



Strasbourg, 5 May 2008

CDL-UDT(2008)009
Engl. only

T-04-2008

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**UNIDEM
CAMPUS TRIESTE SEMINAR
"MODELS OF REGIONAL DEVELOPMENT"**

**Trieste, Italy
21 – 24 April 2008**

REPORT

**DEMOCRATIC PARTICIPATION
AT THE REGIONAL LEVEL**

by

**Mr Angel SANCHEZ NAVARRO
(Professor of Constitutional Law,
Universidad Complutense, Madrid,
Substitute Member, Spain)**

I. Introduction: conceptual framework

1. The seminar's programme focuses particularly on regionalism from the national perspective and good governance. From that perspective, the idea of democratic participation may pose at least two different kinds of questions, which have to be answered. One is related to its contents; and the second, to its theoretical scope.

1. From democratic participation to elections

2. The idea of participation, even of democratic participation, is a very general notion. It is even too general, because it includes very different techniques, which can be considered as different means of democratic participation.

3. Some of them are essential to pluralistic, democratic regimes: freedom of speech, or freedom of association are good examples. But in a strict sense, when we talk about the means of democratic participation we include referenda, recall, popular initiative, individual or collective petitions, open Commissions or other organs with participation of representatives of social interests... and, of course, elections. Because, in fact, when we talk about democratic participation we usually – not exclusively - think of elections. Therefore, I will focus mainly on elections. More particularly, on regional elections.

2. The definition of the democratic subject: the *démos*

4. Originally, the idea of democratic participation had nothing to do with the regional sphere. In the venerable *Declaration of the Rights of Man and of the Citizen*, the citizen right to participate was essentially linked to the formation of the laws and of the budget. Two functions which were logically dependent on a higher principle, set up in Article 3: "The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation". Therefore, the idea of participation was clearly linked to that of sovereignty, which was inherent to the idea of nation... and consequently, could not easily be referred to the regional sphere.

5. In fact, it is generally assumed that democracy is founded on the idea of power of the people (*krátos* of the *démos*). Quoting Abraham Lincoln, democracy should be "The Government of the people, by the people and for the people". As a consequence, if we want to consider democracy at the regional level, we have to pay some attention to the notion of regional people.

6. Because the notion of *demos*, of people is logically previous to the idea of democracy. But, in a world of Nation-States, it is usually linked to the national sphere. The question then can be posed in the following terms: Is there a regional *demos*? In this sense, it is obliged to remember that, in 1991, the French Constitutional Council declared that the very notion of Corsican people made unconstitutional the law which established the Statute of Corsica¹.

7. In fact, the question is not so exceptional, and has also been posed in the context of the European Union, where the democratic foundations of the Unions have to deal with the lack of an "European people" as a whole. This is one of the reasons why the *Treaty establishing a Constitution for Europe* was not based on the will of the non-existing European people, but on "the will of the citizens and States of Europe to build a common future".

8. In any case, the question of the regional people as political subject has to be dealt with.

¹ Décision 91-420 DC (9.05.1991).

Because the notion of people is, in fact, a sociological notion, which refers to a greater or lesser number of individuals, defined by some common features. These individuals may share race, religion, values, interests, or other features, even up to the point to have a feeling of belonging to a given community. But they become a “demos”, a “people” in the sense required by democratic schemes, when they receive juridical (usually, constitutional) recognition, usually through the recognition of means of democratic participation and institutions leading to the formation of a collective will.

II. National and regional *demos*: the plurality of subjects

9. If this happens at the regional level, it implies a pluralist notion of people (demos). In other words, the existence of different spheres of “democratic” participation (at least, regional and national) implies the coexistence of different peoples, capable to form their own collective, regional, will. Different regional peoples, which are part of a wider, global, national people.

10. In theoretical terms, the very idea of “people” may find some difficulties to be considered as plural. Something that can even be observed in the usual language: in some languages (French, German, Spanish) the word “people” is singular, while in others (mainly, in English) it is plural. This may have deep implications: for instance, the “people’s will” tends to be singular (even unique) in some languages (cultures, countries), and plural (that is, diverse) in others. Curiously enough, those countries which speak in English have historically accepted better the democratic pluralism, while others have even suffered long periods of authoritarian, say totalitarian regimes, based in the imposition of the (only) truth, be it religious or political.

III. The risks of democratic participation at the regional level: plurality and conflict

11. But the question does not remain in the sphere of pure theory, and may find other evident, and very practical, consequences. In a nutshell, the democratic theory –and, therefore, the democratic scheme- implies that power has to be founded on the people’s will. At the country level, we call that power “sovereignty”. But the coexistence of different peoples as political subjects, of different regional democratic institutions, of different “people’s wills” may lead to project on them the same logic, so opening the gates to conflict among different spheres with different institutional settlements. Once a political subject is built, and is considered as a “people” on which a democratic power is founded, we have a “self”. And the idea of self-determination may become attractive, thus raising new conflicts, which have to be handled even when some times this may not be easy.

IV. The two-faced regional *demos*: some Spanish cases

12. In any case, there is a basic and constitutive difference between the only “national people” and the (usually, but not always) diverse “regional peoples”. Putting it in a nutshell, the people as a whole which exercise the national sovereignty only participate in decisions of national scope, while the different peoples which exercise a –by definition- limited power take part, as such, in the decision-making process related to issues of –by definition- regional scope. But, in addition, the latter –or, better to say, the individuals that compose them- are also part of the national people. In another words, the constitutional or legal acknowledgement of different regional peoples has to deal with the fact that the same “regional people” may express different opinions (particularly, different political opinions, even different political majorities) when they act as part of the national people, that is, depending on the sphere of the decision. In a strictly electoral perspective, a “regional people” may –of course, does not have to- vote differently in regional and national elections, so weakening possible attempts to face the regional people’s will to the national one.

13. From this particular point of view the Spanish experience may provide us with some valuable examples. It may be especially valuable to look at the results of different elections in

those regions (Autonomous Communities) whose party system is marked by the existence of strong nationalist (even independentist) parties or coalitions, as it is the case of Catalonia and the Basque Country. Regions whose regional institutions have known clear and enduring nationalist majorities, but whose citizens show in a manner similarly clear that they may, as Janus, have two faces, depending on the scope –national or regional- of the elections.

V. The values of democratic participation at the regional level

14. Of course, these kind of reflections which underline the risks of “regional democracy” have to be outweighed by other which emphasize its advantages. Advantages that, in general, are shared with all other spheres that share democratic frameworks and, in coherence with this seminar’s perspective, may favour regional development and, of course, a better governance. And, in a constitutional perspective, do reinforce the classical theory of division of powers, adding a new –vertical- dimension.

1. Regional democracy and good governance

15. From this particular point of view, it seems clear that the participation of citizens in the different processes of decision-making is a factor of political integration in the political community, and it may reinforce the efficiency of the political system in problem-handling.

2. Regional democracy as vertical division of powers

16. In this perspective, the traditional division of powers, considered as a guarantee of the rights of the citizens against any absolute power, is also reinforced. It is quite evident that the existence of new centres of political powers, with its own sphere of competences and faculties, strengthens the system of mutual institutional controls, thus creating new limits for any of them.