



Participation and Decentralisation: The Case of Andalusia

by

María Reyes Pérez Alberdi

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





Abstract

In the Bill of Rights of the Andalusian Statute of Autonomy, right to participation is extremely well-developed and is not restricted to the traditional rights to political participation, but rather is extended to all relationships between individuals, groups, citizens and public authorities. In this paper, we will outline the different forms of participation established in the Andalusian Statute of Autonomy and the development legislation and evaluate their implementation

Key-words

political decentralisation; self-governments' Bills of Rights; right to political participation; participatory democracy



1. Introduction

The reformed Andalusian Statute (hereinafter, EAAnd – Estatuto de Autonomía de Andalucía) adopts a participatory view of society; therefore, participation pervades the contents related to the relationships between individuals and groups and the various public authorities, and among themselves. In the light of this, participation is one of the basic principles that make up the Statute’s political programme. This principle is reflected, on the one hand, in the Bill of Rights in Title I of the Statute - among these principles, the rights to political and citizen participation are particularly evident and, on the other hand, in the powers conferred to the Autonomous Region regarding the required competences to fulfill that objective and those citizens’ rights.

However, I would like to begin by underlining our dissatisfaction with a situation in which the necessary legislative development has not been carried out in these four years of statutory reform validity period. In addition, the constitutional interpretation of the various forms of direct political participation is restrictive and seems to exclude popular consultations by referendum from the competences of the Autonomous Communities. This is particularly evident in the STC (*Sentencia del Tribunal Constitucional* – Constitutional Court Judgement) 31/2010, regarding its interpretation of Article 122 of the Catalanian Statute of Autonomy. According to this Judgement, direct political participation must also be excluded from the competence of the Autonomous Communities, as stated in Article 78 of the Andalusian Statute of Autonomy.

In this paper, we will outline the various different forms of participation established in the Andalusian Statute of Autonomy and the development legislation, and evaluate their implementation.

2. The right to participation in the statutory framework. Political democracy vs participatory democracy

As above-mentioned, within the Andalusian Statute of Autonomy, participation is defined as one of the main goals of the political programme of the Autonomous Region.



This is reflected in its Title, including a whole range of rights to participation, and in the required competences conferred upon the Autonomous Region to achieve these goals.

Therefore, Article 10 provides the axiological and programmatic framework for the new interventionist function of the Andalusian Autonomous Region, which can be summarised as: a) material equality b) parity between men and women and c) participatory democracy. This provision almost literally restates the so-called social or change clause in the first section of Article 9.2 of the SC (Spanish Constitution)ⁱⁱ, adding that, in order to make the notions of freedom and equity contained in this provision effective, all the required positive action measures must be taken. It goes on to state another relevant principle pervading the Statute of Autonomy, i.e., the principle of parity democracy or, similarly, effective equality between men and women, which has already been generally applied in the public policies of our Autonomous Region, aimed at establishing this principle in its related public policies and the Administration of the Autonomous Regionⁱⁱⁱ. Moreover, it concludes by stating that, to fulfill this objective, the Government of the Autonomous Community will exercise its powers with some basic purposes in mind, in particular number nineteen, i.e., “Citizen participation in the design, implementation and evaluation of public policies as well as individual and collective participation in the civic, social, cultural, economic and political fields towards an advanced social and participative democracy”.

From this declaration of intent, it may be inferred that the implementation of the social state clause is fundamental element of the statutory contents. However, this has resulted not only in the establishment of some general contents -as in the previous Statute^{iv}- but also in their reflection in a Citizens’ Bill of Rights^v, which mainly include social rights. All this proves what Professor Antonio Porrás has rightly stated. He identifies three types of regulatory scopes, with their own specific requirements, in the new social rights’ system included in the Andalusian Statute of Autonomy. He also argues that the rights in Title I include regulations of a very different structure and nature, each with a different level of legal effectiveness. First, there are programmatic regulations which establish what type of finalistic objectives are priorities for the Autonomous Region; second, there are declaratory rights’ regulations whose scope must be to make sure subjective legitimacy presides over public powers, whatever the case may be; and, finally, there are regulations regulating public policies which, due to their greater level of difficulty



of implementation, have simply been created as governing principles reporting on the public powers' actions, and which require the appropriate legal development to be used before the courts^{vi}.

Of the rights included in Title I, the right to participation, which fits this same pattern, may be identified: in Article 10 the notion of participation is presented, on the one hand, as a general objective of the Andalusian Statute and, on the other hand, as a subjective right with direct effectiveness over Articles 26, 27, 30 and 31. In Article 37 it is a mere governing principle, guiding the public policies of the Autonomous Region, although it is in need of the appropriate legislative development.

Now, we will start analysing the contents of the right to participation in the Charter of Social Rights included in the Andalusian Statute of Autonomy. To this end, we will use the classification system derived from the jurisprudence of the Spanish Constitutional Court in STC 119/1995, incorporated into the Statute, which distinguishes between the right to political participation —included in Article 30 of the statutory regulations— and other rights to citizen participation before the Public Administration, which may be included in the formula of Participatory Democracy (Articles 26, 27, 30, 31 and 37).

a. Article 30 in the Andalusian Statute of Autonomy: beyond the right to political participation

The traditional right to political participation is recognised as one of the rights of the Andalusian Statute of Autonomy, and has its own subjective contents, included in Chapter II. Article 30 of the Andalusian Statute paraphrases the contents of the basic right, as stated in Article 23 of the SC. It states that all Andalusians — defined in Article 5 as any Spanish citizen with administrative residency in an Andalusian municipality, including Spanish citizens living abroad whose last administrative residence was established in an Andalusian municipality and their descendants— have the right to take part in all Andalusian public affairs on equal terms under the Spanish Constitution, Andalusian Statute and the Spanish laws.

In addition, Article 30 lists the contents of this right, moving away from the notion of political participation set by the Spanish Constitutional Court, and adding some contents which do not adhere to the definition of the fundamental right according to Article 23 of



the SC. In fact, the Spanish Constitutional Court considers the notion of political participation to be defined by its subject: the subject of sovereignty, i.e., citizens who belong to the electoral body; and by its object: its contribution to the creation of the general will. Therefore, the contents of this right should consist of participation by vote (active and passive), popular legislative initiative, referendum, and the open council system^{VII} as well as the inherent rights to representatives for the appropriate exercise of their parliamentary office^{VIII}. In contrast, there are other forms of participation which do not imply the exercise of the people's will but rather an appeal to certain groups or citizens to protect their own collective or diffuse interests, and which could be included in the formula of Participatory Democracy^{IX}.

However, let's see how these different forms of Political Democracy and Participatory Democracy are combined in the provision under discussion. According to Article 30 of the EEAnd, the right to political participation includes:

a) The right to select the members of the representative bodies of the Autonomous Region and the right to present themselves as candidates for these bodies.

The first section creates no problems. It refers to active and passive suffrage. The development of these rights is included in the Spanish Electoral Law (hereinafter, LOREG Ley Orgánica del Régimen Electoral Español) and in the Andalusian Parliamentary regulation, the Andalusian Statute of Autonomy just reasserts the traditional principles of universal, equal, free, secret and direct suffrage (Article 101), and regulates the exercise of these basic concepts, which are fully developed under the Andalusian Electoral Law (Articles 104 and 105). A law which must be passed by an absolute majority and must also meet gender equality criteria when drawing up the electoral lists, an innovation introduced by the Andalusian Statute.

b) The right to promote and propose legislative initiatives before the Andalusian Parliament and take part in the law-making process, directly or by means of collective entities under the terms established by the Parliamentary Regulations.

The first of these competences creates no problems, because the Spanish Constitutional Court also considers popular legislative initiative one form of direct participation in public affairs. The Court has also spoken out in its favour when it has been



exercised before the Spanish Chamber of Deputies and the Parliaments of the different Autonomous Regions^x. Therefore, Article 111.2 of the EEAnd initiates the legislative proceedings in order to refer its regulation to an act issued by the Andalusian Parliament^{xi}.

However, in our opinion, the right to take part in law-making by means of collective entities, an issue—which is addressed more extensively in Article 113 EEAnd—does not fit the notion of political participation recognised by the Constitutional Court, and should have been included in the different methods of participation before the Administration, as one of the forms of Participatory Democracy.

c) The right to promote the calling of popular consultations granted by the Andalusian Autonomous Government or the City Councils under the rules of the laws. These methods of popular consultation, granted by the Autonomous governments and local governments, should be regulated by the Autonomous Government through laws (Article 111.3 of the EEAnd). However, some doubts have been raised regarding these forms of participation.

What type of consultations do they refer to? Do they include referenda or are they limited to other forms of popular consultation, such as surveys, public audiences and participation fora?

The systematic location of the provision leads us to think that, since it is included in the right to political participation, it refers to referenda. However, if we compare this Article to Article 78, which addresses the competence of the Autonomous government with regard to popular consultations, we reach the opposite conclusion. Article 78 of EAAnd^{xii} actually excludes referenda from popular consultations, which are the exclusive competence of the Andalusian Autonomous Government.

Is it possible for another type of competence not to be exclusive? The interpretation of this article according to legislative precedents and the recent jurisprudence of the Constitutional Court on competences regarding popular consultations seem to exclude this possibility^{xiii}. In fact, if we refer to the legal proceedings of the statutory provision, it is evident that this article included two types of competences regarding popular consultations^{xiv}.

On the one hand, in the first section, the competence concerning legal development was established according to the concepts agreed upon by the State regarding



popular consultations in Andalusia and according to the laws enacted in the exercise of the competences provided for in Article 149.1.1 of the Spanish Constitution (regarding basic conditions guaranteeing the equality in the exercise of rights) and 149.1.32 (regarding state authorisation for referenda). Therefore, it implied giving the Autonomous Regions the competence for the legal development of autonomous and local referenda. On the other hand, there was a second section that is similar to the current Article 78, establishing its exclusive competence regarding surveys, public audiences, participation fora and other forms of popular consultation, except for referenda, which was addressed in the first section.

However, during the parliamentary proceedings in the Spanish Parliament concerning the reform of the Autonomous Statute, the first section was removed without further debate due to an amendment tabled by the Socialist Group. From this, we can also deduce a general desire to exclude referenda from the competences of the Autonomous Governments.

On the other hand, since its first decisions, the Spanish Constitutional Court has insisted on a restrictive interpretation of the notion of direct participation, which has led it to deny any possibility of implicit competence regarding popular consultations in its STC 103/2008xv. Similarly, it denies Autonomous Governments the possibility to call or regulate popular consultations, even by referendum, unless they are specifically entitled to that competence by State law, including the Statutes of the Autonomous Regions^{xvi}. In light of this, the Autonomous Regions' Governments are prevented from regulating this matter within the exercise of the generic competence to regulate their self-government institutions as a part of the doctrine suggested^{xvii}.

Finally, the STC 31/2010 excludes any possibility of autonomous regulation regarding this matter since the State's competence includes not only referenda and the authorisation to call them but also "the entire discipline of that institution", including the establishment and regulation of its legal system^{xviii}.

d) This Article also includes the contents of the right to political participation and the individual and collective right to petition, in the way and with the effects established by law, and, therefore, within the framework established by Organic Law 4/2001, November 12th, regulating the right to petition.



e) Finally, it regulates the right to actively take part in Andalusian public life. To this end, the required mechanisms of information, communication and the receipt of proposals are established.

The vagueness of this rule and its originality make it impossible to relate it to any of the contents defining the right to political participation. We can intuitively infer that it refers to citizen participation in the design of public policies and when referring to the mechanisms of information, communication and the receipt of proposals, which seem to indicate the instruments of administrative participation^{xix}. This intuition is confirmed by the Statute's Parliamentary proceedings. This section is based on amendment 455, proposed by the *Izquierda Unida* Parliamentary Group before the Andalusian Parliament to introduce Article 30bis, recognizing the citizens' right to take part in the design, determination and management of public policies. Their proponents justify this based on the need to "turn Representative Democracy into Participatory Democracy"^{xx}. Therefore, we may conclude that this section of Article 30 refers to citizen participation in the design of public policies, and, as such, we do not understand why it is not included in the right to good administration ex-Article 31 of the EAAAnd.

Moreover, we wonder whether the Andalusian Statute of Autonomy is able to redefine the contents ascribed to the right to political participation, or whether it can only reiterate the contents of this right as stated in the Spanish Constitution. We are forced to select the second option. Since the definition of competences according to the contents of the fundamental rights is part of the notion of the development of fundamental rights, consequently, it requires an organic law, in a material sense, for its development. However, in our opinion, the Andalusian Statute of Autonomy does not involve the principle of legal reservation.

b) Additional citizens' rights to participation before the Public Administration

In other statutory articles some other participation formulae are included which fulfill the basic objective of the exercise of the competences of the Autonomous Region concerning "citizen participation in the design, implementation and evaluation of public policies as well as individual and collective participation in the civic, social, cultural,



economic and political spheres, towards an advanced social and participative democracy” (Article 10.3.19 of EAand). They are specific forms of citizen participation before the Public Administration which, without further discussion, we include as one of the various forms of Participatory Democracy.

Therefore, Article 26 of the EAAnd recognises the institutional right to participation of the most representative trade unions and business associations in the Autonomous Region as one of the rights related to labour. Likewise, one of the governing principles of public policy also includes the “encouragement of agreements with economic and social actors” (Article 37.12 of the EAAnd), an agreement that will follow a privileged participation channel in the Economic and Social Council (Article 132 of EAAnd).

On the other hand, Article 27 of the EAAnd also establishes the lawmaker’s duty to regulate the instruments of consumer participation and its list of rights.

Finally, Article 31, the so-called right to good administration^{XXI} which includes all citizens’ right to take part in the decisions affecting them and, therefore, receive truthful information from the Administrations in order to do so^{XXII}. It is only in this last article that citizen participation intends to reach a subjective dimension and begins to take the shape of a truly statutory right^{XXIII}. The contents of this right are completed by what is stated in Article 134 of the EAAnd, which also includes the legal duty to regulate citizen participation, either directly or by means of associations or representative organisations of interest in the administrative proceedings or in the design of the provisions that may affect them. On the other hand, it establishes the right to access the Public Administration, including its files and records^{XXIV}, an essential instrument to obtain the truthful information mentioned in Article 31 of the EAAnd, necessary to prevent participation from becoming a mere formality in the Administrative proceedings instead of being a real way for public opinion to participate in the decisions of public authorities^{XXV}.

Initially, we may consider this statutory article unoriginal, since it simply reiterates what is stated in Article 105 of the SC, which seems to refer to the formulae of public information and procedural, functional and organic participation^{XXVI}. However, this provision must be linked to Article 78 of the EAAnd, which establishes the competence of the Autonomous Region regarding “surveys, public audiences, participation, fora and any other means of popular consultation”, thus adding new forms of citizen participation which have already been regulated in other Autonomous Regions^{XXVII}. This is why we



think that the statutory mandate will be properly fulfilled when a broad range of forms of citizen participation is integrated into the public powers decision-making process.

Furthermore, Article 84.2 of the EAAAnd regarding the scope of the provision of public services establishes that the Autonomous Region must meet the democratic participation criteria of the interested individuals, trade unions and business associations when exercising its competences regarding health, education and social services.

To conclude with the analysis of the Bill of Rights included in Title I of the Andalusian Statute, we must mention Chapter III, Article 37 which provides for the participation of certain groups as governing principles for public policies the elderly (Article 37.1.3) and young people (Article 37.1.8), in addition to the promotion of associations (37.1.18), an essential condition for the implementation of participatory democracy, usually organised by a very strong network of associates^{xxxviii}.

3. Legislative Development and the practice of participatory institutions in Andalusia

Since the approval of the Andalusian Statute of Autonomy, the statutory provisions regarding citizen participation institutions have hardly been developed.

a) Electoral Participation

Therefore, we can argue that Law 1/1986, January 2nd, regarding the Andalusian Parliamentary elections has not been modified since its approval and certainly will not be modified. It is not unusual for the doctrine to ascertain the stability of electoral regulations^{xxxix} and if we add to this the mimetic effect the electoral system of the Spanish Chamber of Deputies has had on that of the Autonomous Governments well as the very broad interpretation constitutional jurisprudence has given to the general electoral regime regulated by the State through an organic law, the result is a set of rather traditional electoral regulations^{xxx} which maintain their central structural elements: the province as the constituency and the proportional character of the electoral system, though this has been corrected by territorial criteria^{xxxi}. This occurred despite the changes introduced by Article 105 of the Andalusian Statute of Autonomy, which removes references to the D'Hondt electoral formula, required by the previous statute, and requires the respect of



gender equality criteria when drawing up electoral lists and that electoral debates be held in the public mass media.

Moreover, the new Andalusian Statute of Autonomy makes regulatory change difficult since it requires, as aforementioned, an absolute Parliamentary majority to change electoral regulations.

In the last 25 years that the law has been in force, there have been 7 elections. In all of them, the average participation rate has been 69.87%. Of these 7, in the 1990 elections—the only one which did not coincide with other electoral processes—the participation rate hardly reached 55.32%, and in the 1996 elections the rate was higher at 78.42%. The party system has been very stable, and the Spanish Socialist Party (PSOE), the People's Party (PP, until 1990, the coalition AP-PDP-PL), the Izquierda Unida Party (IU) and the Andalusian Party (PA) have been in the Andalusian Parliament, the Socialist Party being the most voted by the Andalusian citizens, though between 1994 and 2000 it only obtained a relative majority and the People's Party achieved substantial growth. In the year 2004, however, the PSOE again obtained the absolute majority and has held it ever since.

Elections	Participation	SEATS			
		PSOE	PP	IU	PA
1986	70.67%	60	28*	19	2
1990	55.32%	62	26	11	10
1994	67.68%	45	41	20	3
1996	78.42%	52	40	13	4
2000	69.74%	52	46	6	5
2004	74.67%	61	37	6	5
2008	72.64%	56	47	6	

(Source: Self-made from the CAPDEA and BOJA data)

* At that time AP-PDP-PL

TABLE 1: Andalusian Parliament Elections

b) Citizen participation in legislative proceedings and in Government Parliamentary control

On the other hand, the Andalusian citizen participation in the design of Andalusian legislation may be achieved, as aforementioned, through two main instruments: popular



legislative initiative and the participation of organisations and interested associations in its development procedures.

Popular legislative initiative is regulated by *Law 5/1988*, June 27th *regarding popular and City Councils' legislative initiative*, which —as in most autonomous legislations— adopts the guidelines set by *Organic Law 3/1984*, March 26th *regarding popular legislative initiative* before its 2006 reform. Therefore, there is no reason to highlight any innovations in either the procedures or the matters excluded from its objective^{xxxiv}. Its exercise requires the signatures of 75,000 citizens with the political status of Andalusian citizens, which — according to Articles 5 and 6 of the EAAnd and as was previously acknowledged in the article of the *Statute of the Andalusians abroad*^{xxxv}— includes all Andalusian people abroad. The timeframe for the collection of signatures is 4 months and can be extended for another two months in the event that there are some objective and properly justified reasons. On the contrary, the involvement of the Promoting Commission in its Parliamentary procedure is not provided for^{xxxvi}.

Few popular legislative initiatives have been carried out by the Andalusian Parliament, and, specifically, only 11 popular legislative initiatives have been introduced. From their analysis, it may be deduced that the greatest difficulty lies in obtaining the minimum number of signatures required, since only one of these initiatives —dealing with the creation of a support network for pregnant women— has been discussed before Parliament (though it was rejected) and another five expired because the signatures had not been collected within the stipulated timeframe.

Legislature	Non-admitted	Retracted	Expired	Passed	Rejected	Being processed	TOTAL
II(1986-1990)	-	1	-	-	-	-	1
III(1990-1994)	-	-	-	-	-	-	-
IV(1994-1996)	-	-	1	-	-	-	1
V(1996-2000)	-	-	1	-	-	-	1
VI(2000-2004)	-	1	1	-	-	-	2
VII(2004-2008)	-	-	1	-	1	-	2
VIII(2008-)	2	-	1	-	-	1	4
TOTAL	2	2	5	0	1	1	11

(Source: Self-made from Andalusian Parliament Web data)

TABLE 2: Popular legislative initiatives in Andalusia



Regarding the audiences of citizens and representative associative entities during legislative procedure, as stated in Articles 30 and 113 of the EAAnd, the corresponding adaptation of the Andalusian Autonomous Parliament Regulations has not been carried out yet.

In this respect, we must point out that, despite the fact that in 1995 the Regulations in Article 112 introduced audience proceedings for social actors and organisations that might have been affected by the regulations and even, exceptionally, for individuals through so-called “informative appearances” before the corresponding legislative Boards, these regulations do not meet the requirements established by the new statutory regulations. This is because so far these audience proceedings have only been of a discretionary nature and have taken place only when requested by Deputies and Parliamentary Groups.

Apart from the expression “The citizens will participate in the legislative proceedings...”, it can be clearly deduced from Article 113 that the citizens’ audience proceedings must become an essential and compulsory element of the legislative proceedings^{xxxvii}, the holding of which cannot be left to the will of Parliamentary bodies.

Finally, the citizens’ initiative has been included in the Andalusian Parliamentary Regulations since 1995. These questions are not limited to the Andalusian citizens, since they can be submitted by any natural person or legal entity living in the Andalusian Autonomous Region. Their unique nature lies in the fact that, in order to be formulated, they must be accepted by a Member of Parliament who will be responsible for their presentation before the Plenary Session or the corresponding Committee for the response of the Andalusian Government.

From the analysis of the questions set out, it is clear that this resource has been the most used by citizens, with the proposal of 77 questions. The greatest activity took place during the two terms in which the Government had a simple majority with 75.32% of the questions. It is surprising that this instrument of political control over the Government has hardly been used during the two last legislatures.



Legislature	Committee Questions	Plenary Questions	Total	Answered
IV(1994-1996)	8	5	13	4
V(1996-2000)	21	17	38	21
VI(2000-2004)	17	3	20	11
VII(2004-2008)	4	-	4	1
VIII(2008-)	2	-	2	2
TOTAL	52	25	77	39

(Source: Self-made from Andalusian Parliament Web data)

TABLE 3: Citizens' initiative Question in Andalusia

c) Popular Consultations in Andalusia

The previous Statute established the competences of the Autonomous Government on the legislative development of the local popular consultations system in Andalusia, in accordance with the organic law regulating the different referendum modalities and reserving the authorisation to call referenda to the State. In compliance with this Constitutional mandate, *Law 2/2001* May, 3rd regarding the regulation of local popular consultations in Andalusia was passed, stipulating that a consultation may be submitted not only by City Councils but also by the inhabitants, and introduced as its main innovation the possibility for promoters to express their preferences through the distribution of free informative advertisements on the referendum^{xxxviii}, even giving them priority over political groups with political representation.

In the 11 years that this law has been in force, only three popular consultations have been processed. The first one was held on June 9th, 2002 in Montellano (Sevilla) to decide on its incorporation into the Water Consortium of Huesna. The second was not held because the Government refused its authorisation by agreement on November 12th, 2004 on the grounds that it was not the competence of the Municipality. It was a popular consultation on the building of a correctional facility in Morón de la Frontera (Sevilla). This is also why authorisation for a popular consultation was refused in Almuñecar (Granada) regarding the initial approval of the General Municipality Urban Plan. However, the High Court Judgement of September 23rd, 2008 repealed the Council of Ministers' agreement and the popular consultation took place on February 28th, 2009^{xxxix}.

However, the new statutory regulations on the competences regarding popular consultations also lead us to wonder if local popular consultations, which so far have undoubtedly been the competence of the Autonomous Regions, still belong to the



Andalusian Autonomous Region; this implies questioning the legitimacy of these types of popular consultations.

At this point, we must remember the above-mentioned jurisprudence on the referendum. If we consider what was established by the STC 103/2008, the referendum as a consultation addressed to the electoral census on a political matter that follows the regulations and guarantees of the electoral proceedings, and what is stated in the STC 31/2010, i.e., that all competences regarding referenda are reserved for the State, and, moreover, that Article 78 of the Andalusian Statute excludes referenda from autonomous competence, we must reject the autonomous competence of local popular consultations.

However, if we consider other legal arguments in favour of our interpretation, we come to the opposite conclusion. The first argument is that both *Organic Law 2/1980*, April 2nd, *on the Referendum Modalities* (hereinafter LOMR, *Ley Orgánica reguladora de las modalidades de referendums*)^{XL} and the LRBRL^{XLI} include local popular consultations within local competences. In addition, the Andalusian Statute of Autonomy establishes the shared competence between the State and the Autonomous Government regarding local regime^{XLII}. Furthermore, the Spanish Constitutional Court sometimes considers local elections and local autonomy merely an administrative issue, denying their political character^{XLIII}. All this would lead the Spanish Constitutional Court to consider local popular consultations instruments of *participatory democracy* and, thus not subject to the reservations contained in Article 53.1 of the Spanish Constitution (the development of political participation rights), Article 92 (modalities of referendum) and the competence of Article 149.1.32 (authorisation of referenda) and, in the STC 31/2010 (regulations of the referendum legal system).

d) Participation before the Administration

The adequate legislative development of the citizen participation institutions before the Administration^{XLIV} has not been carried out. Therefore, the new and promised Citizen Participation Law^{XLV} has not been passed yet. Therefore, the current legislation on volunteering is the only general regulation that has been passed by the Andalusian Autonomous Government concerning citizen participation, even *Law 9/2007* of 22nd October, *on the Andalusian Public Administration*, passed just nine months after the reform of the Andalusian Statute, does not establish citizen participation as one of the organisational



and running principles of the Andalusian Public Administration^{XLVI}. In fact, despite the different deductions that may be made from the Statement of Purposes, only a couple of articles (20 and 32) are devoted to citizen participation bodies, and they are given a mere advisory character, even denying them the possibility of creating citizen participation administrative bodies with decision-making powers and referring their regulation to their creation regulations. On the other hand, *Law 6/2006*, includes the traditional audience procedures and/or public information procedures in the design of the administrative provisions^{XLVII}.

Regarding local matters, *Law 5/2010* of June 11th, *on the Andalusian Local Autonomy*, has also given up trying to create a regulation regarding citizen participation institutions, referring its regulation to the internal organisation regulations of each Local Entity. However, it is precisely in this local scope that the most interesting participatory experiences have been had in our Autonomous Region. To this regard, the experience of participatory budgets in Seville and Cordoba and in some other municipalities such as Las Cabezas de San Juan (Seville), Casabermeja, Campillos and Salayonga (Málaga), Puente Genil (Cordoba) and Jerez de la Frontera, Puerto Real and Algeciras (Cadiz) are worthy of mention^{XLVIII}.

In conclusion, it should be mentioned that the Andalusian Statute of Autonomy is rich with respect to the incorporation of citizen participation institutions, and acknowledges, though not always with the appropriate technical adjustments, not only the traditional objectives of political participation, but also a large representation of citizen participation formulae before the Administration.

However, in these four years of statutory validity period the development and adaptation of the current legislation to the statutory provisions have not been carried out. Therefore, much work still remains to be done to create the advanced and democratic society advocated by the Andalusian Statute of Autonomy.

I On the definition of the basic objectives of the Statute of Autonomy see: Terol Becerra, 2008a, 87-103.

II Article 10.1 of the Andalusian Statute of Autonomy: “The Andalusian Autonomous Region will promote the conditions required to achieve the real and effective freedom and equality of individuals and the groups



they belong to; it will remove the obstacles that come in the way of and prevent the fulfillment of this goal, and will foster the quality of democracy, making it easier for the Andalusian people to participate in political, economic, cultural, and social life. In order to meet these objectives, it will take all the required positive action measures.”

III See also, for instance, Article 2 of *Law 5/2005*, April 8th which modified *Article 23.1* of the *Andalusian Electoral Law* and introduced the so-called “zip-lists” when drawing up the lists of candidates, the constitutionality of which was confirmed by the *STC 40/2011*, March 31st; Article 6 of *Law 4/2005*, April 8th on the *Andalusian Consultative Council* and Article 18 of *Law 6/2006*, October 24th on the *Andalusian Autonomous Government*.

IV See also, Lucas Murillo De La Cueva, 1993.

V On the contents of the Bill of Rights in the Andalusian Statute of Autonomy and its extension to other types of non-social rights see Terol Becerra, 2008b, 184-195. The Constitutional legitimacy of these Bills of Rights and Duties has undoubtedly become one of the most controversial matters when passing these new Statutes of Autonomy. Díez Picazo has spoken out against it in: “¿Pueden los Estatutos de Autonomía declarar derechos, deberes y principios?”, 2006, 63-75. Though considering it is not really appropriate from a technical and legal point of view, Ferreres Comella has spoken out in favour of it in: “Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña”, 2006, 9-37 and Biglino Campos, 2006, 39-61. Carrillo, 2006, 63-88 and Carrillo, 2007, 49-73 - Caamaño Domínguez, 2007 33 -46 have been both unconditionally in favour of it.

VI See Porras Nadales, 2008, 107-123. This quotation is taken from p. 110.

VII Regarding the Constitutional Court Judgements see: *STC 119/1995*, July 17th. For a more detailed analysis of the jurisprudence of the Spanish Constitutional Court regarding the contents of Article 23, see Martín Nuñez, 2008, 315-342.

VIII Regarding the Constitutional Court Judgements see: *SSTC 5/1983*, February 4th (right to sit as a member of Parliament); *81/1994*, March 14th (resignation) and *118/1988*, June 20th (representative function).

IX Regarding the Constitutional Court Judgements see: *STC 119/1995*, June 17th and the Constitutional Court Writ: *ATC 25/1998*, January 26th.

X See *SSTC 76/1994*, March 14th and the *AATC 26/1985*, January 16th; *592/1985*, September 18th; *428/1989*, July 21st; *40 /1992*, May 25th and *304/1996*, October 28th.

XI In reference to *Law 5/1988*, October 17th on popular legislative initiative and the City Councils which will be addressed in the next section.

XII Article 78 of the EAAnd establishes that “The Andalusian Autonomous Region has the exclusive competence to determine the legal system, modalities, procedures, their organisation and call, either itself or through the local authorities, within its competence in matter of surveys, public audiences, participation fora and any other means of popular consultation, *except for referenda*”.

XIII See also Bueno Armijo, 2008, 777-789.

XIV Article 71 on the Bill for the reform of the Andalusian Statute of Autonomy: “1. The legislative development of the popular consultations system in Andalusia is the responsibility of the Autonomous Region Government, according to what is provided for by the laws to which Articles 149.1.1 and 32 of the Spanish Constitution refer”.

XV In this paper, we are not doing an in-depth analysis of the Spanish Constitutional Court jurisprudence regarding popular consultations and the possible doctrinal debate on the reach of this competence in other Autonomous Regions. I have addressed this issue in Pérez Alberdi, 2008, 197-198. For a further analysis see, López Basaguren, 2009, 202-240, Pérez Sola, 2009, 433-454 and Castellá Andreu, 2011, 197-234.

XVI *STC 103/2008*, September 11th, Legal Foundation 3.

XVII See Gutiérrez Llamas, 2000 and Aguiar de Luque, 2000.

XVIII *STC 31/2010*, June 28th, Legal Foundation 69.

XIX See Porras Nadales, 2009, 112-114.

XX This amendment did not raise further debate within the Andalusian Assembly and was not included in the final text of the Reform Bill of the Andalusian Statute of Autonomy, passed by the Plenary Session on May 2nd, 2006 and submitted to the Spanish Parliament. In its amendment tabled to the Parliament, the *Izquierda Unida* (the Spanish Left Wing Party) reasserts, this time with amendment 14, that it is to be included in the Commission Report as a transactional amendment and drafted as it appears in the final text of the Andalusian Statute of Autonomy, leaving aside the fact that a better conclusion may be drawn by the



Commission.

XXI On the due interpretation of this right, see Ávila Rodríguez, 2009, 289-326 and, more generally Tomás Maillén, 2004.

XXII The content of the right to good administration included in the Andalusian Statute of Autonomy is three-fold. First, citizens' right to take part in the decisions that may affect them, obtaining truthful information from the Administration in order to do so. In addition, the right to receive impartial and objective treatment in all matters, the right to have these matters resolved in a reasonable period of time and, finally, the right to access public files and records, except for those indicated by law.

XXIII Although with a limited scope granted by the STC 247/2007 to the Bills of Rights recognized in the Statutes of Autonomy. We cannot go into detail on the nature of the statutory rights, as it is a controversial topic which has recently been dealt with by Prieto Sanchís, 2010, 125-150.

XXIV. Article 134 of the EEAnd on Citizen Participation: "The law will regulate: a) citizen participation, directly or by means of the associations or organisations representing them in the administrative proceedings or in the design of the regulations which may affect them.

b) Citizens' access to the Andalusian Autonomous Government Administration, including access to their files and records, whatever the case, with no detriment to the constitutional and statutory guarantees, by making the necessary technological means available to them.

XXV Specialized doctrine often formulates participatory practices and institutions using "participation ladders" featuring steps representing the various techniques, depending on the more or less active role carried out by the individuals and the groups. First step: *receiving* information from the Administration, a process which must be governed by the principles of transparency and veracity; intermediate step: *influencing* the decisions of the public powers by means of public information procedures or consultations with ad hoc citizen participation bodies; third step: *deciding* directly. This representation is attributed to Arnstein, 1969, 216-224, and has been compiled and restated by, to name only a few Parry, Moyser and Day, 1992 and in our doctrine by Alguacil Gómez, 2003, 136 and Font - Subirats, 2000, 72.

XXVI As stated by Escribano Collado, 2008, 905-925, and specifically 921. On the administrative participation formulae see Sánchez Morón, 1980, and Castellà Andreu, 2001.

XXVII See, for instance, *Law 11/2008*, July 3rd, on citizen participation in the *Comunitat Valenciana*, also developed by *Decree 76/2009*, June 5th and *Law of the Canary Islands 5/2010*, July 21th, on *the promotion of citizen participation*.

XXVIII I have already addressed the role of associations in citizen participation institutions and the possibility of including them in the contents of the association, see Pérez Alberdi - Fernández Le Ga, 2005, 489-532.

XXIX Montero, 1997, 9-46. This quotation is taken from p.10.

XXX See also Gavara De Cara, 2007.

XXXI Regarding Andalusian Electoral Law see Ruiz Robledo, 2005, 135-151.

XXXII Participation data have been taken from the Andalusian Analysis and Political and Electoral Documentation Centre (CAPDEA), http://cadpea.ugr.es/Consultas_simple.aspx.

XXXIII During the publication of this paper, there were Andalusian elections in March 2012 and our hypotheses have been confirmed. General and Autonomous elections did not coincide and as usual under these circumstances, the participation rate has been really low with a 62.23%. The PP has notably increased their votes and seats, being for the first time the most voted party in Andalusia with 50 of 109 seats. However, the probable coalition between the left-wing parties –PSOE (47 seats) and IU (10 seats)- leads us to foresee the socialist José Antonio Griñán as President of the Andalusian Government again.

XXXIV Unlike other Autonomous Regions, in which the excluded matters have been notably increased by popular legislative initiative, in Andalusia the only matters are those that cannot fall within the competences of the Government of the Autonomous Region: taxes and budgets, economic planning and those related to the management of the self-government institutions.

XXXV See Article 6 of *Law 8/2006*, October 27th, *regarding Statute of the Andalusians Abroad*.

XXXVI Unlike other Autonomous Regions, such as Aragon and Catalonia, and in the popular legislative initiative before the Chamber of Deputies after its 2006 reform. However, it must be highlighted that, as announced by the Andalusian Autonomous Government Prime Minister in the Debate on the State of the Autonomous Region last June 28th, the regulations of the popular legislative initiative will be modified in order to introduce the participation of the Promoting Commission in the legislative proceedings and reduce the required number of signatures to 41,000. See the article "Griñán propondrá el 'español 110' para poder



defender las iniciativas legislativas populares”, published in the electronic version of the newspaper *El Mundo*, June 28th, 2011, <http://www.elmundo.es/elmundo/2011/06/28/andalucia/1309289155.html>.

XXXVII See Carmona Contreras, 2009, 343-354, and specifically p. 351.

XXXVIII Article 20 of *Law 2/2001*, May 3rd *regulating local popular consultations in Andalusia*. The Catalanian and Navarre Laws also consider this possibility regarding popular consultations. See Article 19 of Foral Law 2/2002, October 28th *regulating local popular consultations*, and Article 50 of *Catalonian Law 4/2010*, March 17th *on consultations through referendum*.

XXXIX Before *Law 2/2001* came into force, three popular consultations were proposed applying Article 71 of *Law 7/1985*, April 2nd, *regulating the basis of the local system* (hereinafter, LRBRL, Ley Reguladora de las Bases del Regimen Local): the first two were held in 1997, by the mayors of Torredonjimeno (Jaén) to change the date of the annual festival, and in Tarifa (Cadiz) related to the design of the interconnection electrical cable between Spain and Morocco, and the third in 1998 by the mayor of Algeciras (Cadiz) to create the ninth Andalusian province in Algeciras and the surrounding area. The Council of Ministers only authorized the first one because it considered the objective of the other consultations outside municipal competence.

XL Additional Provision of Law in the LOMR: “The provisions of this Law do not include in its regulations popular consultations that may be held by the Municipalities, related to relevant local issues, in their respective territories, *according to the local legislation system*, however, it reserves the exclusive competence of its authorisation for the State”. (The italics are ours)

XLI Article 71 of the LRBRL: “In accordance with the State and the Autonomous Region legislations, when this last has been granted the statutory competence to do so, the mayors, with the consent of the absolute majority of the Plenary and the State Government authorisation, will submit to popular consultation those matters within its own municipal competence and with local character which are particularly relevant for the residents’ interests, except for those related to the Local Exchequer”.

XLII See Article 60 of the Andalusian Statute of Autonomy.

XLIII See also the SSTC 4/1981, February 2nd, Legal Foundation 3, 25/1981, July 14th, Legal Foundation 3 and 32/1981, July 28th, Legal Foundation 3 and the Constitutional Court Decision 1/1992, July 1st. However, we would like to underline that we do not share this opinion of the Spanish Constitutional Court.

XLIV This situation was denounced by the Andalusian Ombudsman himself in his 2009 and 2010 reports. See also the Special Report “Regulations on citizens’ participation in the Andalusian County Councils and large Municipalities” submitted to the Andalusian Parliament on December, 29th, 2009, BOPA, No. 410, March 10th, 2010, especially p. 47, which suggests the regulation of the general participation system, at least at a local level, (the scope is covered by the report) by the Autonomous Ministry of the Interior. Later reasserted in the 2010 Annual Report of BOPA No. 667, April 28th, 2011, p. 427.

XLV In this respect, see the statement of the Minister of the Interior from the Andalusian Autonomous Government, Clara Aguilera, on the Future Citizen Participation Law during the opening of the VI Andalusian Volunteering Congress, on February 13th, 2009 (Source: Europa Press: <http://www.europapress.es/andalucia/sevilla-00357/noticia-junta-anuncia-creacion-ley-participacion-ciudadana-cuyo-borrador-podria-estar-redactado-2011-20090213123023.html>).

XLVI See Article 3, Law 9/2007.

XLVII See also Article 45 of Law 6/2006, October 24th, *on the Government of the Andalusian Autonomous Region*.

XLVIII A study of these experiences in participatory budgets can be found in Vilasante - Garrido 2002 and Ganuza Fernández - Álvarez De Sotomayor, 2003.

References

- Aguiar De Luque L., 2000, “Democracia directa e instituciones de democracia directa en el ordenamiento constitucional”, TRUJILLO, G. *et al*: *La experiencia constitucional (1978-2000)*, Centro de Estudios Políticos y Constitucionales, Madrid, 67-96
- Alguacil Gómez, J., 2003 *Equipamientos municipales de proximidad. Plan estratégico y de participación*, Ed. Trea, Gijón
- Ávila Rodríguez C. M., 2009, “El derecho a una buena administración en el nuevo Estatuto de Autonomía para Andalucía: significado y alcance”, *Revista Andaluza de Administración Pública*, 289 -326
- Arnstein, 1969 “A ladder of citizen participation”, *Journal of the American Institute Planners*, 216-224



- Biglino Campos P., 2006, “Los espejismos de la tabla de derechos”, Ferreres Comella, V. *et al.*: *Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña*, Centro de Estudios Políticos y Constitucionales, Madrid, 39-61
- Bueno Armijo A., 2008, “Competencias sobre consultas populares. En especial, por vía de referéndum. (Comentario al art. 78)”, Muñoz Machado, S. - Rebollo Puig, M. (eds.): *Comentarios al Estatuto de Autonomía de Andalucía*, Civitas, Madrid, 777-789
- Caamaño Domínguez F., 2007, “Sí pueden: (Declaraciones de derechos y Estatutos de Autonomía)”, *Revista Española de Derecho Constitucional*, No. 79, 33-46
- Carmona Contreras A. M., 2009 “La elaboración de las normas”, Terol Becerra, M. J. (ed.): *Comentarios al Estatuto de Autonomía para Andalucía*, Tirant lo blanch, Valencia, 343-354
- Carrillo M., 2006, “La declaración de derechos en el nuevo Estatuto de Autonomía de Cataluña: expresión de autogobierno y límite a los poderes públicos”, Ferreres Comella, V. *et al.*: *Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña*, Centro de Estudios Políticos y Constitucionales, Madrid, 63-88
- Carrillo M., 2007, “Los derechos. Un contenido constitucional de los Estatutos de Autonomía” en *Revista española de Derecho Constitucional*, No. 80, 49-73
- Castellà Andreu J. M., 2001, : *Los derechos constitucionales de participación política en la Administración pública*, CEDECS, Barcelona
- Castellà Andreu J. M - Expósito E., 2008, “Los derechos políticos y ante la Administración en el Estatuto de autonomía de Cataluña”, Aparicio, M. A. (ed.): *Derechos y principios rectores en los Estatutos de Autonomía*, Atelier, Barcelona, 61-94
- Castellà Andreu J. M., 2011, “Las consultas populares en la Sentencia 31/2010 sobre el Estatuto de Autonomía de Cataluña”, Álvarez Conde, E. and Rosado Villaverde, C.: *Estudios sobre la Sentencia 31/2010, de 28 de junio, del Tribunal Constitucional sobre el Estatuto de Autonomía de Cataluña*, IDP; Madrid, 197-234
- Díez Picazo L. M., 2006, “¿Pueden los Estatutos de Autonomía declarar derechos, deberes y principios?” en *Revista Española de Derecho Constitucional*, No. 78, 63-75
- Escribano Collado P., 2008, “La Administración de la Junta de Andalucía” Muñoz Machado, S. Y Rebollo Puig, M. (eds.): *Comentarios al Estatuto de Autonomía de Andalucía*, Thomsom-Civitas, Madrid, 905-925
- Fernández Le Gal A., 2000, “Aproximación jurídica a las asociaciones como agentes de participación ciudadana” *Panorámica de la participación ciudadana*, Diputación de Córdoba, 47-66
- Fernández Le Gal A.- Pérez Alberdi M. R., 2005, “La participación ciudadana en la elaboración de las disposiciones generales: el artículo 105 a) de la Constitución”, in Lucas Murillo De La Cueva, P.: *Gobierno y Constitución*, Tirant lo Blanch, Valencia, 489-532
- Ferreres Comella, V., “Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña”, Ferreres Comellas V. et alt., 2006, *Derechos, deberes y principios en el nuevo Estatuto de Autonomía de Cataluña*, Centro de Estudios Políticos y Constitucionales, Madrid, 9-37
- Font N. - Subirats J., 2000, *Local y Sostenible*, Icaria, Barcelona.
- Ganuza Fernández E. - Álvarez De Sotomayor C. (eds.), 2003, *Democracia y presupuestos participativos*, Icaria, Barcelona
- Gavara De Cara J. C., 2007, *La homogeneidad de los regímenes electorales autonómicos*, Centro de Estudios Políticos y Constitucionales, Madrid
- Gutiérrez Llamas A., 1991, *Los procedimientos de reforma de los Estatutos de Autonomía de las Comunidades Autónomas*, Civitas, Madrid
- López Basaguren A., 2009, “Sobre referéndum y Comunidades Autónomas. La ley vasca de la ‘consulta’ ante el Tribunal Constitucional”, *Revista d’Estudis Autònòmics i Federals*, No. 9, 202-240
- Lucas Murillo De La Cueva P., 1993, “El Estatuto como programa y el control y la participación en la política económica y social como exigencias del Estado social”, Cámara, G. y Cano, J. (eds.): *Estudios sobre el Estado social*. (El Estado social y la Comunidad Autónoma de Andalucía), Parlamento de Andalucía-Tecnos, Madrid
- Martín Nuñez E., 2008, “La garantía jurídica de la democracia como derecho fundamental. Un análisis de la jurisprudencia del Tribunal Constitucional sobre la participación política”, *Revista catalana de Dret Públic*, No. 37, 315-342



- Montero J. R., 1997, “El debate sobre el sistema electoral: rendimientos, criterios y reforma”, *Revista de Estudios Políticos*, No. 95, 9-46
- Pérez Alberdi M. R., 2008, “Los derechos de participación en los Estatutos de Autonomía recientemente reformados. Especial consideración al Estatuto de Autonomía de Andalucía”, *Revista de Derecho Político*, No. 73, 181-205
- Pérez Sola, N., 2009, “La competencia exclusiva de las Comunidades Autónomas en materia de consultas populares”, *Teoría y Realidad Constitucional*, 433-454
- Parry, G., - Moysen, G., Day, N., 1992, *Political participation and democracy in Britain*, Cambridge: Cambridge University Press
- Porras Nadales, A., 2008, “Derechos sociales y políticas públicas” Agudo Zamora, M. (ed.): *El Estatuto de Autonomía de Andalucía de 2007*, Centro de Estudios Andaluces, Sevilla, 107-123
- Porras Nadales, A., 2009, “Derechos políticos”, Terol Becerra M. J. (ed.): *Comentarios al Estatuto de Autonomía para Andalucía*, Tirant lo blanch, Valencia
- Prieto Sanchís, L., 2010, “Sobre las declaraciones de derechos y los nuevos Estatutos de Autonomía”, *Revista Jurídica de Castilla-La Mancha*, No. 49, 125-150
- Ruiz Robledo, A., 2005, “El régimen electoral de Andalucía”, Terol Becerra, M. J. (ed.): *La reforma del Estatuto de Autonomía para Andalucía: posibilidades y límites*, IAAP, Sevilla, 135-151
- Sánchez Morón, M., 1980, *La participación del ciudadano en la Administración Pública*, Centro de Estudios Constitucionales, Madrid
- Terol Becerra, M. J., 2008^a, “Preámbulo y título Preliminar”, in Agudo Zamora, M. (ed.): *El Estatuto de Autonomía de Andalucía de 2007*, Centro de Estudios Andaluces, Sevilla, 87-103
- Terol Becerra M. J., 2008b, “Andalucía 2020: El marco normativo”, in Bericat, E. and Echavarren, J. M.: *Andalucía 2020. Escenarios previsibles*, Centro de Estudios Andaluces, Sevilla, 184-195
- Tomás Maillén, B., 2004, *El derecho fundamental a una buena administración*, INAP, Madrid
- Vilasante, T. R., - Garrido F. J. (eds.), 2002, *Metodologías y presupuestos participativos*, IEPALA-CIMAS, Madrid