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MIGRATION  
SOCIAL ENTREPRENEURSHIP  
AND SOCIAL INCLUSION

Edited by  
Hakan Gülerce, Elena Girasella e Maria Skoufi

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VALENTINA PRUDENTE\*

## A GLANCE AT IMMIGRANT INTEGRATION. FROM RECOGNIZING SOCIAL RIGHTS TO GRANTING REAL PARTICIPATION IN LOCAL GOVERNMENT

SUMMARY: 1. Introduction. – 2. Progressive recognition of fundamental rights to non-citizens. Extension to social rights. – 3. Aliens and political rights. – 4. What happens at the level of local government? – 5. Rights to participate and impact on the community. – 6. Experienced organisational paradigms at the local level. – 7. Concluding considerations.

### 1. *Introduction*

The response of States to the phenomenon of immigration and its sway between two opposite poles, striving to find a balance in public policies, legislation, and the overall actions of public administration and jurisprudential decisions, is sometimes more unbalanced towards security and public order protection needs, sometimes more linked to human-rights profiles and migrants' integration policies<sup>1</sup>.

According to the best scholars<sup>2</sup>, both positions have strong roots in different theoretical systems.

The first one refers to the traditional idea of the State, understood like nation, which is a huge community of individuals living together that share

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<sup>1</sup> In the last few years there has been a huge scientific production on issues related to migration phenomena. Just to mention some writings and without presumption of exhaustiveness: M. INTERLANDI, *Fenomeni immigratori tra potere amministrativo ed effettività delle tutele*, Giappichelli, Turin, 2018; M. CONSITO, *La tutela amministrativa del migrante involontario. Richiedenti asilo, asilanti e apolidi*, Jovene, Naples, 2016; M. SAVINO, *La libertà degli altri*, Giuffrè, Milan, 2012; F. SCUTO, *I diritti fondamentali della persona quale limite al contrasto dell'immigrazione irregolare*, Giuffrè, Milan, 2012; Vv.AA., *I diritti di cittadinanza dei migranti. Il ruolo delle regioni*, in L. RONCHETTI, Giuffrè, Milano, 2012; Vv.AA., *Diritto dell'immigrazione e diritti dei migranti: atti del convegno internazionale*, Agrigento, 22-23 maggio 2013, by M. IMMORDINO - C. CELONE, in *Nuove Autonomie*, issue no. 2/3, Naples, 2013; Vv.AA., *Cittadinanza inclusiva e flussi migratori*, a cura di F. ASTONE, F. MANGANARO, A. ROMANO TASSONE, F. SAITTA, Rubbettino, Catanzaro, 2009.

<sup>2</sup> For a complete analysis about this issue, see M. CALABRÒ, *Italian regular immigration public policy: between exclusion, assimilation and integration*, in *EU Law Journal*, Vol. 3, No. 2, July 2017, pp. 34-44, and huge cited bibliography there.

common origins, language and, more generally, culture<sup>3</sup>. In this frame aliens have been considered mainly as a national security treat: the State exercises its full sovereignty within national borders, deciding which aliens to expel or admit and under what conditions. Only citizenship characterizes a long-lasting bond with the State<sup>4</sup> that gives full recognition of civil and public rights.

Instead, the second one, newer than the first, refers to an idea of society that organizes itself through dialectical structures functioning in a non-coercive way. Pluralism expressed by social bodies is resolved in democratic participation in public choices<sup>5</sup>. This approach could justify full integration of all those who reside permanently in a specific territory and contribute to its social fabric, regardless of their status as citizens.

This is also the perspective of Christian social doctrine in the last papal encyclical “Fratelli tutti”<sup>6</sup>.

So we must take note that the phenomenon of immigration cannot be treated on the basis of abstract references frames, it has to be put into the historical, socio-economic and cultural context in which it manifests itself<sup>7</sup>.

Therefore, having cleared the field from philosophical and political positions, abstractly shareable if you look at the reference system to which they belong, it is appropriate to analyse the phenomenon on the basis of a precise context which examines all the implications and variables in order to come up with a response consistent with the context and functional to the development of the society of reference.

However, Italian legislators interfaced with the phenomenon of immigration rather late compared to other European countries. Initially involved with admission regulation, it is only more recently that attention has been paid to integration profiles.

<sup>3</sup> C. SCHMITT, *Le categorie del politico*, Bologna, 1998.

<sup>4</sup> G. JELLINEK, *Sistema dei diritti pubblici subiettivi*, Milano, 1912, p. 127.

<sup>5</sup> J. HABERMAS, *Fatti e norme. Contributi ad una teoria discorsiva del diritto e della democrazia*, Roma-Bari, Laterza, 2013.

<sup>6</sup> The Encyclical Letter “*Fratelli tutti*”, *On Fraternity and Social Friendship*, speaks about «*The rights without borders*» (§ 121) and «*Borders without limits*» highlighting how a country’s response «to the arrival of migrating persons can be summarized by four words: welcome, protect, promote and integrate» (§ 129), in [vatican.va/content/francesco/it/encyclicals/documents/papa-francesco\\_20201003\\_enciclica-fratelli-tutti.html](http://vatican.va/content/francesco/it/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html).

<sup>7</sup> A. SAYAD, *Doppia assenza. Dalle illusioni dell'emigrato alle sofferenze dell'immigrato*, Raffaello Cortina Ed., Milan, 2002. The author considers migration as a total social fact, not limited to economic or demographic phenomenon. It has the capability to demonstrate the limits of the Nation-State and its categories.



“Immigration” is a varied and complex phenomenon and, as such, requires multi-faceted regulatory and institutional responses, which cannot be limited to the regulation of entry and stay inside of national borders, but must be extended to, equally important, aspects of the foreigners’ settlement and integration within the community where they live.

The concept of “integration” is, in general, referred to social or labour integration, implying that the fundamental rights of the human being as such are also to be identified among social rights. However, it should be noted that social and labour integration in a community without corresponding participation in the political choices of the community itself is not fully effective and complete.

Needs that arise within a given social substratum, although territorially circumscribed, gather around interests worthy of attention by the system and are generally entrusted to the care of local authorities. The involvement of people who express these interests in general choices that public authorities are called to make, far from being a limit, constitutes a normal system to achieve greater efficiency in public action and more complete effectiveness in the ability to satisfy needs that arise there.

From this perspective, we can observe that administrative organization is naturally permeable to demands that come from civil society and those that cannot always be shared, for various reasons, and can’t find space in the political level but end up being realized within the organizational structure of public administration.

## 2. *Progressive recognition of fundamental rights to non-citizens. Extension to social rights.*

The progressive expansion of the sphere of rights granted to foreigners present in our system is evident in accordance with the affirmation of the need for a higher level of integration, arising from shared common values for the foundation of a multicultural and multi-ethnic society such as the one that is emerging in many European countries and also in Italy<sup>8</sup>.

The European States have provided diversified responses to the theme of the cultural and social integration of foreigners: from the so-called “Charter of Values” (approved in Belgium, Great Britain and Holland), to the “integration contract” (adopted in France), to the preparation of documents by

<sup>8</sup> On the different model of alien inclusion, see Vv.AA., *Società multiculturali e percorsi di integrazione. Francia, Germania, Regno Unito e Italia a confronto*, in G. CERRINA FERONI – V. FEDERICO, Firenze University Press, Florence, 2017.

the same immigrant associations containing principles to which foreign communities intend to draw inspiration in their relations with the host society (as happened in Germany)<sup>9</sup>. Also in Italy, in 2007, a “Charter of values, citizenship and integration” was adopted<sup>10</sup>, with the idea that the migrant should be considered essentially as a person (and not as a source of labour) and as such a recipient of the same “social” rights that the national legislation recognizes to citizens<sup>11</sup>.

The Charter of Values was preceded by progressive, but slow recognition of the foreigner’s position regarding fundamental rights.

Regarding the status of aliens, the Italian Constitution statute is defined by Art. 10, paragraph 2<sup>12</sup>.

This provision states that the legal status of foreigners is regulated by law, in accordance with international rules and treaties. It imposes two limits on State powers: a) only ordinary law can regulate the legal status of foreigners; b) the content of this law must be compatible with general international rules and treaties stipulated by Italy.

That rule does not define much more about “integration” or about the recognition of fundamental rights to non-citizens. So we need to find a baseline point to define the rights and, ultimately, the inclusion of migrants<sup>13</sup>.

The Constitutional Court played an important role in this field, with a jurisprudential interpretation that went beyond literal expression inside constitutional rules.

<sup>9</sup> For information about the Charter of Values, see C. CARDIA, *Carta dei valori, dialogo tra culture*, in *federalismi.it*, 2/2008.

<sup>10</sup> Adopted with the Decree of Internal Affairs Minister (Giuliano Amato) and published in the Official Gazette of the Italian Republic (G.U.R.I.) on 15 June 2017.

<sup>11</sup> Our “Charter of Values”, which has an exquisitely programming character, consists of a set of directives that are directed at public authorities in their functions. It deals essentially with “social” rights. It should be pointed out, however, that, over and above the legal value that the Charter of Values possesses (or does not possess), it constitutes an important starting point for fostering the process of foreigners’ integration. However, in the logic of the Charter, the integration of foreigners who do not belong to European Union passes through the acquisition of Italian citizenship.

<sup>12</sup> See A. CASSESE, *Commento all’art. 10, 2° comma, Cost.*, in *Commentario alla Costituzione*, by G. BRANCA, Bologna, 1978, p. 510.

<sup>13</sup> Majority doctrine considers that where the Constitution does not expressly mention citizens as addressees of its provisions, the rights and duties contained in it must be considered extensively and must also refer to stateless persons and foreigners. A. BARBERA, *Commento all’art. 2 Cost.*, in G. BRANCA, *Commentario alla Costituzione*, Zanichelli, Bologna, 1978, p. 116; G. BALADORE PALLIERI, *Diritto Costituzionale*, 1970, Giuffrè, Milan, p. 396; P. BARILE, *Il soggetto privato nella Costituzione*, Cedam, Padova, 1953, p. 51.

Article 3 of the Constitution explicitly refers to citizens<sup>14</sup>; in two important judgments the Court confirmed the extension of the principle of equality to non-citizens «when it comes to protection of inviolable human rights, guaranteed to foreigners in accordance with international law»<sup>15</sup>.

The Court acknowledged that, despite the express provision of the Fundamental Charter, inviolable human rights have to be recognized to a person such as he is, regardless of his relation to the State.

This is an important statement, which deals with the additional assertion about the coexistence of different rules justified by factual differences between the condition of citizens and foreigners, respectively. So, even if citizens and aliens are equal in terms of the abstract possession of fundamental rights, *de facto* law can apply a different treatment provided it reflects differences due to reasonable grounds<sup>16</sup>.

These judgements belong to a period when the Italian legal system dealt with foreigners exclusively in the public security area, which is why, despite their limited practical impact, they must be considered as a founding moment of the foreigner's statute<sup>17</sup>.

In fact, the thin regulatory fabric, aimed at public security purposes, totally omitted the salient aspects of aliens' social life (work, healthcare, education, etc.).

<sup>14</sup> In Const. Court, 15 November 1967, n. 120 we can read: «*Se è vero che l'art. 3 si riferisce espressamente ai soli cittadini, è anche certo che il principio di eguaglianza vale pure per lo straniero quando trattisi di rispettare quei diritti fondamentali*».

<sup>15</sup> Const. Court, 19 June 1969, n. 104, paragraph 4.

<sup>16</sup> The Court affirms: «*Ma la riconosciuta eguaglianza di situazioni soggettive nel campo della titolarità dei diritti di libertà non esclude affatto che, nelle situazioni concrete, non possano presentarsi, fra soggetti uguali, differenze di fatto che il legislatore può apprezzare e regolare nella sua discrezionalità, la quale non trova altro limite se non nella razionalità del suo apprezzamento. Ora, nel caso, non può escludersi che, tra cittadino e straniero, benché uguali nella titolarità di certi diritti di libertà, esistano differenze di fatto che possano giustificare un loro diverso trattamento nel godimento di quegli stessi diritti. Il cittadino ha nel territorio un suo domicilio stabile, noto e dichiarato, che lo straniero ordinariamente non ha; il cittadino ha diritto di risiedere ovunque nel territorio della Repubblica ed, ovviamente, senza limiti di tempo, mentre lo straniero può recarsi a vivere nel territorio del nostro, come di altri Stati, solo con determinate autorizzazioni e per un periodo di tempo che è in genere limitato, salvo che egli non ottenga il così detto diritto di stabilimento o di incolato che gli assicuri un soggiorno di durata prolungata o indeterminata; infine il cittadino non può essere allontanato per nessun motivo dal territorio dello Stato, mentre lo straniero ne può essere espulso, ove si renda indesiderabile, specie per commessi reati*», see Const. Court, 19 June 1969, no. 104, paragraph 4.

<sup>17</sup> Until the 1980's Italian legislation on foreigners was limited to ten articles of the Consolidated Law on Public Security (so called TULPS contained in Royal Decree, 18 June 1931, n. 773).

Over the years, this situation forced the Executive to intervene on a number of occasions by means of general administrative acts in order to solve some of the problems that arose in practice<sup>18</sup>.

The perception of the social relevance of the migratory phenomena manifested itself in the mid-80's when the entry of foreigners into Italy was progressively increasing<sup>19</sup>. In 1986 Italian legislators issued a first law about placement and treatment of non-EU immigrant workers and against illegal immigration<sup>20</sup>. This law was inadequate for managing migration flows and illegal immigration.

In this weak regulatory framework, 'Martelli's Law'<sup>21</sup> was issued, named after the Vice Prime Minister of the time. The law contained urgent rules on asylum, entry and stay of aliens (non-EU citizens) and on their regularization as well as stateless people already present in national territory.

This law deals mainly with refugees: it broadens and defines refugee status and the related right to political asylum. The second part of the legislative text, on the other hand, is concerned with regulating exponential increases in migration flows, by planning the entry of foreigners (non-EU citizens) according to the country's production and employment needs.

Italy did not have a complete law on asylum, entry and stay in its territory. Therefore, this law, that views migrants fundamentally as an economic problem, can be considered as a way to settle a new emergency quickly<sup>22</sup>. We are still far from a complete approach to recognizing the social rights of migrants, even if some fundamental rights have been recognized for immigrants by the Constitutional Court<sup>23</sup>.

<sup>18</sup> In 1963 the Minister of Labour, in agreement with the Ministers of the Interior and Foreign Affairs, adopted a circular letter with which, *prater legem*, they introduced the mechanism of work authorisation as a necessary requirement for entry into the territory of the Italian State, after ascertaining the «unavailability of suitable and willing workers» (Circular letter no. 51/22/IV of 4 December 1963). Some time later, the Minister of Foreign Affairs issued another Circular letter setting out rules on the stay and transit of foreigners, trying to soften the rigidity of Consolidated Law on Public Security (so called TULPS).

<sup>19</sup> In 1981, there were approximately 351,000 foreigners living in Italy. In 2016 there were 5,000,000 (as shown by the census surveys of the National Institute of Statistics – ISTAT).

<sup>20</sup> Law 30 December 1986, no. 943.

<sup>21</sup> Law no. 39/90, converted with amendments to Legislative Decree no. 416 of 30 December 1989.

<sup>22</sup> On the evolution of Italian legislation see F. PASTORE, *Migrazioni internazionali e ordinamento giuridico*, in L. VIOLANTE, *Storia d'Italia, Annali 14, Legge diritto e giustizia*, 1998, Milan, p. 1036; G. D'AURIA, *L'immigrazione e l'emigrazione*, in S. CASSESE, *Trattato di diritto amministrativo*, special part, II, Giuffrè, Milan, 2003, p. 1067.

<sup>23</sup> On acknowledgment of fundamental rights to foreigners, see G. MOSCHELLA, *La parabola dei diritti umani nella legislazione italiana sull'immigrazione*, in S. GAMBINO-G. D'IGNAZIO, *Immigrazione e diritti fondamentali*, Giuffrè, Milan, 2010, pp. 481-483.

Among the inviolable human rights guaranteed to all persons, the Constitutional Court – in two different occasions - has included the “right to family unity”, as a fundamental right of the person, with no distinction between citizens and foreigners, to whom providing protection with regards to the “nuclear family”, guaranteeing reunification with minor children to non-EU unemployed mothers and to non-EU mothers who are unmarried but cohabiting with an Italian citizen<sup>24</sup>.

Only in 1998 did Italy finally adopt a law characterized by a different approach to migrants, more respectful of international treaties and more responsive to the constitutional provisions that place the person as such at the center of the system<sup>25</sup>. It was law no. 40 of 1998, the so-called ‘Turco-Napolitano’, inspired by solidarity and egalitarian principles, that inserted a list of rights recognised to foreigners on the basis of domestic and international law<sup>26</sup>: the fundamental rights of the human being (Art. 2, paragraph 1), civil rights attributed to Italian citizens (Art. 2, paragraph 2), equal treatment and full equality of rights for a worker legally residing in Italy as well as Italian workers (Art. 2, paragraph 3); the right to participate in local public life (Art. 2, paragraph 4). Furthermore, the Immigration Act grants foreigners equal treatment with citizens in regard to judicial protection of rights and legitimate interests in relation to public administration and access to public services, within limits provided by law (Art. 2, paragraph 5); diplomatic protection within limits and forms provided by international standards (Art. 2, paragraph 7); the right of defence (Art. 17); the right not to be expelled to a State where the foreigner may be persecuted for reasons of race, sex, language, nationality, religion, political opinions, personal or social conditions (Art. 19); the right to family unity (Art. 28) and family reunification (Art. 29).

The law, transfused into the Consolidated Act of Immigration adopted with

<sup>24</sup> Const. Court, 19 January 1995, no. 28 and Const. Court, 26 June 1997, no. 203.

<sup>25</sup> For the first comments on the law, we suggest: L. PEPINO, *Immigrazione, politica, diritto (note a margine della legge n. 40/1998)*, in *Quest. Giust.*, 1999, p. 1. For a complete analysis of the regulatory framework look at B. NASCIMBENE, *Diritto degli stranieri*, Cedam, Padova, 2004.

<sup>26</sup> On the social the rights granted to foreigners, see studies of B. PEZZINI, *Una questione che interroga l'uguaglianza: i diritti sociali del non-cittadino*, in Vv.AA., *Lo statuto costituzionale del non cittadino*, Napoli, 2010; A. MORELLI, *Solidarietà, diritti sociali e immigrazione nello Stato sociale*, in F. ASTONE, A. LUPO, V. PRUDENTE, A. ROMEO *I diritti sociali al tempo delle migrazioni*, Editoriale Scientifica, Napoli, 2019, p. 29; S. CASSESE, *I diritti sociali degli «altri»*, *Riv. Dir. Sic. Soc.*, issue no. 4, 2015, pp. 677-686. For a useful look at a comparative perspective see VV.AA., *I diritti sociali tra ordinamento statale e ordinamento europeo*, in *federalismi.it*, 2018 (special issue no. 4); M. BOMMES, A. GEDDES, *Immigration and welfare: challenging the borders of the welfare state*, London and New York, Routledge, 2000.

Legislative Decree 25 July 1998, no. 286, is directed to govern regular entry and stay within Italian borders and recognizes the social rights of immigrants who hold a residence permit and have a stable and long-lasting relation with the State.

### 3. *Aliens and political rights*

Despite the progress made in the last twenty years, the integration of foreigners is limited. In fact, integration doesn't extend to right to vote, in other words to participate through the mechanisms of representative democracy in public choices. On the one hand, it is true that citizen status is no longer a prerequisite for recognition of the right to vote, since the voting rights in local elections have been recognised to non-citizens belonging to an EU Member State<sup>27</sup>; and on the other hand, the Chamber of Deputies has examined a bill on the introduction of the right to vote in local elections in favour of long-term resident foreigners<sup>28</sup>; and that there is considerable pressure from various associations to extend immigrants' rights of political participation<sup>29</sup>.

In Italy the attribution of the right to vote continues to be linked to the status of "citizen".

It should be added that the European States have developed very different solutions with regard to the attribution of the right to vote to non-citizens. In general, a distinction can be made between countries more open to inclusion of non-EU foreigners (as in the case of Ireland, the Scandinavian countries or the Netherlands)<sup>30</sup>; national practices characterised by an intermediate position

<sup>27</sup> Directive 94/80/EC of 19 December 1994 laid down detailed arrangements for exercising the right to vote and running as a candidate in municipal elections by citizens of the Union residing permanently in a Member State of which they are not nationals. Legislative Decree no. 197 of 12 April 1996 implemented directive in our legislation.

<sup>28</sup> This was Bill no. 2234 of 27 March 2014 containing "Delegation to Government for amending immigration regulations and rules on legal condition of foreigners".

<sup>29</sup> There were various awareness-raising campaigns including "I am Italy too" promoted by different associations belonging to civil society such as Caritas, the C.G.I.L., 'Migrantes Foundation' and also supported by ANCI, aimed at collecting signatures on two popular initiative proposals of laws on the simplification of procedures for recognition of citizenship and recognition of the right to vote in municipal elections for foreigners residing in Italy.

<sup>30</sup> In Ireland, the right to vote in local elections is granted to residents regardless of the length of time of their stay in Ireland. In other countries the recognition of the right to vote in local elections is linked to the possession of residence for a fixed period of time.

(as in Belgium)<sup>31</sup> and practices based on selective disciplines (as in the English case)<sup>32</sup>.

The current structure of legislation in Italy, characterised by the pluralism of autonomous institutions, shows room for extension, both quantitatively and qualitatively, of fundamental rights recognised to foreigners and in particular the rights of «political-administrative» participation, despite the manifest resistance encountered on the political level to recognize the right to vote at the local level.

The need for “participation”, coming from the changing society and presenting itself as a social need linked to the integration of resident immigrants, has found openings, if not in constitutional system, but in administrative organisation. Unlike the “legislative power”, the administrative organisation has conformed promptly in order to respond to pressures coming from the community, confirming its natural vocation to the satisfaction of collective needs<sup>33</sup>.

Territorial affiliation or permanent residence in Italian territory are not sufficient elements to allow the foreigner to be included in the electoral lists of the Municipality of residence, even if it is expressly established that the subjects in possession of the residence card can: «participate in local public life, exercising also electorate rights when provided by the law and in harmony with the

<sup>31</sup> In Belgium, the right to vote in local elections is guaranteed under several conditions: possession of residence on Belgian territory for 5 years; signing of an oath of allegiance to both Belgian Constitution and European Convention on Human Rights and formal acceptance of the laws of the country; registration in electoral registers.

<sup>32</sup> In Great Britain, citizens of Commonwealth countries who are recognised as having the right to enter and reside in Great Britain also have the right to participate in elections relating to various levels of government. For a complete analysis of the European countries and the choices regarding the allocation of the right to vote to non-EU foreigners, see: D. FIUMICELLI, *L'integrazione degli stranieri extracomunitari può ancora passare dalla «partecipazione politica»? Spunti di carattere comparato e brevi considerazioni sulle proposte più recenti e sulle prassi locali*, in *gruppo-dipisa.it*, February 2014.

<sup>33</sup> On the position and function of the organisation in the economy of community life, see M. NIGRO, *Studi sulla funzione organizzatrice della pubblica amministrazione*, Milano, 1966, p. 117, that affirms p. 117 «L'organizzazione non è un corpo estraneo e sovrapposto rispetto al territorio delle relazioni e delle ragioni di vita del gruppo, ma è uno sviluppo logico di esse e si pone nei loro confronti come elemento integratore e potenziatore: non, cioè, un ricamo che si aggiunge dall'esterno al tessuto sociale, ma il rinforzamento di alcune delle trame di questo stesso tessuto. Ciò spiega in che senso vada intesa la strumentalità dell'organizzazione».

«The organization is not an extraneous and overlaying body regard of relations and reasons of group's life context, but it is a logical development of them and it sets towards them as an integrating and strengthening element: that is, not an embroidery that is added from the outside to the social fabric, but reinforcement of some of the wefts of this same fabric. This explains in what sense should be understood the organization's instrumentality».

provisions of chapter C of the Convention on the participation of foreigners in public life at local level, made in Strasbourg on 5 February 1992»<sup>34</sup>.

Primary legislators, therefore, have not yet untied the knot of acknowledgement of the right to vote for non-EU foreigners in the field of regional and local elections<sup>35</sup>, where the pressure towards a higher level of political integration is greater.

#### 4. *What happens at the local level of government?*

It is precisely from the levels of government closest to territorial communities that the issue attempts to be addressed in a positive way, taking into account the lack of State intervention. It has happened therefore that some Regional Statutes have provided for the extension of the right to vote to resident immigrants, albeit in a promotional form. Tuscany Region's Statute in Art. 3, paragraph 6, states: «*The Region promotes, in compliance with constitutional principles, the extension of the right to vote to immigrants*»<sup>36</sup>; or the Statute of the Emilia-Romagna Region which, in Art. 2, paragraph 1, letter f), identifies among the priority objectives of the region the «*enjoyment of social rights of immigrants, foreign refugees and stateless persons, ensuring, within faculties that are constitutionally recognised, the right to vote of resident immigrants*»<sup>37</sup> and which in Art. 15, paragraph 1, provides for extension of participatory rights, establishing that «*within the framework of faculties which are constitutionally acknowledged to*» the Region, «*it recognises and guarantees to all those who reside in a municipality of regional territory the participatory rights contemplated in this Title, including the right to vote in referendums and other forms of popular consultation*». The Statute of the Campania Region also includes among its programmatic objectives the «*achievement of a high level of benefits concerning social rights and the enjoyment of political and social rights of immigrants, foreign*

<sup>34</sup> Art. 9, paragraph 4 of Legislative Decree no. 286 of 25 July 1998. As already mentioned above the same legislative decree includes participation in local public life among the rights and duties of foreigner legally residing in the country (Art. 2, paragraph 4).

<sup>35</sup> In fact, it is up to the Italian State Law to lay down the fundamental principles on election system and on cases of ineligibility and incompatibility of Ordinary Regional bodies (art. 122 Const.). But it is also the State's task to establish electoral legislation of local bodies (art. 117, paragraph 2, letter p) Const.).

<sup>36</sup> Tuscany's Statute was approved by the Regional Council on 19 July 2004 and published in the Official Regional Bulletin (BUR) on 11 February 2005.

<sup>37</sup> Statute of Emilia-Romagna Region was approved by the Regional Council on 14 September 2004 and published in the Regional Official Bulletin on 16 September 2004.



*refugees and stateless persons, including the right to vote, as far as compatible with the Constitution».*

These are a few limited, but significant, examples, so much so as to call for intervention by the Government, which has challenged the above rules before the Constitutional Court. The Court rejected the questions of constitutional legitimacy submitted by the Italian State<sup>38</sup>, considering the «programming» nature of contested rules, which the Region is entitled to issue as an exponential body of the interests of the community.

In the Court's perspective, these are rules that have cultural and political functions, but without legal effectiveness and therefore have no harmful effects<sup>39</sup>.

In some cases the Regions have gone so far as enacting laws aimed at pursuing socio-cultural integration purposes, always opposed by the Government. For example, there is the case of the Emilia-Romagna regional law no. 5 of 24 March 2004, containing regulations for social integration of immigrant citizens, which was also submitted to the constitutionality test on the whole text (considered by the Government overall to be exceeding the boundaries of regional legislative power); and in reference to specific rules<sup>40</sup>. Also in this case the Con-

<sup>38</sup> Constitutional Court with judgment 27 July 2004, no. 372, Italian Government vs. Tuscany Region, affirmed that the contents of Regional Statutes can recognise regional functions and tasks; and can declare persecuting aims. These contents have a cultural and political purpose, but haven't juridical effectiveness, because they are merely expressive of different political sensitivity existent in the regional community when the Statute were issued. In the Court's view these declarations of aims and commitments aren't comparable to the so-called "future programming" of the Constitution because regional Statutes aren't constitutional charters.

This approach is confirmed in the following judgment 6 December 2004, no. 379, Italian Government/Emilia Romagna Region, where the Constitutional Court, rejecting the raised question of the constitutional legitimacy of Art. 15 of the regional statute, decided that the Region had no claim to intervene in the matter of the State, regional and local elections, recognizing the right to vote for persons unrelated to those defined by State legislation, or including such persons in procedures affecting the composition of representative assemblies or their acts. The Court affirmed that the involvement of persons who take part in associated life consciously and with stability remains in the area of possible decisions by the Regions, even regardless of the ownership of the right to vote or even of Italian citizenship.

<sup>39</sup> The decisions of the Constitutional Court have provoked a lively doctrinal debate, mainly focused on the declared "legal ineffectiveness" of the programmed rules contained in the Statutes. For further details see Vv.AA. "*Le norme programmatiche degli Statuti dopo le sentenze della Corte Costituzionale. Otto opinioni*", in *Le Regioni*, 2005, p. 11.

<sup>40</sup> Particularly about: a) institution of the Regional Observatory on the migratory phenomenon with tasks of observation and monitoring of centres instituted by Art. 14 of Consolidated Act on Immigration (Art. 3, paragraph 4, lett. d); b) provision of substitute powers towards non-compliant local Authorities (Art. 3, comma 5); c) creation of a Regional council for social integration of foreign immigrant citizens also composed of representatives of aliens distributed in

stitutional Court rejected the Government's assaults on regulatory autonomy of the Region<sup>41</sup> on the issue of the alien's participation tools for political life.

Dialectical conflict on the issue of the recognition of political rights to immigrants, which includes on the one hand the most progressive Regions and on the other the State, actually concerns two different ways of approaching the issue and the problems connected to it, which depend on the different role played by the two levels of government. On one side, it deals with the capacity of the regional level of government - even though it is contained within constitutionally assigned competences - to become bearer and promoter of the requests coming from the territorial community; on the other side, it remains in the foreground, at the State level, a strong connection between the recognition of political rights and the possession of citizenship.

Despite the prevalence of such a close relationship in the current state of the legal system, it is possible to highlight some openings from which the request for greater political integration of foreigners permanently residing in our territory makes a breach in the fabric of the legal system. This explains the statutory provisions that recognise the rights of participation and, in particular, the right to participate in referendums, to all those who reside in a municipality of a regional territory and those regional laws that provide for the establishment of an organisational tool (the regional consultative body for immigrants), composed of and representative of foreigners present in the territory<sup>42</sup>.

For the sake of completeness, it should be recalled that the participative requests mentioned above have been strongly welcomed by some municipal administrations that have courageously attempted to recognise the right to vote for non-EU foreigners<sup>43</sup>.

But also in this occasion the Government intervened and, with a Prime Ministerial Decree of 17 August 2005, proceeded with the extraordinary annulment of resolution of the Genoese City Council, pursuant to Art. 138 of Legislative Decree no. 267/2000, «to protect the unity of the system», which gives to

regional territory (Art. 6 and Art. 7); d) granting to foreign immigrant citizens the benefits related to public residential buildings and first house (Art. 10).

<sup>41</sup> Const. Court, 22 May 2005, no. 300, Italian Government vs. Emilia Romagna Region.

<sup>42</sup> Many Italian regions have now equipped themselves with participation tools for foreigners: 14 out of 20 regions in Italy have established Regional Immigration Councils and have laws on immigrant's the integration themes ([www.integrazionemigranti.gov.it](http://www.integrazionemigranti.gov.it)).

<sup>43</sup> Just to mention the most well-known cases: in 2004 Genoa City Council amended the City Statute by extending the active and passive electorate for municipal and local elections to non-EU foreigners. In 2005, Turin City Council (by resolution no. 108 of 21 July 2005) introduced the right to vote, limited to local councils, in favour of non-EU foreigners resident in the city for at least six years.

the Government the power to annul administrative acts of local authorities for defects of legitimacy to protect unitary interests<sup>44</sup>.

The same fate concerned Art. 47, paragraph 1-bis, of the Statute of the City of Turin, which was annulled by Presidential Decree of 20 March 2006. After the annulment, in the subsequent drafting of the Statute (approved on 7 February 2011), there was no trace of the recognition of the right of an active electorate for district councils in favour of non-EU foreigners<sup>45</sup>.

On the basis of the events described above, it is possible to establish at least two fixed points: the right to vote in local elections for non-EU persons with an entry visa and stay permit, with a view to true integration on the political (and administrative) side must be recognised, in a uniform manner throughout the national territory, by State law<sup>46</sup>; but the right to vote, elect or be elected, at least at a local level, must be built around those who live, work, and contribute to the maintenance of the local community (also by increasing its employment and cultural contribution)<sup>47</sup>.

##### 5. *Rights to participate and impact on the community*

It is well known that other forms of participation in political life, alternative to voting, are permitted at the local level. The Constitution is based on the

<sup>44</sup> It should be remembered that the extraordinary annulment ordered by the Government of the Genoese statutory provision obtained a favourable opinion of the Council of State (Council of State, Section I, 16 March 2005) and that the judicial remedy filed in front of the Liguria Regional Administrative Court by the Municipality of Genoa against the extraordinary annulment order was rejected by sentence no. 230 of 3 February 2010.

<sup>45</sup> The same thing happened in other local areas: the Government proceeded with the extraordinary annulment (Presidential Decree of 11 July, 2006, published in Official Journal of Italian Republic no. 226, 28 September 2006) of the regulations of the Statute of the Calenzano's Municipality, which extended active and passive electorate to foreigners and stateless persons; as well as those of the Statute of the Caulonia's Municipality in the part in which they recognised active and passive electorates in municipal elections to stateless persons and foreigners legally residing in Italy, resident in the Municipality, who were in possession of a residence permit and who had legally and habitually resided in Italy in the two years preceding the elections (Presidential Decree of 13 August 2010).

<sup>46</sup> In this sense the Council of State expresses itself in the advice mentioned in footnote 44. According to the advice, the mention of citizens only, in Art. 48 Const. (on the right to vote) and in Art. 51 Const. (on access to elected bodies), is intended to guarantee them an active and passive electorate, but does not preclude the ordinary legislator from extending these rights to persons without Italian citizenship.

<sup>47</sup> On this matter G.E. RUSCONI, *Immigrazione in Europa. Impatto culturale e problemi di cittadinanza*, Il Mulino, Bologna, 1992, p. 116; MORALES, L. - GIUGNI, M., *Social Capital, Political participation and Migration in Europe: Making Multicultural Democracy Work*, Basingstoke, Palgrave Macmillan, 2011; GEBHARDT, D., *Building Inclusive Cities: Challenges in the Multilevel Governance of Immigrant Integration in Europe*, Washington DC, Migration Policy Institute, 2014.

broad recognition of inviolable human rights and determines its most genuine affirmation in the principle of removing obstacles that cause the exclusion of individuals from participation in the political, economic and social life of the country (Art. 3 Const.). The full development of the human personality, the solidarity principle, the protection of social formations, the pluralistic principle and related recognition of autonomy as a moment of political representation of territorial communities that constitute the Republic (Art. 2, 3, 4, 5 Const.) assume a central function in the complex relationship that has been established between civil society, republican institutions and democracy; a relationship that increasingly tends to be resolved in the value of participation<sup>48</sup>. Democracy understood in this way is not limited to representative mechanisms, which in complex societies are certainly necessary for its correct functioning, but makes use of further participatory moments consisting both in the provision of specific institutions and bodies of participatory democracy - such as consultations, referendums, petitions, proposals - and in the valorisation of social formations<sup>49</sup>.

At the local level, representative democracy and democratic participation constitute an essential *continuum* to foster decision-making and governance processes: for this reason, “participation” certainly benefits governors, who through it collaborate with political power, with respect to which they no longer place themselves in terms of extraneousness and subjection, but rather as an active part, natural referents of an administration sensitive to the interests to which it reacts. But it also benefits local institutions, which through it increase their knowledge of the needs that the territory expresses, with the advantage of being able to turn their attention to real problems and concrete solutions, also gaining in terms of efficiency and good performance<sup>50</sup>.

The rights of participation, depending on the case, are vested in individual

<sup>48</sup> See A. VALASTRO, *Partecipazione, politiche pubbliche, diritti*, in *Astrid Rassegna*, March 10, 2010, no. 5/2013; and also U. ALLEGRETTI, voce *Democrazia partecipativa*, in *Enciclopedia del diritto*, updating appendix, Giuffrè, Milan, 2011.

<sup>49</sup> On the concept, history, evolution and experiences (both Italian and foreign) of “participatory democracy” see the essays contained in dossiers n. 3 and n. 4, year 2006, of periodical magazine *Democrazia e diritto*. Particularly in dossier no. 3: U. ALLEGRETTI, *Le basi giuridiche della democrazia partecipativa in Italia: alcuni orientamenti*, p. 151; A. MAGNAGHI, *Dalla partecipazione all'autogoverno della comunità locale: verso il federalismo municipale solidale*, p. 134; G. ALLEGRETTI, *Politiche di partecipazione in Venezuela: tra discorso costituzionale e pratiche sperimentali*, p. 42; in dossier no. 4: L. BOBBIO, *Dilemmi della democrazia partecipativa*, p. 11 and also U. ALLEGRETTI, *Democrazia partecipativa e controllo dell'amministrazione*, p. 71.

<sup>50</sup> Democracy on the one hand and efficiency on the other are general directives, characterized by their mutual complementarity (in terms of compatibility and concordance of the principles of democracy and efficiency referable to the plan of administrative organization, see F. TRIMARCHI, *Funzione consultiva e amministrazione democratica*, Giuffrè, Milano, 1974, p. 131).

persons, groups of people gathered in bodies and associations, or the whole local community.

In our system there are several participative institutions that are used by local authorities. First of all, the Municipalities are required to promote participative bodies and to encourage their involvement in administrative decisions, together with the other associations present in the territory. In addition, local and regional authorities are usually obliged to provide residents' associations and more or less organised groups of citizens with a series of rights, such as the right to submit requests, petitions and proposals to the political and administrative bodies of local authority; to access documents and information held by the administration that are relevant to their activities, as well as existing spaces available at local authority; to participate in consultative bodies set up by local authorities.

Participation is not, however, a sum of legal institutes through which local public administration causes involvement of members of the local community in government choices, it is one of the ways of defining the general interest<sup>51</sup>.

It isn't a coincidence that participation in administrative procedures, the place of election for the care and realization of public interests, is guaranteed to anyone with a qualified interest (recipient of a final measure or party with opposing interests) regardless of his or her citizen status<sup>52</sup>.

In the administrative field, the extension of participation beyond "citizenship" can be explained by the need, specific to "administrative States", to en-

<sup>51</sup> This is because there has been a multiplication of public interests, due to the institutional pluralism that characterises our State, and because private individuals have also been recognised as competent to carry out activities of general interest. The growth of public interests and the diversification of the ownership of their development generate the need for a constant conciliation between them. On this matter see Y. MANSILLON, *L'esperienza del «debat public» in Francia*, in *Democrazia e diritto*, 2006, issue no. 3, p. 102, who observes that the solemn and uncontested notion of general interest is surpassed: today there is no longer an unquestionable general interest «but several types of general interests that must be combined and reconciled. On the other hand, the State no longer holds a monopoly in this field, since other stakeholders - local communities, economic actors, associations and citizens themselves - have a vocation to participate in its definition».

<sup>52</sup> On the impact of procedural participation in relations between public authorities and individuals see F. TRIMARCHI, *Considerazioni in tema di partecipazione al procedimento amministrativo*, in *Dir. Proc. Amm.*, 2000, p. 629. On the implications between participation in administrative procedure and citizenship refer to: F. MANGANARO, *Partecipazione al procedimento amministrativo e cittadinanza plurale*, in Vv.AA., *Procedimento amministrativo e partecipazione. Problemi, esperienze e prospettive*, Giuffrè, Milan, 2002, p. 277 and also L. GILI, *Straniero e partecipazione al procedimento amministrativo*, in the same volume p. 55.

sure that action corresponds to social needs and to legitimise activities of public administration in this way<sup>53</sup>.

In our system, the Constitution lays the foundation for such an approach, since Art. 1 identifies democracy and labour as foundations of the Republican State and in Art. 3, second paragraph, it calls for the effective participation of workers in the political, economic and social organisation of the country<sup>54</sup>. Moreover, it is good and reasonable to give a chance to participate in public choices, express opinions, needs and interests to those who live and work in a given location and contribute to its development. This reasoning is all the more convincing if we relate it to the local community where the natural proximity between the administration and individuals makes the transmission of needs/petitions from the social level to the institutional level extremely fluid.

The provision of participatory forms of local administration, generalised in the reform of local self-government in the 1990s, stems from the need to fill the gap of the selection systems' representativeness by political bodies, based on a weak consensus that flows into the vote<sup>55</sup>.

So-called representative democracy is inadequate in providing effective responses to contemporary societies<sup>56</sup>, while the models of participatory democracy and its implementation tools favour the process of emerging needs/petitions from below, guaranteeing the certain identification of the public interest<sup>57</sup>, without mediations by political parties and therefore in a more spontaneous way.

If tools of participatory democracy are already useful and functional for citizens residing in a given territory, forming the local community, they are even

<sup>53</sup> G. BERTI, *Stato di diritto informale*, in *Riv. Trim. Dir. Pubbl.*, 1992, p. 26.

<sup>54</sup> C. MORTATI, Art. 1, p. 1-49 and U. ROMAGNOLI Art. 3, 2° paragraph, p. 162-198, both in G. BRANCA, *Commentario alla Costituzione, Principi fondamentali*, 1975, Zanichelli, Bologna

<sup>55</sup> L. BOBBIO, *Dilemmi della democrazia partecipativa*, cit., at 49, p. 23.

<sup>56</sup> U. ALLEGRETTI, *Democrazia partecipativa e processi di democratizzazione*, General Report to the Conference *La Democrazia partecipativa in Italia ed in Europa: esperienze e prospettive*, Florence, April 2-3, 2009, who says: «Democracy, that is configured in representation, and as such traditionally perceived, perhaps exalted, as a stable structure and tending towards completion, is instead subjected to “original dysfunctions”, which have only recently been fully revealed. Dysfunctions that go back to the very concept that lies at its basis, that is, to the centrality and almost exclusivity of the electoral moment of designation of the representation, which translates into the essence of democracy a “procedural” artifice such as the formation of a majority to which the decision is entrusted in place of the people, who are the subject of democracy».

<sup>57</sup> *Id.*, *Op. ult. cit.*, p. 8, where we can read: «we can say that participation becomes a “natural” element of administrative procedures once the perception has been accepted that the identification of the public interest, the purpose of administrative activity, can no longer be as it used to be determined by law in conjunction with the power of the administration, but it is the fruit of the administrative procedure, the better as this is more articulated and open to persons outside the administration».

more useful within the framework described above (see § 2), to foreigners not belonging to the European Union, who find themselves permanently in a socio-territorial context, within which they continuously relate to an identified institutional context<sup>58</sup>.

Integration and the need for representation of those who belong permanently and regularly to a territorial community, contributing to its economic and social development even though they do not have the right to vote has therefore been expressed through certain organisational phenomena, symptomatic of the permeability of administrative organisation to social demands.

Local authorities felt the need to involve foreigners legally residing in their territory in participatory relations promoted and implemented by them<sup>59</sup>.

## 6. *Experienced organisational paradigms at the local level*

On the organisational level, two types of bodies have been registered inside local authorities: the so-called *Consulta* (Consultative bodies for the problems of immigrants and their families)<sup>60</sup> and additional councillors.

<sup>58</sup> From the experiences matured, also abroad, it turns out that the participatory models demonstrate the involvement of all those who are in a certain relationship with a given territory or with a given institutional reality (therefore not only “citizens”, but also foreigners and stateless people), beyond the ownership of a specific legally protected interest, just because they live or operate in a given territory. See U. ALLEGRETTI who in his studies states: «Practices developed in other countries and the extensive literature on it provide the elements for a sufficient conceptual approximation. Participatory Democracy refers to the idea that participation - considered first of all from the point of view of the *persons* called to intervene - has as its actors all citizens - summary expression that actually includes all human beings (therefore also foreigners who come into contact with a given community and a given order), as *individuals*, even if their participation will be facilitated and supported by the associative entities and collective self-organisation realities of which some of them may be members. And *not only, nor properly, because they are specifically concerned*, in the sense of individualistic systems, of those who can claim a precise individual right specifically protected by the legal system on an ownership basis or similar to it, but also of those who do not enjoy such rights, for example to be simply inhabitants or operating in a given territory or otherwise related to it. On the contrary, in a certain sense, it is precisely *those-without-rights*, at weaker strata of the population, the marginalised, who are the ones to whom the participatory openness is destined more than all the others, in order to allow them to express their needs and will», in *Le basi giuridiche*, cit., at 49, p. 157.

<sup>59</sup> On the subject see M. CALABRÒ, *Legal Immigration And Local Resilience In Italy: The Case Of The Integration Councils*, in IJPL, vol. no.11, issue no. 1/2019, p. 86-118; A. BONOMO, *L'inclusione dei non-cittadini attraverso la rigenerazione urbana*, in *Ist. fed.*, issue no. 1/2020, p. 187-206.

<sup>60</sup> These types of collegial bodies, with exquisitely consultative functions, are also present at a State level, such as the National Council for Immigrants Problems constituted by Council of Ministers' Presidency; the National Liaison Body set up by the CNEL; the Territorial Councils for Immigration set up within each province, etc.

In the first case, these are bodies representing foreigners, most of which have a consultative function and are identified by the State and regional regulations and by statutory or regulatory provisions approved by local authorities at their discretion<sup>61</sup>.

These bodies could be on an elective basis or not<sup>62</sup>, have an internal organisation (Board, President, Bureau), give opinions, including mandatory ones, and make proposals to the City Council for the adoption of resolutions and administrative acts: they therefore essentially exercise consultative and propositional functions<sup>63</sup>.

“*Consulta*” so, is a body of the local authority that aims to improve the level of interaction between foreigners belonging to the local community and institutions, but also of fostering the social and cultural integration of representatives in their area of competence<sup>64</sup>.

Local Statutes provide for its constitution. It plays a supporting role to the activities of the Council and the Community Board with which it interacts at an institutional level<sup>65</sup>.

<sup>61</sup> Often such bodies are instituted by the municipal or provincial Statute (as provided for by the Statute of the Municipality of Turin). But it may happen that a general statutory provision, concerning the establishment of thematic participatory bodies called “*Consulte*” is translated into a mere Council resolution. This is what happened in the City of Palermo, where the “*Consulta delle Culture*” was established by City Council resolution no. 49 of 15 May 2013, with the aim to foster the building of an Intercultural City.

<sup>62</sup> See, among others, «Regulation of consultative body of the communities of aliens» of Livorno dated 7 April 2014; «Regulation of the aliens’ community Council» of Ferrara Municipality, dated July 8, 2013; «Regulation for the establishment and functioning of the municipal migrants’ consultative body», organisation for integration and participation of foreign citizens and stateless persons of Catania’s Municipality, dated February 21, 2017. In these cases consultative bodies rotate around the idea of community and association, in fact members of the councils are representative of the foreigners’ citizens associations registered in municipal lists.

<sup>63</sup> We can say that on a large part of the national territory local administrations have equipped themselves with these advisory bodies. Regions themselves has often favoured establishing these collaborative and participatory models. For example, the Region of Tuscany, with a resolution of the Council of 16 March 2009, stipulated a Protocol with UPI and ANCI and the Regional Coordination of Foreigners’ Consultations aimed at promoting homogeneous models of functioning and the evolution of relations between the institutions of the territory and foreign communities.

<sup>64</sup> “*Consulte*” for foreigners are different from the similar “*Consulte*” that the local authorities sets up by categories of subjects or by matter, because, while for the former, the representativeness of the body prevails, since they are set up according to bottom-up models, for the latter, the constitution is frequently under the aegis of the representative bodies of the local administration that set them up and chair them, supervising their functioning. It is clear that in the latter case popular participation is not spontaneous and not even “*lato sensu*” democratic.

<sup>65</sup> The establishment of the “*Consulta*” as a body in charge of connection between foreigners and local authority does not exclude that each foreigner may individually exercise other



Scholars' judgement on these forms of participation is generally negative. It is believed, in fact, that these bodies, not having the power to influence the choices of direction of local authority within which they are established, and not being guaranteed an effective representation of the different communities of foreigners, have ended up accentuating the differences between the different ethnic groups, rather than becoming the institutional place of proposal and consultation<sup>66</sup>.

If this is true, it must be said that the institutional interaction of the foreigners' councils with local political bodies, in any case, gives rise to the manifestation of collective needs and the emergence of interests that would otherwise be unexpressed<sup>67</sup>.

Undoubtedly, the political-administrative choices always remain the responsibility of the Council of the local authority or the Mayor (and the Board), but the use of a consultative body such as the one in question helps to make readable what would otherwise remain unrepresented and unsaid. This tool is not, therefore, ineffective in itself (it being understood that participation in the deliberative body is the maximum form of participation that is desirable), but ends up being ineffective if it is not provided with the human and material resources necessary for its functioning, and where the model's founding and regulatory rules do not make it a mandatory organization of confrontation with the political bodies.

From an organisational point of view, the concept of additional councillors deserves attention. It is a body called upon to participate in the meetings of the Municipal or Provincial Councils with proactive and consultative, but

participation rights provided for in Statute and in Municipal Regulations, if and when such acts generate them, extending the content of the participation rights not only to citizens registered in the electoral lists of Municipality, but also to those registered in the Resident Population Register. As in the case of Statute of the City of Turin (Art. 8), which recognises and guarantees participation rights both to those registered on the electoral lists and to those aged six months or more in the City's Resident Population Register, and the Statute of the City of Rome which, in Art. 6, identifies among the holders of participation rights foreigners who are over the age of 18, legally residing and resident in the City or who have their domicile for study or work reasons (but there are Statutes which recognise participation rights only to citizens).

<sup>66</sup> L. CASTELLI, *Il ruolo degli enti locali nell'integrazione e partecipazione dei migranti*, in L. RONCHETTI, *I diritti di cittadinanza dei migranti*, cit., at 1, p. 176; V. FERRAIUOLO, *Le nuove politiche regionali in materia di partecipazione degli stranieri*, in *dirittifondamentali.it*, 15 gennaio 2012, p. 15.

<sup>67</sup> But see M. CALABRÒ, that referring to the similar bodies constituted at the regional level considers with favour the co-presence of Italians and foreigners in the immigration council. In his opinion this represents a strong point of this body: in that *«the heterogeneity of the composition stimulates the dialogue "between equals" and the exchange of opinions between individuals who are part of the same community»* in *Legal Immigration And Local Resilience*, cit. at 59, p. 113.

not deliberative functions. The differences with the previous model are that in most cases the figure is monocratic, although sometimes there is more than one added councillor<sup>68</sup> and, moreover, that it is included in the highest deliberative body of the local authority.

Additional councillors have the same dignity as municipal (or provincial) councillors, have the right to information on the subjects dealt with in the Council meetings, have the right to speak and may submit proposals to the deliberative body to which they belong, but they do not have the right to vote. Despite the lack of deliberative power, which exonerates the added councillor from influence on political-administrative issues of the administrative body, the problem of legitimacy of its institution has been submitted to the scrutiny of administrative jurisprudence<sup>69</sup>.

On the occasion of appeal, the Council of State was requested to annul the statutory and regulatory resolutions in the part in which they had established and regulated the “Additional Foreign Councillor” of the Statute of the Province of Venice<sup>70</sup>, confirmed the legitimacy of the contested provisions, which, considered in their actual content, could not affect the structure and functions of the governing bodies of the Province and, in particular, of the Council Assembly, and could not determine any concrete invasion of the sphere of State regulatory powers<sup>71</sup>.

The presence of these organisational models in minor local authorities demonstrates their vocation to offer themselves as a terrain of hope, reactive to the collective demands and needs of the communities they are called to administer.

For the sake of completeness, it is useful to remember that the legal doctrine that has taken an interest in the issues of integration practices and social inclusion of foreigners has found a stimulating place to implement the partici-

<sup>68</sup> See Statute of the Municipality of Rome (art. 20 of the Statute, voted by Council resolution no. 122 of 17 July 2000), which established two of them.

<sup>69</sup> There was a trial for annulment of Art. 8-bis of Statute of Province of Venice, which established additional councillors.

<sup>70</sup> Cons. St., V, 9 June 2008, no. 2872.

<sup>71</sup> In that occasion Council of State observed that even if the formula used «Additional Provincial Councillor» could lead to think of an alteration in the composition of the council, in reality it is the substantial fact that must guide the interpreter and, indeed, the real consistency of the figure doesn't determine any interference in the matters reserved to state legislation (i.e. the matter of electoral legislation, government bodies and fundamental functions of territorial authorities). In other words, the judges affirmed that, although the formal and lexical data tend to emphasize the political significance of the choice made, it does not actually determine a structural modification of the governing body and its “fundamental” functions.

pation of foreigners in urban regeneration<sup>72</sup>. Urban regeneration, understood as the recovery of urban goods and spaces susceptible to collective use, is the result of a negotiation between the administration and private individuals. Here participation is not limited to the decision-making process, but extends to the implementation phase of the decision through the function of caring for the common good that is the purpose of intervention. The legal instrument through which to achieve the higher goals are the “collaboration pacts”<sup>73</sup>. They therefore become a measure and way of participation of all those who want to be involved in the concrete care of public goods and spaces. These are innovative forms of participation, which make the provision of Art. 118, par. 4, which is about the “horizontal subsidiarity” of the Italian Constitution, relevant with reference to the communities of foreigners who reside in the territory and feel part of the social context<sup>74</sup>.

## 7. *Concluding considerations.* -

The affirmation of democratic principle enshrined in our Constitution is pressing for the recognition of the right to vote for foreigners and stateless persons permanently residing in the national territory. This is demonstrated by the lively doctrinal debate that has lasted for about a decade, by the attention given to the issue by associations belonging to civil society, by the presentation of various projects and proposals for legislation during the legislatures. Permanent belonging of non-citizens to a specific local community, to whose economic, social and cultural development he or she continuously contributes, invokes legitimacy at the political and administrative levels.

In the course of this brief paper, it was observed that, despite significant pressure from many sides, the most effective forms of participation were implemented at the organisational level within local administrative structures. This demonstrates that administrative organisations have proved to be more permeable to the needs of social groups and interests expressed by them to the legislator himself and that the local authority is more sensitive than State institutions in enhancing the community and its needs in a more direct and immediate way. If, on one hand,

<sup>72</sup> See recent paper of A. BONOMO, *L'inclusione dei “non cittadini” attraverso la rigenerazione urbana*, cit. at 59, p. 197 and extensive literature cited therein.

<sup>73</sup> A. BONOMO, *L'inclusione dei “non cittadini” attraverso la rigenerazione urbana*, cit. at 59, p. 199.

<sup>74</sup> For some examples of collaboration pacts between local authorities and foreigners see A. BONOMO, *L'inclusione dei “non cittadini” attraverso la rigenerazione urbana*, cit. at 59, p. 202-204.

solutions found and implemented (consultancies, additional councillors) are not fully able to meet the demand for representation coming from groups of foreigners residing in our country, on the other hand, the organisational tools used are the only ones that at the moment constitute “structured” and formalised places for the emergence of interests and needs, which would otherwise remain without an institutional seat in which to express themselves systematically.

From this point of view, the administrative organisation of its structures in relation to social groups and the interests they express is an effective place for the realisation of the democratic principle<sup>75</sup> demonstrating - once again and where necessary - that this principle is not only limited to legality, or the guarantee of the democratic elaboration of laws, nor can it find its full and unique expression in those formal guarantees, contained in laws and considered indispensable to circumscribe and limit the activity of public authorities, but it needs a further opportunity of expression in offices dedicated to the care of collective interests. The provision of stable organisational models, such as bodies for the participation and representation at the local level of groups of foreigners not belonging to the European Union and carrying demands for social, economic and cultural integration within the minor local authorities, i.e. in places that are naturally intended for the exercise of the functions of care and management of public interests concerning the population and the territory of reference, highlights the intensity of the need that these bodies seek to meet. The level of administrative participation of non-EU foreigners is therefore achieved, even if not fully due to implicit prohibition imposed by the State on local authorities on the recognition of the right to vote and stand for election to local councils. The time has also come to guarantee their political participation, recognising that the current structure of national order does not prevent adoption of a law granting foreigners and stateless persons the right to vote in local elections.

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<sup>75</sup> F. TRIMARCHI, *Funzione consultiva*, cit. 50, p. 85.

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