



ISSN: 2036-5438

Popular Legislative Initiative in the Autonomous Communities

by

Eduardo Virgala

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





Abstract

The Spanish Constitution has strict regulations regarding direct and participatory democratic mechanisms (referendum, popular legislative initiative). The Constitution has adopted the most restrictive popular legislative initiative (PLI) model (the final decision of Parliament and with no possibility of referendum) compared to other decentralised countries, where referenda may be held either on legislation arising from a direct popular initiative or a PLI rejected by Parliament. The Autonomous Communities have regulated PLIs with the same reluctance as they have had regulating the Constitution and the Organic Act on Popular Legislative Initiative. As a result of this regulation, citizens rarely use a legislative initiative, and when they do, it hardly ever leads to the adoption of an act

Key-words

popular legislative initiative; autonomous communities; participatory democracy



1. Spanish Citizen's Weak Role in Political Decision-Making

We cannot address the issue of popular legislative initiative (PLI) without taking into account the configuration of our State and its political system, including the Autonomous Communities.

In 1978 the Spanish democratic State was clearly established, as has often been stated, as a representative democracy under party rule, i.e., with the intention of channelling the institutional political representation of citizens almost exclusively through the election of representatives in Parliament within a system clearly dominated by parties and their internal apparatus of power (the D'Hondt system, closed and blocked lists, poor regulation of the internal functioning of political parties). It could be that there was no real alternative, which is not surprising because in the 1970s the establishment of direct democracy was not an option.

Hence, in the 1978 Constitution, despite that which is stipulated in Arts. 9 and 23, the institutions of direct democracy are virtually non-existent. Strictly speaking, the only institution created, the "Concejo Abierto", is rather marginal since it is limited to municipalities with fewer than 100 inhabitants. This is logical, since expanding it would have been unrealistic in a large territory and in a complex state in the late 20th century. However, semi-direct democracy mechanisms, in which the individual does not directly manage public affairs, but rather has the opportunity to approve certain decisions, have also been regarded with suspicion. Referendum, as a prime example of a semi-direct democracy mechanism, is excluded from the legislative level and is limited to political, non-binding decisions. A referendum cannot be initiated by citizens' initiative, but rather the process is controlled by constitutional bodies, which has led to the calling of only two advisory referenda in the last 33 years, in 1983, on Spain's withdrawal from NATO and in 2004, on the Treaty establishing a Constitution for Europe.

Regarding the mechanisms of what could be defined as participatory democracy¹, notably PLIs, the main focus of this paper, their regulation in the Constitutional complex, Organic Act 3/1984, March 26th regulating Popular Legislative Initiative (LOILP), the



Statutes of Autonomy and regional legislation has led to its elimination, since it is not very effective in channelling citizen participation and, when it does, it does not result in an act being approved by Parliament. The Constitutional Court case law has been “restrictive and exceptional” regarding direct democracy (Pérez Luño 2003, 74): “Our Constitution in Art. 1.3 proclaims the parliamentary monarchy form of government or political form of the Spanish State and, according to this premise, it envisages a system of citizen political participation in which the mechanisms of representative democracy predominate over direct participation” (Judgment 76/1994, March 14th).

The extreme exclusion or limitation of direct, semi-direct and participatory democracy has been motivated by the decision made in favour of representative democracy and based on the memory of its past plebiscitarian use in authoritarian times. However, it must be said that the existence of representative democracy does not preclude the proper and continued use of semi-direct and participatory democracy, as demonstrated by countries such as Switzerland, Italy and some U.S. states. Moreover, the argument regarding its use by authoritarian regimes, especially of the referendum, should be questioned. It was not the use of referendum that kept the Franco regime in power, nor was it a mechanism continuously used (Franco held only two referenda: one in 1947 on the Succession Act and another in 1966 on the State Organic Act). In any case, it seems that at the beginning of our current constitutional experience it was better not to take unnecessary risks. In addition, we should point out what has happened in the 30 years after the adoption of the Constitution.

In the analysis of the political system, it is better to start with the Constitution, the constitutional conventions, the practices of constitutional bodies and the unique facts of political life (Requejo 2004; Volpi 1997). No political system can be called the best, but “only the most appropriate to the historical moment and to the cultural, political and institutional context in a given country” (Volpi 1997, 253-254).

In Europe, since 1945 non-parliamentary political systems have been excluded, such as presidentialism, because of past memories of monarchies and fascism, and the parliamentary system has been chosen. However, within this parliamentary system, the rationalised system is the best option (absolutely necessary for reasons of legal and political certainty) although it is unable (Germany, France since 1962) or ineffective (Italy, France



until 1962) in creating governmental stability, because what matters most is the existence of a bipolar system that allows for political alternance.

Within this context, and keeping in mind the 18 failed governments in our Parliamentary Republic between April 1931 and July 1936, a political system was designed, in which the government was the steering committee of the parliamentary majority and the President of the Government enjoyed strong leadership, which generates a natural alternance (electoral system, simple investiture, constructive vote of no confidence). So far this political system has allowed citizens to choose the formula of government because the electoral system establishes parliamentary majorities, which does not prevent, as has happened in some regions (such as Catalonia and Euskadi), the Executive from being decided as the result of post-electoral agreements in which the citizen has not intervened at all. This was a drag on the configuration of European parliamentary systems resulting from the situation created by constitutional monarchies in the 19th century, which, despite revolutionary vagaries, maintained institutional continuity, i.e., the King lost his powers but did not disappear, preventing people's participation in the executive branch. This situation still exists in most countries with parliamentary systems, leading to the presumption that citizens can only vote in Parliamentary elections.

Moving our discussion to Parliamentary elections, the Spanish citizens are faced with a blocked-list electoral system, in which they have no say, since it is the party machinery that decides everything. This happens in small districts where the proportional electoral system is made to resemble a first-past-the-post system without its benefits (closeness, voter identification with their Member of Parliament), the only difference being that only the two major national parties (PSOE, PP) have obtained a surplus of the system while the deficit has gone to the minor parties (IU, UPD), and has been neutral for the nationalist parties (PNV, CiU, ERC, CC, etc.). The latter act as "hinges" in the government stability formula if none of the major parties obtains an absolute majority.

In addition, we should point out the lack of internal party democracy¹¹, fundamental to channel citizens' political and institutional action. Despite recurring comments on the party crisis, they are still the most appropriate mechanism to channel political pluralism and democratically structure the State's political bodies. Hence the need to further deepen the internal democratisation of political parties and the full force of the constitutional rights of their members, since they constitute the first stage in the democratic political



process. This need for internal democracy has emerged since the advent of mass parties. Without recourse to classic writers such as Michels and Ostrogorsky, on the one hand party bureaucratisation was consolidated during the 20th century, and, on the other hand, the single member currently takes a back seat to public officers (numerous in big parties) and the media activity of the leaders compared to traditional membership based on daily commitment (Carreras 2004, 94).

Since discarded direct democracy mechanisms (discarded either due to their absence or to their strict and restrictive regulation) have excluded citizens from participating in fundamental political decision-making processes regarding the appointment of the Chairman of the Executive and also since political parties lack internal democracy, how will citizens be able to actively participate in democratic political life^{III}? This is not the time to develop a detailed programme of action to strengthen democracy, but rather the regulation of the mechanisms provided for in the Constitution (referendum, popular legislative initiative) must be less stringent. More than thirty years after the adoption of the Constitution and the establishment of a stable democratic State in Spain, the use of these instruments should not entail great risk . A popular initiative could be established to call for a referendum, and a popular legislative initiative could also lead to a referendum if the Parliament has rejected or modified the popular bill^{IV}. This would be accompanied by a much stronger commitment to the adoption of new technologies to facilitate the expression of citizens' will, regarding both the decisions of the State^V (cyber referendum on significant social issues ^{VI}) and decisions regarding the political parties (the electronic primaries). We should also mention that according to studies conducted in the U.S., if the ballot is well-written and campaign financing is transparent, citizens are able to decide according to their own opinion; therefore, in the light of citizen's distrust, the debate could be encouraged and political tensions could be alleviated (Bowler and Donovan 2000, 650, versus Aguiar 2000, 75).

In any case, this desideratum is completely naive as no constitutional reform is likely to come about in Spain in the next years.

Therefore, based on this disheartening portrait of the democratic functioning of the Spanish State, I will attempt to analyse the current regulation of popular legislative initiative, focusing on the regional level.



2. PLI in the Autonomous Communities

The 1978 Constitution, as abovementioned, has adopted the most restrictive PLI model (final decision of Parliament and with no possibility of referendum)^{VII} compared to other decentralised countries, where it is possible to hold referenda either concerning legislation resulting from direct popular initiative^{VIII} or a PLI rejected by the Parliament^{IX}.

It is outside the scope of this paper to analyse why we have chosen the model to which we have repeatedly been exposed. However, we would like to point out that the constitutional regulation of PLI has been harshly criticised by most authors, because it “seriously hampers its effectiveness, making it a direct mechanism that is insignificant and ridiculous, I would say” (Marco 2009, 2) and that “the middle path we are on leads nowhere, it is an institution that is obsolete, and has been losing the limited functionality that it could enjoy, so it should either be repealed or should advance and give it full effect” (Marco 2009, 3). Another author claims that the constitutional regulation “limits PLI making almost impossible for it to prosper”(Cabrera 1999, 51), and that “the Constitution has failed to regulate this instrument, it has been emptied to the point of being impracticable” and that it is “an ornamental feature of the Constitution intended to remain anonymous” (Arnaldo 2008-2009, 6633 and 6636).

It is a procedure that requires a very large number of signatures and excludes the most important issues for citizens (fundamental rights, taxes, constitutional reform) . Furthermore, when the necessary signatures have been collected the procedure may be initially rejected by the Parliament in the “toma en consideración” vote. Therefore, at the national level, procedures hardly ever culminate in becoming laws, and at the regional level very few PLIs have borne fruit.

All Autonomous Communities have regulated PLIs in their Statutes according to the jurisdiction provided for in Art. 148.1.1 of the Constitution (“organisation of its institutions of self-government”) and in the provision of Art. 147.2.c of the Constitution (the Statute must contain the “organisation” of “its own autonomous institutions”). From this we can infer that the only limits to autonomous self-organisation in matters relating to PLIs should be linked to the basic conditions to exercise the right of participation as set out in the LOILP, restricting it to regional matters and respecting the legal nature of PLIs



in the Constitution (mere proposals subject to the discretion of Parliament). In my opinion, Art. 87.3 presents some constitutional limits, for example, taxation^X, although others are binding in that they could never fall under regional jurisdiction, such as, organic acts, the prerogative of mercy, international treaties and constitutional reform^{XI}. The procedural requirements are also not binding (signatures, “toma en consideración”, causes of inadmissibility). Therefore, in my opinion, the Catalan statutory reform of 2006 (Art. 222.1.a) allowing proposals to reform the Statute to be included in PLIs^{XII} is lawful. The Autonomous Communities have regulated PLIs with the same reluctance as in the Constitution and in the LOILP (1984 and 2006).

2. 1. Issues Excluded from the Regional PLI

Statutes and regional PLI acts have not only excluded issues that have no regional legislation according to the Constitution (organic acts, mercy, international treaties, constitutional reform), but have also blocked PLIs on a number of issues, such as, territorial organisation, taxation and institutional arrangements. In addition, some Acts have excluded the establishment of rights^{XIII}, the electoral system^{XIV} and the reform of the Statute^{XV}. Furthermore, in my opinion, restricting a PLI is objectionable when the case regards an issue in which the Autonomous Community should be subject to the basic acts of the State^{XVI} (Aragon, the Balearic Islands, Extremadura), when an act or regulation passed by the same Parliament (Asturias, Cantabria, Castilla-La Mancha) is repealed, or in the case of the Balearic Islands, when, in sharp contrast with Art. 87.3 of the Constitution, PLI is contrary to the supreme values enshrined in the Constitution, self-government, the defence of the identity of the Balearic Islands or the promotion of solidarity among the peoples of the Balearic Islands (Larios 2007, 30).

All of these restrictions are crucial because we must remember that the regional Parliament is not required to approve the initiative and to submit it to a referendum, in which case exclusion would make some sense (Biglino 1987, 104; Larios 2003a, 21). Another cause of exclusion may be patent unconstitutionality or patent violation of the Statute by a PLI (Muro 2007, 30). However, it seems this should not be grounds for initial exclusion by the powers given to the Bureau of the Parliament (in Catalonia it requires a



report to the “Advisory Council”), and its interpretation should always be narrow (Larios 2003b, 82).

2. 2. Right to Sign a PLI

In regional legislation a citizen of legal age who is resident in the Autonomous Community, and in some regions who is registered on the electoral roll^{XVII}, is entitled to sign a PLI.

The 2006 Catalan Act is an exception in that it entitles people over 16 years of age who are legally resident aliens to sign a PLI. Therefore, in Art. 23 of the Constitution this Act changes the definition of who is entitled to the right to political participation, this clearly being the competence of an Organic Act as it regards age. In contrast, M. J. Larios (2008, 189) argues that it must be accepted as it is an improvement in the entitlement to this right, but that this is not a question of the restriction or expansion of entitlement but rather of the sources of law, the exclusive prerogative of the organic legislator. Regarding foreigners, they might not be entitled to sign a PLI, as long as Art.13 of the Constitution prohibits foreigners from exercising any of the rights provided for in Art. 23 of the Constitution, except for the right to vote in municipal elections^{XVIII}. I do not understand the argument used for the Catalan Act, according to which entitlement to sign a legislative initiative does not affect the exercise of sovereignty, since, on the one hand, whether or not it affects the exercise of sovereignty, Art. 13 of the SC, is definitive. Moreover, citizens who exercise a legislative initiative are setting in motion a mechanism which may conclude with the adoption of the Act by the Parliament. Therefore, that it does not affect sovereignty whatsoever seems overstated.

Citizens are entitled to sign a PLI but the “Comisión Promotora” (the Promoting Commission responsible for the collection of signatures) plays a crucial role. Therefore, regional legislation should specify much more clearly than it currently does things such as the number of members of the Commission^{XIX} or which functions they can perform, especially during the Parliamentary process (Marco 2009, 11).



2. 3. Admissibility Requirements and the Bureau of the Parliament

Regional PLI acts often require the presentation of a full text with an explanatory memorandum and the list of the members of the “Comisión Promotora”. In this respect, as in the 2006 LOILP, the requirement that a detailed explanation be provided regarding the reasons for the PLI should be removed, since there is already an explanatory memorandum and the Commission can intervene in the “toma en consideración” process. The Bureau of the Parliament is responsible for advancing the PLI process to the next step, i.e., the collection of signatures.

PLIs may not be admitted not only because they concern issues excluded from PLI, but also due to the failure to file the formal documentation, which is logical. Far more questionable is when PLIs are not admitted for reasons not written in the Constitution or in the Statutes, but that have been included in regional PLI Acts.

These “additional” causes are:

1) The coincidence of a PLI with an existing bill or law (if it is already in the amendment process and concerns the same subject). This seems to be an established restriction added to the Constitution, and may serve to allow those who fear the possible submission of a PLI to block it by the presentation of a bill^{xx}. The coincidence in subject of a PLI does not mean the subject is identified in a legal regulation and is not applicable to the rest of the bills (Larios 2008, 193; Muro 2007, 376; Marco 2008, 66 and 2009, 14)^{xxi}. In the Catalan case, if the Bureau considers there to be a coincidence in the “same matter”, it gives the “Comisión Promotora” 15 days to decide whether to maintain the PLI or withdraw it. If it decides to maintain it, this then leads to the accumulation of bills (Art. 6.3). Another problem is that in Catalonia coincidence paralyses the pre-existing bill during the admissibility stage of the PLI (before the collection of signatures), thus postponing it. Therefore, it would be good for the Bureau to fix the stay of the bill after the PLI is admitted to the House after the collection of signatures (Muro 2007, 377).

The case of Valencia is worthy of mention because if a PLI enters the Parliament prior to the completion deadline for amendments to the parliamentary initiative already in process, it should be accepted as an amendment to the parliamentary bill. This has been defined by Marco as “surprising, if not mind-blowing” (Marco 2008, 67).



- 2) When a PLI overlaps with other PLIs of the same or substantially equivalent content presented in the current Parliament. The PLI should be required, at least, to have been admitted by the Bureau of the Parliament (Marco 2009, 15; Larios 2003a, 225)^{XXII}, although this has not been the criterion of the Constitutional Court.
- 3) When it manifestly concerns different issues with a lack of homogeneity. This may contribute to an improvement in legislative techniques, but is inadmissible in so far as it is not required for parliamentary bills^{XXIII}. This cause has now been suppressed in Catalonia.
- 4) When it corresponds to a parliamentary motion. This is critical both because it is vague (Muro 2007, 375, Aragón 1986, 305) and because it refers to different procedures that lead to diametrically opposed legal results (an Act and a political position). Moreover, it allows those who fear the possible submission of a PLI to cancel it by the presentation and approval of the motion. In this regard, the elimination of this cause has been welcomed in some autonomous regions like Catalonia (Larios 2008, 192; Muro 2007, 375)^{XXIV}.

The control of these requirements is the responsibility of the Bureau of Parliament, and, therefore, Constitutional Court case law should be recalled since it notes that the Bureau “controls the legality of the initiative; however, this control would result in the admission or rejection of the initiative, and works, like all those of its kind, according to a strict legal principle, not a political one (that, by contrast, takes place in the “toma en consideración”: Art. 9 of Act 2/1985)^{XXV}. “This decision is fully reviewable in the constitutional “amparo” procedure because it affects the very possibility of exercising the right”^{XXVI}.

Another issue is “when grounds of inadmissibility are set in response to the material content of the bills, as in the case of popular legislative initiative. The control of the Bureau should necessarily serve that content, without thereby encroaching on the judicial functions reserved for Judges and Tribunals”^{XXVII}, but “if the law imposes no limit whatsoever to the initiative, the validation of its admissibility should always be formal, only ensuring that the initiative meets the formal requirements established by law (Judgment 124/1995)”^{XXVIII}.



2.4. Procedure for the Collection of Signatures

The Autonomous Communities have followed in the footsteps of the central State and in most of them “the number of signatures required to submit a PLI has been specified between 6,000 [La Rioja] and 75,000 [Andalusia] signatures, which corresponds to between 1 and 2 percent of the electorate [0.57 in Galicia and 2.51 in La Rioja]. In the Balearic Islands, a PLI may be submitted by 30% of the electoral roll of a constituency (the islands). In the Canary Islands a PLI may be submitted by 50% of the electoral roll of an island, in addition to the absolute numbers” (Larios 2008, 194). In short, with figures that are far from those of comparative law^{xxix}, this should be reduced dramatically if we want to revitalise the institution of participatory democracy.

The deadlines for the collection of signatures range from three months (Asturias, the Balearic Islands, Cantabria, Castilla-La Mancha, Madrid and La Rioja with no provision for requesting an extension; in the Canary Islands the three month deadline may be extended for 60 days and in Catalonia the 120 days can be extended for 60 more working days) to four months (Andalusia, Valencia, Galicia and the Basque Country with a possible extension of two more months) and to six months (Aragon, Extremadura, Castile-León, Murcia, Navarre) (Larios 2008, 194-195).

As noted by M. J. Larios (2008, 199), “[t]he practice shows that the deadlines for the collection of signatures are too limited and always need to be extended. Of the initiatives submitted to the Congress, the majority did not reach the “toma en consideración” stage due to the failure to collect the required signatures within the fixed deadline, although extensions are usually granted. The vast majority of PLIs that reach the “toma en consideración” stage or the full vote in the Autonomous Communities, where these processes do not exist, were abandoned at that time. Moreover, the time from the entrance of a popular legislative initiative in the House and its first parliamentary process is usually quite long, which is extremely demotivating for the proponents and causes public interest in the issue the initiative addresses to drop off. Therefore, the reform introduced in the central State Act setting a deadline for initiating the parliamentary procedure must be acknowledged”.



Signatures are collected on official paper, but “the reform of the LOILP and of the Catalan Act introduces the possibility of using new technologies in the collection of signatures, although in both cases the possibility of collecting electronic signatures has been opened up (Article 7.4 of the LOILP and first additional provision of Act 1/2006 on the Catalan Parliament)” Larios (2008, 195)^{xxx}. A PLI is a good way to test new forms of participation. Therefore, the proposal from Carlos Guadian’s K-Government web to use an open source public system should be accepted . According to his proposal, authentication is performed against the census, the launch of initiatives is popular and once a certain number of signatures has been reached, the initiative enters the political agenda. This means that it is binding^{xxxI}.

2.5. Appeal Against Rejection

The rejection of a PLI should be remedied using the “amparo” before the Constitutional Court^{xxxII}. Here we encounter two problems. On the one hand, delays in the Constitutional Court can be discouraging for a PLI. On the other hand, the Constitutional Court understands that any legal violation “does not provide a basis for a claim for protection” ^{xxxIII} and that legal violation “cannot be assumed, and therefore requires a special argumentative effort in the request, aimed at verifying the presence of a causal relationship between procedural irregularity and the violation of the content of a fundamental right , making it clearly impossible to exercise a popular initiative in the face of unpredictable and insurmountable obstacles” ^{xxxIV}. Therefore, an ordinary appeal would be more useful than the “amparo” procedure (Larios 2003a, 228-229).

2. 6. Parliamentary Procedure

Once the necessary signatures have been collected, the parliamentary process of a PLI can begin. However, there is one almost insurmountable obstacle, i.e., the “toma en consideración” procedure. This procedure may make sense in those cases where the initiative is attributed to the House, consequently that is when the bill is accepted by the whole Parliament. However, a PLI is openly described as an initiative, which is perfect when collecting signatures and complying with formalities (Santamaría 1985,



1265; Astarloa 2002-2003, 288)^{xxxv}. Therefore, this procedure should not be undertaken because, in practice, it serves to dispose of the parliamentary majority without examining the PLI, wasting the efforts and energies of the citizens.

In this regard, the 2005 reform of the Rules of the Parliament of Catalonia is laudable in that it removed the “toma en consideración” procedure for all bills and replaced it with a full debate without a vote, unless an amendment against the complete bill is presented.

One obstacle that all bills encounter is the possibility of Government veto for budgetary reasons. In my opinion this is logical because of the exclusive governmental budget prerogative.

Moreover, some Autonomous Communities have provided for the involvement of the “Comisión Promotora” in the “toma en consideración” procedure (Aragon, the Balearic Islands, Galicia) or in the whole debate (Catalonia), which allows the proponents to explain the fundamental objectives of their PLI.

2. 7. Withdrawal of a PIL

It is clear that the “Comisión Promotora” may always withdraw a PLI before the “toma en consideración” stage. Once the “toma en consideración” has been carried out, no one, except the House itself, can remove the bill (Aragón 1986, 306). However, it makes more sense to withdraw the PIL when the initiative has been changed, insofar as it distorts its original meaning. Therefore, the example of the Rules of the Catalan Parliament legitimising the retreat of the “Comisión Promotora” “before the start of voting in the plenary or in the committee if it is acting in full legislative capacity” should be followed (Section 116). In addition to Catalonia, the only Autonomous Community which specifically includes the “Comisión Promotora” as an entity entitled to withdraw a PIL is Aragon (Art. 12.3 of Aragonese PLI Act), expressly stating that in the case of a PLI, if the “Comisión Promotora” determines that the amendment adopted and introduced undermine the purpose of the initiative, it may request its removal”. In both cases, according to the wording of the provision, this right is an application, therefore, it would require approval by the House if the “toma en consideración” had already taken place or if it had passed the whole debate in the Catalan case. However, the purpose and spirit of the



legislation, which is to give special importance to the “Comisión Promotora” throughout the process, increases the likelihood that this rule will be applied, so that, before a request for withdrawal, the House cannot object. Giving the members of the “Comisión Promotora” the opportunity to propose the withdrawal of a PLI implicitly entails acknowledging the importance of ensuring the principles of the initiative and not undermining it with legitimate amendments made by the House.

2. 8. Practice of PLIs in the Autonomous Communities

At the national level only 50 PLIs have been proposed in twenty five years^{xxxvi}, and it has taken ten years for one of them to pass the “toma en consideración” while only one has gone on to become an Act^{xxxvii}.

Up until April 2007, in the Autonomous Communities 127 PLIs had been presented, with an average of 7.47 PLIs per Autonomous Community. In the Canary Islands alone there have been 27 PLIs to date, and six of them have become Acts^{xxxviii}. In Catalonia, up until November 2010, 19 PLIs had been proposed. In Euskadi, up until 2010, only 11 PLIs had been presented, two of which became Acts (Act 10/2000, December 27th regarding the Charter of Social Rights and Act 14/2007, December 28th concerning the Charter of Justice and Solidarity with the Poorest Countries).

ⁱ“Representative and participatory democracy are not defined as two alternatives, but rather as two complementary systems that intend to give greater prominence to civil society, either individually or through groups in the creation of the will of the State. Participatory democracy does not pursue the participation of all citizens in general, but of those interested in the decision-making process, primarily through organisations representing social interests” (Larios 2008, 186).

ⁱⁱThe polls project a very negative image of political parties to the Spanish people, nearly 70% of whom believe that political parties only care about their own interests. They also negatively influence citizens’ opinion of the political decision-making of politicians (Gómez Fortes *et al.* 2010, 73 ff.).

ⁱⁱⁱIn Spanish society there is little extra-electoral political participation, with only 36% of the Spanish participating, the most common form of participation being the signing of petitions, which has only been



used by 20% of the population in the last twelve months (Gómez Fortes *et al.* 2010, 129).

^{IV} See Catalan Act 4/2010, March 17th, regarding popular consultations via referendum (under appeal by the Prime Minister to the Constitutional Court in December 2010). This Act, among other consultations, enables citizens representing at least 3% of the population of Catalonia “to promote the call for a referendum” (Article 21), except in the case of tax or budgetary issues (Art. 22), provided that its call is approved by an absolute majority of the Parliament (Art. 29) and a referendum is merely advisory (Art. 12.1). In any case, a referendum may be called by the Government of Catalonia with the prior approval of the central State (Art. 43.2). The problem is that Catalonia does not have the jurisdiction to settle consultations via referendum since, according to Constitutional Court judgement 31/2010, June 28th, regional jurisdiction on consultation may include “surveys, public hearings and participation fora” “with the understanding that under the heading other instruments of popular consultation referendum is not included”, and “the exception [of Art. 149.1.32 of the Constitution] cannot simply claim authorisation to call for popular consultations via referendum, but rather this must be extended to the entire discipline of that institution, i.e., to its establishment and regulation”.

^V On this issue, see Catalan Act 4/2010, March 17th, regarding popular consultations via referendum (under appeal by the Prime Minister to the Constitutional Court in December 2010), establishing the possibility of using electronic media in consultations via referendum, both in the collection of signatures and voting (Article 56 *et seq.*). However, on the unconstitutionality of the Act on jurisdictional grounds please refer to what is stated in the previous note.

^{VI} Some authors refer to *instant-referendum*, permanently open to plebiscite or to the polls. See Pérez Luño (2003, 71).

^{VII} Italian and Austrian style.

^{VIII} Switzerland, U.S. states.

^{IX} German states.

^X Whenever they refer to the autonomic regulation of taxes, which in some Communities, such as the Basque Country or the Community of Navarre, can be very broad.

^{XI} In Judgment 76/1994, March 14th, the Constitutional Court stated that it is not possible for a regional PLI to submit a proposal for constitutional reform to the regional Parliament: “In fact, the bill submitted by the appellants could not be passed since it concerned a matter, i.e., the reform of the Spanish Constitution, that is excluded from popular initiative by Art. 166 of the SC. This article implies that, without it having to appear repeatedly in other provisions, a PLI cannot address this matter in any way, either directly or indirectly, i.e., it vetoes the possibility of requesting, through popular legislative initiative, the exercise of the powers of initiative in this area, which are the competence of the Basque Parliament. (...) If the Constitution has expressly prohibited the initiation of the constitutional reform following the exercise of a popular initiative, it is clear that its purpose is to trigger the exercise of a parliamentary initiative, (...) which means contravening the intended purpose of the makers of the Constitution to provide the aforementioned exclusion”.

^{XII} I agree with Muro (2007, 370) that, in this case, it would be logical for the Bureau to warn the promoters of a flagrant violation of a Statute.

^{XIII} Asturias, Cantabria.

^{XIV} The Canary Islands, the Balearic Islands, Rioja, the Basque Country.

^{XV} Aragon, the Canary Islands, Valencia, La Rioja, the Basque Country.

^{XVI} This has been described as being extremely indefinite, excessively limited, poorly defined, of vague content and difficult to apply in the admission process (Larios 2003a, 250-251).

^{XVII} Art. 1 of Basque Act 8/1986 regarding a PLI: “Citizens who enjoy Basque political status, are of legal age and registered on the electoral roll”.

^{XVIII} Muro has spoken against it (2007, 372) claiming that the PLI is “non-political participation and does not stand for an ideology or a government programme”, but rather it is “a matter of the ‘formalised’ expression of a social demand, or of a part of society, which is communicated to the popular representative body so that it may act for it, if it fits its ‘political’ assessment”. This position is puzzling because in a democratic State political decisions are implemented through laws, which may be imposed on citizens by bodies constitutionally empowered to do so. A PLI forces the Parliament to debate a political decision that may become law. Larios (2007, 30) adds that the makers of the Constitution addressed this in Art. 13.2 of the Constitution on the right to vote, and not other forms of participation.

^{XIX} The Valencian Act establishes a minimum of three members and a maximum of five members.



^{XX} Santamaría (1985, 1266) defines this cause as unconstitutional.

^{XXI} Aranda (2007, 207) has spoken against this claiming that it is “an article that blocks a PLI on the assumption that there is a legislative initiative pending in the Congress or Senate on the same subject in the post-amendment process. I think this is correct as a matter of parliamentary economy”.

^{XXII} In California there is no obstacle to introducing several popular initiatives on the same issue, even when they have contradictory meanings. On one occasion there were five different proposals submitted to a referendum on the insurance reform (Bowler and Donovan 2000, 646).

^{XXIII} See, for example, Act 37/2010, November 15th, establishing a Budget Office of the Parliament. In its First Final Provision, it amended Act 18/2009 of November 23rd, changing the Traffic, Motor Vehicles and Road Safety Act, approved by Royal Legislative Decree 339/1990, March 2nd.

^{XXIV} Unaltered in Castilla La Mancha, Extremadura, Madrid, Murcia and Euskadi.

^{XXV} ATC 428/1989, July 21st.

^{XXVI} ATC 140/1992, May 25th.

^{XXVII} STC 76/1994, March 14th.

^{XXVIII} STC 38/1999, March 22nd.

^{XXIX} 100,000 in Switzerland, 50,000 in Italy, 100,000 in Austria.

^{XXX} Aranda (2007, 210 note 46) criticises the Catalan Act because it allows the Government to defer legislative development.

^{XXXI} http://www.k-government.com/2007/06/08/iniciativa_legislativa_popular_electronica/#ixzz14txg7Tp4 (last visit on May 24th, 2011).

^{XXXII} The exception “is Article 5.4 of the Aragon Act that, leaving the way open for the Constitutional Court, recognises the power of the ‘Comisión Promotora’ to complain before the Justice of Aragon. The role of the Justice is, however, limited since its decision is not binding and is forced to abandon the issue if an “amparo” appeal is introduced” (Biglino 1985, 305). In the Canary Islands, a complaint can be filed before the House within 15 days of notification of rejection by the Bureau (Larios 2003a, 252).

^{XXXIII} ATC 570/1989, November 27th and 140/1992, May 25th.

^{XXXIV} ATC 140/1992, May 25th.

^{XXXV} Punset (1983, 60) has spoken against it stating that suppressing the “toma en consideración” would “not only supplant the will of the House, which, according to the Rules, is responsible for coordinating the processing of initiatives (Art. 89.1), but it would also give the organs or individuals endowed with the power of initiative, a legislative power that has not been conferred upon them” and that it “does not affect the right of initiative recognised by the Constitution whatsoever, since it does not condition the submission of initiatives, but works as a procedural requirement, freely appreciated by the House”. Aranda (2007, 212) has also argued against it claiming that this means that popular initiative serves “to start the legislative process. Therefore, the “toma en consideración” is vital”.

^{XXXVI} 1.56 PLI per year before the 2006 reform of the LOILP and 2.75 per year after the 2006 reform.

^{XXXVII} Act 8/1999, April 6th.

^{XXXVIII} V. Cuesta López, “Participación directa e iniciativa legislativa del ciudadano en democracia constitucional”, Doctoral Thesis, Universidad de las Palmas de Gran Canaria, 2007 (Cabedo 2009, 461-462).

References

- AA. VV., 1999, “Participació ciutadana: la utilitat de la Iniciativa legislativa popular” in *Debats de Paula Provença*, 19
- Aguiar de Luque, L., 2000, “Democracia directa e instituciones de democracia directa en el Ordenamiento constitucional español” in Trujillo, G.-López Guerra, L.-González-Trevijano, P. (eds.), *La experiencia constitucional (1978-2000)*, Centro de Estudios Políticos y Constitucionales, Madrid, 67-96
- Aragón Reyes, M., 1986, “La iniciativa legislativa”, *Revista Española de Derecho Constitucional*, 19, 287-312
- Aranda Alvarez, E., 2007, “La nueva ley de iniciativa legislativa popular”, *Revista Española de Derecho Constitucional*, 187-218
- Arnaldo Alcubilla, E., 2008-2009, “Iniciativa legislativa popular”, in Arnaldo Alcubilla, E. (ed.), *Enciclopedia Jurídica La Ley*, La Ley, Madrid, 6632-6636



- Astarloa Villena, F., 2002-2003, “La iniciativa legislativa popular en España”, *Teoría y Realidad Constitucional*, 273-321
- Barrutia, A. et al., 2009, *Buenas prácticas de participación ciudadana*, Universidad de Deusto, Bilbao (http://www.gipuzkoapartehartzen.net/images/docs/es/Buenas_Practicas_Participacion_InformeFinal_es.pdf, last visit on January 1st, 2011.)
- Biglino Campos, P., 1985, “La iniciativa legislativa popular en los ordenamientos jurídicos regionales”, *Revista de Estudios Políticos*, 289-307
- Biglino Campos, P., 1987, “La iniciativa legislativa popular en el Ordenamiento jurídico estatal”, *Revista Española de Derecho Constitucional*, 75-130
- Bowler, Shaun-Donovan, Todd, 2000, “California’s Experience with Direct Democracy”, *Parliamentary Affairs*, 644-656
- Cabedo Mallo, V., 2009, “La iniciativa legislativa popular en las Comunidades Autónomas. La necesaria reforma de su legislación”, *Teoría y Realidad Constitucional*, 455-476
- Cabrera Acosta, M. A., 1999, “La iniciativa legislativa popular en el ordenamiento jurídico español”, *Anales de la Facultad de Derecho. Universidad de La Laguna*, 45-59
- Carreras, F. de, 2004, “Los partidos en nuestra democracia de partidos”, *Revista Española de Derecho Constitucional*, 91-126
- Contreras, M., 1986, “Iniciativa legislativa popular y Estado democrático de Derecho”, *Revista de las Cortes Generales*, 67-94
- Exposito, E.-Castellà Andreu, J. M., 2008, “Los derechos políticos y ante la Administración en el Estatuto de autonomía de Cataluña”, in Aparicio, M. A. (ed.), *Derechos y principios rectores en los Estatutos de autonomía*, Ariel, Barcelona, 61-94.
- Fernández Ferrero, M. A., 2001, *La iniciativa legislativa popular*, Centro de Estudios Políticos y Constitucionales, Madrid.
- García Escudero, P., 2008, “Artículo 87. La iniciativa legislativa”, in Casas Baamonde, M. E.-Rodríguez-Piñeiro and Bravo-Ferrer, M. (eds.), *Comentarios a la Constitución española*, Fundación Wolters Kluwer, Madrid, 1515-1522
- Gómez Fortes, B.-Palacios Brihuega, I.-Perez Yruela, M.-Vargas-Machuca, R., 2010, *Calidad de la democracia en España. Una auditoría ciudadana*, Ariel, Barcelona.
- Larios Paterna, M. J., 2003a, *La participación ciudadana en la elaboración de la ley*, Congreso de los Diputados, Madrid
- Larios Paterna, M. J., 2003b, “La iniciativa legislativa popular. Especial referencia a la práctica de la VI legislatura del Parlament de Catalunya”, *Activitat parlamentària*, 74-93
- Larios Paterna, M. J., 2007, “La iniciativa legislativa popular en el context español. Referència especial”, *Activitat parlamentària*, 26-35
- Larios Paterna, M. J., 2008, “Participación de los ciudadanos en el procedimiento legislativo: la nueva regulación de la iniciativa legislativa popular y las comparecencias legislativas”, *Revista Catalana de Dret Públic*, 183-222
- Leuschner Luque, E., 2006, “Derecho de participación política y democracia”, *Asamblea: Revista parlamentaria de la Asamblea de Madrid*, 197-206
- Mallaina García, C., 2009, *Nuevos desafíos democráticos: hacia una iniciativa legislativa popular*, Fundación Alternativas, Madrid
- Marco Marco, J., 2006, “El letargo participativo: la iniciativa legislativa popular en España”, *Revista de las Cortes Generales*, 39-82
- Marco Marco, J., 2008, *La iniciativa legislativa popular: la experiencia valenciana*, Corts Valencianes, Valencia
- Marco Marco, J., 2009, “La iniciativa legislativa popular en España (o el mito de Sísifo)”, *Revista General de Derecho Constitucional*, 8
- Muro Bas, X., 2007, “Algunas cuestiones en torno a la iniciativa legislativa popular”, *Corts*, 361-393
- Pérez Alberdi, M^o. R., 2008, “Comentario bibliográfico: Democracia y participación”, *Revista Catalana de Dret Públic*, 343-370



- Pérez Luño, A. E., 2003, “Democracia directa y democracia representativa en el sistema constitucional español”, *Anuario de Filosofía del Derecho*, 63-79
- Pindado, F., 2007a, “La llei 1/2006, de 16 de febrero de la iniciativa legislativa popular, una eina per a la participació”, *El Pas-Diputació de Barcelona*, 20.
- Pindado, F., 2007b, “El desenvolupament del dret a la participació en l'àmbit legislatiu”, *Activitat parlamentària*, 20-25
- Pitarch Segura, I. E., 1990, “Procedimiento legislativo”, in AA. VV., *Comentarios sobre el Estatuto de Autonomía de Cataluña*, Instituto de Estudios Autonómicos-Facultad de Derecho de la Universidad de Barcelona-Facultad de Derecho de la Universidad Autónoma de Barcelona, Barcelona, III.
- Pinset, R., 1983, “La iniciativa legislativa en el ordenamiento español”, *Revista de Derecho Político*, 57-78
- Rallo Lombarte, A., 1998, “Iniciativa popular, Estado autonómico y reforma constitucional”, *Revista Vasca de Administración Pública*, 205-223
- Requejo Pagés, J. L., 2004, “Las relaciones entre el Gobierno y las Cortes Generales”, *Revista Española de Derecho Constitucional*, 73-89
- Sánchez Sánchez, Z., 2007, “La iniciativa popular: una figura importante para una nueva ciudadanía”, *Activitat parlamentària*, 36-41
- Santamaría Pastor, J. A., 1985, “Artículo 87”, in Garrido, F. (ed.), *Comentarios a la Constitución española de 1978*, Civitas, Madrid.
- Soriano, R., 2002, “La iniciativa legislativa popular: una institución herida de muerte”, *Sistema*, 111-118
- Soto, J. I., 2007, “El derecho de iniciativa ciudadana en el ámbito local”, *Activitat parlamentària*, 42-49
- Vintró, J., 2007, “Reflexions sobre la iniciativa legislativa popular des de l'òptica dels agents socials”, *Activitat parlamentària*, 50-54
- Volpi, M., 1997, “Le forme di governo contemporanee tra modelli teorici ed esperienze reali”, *Quaderni Costituzionali*, 247-281