

THE REGIONAL PARTICIPATION AT THE DEVELOPMENT OF EUROPEAN POLICIES

(Comparative analysis of the mechanisms of participation between institutional and
para-institutional models of governance)

ABSTRACT

The present study aims to investigate the issue concerning the mechanisms of participation in the ascending phase of the European law in regard to both the region Emilia Romagna and the Autonomous Community of Catalonia, which have been identified as best practices on the subject in their respective countries.

The analysis of these two specific territorial realities is embedded, however, in a broader framework aimed at a reconstruction, from a diachronic perspective, of both the national and the European legal system on the subject.

The study starts from a broader analysis of the problematic relationship between Europe and the regions, thus moving from an examination of the evolution of the relationship between the European Community and the subnational levels of government of the member States.

As known, the European Community was born as a supranational organization originating from an agreement between the States. This approach has been characterizing the Community for a long time, as far as its institutional and regulatory development are concerned. The result is that even today, the articulation of the internal states remains rather insignificant for the European regulations.

This indifference -- with respect to the levels of sub-state governments of the non-unitary member States --both regional and federal--has produced a doctrine advocating, at least until the adoption of the Single European Act, a “regional blindness” of Europe. On the one hand, in our study we analyze the process of regionalization of Europe, in an effort to enucleate the patterns and problematic issues and to outline its development over time. In other terms, we try to reconstruct the way in which Europe has, over time and due to the evolution of the practice and Treaties, recognized dignity to the regions. At the same time we analyze the process of communitarization of Italian regions taking into account the evolution of the internal state, and regional levels, in relation to the relationship with european institutions.

We try, through a critical examination of the relevant treaties on the subject, from the Treaty of Maastricht to the latest innovations provided by the Lisbon Treaty, to understand the rationale for such participation and mechanisms envisaged by the european, national and regional levels aimed at this purpose.

Regions, and in general all the levels of government with political autonomy, which have seen recognized -- thanks to the treaties ratified by the member States -- who take their opportunity to participate in the european decisions concerning regulatory actions in the areas of legislative jurisdiction, still need to have their instruments recognized for influencing directly and concretely the preparation of the acts, which they will still be obliged to apply later.

The point is that in Europe is so uneven and different not only between member States, but even more between the different regions and different territories within the latter, that you need to have a communication channel that allows the political and institutional autonomy to outline the peculiarities in the European territories and communities they serve.

We will try to show that participation, if properly regulated and exercised, can be beneficial to both the participant and the institution that allow participation.

The ascending regional phase can be articulated in two different ways.

As you will see in more detail, there is a direct involvement of the regions in the process of elaboration and adoption of the European legislation but also an indirect phase in which, regions and member States must seek forms of coordination that could lead to the adoption of a common position to be expressed within the European Union.

This common position, both for the direct ascending phase, and more obviously, for the indirect one, is not due to a dialogue between equals, as the central government continues to maintain a position of dominance resulting from the fact that, to date, the Treaties identify as the only responsible parties towards the European institutions, the Member States.

In addition, we will attempt to demonstrate that the participation of regions and the State to the ascending phase significantly depends on the actual will of its actual exercise by the institutional actors called upon to fulfill this function.

In particular, you should consider that, in addition to the actual will of the regions to participate, you need an effective and concrete cooperation on the part of the State, which is often the court of last resort in relation to the position to be expressed within the European Union.

Such a position of subordination of the regions of the State, is also favored by the inability to access the regions directly to the Court of Justice of the European Union as a privileged applicants and, therefore, they can receive an ex post protection than demeanors of central governments and the European Union that infringes on the prerogatives of local government .

Once defined the general mechanisms of regional participation in the ascending phase, we will proceed with a comparative analysis of regional laws which seem to be

qualified as best practices in the field, meaning the Emilia Romagna Region and the Autonomous Community of Catalonia in Spain.

The comparative study aims to examine these methods of participation, critically analyzing the means employed by the state and regional jurisdictions and highlighting the differences and underlining the common traits .

A common element, on which our investigation will focus, is that regional participation, both in Italy and in Spain, seems to be more effective when it is done directly by them in a european environment.

Both jurisdictions in fact, both the Italian and the Spanish, despite having planned and developed tools for consultation and coordination between the central government and autonomy, aimed at seeking a common position to be expressed within the European Union, still show a dominance of the central government which is likely to thwart the efforts of participation even of the most active in this respect.

The risk is therefore to see the principle of internal distribution of skills -- provided by the respective Constitutions -- fairly compromised as well as jeopardized the effectiveness of the principle of autonomy .

The two regions , however, show a different mode of direct participation.

Catania, as we shall see, has made full use of this kind of direct access to the European institutions, both through political and institutional channels and through tools such as the participation of regional representatives in the working groups of the Council and the of Commission. Those however report the limit of compliance by the region's unique location of the inique spanish position to be manifested in the European Union, through both para-institutional activities carried out directly by the region in the European Union.

The Emilia-Romagna, in contrast, has never used the institutional channels of direct participation, thus implementing the direct contact with the European institutions through activities that are outside the disciplines regional, state and European level.

This type of activity is an opportunity for the regions to be able to rely directly on the regional authorities in the European Union, through channels that are not regulated by any source of law, and then moving into what we might call a 'gray area', to internal relationship between the member States and the European Union.

Just by carrying out these actions, carried out in a direct way towards the European institutions, the two regions seem to be able to overcome the limit of the 'common position' in the determination of which the central governments still have a position of supremacy.

The exercise, then, of these para-institutional activities in the European part of the regions, which represented an actual danger to the relationship between member States and the European Union, should be a wake-up call for the EU institutions and member States, which will hopefully lead to a reconsideration of the current structure of European regionalism in the Treaties and therefore leads to recognition, through a review of the same, head in the regions effective tools to enforce in the Community instances of territories and communities that they represented.