

PUBLIC PARTICIPATION AND CITIZEN PARTICIPATION IN CURRENT VALENCIAN URBANISM

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ABSTRACT

To talk about participation in urban planning is to discuss not only its concept, but also its relationship with the models of Democracy, the meanings of Governance and the governance of the territory. From the analysis of the Law of Territorial Planning, and Urbanism and Landscape (LOTUP, 2014) of the Valencian Community, Spain, and its modifications of 2019, two types of participation, public participation and citizen participation are derived. These are different processes and levels of participation in urban planning and planning, since they have different ends, dimensions and participating agents. In addition, the hierarchical position that the Law establishes between them is significant, subordinating the second one to the results of the first one. This separation and hierarchy invites us to reflect on the concepts of Democracy and Governance that are applied in the development of municipal urban planning instruments. Citizen participation remains one of the workhorses.

KEYWORDS

Public participation; citizen participation; democracy; governance; urban planning law; Valencian Community.

PREVIOUS POINTS

Public participation and citizen participation are terms that seem to be used without making a difference between them in the context of urban planning. Can we talk

indistinctly of both? Can they be differentiated from political or democratic theory and especially in the dispositions and processes that the laws in urban planning gather?

In its generic sense, participating means *being part of...*, which leads us towards socio-political and legal conceptions of the forms of government, Constitutional and Representative State, where the dimension and sense of participation evolves within the opposite discourse between liberal democracy and participatory democracy, models that respond to different institutional designs.

Following the teachings of Almagro (2016, 179-182), which synthesizes much of socio-political thought from the middle of the s. XX, the force ideas that underpin the reasoning basic of both types of democracy, regarding the participation of citizens, are the following:

- *Representative liberal democracy.* Citizen participation is limited to electoral participation, to the election of its representatives, or is its preferred instrument. This is the only effective political management medium leadership at the complexity and size of societies today, and respect for property, security and natural rights:

a) The otherwise -direct participatory democracy- will overflow the political system because of the continuous social demands that would lead to bankruptcy (the scale).

b) Citizens are unable to understand the technical complexity of decision-making, solution of political problems and take responsibility for the management of public affairs (Almagro 2016, 181).

The citizen is a managed, their role is passive. The relationship between Government, Administration and citizenship is vertical.

• *Participatory democracy.*

Understands participation as a right and value that legitimizes democracy, so freedom in democracy is conceived as a space without domination. Popular sovereignty is not transferable. It implies the expansion and strengthening of the channels of "direct and semi-direct participation", as well as civil association, public hearings and forums. Participation must be influential in decision-making processes and their results respected, so citizens are considered active subjects:

a) They have knowledge of the reality that affects them and the ability to decide.

b) Its effectiveness in solving problems may be equal to or greater than that of specialist technicians. Sociologically it leads to increasing public awareness, social cooperation and democratic involvement with institutions and their procedures, as well as reducing the power of the ruling elites on the democratic path. It has three approaches: deliberative, direct and radical. (Almagro 2016, 181-182).

The citizen is an active part. The relationship between Government, Administration and citizenship is horizontal.

Participation, through this last democratic model, takes a new meaning directed towards collective construction of life and the future. In this sense, Villasante (2009, 14)¹ synthesizes the idea in a praxis aimed at "reflecting collectively, building participatively, based on our own reflexivity, to be more operational and transformative".

Both models seem to be combined in the *New Public Management*, based on the *new governance*, a concept developed and

analyzed by multiple authors from public and private framework. Public governance can be defined as a process of self-government and self-coordination, with the participation of a varied network of performers: government, public and private companies, civil society organizations and citizens, in which the direction of society is decided, objectives of coexistence are defined —their sense and direction— as well as the way to coordinate and organize to achieve it (Aguilar 2006, 90 and 2010, 30).

This new direction, therefore, forces states to change laws, transform its institutions and make settings in its bureaucratic apparatus. It surpasses governance - the ability to lead linked to a political performer and the yields of its policy - and it gets installed in a process of constant negotiation among all those who make up the network (Vallés and Martí 2015, 426). Cooperation is in its foundations, also "freedom and unlimited flow of information, innovation and agreements based on commitments and mutual understanding (...) means an equitable distribution and redistribution of power and resources" (González, Gascó and Llopis 2012, 32).

It involves incorporating the citizen as the subject of the process of management and decision making on the collective, recovering, in words of Pindado (2008, 25), both the "political character of citizenship" and the "citizen character of politics."

Therefore, we can talk about a new way to manage social conflict and work consensus. The citizen participation contained in public participation remains in that network of performers.

	Dimension		Relationes	Citizen role
Liberal Democracy	Limited	Electoral	Vertical	Passive
Participatory Democracy	Multiple Multidimensional	Direct Deliberative	Horizontal	Active

Table 1. Democracies and Citizen Participation Dimension. Source: made from Almagro (2016)

¹ Foreword by Tomás Rodríguez Villasante, en Montañes Serrano, M. 2009. Metodología y técnica participativa. Teoría y práctica de una estrategia de investigación participativa. Barcelona: UOC

1. URBAN PLANNING. GOVERNANCE AND PARTICIPATION

Fundamentals and processes of governance, commented in previous lines, are related to the participatory democracy, which is a new redistribution of power in making decisions that affect the physical and social space, the territory and the city. It introduces a way to abandon the bureaucratic hierarchy, the "technocratic elitism" (Villasante 2017, 169).

To incorporate this new public management of our cities, the new administrative legislation in urban planning fit participation, cooperation and collaboration of civil society as a different bureaucratic model, by overlapping or curling it sometimes in their administrative traditions. The Aarhus Convention of 1998 and the European Landscape Convention of 2000 about Environment are the starting point of the European framework in relation to Public Participation. The United Nations Economic Commission for Europe assumed in Aarhus (Denmark, 1998), the Convention about access to information, public participation in decision-making and access to justice in environmental matters. In general terms, it's upheld that "participation must be guaranteed in the authorization procedure for certain specific activities

For its side, European Landscape Convention (Florence, 2000), urges the "development of landscape policies at different political-administrative levels, to establish procedures for public participation, to identify and qualify our landscapes (Zoido, 2012, 13).

Subsequently, in transposition of Directives 2003/4 / CE and 2003/35 / CE)², European regulations on environmental information and participation, culminates in Spain in Law 27/2006, of July 18, which regulates the rights access to information, public participation and access to justice in environmental matters. Participation in which Spanish Constitution of

1978 advocates must guarantee democratic functioning of society and introduce greater transparency in the management of public affairs.

Thus, article 16 of the 2006 Law promotes "real, complete and effective participation in preparation, modification and review of plans, programs and dispositions, of general nature, related to the environment, by the Administration"; Furthermore, it is fundamentally established that "public has the right to express observations and opinions when all possibilities are open, before decisions are made on the plan, program or disposition" (regulations expressly include citizen participation)

In the Spanish urban area, citizen participation is subsequently included in the Land Law of 2008³, which in its art. 3.2 c) establishes "The right to information for citizens and entities representing the interests affected by urban planning processes, as well as citizen participation in urban planning and management"; likewise, in its art. 4 by providing for the rights of the citizen and, after pointing to public information (letter e), which indicates the effective participation "in procedures of preparation and approval of any instruments of management of the territory or urban planning and execution and of their environmental evaluation by formulating allegations, observations, proposals, claims and complaints, and obtaining a reasoned response from the Administration, in accordance with the legislation regulating legal regime of said Administration and the procedure in question ". Nowadays, all of this is regulated in Royal Legislative Decree 7/2015, of October 30, which approves the revised text of Land and Urban Rehabilitation Law, art. 5.e), within basic statute of the citizen, and in relation to the citizen's rights.

In summary, transparency, openness and citizen participation are the three

² Directives on public access to environmental information and by which Directive 90/313 / EEC, of the Council, and Directive 2003/35 / EC, of the European Parliament and of the Council, of May 26, 2003 is repealed, which establishes measures for participation of public in certain plans and programs related to the environment and which modifies, with regard to public participation and access to justice, Directives 85/337 / CEE and 96/61 / CE, by reference in Fernando Manero, M., "La participación ciudadana en la ordenación del territorio: posibilidades y limitaciones", Geographical Notebooks, 47, 2010-2, pp. 47-71, at p. 57.

³ By Real Decreto Legislativo 2/2008, de 20 de junio. Texto Refundido de la Ley del Suelo.

axes on which governments and public administrations must design public policies and specify their forms of implementation and evaluation.

The countries of European environment (France, Germany, United Kingdom as well as Spain), coincide in pointing to the binomial citizen participation and administrative efficiency attending to new forms of relationship and involvement that rebound on management; legislative reforms are therefore necessary involving new instruments where participation is more extensive, more relevant in decision-making, and, in addition, it must be aimed at both organized and non-organized citizens (Ganuza, 2004).

To observe the status of citizen participation in urban planning in Spain, we will analyze the Valencian case through the relevant Legislation in urban planning. We refer to *Law 5/2014, of July 25, on Territorial Planning, Urban Planning and Landscape* and its modifications of 2019 (LAW 1/2019, of February 5, of the Generalitat, of modification of Law 5/2014, of July 25, of land management, urban planning and landscape of the Valencian Community). In this analysis we will try to answer questions like: in the relevant legislation on Valencian urban planning, does a liberal conception of democracy predominate?; What's the position and role of the participants?; Is there a hierarchical separation between the participation of government public entities and the participation of citizens? Does this legislation include consultation of the population and establish a system of binding decision-making?

We will start from a brief reference of the national legal framework, to focus later on the specific reference law.

1.1. Legal framework: transparency and citizen participation

In the Spanish state, through the Constitution, the obligatory nature of the public powers is collected to "promote the conditions so that

the freedom and equality of the individual and of the groups in which it is integrated are real and effective; remove obstacles that prevent or hinder its fullness and facilitate participation of all citizens in political, economic, cultural and social life" (art. 9.2).

The right to information and freedom of expression is included in the same constitutional text (art. 20); and, art. 20.1.a, the right "to freely express and disseminate thoughts, ideas and opinions through word, writing or any other means of reproduction". On the other hand, according to article 23.1 of Constitution:

Citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage.

More specifically, all people have the right to access public information, in accordance with art. 105.b), regardless of format or support, which is in the hands of any of the subjects included in the scope of Title I of the Act state 19/2013 of 9 December transparency, access to public information and good governance, and that have been prepared or acquired in the exercise of their functions (art. 12 and 13), as well as art. 13.d) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations.

Likewise, Law 7/1985, of April 2, regulating Bases of Local Regime, comes to consecrate public-citizen participation in a framework of information transparency. With enhanced role of the municipality as "basic entity of the territorial organization of the State", the councils are equated with "immediate channels of citizen participation in public affairs, to institutionalize and manage independently their own interests of the relevant authorities" as well,

Will provide the most extensive information about their activity and the participation of all citizens in local life. Article 69.1.

Recapitulating, to participation is a democratic principle enshrined in the Spanish Constitution as a fundamental right (art. 23.1) that must be regulated by law (art. 105), establishing forms of participation. As a fundamental right it affects all areas of political action, which includes urban planning, land planning and landscape. The Spanish territorial division, collected in it, recognizes autonomy of the autonomous communities to manage their interests (art. 137), recognizing among its powers the management of the territory, urbanism and housing (art. 148.3rd).

The Autonomous Communities have been legislating in this area for several decades. Currently, the Valencian Community manages and regulates this area through *Law 5/2014, of July 25, on Land Management, Urban Planning and Landscape* (LOTUP) and its 2019 modifications (LAW 1/2019, of 5 of February, of the Generalitat, of modification of Law 5/2014, of July 25, on land use planning, urban planning and landscape of the Valencian Community).

1.2. Legal regime of citizen participation in Valencian regulations

We will start from the consideration of transparency, openness (open access) and citizen participation, such as the three axes on which governments and public administrations are designing public policies and specifying their forms of implementation and evaluation, as thus follows from the preamble of Law 2/2015, of April 2, the Generalitat, of Transparency, Good Governance and Citizen Participation of Comunitat Valenciana. Chapter I, establishes the general principles that should govern actions related to citizen participation, both individually and collectively. The participation instruments are determined in Chapter II and will be indispensable tools for citizen use that will make collaboration between administration and citizens more effective. Participation processes in elaboration of norms, the right

to propose normative initiatives and the regime of the Citizen Participation Council are regulated. Under such a postulate, a new model is advocated, which regulates, on the one hand, the obligation to inform and publicize public action, and, on the other hand, the right of access to public information. More specifically, Title V regulates aspects related to citizen participation; consequently, “the active participation of citizens in public affairs” (art. 43., on development and promotion of citizen participation is encouraged –strengthening the associative fabric; citizen involvement; furtherance of communication, meeting and work spaces, etc.–; and, article 44, measures for citizen participation; with reference to the regulatory route).

Translated into the Valencian urban environment, the legal regime of public participation is set up by Law 5/2014, of July 25, on Land Management, Urban Planning and Landscape, of the Valencian Community, which has been modified by Law 1 / 2019, from February 5. This Law advocates transparency that is guaranteed by public participation, from the beginning and in all phases of formulation, approval and monitoring, in the terms required by strategic territorial evaluation.

All agents with ability to operate in the territory will know from the beginning the environmental and territorial criteria, and the functional requirements that must be taken into account in the development of urban, territorial and sectoral plans (Section I of the Grounds Exhibition of the Law 2014).

In turn, the modifications made by Law 1/2019 insist on the need to guarantee proper citizen participation:

- In the new section 5th in art. 6, in relation to landscape instruments, on the need to submit them to the process of public participation and consultation with the affected administrations.
- In definition of public interested in the processing of the strategic environmental

and territorial evaluation of plans and programs (art. 48. f).

- On regulation of public participation in the processing of planning instruments (art. 49.1b).
- In the new art. 49. bis, in relation to actions prior to the drafting of the planning instrument.
- Equally, public participation plan which refers to the new paragraph 4.c) of the art. 51, which allows "telematic participation from a forum or space enabled where the document is open to citizens and in which contributions are allowed".
- In article 53.1 which includes obligation of the promoter body to submit the strategic environmental and territorial study, as well as the rest of sector documents, to citizen participation: "with people, associations, platforms or groups", which "is have made or provided suggestions in the phases prior to the drafting of plan or program or information in the scope document", etc.

2. ANALYSIS OF THE TREATMENT DISPENSED TO PUBLIC / CITIZEN PARTICIPATION, IN THE VALENCIAN URBAN REGULATION

From all of the above, several fundamental questions can be dealt with from the normative point of view: if the law differentiates public participation and citizen participation, moreover, if it is a separate process clarified in the law in a taxative and/or decisive way. Attending to the procedure of preparation and processing of the planning, in accordance with the provisions of art. 48 of the Land Planning, Urban Planning and Landscape Law 2014 (LOTUP), the persons and institutions participating in the strategic environmental and territorial evaluation of plans and programs are established, mainly targeting legal persons, public institutions competent in the matter, such as the "promoter body, substantive body, territorial environmental body, as well

as the Administrations affected". At this point (phase 0 of beginning) we can affirm that it is attended to the public participation , but far from the citizen participation understood as really involved in the starting point of the elaboration and processing of the planning, with really contributions of what is It will start and what is being done. Citizens would enter to participate, effectively, at a later stage (Phase 1) when there is already a Draft Plan (BP) and a Strategic Initial Document (DIE). The "technocratic elitism" and the hierarchy of specialization, marks the beginning and territorial strategy, so that the results of citizen participation are limited and conditioned since their incorporation into the process. The citizen is an administrator, his role is semi-passive. The relationship between Government, Administration and citizenship remains vertical.

With the modification of the LOTUP in 2019 (of the new article 49bis), in attempt to promote public participation, make citizen participation proactive and more effective, it is noted that before draft plan is prepared, a website of the promoter body will be enabled in order to have a first rapprochement with the public, for 20 days, in relation to a document that briefly indicates problems that are intended to be solved, the objectives of the Plan and the possible alternative solutions (art. 49bis 1.), so that it can serve as a starting point.

(...) Prior public consultation will have internal administrative effects, preparatory to the drafting of the plan, and will give rise to the obligation to prepare a joint response report to the contributions received. The result of the consultation must be included in the file, indicating the number of participants, number of opinions issued and the response report (Article 49bis, 2., Starting document, preparatory work, before the start phase 0).

For the first time the Valencian legislator makes a public consultation before drawing up the Draft Plan (BP), but without elaboration

of an earlier participated diagnosis, ie, again from a diagnosis and proposals processing tea art, without horizontal and collaborative relational model, supported by the basic principle of Governance. On how active advertising is carried out, the volume and diversity of participants will depend, since it is known that the participation of factual powers stands out through the web. Even so, it constitutes an advance in proactive listening and towards a collaborative model. It implies a strengthening of the direct and semi- direct participation channels and is supposed to influence the decision-making processes and their respected results. The path towards the incorporation of Governance in the new management of public goes with small steps, even with verticality between the technical and institutional proposal and the citizen.

In the same way and with the same order of importance is included in the new art. 48 e) –modification LOTUP 2019– as persons and institutions participating in the “interested public”, who for purposes of this law may be a natural or legal person in accordance with the law of the common administrative procedure, Law 39/2015; giving non-profit legal entities entry to the platforms or groups represented, with consolidated grouping, or

with specific creation as such for that plan or program in question, with compliance with the requirements that the regulations themselves stipulate in this same article that provides it. The article 51 comes to collect public participation again through citizen participation in its drafting in 2019, since in the following, Phase 1, "the draft plan or program and the initial document strategy", will take part for pronouncement and contribution:

(...) To how many people, associations, platforms or groups that have made suggestions or provided suggestions in the previous phase (indicated in article 49bis.1) to the drafting of the plan or program, for a minimum period of 30 business days (article 51.1).

The elaboration of the document of scope of the strategic environmental and territorial study will gather the answers received to the consultations made (...)", in the ordinary procedure (art. 51.2 a); and, also, where appropriate, resolution of strategic environmental and territorial report, in the simplified procedure (art. 51.2 b).

On the other hand, the scope document will contain the public participation plan in which:

	LOTUP 2014	LOTUP 2019
Previous actions	----	Brief Previous Technical Document Public Consultation, open. Web
LOTUP 2014 y LOTUP 2019		
Phase 0. Start	Participants: – Promoter organ – Substantive organ	Result: DIE and BP
Technical control.	Participants: – Environmental Organ	Result: – DIE + BP inadmissibility or – Admisión DIE + BP = goes to Phase 1
Phase 1.	Participants: – Public administrations affected – Citizenship	Result: Scope Document Strategic Environmental and Territorial Evaluation (DA EATE)

Table 2. Public and citizen participation in the beginning of urban planning, LOTUP 2014 and 2019. Source: made from LOTUP 2014 and modification 2019

(...) The public interested in the plan or program is identified and the modalities or breadth of information and consultation (article 51.4.c) LOTUP 2019

As well as possible ways of participation and the possibilities that these must incorporate:

(...) Telematic participation from an authorized forum or space where the document is open to citizens and in which contributions are allowed" (article 51.4.c) LOTUP 2019.

CONCLUSION

Relevant regulations regarding transparency and citizen participation, both in Spanish state level and within the framework of the Valencian Community, establish the need for proactive participation of citizens in elaboration of plans and programs. In urban and land planning matters, the Law 5/2014, of 25 July, Ordination of the Territory, Urbanism and Landscape of Valencia, has some openness to this type of participation, still marked by self technocratic elitism of Liberal Democracy, the citizen is an administrator who participates from an already elaborated strategy, decided from the governmental apparatus, his role is semi - passive from the administrative procedure established by said law. The relationship between Government, Administration and citizenship remains vertical in the development and approval of urban plans in the Valencian Community.

The partial modification, which this Law undergoes, with new text in force since 2019, provides a new beginning in participatory process in development of urban plans, opening a process of prior consultations based on a synthetic of what is technically thought of what happens and how it is fixed. Even marked by a certain attitude prone to preferences that depart from a democracy of initiative from citizens, from the people, this

modification of the Law can constitute a step forward in strengthening the channels of direct and semi- direct participation, prior to the decision making that affects the community, walking shyly towards a collaborative model of relationship between technical and institutional proposal and citizen. Now we just have to wait for the practical experience of its application.

From the analysis of the 2014 LOTUP and its modification of 2019, two types of participation emerge, from public entities and citizens. These constitute different processes and levels of participation in urban planning and land planning, with differentiated purposes, spaces and times, with nonexistent or little collaborative relationship between them in the conception of the present and the joint construction of the future of the city. Thus, the hierarchical position established by the Law between them is made significant, subjecting the second —the citizen— to the results of the first —highly specialized public entities—. A concept of Liberal Democracy thus begins, against the currents of current Participatory Democracy, very sensitive to the application of the principles of Governance for a new management of the public.

REFERENCES

- Aguilar Villanueva, Luis. F. *Gobernanza y gestión pública*. México: Fondo de Cultura Económica, 2006.
- Aguilar Villanueva, Luis F. *Gobernanza: El nuevo proceso de gobernar*. Ciudad de México: Fúr Die Freiheit, 2010.
- Almagro Castro, David. "La participación política en la teoría democrática: de la modernidad al siglo XXI" *Revista de Estudios Políticos*, nº 174, (2016): 173-193. doi: <http://dx.doi.org/10.18042/cepc/rep.174.06>
- Constitución Española. *Boletín Oficial del Estado*, nº. 311 (December 29, 1978): 29313-29424
- Ganuzá, Ernesto. "La participación ciudadana en el ámbito local europeo." *Revista de Estudios Europeos*, nº 38, (2004): 77-91.
- González Ramírez, M^a Reyes; Gascó Gascó, Jose Luis and Llopis Taverner, Juan. "Participación y satisfacción del ciudadano en la Gestión Pública: un estudio en el ámbito de la administración local". *Auditoría Pública*, nº 58 (2012): 31-42.
- Ley 5/2014, de 25 de julio, de Ordenación del Territorio, Urbanismo y Paisaje, de la Comunitat Valenciana. *Boletín Oficial del Estado*, nº 231 (September 23, 2014): 74030-74200.
- Ley 1/2019, de 5 de febrero, de modificación de la Ley 5/2014, de 25 de julio, de Ordenación del Territorio, Urbanismo y Paisaje de la Comunitat Valenciana. *Boletín Oficial del Estado*, nº. 51 (February 28, 2019): 18987-19106.
- Pindado Sánchez, Fernando. *La participación ciudadana es la vida de las ciudades*. Barcelona: Ediciones del Serbal, 2008.
- Vallés, Jose María and Martí i Puig, Salvador. *Ciencia política. Un manual*. Barcelona: Ariel, 2015
- Villasante, Tomás R. *Democracias transformadoras. Experiencias emergentes y alternativas desde los comunes*. Barcelona: El Viejo Topo, 2017.
- Zoido Naranjo, F., "Paisaje urbano. Aportaciones para la definición de un marco teórico, conceptual y metodológico". In Delgado Viñas, Carmen; Juaristi Linacero, Joseba; Tomé Fernández, Sergio (edt) *Ciudades y paisajes urbanos en el siglo XXI*. Santander: Librería Estudio, 2012, pp. 13-92.