

LEGAL IMMIGRATION AND LOCAL RESILIENCE IN ITALY: THE CASE OF THE INTEGRATION COUNCILS

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Abstract

Currently in Italy coexist different regulatory approaches not as much in the field of the entrance, but more in the field of the stay of legal immigrants. Local ordinances limiting social rights for foreigners, as well as some restrictive regional welfare laws are expression of “excluding” interventions, based on the cultural identity protection and on the formal citizenship enhancement (C. Schmitt). Nevertheless, some recent regional laws in the field of social integration, as well as local integration policy, reveal a different approach, founded on a new “permeable” concept of identity (J. Habermas): both those who welcome, and those who are welcomed, are supposed to place themselves in a mutual listening and understanding attitude. The sustainable development of our pluralist societies firstly needs the implementation of legal tools able to enhance local resilient approach – dynamic and open to change – supporting institutional (as well as spontaneous) moments of dialogue, discussion and mutual knowledge. Meanwhile, resilient attitudes should be considered even from the immigrants' point of view, through a differentiated analysis of several immigrant communities' behaviours: even if foreigners share common stress causes (language difficulties, sense of marginalisation, self-determination obstacles), the way each single ethnic group faces these difficulties is often deeply different.

That being stated, this paper moves from the consideration that national Italian legislation in the field of immigration recognizes to legal immigrant a specific right to be involved in social, political and economic policy at local level. However – distinguishing between policy of immigration and policy for immigration – the Italian Constitutional Court has stated the exclusive regional legislative power in the field of participation rights of immigrants. Hence, the aim of this paper is to examine the

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heterogeneous regional laws (and also their municipal implementation) concerning one of the most effective and interesting model of political participation for legal immigrants: the integration council. It consists in a collegial body, holder of advisory functions in the field of immigration local policy, partly (in some cases exclusively) made up of representatives of the legal immigrant population present locally. The study will have as its objects several points: the councils legal status; the members designation methods; the binding or not-binding effectiveness of acts issued by the integration council. The purpose is to underline the several points of distinction existing among the various models of integration councils operating in Italy at municipal and regional levels, in order to identify best practices, as well as critical issues and weaknesses.

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1. Preamble. The different models of resilience in the relational dynamics between the Italian legal system and regular immigrants.

The study of the *status* of the regular immigrant and, more specifically, of the rights and duties ascribable to him, intercepts the theme of resilience from a twofold perspective: on the one hand, it allows to examine how much and in what terms the community within which the foreigner is inserted is willing to take action in order to respond to the needs of integration coming from those who enter "from outside"; on the other, the profile of the level of adaptability and openness of the immigrant who approaches a new reality, in terms of both rules and values, emerges.

It is possible to report at least three different resilience models in the context being dealt with: a) mutual hostility (identification of strict limits in the recognition of the rights of the foreigner by the host system, and attitude of self-ghettoization by the immigrant community); b) full assimilation of the immigrant within the new system, with the relative irrelevance of the values and culture of origin; c) integration, through a slow and difficult process of mutual knowledge and understanding¹. In literature, there are several studies that have tried to measure the degree of effectiveness of these models; effectiveness, in fact, understood as resilience, or as the capacity to adapt to changes without losing its essential characteristics². But it is clear that the cited different models have a different degree of adaptability, depending on the "type of pressure" they undergo: in this light, it is therefore necessary to distinguish between irregular immigration, asylum seekers and regular immigration phenomena³.

¹ For a reconstruction of the traditional debate about the different models of State intervention towards the migration phenomenon, see C. Bertossi, *National Models of Integration in Europe*, ABS 1561 (2011); S. Castles, *How Nation-States Respond to Immigration and Ethnic Diversity*, in S. Vertovec (ed), *Migration and Social Cohesion* (1999).

² A. Caviedes, *European Integration and the Governance of Migration*, 12 *Journal of Contemporary European Research* 552 (2016); P. Bourbeau, *Migration, Resilience and Security: Responses to New Inflows of Asylum Seekers and Migrants*, 41 *J. Ethn. Migr. Stud.* 1958 (2015).

³ S. Gozzo, *Quale integrazione? Politiche per l'accoglienza e percezione dell'immigrato in Europa*, 1 *Autonomie locali e servizi sociali* 17 (2017).

The huge and difficult to control (as well as to regulate) irregular migration flows that are affecting Europe in recent years have, among other things, led to a redefinition of public policies, increasingly inspired by assimilative, if not exclusionary, models⁴. To this must be added the incidence of the “terrorism factor”, whose emergency character pushes away the perspective of integration in favor of that of security and of public order⁵.

In the light of these phenomena, even in Italy the debate is now largely devoted to the issues of security and protection of fundamental rights related to initial reception⁶. The aim of this paper, however, will be to verify the effectiveness of Italian migration policies with regard to the phenomenon of regular immigration: it is clear that – in a long-term perspective – is no less important to study the public policies which are aimed at granting the construction of legal, social and cultural bases for the effective integration of those who come to Italy not to escape

⁴ G. Rayap, I. Ruyssen, S. Standaert, *Measuring and explaining Cross-Country Immigration Policies*, *World Development* 141 (2017); L. Bjerre, M. Helbling, F. Römer, M. Zobel, *Conceptualizing and measuring immigration policies: A comparative perspective*, *International Migration Review* 555 (2015). For an analysis of the debate in the U.S. and Canada see C. G. Massey, *Immigration quotas and immigrant selection*, *Explorations in Economic History* 21 (2016).

⁵ For a multi-level analysis of the effects of the recent terrorist events on the immigration policies, see Y. Young, P. Loebach, K. Korinek, *Building walls or opening borders? Global immigration policy attitudes across economic, cultural and human security contexts*, *Social Science Research* 83 (2018). On the difficulties arising from the absence of common European immigration and anti-terrorism policies, see N.D. Coniglio, K. Kondoh, *International integration with heterogeneous immigration policies*, *International Economics* 15 (2015). Denounces the tendency to make an improper confusion between the concepts of public order and security A. Fioritto, *L'amministrazione dell'emergenza tra autorità e garanzie* (2008).

⁶ M. Interlandi, *Fenomeni immigratori tra potere amministrativo ed effettività delle tutele* (2018); N. Gullo, *Prevenzione del terrorismo, tutela dell'ordine pubblico e diritti fondamentali degli stranieri: riflessioni sull'espulsione degli stranieri prevista dall'art. 3, d.l. n. 144 del 2005*, *Diritto e questioni pubbliche* 461 (2017); M. Consito, *La tutela amministrativa del migrante involontario. Richiedenti asilo, asilanti e apolidi* (2016); F. Frattini, *Fenomeni migratori e sicurezza in Europa*, *Gnosis* 22 (2015); F. Duvell, *Fundamental Rights of Migrants in an Irregular Situation in the European Union*, http://fra.europa.eu/fraWebsite/attachments/FRA_2011_Migrants_in_an_irregular_situation_EN.pdf; M. Immordino, *Pubbliche amministrazioni e tutela dei diritti fondamentali degli immigrati*, *Federalismi* 1 (2014).

temporarily from unsustainable living conditions, but rather to lay the foundations of a new path of life⁷.

As already noted, the first approach that can be registered in Italy with regard to immigrants, even if regulars, is of an exclusionary nature, aimed at defending the national identity through the enhancement of citizenship in its traditional sense⁸. In literature, the s.c. Social Identity Theory explains the defensive reaction of the host community with the fear of loss of national characteristics, which leads to a closing attitude by the dominant group⁹. A clear manifestation of this exclusionary attitude has emerged in those necessity and urgency local ordinances aimed at – pursuant to public security reasons – making the access criteria to the registry office more selective, by means of more stringent requirements than those provided by state law¹⁰. The Italian Constitutional Court intervened with a resolution stating the illegitimacy of the state provision which allowed Mayors to give life, through temporary ordinances, to permanent long-term effects capable of affecting fundamental rights and freedoms of immigrants¹¹. Even more significant is the experience of the most recent regional laws on access to social services for foreigners who are regularly resident in Italy. In this regard, there is the issue of those welfare benefits which go beyond the fundamental rights, but are still recognized to all persons demonstrating to meet certain requirements, and – as will be highlighted in the next paragraph – in Italy, recently, there have been several attempts by some regional legislators to introduce very restrictive disciplines.

⁷ A.B. Anderson, *Commentary: The Migrant Crisis and Ethnic Minority Integration in Europe*, JEMIE 108 (2017).

⁸ F. Bordignon, L. Ceccarini, F. Turato, *Migranti e cittadinanza al tempo delle crisi globali*, 4 *Rivista delle Politiche Sociali* 185 (2015); M. Savino, *Le libertà degli altri. La regolazione amministrativa dei flussi migratori* (2012).

⁹ M.A. Cea D'Ancona, *What determines the rejection of immigrants through an integrative model*, *Social Science Research* 1 (2018); J. Hainmueller, D.J. Hopkins, *Public Attitudes Toward Immigration*, *Annual Review of Political Science*, 225 (2014).

¹⁰ N. Zorzella, *I nuovi poteri dei sindaci nel pacchetto sicurezza e la loro ricaduta sugli stranieri*, 3-4 *Dir. imm. cit.* 57 (2008).

¹¹ Constitutional Court, April 7, 2011, n. 115. See also P. Cerbo, *Principio di legalità e «nuove ed inedite» fattispecie di illecito create dai Sindaci*, *Le Regioni* 2015 (2012).

The second relational model that may be established between a legal system and the regular immigrant, i.e. the inclusive type, is aimed at allowing a full assimilation of the immigrant within the community and refers to the notion of Habermas's "constitutional patriotism"¹², who theorized a rationality that is common to all men, which is discursive and communicative and should bring everyone to agree upon a "common constitution". However, such harmony of principles does not come to a universal dimension, since it can only be the reflection of the idea of man and community of the hosting nation. In this context it is possible to recall the Integration Agreement, a sort of contract between the Italian State and the foreigner through which the regular immigrant undertakes to acquire certain credits within a certain time, on pain of revocation of the residency permit¹³. Among other things, the immigrant is required to explicitly adhere to the Charter of Values of Citizenship and Integration¹⁴, which is a document summarizing and explaining the fundamental principles and values of Italian law regulating the collective life: thus, the foreigner is required not simply to know and respect (which would evidently be shareable) the national culture and values, but rather to embrace them. The philosophy behind the Integration Agreement is not to integrate, but to "select" only those immigrants willing to give up their original identity and fully embrace Italian values and culture¹⁵.

Ultimately, the Integration Agreement appears to be a classic product of the assimilation theoretical model, according to which only the complete adherence to the cultural system of the host Country would allow the immigrant to reach a satisfactory level of integration¹⁶. However, this approach was strongly

¹² J. Habermas, *La costellazione postnazionale – Mercato globale, nazioni e democrazia* (2002).

¹³ See <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/accordo-dintegrazione>. The acquisition of the aforementioned credits takes place through the attendance of training courses covering the Italian language, the Constitution, the educational system, healthcare, etc.

¹⁴<http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/circolari/carta-dei-valori-della-cittadinanza-e-dellintegrazione>.

¹⁵ E. Gargiulo, *Integrazione o esclusione? I meccanismi di selezione dei non cittadini tra livello statale e livello locale*, 1 *Dir. imm. cit.* 41 (2014).

¹⁶ R. Alba, V. Nee, *Rethinking assimilation theory for a new era of immigration*, *International Migration Review* 826 (1997).

criticized in the light of recent experiences of European immigration, where it emerged that assimilation policies do not lead to the same results if applied to different immigrant groups. Factors such as ethnicity, race and, more generally, the cultural system of origin, impose alternative models of integration, attentive to the ethno cultural specificity of each minority group¹⁷.

A substantial evolution of these recent theoretical approaches is represented by the third and final relational model that can be registered in Italy between legal order and legal immigrant is based on the recognition and, when necessary, protection of cultural diversity, in a perspective that looks favorably on multiculturalism¹⁸. Our society is evolving towards an increasingly pluralistic dimension and, in the face of this process, an attitude aimed at protecting national cultural identity risks leading to a dangerous situation of plural mono-culturalism, of fragmented and non-dialogue communities¹⁹. On the contrary, it is only by recognizing the value of cultural diversity and enabling legal immigrants to integrate fully into the new society that the goals of security and social cohesion can be achieved²⁰. For these purposes, as we will try to demonstrate in this paper, it is necessary to guarantee the foreigner an easy and wide access to welfare, but this operation will not lead to significant results if it is not accompanied by the contextual recognition of some rights of

¹⁷ D. Maskileyson, M. Semyonov, *On race, ethnicity and on the economic cost of immigration*, *Research in Social Stratification and Mobility* 19 (2017); M.A. Painter, M.D. Holmes, J. Bateman, *Skin tone, race/ethnicity, and wealth inequality among new immigrants*, *Social Forces* 1153 (2015); M. Bommès, *Transnationalism or assimilation?*, in C. Boswell, G. D'Amato (eds.), *Immigration and Social System* (2012).

¹⁸ C. Taylor, *Multiculturalism and «The Politics of Recognition»* (1992); G. Azzariti, *Multiculturalismo e Costituzione*, *Politica del diritto* 3 (2016).

¹⁹ A. K. Sen, *Identità e violenza* (2008). More recently, on the same subjects, see P. Grajzl, J. Eastwood, V. Dimitrova-Grajzl, *Should immigrants culturally assimilate or preserve their own culture? Host-society natives' beliefs and the longevity of national identity*, *Social Science Research* 96 (2018).

²⁰ M. Calabrò, *Italian regular immigration public policy: between exclusion, assimilation and integration*, *3 EU Law Journal* 34 (2017). Particularly interesting, from this point of view, is the study of B. Sahin, *Social Integration of Immigrants: a Swot Analysis*, *Procedia-Social and Behavioral Sciences* 110 (2016), where the author – starting from the analysis of the Syrian crisis – suggests possible policies for implementation of social integration and discusses their advantages.

participation in the public/political life of the community in which the legal immigrant resides²¹.

The author is fully aware that this last scenario, however desirable, appears at the moment rather difficult to fully achieve, in the light of the disruptive consequences of the migratory phenomena that are affecting Europe, and Italy in particular, in recent years. The emergence of the "security" profile has led, inter alia, to a debate focused on the rights of the citizen, rather than those of the individual, adhering to a notion of citizenship understood in an exclusionary sense.²² As we will see below, today in Italy the citizen is often framed in a relationship of strong otherness with the foreigner, considered today an intruder, a problem to be solved, certainly not a resource to "include"²³.

2. The recognition of social rights as an essential prerequisite for genuine integration.

Despite the economic literature is substantially agreed that, above all in Countries with low birth rates such as Italy, international migration brings important economic and social benefits²⁴, it is still possible today to register a broad anti-migration sentiment into host societies, in relation to the impact of the phenomenon on welfare ²⁵. According to the s.c. Group Conflict Theory,

²¹ V. Prudente, *In tema di partecipazione degli stranieri all'amministrazione locale*, 1 Nuove autonomie 149 (2013).

²² T. Wotherspoon, *Migration, Boundaries and Differentiated Citizenship: Contested Frameworks for Inclusion and Exclusion*, 6 Social inclusion 153 (2018); S. Staiano, *Migrazione e paradigmi della cittadinanza: alcune questioni di metodo*, Federalismi (2008).

²³ P. Lombardi, *Giudice amministrativo e cittadinanza: quale contributo per un concetto giuridicamente sostenibile?*, Federalismi (in press); P. Chiarella, *Il terzo intruso: problemi del fenomeno migratorio in Europa*, 7 Federalismi (2017); A. Baraggia, *La cittadinanza "composita" in alcune esperienze europee. Spunti di riflessione per il caso italiano*, 18 Federalismi (2017).

²⁴ V. Bove, L. Elia, *Migration, Diversity and Economic Growth*, World Development 227 (2017); D. Kancs, P. Lecca, *Long-term social, economic and fiscal effects of immigration into the EU: The role of the integration policy*, 8 Economics and Econometrics Research Institute Paper Series (2016); G.J. Borjas, *Immigration Economics* (2014).

²⁵ P. Poutvaara, M.F. Steinhardt, *Bitterness in life and attitudes towards immigration*, European Journal of Political Economy 1 (2018); M. Bommers, *Welfare systems and immigrant minorities: the cultural dimension of social policies and its*

negative attitudes towards immigrants mainly derive from the perception of the foreigner as a competitors in the acquisition of scarce resources²⁶.

In consideration of the above, with regard to the recognition of social rights of legally residing immigrants, Italy has recorded fluctuating positions, both at state and local level. Pursuant to art. 117 of the Italian Constitution, the matter of immigration falls within the exclusive legislative competence of the State, but the Italian Constitutional Court has long ago clarified that only the profiles relating to the entry and the modalities of stay of the foreigner in Italy are to be considered strictly the competence of the State, since they are connected to the area of public security²⁷. On the contrary, different areas, connected to profiles of great importance for the life of the immigrant already residing in Italy – such as assistance, education and health – must be managed in close coordination between the State and the Regions²⁸.

This model of multi-level regulatory intervention, which is also necessary in view of the intrinsic complexity of the problems connected with the subject of immigration²⁹, therefore entrusts an important role to the Regions. This, however, in the absence of

discriminatory potential, in C. Boswell, G. D'Amato (eds.), *Immigration and Social System* (2012); P. Huber, D. A. Oberdabernig, *The impact of welfare benefits on natives' and immigrants' attitudes toward immigration*, *European Journal of Political Economy* 53 (2016).

²⁶ S. Pehrson, E.G.T. Green, *Who we are and who can join us*, *Journal of Social Issues* 695 (2010). For a recent review of the several theories on the explanations of anti-immigrant attitudes, see M.A. Cea D'Ancona, *What determines the rejection of immigrants through an integrative model*, cit. at 9, 1.

²⁷ Constitutional Court, 13 April 2017, n.81; Constitutional Court, January 18, 2013, n. 2; Constitutional Court, April 15, 2010, n. 134; Constitutional Court, May 14, 2008, n. 131.

²⁸ Constitutional Court, February 25, 2011, n. 61; Constitutional Court, March 7, 2008, n. 50. See also L. Ronchetti, *I diritti di cittadinanza dei migranti. Il ruolo delle regioni* (2012); B. Pezzini, *Una questione che interroga l'uguaglianza: i diritti sociali del non-cittadino*, Vv.AA., *Lo statuto costituzionale del non cittadino* (2010).

²⁹ E. Di Salvatore, M. Michetti, *I diritti degli altri. Gli stranieri e le autorità di governo* (2014); F.G. Scoca, *Protection of diversity and legal treatment of the foreinger: the Italian model*, 1 *Il diritto dell'economia* 15 (2013); M.R. Spasiano, *Principi sull'immigrazione*, in F. Astone, F. Manganaro, A. Romano Tassone, F. Saitta (eds.), *Cittadinanza inclusiva e flussi migratori* (2009); C. Corsi, *Lo Stato e lo straniero* (2001).

organic state public policies, leads to a profoundly multifaceted and heterogeneous regulatory framework³⁰. The non-degradable nature of (some) social rights does not appear to be the object of dispute: the Italian Constitutional Court has long ruled that the inviolable rights recognized by the Italian Constitution belong to individuals «not because they participate in a specific political community, but because they are human beings»³¹. Less obvious, however, is the concrete definition of such a "minimum core" constitutionally guaranteed, in the absence of a list of specific social benefits that can configure the essential core of each inviolable right³².

The state regulations on the access to social assistance benefits for foreigners (non-European) appear rather insufficient. In fact, it limits itself to equating to Italian citizens only foreigners holding a long-term residence permit or a residence permit for a period of not less than one year³³. The vagueness of the discipline

³⁰ C. Panzera, *Immigrazione e diritti nello Stato regionale. spunti di riflessione*, 1 Dir. Pubbl. 141 (2018); F. Scuto, *Le Regioni e l'accesso ai servizi sociale degli stranieri regolarmente soggiornanti e dei cittadini dell'Unione*, 1 Dir. imm. cit. 56 (2013); D. Strazzari, *Stranieri regolari, irregolari, "neocomunitari" o persone? Gli spazi di azione regionale in materia di trattamento giuridico dello straniero in un'ambigua sentenza della Corte*, Le Regioni 1037 (2011).

³¹ Constitutional Court, July 25, 2011, n. 245. See also, Constitutional Court, 7 December 2017, n. 258. On the constitutional legitimacy (in terms of non-configurability of a hypothesis of violation of fundamental human rights) of the current Italian regulation of irregular immigrant rejection, see Constitutional Court, 20 December 2017, n. 275.

³² In the doctrine there are alternating positions aimed at guaranteeing foreigners all the inviolable rights, and approaches that instead support the need to verify, with regard to each right that the Constitution exclusively reserves to citizens, the existence or not of reasons suitable to support this choice [F. Crepeau, A. Purkey, *Facilitating Mobility and Fostering Diversity. Getting Eu Migration Governance to Respect the Human Rights of Migrants*, 92 Liberty and Security in Europe 1 (2016); P. Caretti, *I diritti fondamentali* (2005); C. Corsi, *Diritti fondamentali e cittadinanza*, Dir. pubbl. 805 (2000)]. For a review of the debate on the opportunity to use ordinary or exceptional legal instruments to guarantee fundamental rights in socio-economic emergency situations, see P. Bonetti, *Terrorismo, emergenza e Costituzioni democratiche* (2006). On the delicate relationship between the application of anti-terrorist policies and the protection of fundamental rights, see E. Shor, I. Filkobski, P. Ben-Num Bloom, H. Alkilabi, W. Su, *Does counterterrorist legislation hurt human rights practices? A longitudinal cross-national analysis*, Social Science Research 104 (2016).

³³ Art. 41 d.lgs. n. 286/1998.

at the state level leaves ample room for maneuver to the regional legislators, who, in the majority of cases, have, in reality, extended the access to welfare to all the legal immigrants, regardless of the duration of their stay, derogating, *in melius*, the state regulations. However, there has been no lack of regional legislation on the contrary, aimed at limiting access to social benefits for immigrants compared to what they are recognized in national legislation³⁴. In some cases, the discriminatory element was based on the citizenship requirement (completely excluding non-Italians from access to welfare³⁵); in other cases, the differential element was identified in residence, through the provision of different requirements for the citizen (for whom it is generally sufficient to prove simple residence) and for the foreigner (who was required to be resident, uninterruptedly, for 3, 5, if not sometimes 10 years³⁶).

The Italian Constitutional Court has, however, declared the constitutional illegitimacy of these provisions, both of the regional laws that completely excluded non-citizens³⁷ from access to welfare, and of those that required an uninterrupted residence of a number of years that could not be justified by the type of social benefit provided³⁸. Although the Court does not rule out the possibility that the element of precariousness of residence may be a legitimate criterion for the non-attribution of a social benefit, it does require a reasonable correlation between the conditions to which access to the benefit is subject and the purpose of that

³⁴ See art. 2, l.r. Emilia Romagna, March 24, 2014, n. 5; art. 14, l.r. Abruzzo, December 13, 2014, n. 46; art. 2, l.r. Campania, February 8, 2010, n. 6; art. 6, l.r. Toscana, June 9, 2009, n. 29; art. 10, l.r. Puglia, December 4, 2009, n. 32; art. 5, l.p. Bolzano, April 30, 1991, n. 13; art. 2, l.r. Umbria, April 10, 1990, n. 18; art. 2, l.r. Veneto, January 30, 1990, n. 9; art. 2, l.r. Lombardia, July 4, 1988, n. 38.

³⁵ See l.r. Lombardia, February 12, 2002, n. 1; l.r. Friuli Venezia Giulia, March 31, 2006, n. 6.

³⁶ See l.p. Trento, July 24, 2012, n. 15; l.r. Trentino Alto Adige, December 14, 2011, n. 8; l.p. Bolzano, October 28 2011, n. 12; l.r. Friuli Venezia Giulia, November 30, 2011, n. 16; l.r. Friuli Venezia Giulia, June 6, 2017, n. 13.

³⁷ See Constitutional Court., February 9, 2011, n. 40; Constitutional Court, December 2, 2005, n. 432. See also G. Corso, *Straniero, cittadino, uomo. Immigrazione ed immigrati nella giurisprudenza costituzionale*, Nuove autonomie 386 (2012).

³⁸ See Constitutional Court, May 24, 2018, n. 106; Constitutional Court, July 4, 2013, n. 172; Constitutional Court, June 7, 2013, n. 133; Constitutional Court, January 18, 2013, n. 2. For a recent decision of unconstitutionality of a state law restricting the right of legal immigrants to access facilities for the payment of the rent, see Constitutional Court, 20 July 2018, n. 166.

benefit³⁹. Thanks to the Court corrective action, therefore, the regions will only be able to set limits on access to social benefits for legal immigrants if these limits constitute a not unreasonable discrimination between citizens and foreigners⁴⁰.

In Italy, therefore, the right of legal immigrants to access adequate levels of social benefits can now be considered guaranteed⁴¹, but this does not appear to be able, on its own, to determine the conditions for achieving a real process of integration. As recent doctrine has shown, in the perspective of the future development of a safe and multi-ethnic society, in addition to the theme of access to social welfare services, there is the implementation of public integration policies operating at different levels, cultural, social and political⁴², so as to put the immigrant in a position to feel an integral part of the (new) community to which he belongs.

3. The debate on the right of foreigners to participate in local public life.

The described progressive substitution of the criterion of residence to that of citizenship has oriented the debate towards the analysis of the evolution of the very notion of citizenship or, better, of citizenships, in order to verify if, and eventually within

³⁹ In the European context, is particularly significant the Long Term Residence Directive (2003/109/CE). As far as it concerns in this context, through the study of several cases dealing with this directive, has been underlined that «rights are not considered as a prize for an already successful and completed integration», D.A. Arcarazo, *Civic Citizenship Reintroduced? The Long-Term Residence Directive as a Post-National Form of Membership*, 21 *European Law Journal* 321 (2015).

⁴⁰ I. Ciolli, *The new challenges of constitutional Courts: global markets, terrorism and immigration. The Italian case*, 3 *Dir. Pubbl. Comp. Eur.* 569 (2017), analyzes the important role played by constitutional Courts in situations of emergencies and frequent recourse to exceptional remedies.

⁴¹ Despite of the recent emergence of anti-migrant attitudes, which risks to entail steps backwards (see previous paragraph 1). Lastly, on this issue, E. Ales, *Il diritto alle prestazioni sociali dei migranti economicamente non attivi: una parola definitiva dalla Corte di giustizia*, *Giorn. dir. lav. rel. ind.* 295 (2017).

⁴² R.M. Niculescu, *In Search of a Dream at the Crossroads of Inculturation and the Integration Within an inTer-Cultural Society – Challenges of Immigration*, *Procedia-Social and Behavioral Sciences* 400 (2013); F. Fracchia, *Integrazione, eguaglianza, solidarietà*, 2/3 *Nuove autonomie* 229 (2013); J. De Lucas, *Migrazioni, diritti, cittadinanza nell'Unione europea. Sulle condizioni di legittimità della politica d'immigrazione*, 4 *Dir. imm. cit.* 13 (2004).

what limits, the formal meaning of citizenship still finds application⁴³. As already mentioned above, due to phenomena such as irregular immigration and terrorism, it is possible to register a recent tendency to enhance the notion of citizenship in a formal sense, as a factor of exclusion⁴⁴. However, not only in Italy, it is possible to register signals of opposite tenor, such as the recent bills under discussion in several European Countries on the subjects of *ius soli* and *ius culturae*⁴⁵.

As far it is more relevant here, the evolution of the community towards multicultural models raises the question of the degree of democratic participation, of active involvement in the public life of the community, to be recognized by the non-citizen⁴⁶.

In this regard, the Strasbourg Convention on the Participation of Foreigners in Public Life at Local Level, promoted by the Council of Europe, which was ratified by Italy and entered into force in 1997⁴⁷, is of considerable importance on the supranational

⁴³ M. Savino, *Lo straniero nella giurisprudenza costituzionale: tra cittadinanza e territorialità*, 1 Quaderni costituzionali 41 (2017). The debate on the notion of citizenship has recorded several – and often completely opposed – positions. For a general overview see M. Coady, *Citizenship: inclusion and exclusion*, in J. Wyn, H. Cahill (eds.), *Handbook of Children and Youth Studies* (2014); F. Vetrò, *Oltre la cittadinanza: stranieri e diritti inviolabili*, in F. Astone, F. Manganaro, A. Romano Tassone, F. Saitta (eds.), *Cittadinanza inclusiva e flussi migratori* (2009); M. Bell, *Civic Citizenship and Migrant Integration*, 13 Eur. Public Law 311 (2007); C. E. Gallo, *La pluralità delle cittadinanze e la cittadinanza amministrativa*, 3 Dir. amm. 481 (2002).

⁴⁴ D.C. Mueller, *Rights and citizenship in a world of global terrorism*, Eur. Journal of Political Economy 335 (2004).

⁴⁵ G. Milani, *Cittadinanza e integrazione. L'influenza del diritto comparato sulla disciplina italiana e sulle proposte di riforma*, 4 Federalismi (2018); G. Zincone, *Citizenship Policy Making in Mediterranean EU States: Italy*, <http://eudo-citizenship.eu> (2010).

⁴⁶ With regard to the effects on the evolution of the traditional concepts of political community deriving from the process of substantial weakening of the concept of the State/Nation in favour of the State/Community, see P. Grajzl, J. Eastwood, V. Dimitrova-Grajzl, *Should immigrants culturally assimilate or preserve their own culture? Host-society natives' beliefs and the longevity of national identity*, cit. at 19, 96; B. Caravita di Toritto, *I diritti dei "non cittadini": Ripensare la cittadinanza: comunità e diritti politici*, www.associazionedeicostituzionalisti.it (2010).

⁴⁷ In fact, already art. 21 of the Universal Declaration of Human Rights of 1948 provided that «Everyone has the right to take part in the government of his country, directly or through freely chosen representatives», however, the majority orientation immediately understood the term "everyone" in a technical

scene. For the first time, it was stated in an official document that foreigners residing on national territory are now a permanent feature of European societies and that – since they are generally subject to the same duties as citizens at local level – they are entitled to be placed in the position of being able to integrate fully into the community, also by strengthening their possibility of participating in local public affairs⁴⁸.

In particular, this Convention is divided into three parts: a) freedom of expression, assembly and association; b) advisory bodies to represent foreign residents at the local level; c) voting rights at the local level. While the freedoms indicated in part a) are now indisputably recognized in Italy even to foreigners, in that they belong to the minimum nucleus of inviolable human rights⁴⁹, the most interesting ones are parts b) and c), the concrete implementation of which is still partially uncertain, as will be examined below.

Regarding to the analysis of the national legislation, it must be pointed out that – with a rather vague formulation – art. 9, § 12 of Legislative Decree no. n. 286/1889 (Italian Consolidation Act on Immigration) provides that foreigners holding long-term residence permits may participate in local public life, in the forms and within the limits provided by current legislation.

One of the few certain elements that can be inferred from the analysis of the meager national and supranational legislation of reference is that the context in which it is possible to imagine the recognition of the rights of democratic participation of non-citizens is the local one, certainly not the national one; this, moreover, is the natural consequence of the rationale of the extension of (some) political rights to the immigrant, to be identified in the link with the reference territory, in the residence (often the long term one). If it is true that local authorities are the

sense, as referring not to each individual but only to citizens [A. Lollo, *Note minime sulla partecipazione alla vita democratica del non cittadino*, www.associazionedeicostituzionalisti.it (2013)].

⁴⁸<https://www.coe.int/en/web/conventions/full-list/conventions/treaty/144>. Currently, only 9 Countries have ratified the Convention: Albania, the Czech Republic, Denmark, Finland, Iceland, Italy, the Netherlands, Norway and Sweden.

⁴⁹ Pursuant to art. 11, p. 1 of the European Charter of Human Rights, “Everyone has the right to freedom of peaceful assembly and to freedom of association”.

administrations that are most strongly invested by the impact of migratory flows in terms of management of health and safety emergencies linked to initial reception, it is also true that the same territorial areas represent the natural dimension within which it is possible to experiment with public policies aimed at facilitating the rooting of legal foreigners in the community⁵⁰.

On this point, the European Agenda for the Integration of Third-Country Nationals (2011)⁵¹, which is one of the most significant documents in the European integration strategy⁵², is of great interest. In this document, *inter alia*, it is strongly underlined that the essential elements to achieve effective results in terms of integration are the removal of obstacles that do not allow the

⁵⁰ M. Bommès, *Integration takes place locally: on the restructuring of local integration policy*, in C. Boswell, G. D'Amato (eds.), *Immigration and Social System* (2012); M. Brocca, *Il ruolo degli enti locali nella gestione della città interetnica: tra sicurezza e integrazione*, in M. Calabrò, L. Ferrara, M. T. Vogt (eds.), *Biopolitica dell'immigrazione* (in press).

⁵¹ Communication from the Commission to the European Parliament, the Council, the European economic and social committee and Committee of the Regions (COM/2011/0455), in <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML>. It is significant that this document clarifies from the beginning that «Effective solutions to integration challenges must be found in each national and local context but as these challenges are common to many Member States, experiences could be shared. Although it is not the prerogative of the EU to determine integration strategies, the EU can provide a framework for monitoring, benchmarking and exchange of good practice, and create incentives through the European financial instruments».

⁵² Within the EU, cooperation between Member States on policies for the integration of third-country nationals began to develop starting from the *Tampere Program* adopted in 1999. Afterwards, in 2004, the European Commission approves the *Migrant Integration Information and good practices*, then updated in 2007 and 2010. Meanwhile, in 2009, the Lisbon Treaty provided a new legal basis on integration, providing that «The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonization of the laws and regulations of the Member States» (art. 79.4 TFUE). Most recently, in 2016, the European Commission presented the *Action Plan on Integration*, which includes an action framework and concrete initiatives to assist Member States in integrating about 20 million third-country nationals legally residing in the territory of the Union. For a recent overview on this topic, see V. Piergigli, *L'integrazione degli immigrati da paesi terzi nel diritto sovranazionale: limiti e potenzialità dell'Unione Europea*, *Rivista Aic* (2018).

democratic participation of foreigners in public life, as well as the active involvement of the local authorities in the implementation of social cohesion policies and the fight against segregation.

It is not by chance, therefore, that Article 8 of the "Italian Consolidated Act on Local Bodies" (d.lgs. n. 267/2000) provides for the promotion of forms of participation in local public life by legally residing foreigners, not in terms of a mere option, but as a compulsory content of municipal statutes⁵³. Unfortunately, the same normative source does not expressly indicate specific institutes and models suitable to guarantee an adequate level of democratic participation to the legal immigrant, which leaves an excessive margin of discretion to the local authorities in determining the degree of "political" involvement that they intend to grant to the foreigner.

The enduring uncertainty, deriving from the largely merely expository nature of the reference State regulations, appears the result of the permanence, in the Italian debate, of a dominant orientation on the basis of which political rights (at least those of direct democracy) should be considered as inherent to the *status civitatis* and, therefore, their extension (not even partial) to non-citizens would not be legitimate⁵⁴. Even today, in Italy, it is still possible to record a wavering evolutionary process in terms of the recognition of the foreigner's rights to participate in public life, which denotes a substantial contradiction between the continuing tendency to frame the deepest discrimination between citizens and non-citizens in the ownership of political rights and the principle of substantial democracy, on the basis of which the subject appointed to make public choices must be representative of all the subjects to whom the aforementioned decisions are addressed⁵⁵.

⁵³ The Italian Constitutional Court has long ago also sanctioned the legitimacy of the possible introduction of institutions for the participation of foreigners in public life within the regional statutes, as a concrete implementation of principles already existing in the reference state legislation. (Constitutional Court, December 6, 2004, n. 379; Constitutional Court, July 22, 2005, n. 300).

⁵⁴ G. Vosa, *Sul riconoscimento dei diritti politici agli stranieri residenti: esperienze e prospettive*, in F. Rimoli (ed.), *Immigrazione e integrazione. Dalla prospettiva globale alle realtà locali* (2014).

⁵⁵ See S. Cassese, *Stato in trasformazione*, 2 Riv. Trim. Dir. Pubbl. 331 (2016), which also notes that the scale of recent migratory flows raises new questions

4. The difficult path of granting political rights to non-citizens: the right to vote.

As already noted, in the wake of the traditional legal logic of the State-Nation, it is customary to distinguish between individualistic rights of freedom, due to each person as an individual, and democratic rights, due to a subject as a part (formally recognized) of a State. Political rights, from this point of view, should be counted among those rights which – being an expression of the principle of popular sovereignty⁵⁶ – assume the existence, for the holder of the requirement of full membership of the community-State and, therefore, should not be legitimately extendable to non-citizens.

In Italy, the debate on the possibility of granting political participation rights to foreigners has in recent years focused mainly on voting rights⁵⁷. To simplify, it can be affirmed that in order to recognize the right to vote to non-citizens, two paths can be followed: a) intervene in the legal regime of citizenship, providing for easier ways of acquisition of this "status"⁵⁸; b) remove the existing link between the exercise of the right to vote and the status of citizen, enhancing, for example, the element of long-term residence⁵⁹. In the following, we will focus, in particular, on the second option, which – as we will see – is theoretically

about the figure of the citizen and the elements that distinguish the identity of a community.

⁵⁶ F. Tolson, *The popular sovereignty foundations of the right to vote*, <https://digitalcommons.law.umaryland.edu> (2017); E. Grosso, *Straniero (status dello)*, in S. Cassese (ed.), *Dizionario di diritto pubblico* (2006); V. Crisafulli, *La sovranità popolare nella Costituzione italiana*, in *Stato, popolo, governo. Illusioni e delusioni costituzionali* (1985).

⁵⁷ P. Colasante, *L'attribuzione del diritto di voto ai non cittadini: prospettive di riforma e fonte competente*, 2 *Rivista Aic* (2016).

⁵⁸ For an overview of the heated debate in Italy about the need to reform the current regulation of the acquisition of citizenship, see E.A. Ferioli, *La cittadinanza "oltre" lo stato. Interferenze internazionali e sovranazionali nell'acquisto e conservazione della cittadinanza statale*, 1 *Rivista Aic* (2017); D. Porena, *Il problema della cittadinanza. Diritti, sovranità e democrazia* (2011).

⁵⁹ On the s.c. residential citizenship, that is the connection between residence and enjoyment of several social rights, regardless of the formal nationality, see S. Benhabib, *The Rights of Others. Aliens, Residents and Citizens* (2004); A. De Bonis, M. Ferrero, *Dalla cittadinanza etno-nazionale alla cittadinanza di residenza*, 2 *Dir. imm. cit.* 49 (2004).

more easily pursued, even if not without obstacles of both a legal and an ideological nature.

On this point, the European panorama offers a rather heterogeneous picture, even if almost all the EU Countries - with the prevision of major (Spain, Belgium, Portugal) or minor (Norway, Denmark, Netherlands) restrictions - provide for forms of recognition of the right to vote also to non-citizens, at least at a local level, with the exception, together with Italy, of the States with a greater presence of immigrants, such as France and Germany⁶⁰. Moreover, there do not seem to be any binding supra-state provisions, either of European or international origin⁶¹, that impose a certain discipline, even if it is true that Italy, like several other States - even though it has ratified the aforementioned Strasbourg Convention on the Participation of Foreigners in Public Life at the Local Level - has, however, formulated an express reservation with regard to Part C of the same document, that is the one dedicated to the conferment of the right to vote to foreigners at the local level.

That said, in Italy the main obstacle to the recognition of the right to vote of foreign residents is represented by Articles 48 and 51 of the Constitution, in which the right to vote and stand as a candidate is attributed only to Italian citizens. Nevertheless, in 2004, there were some initiatives, both at regional and local level, inspired by a policy of not only social, but also political integration towards legally resident immigrants. In particular, the Regions of Tuscany, Emilia Romagna and Campania have included in their Statutes provisions through which they have substantially

⁶⁰ M. Engdahlb, K. O. Lindgren, O. Rosenqvist, *The role of local voting rights for foreign citizens - a catalyst for integration?*, <https://www.ifau.se> (2018); J. T. Arrighi, R. Bauböck, *A multilevel puzzle: Migrants' voting rights in national and local elections*, *Eur. Journal of Political Research* 619 (2017); M. Mezzanotte, *Il diritto di voto degli immigrati a livello locale, ovvero la necessità di introdurre una espansive citizenship*, www.formucostituzionale.it (2012).

⁶¹ Art. 22 of the Treaty on the Functioning of the European Union only states that «Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides». The European Agenda for the Integration of Third-Country Nationals (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML>), as a non-binding document, recommends that Member States promote the exercise of the right to vote at local level of legal immigrants.

provided for the recognition of rights of political participation, including the right to vote, for foreigners residing in a municipality of the region⁶². However, these provisions have not been applied in practice, partly because the innovative power of the statutory measures has been greatly reduced following a number of rulings by the Constitutional Court, which have construed them as merely programmatic rules lacking preceptive force and, therefore, unable to innovate the legal system⁶³.

At a local level, in the same years, some municipalities (e.g. Genova City Council and Forlì City Council) have provided, always within their respective statutes, for the recognition of the right to vote in local elections to foreigners legally resident. Even on these occasions the "expansive impetus" of administrations in favor of the implementation of a notion of citizenship in a substantial sense has been held back by the judicial power. In this case, in particular, it is the Council of State that has censured the aforementioned statutory provisions, declaring them unlawful: however, the negative opinion of the Council of State was not based on the alleged contradiction to Articles 48 and 51 of the Constitution, but on the lack of a State law that would allow local administrations to intervene in this direction⁶⁴, given the exclusive legislative competence of the State in matters of the legal status of foreign citizens and electoral law.

Although negative, the aforementioned opinion of the Council of State is crossed by a spirit of openness, indicating a path that the Italian system could follow in an evolutionary perspective; the constitutional recognition of the right to vote to citizens would represent, in fact, not a foreclosure, but a minimum guarantee, subject to "enlargement" through an intervention of the State legislator intended to allow local and regional authorities to extend to foreigners the right to vote at the local level.

⁶² Statute of the Region of Tuscany, art. 3, par. 4 and 6; Statute of the Region of Emilia Romagna, art. 2, par. 1, letter f); Statute of the Region of Campania, art. 8, letter o).

⁶³ Constitutional Court, December 2, 2004, no. 372; Constitutional Court, December 6, 2004, no. 379. See also A. Anzon, *La Corte condanna all'«inefficacia giuridica» le norme «programmatiche» degli Statuti regionali ordinari*, Giur. Cost. 4057 (2004).

⁶⁴ Council of State, I, March 16, 2005, no. 9771; Council of State, I, July 6, 2005, no. 11074; Council of State, I, December 17, 2008, no. 3714.

Part of Italian doctrine, in fact, immediately criticized the spirit of "openness" shown by the Council of State, arguing that the state legislator would not be allowed to issue rules contrary to the clear constitutional dictation, aimed at admitting a single model of citizenship and, at the same time, at indissolubly linking the participation in the exercise of popular sovereignty to the possession of the status of citizen⁶⁵. According to this tendency, therefore, the possible recognition of the right to vote to legal immigrants would be admissible in the abstract, but only following a procedure of constitutional revision⁶⁶. An even more restrictive orientation can be added, according to which not even a modification of the Constitution in this direction would be admissible, under penalty of the "betrayal" of the entire constitutional system⁶⁷: from this point of view – which lacks any solid reasoning – the only viable solution to allow migrants the right to participate in the social and political life of the country would be, therefore, to affect the discipline of citizenship, making the naturalization procedure less onerous⁶⁸.

In the light of these brief reflections, it emerges how far Italy is still from the recognition of a full and peaceful political dimension in relation to legal immigrants. Moreover, it is significant that Title IV of the Italian Constitution, dedicated to "Political Relations" is addressed only to citizens, both in relation to their rights (to vote, to join parties, to petition Parliament, to access public offices), and their duties (to defend the Country, to be faithful to the Republic), with the sole exception of the duty to pay taxes, extended to everyone.

⁶⁵ A. Ruggeri, *I diritti dei non cittadini tra modello costituzionale e politiche nazionali*, www.giurcost.org (2005); M. Luciani, *Il diritto di voto agli immigrati: profili costituzionali*, www.cestim.it (1999), which, however, affirms that the extension of the right to vote, with an unchanged constitution, is admissible in all local elections, in which the construction of representation for entities that do not have legislative power is at stake.

⁶⁶ T. F. Giupponi, *Stranieri extracomunitari e diritti politici. Problemi costituzionali dell'estensione del diritto di voto in ambito locale*, www.forumcostituzionale.it 12 (2006).

⁶⁷ T. Martines, *Diritto costituzionale* 591 (2005). *Contra* G. Vosa, *Sul riconoscimento dei diritti politici agli stranieri residenti: esperienze e prospettive*, *cit.* at 54.

⁶⁸ P. Colasante, *L'attribuzione del diritto di voto ai non cittadini: prospettive di riforma e fonte competente*, *cit.* at 57.

The enduring reticence towards the recognition of the right to vote of the immigrants, even at the local level, seems the result of a vision according to which it is considered legitimate to assign suitable instruments to influence the process of definition of social rules only to those who are able to demonstrate a complete belonging to (and, therefore, a full loyalty to) a community. A sort of public policy of integration "by concentric circles" is outlined: with every step forward in the integration process (legal entry into the national territory; obtaining a residence permit; obtaining a long-term residence permit; acquiring citizenship by naturalization or marriage) there is the recognition of a higher nucleus of rights, up to the "widest circle", within which there is the right to vote only granted to the citizen⁶⁹.

5. Sustainable models for the recognition of a "political dimension" of legal immigrants.

On closer inspection, apart from the difficult process of extending the right to vote to foreigners, in Italy seems legitimate – even in the absence of changes to the constitutional order – to envisage the configuration of a political dimension for legal immigrants as well. The inclusion of non-citizens within the life of the local community passes through the enhancement of what is commonly defined *denizenship*⁷⁰, or that form of "half" citizenship, linked to the demonstration of the permanent residence in the territory and the real will to integrate within the new context. In

⁶⁹ For a similar approach, on the basis of which each "change of level" results in the recognition of rights that are qualitatively and quantitatively more extensive, see the reflections of A. Damonte, *La normazione dell'Altro. La partecipazione alle consulte regionali per l'immigrazione*, 3 *Sociologia del diritto* 83 (1997), where it is theorized the existence of a «hierarchy of strangeness towards the national community that suggests a citizenship structured in concentric rings, each of which corresponds to specific entitlements and different statuses», 93.

⁷⁰ The term "denizen" entered the language of immigration theory by Hammar, who first used it to refer to long-term residents with many of the rights of citizenship, but not the right to vote. (T. Hammar, *State, Nation, and Dual Citizenship*, in W.R. Brubaker (ed.), *Immigration and the Politics of Citizenship in Europe and North America* (1989). See also K. Groenendijck, *The Long-Term Residents Directive, Denizenship and Integration*, in A. Baldaccini, E. Guild, H. Toner (eds.), *Whose freedom, security and justice?: EU immigration and asylum law and policy* (2007).

Italy the last condition can be easily demonstrated by the signing of the Integration Agreement by the immigrant who requires a residence permit of at least one year, with which he undertakes to acquire not only an adequate level of knowledge of the Italian language, but also a sufficient knowledge of the fundamental principles of the Constitution of the Republic and of Italian civic culture.

One way to facilitate the adaptation of society to this process (resilience of those who "welcome") could be to identify the rationale for the recognition of certain rights to participate in local public life, not only in the satisfaction of legitimate claims of the foreign as an individual, but also in the need to facilitate the achievement of concrete results of effective integration. In other words, the rapid evolution of our cities in a multi-ethnic way means that – regardless of whether we want to include participation in democratic life in the rights of the individual (and not just of the citizen) – even reasons of public interest require the implementation of public integration policies that include openings in this regard⁷¹.

This is the approach that seems to emerge from the analysis of several Italian regional laws⁷², where it is strongly stressed that an effective public policy of integration must also aim at the introduction of tools to overcome the stress factor consisting of the inability of immigrants to actively participate in public life of the new community in which they live⁷³. In this perspective, for

⁷¹ P. Grajzl, J. Eastwood, V. Dimitrova-Grajzl, *Should immigrants culturally assimilate or preserve their own culture? Host-society natives' beliefs and the longevity of national identity*, cit. at 19, 96; N.D. Coniglio, K. Kondoh, *International integration with heterogeneous immigration policies*, cit. at 5, 15.

⁷² Public integration policies are part of what are commonly called policies *for* immigration, to differentiate them from policies *of* immigration, relating to access and expulsion profiles and linked to public security concerns. This means that, in accordance with the relevant principles laid down in state legislation, it is up to the regions at territorial level to provide the necessary instruments, in the form of legislation and planning, to facilitate the integration of foreigners into their communities. See S. Baldin, *La competenza statale sull'immigrazione vs. la legislazione regionale sull'integrazione degli immigrati: un inquadramento della Corte costituzionale*, www.forumcostituzionale.it (2005).

⁷³ «Almost all immigrants strongly feel that they don't want to lose their cultural identity. But they cannot neglect the necessity to fit with everybody else in the new land, and to contribute with their best efforts to the functioning of a society where all are to be effectively integrated, that is to belong to a

example, it is often planned to promote social and cultural initiatives carried out by the immigrant communities themselves, precisely in order to implement a model of shared integration. This, on the one hand, allows the foreigner to feel an "active part" of the community and not a weight extraneous to it⁷⁴, and on the other, promotes the adoption of approaches differentiated by ethnic-cultural groups, indispensable if we want to pay proper attention to the specificities of individual cultural identities, and not fictitiously consider all immigrants as a homogeneous entity⁷⁵.

Since it is more relevant here, there are also models of participation with a strong "political" nature, intended to express themselves in an institutional context. As already noted, the Strasbourg Convention on the Participation of Foreigners in Public Life at Local Level, ratified by Italy and entered into force in 1997, requires our Country to allow local authorities that have a significant number of foreign residents in their respective territories, to create advisory boards dedicated to immigration policies. In particular, pursuant to art. 5 of the Strasbourg Convention, these bodies are intended to ensure adequate representation of foreign residents in local communities, in order to «provide a forum for the discussion and formulation of the opinions, wishes and concerns of foreign residents on matters which particularly affect them in relation to local public life».

As mentioned above, Italy has implemented the Strasbourg Convention content with some provisions introduced in the "Italian Consolidation Act on Local Authorities" (Legislative Decree no. 267/2000), which promote forms of participation for foreigners in local public life: the openness to the establishment of new consultative bodies (dedicate to immigrants and composed by immigrants) evidently derives from the "sustainability" of such

"healty and delicious salad in a new bowl for everyone"» R.M. Niculescu, *In Search of a Dream at the Crossroads of Inculturation and the Integration Within an inTer-Cultural Society – Challenges of Immigration*, cit. at 42, 401.

⁷⁴ For an analysis of the potential applications of the dynamics of active citizenship to the phenomenon of immigration, see M. Meini, *Nuovi percorsi di governance multiculturale. La cittadinanza attiva degli immigrati stranieri nelle città toscane*, in L. Cassi, M. Meini (eds.), *Fenomeni migratori e processi di interazione culturale in Toscana* (2013); G. Arena, *Immigrazione e cittadinanze*, in R. Acciai, F. Giglioni (eds.), *Poteri pubblici e laicità delle istituzioni* (2008).

⁷⁵ D. Maskileyson, M. Semyonov, *On race, ethnicity and on the economic cost of immigration*, cit. at 17, 19.

interventions in terms of the absence of incompatibility with the Constitution, to the extent that they are bodies that do not affect (at least not directly) the local political direction⁷⁶. The most significant expressions of this process of active involvement of the foreigner in the community public life are, in Italy, on the one hand, the Provincial councils for foreigners and the Additional municipal councilors, and, on the other, the so-called Integration councils.

5.1. Provincial councils for foreigners and additional municipal councilors.

A first timid attempt to allow the community of immigrants legally resident in Italy to "make their voices heard" within the institutional contexts is represented by the figure of the Additional municipal councilor, represent. For some years now, various regional laws have allowed (and do not require) municipal (and provincial) administrations to provide for the presence, within local elective assemblies, of a person elected by resident foreigners, not having the right to vote but only the right to speak (among other things, in some cases, exclusively on matters relating to immigration)⁷⁷. The aim (and, at the same time, the limit of this initiative) is, evidently, that of entrusting to this single subject all the requests expressed by the local immigrant community, thus acting as an intermediary, as a "channel" for dialogue between groups, however, considered as separate realities (citizens and foreigners).

An examination of the most significant experiences⁷⁸ shows that, rather than a member of the assembly, the local councilor is a side element, a poorly regarded 'guest'. In that regard, the case-law has held that this figure is to be regarded as legitimate precisely because of the lack of the right to vote and the unsuitability of being part of the structural and functional quorum of the assembly; in short, his reduced capacity to have a significant effect

⁷⁶ M. Carta, *La partecipazione alla vita pubblica dello straniero nella prospettiva del diritto internazionale*, 5 *Federalismi* (2014).

⁷⁷ A. De Bonis, M. Ferrero, *Dalla cittadinanza etno-nazionale alla cittadinanza di residenza*, cit. at 59, 60.

⁷⁸ According to the latest available mapping (2013) in Italy there are 29 additional municipal councilors, working in as many municipal or provincial councils (www.integrazionemigranti.gov.it).

on the exercise of the function of government of the local authority⁷⁹. Although undoubtedly a step towards greater involvement of the immigrant population in local public life, the figure of the additional municipal councilor is considered too weak, both in relation to the low degree of effectiveness of his work, and (especially) because of his limited representativeness of the presence of heterogeneous communities (in terms of origin and ethnicity) of foreigners on the territory.

The experience of the Provincial Councils for Foreigners is different, and undoubtedly more interesting in terms of the effectiveness of the potentially achievable results, through which it was intended – within the limits of what is allowed by the Constitution and state legislation – to extend with greater force the exercise of participatory instruments of direct democracy to the immigrant population as well. In particular, it refers to the Council for Foreigners of the Province of Florence, established in 2002, as a consultative body⁸⁰ of the Provincial Assembly on issues relevant to the interests of the immigrant population. From the examination of the Regulation of this body some peculiar characteristics emerge, clear indications of a sort of "regulatory uncertainty" about the role to be effectively attributed to the same. These are relevant elements: a) the rationale (the first of the goals indicated is not to allow the foreigner to exercise rights of political participation, but to promote dialogue and integration between immigrants and citizens); b) the function (the opinion issued by the Council for Foreigners – in any case only concerning decisions directly linked to the immigrant population – is not only not binding, but does not even impose any aggravated motivational burden on the local authority if it intends to depart from the same); c) the representativeness (the active and passive electorate is recognized not to all foreigners legally resident, but only to those who prove that they have a residence of at least one year).

A few years later, in 2007, the Province of Bologna also provided itself of a Council for foreign citizens and stateless persons, whose Regulation⁸¹ contains provisions clearly aimed at perfecting

⁷⁹ Council of State, V, 9 June 2008, no. 2872.

⁸⁰<http://www.provincia.fi.it/statuto-e-regolamenti/regolamenti/regolamento-per-il-consiglio-degli-stranieri-della-provincia-di-firenze/>.

⁸¹http://www.cittametropolitana.bo.it/portale/Engine/RAServeFile.php/f/NormeRegolamenti/Reg_cittadini_stranieri.pdf.

the model of Florence, overcoming some critical issues. Returning to the same elements upon which the analysis of the Florence Regulation was based, it is possible to observe, in the first place, how the rationale (a) of the body is, in this case, clearer, where it is provided that the Council must represent a specific part of the population excluded from the vote and must be considered the instrument for the entry of foreigners into the political dimension. Even the exercise of function (b) appears to be more extensive and incisive: the Council is not simply called upon to express opinions, but also to formulate proposals (proactive role) even on issues not strictly related to integration policies of the foreign population; to this it must be added that any willingness of the Council Assembly of the Province of Bologna not to comply with what is expressed in the opinion of the Council for Foreigners must be supported by a written justification. Finally, with regard to representativeness (c), it is of great interest not so much that the active and passive electorate be recognized to any (non-citizen) resident, therefore regardless of the duration of the stay in the territory⁸², but rather that it be provided for the use of a "adjusted" electoral system, in order to ensure the presence in the Council of even the fewest ethnic groups on the territory.

From what has been examined, it emerges how the recent experience of the Provincial Councils for Foreigners, especially according to the "advanced" model of Bologna, can prove to be of great interest, as a place of institutionalized dialogue suitable for bringing the requests of the immigrant population to the fore within the local public debate. However, there is no lack of critical elements, consisting, on the one hand, in the still very limited diffusion of such a model (to date, there are only the cases of Florence and Bologna), and, on the other, in the risk that the forecasts of elected bodies representative only of foreigners could lead to an enhancement of the differences, rather than to the promotion of real integration: a sort of micro-community within a

⁸² Indeed, as already noted, it is considered not only legitimate, but also desirable, to use the criterion of medium/long-term residence as a condition for access to the exercise of political rights, the rationale of which is therefore linked to belonging to a community and not to the individual as such (as happens, however, for social rights). See v. C. Corsi, *Immigrazione e ruolo degli enti territoriali*, in 1 Dir. imm. cit. 49 (2005).

macro-community, rather than an integrated multi-ethnic community.

5.2. The integration councils: regional legislation and local experiences in comparison.

In the panorama of the initiatives carried out in Italy to encourage the participation of foreigners in the local institutional life, there is also the experience of the so-called integration (or immigration) councils, which have a lesser "consistency" from the institutional point of view compared to the Provincial councils for foreigners, but perhaps also for this reason potentially more effective. In this regard, it is necessary, first of all, to underline once again how these bodies were created on the initiative of individual Regions; moreover, in Italy, the implementation of such innovative models for the exercise of rights of a political matrix by the foreign population is a matter of regional legislative competence. In particular, the Constitutional Court has clarified that in the exercise of this jurisdiction the Regions may provide for ways of consultation and participation aimed at individuals who take part «knowingly and with at least relative stability in the associated life, even regardless of the ownership of the right to vote or even Italian citizenship»⁸³.

That said, a distinction must be made between regional, provincial and municipal integration councils. The former, in fact, are expressly contemplated in the State legislation, and in particular in art. 42, para. 6 of Legislative Decree no. n. 286/1998 (Consolidated Act on Immigration), which recognizes the right of regions to set up regional councils «for the problems of non-EU workers and their families»⁸⁴. Despite the fact that there is no legislation requiring the establishment of such bodies, they are still present in many regional contexts and include, as members (and not, therefore, only recipients), representatives of immigrant communities⁸⁵.

⁸³ Constitutional Court, December 6, 2004, no. 379

⁸⁴ This provision was already present in the first organic Italian legislation on immigration, or rather, on immigrant workers, Law no. 943/1986 (Regulations on the placement and treatment of non-EU immigrant workers and against illegal immigration).

⁸⁵ To date, 14 out of 20 regions in Italy have established Regional Immigration Councils (www.integrazionemigranti.gov.it). For a transversal analysis of

In addition to regional initiatives, similar (and often more advanced) initiatives are undertaken by local administrations, which are entrusted with autonomous powers for the promotion of social integration, also on the implementation of specific regional laws. According to the latest official mapping (2013) there are 48 immigration councils in Italy at municipal level and 20 at provincial level⁸⁶. These bodies – which are once again assigned essentially consultative and propositional functions – were created with the dual intention of actively involving the immigrant population in local public life and, at the same time, of making an essential cognitive contribution to the work of the public administration whenever the latter programmes to intervene with actions designed to assist the processes of integration and intercultural dialogue.

5.2.1 Organizational profiles.

Moving on to the specific examination of some of the most interesting profiles of the immigration councils, and dwelling first of all on the organizational-structural elements, it is noted that part of the doctrine looks unfavorably at the fact that among the members of the immigration councils there are not only foreigners, but also Italian citizens, as this would prevent «the former from having that reserved area of political elaboration necessary to express autonomous requests»⁸⁷. On this point, in my opinion, the co-presence of Italians and foreigners in the immigration council represents a strong point of this body: in that, unlike what happens in relation to the Councils for Foreigners (see above), the heterogeneity of the composition stimulates the dialogue "between equals" and the exchange of opinions between individuals who are part of the same community. Certainly, the rationale behind the establishment of such bodies would recommend a majority presence of members belonging to the immigrant population, whereas, on the contrary, in most cases, such councils are com-

regional and local experiences spread over the territory see M. Brocca, *Il ruolo degli enti locali nella gestione della città interetnica: tra sicurezza e integrazione*, cit. at 50.

⁸⁶ See: www.integrazionemigranti.gov.it.

⁸⁷ V. Ferraiuolo, *Le nuove politiche regionali in materia di partecipazione degli stranieri*, www.dirittifondamentali.it 9 (2012).

posed of the most part of Italian citizens (regional or municipal councilors, members designated by the Prefectures, etc.).

To this must be added, with regard to representativeness, that most of the integration councils do not receive any "bottom-up" legitimacy, insofar as – with the exception of some municipal experiences – their members are not elected by the immigrant population, but designated by the associations of foreigners previously registered with the regional/municipal registry office, if not even identified (even in the component of non-citizens) directly by local institutions. In this regard, it should be noted how Italy is in clear breach of its obligations following the ratification of the Strasbourg Convention on the Participation of Foreigners in Public Life at the Local Level, where Article 5, paragraph 2 provides that «each Party shall ensure that representatives of foreign residents participating in the consultative bodies or other institutional arrangements referred to in paragraph 1 can be elected by the foreign residents in the local authority area or appointed by individual associations of foreign residents».

Apart from this consideration, the rules that in most cases supervise the composition of the immigration councils give rise to several critical issues: first of all, it seems clear that the described system of co-optation entails a limited degree of autonomy that the councils are able to express with respect to the majority political direction and, therefore, their reduced capacity to actively involve the immigrant population in the participation in political life⁸⁸. In this perspective, therefore – even if positive experiences of effective impact are recorded – they often act as an instrument of legitimization of local public policies whose content is only formally "shared" with the immigrant population, as well as a means of co-opting (and assimilating) the leading associations of foreigners⁸⁹.

To this it must be added the fact that only the delegates of the most representative immigrant communities are generally called upon to participate in these bodies, with the consequent risk of exacerbating the conflicts between the different ethnic groups

⁸⁸ G. Vosa, *Sul riconoscimento dei diritti politici agli stranieri residenti: esperienze e prospettive*, cit. at 54.

⁸⁹ A. Damonte, *La normazione dell'Altro. La partecipazione alle consulte regionali per l'immigrazione*, cit. at 69, 98.

existing in the territory⁹⁰. Lastly, there is a further and certainly not insignificant weakness, or rather contradiction, in the fact that the chairmanship of the councils is often entrusted to the Prefects: this risks distorting the body, as it seems to give it more a role of guarantor of security, of social control, than of an tool for participation in public life and integration.

5.2.2 Functional profiles

From an analysis of the functions attributed to the integration councils and the features through which these functions are exercised, it emerges with force, at least "on paper", that these bodies are called not only to intervene at the stimulus of local institutions, in a consultative key, but also independently, in a proactive key, in order to stimulate local and regional authorities in undertaking new and more effective social and cultural initiatives with an impact on integration policies.

In proceeding, however, to examine the works of the councils operating in the main Italian cities and provinces, it emerges that in most cases they are unable to express planning feasibility: the documents produced by these assemblies often end up limiting themselves to mere (and often unheard of) opinions on specific profiles of public policies impacting on the immigrant population, or, at most, contain general grievances lacking a sufficient degree of concreteness to guide the activities of local institutions⁹¹. It is not by chance that part of the doctrine configures these bodies not as a veritable places of political representation of the foreign population, but rather as negotiating table having limited capacity to give voice to the real demands of the immigrant communities present on the territory⁹².

On this point, we must clear up any possible misunderstandings. Since these are participatory bodies and not institutes of

⁹⁰ L. Castelli, *Il ruolo degli enti locali nell'integrazione e partecipazione dei migranti*, in L. Ronchetti (ed.), *I diritti di cittadinanza dei migranti. Il ruolo delle regioni* (2012)

⁹¹ «Within these bodies, the primary needs claimed in the few interventions of the immigrants' representatives are constituted by the scarce effectiveness of the rights formally granted to them effectiveness conceived in terms of equality and concreteness of the services, but never in terms of the negotiation of the contents for the recognition of cultural specificities», Damonte, *La normazione dell'Altro. La partecipazione alle consulte regionali per l'immigrazione*, cit. at 69, 102.

⁹² M. Carta, *La partecipazione alla vita pubblica dello straniero nella prospettiva del diritto internazionale*, cit. at 76.

direct democracy, it is clear and undisputable that both consultative and proactive acts are not binding⁹³, since they are called upon to supplement and certainly not replace the decisions taken by the representative bodies⁹⁴. However, what seems totally unacceptable, and what marks a clear weakness of these bodies, is the fact that – with the exception of rare cases – the regional and local regulations of the several immigration councils do not impose a specific motivational burden in the event that the local institutions intend to reach a decision that does not conform to the opinion given by the consultation, or intend not to take into consideration an act of proposal of the same.

6. Conclusions.

In the light of the above, it emerges first of all that, in relation to the figure of legal immigrants (long-term residents), today in Italy a distinction must be made between social rights and rights to political participation in public life on the one hand, and political rights that are expression of the principle of popular sovereignty (right to vote) on the other. Exclusively in relation to the latter, it now seems legitimate – due to the multicultural structure of our society – to recall the traditional concept of legal citizenship.

Even outside the ambit of universally recognized fundamental rights⁹⁵, in other words, the distinction between accessibility and non-accessibility to social welfare services and, for what is more relevant here, to the exercise of the rights of political participation, seems to be individuated in a certain degree of

⁹³ *Contra* M. Ferrara, *I diritti di partecipazione dell'immigrato: il Consiglio provinciale dell'immigrazione*, in E. Di Salvatore, M. Michetti (eds.), *I diritti degli altri. Gli stranieri e le autorità di governo*, cit. at 29, who states that it is admissible for participatory bodies such as immigration councils to be given binding consultative powers.

⁹⁴ E. Gianfrancesco, *Gli stranieri, I diritti costituzionali e le competenze di Stato e Regioni*, 5 *Amministrazione in cammino* 5 (2014).

⁹⁵ Pursuant to art. 2 of Legislative Decree no. n. 286/1998, to the foreigner however present on the territory of the State (therefore also to the irregular one) the fundamental rights of the human person are recognized.

"stability" of the relationship between the person and the territory, deducible from the length of the period of stay⁹⁶.

Having said that, the analysis of the state and regional legislation, as well as the examination of the several initiatives carried out by local authorities in the area of public integration policies, reveals how the figure of the legally residing immigrant still has a "fragile" legal connotation in Italy. In particular, while in terms of access to social welfare services there is now a situation that can be defined as satisfactory – in terms of certainty and adequacy⁹⁷ – a similar approach cannot be adopted with regard to the recognition of rights to participate in local public life. It is necessary to guarantee more effectively the exercise of these rights, with respect to which both quantitative and qualitative critical aspects emerge. From the first point of view, it is necessary for the state legislator to make the introduction at regional and local level of adequate institutions of political participation for the foreign population mandatory, overcoming the current situation characterized by the existence of wide margins of discretion for local institutions.

With regard to the qualitative dimension of the participation institutions, the previous pages have indicated a series of profiles of uncertainty and contradiction that risk making initiatives with great engraving potential, such as the establishment of immigration councils, missed opportunities. Regulatory measures aimed at implementing the rationality and efficiency of these bodies respond, in a nutshell, to a dual need: on the one hand, in a perspective of participatory democracy⁹⁸, they are suitable tools to strengthen the legitimacy of public decisions (most of which also impact on the lives of non-citizens resident⁹⁹); on the other, they

⁹⁶ Cassese points out that many European Countries have adopted the principle of «the longer the stay, the stronger the claim», S. Cassese, *Stato in trasformazione*, cit. at 55.

⁹⁷ For the "room for improvement" still desirable with reference to the effective attribution of social rights to legal immigrants, see M. Calabrò, *Livelli essenziali delle prestazioni sociali e politiche pubbliche per l'integrazione*, Giustamm 1 (2015).

⁹⁸ A. Michels, L. De Graaf, *Examining citizen participation: local participatory policymaking and democracy revisited*, 6 *Local Government Studies* 875 (2017); U. Allegretti, *Basi giuridiche della democrazia partecipativa in Italia: alcuni orientamenti*, *Democrazia e diritto* 151 (2006).

⁹⁹ «Democracies are in a standing dilemma. They need strong cohesion around a political identity, and precisely this provides a strong temptation to exclude

allow the public administration to directly acquire knowledge of the real needs coming from different communities living in the territory¹⁰⁰.

The current multi-ethnic society, and the correlated need for real integration, require, in other words, a further effort by the legal system, a change of perspective, aimed at recognizing a role of protagonist and not of mere user to the legally residing foreigner¹⁰¹. Accessibility to most social rights is undoubtedly an important step, but it does not seem sufficient, insofar as it ends up framing the immigrant in exclusively "passive" terms¹⁰²: it risks containing him in a dimension of mere receipt of benefits, which does not facilitate the overcoming of persistent social and racial barriers¹⁰³. On the contrary, policies aimed at determining the recognition and effective exercise of political rights (of indirect democracy) – through the enhancement of the requirement of long-term residence – would allow the immigrant to be configured as an active individual, a person with a political role (denizen), called to deal operationally with the interests of the community to which, in fact, in full legitimacy belongs.

those who can't or won't fit easily into the identity which the majority feels comfortable with, or believes alone can hold them together. And yet exclusion, besides being profoundly morally objectionable, also goes against the legitimacy idea of popular sovereignty, which is to realize the government of *all* the people» C. Taylor, *Dilemmas and Connection* (2011).

¹⁰⁰ On the need for a "plural approach" by public authorities and for the enhancement of the «concept of citizenship, one that is progressively inclusive and expansive», see D. D'Orsogna, *Cultural diversity, citizenship, migration flows*, 3 *Il diritto dell'economia* 617 (2012).

¹⁰¹ «Migrants' participation in the democratic process is important for their integration. Obstacles to migrants' political participation in terms of legislative and structural barriers must be overcome to the greatest extent possible. The involvement of migrant representatives, including women, in the drawing up and implementation of integration policies and programmes should be enhanced» (European Agenda for the Integration of Third-Country Nationals, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML>).

¹⁰² T.H. Marshall, *Reflection On Powers*, 3 *Sociology* 144 (1969).

¹⁰³ P. Scholten, *Beyond Migrant Integration Policies: Rethinking the Urban Governance of Migration-Related Diversity*, *Croatian and comparative public administration* 7 (2018).