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## **The place of expertise in mechanisms for citizen participation**

in *The role of experts in constitutional reform procedures*, Reykjavik, 29 septembre 2023, COREP project (Constitutional reform processes in Ireland, Iceland and France: methods, difficulties and potential to institutionalize citizen empowerment, dir. M. Fatin-Rouge Stefanini).

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After having discovered our respective institutions in the 3 countries, Ireland, Iceland and France, we are going to go into more detail on certain issues.

Today, we will be looking in particular at the role of experts in the processes of citizen participation. Why this question? Because in the processes we are studying, there is a tension between the attempt to establish, on the one hand, a technically well-constructed and well-thought-out rule or recommendation and, on the other, a well-deliberate decision.

## **The place of expertise in mechanisms for citizen participation**

A number of questions arise.

When we talk about experts, who are we referring to?

What role are they likely to play in a participatory process in general and in a constitutional revision procedure in particular?

And from this question stems that of the qualities expected of the expert and the minimum framework enabling him to play his role without having an excessive influence on the participants.

### **I - When we talk about experts, who are we referring to?**

In the two major citizens' conventions that have been held in France so far, there has been no talk of experts but of "interveners" or "stakeholders". The term "stakeholders" in English can refer to groups of informed citizens who are more familiar with certain subjects than ordinary citizens, or even more committed to certain causes. This is different from the notion of expert. In French, according to the dictionary, an expert is someone with experience who knows something very well through practice. This type of expertise is found mainly in criminal proceedings.

At the national citizens' conventions in France, speakers came from all walks of life. For the climate convention, there was elected representatives, climate specialists, directors of department stores, of building firms, architects, minister, senior civil servants, think tank members....

In the Convention on the End of Life, the participants included doctors, healthcare professionals, religious leaders, philosophers, patients' associations, etc. About this convention, for example, it is hard to say who can be called an expert, since it was impossible to find a single person capable of answering the question of what the best solution for the end of the life is : the anaesthetist, the doctor in charge of palliative care, the nurse who works in a palliative care unit, the priest, the association representing patients' families.... all express

different points of view. This is an important lesson: the expert can answer certain questions but does not necessarily have the whole picture.

If the definition of an expert is "one who has experience", then the notion of expertise can be broadly understood. An expert is not someone who has all the knowledge, but someone who has experience in a field to the point of being able to offer a relevant point of view.

On this basis, we can distinguish several types of expert.

On participatory processes in general :

- First of all, there are insiders and outsiders experts : insiders are those who have been officially invited to give their point of view either on certain issues or on the process itself.

This distinction can be found in the Citizens' Convention, but we'll come back to it later.

In other participatory processes, experts are mainly found outside the process: for example, to explain to the media or the government whether a given subject can or cannot fall within the scope of a referendum procedure.

Citizens' conventions are a form of citizen participation in which the role of expertise is particular, since this role is part of the definition of the citizens' assembly. For a mini-public to be able to deliberate, they need to have access to quality information and people who can answer their questions

The role of expertise in other forms of citizen participation, such as popular initiatives and referendums, can be very different, because such processes may not involve experts at all.

In a participatory process, we can distinguish between experts in the participatory technique and experts in the subject. However, in a citizens' convention procedure, the distinction may be more precise since we can find multiple forms of expertise: communication experts for a good organization of debates, to guide exchanges between citizens or even educators, to clearly explain how the process is organized, legal experts, for example, to help citizens draft a provision within the framework of the citizens' climate convention, climate experts, environmentalists, chemistry experts to talk about certain polluting industries or experts in renewable energy...

We can also distinguish the Certified Expert from the second-hand expert or the self-proclaimed expert found, for example, on social networks. This raises the question of the legitimacy of the expert and who decides on this legitimacy: there is a part of training, a part of diplomas, a part of recognition by peers, what we call "the scientific community " for example or the community relating to a profession, a part can also be part of public notoriety. And in the choice of the official expert precisely for this or that process, there will be an element of subjectivity on the part of those who decide, an element of chance?

Finally, a few remarks on this subject:

- first of all, the broader the participatory process, the more the experts will be participants themselves. For example, in the context of a referendum: the expert may be asked to give his opinion on the subject or on the wording of the project submitted to the vote and he will also be asked to vote as a citizen.

- then, in a citizens' convention, the expert can also be considered as a participant in the construction of opinion, consensus or standards because by exchanging with citizens, he can

influence or even guide them. It is therefore a co-construction of a consensus within a citizens' convention.

The question of the place of expertise in citizen participation processes is at the crossroads of two types of legitimacy: the legitimacy of knowledge and democratic legitimacy. At the heart of a tension between technocracy, epistocracy on the one hand and democracy, general will or public opinion on the other. Citizens' conventions will allow a meeting between the two but the tension will not disappear: on the one hand, experts can influence, guide the formation of citizens' opinions and therefore it is difficult for them to simply inform ; on the other hand, citizens can either accept the expert's word too easily, or distrust it to the point of doubting it, rejecting it for fear of being manipulated or considering that they know better than the expert. expert himself.

- finally, we can notice that, in a citizens' convention, citizens come from various backgrounds and may be more or less knowledgeable about the subject. Furthermore, some citizens will inform themselves and in a self-taught manner, they will develop their own expertise.

We will then distinguish between the professional expert and the citizen expert.

This brings us to the second question, very quickly, that of the role of the expert.

## **II – What role are they likely to play in a participatory process in general and in a constitutional revision procedure in particular?**

Whether in or out of process, its role is above all to inform. Obviously, we will seek information with scientific objectivity, a certain form of impartiality, or even neutrality. However, this search is in vain.

As Dominique Pestre writes: "All knowledge has limits and an insurmountable partiality".

Scientific honesty and rigor require that all opinions be presented when there are divergences or that the expert presents this diversity and leaves those who deliberate or decide to choose between these various opinions. In reality, in the citizens' climate convention, some researcher-observers were able to note that the speakers did not always have the same speaking time. Furthermore, the division of citizens into groups has favored the influence of certain experts on certain groups and even clearly oriented both the debates and the drafting of proposals.

The good citizens' convention will be the one in which we can find a consensus that the expert informs without and answers citizens' questions but without prescribing a decision to them. The biggest difficulty is finding this point of balance.

Some researchers are very committed and make their research an ideological battleground (environment, climate, democratic participation, constitutional justice, justice in general). As a result, the expert sometimes becomes a member of a think tank, an association, or a lobbyist. In this case activist experts bridge between technocratic knowledge (and technocratic decisions) and citizen knowledge but it is important that citizens know this.

The various expertise presented can be complementary, or even contradictory, but everyone must remain in their information role.

The status of professor or researcher at a prestigious institution can lead to giving credibility to very subjective or very politically oriented comments. Freedom of expression and public

debate in general must allow everyone to challenge a particular point of view and give opposing arguments even if this is not always easy.

Another question that arises in terms of expertise is of course that of conflicts of interest. Certain opinions are clearly dictated by financial interests, particularly in the field of health and chemicals.

This brings us to the 3rd point, that of the regulation of expertise.

But before, another question : the role and choice of experts will also depend on the objectives sought and the purpose of the participatory procedure. The expertise in constitutional matters has a particularity is that the rules are very general and abstract and that in principle, the provisions are not very detailed (which is not the case in Switzerland for example because of the popular initiative). As a result, the experts will above all be jurists who will understand the general meaning of the provision (organize the responsibility of the President of the Republic, broaden the scope of the referendum, modify the text to take into account the ratification of a international treaty). At this level, we rarely call on other specialists except for more technical questions such as the environment, which Clémentine will tell us about.

### **III – What regulation and how regulate expertise ?**

Apart from any process, the regulation of expertise is difficult. Certain institutions in France, however, have adopted a form of scientific ethics charter. On the CNRS website we find even more broadly an Ethics Charter for research professions which transposes the main international texts in this field: the European Charter for Researchers (2005); the Singapore statement on research integrity (2010); the European code of conduct for research integrity (ESF-ALLEA, 2011). The charter is part of the reference framework proposed in the European HORIZON 2020 research and innovation program.

It includes as a principle: respect for the law, reliability of research including an explanation of the method, scientific integrity, honesty and transparency of research, obligation of neutrality and transparency of links of interest, impartiality and independence in an evaluation or expertise, the communication of research results to the scientific community but also to the public.

There we find a certain number of rules which could be formalized in a sort of procedural regulation for citizen assemblies with the possibility of referring to an authority (ethics officer) in the event of a dispute.

Among these rules, we could find:

- the transparency of the process as a whole, including in the choice of experts or private operators managing certain material or formal aspects (which assumes that these elements are made public),
- the integrity and independence of the people ensuring the implementation, organization of the work and management of each phase of the process,
- prior and diversified information for participants (concerns of pluralism), the possibility of obtaining additional information (according to an inquisitorial model) in particular by carrying out public hearings,
- the presentation of contradictory expertise in equal speaking time,

The criticism that one could make is that the regulation slows down the smooth running of the deliberation in the sense of natural development in a citizens' convention which means that citizens can obtain unlimited information to form their opinion and debate in an argued manner. However, a balance must be found and while the time for questions and answers may not necessarily be limited, the time for the general presentation of an issue by an expert should be.