be the two pillars of a new form of governance (Paladin 2004: 251). In essence, the notion of participation could be understood schematically yet effectively as an opportunity to establish new channels that might integrate traditional political representation.

Unquestionably, as has been well explained, this climate changed with the appearance of terrorism (Barrera 2004: 119). However it is also true that the Regions fell short of their expectations. The statutes remained confined to the model of weak participatory institutions provided for by the Constitution and by state legislation. One of the most convincing explanations, according to legal scholars, is that “ <...> the regional political class was still unsure about its own identity and its potential to establish itself as a socio-political entity that might have some level of autonomy from the political class at a State level. Hence there was little stimulus for it to promote forms of debate with public opinion at a regional level. In any event, in a context where there was little understanding of the special value of ‘regional politics’, such a debate would not have been of much benefit in terms of gaining direct visibility at national level” (Luciani 2005: §1).

In other words, the national parties (and the national trade union associations) kept a firm grasp on the participatory channels in a context in which political presence was perceived as being mediated only by those entities which, thanks to their strength, could achieve the promise of the constitutional revolution provided for under art. 3, paragraph 2 of the Constitution, the promise of substantial equality (Caretto 1972: 485). The call for “*effective participation of workers in political, social and economic activities*”, contained in art. 2 of the 1971 Calabria Statute, is emblematic in this respect.

In other words, the aforementioned statutes lacked one essential condition for public participation, what political scholars have defined as the “outcomes of participation”, in other words a reasonable belief in the successful outcomes of initiatives undertaken by individuals for whom such participation is intended.



Petitions, legislative initiatives and referendums have never been considered as capable of assuring sufficiently effective outcomes to justify their adoption by the social entities for which they are intended: in other words instruments whose use might be warranted by the effectiveness of their outcomes.

Hence one can easily grasp how the public participatory channels provided for by the 1970 statutes soon shifted away from the original model, which linked them closely to the Regional Councils, the assemblies providing direct representation to local communities. In other words it is not difficult to appreciate why the preferred interlocutors chosen by single citizens and social and economic stakeholders became instead either the regional Juntas of the regional administration in its entirety.

1) **The 1999 and 2001 Constitutional Revisions: the same “text” but a different “context”**

What was subsequently and rather unfairly defined by some as “participation euphoria” (Cuocolo 2003: 314) soon died out, leading to the establishment of faded political participatory institutions at a local level.

However, it was only the later round of reforms, in the early nineties, that substantially affected local authorities (City Councils and Provinces), once again focusing on the participation issue, albeit in the field of administrative procedures. It was during this period that models for the participation of individuals in the decision making process of public administrations were introduced, and such models were to change not only the actions but also the actual “features” of local government administration. As we will discuss later, it is precisely some of these institutions that some of the Regions have recently taken into consideration in re-shaping their own political participation institutions and more specifically participation in the legislative process.

On the strength of the changes achieved at a local level (mainly municipal), it had been expected that the “second” statutory season, which started with the 1999 – 2001 constitutional reforms, would be extremely incisive and better able to keep the promises that the first statutory round had not fulfilled.



Despite analogies with the previous formulation, the specific content of the statute in the reformulated article 123 of the Constitution (“*The statute regulates the exercise of the right of initiative and referendum with respect to Regional laws and administrative procedures and to the publication of regional laws and regulations*”) should be considered in today’s different setting. While prior to 1999, the statute established “*the provisions for the internal organization of the Region*”, today it “*determines the form of government as well as the fundamental organizational and operational principles*”.

Even though the text is basically similar, it is today’s context for legislative initiative (and, generally speaking, for public participation in legislative processes) that makes the difference. There are at least three factors that could have a significant effect on its revitalisation.

The first factor, as far as the form of government is concerned, is that the clear presidential option, and hence the extensive powers conferred upon the regional government, together with the majority electoral system, requires a re-balancing of political representation (Rivosecchi 2006: 126). In other words the Regional government should be creating room for the variety of instruments that can strengthen its ties with regional political society, both through the direct representation provided by the parties in the Regional Council, and also through channels outside the Regional Council that can provide more appropriate representation of other interests.

The second factor pertains to the greater legislative power conferred upon the Regions through the 2001 revision of Title V. Today, more than in the past, legislative initiative and public participation in regulatory processes may prove of interest to regional society as a whole, since it is able to relate to concrete interests more than in the past.

The third factor is the generalised and increasing “disaffection” with politics in our country. In this respect, like it or not, participation in the legislative process could become a channel that would no longer be just an adjunct but would be a real alternative to traditional political representation.



2) The “second generation” statutes – public participation in the legislative process

In view of the above-described context, one comes to realise why several statutes confer upon public participation what has been defined as “[...] a broad meaning [...]” (Luciani 2005: §4.1).

Hence, under article 15, the Emilia-Romagna statute provides that:

1. *The Region, within the scope of its constitutionally recognized powers, acknowledges and guarantees the right to participation, provided for by the present title, to any person residing in a municipality within the region, including the right to vote in referendums and in other forms of popular consultation.*
2. *The Region acknowledges and encourages the autonomy of democratic forms of associations and self-management and assures any organizations that express widespread or collective interests the right to publicly disseminate and exchange opinions on topics of regional relevance, through appropriate consultation mechanisms;*
3. *Any stakeholder of general or private interests, as well as diffuse stakeholders representing widespread interests in associative form, to whom an act of the Region may cause harm has the right to intervene in the process of formulating such an act, according to the procedures established by the Statute and by the regional laws.*

In the Calabria statute too, article 4 reads:

The Region encourages the participation of individuals, of social and political entities, of all the components of the Calabria community, and of Calabrian communities worldwide, in the life of regional institutions, so as to achieve a state of full democracy and the civil development of its population.” (paragraph 1) and *“In order to achieve the above, the law establishes the necessary procedures and criteria for participation to be effective, also assuring services and regional structures and providing for consultation with entities that represent diffuse social requests”* (paragraph 2).

The wording here depicts a truly broad form of participation, a generic participation in the “life” of institutions and an openness to “consultation” with civil society.

On the other hand, the approach that has been defined as “restrictive” (Luciani 2005: §4.1), consists in shared participation in public decision making processes and entails accepting responsibility for public decision making.

Article 72 in the Tuscan statute reads:



The law promotes (...) the participation of citizens, residents and organised social players in different forms: as an independent initiative submitted to an administration, as a voluntary, proactive contribution to regional initiatives, as an instrument to take part in the formal stages of consultation, as a contribution in the evaluation of the effects of regional policies.

Furthermore, article 20 of the Umbria Region statute states that: “*In order to create new opportunities for direct democracy and social inclusion, the Region ensures the recognition and participation of individual citizens and their associations, in the exercise of the legislative, administrative and governance functions of regional bodies and institutions*” (paragraph 1) and that “*participation is achieved through legislative and referendum initiatives, through the right to petition and to consultation*” (paragraph 2); as well as article 72, paragraph 1 in the Piedmont statute, which reads:

The following are to be considered as participation institutions:

- a) popular initiatives;*
- b) local authority initiatives;*
- c) abrogative and consultative referendums;*
- d) questions to regional bodies, addressed by local bodies, trade unions, regional or provincial professional associations;*
- e) Petitions submitted by individual citizens, bodies and associations.*

Lastly, article 8, paragraph 2 of the Lombardy Statute states that “*The Regional Council and the Junta, within their respective spheres, shall consult stakeholders’ representatives on regulatory texts and programming instruments with particular concern for measures that produce financial effects*” and article 50, paragraph 4 reads “*any person who resides in Lombardy may, individually or as an association, present a petition to the Regional Council requesting it to act on matters of general interest*”.

Basically, the approaches that may seem to be the most restrictive in actual fact are not, as they present the strictly institutional terms of the issue, thus linking the end (the democratic growth of the regional community) to the means (*stricto sensu* the participatory institutions).

We shall now attempt to understand the regulatory impact and participatory “outcomes” these instruments have delivered so far.



3) Popular legislative initiative in the statutes of ordinary Regions; many favourable provisions, few limitations and conditions

In reading about the provisions for legislative initiative (both the statutory and the legislative rules, to which the former make reference), such an instrument would appear to be the “primary instrument” for popular participation in the legislative process.

Many favourable rules therefore do exist and should lead to encouraging the use of such an instrument. First of all, there is a provision established by all the Regions, that assures technical assistance free of charge, enabling any citizen intending to present a popular initiative proposal to require the assistance of the appropriate Regional office in drafting the texts. They may also request any useful data for the drafting of such a proposal^I.

Secondly, the promoters shall not incur any expenses for the collection of signatures: Regions generally commit to refunding them, if so requested and provided that the bill has been declared admissible, in other words that it does not relate to one of the matters excluded by statute from such initiatives^{II}.

Thirdly, a further important and favourable rule has been incorporated by all the Regions; according to this provision, popular initiative legislative proposals cannot lapse at the end of the legislative period (as instead occurs in the case of any other legislative proposal) and, therefore they do not require re-submission to the newly appointed Regional Council^{III}.

Fourthly, the Advisory Commission, tasked with examining the legislative proposal, is required to inform its presenters of the date on which its discussion will start: presenters are entitled to intervene in the discussion, to illustrate the proposed legislation and to present relevant reports and documents.^{IV}

Lastly, should the proposal not be examined, or in the event a decision has not been taken within a specific time limit (ranging from three to six months, depending on the Region) the proposal will be entered de jure into the agenda of the Regional Council and it shall be discussed during the first Council session that follows the date on which the period expires, and it shall have precedence over any other item of business.

In contrast to the above, not many restrictions have been applied to such legislative initiatives. Most Regions provide for a minimum number of supporters (from 3,000 to



10,000 according to the total population)^V, moreover there are issues for which legislative initiatives are prohibited. Despite some differences between Regions, the following is a list of the issues to which such prohibition applies^{VI}:

- a. tax and budgetary laws;
- b. statute reviews;
- c. approval of regional plans and programs;
- d. laws relating to the organisation of regions and the financial status of their employees^{VII};
- e. electoral laws;
- f. laws that ratify agreements with foreign States and territorial entities in other States or other Regions^{VIII};
- g. laws restricting land and environment use^{IX}.

The same restrictions apply to legislative initiative at a state level with one proviso: proportionally, the number of sponsors required at a regional level is higher (50.000 at state level and 3-5000 at regional level) and even disproportionately higher, as in the case of Lazio (10.000!).

Thus the regional situation confirms what we already know about popular initiative at a state level: as things stand one can hardly consider the above described initiative as a popular initiative, in the sense of an initiative freely taken by each of the 3, 5 or 10,000 citizens. Such an initiative is more feasibly undertaken by political parties (or ideologically based associations) which deal with gathering the signatures of individual citizens. On the other hand, this “tension” between direct popular participation and the political mediation of parties or associations is inevitable, as the example of the Tuscan statute proves.

Article 72, paragraph 1, on the one hand, affirms the direct participation of citizens (“*Under the law [...] the participation of citizens is encouraged [...] in different forms: as an independent initiative submitted to the administration, as a voluntary, proactive contribution to regional initiatives, as an instrument for taking part in the formal stages of consultation, as a contribution in the evaluation of the effects of regional policies*”), but immediately after, in paragraph 3, the same provision specifies that “*political parties are fundamental instruments for participation*”.

This may be understandable in terms of state-level politics; it is less so at a local level where the principle of subsidiarity (which was formally added to the Constitution with the



2001 revision) could have recommended alternative options to enable citizens to achieve a greater closeness to the entity by which they are governed, by the use of request processes better suited to the principle of subsidiarity.

However, over and above this last point that unquestionably does affect the force of the institution, the availability of such an instrument to citizens, either individually or as associations, and the fact it is an institution with significant favourable provisions, creates the expectation that it be accessible^X.

4) The “real” limits of the institution and its poor participatory “outcomes”

In actual fact, the “outcomes” of this instrument are extremely limited.

In the region of Piedmont only one popular initiative legislative proposal has become law; five such legislative proposals were presented during the last but one legislative period, but none of them became law. Not a single proposal was presented during the last legislative period.

The latest Report on the 2008 status of Legislation in the Puglia Region shows that not a single popular initiative bill was presented that year either.

The same is true for Lazio, where the most recently published Report refers to the year 2007. The 2005-2002 reports for the regions of Lombardy and Abruzzo both highlight that not even one popular legislative initiative was presented during the years covered by the reports.

The region of Emilia Romagna Report for same years states that two public initiative bills were presented in 2005, one in 2006 but none were presented in either 2007 or 2008.

As regards Calabria one can infer from the 2005-2009 Report that one popular initiative legislative proposal was presented and adopted.

If we consider the special regions the situation does not change, all the more so because these regions provide less favourable conditions for this institution.

The Report on legislation in Friuli Venice-Giulia shows there were no popular initiative legislative proposals from 2003 to 2009.



The Report presented by the autonomous Province of Trento is even more eloquent. Four popular initiative bills were presented since 1948 but none of them was adopted.

One can therefore wonder why there is such a discrepancy between the provisions that favour the institution and its surprisingly limited “outcomes”.

The main reason may lie in the participation “model” embodied in the popular initiative approach, or how it has been transposed into statutes. In actual fact, it is a model that separates the participation circuit from the political circuit, *tout court*.

The real limits of the institution and the main reason for its disappointing results can be found in a provision that would appear to be absolutely consistent with the *ratio* of the institution itself, but can actually paralyze its potential. The provision exists in all the Regions and finds its clearest formulation in the Regional Law of Tuscany, no. 51/2010: “Rules governing popular initiative legislation”.

“To protect the will expressed by the voters who have signed for a legislative proposal, provision is made for the proposal to be put to the vote in the Chamber with regard to the substance of the original text (within nine months), whereas any possible amendments from the referring Council commission shall be presented separately.” (Preamble, paragraph 5).

Similar formulations are provided for by almost all the other regional laws that govern popular legislative initiatives:

- *“Proposals are submitted to the examination of the Council with the wording drafted by the applicants”* (article 9 of regional law no. 1/1971 of Lombardy “Rules governing popular initiative for the making of laws and other Regional acts”; article 8 of regional law no. 4/1973 of Piedmont “Popular and local authority initiatives, abrogative and consultative referendums” and article 9 of regional law no. 9/1973 of Puglia “Popular participation in the regulatory activities of the Region”);
- *“No amendments may be made to the Commission’s proposal not even with the assent of the official Applicant, and it will be submitted to the Chamber as drafted by the applicants, together with any possible amendments presented during its discussion before the Commission”* (article 7 of regional law no. 1/1973 of Veneto “Rules governing popular initiative for regional laws and regulations, regional abrogative and consultative referendums”);
- *“In all instances, popular initiative proposals are subject to examination by the Council in the text drawn up by the applicant”* (article 67, statute of Basilicata);



- *“The proposals are subjected to the examination of the Council in the text drawn up by the applicants. Any amendments made by the Commission are provided separately”* (article 12 of regional law no. 13/1983 of Calabria "Implementing measures of the Statute for popular legislative initiatives and referendums"; article 12 of regional law no. 44/1977 of Liguria "Implementing measures of the Statute for popular legislative initiatives and referendums"; article 9 of regional law no. 23/1974 of the Marche "Popular legislative initiative").

On the one hand, the fact that the original text may not be changed shows respect for the wishes of applicants, but on the other hand it is the main reason for which proposals are hardly ever adopted. All laws are the result of political composition and compromise, which are achieved through the opportunity to implement amendments. If amendments are not an option, a legislative proposal has no chance of being adopted.

5) **Hearings and consultations: the presence of citizens as individuals or associations in the legislative process**

Other important instruments, different from legislative initiative, also exist “within” the legislative process: accepted institutions such as public and other hearings as well as fairly innovative tools introduced recently by several Regions, such as public preliminary inquiries (Emilia-Romagna statute); the possibility of proposing issues of significant interest to the Council. (Emilia-Romagna and Lombardy statutes) and the Register of associations and collective entities to be consulted and/or heard (Emilia-Romagna statute).

With respect to the first of these, article 17 provides that:

1. *In the process of making general regulatory or administrative acts, the adoption of the final provisions may be preceded by a preliminary public inquiry.*
2. *Such an inquiry is held in a public proceeding in which all parties are heard and with the participation not only of the regional Councillors and the regional Junta, but also of associations, committees and groups of stakeholders not representing individual interests who may participate through a spokesperson or with the assistance of an expert.*
3. *The legislative assembly calls a public inquiry, at the request of no less than five thousand persons, and identifies the entity responsible for the procedure.*



4. *The regional law establishes the implementation methods for the public inquiry and the time limits for the completion of each stage and of the entire process.*

It is firstly worthy of note that in the wording of the statutory rules, laws and administrative acts are considered together, as if recognising the substantial assimilation of such categories in routine, general Regional proceedings. But what allows one to grasp the full innovative significance of the regulation is the fact it was challenged by the Government before the Constitutional Court for allegedly infringing the principle of good public administration (article 97 of the Constitution), by prolonging the decision making process.

The Court ruled (decision no. 379/2004) against the Government declaring the challenge to be groundless and considering the choice of the Region to be legitimate. It noted that such a choice creates a “link” between Councils and private entities, noting moreover that pursuant to Community law the reasons for a decision are also a condition for its lawfulness.

As has been clearly explained (Mangia 2006: 9-10), at least 4 elements make it an innovative institution: it introduces an approach that differs from traditional hearings; it is requested by the persons concerned; it establishes an adversarial process between the Council and Junta on the one hand, and the intervening associations on the other; lastly it imposes motivation.

All these terms are well-known in the case of private entities that take part in administrative procedures, but the fact of having transposed them into the legislative process is no small matter, since what ensues is that popular participation may reach the point of obliging the bodies of Regional governance to change their *modus operandi* (consider the reasons for the legislative act).

The second innovative and interesting feature can be found both in article 50, paragraph 4, of the Lombardy statute (*Persons residing in Lombardy may address petitions to the Regional Council, either individually or as associations, requesting its intervention on matters of general interest*) and in article 18, paragraph 6, of the Emilia statute, in which entities promoting a legislative initiative may moreover, “*present matters of importance to the Assembly, even if in general terms, and present proposals. The Assembly shall then have six months to examine the matter*”.



The third and most recent institution can be found in the Emilia statute, the Register of Associations, provided for by article 19 as follows:

1. *The Region adopts acts and regulations to put into effect the right of associations to participate in the legislative process and to define general policy and position guidelines, striving for equal conditions in the representation of stakeholders and helping to remove any causes that de facto prevent such a right.*
2. *The legislative Assembly regulates the registration procedures and criteria and the keeping of the general Register, articulated by Assembly Commissions, of all the associations that request participation in regional activities under paragraph 1 and whose aims are based on goals of general interest.*
3. *In order to achieve permanent dialogue with associations on the policies and guidelines of their work, the Assembly defines a protocol for consultation with associations, as referred to in paragraph 2. The protocol is an integral part of the Rules of Procedure of the Assembly.*
4. *On the basis of the consultation protocol, each Commission decides what procedures to adopt to inform interested associations and implement their comments and proposals and to convene them in the event of public hearings.*

The notion of a Register is nothing new, but what is really novel is that the statutory requirement states that Council Commissions should draw up a consultation protocol that consequently becomes an integral part of the Council's internal rules of procedure.

6) The reasonably satisfactory participatory outcome of consultation instruments in general

The 2005-2008 Report on legislation in the Emilia-Romagna Region describes the success of these instruments:

“Since the beginning of the VIII legislature, the report on regional legislation has also intended to monitor the level of actual implementation, over the years, of the main instruments for popular participation in the legislative process provided by the Statute, with the intention of furthering democratic participation in regional lawmaking.

- The data [...] shows [...] that public hearings were the most frequently used popular participation instrument during the years in question (as many as 23 were convened in 2007 and 22 in 2008).
- Article 19, paragraph 2 of the Statute that provides for a general Register for associations has also been fully implemented. During the course of 2008, after having set up registration procedures for the associations which had applied within the time limits, the Register was



compiled (following the Presidency Office resolutions no. 143 dated 10 June 2008, and 182 dated 22 July 2008), and articulated into sections which matched the remits of the Assembly Commissions. It initially included 206 associations. A further 26 associations were subsequently registered during the Register update in December 2008 (with Presidency Office resolution no. 260/2008)^{XXI}.

The 2009 Report on the legislation of the Region of Calabria proves the importance that these participation instruments may have in the preparation of legislative acts, and generally speaking, in the way territorial administrations work:

Instead, with respect to hearings, not only do they have the advantage of being able to provide in-depth technical knowledge but they can also better achieve the principle of democracy by involving social actors in political and legislative decision making. [...] most Commissions have resorted to hearings and the greater frequency in some cases is to be attributed to their specific remit and consequently to the content and consequences of the provisions that have been adopted.

The First Commission held a hearing with the representatives of ABI regarding a draft act on "The establishment of a register of banks for the Calabria region.

The Second Commission allowed time for hearings not only when the draft budget act was being examined, but also when proposals for other laws or administrative provisions were being discussed. More specifically, during the discussion of the budget, a total of 19 hearings were held with representatives of professional, practitioners', entrepreneurial, trade union and local associations, as well as with the institutional representatives of boards and foundations: they were given the opportunity to express their positions on issues that concerned them.

A total of 15 further hearings were held during the examination of other draft regulations on farm-tourism, mushroom gathering, the protection of firms and economic development.

During the discussion of the 2009/2010 school sizing plan, the Third Commission heard the competent Councillors from the provinces of Cosenza, Reggio Calabria, Vibo Valentia and Crotona. During the examination of the bill on scientific research and technological innovation, a Professor from the University of Calabria was heard. Regional representatives from Cisl and Uil were heard on the bill to balance the 2008 deficit and on the agreement with the State to balance the regional Health Service deficit.



As far as the Fourth Commission is concerned, reference should be made to the above mentioned public inquiry activities ^{xii}.

In amending regional law no. 33 of 29 December 2004 on “Regulations favouring Calabrians worldwide and on the coordination of external relations”, representatives of the Regional Council on emigration were heard by the Sixth Commission, whereas representatives from CNA for artisans and small enterprises from Cassartigiani were heard on opinion 67/8[^] that the Commission had to provide on resolution 237 of April 24th 2009 of the regional Junta regarding the “Approval of the implementation directives for aid schemes and incentive instruments to provide regional aid”^{xiii}.

7) Subsumed participation in participatory “organs”: CRELs

Another new popular participation instrument, for which we do not yet have much evidence, is the establishment in some of the Regions of a collegiate body to represent economic and social forces: the CREL or Regional Council on Economy and Labour.

In addition to the Council of local autonomies (compulsory under the Constitution) some Regions have also provided for the establishment of such an entity to act as a representative body of what, in Italy, goes by the name of “functional autonomies” (such as the Chambers of Commerce).

The body that represents social forces has been created in Lazio^{xiv}, in the Marche^{xv}, in Sardinia^{xvi}, in Tuscany^{xvii}, in Sicilia^{xviii} and in the Valle d’Aosta^{xix}.

In Calabria a body representing the social forces was never created, however it was governed by regional law no. 17/2007 which can now be considered as repealed following the repeal of clause 56 of the statute. In Liguria the CREL was established under regional law no. 16/2006, but it has not yet been implemented, whereas in Piedmont, article 87 of the Statute, which provides for the creation of the body, has not yet been implemented^{xx}.

The Province of Bolzano does not have such a body either, but in the case of reform or other especially important draft legislation, the legislative commissions often invite the main social forces representatives to hearings. No body that represents the social forces has been provided for in the Province of Trento.



8) Summary: Two “models for popular participation”: separation; integration and/or consultation

What emerges from this overview is that we have two models, rather than two institutions:

- a) the model in which there is a separation between citizens and Regions: this is basically provided for by the institution of legislative initiative;
- b) the model of integration/consultation.

9) Conclusions

National case-law has certainly not given much assistance to the brave. The 2004 decisions (no. 372, 378 and 379) greatly diminished the importance of the statutory innovations, leading to the hypothesis of statutory “non-regulations”, statements in the statutes that only appear to be mandatory, and are instead substantially declarative (declarative i.e. general and not regulatory, or even “literary” cultural options).

Criticism brought against this case-law is, in my opinion, rather facile (regulations that reproduce others which take precedence are nevertheless regulations, as constitutional case-law has repeatedly asserted, and in fact often declaring them as unconstitutional; the fact of being mandatory is not necessarily in the nature of being regulatory; – a generic status does not exclude being regulatory, etc.); it is no coincidence that much legal theory has been merciless in this respect, (see in particular Anzon). What deserves to be noted here is that it is precisely in the field of participatory institutions that the Court has considered the issue under different terms, so much so that decision no. 379 in 2004 scrutinized the substance (issuing a declaration of groundlessness and not of inadmissibility due to failure of being regulatory of the scrutinized norms), of article 15, paragraph 1 of the Emilia-Romagna Statute which reads “*The Region, within the scope afforded to it by the Constitution, ensures the recognition of participation rights to any person who resides in a Commune located in the Region, as referred in the present Title, including the right to vote in referendums and in other forms of public consultation*”. In this case one may notice, despite the broad approach of the statutory provision, the Court was unable or unwilling to question its lawfulness, and hence



did not judge the issue of constitutional legitimacy contained in the governmental appeal as inadmissible.

^I Cfr.: art. 38, par 1, R. L. no. 44/2007 of the Abruzzo Region, "Discipline regarding the abrogative and consultative referendum and the legislative initiative"; art. 4, R. L. no. 40/1980 of the Basilicata Region, "Norms regarding popular initiative for regional laws and abrogative referendum"; art. 4 R. L. no. 13/1983 of the Calabria Region, "Norms for the implementation of the Statute about popular legislative initiative and referendums"; art. 18, par 3, Statute of the Emilia-Romagna Region; art. 4, R. L. no. 34/1999 of the Emilia-Romagna Region, "Consolidated norms about popular initiative, referendum and public inquiry", as modified by the R. L. no. 8/2008; art. 3 R. L. no. 63/1980 of the Lazio Region, "Discipline regarding the right of popular initiative and of the Local Autonomies initiative toward the making of laws, regulations and regional administrative acts"; art. 4 R. L. no. 44/1977 of the Liguria Region, "Norms for the implementation of the Statute about initiative and popular referendum"; art. 3, R. L. no. 1/1971 of the Lombardy Region, "Norms regarding popular initiative toward the making of laws and other regional acts"; art. 3 R. L. no. 23/1974 of the Marche Region, "Popular legislative initiative"; art. 15, par. 5, Statute of the Puglia Region; art. 3 R. L. no. 9/1973 of the Puglia Region, "Popular participation in the Region's regulatory activity"; art. 4 R. L. no. 51/2010 of the Tuscan Region, "Norms regarding popular initiative of laws"; art. 6 R. L. no. 14/2010 of the Umbria Region, "Discipline of the participation mechanisms to the regional bodies activities (legislative and referendum initiative, petition right and consultation)"; art. 41, par. 1, Statute of the Veneto Region; art. 3 R. L. no. 1/1973 of the Veneto Region, "Norms regarding popular initiative on regional laws and regulations, the abrogative referendum and the regional consultative referendums".

^{II} See art. 48-49 R. L. no. 44/2007 of the Abruzzo Region, "Discipline regarding the abrogative and consultative referendum and the legislative initiative"; art. 9 and 30 R. L. no. 40/1980 of the Basilicata Region, "Norms regarding popular initiative for regional laws and abrogative referendum"; art. 9 R. L. no. 13/1983 of the Calabria Region, "Norms for the implementation of the Statute about popular legislative initiative and referendums"; art. 8 R. L. no. 4/1975 of the Campania Region, "Popular and Local Autonomies legislative initiative"; art. 47-48 R. L. no. 34/1999 of the Emilia-Romagna Region, "Consolidated norms about popular initiative, referendum and public inquiry" as modified by R. L. no. 8/2006; art. 12 of the R. L. no. 63/1980 of the Lazio Region, "Discipline regarding the right of popular initiative and of the Local Autonomies initiative toward the making of laws, regulations and regional administrative acts"; art. 9 R. L. no. 44/1977 of the Liguria Region, "Norms for the implementation of the Statute about initiative and popular referendums"; art. 7 R. L. no. 1/1971 of the Lombardy Region, "Norms regarding popular initiative toward the making of laws and other regional acts"; art. 5 R. L. no. 23/1974 of the Marche Region, "Popular legislative initiative"; art. 4 and 40 R. L. no. 4/1973 of the Piedmont Region, "Popular and Local Autonomies initiative and abrogative and consultative referendum"; art. 7 R. L. no. 9/1973 of the Puglia Region, "Popular participation in the Region's regulatory activities"; art. 8 and 11 R. L. no. 51/2010 of the Tuscan Region, "Norms regarding popular initiative on laws"; art. 68-69 R. L. no. 14/2010 of the Umbria Region, "Discipline of the participation mechanisms to the regional bodies activities (legislative and referendum initiative, petition right and consultation)"; art. 27 R. L. no. 1/1973 of the Veneto Region, "Norms regarding popular initiative on regional laws and regulations, the abrogative referendum and regional consultative referendums".

^{III} Art. 47 R. L. no. 44/2007 of the Abruzzo Region, "Discipline regarding the abrogative and consultative referendum and the legislative initiative"; art. 39, par. 4, Statute of the Calabria Region; art. 14 R. L. no. 13/1983 of the Calabria Region, "Norms for the implementation of the Statute about popular legislative initiative and referendums"; art. 53, par. 3, Statute of the Campania Region; art. 50, par 6, Statute of the Emilia-Romagna Region; art. 60, par. 2, Statute of the Lazio Region; art. 11 R. L. no. 63/1980 of the Lazio Region, "Discipline regarding the right of popular initiative and of the Local Autonomies initiative toward the making of laws, regulations and regional administrative acts"; art. 7, par. 3, Statute of the Liguria Region; art. 14 R. L. no. 44/1977 of the Liguria Region, "Norms for the implementation of the Statute about initiative and popular referendums"; art. 9 R. L. no. 4/1973 of the Piedmont Region, "Popular and Local Autonomies initiative and abrogative and consultative referendums"; art. 15, par. 4, Statute of the Puglia Region; art. 14 R. L. no. 9/1973 of the Puglia Region, "Popular participation in the Region's regulatory activities"; art. 35, par.



4, Statute of the Umbria Region; art. 38, par. 4, Statute of the Veneto Region.

^{IV} See: art. 45, par. 2, R. L. no. 44/2007 of the Abruzzo Region, "Discipline regarding the abrogative and consultative referendum and the legislative initiative"; art. 12, par. 1, R. L. no. 13/1983 of the Calabria Region, "Norms for the implementation of the Statute about popular legislative initiative and referendums"; art. 10, par. 2, R. L. no. 34/1999 of the Emilia-Romagna Region, "Consolidated norms about popular initiative, referendum and public inquiry", as modified by the R. L. no. 8/2008; art. 10 R. L. no. 63/1980 of the Lazio Region, "Discipline regarding the right of popular initiative and of the Local Autonomies initiative toward the making of laws, regulations and regional administrative acts"; art. 12 R. L. no. 44/1977 of the Liguria Region, "Norms for the implementation of the Statute about the initiative and popular referendum"; art. 9, par. 2 and 3, R. L. no. 1/1971 of the Lombardy Region, "Norms regarding peoples initiative toward the making of laws and other regional acts"; art. 9, par. 2, R. L. no. 23/1974 of the Marche Region, "Popular legislative initiative"; art. 18, par. 2, Molise Statute; art. 8, par. 1, R. L. no. 4/1973 of the Piedmont Region, "Popular and Local Autonomies initiative and abrogative and consultative referendum"; art. 9, par. 2, R. L. no. 9/1973 of the Puglia Region, "Popular participation in the Region's regulatory activities"; art. 15, par. 3, R. L. no. 51/2010 of the Tuscan Region, "Norms regarding popular initiative referring to laws"; art. 12, par. 2, R. L. no. 14/2010 of the Umbria Region, "Discipline of the participation mechanisms to the regional bodies activities (legislative and referendum initiative, petition right and consultation)"; art. 7 R. L. no. 1/1973 of the Veneto Region, "Norms regarding popular initiative on regional laws and regulations, the abrogative referendum and the regional consultative referendums".

^V See: art. 31, par. 1, Abruzzo Statute; art. 36, par. 1, let. e, R. L. no. 44/2007 of the Abruzzo Region, "Discipline regarding the abrogative and consultative referendum and the legislative initiative"; art. 40, par. 1, Basilicata Statute; art. 2, par. 1, R. L. no. 40/1980 of the Basilicata Region, "Norms regarding the popular initiative of regional laws and the abrogative referendum"; art. 39, par. 1, Calabria Statute; art. 1, par. 1, R. L. no. 13/1983 of the Calabria Region, "Norms for the implementation of the Statute about popular legislative initiative and referendums"; art. 12, par. 1, Campania Statute; art. 5, par. 1, R. L. no. 4/1975 of the Campania Region, "Popular and Local Autonomies legislative initiative"; art. 18, par. 2, let. a, Emilia-Romagna Statute; art. 1, par. 1, let. a, R. L. no. 34/1999 of the Emilia-Romagna Region, "Consolidated norms about popular initiative, referendum and public inquiry" as modified by r. L. no. 8/2008; art. 37, par. 1, Lazio Statute; art. 1, R. L. no. 63/1980 of the Lazio Region, "Discipline regarding the right of peoples initiative and of the Local Autonomies initiative toward the making of laws, regulations and regional administrative acts"; art. 7, par. 1, let. a, Liguria Statute; art. 1, par. 1, R. L. no. 44/1977 of the Liguria Region, "Norms for the implementation of the Statute about initiative and popular referendums"; art. 34, par. 1, Lombardy Statute; art. 1, par. 1, R. L. no. 1/1971 of the Lombardy Region, "Norms regarding popular initiative toward the making of laws and other regional acts"; art. 30, par. 1, let. i, Marche Statute; art. 1, par. 1, let. a, R. L. no. 23/1974 of the Marche Region, "Popular legislative Initiative"; art. 32, Molise Statute; art. 74, par. 2, Piedmont Statute; art. 1, par. 1, R. L. no. 4/1973 of the Piedmont Region, "Popular and Local Autonomies initiative and abrogative and consultative referendum"; art. 15, par. 1, Puglia Statute; art. 1, par. 1, R. L. no. 9/1973 of the Puglia Region, "Popular participation in the Region's regulatory activities"; art. 74, par. 1, Tuscan Statute; art. 1, R. L. no. 51/2010 of the Tuscan Region, "Norms regarding popular initiative referring to laws"; art. 35, par. 1, Umbria Statute; art. 3, par. 2, R. L. no. 14/2010 of the Umbria Region, "Discipline of the participation mechanisms to the regional bodies activities (legislative and referendum initiative, petition right and consultation)"; art. 38, par. 2, Veneto Statute; art. 1, par. 1, R. L. no. 1/1973 of the Veneto Region, "Norms regarding peoples initiative on regional laws and regulations, the abrogative referendum and the regional consultative referendums".

^{VI} The Umbria and Abruzzo Regions, for example, do not impose any restrictions on this subject however, they do foresee that the regional Council must have an absolute majority in some of them (see art. 36, par. 4, Umbria Statute and art. 32, par. 3, Abruzzo Statute). On the other hand, Marche and Molise Regions do not foresee any restrictions on this subject.

^{VII} Restrictions foreseen only by the Piedmont Region (cfr. art. 2, par. 1, lett. b, R. L. no. 4/1973 "Popular and Local Autonomies initiative and abrogative and consultative referendum"), Lombardy (cfr. art. 2 R. L. no. 1/1971, "Norms regarding peoples initiative toward the making of laws and other regional acts").

^{VIII} Restrictions only foreseen by the Lombardy Region (cfr. art. 50, par. 2, of the Statute).

^{IX} Restrictions only foreseen by the Liguria Region (cfr. art. 10, par. 1, of the Statute).

^X The norm foreseen in the special Regions is much less favorable, explained by the fact that the corresponding statutes (except for Friuli Venezia-Giulia) were drawn up previously, even though a short time



ago, when the Constitution came into force. So art. 22, par. 1, R. L. no. 5/2003, “Article 12 of the Statute of the Autonomous Region of Friuli Venezia-Giulia. Norms relating to petitions, summons and exercising the abrogative, propositional and consultative referendum and peoples initiative of the regional laws” foresees that: “*The proposal, on behalf of at least 15,000 voters, registered in the electoral lists of the towns in the Friuli Venezia Giulia Region, shall be presented, supplied with the signatures of the voters proposed, to the President of the Regional Council*”. The Sardinia statutory R. L. no. 1/2008, art. 32: “*2. The projects of the popular initiative shall be undersigned by at least ten thousand voters of the Region. 3. The popular initiatives are definitively approved by the Regional Council two years after they have been presented. They are not subject to lapsing at the end of the legislation. 4. The popular legislative initiatives are not permitted by the fiscal laws and financial statements, on the subject of procedures governing designations or appointments and shall not be exercised in the six months prior to the expiry of the Regional Council*”. The Sicilian Statute states in art. 12, par. 1, “[...] *The people exercise the initiative of the laws by presenting at least ten thousand citizens registered in the electoral lists of the Towns in the Region [...]*”, whereas in Trentino Alto-Adige the proposal shall be signed by at least 4,000 voters, except for derogations due to provincial minorities (see. art. 2 R. L. no. 15/1972, “Norms governing popular initiative in formulating regional and provincial laws”, as modified by the only art. of the R. L. no. 7/1974 and by art. 3 R. L. no. 9/1980). Last of all, as regards the Aosta Valley, art. 1 R. L. no. 19/2003, “Discipline governing the people’s legislative initiative, and the propositional, abrogative and consultative referendum, according to art. 15, par. 2 of the special Statute states that: “*the popular legislative initiative shall be exercised by at least five thousand voters of the Regional Towns*”.

^{XI} See the Emilia-Romagna Region - Legislative Assembly - *Seventh report on the legislation in Emilia-Romagna Region. VIII Legislation - Year 2008*, Bologna, July 2009, in http://elezioni.regione.emilia-romagna.it/wcm/al/astud/pub/legislativo/index/rapporti_leg/par_VII/Rapporto_FINALE_2008.pdf, 75.

^{XII} “In the IV Commission there were no petitions regarding proposals, but going deeply into different issues. [...] the Commission heard the manager of Trenitalia Cargo Sud on the feared closure of the Lamezia Terme goods station; as well as the Head Compartment ANAS, on the strategies that the former intends to carry out as regards the relationship with Fondi Fas 2007/2009, particularly concerning the intersection of the Serre. [...]”. See Calabria Regional Council - Committee for quality and feasibility of laws, *Sixth report on regional legislation. VIII legislation - year 2009*, Reggio Calabria, February 2010, in <http://www.consiglioregionale.calabria.it/hp4/index.asp?accesso=2&selez=pubblicazioni>, 125-126.

^{XIII} See Calabria Regional Council - Committee for quality and feasibility of laws, *Sixth report on regional legislation. VIII legislation-year 2009*, cit., 126-127.

^{XIV} R. L. no. 13/2006, “Institution and the discipline of the Regional Council for Economy and Work. Abrogation of article 22 of the Regional Law 6 August 1999, no. 14 and subsequent amendments”; on public labor contracts, services and supplies; on the implementation regulation of the R. L. no. 4/2009.

^{XV} R. L. no. 15/2008, “Discipline of the Regional Council for Economy and Work (CREL)”. The body was actually constituted on the 11 March 2009.

^{XVI} R. L. no. 19/2000, “Institution of the regional Council for Economy and Work”.

^{XVII} R. L. no. 20/2007, “Discipline of the permanent Conference of social autonomies”. This body, actually constituted on 6 April 2009, expressed its opinion on DPEF, on Planning for social buildings, on integrated social Planning, on regional agricultural planning.

^{XVIII} R. L. no. 6/1988 “Planning implementation in Sicily and institution of the Regional Council for Economy and Work”.

^{XIX} R. L. no. 70/1994, “Institution of the regional Consulta for Economy and Work (CREL)”.

^{XX} R.L. no. 43/1994 “Norme in materia di programmazione degli investimenti regionali”, is still in force and under articles 20-23 it regulates the establishment of the CREL and details its functions. The articles have not however been implemented. Legislative proposal 322 “Nuova disciplina del Consiglio regionale dell’Economia e del lavoro”, which was allocated during the 8th legislature to the relevant Council Commission for examination, together with legislative proposal no. 290, ordered the abrogation, or, where required, the amendment of the above-mentioned articles 43/1994. However, both the legislative proposals came to an anomalous end by lapsing.

References

- Barrera, P., 2006, “Gli Istituti di partecipazione”, in Pizzetti F. - Poggi A. (eds), *Commento allo statuto della Regione Piemonte*, Giappichelli, Turin, 115-139





-
- Caretti, P., 1972, “Partecipazione, iniziativa e referendum”, in Cheli E. et. al. (eds), *Commento allo Statuto della Regione Toscana*, Giuffrè, Milan
 - Cuocolo F., 2003, “La nuova potestà statutaria regionale”, in *Quaderni costituzionali*, 295-318
 - Luciani, M., 2005, “Gli istituti di partecipazione popolare negli statuti regionali”, <http://www.issirfa.cnr.it/3416,908.html>.
 - Mangia, A., 2006, “Consigli regionali e partecipazione politica nei nuovi statuti”, <http://www.forumcostituzionale.it>.
 - Paladin, L., 2004, *Per una storia costituzionale dell'Italia repubblicana*, Il Mulino, Bologna
 - Rivosecchi, G., 2006, “Organizzazione e funzionamento dei Consigli regionali: principio maggioritario, statuti regionali e regolamenti consiliari”, in Bifulco, R. (eds), *Gli statuti di seconda generazione. Le Regioni alla prova della nuova autonomia*, Giappichelli, Turin, 125 ff.