LUISS

Forms for the application of "Public Debate"

In the European Union

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Introduction

The present work arises from the stimuli that emerged from the debate on the evolution and the transformation of administrative law. As for the choice of examining an interdisciplinary institute like the "public debate", this is based precisely on the legal implications that such institution determines in the approval process of public works and that reflects those reflections that Massera, in incipit to the "preface" of his last monographic work, did, claiming to be among those "who believe that the often evoked image of the end of the territory also represents, always figuratively, the breaking down of the boundaries between the knowledge and that our time is the era of an overlapping and disciplinary contamination"[1] .

Suggestive considerations that highlight how the contaminations with other disciplines, expressing the process of transformation of decision-making processes of public administrations between democracy representative and participatory democracy, which the institute of "public debate" constitutes, in fact, the most evident and significant representation[2].

In fact, the substratum that determined this change in perspective is nothing more than the emerging sign of the changes that have characterized modern societies, in which different instances and interests have come to oppose, often resulting in real situations of social "conflict" to which the political system has not been able to give a solution, thus fueling citizens in the distrust of all institutions and in the action of public administrations. In essence, a "chain circuit" has emerged where the crisis of the political system has brought with it the crisis of the traditional model of administration,

[1] A. MASSERA, "Lo Stato che contratta e che si accorda" Pisa, 2012

[2] G. DI GASPARE, "Il dibattito tra democrazia rappresentativa e democrazia partecipativa", in "www.amministrazioneincammino.luiss.it, 2017", pp. 7-8.

the very expression of representative democracy, leading to the growing affirmation of models of shared administration[3] and systems of participatory democracy[4].

Well, the introduction of the institute of "public debate" as a compulsory phase of the procedure concerning the approval of major infrastructural works and of architecture of social relevance as required by art. 22 of the new contract code (Legislative Decree No. 50 of 2016[5]), constitutes one of the most evident expressions of this process of transformation of administrative law, so much so that immediately an authoritative part of the doctrine raised the question of whether it was more correct to speak of "a code new"rather than "a new code[6]", since the new rules of contracts are indicative not only of simplification, transparency, good administration, but also of a new model of "participatory administrative procedure". And it is therefore evident that an institute that expresses this process of transformation and that puts the administration in front of a different process of decision-making processes, deserves some reflection. A juridical analysis of the "public debate" immediately raises a problem of delimitation of the field of investigation, as this risks being strongly affected by the ideological substratum that "revolves" around the "institutes of participatory democracy" and that is affected by the contamination of other disciplines, being a subject that has always been the subject of investigations of a sociological, political and philosophical nature.

In fact, with the term "public debate" we refer to a preliminary procedural step of confrontation between public administration and private individuals interested in the public decision-making process which until now has concerned particularly sensitive subjects such as the environment and the government of the territory (think about innovations regarding EIA procedures). Comparison aimed at settling and, possibly, preventing environmental conflicts, increasingly characterized by real social, economic and cultural conflicts, able, through various forms of opposition, to delay or even "block" the realization of works necessary for the development and economic recovery of a territory[7]. Against these forms of opposition, public administrations, public administrators, in the majority of cases, assumed positions of closure, due to their democratic legitimacy[8], creating a vicious circuit that has exacerbated conflict situations, as happened in France for the construction of the TGV Lyon high-speed

[3] Cfr. G. ARENA, "Introduzione all'amministrazione condivisa, in Studi parlamentari e di politiche costituzionali", vol. 3/4, 1997, p. 30 ss.
[4] U. ALLEGRETTI, "La democrazia partecipativa nella "società liquida" e nella crisi della democrazia"
[5] cfr. G. MASTRODONATO, "Decisioni amministrative e partecipazione nella disciplina degli appalti pubblici"
[6] L. TORCHIA," Il nuovo Codice dei contratti pubblici: regole, procedimento, processo", in Giorn.dir. amm., n. 5, 2016, p. 605.
[7] F. BALASSONE – P. CASADIO, "Le infrastrutture in Italia: dotazione, programmazione, realizzazione", Roma, 2011, p. 357
[8] L. BOBBIO, "A più voci. Amministrazioni pubbliche, imprese, associazioni e cittadini nei processi decisionali inclusivi", Napoli, 2004, p. 34

railway line -Marsiglia, which led the French government to introduce the institution of "débat public" with the aim of preventing or mitigating situations of conflict[9].

In fact, the distinguishing feature of Public Debate, with respect to other forms of mediation and conciliation that intervene when the conflict has already exploded, is precisely that of pursuing a goal of "preventing" social conflict, through the activation of instruments of direct confrontation between the counterparts (single and associate citizens, public administrations, operators), before the decision-making process of the public administration has improved, and in any case, before the conflict has taken place. The institution's ratio would therefore be to operate in situations of potential conflict. This makes it clear that if, on the one hand, the activation of the debate in this preliminary phase implies a purpose of conflict prevention, as it leads to a shared sensu decision (ie shared even in the case of "non-sharing", given the recourse to an adequate and detailed motivation), on the other hand, makes much more difficult the comparison between public and private subjects, in consideration of the different information deficits in which the parties and the different interests of which they are carriers. Criticality that the French model of débat public seem to have resolved with a precise and clear discipline of the decision-making procedure, reinforced by the filter of the National du débat public Commission, clarity which, on the other hand, at first glance, would not seem to emerge from the tenor of art. 22 of the new code of contracts that has introduced the institute of public debate in the proceeding approval of large public works. Various forms of participation can be imagined at any level of government, therefore the local level also lends itself to experimentation and prediction of the instruments of participatory democracy, since local authorities are also channels through which the sovereignty is expressed - or should be expressed popular.

[9] "Loi n. 95-101 du 2 février 1995 relative au renforcement de la protection de l'environnement", c.d. loi Barnier

Chapter 1

The introduction of "Public Debate" in the Italian system

SUMMARY: 1. Historical Route for the Introduction of The Public Debate in Italy: The l. n. 69/2007 of the Region of Tuscany – 2. Historical Route for the Introduction of The Public Debate in Italy: the law of 9 February 2010, n. 3 of the Emilia-Romagna – 3. Legislative Decree 18 April 2016, no.50: the application of "Public Debate" in Italy – 3.1. The iter of the Public Debate – 3.2 The content of the regulation – 3.3. When the Public Debate can be applied? – 3.4. The Public Debate procedure – 3.5. The subjects of Public Debate – 3.6. The Public Debate process – 3.7. The Public Debate duration – 3.8. Monitoring procedure of Public Debate – 4. The limits of Public Debate – 5. First conclusions on the introduction of the Public Debate in Italy

1) Historical Route for the Introduction of The Public Debate in Italy: The l. n. 69/2007 of the Region of Tuscany

Various forms of participation can be imagined at any level of government, therefore the local level also lends itself to experimentation and the prediction of the instruments of participatory democracy, since local authorities are also channels through which - or should be expressed - sovereignty is expressed popular. With the reform of Title V of the Constitutional Charter, which took place in 2001, the constituent legislator has guaranteed local authorities a sphere of autonomy and has given them the possibility to regulate, for the exercise of their administrative functions, forms of participation and consultation regardless forecasts contained in state or regional laws.

Article. 117 of the Constitution, in the matter of legislative function, contains the list of matters on which the Regions can compete with the State to legislate and with the constitutional revision of 2001, the legislative power of the Regions has been extended.

Furthermore, the art. 118 of the Constitution, as reformed in 2001, ordered that the administrative functions be assigned, according to the principle of subsidiarity, to the local authority closest to the citizen; these functions are exercised, on the basis of the criteria of differentiation and adequacy, by Municipalities, Provinces, Metropolitan Cities, Regions, or the State. The law of 8 June 1990, n. 142[10], on the regulation of local self-government, established the conditions of autonomy of local authorities and recognized to the Municipalities and Provinces the quality of representative bodies of their respective communities, charged with taking care of their interests and promoting their development. This is a general law, not only because it embraces the whole local matter, but also because, in addition to defining the organization of political-

[10] Now repealed by the art. 274 of the T. U. of the laws on the organization of local authorities, approved by Legislative Decree 18 August 2000, n. 267

administrative summit, it reorganizes the overall structure of the sources of the local legal system, according to a rather articulated.

The l. n. 142/1990 allowed the local statutes to regulate a number of forms of citizen participation in the local administration: in doing so, they were allowed to implement the principle of participation in a broader and more original way than the other administration is allowed public from l. n. 241/1990. In Article. 4, co. 2, we read that the municipal and provincial statutes, within the principles established by law, establish the forms of popular participation and access of citizens to information and administrative procedures.

Article. 6 is dedicated to popular participation and in particular, in paragraph 1, we read that "the municipalities enhance the free forms of association and promote bodies of citizen participation in local administration, even on a neighborhood or fraction basis. The relationships of such associative forms with the municipality are regulated by the statute".

In the following paragraph, it is envisaged that, in the proceeding concerning the adoption of acts that affect subjective legal situations, forms of participation of the interested parties must be envisaged, according to the procedures established by the by-laws. In the statute must also be provided for forms of consultation of the population, procedures for the admission of applications, petitions and proposals of citizens, individual or associated, directed to promote actions for the better protection of collective interests, as well as guarantees for their timely examination. Furthermore, consultative referendums may be envisaged, even with the request coming from a certain number of citizens[11]. Among the first regions to be sensitive to the so-called "participatory democracy", we surely find Tuscany. It is worth pointing out the Tuscan regional law 27 December 2007, n. 69, containing "rules on the promotion of participation in the elaboration of regional and local policies". This law is characterized as general legislation on participatory democracy and provides for the signing of memoranda of understanding between local authorities and regions aimed at the implementation of regional legislation. For the contents and the inspiration that sustains it, we can consider the l. n. 69/2007 of the Tuscany Region, at least in Italy, the first case of an organic regional legislative intervention that aims to promote new models and to promote the dissemination of new practices and methodologies of participation. In this regard, it must be said that in the Tuscan law we find the most widespread type of participation, namely that of a corrective or opposing nature with respect to projects decided by public or private operators. The procedures laid down in Law n. 69/2007 in the part concerning the public debate on "major interventions", while the nature of the so-called "participatory processes" proposed in the same law and their final outcome is less clear. In fact, the law on the participation of the Tuscany

[11] Cfr. art. 6, co. 3, l. n. 142/1990

region has foreseen a mechanism similar to the public debate on large infrastructures, a participatory institute that, as we will see later, was introduced in France in 1995, but while in France it was applied in about forty cases[12], in Italy so far rarely found concrete applications. The second type have proactive nature: we ask for policies, plans or interventions in reference, in most cases, to critical or uncomfortable situations. Often the two types are intertwined: one criticizes a project, but at the same time alternative solutions are proposed. The l. n. 69/2007 of the Region of Tuscany is configured as an attempt to give a procedural framework and an operative translation to the principle of participation by paying special attention to the conditions of participation: participatory processes are not funded generically, whatever they are, but processes structured, methodologically motivated, defined in the times, in the object, in the ways of unfolding and in the ways of "restitution" of the outcomes.

Article. 15 provides the set of requirements that the Tuscan law requires so that a participatory project, presented by local institutions or citizens, can receive regional support. First, the conditions for the admission of projects must be evaluated by the Regional Authority for guarantee and promote participation[13]. Among the requirements, first of all it have to considerate the object of the participatory process must be defined in a precise way[14]. As regards the methods and rules of the discussion, we speak of "certain and well-defined times"(six months) except for the possibility of extension for another three months and the case of specific projects that require a longer duration, provided that it is expressly indicated.

According to the art. 15, co. 1, lett. c), the proposal must indicate institutions, tools and methodologies that are considered most congruous to the process and the context in which it takes place. From this passage we understand how the legislator has not been able to dictate in detail the methods that individual participants can adopt, but the proponents must indicate how they intend to carry out the discussion, which tools they want to use and so on.

The art. 15, co 1, lett. e), where it is stated the general principle according to which modes of management of the participatory process must be guaranteed such as to ensure "neutrality and impartiality".

Article. 16 provides that the regional authority should not limit itself to assessing the admission of projects, since it will also have to set the priority criteria with to select, among the various projects presented, those to which to allocate the available resources - which will be easily understandable - and the modalities of the support that the Region will grant to the various projects. Furthermore, the role of the Regional

[12] Cfr. Y. Mansillon, "L'esperienza del "débat public" in Francia", in Dem. e dir., 2006/3, pp. 101 ss.
[13] Art. 3, co. 1, l. r. 69/2007
[14] Cfr. A. Floridia, "La democrazia deliberativa: dalla teoria alle procedure: la legge della Regione Toscana sulla partecipazione, in Stato e mercato", 82/2008, pp. 83 ss

Authority is not only to evaluate the projects and select them, but also to actively work so that the projects presented can be modified and enriched.

During the creation of this law, there has been a long discussion on how to deal with the link between participation and decision, in particular how, if and the extent to which a participatory process may involve some transfer of sovereignty and how provide it with some form of political effectiveness. To tell the truth, from the Tuscan law emerges an extremely realistic political vision of participatory processes and of the conflicts that develop in them. A key very useful interpretation is that provided by Antonio Floridia[15], who it would prefigure a sort of "pact" between the participating institutions and citizens for which the competent body "undertakes to take into account the results of the participatory process or in any case to justify its failure or partial acceptance"[16]. The devices introduced by the law builds a solid procedural framework in which an important element of institutional "thirdness" is inserted in the management (and promotion) of participatory processes. Furthermore, mechanisms of institutional enforcement are envisaged: voluntarily accepting a bond to one's own action, a "binding one's hands" in exchange for political resources and opportunities or lower political costs. The object of this restriction, however, is not that of forcing oneself to accept all the conclusions reached during the participatory moment, as well as that of adequately accounting for one's decision; since it has been chosen a public confrontation way and have invested public resources to organize it, there is at least an obligation to "response" with which the authorities motivates their choices and assumes full political responsibility. By requiring the administration to answer for its own decisions in a transparent manner, publicly justifying their choices, it was intended to raise the political cost that would result from disregarding a commitment, where by "political cost" we mean a crisis of credibility, trust and consensus. The link between participation and decision is entrusted to the concrete political choice that will be produced: in fact, the more the results of the participatory process has seen a real and an intense involvement of the actors involved in the decision, the more detailed and complex the technical documentation has been produced during the participatory process and the more effective political consensus it has been able to build around the proposal, the more the results of the participatory process will be binding for the decision maker. On the contrary, the weaker and more inconclusive will be the results in the public arena called to address the issue, the freer the administration will be at the time of adopting the decision.

The participatory process envisaged by the model prefigured by l. n. 69/2007 of the Tuscany Region organically enters the policy-making process and is not confined only in the preliminary phase: it produces initial effects - inducing the suspension of the

[15] Cfr. A. Floridia, "La democrazia deliberativa: dalla teoria alle procedure: la legge della Regione Toscana sulla partecipazione, in Stato e mercato", 82/2008, pp. 83 ss

[16] Art. 14, paragraph 4, l. n. 69/2007 of the Tuscany Region

decision- but may also produce final effects, and it is here that the temporal dimension acquires a fundamental importance. To impose a certain time limit on the development of the participatory process implicitly means considering this moment as a "phase" of the decision-making process and not as a decision-making place. Paradoxically, not imposing limits on the participatory process would mean attributing a purely advisory nature to participation by undermining the link between participation and decision and meaning that decisions are taken elsewhere and otherwise.

The l. n. 69/2007, unique in the national scene up to that moment, has certainly produced a lot of material to reflect on and this is why it seemed appropriate to make a synthetic analysis of it, despite the dissolution clause. Article. 26 in fact, had fixed the expiration of the law as of December 31, 2012, except for a possible reapproval. Behind the choice to make it a Law at the end, there was the hope of moving from the experimentation of the first phase to a generalized and conscious use of the participatory tools on the regional territory. Despite the difficulties encountered, the lack of use of the public debate[17] and often negative evaluations by committees and associations that have tried this experience by confronting the local authorities, something in Tuscany has moved. This law has in fact launched a path that led the regional legislator to the law 2 August 2013, n. 46, which in fact is the result of a re-examination of the previous l. n. 69/2007 and which today is the only one in Italy to be inspired by the concept of participation as an ordinary "phase" of the decision-making process, as well as the idea that to improve the quality of the decisions, the institutions must motivate its based on the results of the participatory process[18].

We come to the new regional law on participation, entitled "Regional Public Debate and promotion of participation in the elaboration of regional and local policies", as mentioned, after an evaluation of the l. n. 69/2007, on the effects of which the Regional Council had expressed positive opinions, affirming the appropriateness of a reapproval. To correct the problems that emerged in the previous law, however, a joint technical group of the Council-Council drafted an outline of the new law.

The most significant change is already evident in the title, or the new discipline of the regional Public Debate, an institute that as we have seen was also present in l. n. 69/2007, but which in fact had not been applied. The 2013 regulation instead establishes the obligatory nature of the public debate, given certain cases and certain financial thresholds. Through the inclusion of the obligatory nature of the public debate, the new law has effectively understood “Participation” as an ordinary methodology for the formation of regional policies.

[17] Report of the Regional Institute for Tuscany Economic Planning (IRPET), Participation, public policies, territories. The l. r. 69/2007

[18] Cfr. V. De Santis, “La nuova legge della Regione Toscana in materia di dibattito pubblico regionale e promozione della partecipazione”, in Rivista AIC, october 2013.

The changes introduced reinforces the underlying inspiration that was already present in l. n. 69/2007, aimed at reshaping the complicated relationship between institutions and citizens, through an idea of participation that does not translate itself into a confused assemblyism, but in a public confrontation between different positions, that is governed by shared procedures and rules. With all this, we do not want to cancel the responsibility of politics and institutions, but to strengthen the consensus around the decisions that in any case continue to belong to them.

The first element of novelty is already encountered in the Preamble and in particular in Recital n. 1, which outlines the ration of the law: "Participation in the elaboration and formation of regional and local policies constitutes a qualifying aspect of the Tuscan system". This affirms the idea that participation is not envisaged with reference only to the formation of administrative acts, but it concerns, in general, the definition of regional policies and, consequently, may also have regional legislative acts. Therefore it is not excluded that the participatory process may concern the preparation of legislative acts that have a significant impact on the regional community.

It is also significant that the Recital n. 1 defines Participation as an aspect that "qualifies" the regional order, thus leaving out the complexity of the concept of participation as a principle capable of characterizing the system as a whole. In this perspective, the new Tuscan law confers the role of "contributing to strengthening and renewing democracy and its institutions"[19].

This statement seems to delineate the relationship between regional representative institutions and participation in the terms of integration. A further objective of the law is to promote participation as a "standard form of administration and government" of the Region in all sectors and at all administrative levels; this means that there is no contrast between representation and participation, since the latter has been qualified as an instrument that has to be integrated- as an ordinary phase - within (potentially) every procedure of "Elaboration of regional and local public policies"[20]. Revaluating the 2007 ’s discipline, the new law adopts a criterion of maximum inclusiveness recognizing explicitly the Participation as a right exercisable by every individual who has a requirement, for example a link with the territory in which the decision is taken or some interest to the adoption of the decision[21]. Art. 2, in fact, establishes that the holders of the right to participate can be residents, foreigners or stateless persons, regularly residents, people who work, study or stay in the territory concerned and all other persons who have an interest in the territory in question or in the object of the

[19] Cfr. art. 1, co. 2, lett. b).

[20] Cfr. art. 1, co. 1.

[21] G. Pizzanelli, “Alcune note di commento alla legge regionale Toscana che promuove la partecipazione all’elaborazione delle politiche regionali e locali “(l. r. 27 dicembre 2007, n. 69), in “Le istituzioni del federalismo”, 2008, p. 141.

participatory process[22]. Therefore, the recognition of this right is independent from the possibility of asserting a legally qualified position and in this object the legislative discipline deviates from the Statute, which recognizes participation only in citizens (Article 72, paragraph 1)[23].

As regards the ownership of the right to participate, the new law confirmed the exclusion of organized social groups and associations: only natural persons can participate, while associations are not allowed to present projects or take part in its. The intent was probably to prevent the organized subjects, as associations and parties, monopolizing the participatory processes favoring the representation of interests already strong and structured[24].

As we have seen, beyond some new elements, the Section I (articles 1 and 2) presents the principles and purposes of l. n. 69/2007, while Section II, talking about the Regional Authority, presents more news. The independent nature of the regional authority for the promotion of Participation is reconfirmed, but it no longer qualifies itself as a monocratic body, but as a collegiate authority composed of three members, of which two are nominated by the Regional Council and one is nominated by the President of the Regional Council; these components are selected on the basis of "proven experience in participatory methodologies and practices"[25].

Article. 5 defines the tasks of the Law; in particular, the Authority officially activates the public debate in the cases provided by art. 8, evaluates the performance and the effects of participatory processes and ensures, also by telematic means, the dissemination of documentation and knowledge of the projects presented and of the experiences carried out.

Article. 7 contains the discipline of the regional public debate: the formulation of the l. n. 69, which took as reference and object of the debate only the "great interventions", is overcome, assuming as a possible object "works, projects or interventions that have particular importance for the regional community, environmental, territorial, landscape, social, cultural and economic". Furthermore, Public Debate is defined as "a process of information, public confrontation and participation" that takes place "normally, in the preliminary stages of the elaboration of a project, or a work or an intervention, when all the different options are still possible or in successive phases but in any case not beyond the start of the final design.

[22] M. Picchi, “Il diritto di partecipazione”, Milano, Giuffrè, 2012, pp. 165 ss.
[23] C. Cudia, “La partecipazione ai procedimenti di pianificazione territoriale tra chiunque e interessato”, in Dir. pubbl., 2008, pp. 294-295
[24] Ciancaglini,” La democrazia partecipativa in Toscana”. Notes on the sidelines of regional law n. 69/2007, in "www.osservatoriosullefonti.it", n. 3/2008, pp. 6-7.
[25] Corsi, “Democrazia partecipativa e procedimento amministrativo: un raffronto attraverso l’esperienza della legge toscana”

Article. 8, talks about the works object of Public Debate, introducing great news. Under the previous legislation, the Authority had the power to activate the debate procedure following the activation requests that could be received by a series of subjects (the local authorities involved, the owners of the work, a share of inhabitants). The same Authority arranged the organization and the conduct of the debate by appointing a manager. Furthermore the l. n. 69 had foreseen a final report to be delivered to the owner of the realization of the work, which, within three months, had to declare whether he accepted the conclusions of the debate (all or in part) or if he wished to confirm the original project. It is a common opinion that one of the causes of the failure in the application of the public debate must be attributed to the excessively restrictive formulation contained in the previous legislation, according to which "the Authority can organize a public debate on the objectives and characteristics of the projects in the prior phase to any administrative act concerning the preliminary project ".

The main innovations concerns the introduction of mechanisms that, as far as possible without further aggravation, makes the opening of a mandatory debate, giving certain conditions. Furthermore, it is specified that the expenses related to the information of the public opinion and to the relationship with the citizens must be considered as an essential entry for the investment project: the Authority must take action to acquire the collaboration of the promoters and to activates financial contribution[26].

Article. 8 also provides for a classification of the works that are subject of Public Debate and a different procedure based on the different financial thresholds and the public or private nature of the works.

Article. 9 relates to the coordination between Public Debate and the environmental impact assessment: it is expected that for the works referred to in paragraphs 1 and 2 of art. 8, for example the works "over threshold"[27], the debate takes place before the beginning of the procedure of v.i.a. and in the context of this procedure account must be taken on what emerged from the public debate.

This rule is particularly important because it often happens that private works, including modest size works, despite having already obtained a v.i.a. positive and although the company has already incurred significant costs, are blocked due to the protests. To prevent such situations, the new law seems to trigger an incentive mechanism, with important savings on the privates costs of planning, encouraging promoters to pre-report their projects to submit them in the preliminary phase of Public Debate. Therefore, in addition to eliminating risks of overlaps, the new regulation prevents from the abandonment of a project because of disputes after the obtaining a v.i.a positive. In this way we try to eliminate at the root the problem of localization

[26] Cfr. art. 10, co. 4.

[27] Public and private initiative works involving total investments of over 50,000,000 euros

and the problem of the design of works that are subsequently challenged and hindered by public opinion, generating, among other things, additional costs for the management of the conflict.

It is good to keep on mind that the costs linked to a specific location are usually of two types: the costs of building and managing the infrastructure and the costs deriving from disutilities that burden the community. The former, which are related to aspects of a technical nature and may vary between different locations, normally for technological reasons, are generally known to the manufacturer / operator. The second type of costs could be purely economic (such as the loss of certain land uses or the loss of property value), but more often it involves risks to health, to the environment and damage to the landscape. Since this type of costs had particularly important, evaluating the negative effects that each community endures by hosting the new structure has been very difficult. This is because the differences between the communities reflect the differences in the structure of preferences, and the structure of preferences usually constitutes private information of each community. This characteristic makes the task of a public decision-maker whose objective is to maximize the overall benefits of the project net of all the costs involved[28]. Where the localization is predefined, the difficulty consists in determining a possible "compensation" of the costs that the host community has to bear, with the consequent, further, disbursement of money by the proponent of the work.

Many consider compensations as the universal remedy to reduce local conflict, even if these were not framed within an appropriate ledge, they could represent a further moment of friction, leading to a considerable increase in the costs of the realization of the work, accentuating distorting phenomena and leaving environmental problems unresolved.

In light of all the over-exposed costs, if the comparison with the local community takes place after the location choice, the proposer finds himself in a "lock in" condition: having already allocated the costs connected to the project, if he decides to abandon it, to modify its location or essential characteristics, he would endure an high loss. This situation could give the community destined to host the work an high bargaining power and the result could be the recognition of a too high compensation or the decision by the promoter to give up the investment, with the result that the infrastructure works could end with being less often than necessary.

Like the previous one, even the new Tuscan discipline does not say much about the concrete ways of carrying out the Public Debate, leaving a margin of choice regarding the types of intervention. Article.10 establishes that the Authority will activate the public debate procedure after a preliminary phase, based on providing the

[28] R. Occhilupo, G. Palumbo, P. Sestito, "Le scelte di localizzazione delle opere pubbliche: il fenomeno Nimby", Volume 91 of Questioni di economia e finanza, Banca d'Italia, 2011, pp. 6-7.

documentations by the promoters of the works. It also establishes the methods and tools of the debate, so as to ensure maximum involvement, impartiality of conduct, equality and inclusion of all the positions. It also defines the phases and the duration of the Public Debate and appoints the manager by selecting him among the experts in the methodologies and participatory practices, according to public procedures. In the end the Authority receives the final report of the manager: it is made public, sent to the Regional Council, to the Regional Council and to the promoter or owner of the work which, within three months, must communicate its evaluations, if it intends to renounce the work, to propose modifications to the original project or to confirm it in its entirety.

As regards the modalities of regional support for participatory processes, the new discipline distinguishes between the presentation of a real participatory project and the initial request presented to the Authority. In fact, on the basis of the old law, it was created a sort of vicious circle for which the proponents elaborated a question and a completed project without having the certainty on the acceptance of the application itself. In the new text, on the other hand, is foreseen a preliminary investigation phase, in which the proponents present a general project and the Authority assesses its relevance and only after the acceptance of the application (and the amount of financial support is fixed) the proposer will be asked to elaborate the project in a more complete and defined way.

Among the new criteria with which the Authority assesses the acceptance of the application, it is interesting the assume contained in art. 14, co. 4, which provides an evaluation of the costs of the participatory process also in relation to the costs of the project, the work, the territorial governance act or the intervention object of the same participatory process. The intention of the regional legislator is clear to avoid that the costs of the participatory process end up being disproportionate to the costs of the object of the participatory process itself.

Finally, it is confirmed that applications submitted by local authorities are allowed if, in addition to the other requirements, they present a "declaration with which the entity undertakes to take into account the results of participatory processes or however to motivate publicly and punctually the failure or partial acceptance[29]». In this way are established the relationship between the contribution that the participatory process can make and the commitment of the institutions to assess the results.

[29] Cfr. art. 11.

2) Historical Route for the Introduction of The Public Debate in Italy: the law of 9 February 2010, n. 3 of the Emilia-Romagna

The example of l. r. Tuscany, n. 69/2007 was followed by a law of the Emilia-Romagna Region, approved in 2010, which also seeks to introduce innovative forms and methods of citizen participation in public policies and collective choices. This is the law of 9 February 2010, n. 3, containing «Rules for the definition, reorganization and promotion of the procedures for consultation and participation in the elaboration of regional and local policies». The need was again, in this case, to promote the right to the active participation of citizens in the elaboration of regional and local policies. The law is developed in fifteen articles, the first of which is dedicated to the enunciation of the principles underlying this discipline. In particular, Article. 1, co. 3, establishes the recognition of an inseparable connection between participation and simplification of public procedures in order to achieve a high administrative quality. The following paragraph reads the purpose of the law, which consists in the configuration of a uniform legislative framework to regulate "a coherent and homogeneous participatory system on the territory, in which the best practices and experiences are valued, also through procedural agreements between the Council of Local Autonomies ". The law assigns to local territorial bodies a fundamental role since the holders of the participatory process can request the granting of regional contributions in the case in which they succeed in demonstrating that the entity responsible for the procedure subject of the process has committed itself to suspend any administrative act of own competence that affects the outcome.

Article. 3 defines the subjects holding the right to participate, for example «all persons, associations and enterprises that are individually or collectively recipients of the choices contained in a regional or local act of strategic planning, general or sectoral, or of project deeds and implementation in every field of regional competence, both direct and concurrent ".

The subjects entitled to request the start of participatory processes are the Regional Council, the Legislative Assembly, the local authorities (also in an associated form) and their constituencies, as well as other subjects, public or private, that have obtained the formal adhesion of at least one of the aforementioned subjects who is the holder of the public administrative decision connected to the trial[30].

In Article. 6, the l. r. 3/2010 provides for an annual session of the Legislative Assembly dedicated to the issue of participation in the regional territory, which will contain "an analysis of the state of participatory processes and proposals for their evolution and improvement". The annual session for participation represents the moment of maximum publicity: on that occasion the Regional Council presents its proposal for the annual plan for participation, after which the Legislative Assembly dismisses the

[30] Cfr. art. 16, co. 1, lett. a).

program containing also the addresses on the criteria and modalities for the granting of regional contributions. There are two tools for promoting and coordinating participatory processes: the technical for integration with local authorities and the guarantee technician on participation matters. To the first, the discipline contained in the art. 7 assigns the task of promoting and coordinating the integration of participatory processes with the best experiences of local authorities, evaluating requests and providing for the provision of contributions. The second, pursuant to art. 8, must provide useful documentation to design and prepare the participation processes on matters of regional importance, support communication, examine project proposals and certify the quality for the purpose of granting the contributions; finally, where required, he assumes the role of consultant and mediator in the conduct and promotion of participatory processes.

The phases relating to the admission of participatory projects to the regional contribution are divided between the Regional Council and the Legislative Assembly, with a view on guaranteeing and transparency of the decisions taken.

The art. 10, which, in paragraph 3, provides us a definition of participatory process: "by participatory process we mean an organized discussion path that is started with reference to a future project or to a future norm of competence of the Elective Assemblies or the Giunte , regional or local, with a view to its elaboration, putting in communication actors and institutions, in order to obtain the complete representation of the positions, interests or needs on the matter, as well as to reach a mediation or negotiation, seeking an agreement of the parties involved in the issue covered by the acts under discussion ". The article continues requiring the decision-making authorities to take into account the results of the participatory process at the time of the resolutions; otherwise, or if they deviate from the participatory proposal document, they will have to give explicit reasons in the provision.

The l. n. 3/2010 of the Emilia-Romagna Region ends with the evaluation clause contained in art. 18, according to which, after five years from its approval, the Legislative Assembly will have to discuss the experience made based on a report prepared specifically by the Regional Council.

With regard to the regulatory framework of the institute of public debate as required by art. 22 it is evident that is influenced by the general approach of the new contract code which, on the one hand it invokes simplification (normative / administrative), on the other hand it requires the implementation of the code itself with an excessive number of measures. In fact, the technique of "referral" to implementing measures is in sharp contrast with the objective that led to the approval of the new code, that is to delineate a clear, systematic, unitary and organic regulatory framework.

3) Legislative Decree 18 April 2016, No. 50: the application of the "Public Debate" in Italy

On August 24th 2018 the "Regulations containing the methods of carrying out, types and dimensional thresholds of the works subject to public debate" (decree of the President of the Council of Ministers 10 May 2018, No. 76), which is the last piece, came into force a set of new tools aimed at ensuring a broader participation of citizens in public decision-making processes, adopted in the final glimpse of the seventeenth legislature. In particular, measures have been adopted to regulate the consultations of citizens and stakeholders[31] in the proceedings for the adoption of acts of all the administrations referred to in Article 1, paragraph 2, of the legislative decree of 30 March 2001, n. 165 (Directive 31 May 2017 of the Minister for Simplification and Public Administration, containing the "Guidelines on public consultation in Italy", published in the Official Gazette No. 163 of 14 July 2017). Furthermore, it will be possible to involve in the proceedings for the adoption of the Government's legislative deeds (Decree of the President of the Council of Ministers September 15, 2017, No. 169, "Regulation containing the discipline on the analysis of the impact of regulation, the verification of impact of regulation and consultation ", published in Official Gazette No. 280 of 30 November 2017)[32]. Finally, the citizen / regional participation is foreseen for the parliamentary procedures of the Senate (Guidelines on the consultations promoted by the Senate, announced by the President of the Senate during the course of the plenary session of 12 September 2017).

Article 1, paragraph 1, of the law January 28, 2016[33], n. 1128, in delegating the Government to implement the new European directives on procurement, envisaged, among the criteria and the guiding principles, the transparency in the participation of the qualified stakeholders of interest in the decision-making processes finalized to the planning and awarding of public contracts and concession contracts as well as in the execution phase of the contract (letter ppp)).

Furthermore, the subsequent letter qqq) specifically provided for the introduction of forms of public debate of the local communities of the territories involved in the construction of major infrastructure projects and of socially relevant architecture having an impact on the environment, the city or the territory. Subsequently, the legislation provided for the online publication of the projects and the outcomes of the

[31] Senato della Repubblica, Ufficio valutazione impatto, "Recenti sviluppi in materia di consultazioni dei cittadini e dei portatori di interesse", Experiences n. 29, september 2017.
[32] "General rules on the regulation of work employed by public administrations"
[33] Senato della Repubblica, Ufficio valutazione impatto, "La nuova disciplina dell'impatto e della verifica della regolamentazione", Experiences n. 32, april 2018.

public consultation with a final evaluation of the observations made during the public consultation during the preparation of the final project. The European directives on procurement do not provide for public debate and therefore the criterion referred to in the letter qqq), unlike the previous one, was not present in the original text of the bill of government initiative.

In implementation of the aforementioned delegation, Article 22 of the new Code of Public Procurement (Legislative Decree 18 April 2016, No. 50) provided that contracting authorities and contracting entities publish, in their profile, the feasibility projects relating to large infrastructural works and architecture of social relevance, having an impact on the environment, on the cities and on the structure of the territory, as well as on the results of the public consultation, including reports of meetings and discussions with the porters of interest. The contributions and the reports are published with equal evidence, together with the documents prepared by the administration and related to the same works.

The concepts of "contracting authorities" and "contracting entities" are defined in Article 3, paragraph 1, of the same Code of public contracts. In the category of "Judicial Administrations" we find: the administrations of the State; local public bodies; other non-economic public bodies; bodies governed by public law; the associations, unions, consortiums, however named, constituted by said subjects. "Contracting entities" means: (1) for the purposes of the discipline referred to in Part II of the Code itself (procurement contracts for works, services and supplies), entities that are contracting authorities or public undertakings carrying out one of the activities referred to in Articles 115 to 121 (contracts in the special sectors: gas and thermal energy, electricity, water, transport services, ports and airports, postal services, gas extraction and prospecting or extraction of coal or other solid fuels) and those which, although not contracting authorities or public undertakings, exercise one or more of the activities referred to in the aforementioned Articles 115 to 121 and operate by virtue of special or exclusive rights granted to them by the competent authority; (2) for the purposes of the regulation referred to in Part III of the Code (concession contracts), the bodies that perform one of the activities listed in Annex II of the Code itself and issue a concession for the performance of one of these activities , such as: state administrations, local public bodies, bodies governed by public law or associations, unions, consortiums, however named, made up of one or more of these subjects; the public enterprises referred to in letter t) of the same paragraph 1 of Article 3 of the Code (the companies on which the contracting authorities can exercise, directly or indirectly, a dominant influence or because they are the owners, or because they have a financial contribution, or by virtue of the rules governing said companies); institutions other than those listed above but operating on the basis of special or exclusive rights for the purpose of the exercise of one or more of the activities listed

in Annex II (entities with special or exclusive rights through a procedure where adequate publicity has been assured and where the conferment of these rights is based on objective criteria, they do not constitute 'contracting entities' within the meaning of this point).

Article 22 then referred to a decree by the President of the Council of Ministers defining the criteria for identifying works for which it is obligatory to proceed with the public debate procedure, and the procedures for carrying out and the deadline for conclusion of the same procedure. Finally, it clarified that the outcomes of the public debate and the observations collected are assessed during the preparation of the final project and are discussed at the service conference on the work submitted to the public debate. Article 22 was subsequently amended by the corrective decree of the Code of Public Contracts (Legislative Decree 19 April 2017, No. 56[34]), which first clarified that the public debate will apply to actions taken after the entry into force of the DPCM implementation and not to those initiated after the entry into force of the new Code of public contracts, and subsequently provided for a monitoring procedure on the application of the public debate, through a commission specifically set up at the Ministry of Infrastructure and Transport, having the task of collecting and publishing information on public debates currently being held or concluded and proposing recommendations for the public debate on the basis of the experience gained. In implementation of article 22, the Decree of the President of the Council of Ministers was finally adopted on 10 May 2018, n. 76, "Regulations governing methods of execution, types and dimensional thresholds of works subject to public debate" (hereinafter the "Regulations"), published in the Gazette Official 145 of 25 June 2018 and entered into force on the following 24 August.

According to the illustrative report annexed to the outline of the Regulations sent to the Chambers (AG 494 of the XVII legislature), the Regulation itself is inspired by founding principles, such as the need for large infrastructural interventions to be decided following a wide and regulated public comparison with the local communities, or the temporal objective that the comparison will take place in the initial phase of the project, when all the options are still possible, including the opportunity of the realization of the work, or use the results of the comparison so that they can serve in addition to evaluating the opportunity of the interventions, to improve the design of the works, making them more responsive to the needs of the community and finally that the comparison can reduce the social conflict that normally accompanies the design and construction of large works.

[34] "Disposizioni integrative e correttive al decreto legislativo 18 aprile 2016, n. 50".

3.1) The Iter of the "Public Debate"

According to the impact assessment of the regulation attached to the regulation scheme, the contents of the regulation have been elaborated through the consultation of subjects necessary for the realization of the project of citizen participation in the democratic life of the country. First of all, among the necessary subjects we find the Parliamentarians, who have presented over the years proposals or bills concerning public debate and the involvement of citizens and local authorities in public choices. The main public companies of the infrastructural sector (railway, highway and road) and the main companies and organizations of the category of the energy sector have also played a very important role, as they are the main engines of public works to be carried out. Finally, great importance in this process has been acquired by the main environmental associations of national level, such as WWF Italy, Legambiente, AIIG, Pro-Nature Federation, Ecological Research Groups and experts in the sector and scholars at national and international level. These in fact verify the applicability of the realization of the public work in relation to the environmental norms present in the International Treaties.

On the outline of the decree was acquired - in addition to the opinion of the Minister of the Environment and the protection of the territory and the sea and the Minister of Cultural Heritage and Activities and Tourism, as required by Article 22 of the Code of Public Contracts - also that of the Minister for Economic Development, the Minister for Simplification and Public Administration and the Department for Regional Affairs. The Unified Conference has spoken on two occasions: on 14 and 21 December 2017.

The draft decree was sent by the Government to the Chambers on 28 December 2017. The 8th Senate Commission began its examination on 24 January 2018, without however reaching the approval of an opinion. The VIII Committee of the Chamber of Deputies, on the other hand, gave a favorable opinion with conditions on 20 February 2018. In the meantime, the Council of State had also expressed its views, with favorable opinion (number 359/2018 of 12 February 2018).

3.2) The content of the Regulation

The Regulation defines the public debate as "the process of information, participation and public debate on opportunities, on project solutions for works, on projects or interventions referred to in Annex 1 " (article 2, paragraph 1, letter a).

The public debate consists of information meetings, discussion, discussion and management of conflicts, in particular in the areas directly concerned, and in the collection of proposals and positions by citizens, associations and institutions (article 8, paragraph 2). It must be organized and managed in relation to the characteristics of the intervention and to the peculiarities of the social and territorial context of reference. As already mentioned, article 22, paragraph 4, of the Code of Public Contracts provides that the results of the public debate and the observations collected will be evaluated during the preparation of the final project and will be discussed during the services conference concerning the work in question. For this reason, Article 9, paragraph 4, of the Regulations, provides that the contracting authority or the contracting entity take into account the final dossier of the public debate in the subsequent phases and procedures referred to in the aforementioned Article 22, paragraph 4.

3.3) When the "Public Debate" can be applied?

The Public Contracts Code has provided that the public debate is carried out with reference to the major infrastructural works and architecture of social relevance, having an impact on the environment, on the cities and on the spatial planning and has delegated to the Regulation the setting of criteria for the identification of the works, distinguished[35] by type and size thresholds, for which the conduct of the public debate is mandatory. Therefore, pursuant to Article 3, paragraph 1, of the Rules, the public debate must be carried out for the works listed in Annex 1 of the Rules.

Within these works we find above all the construction of works such as highways and main suburban roads, extra-urban roads with four or more lanes and adjustment of existing two-lane roads to make them four or more lanes. The law in question does not only deal with road transport, but also provides for the application of the public debate for the construction of railway trunks for long-distance traffic and Aeroporti, both works of great social impact. Another aspect on which the law is based is the

[35] Art. 2, paragraph 1, letter a

construction of commercial maritime ports, as well as inland waterways and ports for inland navigation accessible to vessels of more than 1,350 tons. In addition, this mechanism also operates for the construction of maritime terminals, to be understood as piers, piers, floating buoys, offshore islands for loading and unloading of products connected to the mainland and the ports, which can accommodate ships of tonnage exceeding 1,350 tonnes, including equipment and functionally related works. Basilari in this area are the interventions for the defense of the sea and of the coasts, with the presence of special platforms for washing the vessel's water. The Law on the "Public Debate" also intervenes in the creation of Interports for the transport of goods comprising a railway port suitable to train or receive complete trains and in connection with ports, airports and viability of great communication, overhead power lines and systems destined to retain, regulate or accumulate water in a durable way. For the purposes of regional intercooperation, this institute also intervenes in the assignment of Works which envisage or may provide for the transfer of water between different regions and this goes beyond the reference areas of the river basins established[36]. Lastly, it is important to remember the role of the institute also in the construction of infrastructures for social, cultural, sports, scientific or tourism use, as well as for plants and industrial sites.

As regards the dimensional thresholds, on the other hand, the present law gives the criteria applicable in the various situations. It is possible to use the public debate for works that involve a length of the route exceeding 15 km and in any case with an investment value equal to or higher than 500 million euro net of VAT of the total contracts envisaged, works that involve a length of the route exceeding 30 km and in any case with an investment value of more than 500 million euro net of VAT for all the contracts envisaged and for works involving new passenger terminals or goods, or new landing and take-off routes over 1,500 meters in length and in any case with a total investment value of over 200 million euro net of VAT of the total contracts envisaged. Furthermore, in the description of the law, we find the institute's presence in the realization of Works involving an area of over 150 ha and in any case with a total investment value of over 200 million euro net of VAT of the complex of the contracts envisaged, of Works involving a total investment value of more than 50 million euros of the total of the contracts envisaged, of offshore works which involve a total investment value of over 150 million euros of the total contracts envisaged and of Works which entail costs of establishments and infrastructures exceeding 300 million euros net of VAT of the total contracts envisaged. As for the "electric" or height limits, the law provides for the intervention of the institute for the construction of Overhead power lines of 380 kV or more and with a track length exceeding 40 km, and installations over 30 meters in height or with a volume of over 40 million cubic meters or Works involving transfers with a capacity of 4m³ / s or greater. From an

[36] Law n.183/18 May 1989

economic point of view, the Public Debate intervenes for the construction of works or infrastructures that involve total investments of over 300 million euros net of VAT of the total contracts envisaged and of Works that involve total investments of more than 300 million euros of euro net of VAT for all the contracts envisaged.

The Government has accepted the condition formulated by the VIII Commission of the Chamber of Deputies, which had requested that energy infrastructures be reinserted in Annex 1. These works were in fact envisaged in the first drafts of the Regulations, but they were then expunged as not falling within the Code of Public Contracts, being classified as private works of public interest that are subject to authorization by the Ministry of Economic Development.

Regarding the criteria for identifying the thresholds, the explanatory report states that they "have been defined following a careful analysis and evaluation of the main public works planned and / or in the planning stage, through the interrogation of several databases and programming documents. " The thresholds were subsequently discussed with the main public companies of the sector infrastructure and energy and with national environmental associations. Subsequently, there was the integration of the financial criterion with a dimensional criterion which, depending on the type of work, indicates the maximum dimensions beyond which the public debate procedure applies. The size criterion was defined through technical evaluations carried out with the support of the main public companies of the infrastructural and energy sector and with the national environmental associations, in order to identify dimensional parameters that verify the real impact of the operates in the territories. In assessing this impact, the Ministry of the Environment and the protection of the territory and the sea was involved. This action was considered necessary in order not to burden the evaluation and approval procedures of public works and to limit the use of the public debate exclusively for large works (while for smaller works the normal participation procedures apply) planned during the environmental impact assessment phase). "The indicated thresholds therefore allow us to identify the strategic works that, by relevance, size and impact, need to be submitted to a public preventive comparison with the local communities." Identifying high thresholds allows to concentrate on a limited number of significant works on which to verify the applicability of the new procedure. In fact, in Italy only few processes of public debate have been experimented and it is therefore necessary to allow proposers, public administrations and the professional world to become familiar with the new institute and to revise, when necessary, their internal operating procedures and fashion planning and relationship with local territories and communities.

The analysis of the impact of the regulation expresses, on this point, a further consideration: "For the purpose of an international comparison, it should be noted that the French legislation on the débat public nevertheless includes high thresholds, but generally lower than those proposed by this decree." Please note that in the "Public

Debat" the decision to start the public debate is left to the discretion of the Commission nationale du débat public (CNDP). In the Italian case, however, for some types of works it is mandatory to submit to the procedure. From this point the need arises for higher dimensional thresholds to limit the use of the procedure for the works that really impact. For greater protection of the cultural and natural heritage, the dimensional thresholds of the works to be submitted to public debate are reduced by 50% if, with reference to particular safeguarding needs, of interventions falling, also partly on cultural heritage assets and registered in the UNESCO World Heritage List, in accordance with the 1977 World Heritage Conference.

Pursuant to Article 3, paragraph 3 of the Rules of Procedure, the public debate must also be carried out for works of an amount included between the threshold indicated in the Attachment and two thirds of the same, if there is a request in this sense on the part of the Presidency of the Council of Ministers or Ministries directly involved in carrying out the work. There is also a request from "peripheral" powers, such as the request from a regional council, a province, a metropolitan city, a common provincial capital territorially affected by the intervention or one or more municipal councils or unions of municipalities territorially involved in the intervention (if altogether representative of at least 100,000 inhabitants). The public debate can in any case be carried out whenever the contracting authority or the contracting entity detects the opportunity (article 3, paragraph 4, of the Rules). On the contrary, there is no public debate on the works carried out with the procedures provided for in articles 159 ("Defense and security") and 163 ("Procedures in cases of urgency and civil protection") of the Code of public contracts and for those national defense law referred to in Article 233 of the Code of Military Ordinance. Furthermore, it will not be possible to use a procedure for routine maintenance, extraordinary maintenance, restorations, technological adaptations and completions. Finally, this law can not be applied to works already submitted to preliminary public consultation procedures on the basis of Regulation (EU) no. 347 of 17 April 2013, on the matter of trans-European energy infrastructures, or other European standard.

3.4) The “Public Debate” Procedure

The public debate takes place in the initial stages of the elaboration of a project of a work or an intervention, in relation to the contents of the feasibility project or the feasibility document of the project alternatives[37], when - as stated in the illustrative report attached to the Rules of Procedure sent to the Chambers - the proposer is still in a position to choose whether to carry out the work and what changes to make to the

[37] Article 5, paragraph 1

original project[38]. The technical and economic feasibility project is the first of the three levels in which the design of public works is structured, followed by the final design and the executive project[39]. The following paragraph 5 establishes that the technical and economic feasibility project identifies, among several solutions, the one that presents the best ratio between costs and benefits for the community, in relation to the specific needs to be satisfied and services to be provided. For the sole purpose of the three-year planning of public works and the completion of public debate procedures as well as design and ideas competitions, the feasibility project can be divided into two successive stages of elaboration. In all other cases, the feasibility project is always drawn up in a single processing phase. In the case of two-phase processing, in the first phase the designer identifies and analyzes the possible alternative design solutions, where existing, and draws up the feasibility document of the design alternatives. In the second phase of elaboration, or in the only phase, if it is not written in two phases, the designer in charge develops, in compliance with the contents of the planning document, all the necessary surveys and studies, as well as graphic drawings for the identification of the dimensional, volumetric, typological, functional and technological characteristics of the works to be carried out and the relative economic estimates, including the choice regarding the possible division into functional lots. The feasibility project must allow, where necessary, the start of the expropriative procedure. In the cases referred to in Article 3, paragraphs 3 and 4 of the Regulation (debate requested by institutions, local authorities or citizens or on a voluntary basis by the awarding authority), the public debate may take place until the start of the definitive design.

3.5) The Subjects of "Public Debate"

The subjects involved in the public debate are: the contracting authority or the contracting entity (later, for the sake of brevity, also "contracting authority"); the coordinator of the public debate and the National Commission for the public debate (hereinafter, also the "Commission")[40]. The contracting authority proposing the work

[38] Pursuant to Article 10, paragraph 2 of the Rules of Procedure, pending the entry into force of the Ministry of Infrastructure and Transport decree referred to in Article 23, paragraph 3, of the Code of Public Contracts, the public debate takes place, in relation to the works for which the feasibility document of the project alternatives has not been prepared, with reference to the feasibility project or to the preliminary design.

[39] Article 23, paragraph 1, of the Code of Public Contracts.

[40] From the illustrative report attached to the Rules of Procedure sent to the Chambers it emerges that the initial drafting of the provision envisaged the establishment of a monitoring committee to encourage the involvement of the local authorities involved in the design and construction of the works subject to public debate. This provision was subsequently removed for the following reasons: "The opinions collected, while not confirming the need for the involvement of local authorities, indicated that the presence of the committee would have constituted the establishment of a new

subject to public debate is the subject that indexes and takes care of the public debate[41] and supports the related costs[42].

Article 23, paragraph 11, of the Code of Public Contracts provides that: "The costs inherent to the design, including those related to public debate, the direction of the work, supervision, testing, studies and research related , the drafting of security and coordination plans, when required pursuant to Legislative Decree 9 April 2008, n. 81, to the professional and specialized services necessary for the drafting of a complete executive project in every detail, can be weighed down on the financial resources of the contracting authority that accesses the design itself. For the purpose of identifying the estimated amount, the calculation must include all the services, including the direction of the works, in case of assignment to the same external designer ". For the planning and management of public debate, the contracting authority relies on the collaboration of the public debate coordinator, who must carry out the tasks entrusted to him with professional responsibility and autonomy.

It is identified, at the request of the contracting authority, by the Ministry responsible for the matter between its managers. If the contracting authority is a Ministry, the coordinator is appointed by the Presidency of the Council of Ministers among the heads of the public administrations unrelated to the Ministry concerned. The coordinator is identified among subjects with proven experience and competence in the management of participatory processes or in the management and execution of planning and planning activities in infrastructural, urban, territorial and socio-economic matters. In the absence of public managers in possession of these requirements, the coordinator can be identified by the contracting authority as a result of a service contract Persons resident or contracted in the territory of a province or a metropolitan city where the same work is located can not take the role of coordinator.

The decision to assign the function of coordinator of the public debate to a manager of the State was not provided for in the Rules of Procedure sent to the Chambers and is the result of an observation by the Council of State: "The Commission considers it opportune, in order to guarantee independence and third party of the coordinator of the public debate, that this task is carried out by an external party to the contracting authority or to the contracting entity, but always from a subject belonging to the State-

body not provided for by the legislation. The issue of elimination of the monitoring committee was put to the discussion and evaluation of the Unified Conference. The latter has agreed on the need to strengthen the role of local authorities within the National Commission through a different organization of the work of the Commission itself. In particular, it was agreed that the Commission organizes its activities at the territorial level, with the active involvement of the local authorities involved in carrying out the work, which in turn report to the Commission any critical issues related to the operating procedures and techniques for carrying out public debate and collaborating in order to identify the best solutions for local communities (Article 4 paragraph 6 letter d) ".

[41] Article 22, paragraph 3, of the Code of public contracts

[42] Article 23, paragraph 11, of the Code of public contracts

apparatus. The function and the tasks entrusted to the coordinator are, in fact, extremely delicate and their work of conflict resolution and the task of final report directly affect the needs and expectations of the citizens and institutions involved, involving evaluation and appraisal margins they fall outside a simple professional technical task. At the same time, the coordinator must be an entity outside the contracting authority or the contracting entity and unrelated to the interests that come relief. This, moreover, is in line with the more recent guidelines of the legislator which, as is known, has introduced rules aimed at avoiding the conflict of interests both in general[43] and in sectors details. It is therefore appropriate that this figure be reserved to representatives of the State-apparatus bound to strict observance of the principles set forth in art. 97 of the Constitution ".

As already mentioned, Article 22, paragraph 2, of the Code of Public Contracts has provided for the establishment, without charges to public finance, of a commission at the Ministry of Infrastructures and Transport, with the task of to collect and publish information on public debates being carried out or concluded and to propose recommendations for the public debate on the basis of the experience gained. Article 4, paragraph 1, of the Regulation has delegated the establishment of the National Commission for the public debate to a decree of the Minister of Infrastructures and Transport, to be adopted within 15 days from the date of entry into force of the Regulation itself.

The Commission is composed of two representatives, one of whom is President, designated by the Minister of Infrastructure and Transport, three representatives appointed by the President of the Council of Ministers, four representatives each, respectively appointed by the Minister for the Environment and the protection of the territory and the sea, the Minister of Economic Development, the Minister of Cultural Heritage and Activities and Tourism, the Minister of Justice and the Minister of Health; three representatives appointed by the Unified Conference, of which two representing the regions, one from the UPI and two from the ANCI. The Minister of Infrastructure and Transport may appoint, on a proposal from the Commission, up to three experts competent in matters of conflict mediation, participatory planning and public debate, taking part in the work of the Commission without the right to vote.

The Commission can avail itself of the support of the departments, the Mission Technical Structure and the MIT in-house companies. For the preliminary activities, the Commission avails itself, in the case of works of national or supra-regional interest, of the technical-administrative support of the competent central administration in the subject matter of the intervention. The personnel involved maintain functional dependence on the administration to which they belong; in the case of works of

[43] Article 6, paragraphs 1 and 2 of the Regulation.

regional interest, the Commission makes use of the technical-administrative support of the regional offices for the specific purpose identified.

The Commission in particular monitors the proper conduct of the public debate procedure and respect for public participation, as well as the necessary information during the procedure, and proposes general or methodological recommendations for the proper conduct of the public debate. In addition, the institution's role ensures that appropriate and timely publicity and information is given to the decisions made for its functioning, to the procedures of the public debate procedure, to the opinions rendered, to the technical documentation concerning the intervention subject to public debate as well as the results of ongoing or concluded consultations. In addition, the Commission is responsible for organizing consultative activities at the local level, with the active involvement of the local authorities involved in carrying out the work that must report any critical issues related to the operational and technical procedures for carrying out the public debate and must collaborate with the order to identify the best solutions for local communities. Finally, the Commission submits to the Government and the Chambers, by June 30, a report on the results of the monitoring activities carried out in the previous two-year period, highlighting the critical issues that emerged during the debate procedures, also suggesting solutions aimed at eliminating possible imbalances in participation and promoting forms of contradiction as moments of constructive interaction.

3.6) The "Public Debate" Process

The contracting authority identifies, according to its own laws, the holder of the power to hold public debate and transmits to the Commission a communication, with attached the feasibility project or the feasibility of the project alternatives, which contains the intention to start the procedure, the description of the objectives and the characteristics of the project and indicates one or more subjects that represent it at all stages of the public debate[44]. Finally, the Administration processes the project dossier of the work, written in clear and comprehensible language, in which the opportunity of the intervention is motivated and the proposed design solutions are described, including assessments of social, environmental and economic impacts[45].

The coordinator of the public debate, on the other hand, evaluates and, if necessary, requests, for once and within 15 days of receipt, additions and modifications to the project dossier prepared by the contracting authority[46]. Subsequently, the coordinator

[44] Article 5, paragraph 1, of the Rules
[45] Article 5, paragraph 3, of the Regulations
[46] Article 7, paragraph 1, letter a), of the Regulation).

designs the procedures for carrying out the public debate and elaborates, within one month from the conferment of the assignment, the draft document of the public debate, establishing the topics of discussion, the calendar of meetings and the modalities of participation and communication to the public. Finally, the coordinator defines (and subsequently implements) the communication and information plan to the public and organizes and updates the website of the public debate.

From the moment of the presentation and simultaneous publication of the project dossier of the work on the site of the contracting authority, the public debate has started. As already anticipated, pursuant to paragraph 2 of article 8, the public debate consists of meetings of information, analysis, discussion and management of conflicts, particularly in the territories directly concerned, and in the collection of proposals and positions by citizens, associations and institutions.

The coordinator of the public debate has the task of facilitating the comparison between all the participants in the debate and bringing out all the positions in the field, also through the contribution of experts. It must also report to the Commission any anomalies in the conduct of the public debate and make the contracting authority aware of compliance with the timing of the procedure (article 6, paragraph 6, letters c) and e) of the Regulations). The contracting authority, on the other hand, must provide information on the intervention and, where significant, on the design alternatives examined in the first phase of the feasibility project, as well as actively participate in the meetings and activities foreseen in the public debate and provide the necessary support to answer the questions that emerged during the course

3.7) The “Public Debate” duration

The public debate has a maximum duration of four months, starting from the publication of the project dossier of the work on the site of the contracting authority[47] , the coordinator of public debate, the holder of the power to hold public debate may extend the duration of a further two months in case of proven need. According to the analysis of the impact of the regulation annexed to the regulation scheme sent to the Chambers, it was decided to refer to the most significant national and international experiences: "From the analysis carried out, we opted for a timetable that would allow to carry out the public debate within certain times and not excessively long, but sufficiently extended, to enable local communities to adequately inform themselves and participate actively in the decision-making process". Pursuant to Article 9,

[47] Articles 5, paragraph 2, and 8, paragraph 1, of the Regulations)

paragraph 1, of the Rules of Procedure, within 30 days of the expiry of the deadline, the coordinator of the public debate submits to the awarding authority and to the Commission a final report on the progress of the entire procedure containing a description of the activities carried out, including information on the number of meetings and participants, the management methods and trends of the meetings, the communication tools used, the access statistics and the consultation of the public debate website. Subsequently, the coordinator inserts the synthesis of the themes, the positions and the proposals that emerged during the debate, the description of the open and most problematic questions with respect to which the contracting authority is asked to take a position in the final dossier. Within two months of receiving the final report of the coordinator, the contracting authority, after evaluating the results and the proposals that emerged during the public debate, draws up the final dossier[48] in which it highlights the intention or not to carry out the intervention, any changes to be made to the project and the reasons that led to not accepting any proposals. The final report of the coordinator is attached to the final dossier of the contracting authority and forms an integral part of it.

The results of the consultations carried out in the public debate must be published on the contracting authority's site, on the Commission's and on those of the local authorities involved in the intervention and must also be sent by the contracting authority to the contracting authority, the competent authority for the presentation of the environmental impact assessment application.

3.8) Monitoring procedure of the "Public Debate"

As already mentioned, Article 22 of the Code of Public Contracts has delegated, among other things, the Regulation, the identification of the methods of monitoring the application of the debate and, to this end, has provided for the establishment of the Commission , to which, among other things, the Regulations entrusted the task of monitoring the correct execution of the procedures and illustrating the results of this activity in a report to be presented every two years to the Government and Parliament.

If one of the conditions laid down by the VIII Chamber of Deputies and similar requests from the Council of State, which called for a strengthening of the monitoring action, the Regulation also provides that, within two years of the entry into force of the new regulation, the In the light of the monitoring activity carried out by the Commission, it proposes to the Minister of Infrastructures and Transport supplementary and corrective provisions of the Regulations.

[48] Articles 7, paragraph 1, letter d), and 9, paragraph 2 of the Regulations)

4) Limits of the "Public Debate" System

The considerations that precede the following paragraph open a reflection on the substantial impact of this tool in the process of affirmation of a new model of "participatory administrative procedure". In other words, we must ask ourselves whether, beyond the qualification of the public debate as an instrument of participatory democracy, this actually affects the decision-making process of public administrations. And there are some aspects that seem to strongly limit the innovative value of the institute. In fact the reading of the rules of the code and of the dpcm scheme, raises criticalities both in terms of link between the state and regional sources that govern the institute, both in terms of provisions that they do not allow to have a precise and precise picture on the strategic aspects, such as the identification of legitimized subjects, the precise delimitation of the subject of the debate, the consistency of the procedure with the simplification and reduction of the timing of the proceedings, the identification the subject responsible for the procedures of the public debate, and finally the judicial protection of the subjects of civil society who took part in the public debate.

This contradictions, underlined both by the Council of State and by the Antitrust Authority, is in fact likely to have repercussions on the whole reform, whose implementation is subject to the issuing of too many provisions and therefore the timing of implementation of the same and their natural flexibility[49]. And indeed, the art. 22, even in the correct version, despite having accepted the suggestion, expressed by the Council of State on the draft legislative decree of the new code, to delegate the implementing regulation to a d.p.c.m. instead of a d.m., it confines itself to giving indications of a general nature, referring to d.p.c.m. the "fixing" of the criteria for identifying the works, broken down by type and thresholds size, of the procedures for carrying out and the end of the same procedure, as well as of the methods for monitoring the institution by the establishment of the Commission for the public debate[50]. Not only that, the choice to return to a future d.p.c.m. the identification of the

[49] The reference is to the well-known opinion of the Council of State on the outline of the Code of public contracts of April 1, 2016, n. 855 and the Annual Report of the Competition and Market Authority presented to Parliament on May 16, 2017. Specifically, the Agcm noted that "the postponement of the effectiveness of the rules over time weakens the effectiveness of the entire Code and generates furthermore, interpretative uncertainties regarding its application "with the risk of undermining" the development and effectiveness of reforms

[50] More precisely, the Opinion of the Council of State no. 855/2016 with reference to the actuarial source of the public debate procedure, in addition to a modification of the source identified (dpcm), also highlighted the need for a precise timing for adoption, emphasizing that the provision of no deadline for adoption of this decree (unlike for other ministerial decrees foreseen by the code), nor of a transitional regime, risked to make the procedure remain optional indefinitely. The transposition of the opinion expressed by the Council of State in the definitive text of art. 22 which provides for the adoption of the d.p.c.m. on public debate within a year from the date of entry into force of the code.

implementation methods of the public debate risks to also affect the stability of the regulatory framework, given the close link that these regulatory instruments have with the political direction of the Government and which is expressed in the tendency to treat differently the administrative problems in correlation with the political interests of a party, relevant at a given moment[51]. Ultimately the greatest risk is to find themselves faced with the same critical issues that have characterized the old code, object, as is known, of many changes in its ten years of life, and therefore not to reach an organic and stable discipline of the institute of the public debate.

As mentioned in the preceding pages, the recourse to public debate pursuant to art. 22 and 23, leads to change the iterdecisionale according to a well-defined timing, which finds its start precisely in the "debate" as the prodromal phase of a participated decision by the requests coming from civil society[52]. This implies that the broader the scope of the wider participation is the possibility of obtaining indications that are really shared within civil society. This last aspect is fundamental if compared to the specific sector of public contracts even if, as all the experiences of participatory democracy demonstrate, participation risks running around in its effective implementation in view of the scarce capacity of the public administration to listen and receive the indications received from the company civil. So much so that, to counter this attitude of the administrations, there are those who have linked the participatory requests to the public decisions to the affirmation of a new right (c.d. fourth generation rights)[53]. And like all rights, the related exercise also involves the principle of equality, to the extent that it represents a "gateway" to the decision-making process of public administrations, recognized by the legal system. A perspective, this, that it would seem to lay the groundwork for the configuration of the right to participate as a social right.

It is evident that the transposition of the public debate in terms of the right to participation, although suggestive, always poses risks in terms of equality given that, if on one hand a limited participation can become a factor of exclusion and over-representation of some interests, on the other hand, the involvement of "all" stakeholders is not actually possible. For this reason, the determination of clear selection procedures inspired by the "criterion of maximum inclusiveness" appears to be the only viable path. And that such an approach is possible demonstrates the Tuscany regional law (No. 46/2013), which among the many possible solutions, has chosen to assign a fundamental role to the Authority for the participation also in order to correct the method to select the interests involved[54]. Participation in the public

[51] A.M. SANDULLI, "Governo e amministrazione", in "Riv.trim dir.pubbl.", 1966, p. 755.
[52] N. ZANON – F. BIONDI, "Percorsi e vicende attuali della rappresentanza e della responsabilità politica, Milano", 2001, p. 109 ss.
[53] G. PECES-BARBA MARTÌNEZ, "Diritti sociali: origine e concetto", in Sociologia del diritto, 2000, p. 36.
[54] Cfr. A. VALASTRO, "Stato costituzionale, democrazia pluralista e partecipazione: quali diritti?", in AA.VV, "Scritti in onore di Enzo Cheli", Bologna, 2010, 457 ss

debate is therefore structured as a procedural right, which, however, precisely because it requires specific rules for its exercise.

Well the art. 22 nothing in this regard, leaving, therefore, the procedural dynamics, which should allow civil society in its broader representation to penetrate the decision-making processes (without replacing the representation), "to the varied world of practices, experiments, political sensibilities contingents, of concerted dynamics, of the de facto power of organized private subjects[55]".

A way, ultimately, to undermine the effectiveness of the law and let the participation end up being exercised exclusively by those subjects who already would have formally or informally participated in the decision-making process. This last aspect gives a glimpse of another risk to the debate public when the administration is inclined to use digital procedures. In fact digital participation, while being functional to simplifying the procedure by reducing the time it takes to perform, implies a limitation of the right to participate for that part of the civil society excluded from "digital knowledge", thus investing the principle of substantial equality.

The introduction of art. 22 in the new code of public contracts clearly reveals a further criticality in terms of relations with the current regional laws on public debate, as being an institution that involves the construction of major infrastructure works and architecture of social relevance, this goes necessarily to impact also on subjects that involves regional competences (the phenomenon of conflicts of attribution between the State and the regions in matters of concurrent jurisdiction has been repeatedly criticized by the Constitutional Court because of the criteria that are not always clear, followed by the 2001 constitutional reform in the division of subjects) . And in fact the activation of the public debate as mandatory phase of the proceeding concerning the approval of the great infrastructural works and of architecture of social importance on state competence it is also produce interest in the "government of the territory", the "Ports and civil airports", the "large transport and navigation networks", in other words, subjects falling within the shared competence as provided for by article 117, paragraph 3, of the Constitution.

For this reason it would have been opportune that the legislator in a sector as complex as that of the participating institutions, had not formulated a generic rule such as art. 22 inserted, moreover, in sector legislation, but it have been approved a general discipline so as to constitute the reference point not only for large works of national interest but also for works of regional interest.

On the other hand, the absence of a general law on public debate has meant that in the view of growing success of the participation institutions, some regions have been

[55] L. BOBBIO – G. POMATTO, "Il coinvolgimento dei cittadini nelle scelte pubbliche", in Meridiana, n. 58, 2007, in part. pp. 51-52

activated by introducing the participation institute for works of regional and local interest as well as for national interests for which the opinion of the regions is required.

It is evident that these regional laws (Tuscany, Emilia Romagna, Umbria, Puglia) are now located at having to deal with the discipline introduced by art. 22 of the new contract code, and therefore to have to connect to it, especially if we consider that in some regional laws, as in the case of the Tuscany regional law, the first in the matter, and the regional law Puglia (the latter following the "new" code and tenor almost identical to that Tuscany), the institute of public debate has been foreseen both for the works of regional interest and for the works of national interest for which the Region is called to express themselves, and whose development must take place, "with times and modalities compatible with the procedure regulated by the state law" in the case of works concerning: a) road and railway infrastructures; b) power lines; c) facilities for transporting or storing fuels; d) ports and airports; e) hydroelectric basins and dams; f) radiocommunication networks; to which the regional law of Puglia added the lett. g) onshore and offshore drilling for the research and production of hydrocarbons.

The other regional laws, although inspired by the regional law of Tuscany, have been detached from it instead some reference to the basic elements such as: the opening moment of the debate, the person in charge of the procedure, the obligatory nature or the possibility of activation, as well as the subject of the debate. The result of this regulatory process was therefore that of a heterogeneous regulatory framework, a "participative millefeuille" that led to the emergence of a multifaceted variety of participatory procedures for works and interventions of regional / local level, substantially an expression of historical, cultural and of the reference territories[56]. Basically a picture characterized by territorial particularisms, in evident contrast with the constitutional approach which, in matters of concurrent competence, requires, however, a link with the fundamental principles dictated by the state law[57].

The responsibility of this heterogeneous framework is obviously not only attributable to the regions, given the prolonged inertia of the State in this matter, but also to the "sectorial" criterion followed by the national legislator who, in competing subjects such as those indicated, has certainly not helped to clarify the relationship between state legislation and regional legislation. If anything, to overcome the impasse that has come to be determined, a possible solution could be that moving from the qualification of the right to participate as a social right, bring the discipline of the institute within the "determination of the essential levels of services concerning the social rights that

[56] C. LEYRIT, "Remettre le citoyen au coeur de la décision publique. Enquête Tns sofres/Commission Nationale du débar public", in www.debatpublic.fr, p. 224.
[57] L. AZZENA, "Sulla persistente necessità di una riforma costituzionale delle competenze in materia infrastrutturale", in www.federalismi.it, 2017

must be guaranteed on the national territory ", according to the dictation of the lett. m) of the art. 117 of the Constitution.

It is clear that this is a perspective that presents the limit of the current fragility of the reconstruction of the institution of public debate as a social right, as it is equally evident that for such an important participatory institution a general and organic discipline would be necessary, as emerged from the proposals and the bills before the Chamber and the Senate. Less likely appears on the other hand, the proposal made on the one hand (rather isolated) of the doctrine of a "mini" constitutional reform aimed at modifying the complex set of legislative competences outlined by the current art. 117 of the Constitution, given the negative referendum outcome on the constitutional reform approved by parliament on 12 April 2016 (c.d. Renzi-Boschi).

What is certain is that the legislative limbo in which the art. 22 has placed the institute of public debate does not resolve the critical issues but feeds them if we consider that the Government, while it has never challenged the Tuscany regional law (Law No. 46/2013) on the public debate, has instead challenged the law on the participation of the Puglia Region, noting that the art. 7, paragraphs 2, 5 and 12 of contents (almost) identical to those of art. 8 paragraphs 1, 2 and 5 and of art. 12, paragraph 3, of the Tuscany regional law, contains provisions that affect works of national interest to which the national legislation envisaged by art. 22 of the public contracts code. In particular, in the Government's appeal it is emphasized that the regional legislation violates constitutional parameters such as art. 117, paragraph 2, letter m) since it is the exclusive legislative competence of the State in terms of determining the essential levels concerning civil and social rights, art. 117, paragraph 3 for violation of the fundamental principles regarding "production, transportation and national distribution of energy" dictated by law n. 239 of 2004, the art. 118 since the aforementioned regional regulations involve interference with the administrative activity of the state and in particular with the proceedings concerning the public debate for the projects of state competence, determining an alteration of the regulatory framework, which generates "... further procedural charges and unjustifiably prolonged time, tinges (ndo), still illegal law the law opposed for violation of the principle of good performance of the administrative action pursuant to art. 97, first paragraph, of the Constitution[58]".

To all these profiles the Government also adds other findings concerning the lack of competence of the law regional to regulate the drilling at sea for research and production of hydrocarbons, being profiles that touch the fundamental territorial limit that characterizes the legislative competences of the regions and that "... constitutes a

[58] Act of promotion of the Court's judgment n. 74, appeal by the President of the Council of Ministers on the question of constitutional legitimacy pursuant to art. 127 of the Constitution against the law of the Puglia Region 13 July 2017, n. 28 ("Law on participation"), art. 7, in particular, paragraphs 2, 5 and 12, filed in the registry on 20 September 2017. For further information on the appeal, please refer to the text published in the Official Journal, 1st special series, n. 46 of 15 November 2017.

logical antecedent to the list of the subjects contained art. 117, second and third paragraphs of the constitution, as well as the other provisions contained in Articles 114 and 118 of the Constitution ", taking into account that the concessions for the research and the cultivation of hydrocarbons are part of the State's state property regime.

Well, without going into the merits of the appeal promoted by the Government and on which the Constitutional Court must still be pronounced, it is certain that the Government has never contested the discipline of the Tuscany regional law in matters of public debate, the underlying legal motivations of the appeal on the regional law of Puglia more than to interest the institute of participation in itself touch the subject on which the debate takes place, namely "production, transportation and national distribution of energy", in a word "drilling" on land and at sea.

Type of works that inexplicably are no longer present in the draft of Annex 1 containing the works submitted to public debate classified by type and thresholds, and which is an integral part of the scheme of d.p.c.m. forwarded to the Council of State! Therefore, there is doubt (not to mention certainty) that in addition to the exquisitely juridical aspects there are "other" motivations, considering the strong social tension that has come to be determined following the decision by the Government to authorize the construction of the "Trans Adriatic Pipeline[59] "(so-called TAP), whose impact is strongly felt by the communities on which the work insists as a damage to the environment and to the health of the inhabitants and territories involved in the construction of the gas pipeline .

The third element capable of affecting the effectiveness of the public debate procedure envisaged by art. 22 is represented by the uncertain identification of the works. In fact, despite the fact that the Council of State had recommended in the opinion expressed on the draft legislative decree on the new code the correspondence of the code to the canon of the "quality of formal and substantial regulation", the art. 22 limits itself to indicating the obligatory nature of the public debate for "major infrastructural and architectural works of social importance, having an impact on the environment, on the cities andon the spatial planning"[60]. No further specification, except for the postponement of the identification of the works "distinct by type and dimensional thresholds" to the next d.p.c.m. A formulation of this kind could not but raise two

[59] The Single Authorization Decree of the Albania-Italy interconnection pipeline "Trans Adriatic Pipeline" was approved by the Minister of Economic Development on 20 May 2015. It is the definitive provision that enables construction and operation of the work, replacing any other formal act of assent of the other administrations intervened in the proceeding, approving the project and declaring also the public utility, indifference and urgency of the infrastructure, also for the purposes of expropriations. The decree establishes the start of work by 16 May 2016 and the operation of the infrastructure by 31 December 2020.

[60] Const.opinion of 1 April 2016, n. 855.

important problems: one of a formal or definitive nature, the other of a substantial or more precisely dimensional nature.

The first concerns the ambiguity and the atechnity of the expression "social architecture" introduced by the legislator, instead of using notions of similar meaning and consolidated in the legal lexicon of the subject ("building" instead of "Architecture"), has chosen to resort a new concept, devoid of tradition and therefore of legal elaboration, thus representing a typical example of that phenomenon that the doctrine qualification as "provoked ambiguity"[61].

This entailed not only the contrast with the canon of formal clarity, declined as the clarity of the adoption of expressions of univocal meaning consistent with the whole national legal system, but also the lack of external coordination of the whole code with definitions and rules contained in other sectoral disciplines[62]. The consequence of such a way of drafting normative texts is that the ambiguous phrase "great infrastructural works and of architecture of social importance", has given rise to two different interpretations in reference to the works to be submitted to the activation of the public debate[63].

Thus, following a literal interpretation of the norm, the terms adopted by the legislator would seem to identify two different sectors, that of large infrastructural works and that of the great works of architecture of social relevance. Such a reading would have the effect of widening the object of the public debate also to the cds.social infrastructure, such as hospitals, schools, facilities for seniors etc. I wait this is not irrelevant!

On the other hand, a restrictive, direct interpretation, that is, privileging a "unitary" reading of the normative text, would lead us to recognize in the reference to the term "architecture of social relevance" a mere specification of the great infrastructural works (roads, railways, ports, airports), energy, telecommunications), of which the social impact is undoubted. The object of the debate, in this second perspective, would

[61] P. CARNEVALE, Diritto, normazione e ambiguità, in R. ZACCARIA, La buona scrittura delle leggi, Roma, 2011, p. 39

[62] Indeed the opinion of the Council of State of April 1, 2016, n. 855, identifies four declinations of the canon of formal clarity, such as: "1) clarity of the language used, univocal and consistent with the entire national legal system; 2) clarity of individual articles, which must be streamlined and synthetic; "They sin" for excess the art. 3 of the code, with 83 definitions, enumerated arriving to the letter vvvv), and paragraph 7 of the art. 93, divided into six long sentences in turn composed of numerous syntactic periods; 3) internal consistency of the code, as regards internal references, definitions, items columns; 4) external consistency of the code, with definitions and norms contained in other sector disciplines, in force or under approval, such as the code of digital administration, transparency, the discipline of public companies, the code of cultural heritage, the penal code , the single text of the judicial register, the framework law on the administrative procedure ".

[63] F. KARRER – A. SCOGNAMIGLIO, “Dèbat Public all’italiana, ovvero come mutuare nozioni senza innovare comportamenti”, cit.

therefore be limited only to a single macro-sector. It is evident that it will be the concrete application of the code law to give indications in this regard, without prejudice to the fact that a lack of legislative technique such as that followed in art. 22 of the code inevitably generates interpretative difficulties regarding the cases of activation of the public debate.

The second problem concerning the activation of public debates seems to derive from the (substantial) identification of the "dimensional threshold" of the works to be submitted for discussion. Identification that, as already said, the art. 22 refers to a subsequent d.p.c.m., to be adopted on the proposal of the Minister for Infrastructure and Transport.

In this regard, it is important to highlight the intrinsic difficulty in identifying an adequate "dimensional threshold" to the social impact on the territory, given that there are works of reduced scale that have a strong impact on the territory, as well as works of enormous scope for which the obligatory prediction of public debate could only create confusion. In other words, the social impact is difficult to assess using only objective criteria. These findings probably led to the choice of the Minister of Infrastructure and Transport to reconcile the objective criterion of the "high dimensional threshold", with the subjective criterion that takes into account the interest that for this work shows a qualified group of interested parties made up of public or private subjects.

However, this solution has been harshly criticized by the Council of State which, in the recent opinion no. 359 of 12 February 2018 on the d.p.cm.scheme, has found that thresholds of such a high amount could end up making, in practice, minimal recourse to this institute, "which represents, instead, one of the most important changes in the new Code of Contracts and that, if well used, could also constitute a valid deflationary tool for litigation ". This is why the Council of State suggests "to intervene by modifying the level of the dimensional thresholds indicated, for the different types of works, in Attachment 1 to the draft decree, after spectral analysis of the trend of statistical surveys at the statistical curve of the tender amounts ". The identification of the subject responsible for public debate is one of the most problematic aspects of the procedure provided that the current text of art. 22 does not offer any indication on this figure. The first drafts of the art. 22, in truth, outlined a system of governance by the proponent of the work, which had to convene a conference of services to define the modalities of the debate. This conference would have been open to participation by institutions, administrations concerned and Citizens' committees who had reported their interest to local territorial bodies. A structuring of this kind, however, ended up creating an "oxymoron" around the procedure of public debate, given that, on the one hand, it envisaged the public debate as a place for confrontation of conflicts, and on the other hand demanded the public debate to the proponent of the 'work, or only one of the interested parties.

The definitive text of the art. 22 nothing says about it, limiting itself to recalling the national commission introduced by the corrective, and postponing, once again, to the next d.p.c.m. the integration of the bare code discipline. The provisions regarding the system of governance of public debates are, in fact, only in the scheme of d.p.c.m.

Well, from reading these provisions (unfortunately) emerges a system of governance far from organic and systematic, structured on the presence of several subjects: the coordinator of public debate (alias the manager), the c.d. Monitoring Committee and the National Commission for Public Debate. Among these figures only that of the coordinator should be the management of the debates public coordinating with other subjects. Likewise, independence should be guaranteed. Except that the scheme of d.p.c.m. seems to delegate to the proponent of the work the selection of the manager, albeit through a procedure of public evidence addressed to "suitable" subjects, ie subjects with proven experience and expertise in the management of participatory processes, ie in the management and execution of design activities and planning on infrastructural, urban and territorial matters.

It follows that a procedure that gives the proponent of the work the power to select the coordinator of the public debate can not but raise doubts about the real "degree of independence" of the person so identified.

It would therefore be advisable for the procedures for identifying the coordinator of the public debate to be delegated to the National Commission to which the d.p.c.m. should give the power to start the public evidence procedure and the selection of the public debate coordinator. A change in this sense would guarantee, in fact, the third party of the person appointed to manage the procedure (of the public debate), effectively making it independent of the parties involved. Otherwise the effect is that of a model of "opaque" public debate far from the ideal of the débat public, where this identification is referred to an independent administrative authority (the Commission Nationale du Débat Public), which it is responsible for, in addition to the fundamental task of ruling on the need (or not) to activate a débat public, also the establishment of an ad hoc commission, so-called Commission Particulière du Débat Public (CPDP).

With this in mind, the same composition of the National Commission for the public debate that, provided for by the scheme did.p.c.m. in an even number (14 members), it seems to lead to "deadlock situations" in cases where a decision must be taken by a majority; operational criticality that could easily be overcome by accepting the suggestion of the Council of State to identify an odd number of members of the Commission, as in the French model. Not only. The scheme of d.p.c.m. provides that the person in charge of the debate must coordinate, as well as with the National Commission for the public debate, also with the c.d. monitoring committee, that is, with a body composed of local authorities directly involved in the intervention and to which the law has assigned the task of contributing to the definition of the public debate procedures, to collaborating in the realization and supervision of the debate, to

contribute to solve the problems and critical issues that may arise during the debate, to contribute, finally, to the discussion and evaluation of the proposals that emerged during the public debate.

Arrangement that creates further doubts about the "degree of independence" of the person in charge of the procedure that seems to have to coordinate with the local administrations, precisely those institutional subjects that in recent years have been the main promoters of the demonstrations of dissent (See last the case of the Trans Adriatic Pipeline gas pipeline in Puglia) as can be seen from the Nimby Observatory data.

5) First conclusions on the introduction of the “Public Debate” in Italy

From the analysis conducted so far, it appears that the introduction of public debate in the code of contracts, and therefore in a specific sector legislation, represents a significant novelty for the public administrations, as it is an expression of that tendency to delineate a new way of administering, that if it is excessive to define "shared", in the cases of "compulsory" it is undoubtedly "participated".

In fact, it is known the complexity in re ipsa of the realization of large infrastructural works, from which derive both positive and negative externalities, some addressed in a widespread manner to a vast audience of subjects, public or private, others concentrated on specific segments of the population. The complex phenomenology of the processes of opposition to these settlements is equally well known, and they increasingly see both public and private subjects on both sides, causing a huge increase in costs, and in the worst cases, the appearance of only negative externalities when you arrive at the abandonment of the work already started.

And it is in this conflictual process that the institute of public debate is inserted, which sees in the public and private dimension of participation in public choices - similarly to what happened in the French legislation, and in the Tuscany regional law - an ordinary phase of the decision-making process public administrations. In other words, every subject, public or private, that intends to realize a work of significant impact, social and economic on the territory, must consider the relationship with the community of reference as an unavoidable aspect of the design. The inclusion then in the code meant that the participation of the private to public decisions has been protected by the same principle of legality and at the same time became an expression of the constitutional principle of subsidiarity.

The analysis carried out so far on the art. 22 (in the correct version) and on the d.p.c.m. scheme, has shown that, despite the affirmation of the culture of participation, the legacy of the traditional bipolar model remains in legal culture.

If, as was affirmed by an authoritative part of the doctrine, "participatory democracy escapes the classical categories of the principles of legality and judicial protection" , it is true that "the normal effect of the completion of the participatory procedure on the decision of the 'competent body' can not but take into account (because mandatory) the positions expressed in the participatory process, inducing, whatever the decision that will be taken by the administration, to an adequate reasoning especially if we consider that the emergence of a (for now) a fragile right to participate as a social right, makes it no longer possible to differ, despite the negative opinion expressed in this regard by the Council of State, a discipline that clearly addresses the issue of protection of individuals or associated participants in the debate procedure public, or excluding it as in the French model of débat public or ammet it tends in a more or less selective way to avoid the risks related to the establishment of "dust committees".

Chapter 2

The application of "Public Debate" in the European Union System

SUMMARY: 1. Introduction – 2. The European Union case – 3. The French case – 3.1 Enquete Public – 3.2 Le Debat Public – 4. The English case: the "Public Inquiry" system – 4.1 Running the Inquiry – 4.2 After the Inquiry – 5. Consensus Conferences – 5.1 The real Consensus Conferences – 6. Comparison among systems

1) Introduction

The participation of private individuals in public decisions is a very boundless topic, since it involves a large part of the administrative action, both by type of activity and by the type of relationship that is created in the relationships between directors and administrators. Trying not to be discouraged, it was decided to treat the subject by virtue of its direct connection with the countless environmental conflicts that today proliferate in our country (and beyond).

Participation, as long as it is pluralistic and conscious, constitutes an essential component of democracy and today more than ever it has acquired a fundamental importance precisely with reference to the administrative procedure. In fact, over the years, administrative law has lost much of its authoritarian incrustation - typical of its origins - and has gradually opened up to consensual forms. Increasingly, it becomes a guarantor right, anchored to the principle of legality and ready to experiment with new institutions and methods. For a long time it was considered a right that could threaten public freedoms and individual autonomy, but since the second half of the twentieth century, the diffusion of public intervention and its work at the service of the citizens have allowed to overcome this cultural prejudice1. Even the administrative procedure, in its historical path, has changed a lot, coming to incorporate those principles thanks to which there has been a break with the authoritarian tradition. Among them, together with transparency and efficiency, we find participation. Public decisions are able to address not only the economic, social and infrastructural progress of a country, but also its development and development growth of future generations and given the great extent of their influence on present and future societies, we felt it was right to study modalities. As we saw in the previous chapter, the current Italian legislation is inspired

by a whole series of previous European experiences. In particular, it is very easy to understand the proximity of the Italian system to the French one.

2) The European Union Case

The obligation for administrations to hear individuals before adopting a decision is also foreseen in supranational legal systems such as the European Union, but in this case the consultation takes a different meaning from that typical of the domestic legal systems.

According to Sabino Cassese, this is because in supranational arena there is not a "civil society" in the proper sense: those ties that usually a representative legal system has with the community are absent or are affirmed with difficulty[64]. This implies significant consequences also with regard to administrative relations between the community (or individuals) and the supranational apparatuses. Even in supranational legal systems we find rules on the obligation to consult, but this obligation, rather than weighs directly on the supranational apparatus, it usually weighs on the national one or on the subjects operating in the national arena in a global function.

Among the principles on which the European administrative action is based, there are those who do not find an expressed acknowledgment in the Treaties: they do not have a constitutional framework, but its came from jurisprudential origins. These are the principles to which the Community judicature refers to draw on the common legal heritage of the legal systems of the Member States. Among them we find the contradictory principle whose origin, as we have already seen, concerns sanctions.

The principle of the right to be heard before the adoption of an unfavorable decision is very old, in fact it is in 1963 that the so-called Alvis case[65] dates back, through which the Court of Justice of the European Communities affirmed, for the first time, the principle of contradictory. It was an official of the European institutions affected by disciplinary sanctions. The Court stated that, on the basis of a principle of administrative law admitted in all the Member States of the the European Economic Community, the public administration, before adopting any disciplinary measures against its employees, must put them in position to defend themselves against the charges they have made. However, this principle found a limitation, since it concernes only the afflictive measures. In particular, the Community judicature has resorted to

[64] Cfr. S. Cassese, La partecipazione dei privati alle decisioni pubbliche. Saggio di diritto comparato, in Riv.trim.dir.pubbl., 1/2007, pp. 13 ss.
[65] CGCE, judgment 4 July 1963, in lawsuit C-32/62, Alvis c. Consiglio, in Raccolta 1963, p. I-49.

this principle in two areas, namely that of the public service and that of competition, where the public administration imposes sanctions against economic operators.

The contradictory principle arises and is applied with this limitation, but subsequently the Court has tried to overcome this scope of the application. In particular, he did so in 1974 with the Transocean Marine Paint Association case[66] in whose sentence clarified that the notification to the interested parties must contain all information regarding the decision to be taken towards them, in order to allow them to adopt the appropriate strategies in good defensive time.

In the present case, some private companies producing paints for ships had appealed against the Commission decision in which, by extending the exemption from a prohibition on a restrictive agreement, they imposed them to provide specific information on the their activities. According to the Commission, since the last grant of the exemption, the association had grown in size and importance, therefore the need of a more stringent regulation was growing up. The main challenge raised by the appellant companies referred to the fact that the applicants had not been granted any right to be heard before the decision was taken. In other words, they were not allowed to explain to the Commission the reasons why would have been extremely difficult to met such a request for information.

The judge satisfied the applicants, explaining, in paragraph 15 of the judgment, that "if the measures of the public authority significantly harm the interests of the recipients, the latter must be enabled to present their defense promptly. This rule implies that companies must be informed in good time of the essential points of the conditions they must comply with in order to obtain the exemption. On the other hand, this practice allows them to present any observations promptly. This principle is particularly observed when the conditions, as in this case, are rather burdensome towards the recipients.

This certainly is a case that has made jurisprudence because it opened a change: a new jurisprudential current according to which all the proceedings against a person must be inspired by this principle, even when there is no ad hoc procedural legislation.

It is a principle that has been strengthened over time and not only at the jurisprudential level, presenting a close connection with the principle recognized by the Charter of Fundamental Rights of the European Union under art. 41; in it is codified the right to a good administration, but understood in an always defensive way, or as an instrument that must guide all administrative proceedings aimed at ending a detrimental provision in the interests of its recipients.

[66] CGCE, judgment 23 october 1974, in lawsuit C-17/74, Transocean Marine Paint Asoociation c. Commissione, in Raccolta 1974, p. I-1063.

Until the years 2000, the participation of private individuals in administrative processes was always understood in a defensive way, so the purpose was always to protect the claim of the individuals in front of the administration; starting from the beginning of the new century, however, we take note of the fact that participation can also fulfill another function (beyond defense). In particular, the European legal system begins to provide, in certain sectors[67], another purpose of participation: to bring out, and therefore represent, the various interests at stake.

Participants are expected to participate beyond those procedures in which it was admitted until now (punctual measures, addressed to a single recipient, so-called adjudication) and there is an increase in participation in proceedings aimed at the adoption of legislative and general measures. Basically, participation becomes a tool to compose the various interests at stake.

For example, companies can tell them to participate in proceedings with a different purpose than in the past: not because they are undergoing a decision, but to express the interests of the category and to define the rules that will be applied to them. In the 2000s, also in the Community legal framework the rule-making model was inaugurated in the United States.

For procedures as the adoption of regulatory and general legislation there is no reference legislation, but there are sectoral disciplines such as Directive 2002/2 / EC on electronic communications, which requires Member States to give the possibility to present observations when regulatory acts are adopted within a fixed period. Equally important is Directive 2003/87 / EC, adopted on 25 October 2003 for the implementation of the Kyoto Protocol. It establishes a system for the exchange of greenhouse gas emission quotas in the European Community by providing a complex state procedure focusing on double consultation.

According to the Directive, each Member State must draw up a three-year (then five-year) plan to establish the total emissions that have to be allocated to the operator of each plant for that period, taking due account of public comments (Article 9.1). The Commission can accept or reject (in whole or in part) the plan that each State will notify you, after which the State will decide whether amendments proposed by the Commission accept, again "taking account of public comments"[68]. In addition, according to point 9 of Annex III, "the plan includes provisions concerning the observations that the public comments may submit and contains information on how the above comments will be taken into account before deciding on the allocation of allowances."

The General Court of the European Communities, Section I, had pronounced itself on the public participation foreseen in this directive on 23 November 2005. This was

[67] (2002/21/CE directive)
[68] Cfr. art. 11.1.

provided in Case T-178/05 by which the Court annulled the decision on the British plan of the Commission. The Commission claimed that the observations of the public, formulated during the second consultation, could only be used to modify the data and possibly allocate the quotas within the limit of the total quantity and not to increase that quantity. In the opinion of the Court of First Instance, the Commission's claim was unlawful because "the Member State is obliged, under Article 11.1, and point 9 of Annex III to Directive 2003/87, to take into account the comments after the initial notification of the plan and before the adoption of the final decision pursuant to art. 11.1 of the same directive. Such public consultation would be useless, and the observations of the public purely theoretical, if the changes to the plan that can be proposed after the expiry of the three-month deadline set by art. 9.3 of Directive 2003/87 or after a Commission decision taken under the same provision were only those which the Commission indicated."

Although consultation is provided in Community law, it is carried out by the national administration which operates in the Community. In the present case, however, the Commission intended to limit the scope of the second consultation, so the Court intended to encourage wider participation also during the second consultation. Even if this is carried out in the context of a national procedure, the European judge has followed a favorable approach to enlargement of the participation, which will take place on the basis of a common interest, codified by the Community legislation. Despite the limited availability of the Treaties to explicitly recognize specific rights to participate in European citizens, the Lisbon Treaty provided instruments of participatory democracy aimed precisely at encouraging citizen participation, through the "public exchange of opinions" (Article 11, paragraph 1, TEU), an 'open, transparent and regular dialogue' between representative institutions and associations and civil society (Article 11, paragraph 2, TEU), as well as through 'extensive consultations' of the interested parties by the European Commission (Article 11, paragraph 3, TEU).

Furthermore, as a tool for strengthening participatory democracy in the European Union, the Lisbon Treaty introduced the legislative initiative of European citizens; it is an institute governed in detail within the regulation n. 211/2011 adopted on February 16th 2011 and applicable from April 1st 2012.

This institution is set up as a legislative "pre-initiative" tool which does not prejudice the discretionary power of the Commission in assessing whether to translate the citizens' demands into a real proposal for an act that has to be presented to the European Parliament and the Council. In spite of this discretionality, however, the legislative initiative of EU citizens appears to be a mechanism capable of allowing private impact on the European decision-making process.

Contributing to strengthening the democratic participation of citizens in European affairs, art. 11, par. 4 of the TEU regulates the legislative initiative as a "semi-direct" instrument of democracy : "Union citizens, at least one million in number, that have

the citizenship of a significant number of Member States, can take the initiative to invite the European Commission, as part of its powers, presenting an appropriate proposal on subjects on which such citizens consider a Union legal act necessary for the implementation of the Treaties." Article. 11 allows citizens to present this proposal, which may be more or less detailed, to the Commission. Once the structure has been received, the Commission takes a position deciding whether to follow up on the citizens' proposal or not.

In reality, the art. 11 regulates only certain aspects, for example that about one million citizens of "various" Member States; for detailed regulations, we have to wait to the implementing regulation which was then adopted in 2011. The procedure is essentially divided into five phases.

Firstly, the promotion of the initiative must be a transnational promotion committee, made up of at least seven people from seven different States. The members must have reached the age necessary to acquire the right to vote in the European Parliament elections and have the task of presenting and registering the online proposal, providing information on the object and objectives of the initiative. Once the registration has been completed, within one year, at least one million signatures must be collected in at least a quarter of the Community countries and in each State a minimum threshold is set. Reached these thresholds, the Commission must publish the initiative on its web register and receive the organizers so that they can explain in detail the issues raised. Three months after the meeting between the promoters and the Commission, the latter issues an act stating whether it intends to adopt the proposal, or reject it with the motivations. The communication - to be notified to the organizers, to the European Parliament and to the Council- must contain the [69]"Legal and political conclusions concerning the citizens initiative, any action intended to be taken and its motivations". If the proposal is rejected, is ammitted the possibility of an hearing with the European Parliament, but is denied the possibility of appealing against the Commission's decision. Reaching these conditions may seem extremely difficult, but on the other hand the European legislator intended to prevent the European Union from being inundated with proposals produced by the most varied committees. Also for this reason, the art. 4, par. 2 of the regulation, provides the screening of the Commission: within two months of receiving the information from the promoters, the Commission proceeds to register the initiative, but only if it considers it appropriate. It is a filter through which the Commission assesses that the structure is admissible and compatible with European legislation.

In any case, the regulation of this institute leaves some questions and perplexities open. For example, among the subjects holding the power of legislative initiative, there is no mention of the citizens of third countries that have a close relationship with the Union,

[69] Cfr. art. 10

such as those who, for a substantial number of years, resides in one of the Member States. Furthermore, the role of the Court of Justice, in relation to the hypothesis in which the proposal is deemed, to be not part of the Commission's tasks does not seem entirely clear.

Tracing an initial assessment of the functioning of this institute, since it is such a recent regulation, is particularly difficult. In the first two years of the application of regulation no. 211/2011, the initiatives officially registered were numerous, but most of them were not able to obtain the sufficient number of signatures to be submitted to the examination of the Commission. However, the "Right2Water" project, registered on May 10, 2012, was the first legislative initiative of EU citizens that have reached the minimum number of signatures to be submitted to the Commission. The conclusions adopted by the Commission on the occasion of this first "test bed" could have the effect of "discouraging European citizens from using this instrument in the future, given that their requests were not, in this case, slavishly delivered to a proposal for a legislative act". Despite the obvious structural limitations of the legislative initiative of the citizens of the European Union, it is a tool provided by the Lisbon Treaty by strengthening the democratic participation of citizens. At least in theory, this mechanism should enable them to influence the decision-making process at European level and, consequently, the developments in the process of European integration. On the other hand, it is not possible to ignore that, at the moment, this institute has been able to determine a too weak incidence on forming European legislation. Especially when the proposed initiatives concern particularly sensitive subjects, such as the human right to water.

3) The French case

The realization of great works that have a direct impact on the environment and on the health of a local community requires the involvement of various entities - both human and non - and at the end, the trend and the result of an environmental controversy depends on the particular combination of all these elements[70].

Although decision-making power remains with the administration, that it has a duty to take decisions that are also legitimate, or accepted - and shared as far as possible - by

[70] Cfr. N. Magnani, Attori sociali e fattori materiali nei conflitti ambientali. Il caso dell'inceneritore di Trento, in L. Pellizzoni, Conflitti ambientali. Esperti, politica, istituzioni nelle controversie ecologiche, Il Mulino, 2011, pp. 60 ss.

the community of reference. With regard to the creation of large and highly impacting works, currently the regulations leaves small participatory (and decision-making) spaces in the hands of local authorities that are often simply heard, but the decision is referred to the central administration.

As a premise it must be said that the administration asks the participation of private individuals in the formation of this type of decision essentially for three reasons. The first is to get a better understanding of the facts and interests on which to base the decision. The second is to allow individuals to assert their rights from the preparatory stage. The third is to guarantee private individuals a certain involvement in the decision-making process.

The participation of private individuals has therefore a dual function, one horizontal and the other vertical: on one hand, puts itself at the service of the public administration helping it to make the decision, on the other, it allows the civil society to express their opinions and defend themselves from decisions that could be detrimental to his interests. In this way, the will of private individuals is at least heard in the process of collective decision: the state opens up to the citizen and makes it enter the process of public decision.

We can affirm that the participation of private individuals in public decisions makes it possible to establish a balance between the State and the citizen. However, it is a fairly precarious balance because, if participation is not guaranteed (or guaranteed in a minimal or artificial way), there is a risk of a democratic deficit; on the other hand, if the administration relies too heavily on citizen participation, there is the risk of falling hostage to stronger organized interests, weakening and losing effectiveness.

The construction of public works, especially large ones, tends to meet a double opposition: that of the residents involved and that of environmental groups. The first fear the invasion of "their" territory, the upheaval of their rhythms of life, the dangers to health, the loss of value of their homes. The regulatory framework of the participatory process, as has been done in France, can be particularly useful for ensuring the effectiveness of the process and stability of decisions. The different way in which citizens' participation in public decision-making is regulated reveals the place recognized to the private sector vis-à-vis the administration and, in a certain sense, the weight assigned to the three powers of the State: this is particularly evident in France. In the French system we find what Sabino Cassese, in his essay on comparative law, defined the "type of separation"[71]. The control of the participatory procedure remains the exclusive domain of the administration and is therefore subtracted from the courts. There is a clear separation of duties between the administration and the judges in France, which judges the decision only at the end of the procedure. The subtraction of the procedure for participation in judicial review reflects the fundamental

[71] S. Cassese, La partecipazione dei privati alle decisioni pubbliche, op. cit., p. 18.

characteristics of French law and falls within the typical French tendency to limit the judicial review as the participatory procedures are extended and perfected. In France, the private hearing phase is entrusted entirely to the administration, even if this task is carried out by an independent administrative authority; this means that the administration that listens to the private are released from the bureaucratic hierarchy and at the same time are subjected to a less penetrating control of the judge.

Given the centralism of the administration, typical of the French constitutional tradition, the participation of private individuals could only be configured according to the administration alone. Since the Revolution in fact, the French constitutional vision is dominated by the executive monolithism and by the fear that the judges can troubler the performance of administrative activity. This explains why - once democracy has been introduced into administration and guaranteed the independence of the person in charge of directing the trial and the impartiality of the trial itself - the exercise of democracy is subtracted from the control of the judge. And without judicial review, the effectiveness of participatory institutions risks being reduced. Therefore, the thesis put forward by Cassese is that the participation measures are "less an instrument of participatory democracy than a means of legitimizing public action of the administration".

3.1) Enquete Public

The French model is rather complex, but ensures a good degree of private participation in public decision-making processes. The oldest solution is the enquête publique (public inquiry), used since the early Nineteenth century with reference to the expropriation procedures, both in urban planning matters relating to land for agricultural use. The public inquiry is an instrument introduced for the first time in France by the law of 8 March 1810[72], in order to guarantee participation in the proceedings in which the inviolable and sacred right to private property was sacrificed.

With the law of 21 April 1810, concerning mines and quarries, a public inquiry is introduced prior to granting the concessions; with the Imperial Decree of 15 October 1810, concerning workshops and manufactures, a public inquiry is planned to collect information before the opening of the plants.

[72] J-L. Autin, Inchieste pubbliche e débat public nell'ordinamento francese, in Dir. gest. amb. , 2001, pp. 67 ss.; J. Caillosse, Enquête publique et protection de l'environment, in Revue Juridique de l'Environnement., 1986, pp. 151 ss.

In 1983 the decision was taken to bring order to the regulatory level: the arrangement of the discipline resulted in a new law with which it was intended to extend the procedure of participation, originally established for expropriation, to protect the environment.

Law 83-630 of 12 July 1983 on the democratization of public inquiries and environmental protection, the so-called loi Bouchardeau, has been widely criticized for introducing a deficit procedure. This procedure, in addition to being late - because it intervenes when the project of a work is already in an advanced stage - does not attribute sufficient powers to those who participate in it. For this reason, the discipline relating to the public inquiry has been revised through various reforms contained in the law 93-24 of 8 January 1993, so-called loi paysages, in the financial law 93-1352 of December 30, 1993, art. 109 and in decree 85-453, of 23 April 1985, implementing l. n. 85-630. Finally, the legislation was updated with the law 95-101 of 2 February 1995, which introduced a new participatory instrument, namely the public debate: with this legislation it was decided to precede the public inquiry procedure, only for large projects of interventions nfrastructures, from a wider consultation procedure called débat public.

The public inquiry was perfected with the public debate from the 2002-276 law of 27 February 2002: "Relative à la démocratie de proximité", with the aim of bringing citizens closer to the public administration, is a planned sub-procedure.

The public inquiry is preceded by a consultation phase concerning the deciding administration and the citizens, at the end of which the mayor presents a final report containing a proposal that has to be submitted to the municipal council for approval. If the idea contained in the final report of the mayor is approved by the City Council, it is made public to the citizens and the dossier containing the proposal becomes the object of the discussion.

After the approval by the Council, the actual inquiry procedure, opened by the mayor or the president of the établissement public, opens. The mayor, or the president of the établissement public, sends to the president of the territorially competent administrative court the request to designate a commission of inquiry in charge of leading the public inquiry phase. This is an administrative judge, a third party and a guarantor of impartiality in carrying out the procedure.

At the end of this procedure, the impartial body submits to the competent administration a final report containing the results of the public inquiry. However, this procedure has two significant limitations: firstly, it is a modality that only applies to the decision-making processes relating to the town planning; secondly, this procedure allows participation only in documentary form, even if the Commission of Inquiry may decide to convene a public meeting, if it deems it appropriate. With the emergence in civil society of numerous environmental conflicts and associative movements aimed

at protecting environmental values, the crisis in the public inquiry has intensified; in addition to intervening in the decision-making process with excessive delay, it was still a procedure to which a director was placed Commissioner too tied to the administration. It is sufficient to read the art. L. 123- 3 of the original version of the Code de l'environnement to have a clear perception of the limits that affected this institution, given that the participation of the public did not seem to be the main object of the procedure: enquête «a pour objet informs the public and de recueillir ses appréciations, suggestions et contre-proposition, [...] afin de permettre à l'autorité compétente de disposer de tous éléments nécessaires à son information '.

For this reason, the public inquiry procedure has undergone a new series of reforms: the art. 60 of the law 2004-1343 of December 9, 2004, loi de simplification du droit, has assigned to the Government the task of issuing a reordering with the aim of "regrouper les différentes procédures d'enquête publique et simplifier et harmoniser les règles: autoriser les recours à une procedures d'enquête unique ou conjointe en cas de pluralité de maîtres de l'ouvrage ou de réglamentations distinctes; coordonner les procédures d'enquête publique et de débat public". However, the pattern relating to the reordering prepared in 2006 has always remained outstanding due to the numerous criticisms. Meanwhile, in November 2005, the Ministries of Transport, Environment and Economy had drawn up a report on the simplification of public inquiries precisely in order to denounce the limits of the French procedure.

This is how the law 2009-967, dated August 3, 2009, saw the light of "de programmation relative à la mise en oeuvre du Grenelle de l'environnement", the so-called loi Grenelle 1; in particular the art. 52, in an attempt to overcome the cumbersome nature of the institution, had foreseen that the procedures of public inquiry were to be modified "afin de les simplifier, de regrouper, d'harmoniser leur règles et d'améliorer le dispositif de participation du public".

In the wake of Grenelle 1, the discipline was revised again in 2010 with the law 2010-788 of 12 July 2010, "portant engagement National pour l'environment", the so-called loi Grenelle 2. The most important news introduced by this legislation consists in leaving the deciding free authority to decide differently from the results of the public inquiry procedure, but in this case it has the obligation to motivate its choices. Furthermore the reform of the 2010 has foreseen that the public authority must justify the decision adopted not only in relation to the conclusions contained in the final report (if it departs): also the observations that are not contained in the dossier have to be taken into consideration and therefore, deviate from the findings of the public inquiry can be quite difficult.

Furthermore, by introducing the new art. L. 123-1 of the Code de l'environnement, the 2010 reform has redefined the objective of the public inquiry, namely that of"Assurer information et la participation du public ainsi que la prize en compte des inters des tiers lors de l'éclaboration de décisions susceptibles d'affecter l'environnement".

Consequently, the changes introduced by the 2010 reform, on the one hand, explicitly meant the public inquiry as an institution for private participation in public decisions and on the other hand, raised the comments that emerged during the public inquiry procedure - and not the mere conclusions of the commissioner or the commission of inquiry - a binding element for the exercise of decision-making power; in this way the French legal system has incorporated the content of art. 6, par. 8 of the Aarhus Convention. Thanks to the approval of Grenelle 2, the public inquiry procedure, that was previously relegated to the area of spatial planning, has been institutionalized in the environmental sector.

According to the French Environmental Code and in particular to art. L. 123-2 revised in 2010, before their authorization, approval and adoption, all projects of works and works proposed by public or private subjects susceptible of environmental impact, the planning tools of the project must be submitted to the public inquiry procedure territory subjected to environmental impact assessment pursuant to art. L. 122-4 - L. 122-11 of the Code de l'environnement and of the articles. L. 121-10 - L. 121-15 of the Code de l'urbanisme and projects for the establishment of national and regional parks and marine natural parks.

The conduct of the public inquiry, as amended in 2010, is governed by the Code de l'environnement: art. L. 123-3 distinguishes the procedure in four different phases, namely the start-up phase, the preliminary phase, the implementation phase of the investigation, in which the drafting and publication of the report takes place, and finally the phase following the investigation concerning the effects on the decision.

The investigation is called and organized by the competent body to adopt the decision for which the procedure was requested, ie by the President of the Etablissement public de cooperation intercomunale (public bodies composed of several local administrations whose decision-making body is composed of delegates chosen within the Municipal Councils of the participating Municipalities).

At each Department, a committee chaired by the President of the Administrative Court, or a counselor delegated by him, draws up the list of commissioners of inquiry, which is published and is subject to review at least annually. So every inquiry is conducted, according to the nature and importance of the intervention, by a commissioner or a commission.

Article. L. 123-5 of the Environmental Code provides that commissioners or members of the commission of inquiry can not be appointed those subjects who have interests of personal nature or because of their functions in relation to the project.

The minimum duration of the public inquiry consists of thirty days; the commissioner of inquiry can decide to extend the procedure for a maximum duration of thirty days opting for the recourse to the information and exchange commission with the public, but must motivate this provision.

At least fifteen days before the initiation of the public inquiry and during its investigation, the competent authority must inform the public of the subject matter, the manner, time and location of the investigation. The information must be guaranteed by all appropriate means, including the publication of notices in newspapers and the installation of posters in the places affected by the project and in electronic form; the costs related to the advertising of the investigation are borne by the person responsible for the project. The dossier of the investigation must contain the study of the environmental impact, documents required by the sector legislation, a non-technical summary and, if the project in question has been the subject of a public or concertation préalable, also a bilan[73] of these procedures. The public can access this dossier: according to the art. L. 123-11, of the Code de l'environnement, the dossier can be transmitted to anyone interested in it, at its expense. Furthermore, the public has the right to submit written and proposed observations in the appropriate registers or to send directly to the commissioner, from whom it can also be received at the hearing.

If he considers it appropriate, the commissioner, in the presence of the project manager, may convene a reunion of information et d'échange with the public in which participation prevails in oral form, although in general the still dominant mode is participation in the form written.

Within thirty days from the end of the public inquiry, the commissioner must deliver the final report containing the justified conclusions; if he is unable to deliver the report within the prescribed time frame, he can ask the competent authority for an extension granted and notified to the project manager. In the event of unjustified expiration of the deadlines, the competent authority will put the defaulting Commissioner in default and, in agreement with the project manager, ask the President of the Administrative Court to replace him with a deputy commissioner, who will be entrusted with the task of delivering, within thirty days of his appointment, the relationship with the motivated conclusions. Article. L. 123-17 states that if the work related to the project that has been the subject of a public inquiry is not started within five years of the decision, it is necessary to call a new investigation procedure.

Regarding the effects of the public inquiry on the final decision, we have already said that the deciding administration is not obliged to accept the findings of the rapport d'enquête, however the dialogic interaction developed between the parties during the procedure conditions the choices of public authority. To declare the public benefit of the work being investigated must be a central administration body: in particular, the declaration of public authority must be contained in a decree of the Prime Minister, after the opinion of the Conseil d'État, in case where the expropriation refers to the great works national interest, or, in cases where the commissioner has expressed himself against the project being examined, will be contained in a prefectural decree.

[73] Art. L. 123-12 as introduced by the Grenelle Law.

In summary, the French public inquiries are characterized by the following elements: the location in an already advanced stage of the procedure, in fact for the urban plans there is already a plan proposal and for the public works a project; the impartiality and independence of the subject in charge of the procedure; the predominantly documental form with which observations and proposals are presented; the high degree of publicity of the procedure; the wide participatory legitimacy; the preliminary nature of the investigation.

Lastly, it should be remembered that the participation of private individuals in proceedings of environmental interest has today found constitutional recognition. In fact, the constitutional law 205-2005, dated March 1, 2005, included the 2004 Charte de l'environnement, which in art. 7 provides for the right of each person, under the conditions and within the limits established by law, to participate in the preparation of public decisions that have an impact on the environment.

Having said this, however, it should be emphasized that for all participatory processes there is a real risk of being "tamed" or manipulated, since it is not always possible to ensure that those who manage them are in a condition of sufficient autonomy with respect to the promoters. However, an attempt was made to protect this need in the case of the débat public, given that in France an independent national commission for public debate was established with the task of establishing which cases to open. Once the procedure has been opened, the commission will appoint a commission particulière so that it takes its management in practice.

On the actual independence and impartiality of this commission, it is obviously possible to raise doubts, since its members are appointed by the government. However, we must take into consideration its varied composition: in fact, they are members of ministries, of entrepreneurship, but also of environmental associations. Furthermore, it is an institution separate from the Government and endowed with a specific mission, something that rarely happens in other participatory procedures.

3.2) Le Debat Public

A case of dialogue and preventive comparison on the opportunities to realize the work and on its main characteristics is the débat public, a procedure of participation introduced by the law 95-101, dated 2 February 1995, "relative au renforcement de la protection de l ' environnement, "said loi Barnier, later revised by the 2002-276 law of 27 February 2002," relative à la démocratie de proximité ", with which the institution of public debate is structured in a more organic and strengthened way.

The public debate originates from an environmental conflict born in the South of France in relation to the project for the construction of the high-speed railway line in

an area where important vineyards are located. The strong opposition that had been created had prompted the Minister of Transport to foresee, for only this case, the experimentation of a public debate in which promoters and residents could confront each other. On that occasion a solution was found and since the experiment had worked, it was decided to apply this model to all the impacting infrastructure projects.

Article. 2 of Law 95-101, where it establishes the Commission nationale du débat public (CNDP), it speaks of "participation" and "consultation of the public et des associations and amont des décisions d'aménagement". Article. 134 of the L. 2002-276 sets up the National Commission for the public debate as an independent administrative authority, entrusted with the task of organizing and managing the public debate, checking the respect of the principles of informing the public and its participation in the process of elaborating the projects of the public works.

The Commission consists of twenty-one members who remain in office for five years or for the duration of their mandate: one President and two Vice Presidents appointed by decree of the President of the Republic; a deputy and a senator appointed respectively by the President of the National Assembly and by the President of the Senate; six members elected locally "nommés par décret sur proposition des associations représentatives des élus concernés"[74] ; four senior magistrates, one of whom is a member of the Council of State, one of the Court of Cassation, one of the Court of Auditors, appointed by their respective assemblies and one member belonging to the Administrative Courts and administrative appeals courts, appointed by decree on the proposal of the Higher council of the latter; two representatives of environmental associations; two representatives of consumers and users; two qualified personalities. These last six members are appointed by Prime Minister's decree on the proposal of the Minister of the Environment, Economy and Transport, Industry and Infrastructure respectively.

As we can see, appointments of executive responsibility prevail, or in any case of the parliamentary majority; it is therefore a Commission named "from above", composed of representatives of central institutions rather than the self-organized society, despite the four representatives of environmental associationism (of governmental nomination).

The Commission decides whether to activate the débat public procedure: it "apprécie, pour chaque projet, si le débat public doit être organisé en fonction de l'intérêt national du projet, de son territorial incidence, des enjeux socioéconomiques qui s'y attachent et de ses impacts sur l'environnement ou l'aménagement du territoire". Furthermore, the CNDP can decide whether to continue the project until the public inquiry and to invite the project manager to start a consultation.

[74] L. 2002-276, art. 134

The current level of consultation is based on one of the criteria followed by the Commission[75]: "when the previous consultation has already allowed to resolve the question of the opportunity of the project, and therefore to define its characteristics, it is considered that the moment of public debate is now outdated; on the other hand, even an already advanced project can justify a public debate if the population concerned has not been sufficiently consulted ". The Commission has the task of making the necessary information available to the public, determining the modalities of participation, establishing whether the debate is taking place it must be done in front of a commission that it institutes itself or if it is to be organized by the so-called "maître d'ouvrage", or directly by the public body responsible for the work. Furthermore, it has the task of defining the timetable for implementation which, except for two months extension, can not exceed four months. Finally, the CNDP may request additional information.

With regard to the contents of the débat public, it should be clarified immediately that the reading of the rules clearly shows that it is a participation "in the elaboration" and not therefore "in the decisions". The public debate is nothing but a stage in the decision-making process, attributable to the process of drawing up a project: it is neither the place of decision nor of negotiation, but an opportunity for openness and dialogue during which the population can inquire and express themselves on the project, according to the rules established by the CNDP[76].

We are talking about a mechanism of consultation and dialogue: "participation is configured as a right to be heard, not as a right to build together and share choices. Is the difference thin? It could also be, it depends on the quality of listening and, in particular, on the objectives it proposes"[77]. The same Alessandra Algostino, author of the inciso, however, wants to clarify that does not intend to criticize an instrument of participatory democracy, as is the débat public, as lacking in decision-making power, because if this were not "difficult questions of connection would arise" with representative democracy and would risk attributing political choices to a minority, giving rise to an elitist connotation of participation, in violation of the principle of political equality and popular sovereignty ". It seems obvious to us, however, that among the aims of such participative tools are not just participation, confrontation and listening, but also the precise intent to reduce the use of coercion and soften conflicts, or even to prevent them by channeling dissent through these forms of listening and dialogue. Because territorial conflicts are essentially conflicts over possession and the use of scarce resources[78] (such as environmental, economic, spatial, etc.), to think of eliminating them definitively would be utopian on the one hand and harmful on the

[75] Y. Mansillon, L'esperienza del «débat puplic» in Francia, in Dem. e Dir., 3/2006, pp. 105-106.
[76] www.debatpublic.fr/notions_generales/information.html
[77] A. Algostino, Democrazia, rappresentanza, partecipazione, op. cit., p. 209
[78] M. Bartolomeo, Libro Bianco su Conflitti territoriali e Infrastrutture di Trasporto, 2009, www.trt.it/pubblicazioni.htm, p. 4

other. In fact, conflicts allow the emergence and enhancement of widespread knowledge that, if properly integrated when the work is still in the planning stage, can allow to improve its quality. As a consequence, legitimizing local actors as interlocutors could help to avoid those wall-to-wall situations that often lead to paralysis of the system.

Within two months of the closure of the débat, the President of the Commission makes a balance sheet and the procedure ends with the adoption of a final report that will be delivered to the deciding administration, which will have to take into account the observations presented: it can clearly deviate from it, but with the obligation to state motivations.

Since the completion of the public debate does not exclude the subsequent implementation of the public inquiry, the budget and the statement must be available to the commissioner responsible for the subsequent enquête publique. Within three months of the publication of the budget and the statement, the maître d'ouvrage or the public body responsible for the project must take the decision on the realization of the work and send the decision to the National Commission of the public debate. Article. L. 121-14 of the Code de l'environnement provides that, once the decision has become final, any irregularities relating to the public debate procedure can no longer be claimed. On this aspect, the Conseil d'État has assumed an extremely rigid attitude: in particular, it has not dared to depart from this position in two decisions, one in [79]2002/16 and one in [80]2004/17. The first was related to the project of construction of the a motorway, the second was related to the project to build an airport near Nantes. Both situations give rise to a débat public procedure: in the first case, a local association asks the commission particulière for additional documents, in the second case, two associations ask the CNDP to order an additional appraisal by suspending the procedure. Obtaining a refusal, in both cases, an appeal was lodged to the Conseil d'État, which ruled that such wastes can not be challenged: "ne sont pas recevables".

In the second of the aforementioned decisions, it is stated that 'les différentes décisions que la commission peut être appelée à to take après qu'elle a décidé d'ouvrir a débat public and here peuvent notamment porter sur ces modality, le calendrier et les conditions de son déroulement ne constituent pas des décisions faisant grief'[81]. On the contrary, the decision to activate or not the public debate procedure may be the subject of a judicial appeal. The decree of October 22, 2002 (codified in Article R. 121-2, Code de l'environnement) contains the lists of projects in relation to which the procedure of débat public is necessary, or limited to large projects of national interest. In 2010, however, with the changes made to art. 121-8 of the Code de l'environnement,

[79] 14 giugno 2002, n. 215154, Association pour garantir l'integrité rurale restante.
[80] 5 aprile 2004, n. 254775, Association citoyenne intercomunale des populations concernées par le projet d'aéroport de Notre-Dame-des-Landes, Union française contre les nuisances de aéronefs
[81] 28 december 2005, n. 267287 Decision

it is expected that the impacting projects, whose cost is lower than the thresholds set by the decree, be made public by the project manager, making the decision on opening (or not) known of the public debate procedure.

As you can well imagine, it is not possible to resort to such a long and costly procedure for each work, consequently the implementation decree of the law of 2002 distinguished two cases. The activation of the débat public procedure is mandatory (saisine obligatoire) when the economic value of the work exceeds a certain threshold, or three hundred million euros (obviously these are estimated costs). Below this threshold, the CNDP session is considered optional (saisine optional): the public debate can be raised by some subjects and legitimated to request their activation are the promoter of the work, or the project manager (maître d'ouvrage), or a group of ten parliamentarians, or one or more territorial communities involved and in particular a municipal council or a public intercommunal cooperation body with the competence of territorial planning and management, or the associations that work for the protection of the environment recognized at national level.

The invitation to open the débat public procedure must be submitted within two months from the day the project was made public by the promoter. The categories subject to the débat public procedure that the regulatory legislation refers to are motorways, waterways, railway lines, nuclear plants, airport infrastructures and runways, reservoir and hydroelectric dams, oil pipelines, gas pipelines, transfers of river basin waters, the construction of large industrial, cultural, sporting, scientific or tourist facilities.

The degree of openness of the process is a thorny element. In the public debate, the method of involvement is classic and not very sophisticated because it consists simply in the convening of assemblies open to all. In theory, everyone is recognized the possibility of intervening, without any discrimination: the selection criterion followed is that of the "open door" and access to the meetings is absolutely free. The debate takes place in contradictory through meetings in the territory during which any association, group or committee can present its observations and proposals. Based on the self-selection of the participants, however, the assembly method tends to produce an imbalance in the composition of the participants: the participation that we regularly find in these assemblies is certainly passionate and intense, but also one-sided since the positions opposed to the intervention object of the debate are absolutely dominant[82]. Furthermore, the comparison takes place mainly between "active" and "competent" citizens.

In any case, the degree of influence and incisiveness that the public debate has had on the final decision will have to be assessed on a case-by-case basis: it is obvious that much will depend on the structural capabilities that the proposing subject will have to

[82] Cfr. L. Bobbio, Dilemmi della democrazia partecipativa, op. cit., pp. 12 ss.

answer all the questions raised during the debate. However, a certain one doctrine stressed that the extent of this influence in the case of public debate is rather limited[83].

The same doctrine also underlines how the participation, so congenital, has a markedly advisory nature, besides not being immune to risks of manipulation by political power: although the director of the débat public has an independent administrative authority, the promotion of even in most cases it is still up to institutional actors. The problem arises when the goal is not the construction of a shared and participatory choice, but the suppression of dissent or the formation of consensus on a choice already made.

However, in spite of these critical issues and the evident perfectible character of the model, the public debate on large infrastructures represents "a radical break with the climate of complacent and arrogant authoritarianism which marks the design of great works in Italy ". In fact, Italian law does not provide for mandatory forms of consultation and direct dialogue with local communities[84].

Among the critical aspects of the Italian system for managing environmental conflicts, there is certainly a sort of "intrinseca aporia"[85]. The traditional centralist approach, which implies the involvement of the territory only after the adoption of the location choice, is grafted into a bureaucratic-administrative apparatus that, following the reform of Title V of our Constitution, has become markedly decentralized and that, in theory, would impose it participation of all levels of government in decisions regarding planning, location and implementation of infrastructure works. The result is that the local authorities, formally deprived of the processes of choice of location, find the way, also through the administrative powers that in other respects belong to them, to hinder the realization of the projects by placing obstacles to the subsequent bureaucratic and procedural steps.

In Italy it has been often tried to tackle the issue of environmental conflicts through regulatory simplification and the tightening of processes, but the lack of transparency in the methods of constructing public choices and the adoption of decisions in camera, between subjects who do not they are rarely found in positions of conflict of interest[86], has certainly not led to an improvement in the timing of design and implementation[87].

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[83] M. Zinzi, La democrazia partecipativa in Francia alla luce delle recenti riforme legislative, in Dir.pubb.comp.eur , 2014, pp. 822 ss.

[84] L. Bobbio, Le specificità del dibattito pubblico sulle grandi infrastrutture, in U. Allegretti, Democrazia partecipativa, op. cit., p. 297.

[85] R. Occhilupo, G. Palumbo, P. Sestito, Le scelte di localizzazione delle opere pubbliche: il fenomeno Nimby, op. cit., p. 29.

[86] M. Bartolomeo, La Governance incompleta delle infrastrutture lombarde: conflitti di interesse come causa di conflitti locali, in Belli, Territori regionali e infrastrutture. La possibile alleanza, Milano, Franco Angeli, 2008.

[87] M. Bartolomeo, Libro Bianco su Conflitti territoriali e Infrastrutture di Trasporto, op. cit.

What is needed, however, is to re-establish a climate of trust on infrastructure projects, but to strengthen confidence we must limit situations of conflict of interest and increase the transparency of decision-making processes, starting from the definition of plans and programs, until to get to the projects. In this sense, the prevention and recomposition of conflicts requires the inclusion in the decision-making process of all the actors involved, placing a profound attention to the balancing of the various interests at stake and of the various instances expressed.

Therefore, the diffusion of these participatory mechanisms, if carried out in compliance with procedural rules and citizens, can only benefit democracy, the environment and communities.

Among the growing techniques to produce more concrete effects through the collective construction of information materials approved by several actors, today there is the creation of "observatories", which mix social, institutional and academic actors with the task of constantly monitoring the processes. The aim is to guarantee the inhabitants a certainty about the control of each phase following the conclusion of the dialogue path.

Not surprisingly, the International Observatory of Participatory Democracies (OIDP), for some years, has been committed to creating methodological guides and to stimulating the establishment of local observatories to increase the positive relations of trust between institutions and citizens. Usually an observatory is born to loosen a political and social tension that has become intolerable, creating a more or less neutral field of technical confrontation. It is clear that the different parties intend to set up the observatory in a different way: there will be those who consider it the ideal place to give voice and credibility to the reasons of the "no", who will look at it with suspicion and perplexity, who will identify it as an instrument of comparison and mediation. But what surely will be, is a border space in which science and politics will tend to intertwine in search of a convergence on some alternative solution in order to reconcile the dispute. Moreover, "the Observatory is marked by a powerful ambivalence: on the one hand it constitutes the extreme ratio of the confrontation, without which one can only resort to force and the state of exception; on the other hand, it highlights the impossibility of renouncing the work, as far as one can claim the existence of a "zero option"[88]

[88] D. Padovan e M. Magnano, Genesi e ruolo dell'expertise nelle controversie ambientali. Il caso del Tav in Val di Susa, in L. Pellizzoni (a cura di), Conflitti ambientali, op. cit., p. 231.

4) The English Case: The "Public Inquiry" system

Inquiries are now a permanent fixture in public life. Since 1990, central and devolved governments have spent at least £638.9 million[89] on public inquiries and this figure is rising. There are currently eight public inquiries under way; the number peaked in late 2010 under the Coalition Government when there were 15 inquiries running concurrently. Inquiries have become the main vehicle for investigating some of the most tragic, complex and controversial issues in society: from one-off events such as the Grenfell Tower fire, to broader issues of serious public concern, as in the case of the Independent Inquiry into Child Sexual Abuse. At the same time, the use of other forms of investigation, including Royal Commissions and parliamentary commissions of inquiry, has declined.

It has been identified 68 public inquiries that have been active or established between 1990 and 2017. These cover a wide range of different issues. The main commonality between them is the existence of sufficient public concern to drive ministers to action. This disquiet usually revolves around allegations of institutional failure that are not addressed by parliamentary or judicial processes, although the exact nature of this failure is specific to each inquiry. Public inquiries are often treated as the 'gold standard' of investigations, reserved for the most serious of issues. This status creates high expectations of inquiries, both for those affected and for the wider public. The first expectation is that an inquiry will establish the facts. As the public reaction to inquiries such as the Bloody Sunday Inquiry has shown, the extent to which they are perceived to have uncovered the truth is critical to whether they succeed in restoring public confidence in the institutions of government. This process can also help families and victims to feel that their concerns have been heard. The second expectation is that an inquiry will establish who is to blame for the events that have occurred. Inquiries cannot determine criminal or civil liability[90], but they can –and often do – highlight where failings have occurred. But it is the third expectation that is arguably the most important: inquiries should also aim to change the systems that gave rise to the tragedies in the first place and to prevent recurrence. This objective – to be forward-looking, to improve government and public services, and to prevent the same mistakes from being made again – is the most important contribution that an inquiry can make to the wider public interest. Government has itself argued that this is the key purpose of an inquiry. Despite the gravity of the issues that inquiries address, the public expectation that rightly surrounds them, their cost and the frequency with which they

[89] Inflation-adjusted in 2017 terms

[90] www.scotsman.com/news/opinion/professor-hugh-pennington-inquiries-can-blame-but- they-re-not-courts-1-4512542

are used, there are few sources of guidance on how to structure, run and follow up on an inquiry effectively. The central issue of the lasting change that inquiries achieve has received scant attention. Many inquiries have delivered valuable legislative and institutional change – from more effective gun control[91] and CRB checks, to the establishment of institutions such as the Rail Accident Investigation Branch[92]. They can also drive cultural change; in some cases they have had a profound effect on behaviours and attitudes. The most remarkable example of this is the way the Macpherson report – which investigated the death of Stephen Lawrence – helped to establish the concept of 'institutional racism' within the public consciousness. But overall, the amount of change delivered as a result of inquiries is variable, and in some cases repeat incidents have occurred, which should have been avoided. There is no firm procedure for holding the Government to account for promises made in the aftermath of inquiries, and the Cabinet Office system intended to allow inquiries to learn from their predecessors is not being used.

In this report we look at how to change this. From the establishment of an inquiry to its aftermath, we examine how inquiries can best assure that they develop powerful, timely recommendations for change; and how government can be held to account for implementing them. Impact does not begin at the end of an inquiry, but at the start. When establishing an inquiry, a number of key decisions are made by the initiating minister. First of all, he has to establish if it is necessary the use of an inquiry or if he can use a different type of investigation and to establish what the intended purpose of the inquiry is. In a second moment, the minister has to decide who should be appointed to chair the inquiry, and whether they require the support of a panel or technical assessors. Finally it has to be set the term of reference, usually in consultation with the chair, and the timing of the inquiry.

Decisions on these critical questions are sometimes made hurriedly, in the face of significant public and political pressure.[93]But these decisions are central to an inquiry's effectiveness: they will have implications for its length, its costs and public expectations. Critically, they will augment or diminish the chances of achieving change on the basis of inquiry findings. Inquiries are not the only way to achieve change. Since 2000, there have never been fewer than three concurrent inquiries

[91] https://www.gov.uk/government/publications/ public-inquiry-into-the-shootings-at-dunblane-primary-school

[92] The Rail Accident Investigation Branch was established in the wake of the Southall Rail Accident and the Ladbroke Grove Rail Inquiries (1997–2000 and 1999–2001 respectively) and the Joint Inquiry into Train Protection Systems (1999–2001).

[93] The Hutton and Grenfell Inquiries were both established the day following the events in question. Similarly, the inquiry into the Dunblane massacre was established within eight days of the massacre; and in the case of Anthony Grainger, an inquest was convened two days after his death and a separate inquiry was ordered within two weeks of the event.

running in any month, and at the high point in 2010 there were as many as. The rise of the public inquiry has been accompanied by a long-term shift away from other forms of investigation, particularly as Royal Commissions have fallen into disuse[94]. During our research, we heard that inquiries have come to be seen as the 'gold standard' for an independent investigation into a major disaster, accident or other event involving significant damage or loss of life.

Convening an inquiry is understandably tempting. It offers ministers the means quickly to relieve political pressure in difficult circumstances[95] and the Inquiries Act 2005 provides ministers with the latitude to set them up under a broad set of circumstances[96]. So far, the decision to establish an inquiry under the Act has never been subject to a successful judicial review. But inquiries are not always the best method for examining a tragedy, disaster or scandal. In some cases, an inquest or other form of investigation might achieve the necessary goals more quickly and cheaply than an inquiry can do. The alternatives – inquests, independent panels and Royal Commissions – should be borne in mind by ministers before convening an inquiry. Inquests are legally mandated, coroner-led investigations into the unnatural death or death in custody of an individual or individuals to establish how, where and why they died[97]. They culminate in the coroner recording a conclusion about the causes of death. Inquests are not about apportioning blame: they establish what happened; the question of who should be held responsible remains a matter for criminal and civil courts. When the purpose of an investigation is to establish the causes of death, inquests usually represent a more cost-effective, faster and more streamlined approach than inquiries. The average length of time for an inquest to be processed was 18 weeks in 2016 and coroners are required to report any inquest that lasts longer than a year to the Chief Coroner, and subsequently report when the investigation is concluded. There are set procedures in place for gathering lessons: coroners publish recommendations based on their investigations via 'Reports to Prevent Future Deaths'. They have a statutory duty to make these recommendations wherever they identify a concern about the nature of a death. However, inquests have a narrower remit to operate than inquiries. They are limited in their ability to investigate beyond the immediate causes of the death and

[94] www.instituteforgovernment.org.uk/blog/role-public-inquiries

[95] 'Most inquiries are… "quick political fixes" in response to urgent pressures, like the Hutton report after the death of Dr David Kelly or the Leveson inquiry after the revelations about the hacking of Milly Dowler's phone.' See Riddell P (2016) 'The role of public inquiries', blog, Institute for Government, 26 July, retrieved 5 December 2017, www.instituteforgovernment.org.uk/blog/role-public-inquiries

[96] www.legislation.gov.uk/ukpga/2005/12/contents

[97] The right to life enshrined in Article 2 of the European Convention on Human Rights 1953 has been interpreted as placing a duty on nations to properly investigate a death that is either violent or unnatural, where the cause of death is unknown or where the death occurred in state custody or detention. See Chief Coroner (2013) The Chief Coroner's Guide to the Coroners and Justice Act 2009, Chief Coroner, p. 8.

have restrictions on handling sensitive materials or holding closed hearings. This was one of the reasons why the inquests into the deaths of Azelle Rodney, Alexander Litvinenko and Anthony Grainger were converted from inquests to statutory inquiries. If public concern extends to wider issues, or the changes needed to prevent recurrence require looking beyond the immediate death to broader systems and institutions, then public inquiries may still be the most appropriate option.

Another alternative is the emerging model of the independent panel. There have been independent panels on a range of issues, the best known of which is the Hillsborough Independent Panel. This was convened in the wake of an inquest, an inquiry and an independent non-statutory review, all of which failed to satisfy the expectations and concerns of the victims, their families and the wider public[98].Other independent panels have considered the riots that took place in towns and cities across England in August 2011 and concerns about the care provided at the Gosport War Memorial Hospital. Unlike an inquiry, panels usually do not hold oral hearings or have the power to compel testimony or the release of documents. Instead, their role focuses on gathering information by negotiating the disclosure of documents to contribute to the public understanding of the issue in hand. In the case of the Hillsborough tragedy, the Independent Panel was able to do this successfully, gathering information – from central government, local government, other public agencies and some private bodies- that related directly to events surrounding the tragedy and its aftermath. In total, some 450,000 pages of material were disclosed.9 Initially, the Panel made this information available to the Hillsborough families and affected parties before drafting a report setting out what it had learned and publishing most of the gathered material as a permanent archive. A similar approach is being used by the Gosport Independent Panel.When the Hillsborough Independent Panel reported in September 2012, it was credited by victims and their families as having finally got to the truth of the disaster. It led to apologies from the-then Prime Minister David Cameron, from the Sun newspaper and from the Chief Constable of South Yorkshire Police. As a process for achieving truth and some measure of closure, the Panel appears to have been effective. The panel format might be an appropriate alternative to an inquiry when the main goal is to establish an historical account of what happened, although the absence of legal powers to compel co-operation should be noted.

A Royal Commission is an ad-hoc advisory committee appointed by the Government (in the name of the Crown) for a specific investigatory and/or advisory purpose. During the past 200 years, they were most in vogue during the 19th century: some 388 commissions were established between 1830 and 1900 (more than five a year on average). Royal Commissions have fallen into disuse more recently in the UK, but are still used in Australia, Canada and New Zealand. The last Royal Commission

[98] Following the Hillsborough disaster in April 1989, there was a coroner's inquest (1989–91), an initial public inquiry (the Taylor Inquiry, 1989–90), a further independent investigation.

concluded in 2000, looking at House of Lords reform. Before that there had only been two other Royal Commissions since the 1970s.Although there have been successes – the Royal Commission on Criminal Procedure directly influenced legislation governing police powers in the Police and Criminal Evidence Act 1984 and the establishment of an independent Crown Prosecution Service in the Prosecution of Offences Act 1985 – the overall lack of influence that Royal Commissions appear to have wielded (and the time they take to report) is one of the reasons why they have been shelved in favour of other forms of inquiry. There is still a stalemate on House of Lords reform, for instance.

However, one of the participants in our research suggested that Royal Commissions might have an advantage over inquiries in matters of broader policy change. Inquiries tend to be rooted in specific incidents, which might not be the most appropriate basis for considering wider policy change because the circumstances do not always generalise well. For example, an inquiry into one specific fatal police shooting might not be the best way to investigate policy options for police use of weapons more broadly. In theory, Royal Commissions have the advantage of considering change beyond a single, potentially limiting incident. They are there to consider intractable policy challenges. For this reason, a Royal Commission or similar might be an appropriate vehicle to consider the wider issues of social housing policy highlighted by the circumstances of the Grenfell Tower fire.To be effective and deliver change, inquiries need a clear sense of purpose. The House of Lords Select Committee on the Inquiries Act 2005 has stated that the purpose of inquiries is to 'establish disputed facts, determine accountability, restore public confidence and prevent recurrence of events and taking forwards public policy'. Jason Beer QC adds establishing blame, providing catharsis and meeting human rights obligations to that list. But inquiries rarely address all these aims. Participants in our research suggested that, for instance, the inquiries into the murder of Rosemary Nelson, historical incidents of child abuse, and infections resulting from contaminated blood, were focused mainly on establishing the facts and providing some resolution to those directly affected. Other inquiries were tasked more explicitly with making recommendations for change, for example the Mid Staffordshire NHS Foundation Trust Inquiry, the Fingerprint Inquiry and the Shipman Inquiry.

The terms of reference for an inquiry usually offer the clearest exposition of its aims. Decisions on the wording of the terms of reference influence how the inquiry is run, how long it will take, how much it will cost and how it can effect change. As such, being clear and direct in the terms of reference about which of the many potential purposes of inquiries is being pursued is critical. This will ensure that the inquiry is run in a way that supports these aims and importantly will help to avoid disappointment or disillusionment at the end of an inquiry. Over time, inquiry terms of reference have been becoming longer. This shift reflects a growing focus on detailed and specific questions within terms of reference, instead of the vague instructions to 'investigate

such and such event' that had been common previously. The Saville Inquiry into the events of Bloody Sunday -which was roundly criticised for its length (12-and-a-half years) and costs (£191.5m) - had particularly loose and wide-ranging terms of reference, albeit focused on the events of one night. Modern terms of reference are also – where appropriate – better at setting out the need for recommendations as a core part of the inquiry. Since a series of high-profile inquiries failed to adequately involve victims and their families – perhaps most famously the first Bloody Sunday Inquiry – the communities directly affected by tragedies are now playing a larger role in developing the terms of reference. At the outset of the Grenfell Tower Inquiry, a public consultation was run on the draft terms of reference and a series of meetings took place with survivors and their families to take in their views. The idea of such consultation is to ensure that the expectations of different groups – including affected parties – are acknowledged from the outset, and to help build trust in the inquiry.

4.1) Running The Inquiry

Once the team has been assembled, the real work on an inquiry begins: gathering evidence, testing recommendations and producing reports. The way this work is structured, the use of specific expertise and capability, and the pace of reporting, all have a significant impact on the efficiency and effectiveness of an inquiry – and ultimately, whether or not it is able to produce a timely, powerful set of recommendations capable of driving change. Running an inquiry is a daunting process. Former chairs recall phones ringing in the dark, rushed decisions and starting from scratch on issues of national importance. During our research, past inquiry secretaries recounted walking the halls of Whitehall, seeking out fellow civil servants with experience of running a secretariat; or sitting in the gallery of an ongoing inquiry, hoping to learn through observation. There is no well-established guidance for the process of running an inquiry, gathering evidence and producing reports. Instead, the form of an inquiry is largely dictated by the chair with support from the secretariat. But all inquiries face common decisions, which will affect their ability to create the momentum for change. The approach taken to time management, how the inquiry is structured, the pace and scope of its outputs, and its use of recommendations, will all contribute to the outcome of an inquiry. What little guidance on inquiries that does exist almost exclusively pertains to the earliest stages of inquiries. There is little written in accessible forms to guide how inquiries could be run. In the guidance available from the Cabinet Office, writing a 'lessons learned' paper is the responsibility of the inquiry secretary. This paper is intended to focus on the process of the inquiry and what has been learned, with the intention of informing future inquiries. However, when the House of Lords Select Committee on the Inquiries Act 2005 tried to find copies of these reports, it was 'astonished to be told that the Cabinet

Office held only one, for the Baha Mousa Inquiry'. The Bernard Lodge Inquiry included comments that amounted to a set of lessons in the text of its main report, under the heading 'Lessons about inquiry procedure'. But in general, this material is extremely hard to locate, if it exists at all. The lack of guidance creates inefficiencies in the process of setting up an inquiry, and means that secretariats are not always able to access the full range of good practice. Instead, they are heavily dependent on individual experience and informal networks for advice. Due to staff turnover, finding this cannot be guaranteed. Secretaries to inquiries – who are usually experienced senior civil servants – have sometimes played this role more than once and so know the ropes[99]. But this is far from always the case and, as the House of Lords Select Committee on the Inquiries Act 2005 has pointed out, it is precisely those experienced secretaries who have emphasised how valuable it would be to have full and detailed guidance on setting up and running an inquiry. Inquiries are slow-moving beasts even when run well. Since 1990, they have taken an average of two-and-a-half years to report and nine have taken five years or more to produce their final reports[100]. As Mr Justice Scott Baker observed, 'the plain fact is that inquiries held in public do tend to develop a life of their own, however efficiently or carefully they are managed'. This is expensive. And it delays closure and catharsis for the victims involved. But the greatest risk, as was famously the case with the Chilcot Inquiry, is that by the time they conclude, they are too late to be useful and practice has already moved on. This danger is heightened when the nature of an inquiry is historical. The Bristol Royal Infirmary Inquiry, which reported in 2002, was examining events that took place as far back as the 1980s and early 1990s. The current Independent Inquiry into Child Sexual Abuse is looking back over many decades. One way to mitigate the risk of anachronism is to run more efficient inquiries. It might be possible to incentivise shorter timeframes through a compulsion for chairs to report to government when they run beyond a certain deadline (this is the model used by inquests). However, assuming that sometimes the only way to get to the truth is by working through all the historical evidence step by step, there are other opportunities to ensure that change is effected in a timely fashion, as we explore below. One of the most common reasons for delays is concurrent investigations by the police. The existence of these, and the criminal and civil trials that may follow, will always complicate and slow the progress of any inquiry. Lord Leveson attempted to manage this complication by splitting his inquiry into the British press into two parts – a practice that has been used by various inquiries

[99] At least seven secretaries have been appointed with prior experience of being an inquiry secretary. In the case of Lee Hughes CBE, he served as secretary to at least four inquiries (Hutton, Baha Mousa, Al-Sweady and Litvinenko).

[100] These are the Mirror Group Newspapers plc Inquiry (1992–2001), the Saville Inquiry (1998–2010), the FV Gaul Inquiry (1999–2004), the Rosemary Nelson Inquiry (2004–11), the Penrose Inquiry (2008–15), the Vale of Leven Inquiry (2009–14), the Al-Sweady Inquiry (2009–14), the Chilcot Inquiry (2009–16) and the Robert Hamill Inquiry, which was initiated in 2004, published an interim report in 2011, but has had its final report embargoed indefinitely while criminal proceedings are conducted.

since the 1980s. This part delivered a report in 16 months, only four months later than originally proposed. The second part was intended to resume 'follow[ing] the conclusion of any criminal prosecutions'. However, it was never initiated, for reasons including the length and complexity of the criminal proceedings and changing political sentiment. The Conservative Party since committed to dropping the second part of the inquiry as part of its 2017 general election manifesto, explicitly citing the lengthy criminal proceedings. The Detainee Inquiry faced similar challenges, with fresh police investigations leading to the inquiry being wound up early :'the problem we had in the Detainee inquiry. As long as the police are investigating something, you cannot tackle that and people cannot give you evidence for perfectly good reasons of justice'. Some inquiries go as far as they can and then wait for the conclusion of criminal proceedings before publishing. For example, the Robert Hamill Inquiry's final report is still awaiting publication as legal proceedings are ongoing. Most recently, the Grenfell Tower Inquiry has announced that its interim report – due by Easter 2018 – will be delayed because of the ongoing police investigation and the danger of compromising prosecutions. Given the difficulty of running an inquiry alongside police and criminal proceedings, consideration should be given to beginning inquiries once police and legal proceedings have been completed.

4.2) After The Inquiry

Since 1990, the UK Government and the devolved administrations have received 60 inquiry reports[101], which feature 2,625 recommendations for change. The Mid Staffordshire NHS Foundation Trust Inquiry alone produced 290 recommendations. But these are merely suggestions for change; implementation is usually the responsibility of the central or devolved governments. This includes ensuring that recommendations directed at private entities, such as particular industries or service providers, are implemented. Typically, the Secretary of State for the relevant department – or sometimes the Prime Minister – will provide an immediate response to an inquiry report, setting out how government plans to take the recommendations forward. For instance, David Cameron responded to both the Leveson report and the Chilcot report on the days they were published. In some cases, government goes further and also provides a comprehensive response to inquiry reports, setting out its reasons for accepting or rejecting recommendations. This happened in the cases of the Mid Staffordshire NHS Foundation Trust Inquiry and the Harris Review into self-inflicted deaths in custody. This should happen for every inquiry. Beyond this initial response, there is little firm procedure for holding government to account for any

[101] In total, 68 inquiries have been established since 1990. This figure excludes the eight ongoing inquiries.

promises made in the aftermath of inquiries. The Inquiries Act 2005 does not make any provision for the implementation of inquiry recommendations and recommendations are non-binding. As one law firm has put it: 'Other than facing potential public criticism, there is no recourse if Government fail to implement recommendations or fail to explain their reasons for non-implementation. 'Follow-up does happen – but it is ad hoc. The conclusions and recommendations of the Mid Staffordshire NHS Foundation Trust Inquiry received significant, high-quality scrutiny: the Health Select Committee ran an in-depth analysis of the Government's response. This included oral evidence from the chair of the inquiry, Sir Robert Francis QC; the chair, medical director and director of nursing of the NHS; and the Secretary of State for Health. Other select committees have undertaken similar scrutiny. These include the Public Administration and Constitutional Affairs Committee's examination of the Government's response to the recommendations of the Chilcot Inquiry and the Home Affairs Select Committee's 10-year retrospective on the implementation of the Macpherson report on the death of Stephen Lawrence, and its legacy. But overall, the number of inquiries that have received some form of follow-up is disappointing Of the 68 inquiries that have taken place since 1990, only six have received a full follow-up by a select committee to ensure that government has acted[102]. But there is no established expectation of or routine procedure for this type of scrutiny. Perhaps partly as a result of this, some inquiries, like the Leveson Inquiry, see their recommendations quietly shelved. Others see their recommendations implemented, only to be undone as political attitudes shift. This was the case with the National Safeguarding Delivery Unit, the headline recommendation of Lord Laming's report following the inquiry into the death of Baby P. Established in July 2009, it was disbanded in June 2010 following a change of government. Most commonly, inquiries see a mixed response: some recommendations are adopted, some are rejected and others are partially implemented. The Shipman Inquiry is a clear example of this. There might be good reasons for failing to adopt some recommendations, but a failure to implement must be picked up and government must be called up to explain its decision making. Given the seriousness of the subjects being addressed by inquiries and the huge sums of public money invested in them[103], the inadequacy of monitoring and accountability mechanisms in the aftermath of inquiries is striking and a cause for concern. Much of the most important work of inquiries is only just beginning when an inquiry report is published. But for an inquiry team – the chair, the secretariat and often an expert panel – their work is over. By law, once the chair has informed the sponsoring minister that the terms of reference have been fulfilled, the inquiry ends. Some participants in our research suggested that this 'hard line' between the inquiry

[102] The Scott Inquiry (1992–1996), the Stephen Lawrence Inquiry (1997–1999), the Victoria Climbié Inquiry (2001–2003), the Chilcot Inquiry (2009–2016), the Mid Staffordshire NHS Foundation Trust Inquiry (2010–2013) and the Leveson Inquiry (2011–2012).

[103] Since 1990, central and devolved governments have spent at least £638.9m (2017 inflation-adjusted value) on public inquiries.

and the aftermath was an important feature of the process: the baton is handed from the inquiry to the ministers who must choose whether and how to implement the changes it has recommended. However, some inquiry teams choose to stay involved even after they have reported. Perhaps most famously, Lord Bichard decided – largely of his own volition – to revisit his Soham Inquiry six months after reporting, to investigate the state of implementation. Other chairs – such as Sir Robert Francis QC, Dame Janet Smith, Baron Laming and Sir Desmond Fennell QC – also maintained an active interest in their work after the formal conclusion of their inquiries. Inquiry chairs are uniquely powerful advocates in this regard. Not only do they have an unparalleled knowledge of the topic of the inquiry, they are also the lone arbiters of the moral authority vested in the inquiry by the public concern that drove its initial inception. This grants them a strong voice in the months and years following the inquiry. In other cases, chairs have adjourned their inquiries, rather than completing the terms of reference, enabling them to have an ongoing, authoritative voice on the implementation of recommendations. Some chairs have specifically looked at the question of implementation in an attempt to prevent political backsliding. Robert Francis recommended that organisations to whom the recommendations of the Mid Staffordshire NHS Foundation Trust Inquiry were relevant should indicate to what extent they intended to implement the recommendations and publish annual progress reports. Robert Francis also invited the Health Select Committee to review whether implementation was happening. A report looking at this question was published in 2013.The Department of Health also initiated an independent review into the culture of reporting within the NHS; this followed on from some of the recommendations made by the Mid Staffordshire Inquiry and was also chaired by Robert Francis. This kind of activity is to be welcomed – all avenues for promoting change should be exploited. However, on balance it is unrealistic to argue for any formal change in the role of the chair to encompass follow-up. Chairs – particularly judicial chairs – are unlikely to have the time to do regular follow-up on the progress of change.

Additionally, the skills needed to scrutinise policy change are not always similar to those required for running an inquiry. But most importantly, ‘one has to allow some clear water between the outcome of the inquiry and the possible implementation of its recommendations’. The responsibility for making change on the back of an inquiry rests with the Government. It must decide what to implement and what not to implement, and it must be held accountable for these decisions. It is to this requirement that we turn next. Who is holding government There are few mechanisms for holding government to account for what it does with the outputs of inquiries beyond an initial response statement. In some cases, select committees have followed up on inquiries to attend to the state of recommendations. But often, government receives little formal scrutiny beyond this and is not regularly held to account in the years after an inquiry during which implementation is – in theory – taking place. This is despite the seriousness of the issues that inquiries address – major child protection failures, serious

transport disasters, significant health care failures and institutional abuse – and the hundreds of millions of pounds of public money spent on inquiries. Government should not be obliged to implement all inquiry recommendations. In some instances, it will have understandable grounds for objection or concern. In the case of the Shipman Inquiry, some recommendations regarding the prescription of opiates were deemed too severe and in practice would have excessively limited access to pain relief for patients in need. However, even in cases where government decides not to implement change, a process of government being called to explain its decisions is appropriate – not least so that members of the public who have been directly involved in an inquiry understand why change has not been taken forward. As advocacy group Liberty has put it, those responsible for implementation should be 'effectively tested and questioned and asked to explain why they have or have not implemented certain recommendations'. During our research we heard repeated, powerful arguments for an enhanced role for select committees in undertaking this scrutiny of government. Their routine involvement would provide an opportunity to monitor the state of the implementation of recommendations. Where implementation has not happened, rather than forcing government to adopt inquiry recommendations it might rightly deem unsuitable, select committees could ensure that ministers provide reasons for a departure from the findings they had invested significant public resources to reach. At the very least, such a process would support greater accountability and deliberation beyond the lifespan of an inquiry.There are a number of ways in which select committees could perform this function. One option would be to place additional responsibilities on the chair of an inquiry for instance mandating them to write to the clerk of a select committee to request scrutiny activities in instances where they were concerned about the likelihood of implementation. This would have the benefit of reducing the burden on select committees by limiting their involvement to instances where there was cause for concern. However, given the earlier points made about the likelihood of the continued involvement of a chair, this process would be unlikely to create the routine monitoring, accountability and debate required. An alternative option would involve the House of Lords, which has some precedent for creating ad-hoc committees to look at specific issues in more detail. However, again, this would not create a permanent, standing process for accountability or pressure for change. This brings us to the work of House of Commons select committees. It is here that there is most potential for action. There is already precedent for departmental select committees following up on the aftermath of inquiries. But rather than this occurring on an ad-hoc basis, it should be a core part of select committee work. Currently the work of select committees is defined by 10 advisory 'core tasks'. We suggest adding an 11th task: scrutinising the implementation of inquiry findings. Given the number of inquiries that government pursues, the burden of running regular sessions on every inquiry might be overwhelming. Therefore, government departments responsible for implementing inquiry recommendations should update the relevant department select committee on progress. In instances where the information provided is unsatisfactory,

select committees should move to hold full hearings. Updates should be required for at least five years after inquiries have reported, or until the committee is satisfied that recommendations have been implemented or sound reasons have been provided for deciding not to implement them. Where recommendations cover the work of multiple departments and public bodies, it would not be unusual for one committee to put questions out to institutions under the oversight of another committee, either with the permission of the other committee chair, or as part of a joint effort. We are aware that this is not the first report to make recommendations about the need for additional scrutiny from select committees. But so far, insufficient action has been taken. Given the frequency, significance and cost of public inquiries, there is no good reason for the absence of formal accountability mechanisms. Ministers should account for what they do with the results of inquiries. For inquiries that are there to bring about change, a proper means of ensuring accountability could monitor whether this change had been achieved and might provide an additional incentive for government to act. For inquiries that have as their primary goal the restoration of public trust, transparently setting out what has been achieved can only support this.

5) Consensus Conferences

Consensus Conferences (CC) have been designed and implemented since the mid-1980s by the Danish Board of Technology, an advisory body of the Danish Minister for Science, Innovation and Higher Education. Over the years, the c.d. Danish model of CC has inspired similar experiences of deliberative democracy, such as Publiforums and juries of citizens in other European countries (Holland, Switzerland, France, United Kingdom and Norway) and non-European countries (Canada, Australia, Japan, Korea, Israel). The CC are conferences that involve a group of 10-30 citizens in order to gather opinions and positions on new or controversial issues, also for their ethical aspects, in the technological and scientific field[104]. Through moments of dialogue with selected experts, the group of citizens discusses the topic on the agenda. At the end of the meetings, the group of citizens reaches a c.d. consensus or common position drawn up in a final document that is made public and is addressed to decision-makers[105]. During CC, participants enter into dialogue and together evaluate the possible use of a given technology, indicating preferences on its use or possible development. In order for them to be involved in a CC, the participants must not have acquired specific knowledge or previous involvement regarding the subject matter of the CC. Through

[104] Mayer I., Geurts J., Consensus Conferences as Participatory Policy Analysis: A Methodological Contribution to the Social Management of Technology, 1996

[105] Einsiedel E.F., Jelsoe E., Breck T., Publics at the technology table: The consensus conference in Denmark, Canada, and Australia, 2001

the CC, participants can in fact highlight and express their opinion on aspects of the technology under discussion that experts, politicians or stakeholders may have underestimated.

The premise on which the CC method is based is that the evaluation (both ex ante and ex post) of the scientific and technological choices can not be confined to the workers world or to the policy-makers. The purpose of the CC is to know the orientation of the group of citizens once they have obtained clear and comprehensive information necessary for the evaluation of a given technology. The CC does not involve a transfer of decision-making authority to the participants: the public is involved in 'polling' proposals and to take opinions, not to define the choices. In the CC, the choice of the theme is reserved for the organizers. Some topics on which CC have been held in other countries are: genetic therapy; the future of fishing; teleworking; the use of GMOs; the use of biotechnology; electronic surveillance; infertility; transplant medicine. There are multiple actors[106] involved in the preparation and implementation of a CC. First subject we have to speak about it is the Project Management. It consists of a project manager, a secretary and an information project manager. The project manager is responsible for the design and construction of the CC and acts as the coordinator of the various actors involved. The information project manager has the task of managing the communication strategy of the CC and acting as a press office. After, it gained great importance the Coordination group. It consists of 4-6 members supervised by project management in planning and conducting the CC. The coordination group makes strategic decisions regarding the implementation of the project. The group must be representative of the interests and the different positions on the topic. Depending on the subject matter of the CC, the group may include representatives of the political world, scientists, industry and non-profit organizations. The latter sit in a personal capacity and, in the exercise of their function, do not represent the position of the reference organization. The group has the task of approving or suggesting changes to the information brochure intended for group of citizens; approve or suggest changes to the composition of the group of citizens; to contribute to the selection and approval of the list of experts; approve or suggest changes to the CC program. The group of citizens instead consists of a minimum of 10 to a maximum of 30 members (generally the participants are 12/15). The group participates in all the phases of the CC: two preparatory weekends and 4 days of the CC. The group meets in order to define the conference agenda; prepare the questions to ask the experts; discuss and deepen the subject matter of the CC; draw up the final document of the CC. The composition of the group of citizens must be heterogeneous in terms of age, sex, professional status and geographical origin. Therefore, there are two particular subjects involved into the Consensus Conferences. First, the importance of the role of a journalist. He is an expert in the subject matter of the CC. It has the task of preparing information materials on

[106] J.Grundhal, The Danish consensus conference model, 1995

the topic of CC. Draw up an informative brochure of no more than 40 pages which will be the starting text for the work of the group of citizens. The informative text gives an account of the subject matter of the CC; it should include the plurality of existing positions on the topic, the possible problems and development prospects on the topic.Second, the role of a facilitator. He is an expert in facilitating decision-making processes. He presides over the meetings during the preparatory weekends and the CC to moderate and facilitate the discussion. Provides support to the group of citizens in drafting the final document.

The group of experts / support group consists of 12 to 15 members, experts (figures of proven professional experience exercised at a high level in the relevant field) of the subject matter of the CC. In carrying out its activity, each expert participates and does not represent any group of interest. Each expert is called to elaborate and present during the CC a presentation on the subject matter of the CC in a simple way (accessible to those who do not have specific skills on the subject) and effective; answer the questions of the citizens' group during the CC; suggest revisions to correct any inaccuracies contained in the final document prepared by citizens. Finally, on the two preparatory weekends, there are meetings of the group of citizens, who meet in plenary session and / or in small groups, in order to identify the issues and formulate the questions related to the subject matter of the CC. During the first weekend, the participants have the opportunity to make mutual acquaintances and to proceed to the discussion of the informative materials (information brochure) of the CC. They draw up a provisional list of questions that emerged during the discussion in order to deepen the subject matter of the CC and identify the categories of experts who could provide them with the answers. During the second weekend, participants continue the discussion and draw up the final list of questions and experts. Participants may request the involvement of experts not included in the list provided to them by the project manager, who will probe their willingness to get involved.

5.1) The Real Consensus Conference

It develops over 4 consecutive days, normally from Friday to Monday. It is open to the media, to the policy-makers and to all those who may be interested (stakeholders and citizens).

On the first day, the experts present their presentations and respond to questions asked by citizens. Each expert has at his disposal 15 to 30 minutes. If there is sufficient time, the experts will answer any questions asked by the public. The presentations are also delivered in written form so that they can be used by the group of citizens during the following days.

In the first part of the second day, the group of citizens formulates the questions to ask the experts who have the opportunity to clarify their presentations. In the second part of the day the discussion inside the group of citizens begins for the drafting of the final document. Instead, the third day dedicated to deliberation and happens internal discussion within the group of citizens for the drafting of the final document. The work of the group continues until a minimum level of consensus has been reached; the final document includes the points of agreement and those of disagreement. The group of citizens maintains full control over the contents set out in the final document and can be helped in drafting the text both by the moderator and by a secretary.

On the fourth, and last, day there is the presentation of the final document of the group of citizens to the participants of the conference. The experts can thus intervene in order to correct any errors in the document, not to comment on it and all CC participants can comment the document and ask questions to the group of citizens. The conference ends with a debate open to all participants: the group of citizens, experts, decision-makers, the public and the press. At the end of the conference, a report is published that includes all the materials of the CC: the questions of the group of citizens to the experts, their answers and the final document drawn up by the group of citizens. The report, whose release can be announced through a press conference, is sent to policy makers and to all CC participants.

The organization of a CC varies from a minimum of 7 months to a maximum of one year, depending on the number of actors involved. The timing below refers to a "standard CC" described above. In the first part of the planning phase (lasting about one month) it is first necessary to provide for the constitution of the working group and for the preparation of procedures for the recruitment of human and material resources necessary for the realization of the CC; in particular, selection of the project manager, the secretary, the information manager, the expert journalist, the facilitator; selection of the company that provides the database for the recruitment of the group of citizens.

In the second part of the planning phase (lasting about three months) all the activities necessary for the realization of the CC are completed. In the list of the most important activities it can be found the drafting of the budget (project manager) and its approval (coordination group), the drafting of the detailed work plan (project manager) and its approval (coordination group), the mapping of stakeholders for the creation of the group of experts and creation of a list that reflects the criteria of multidisciplinarity and plurality of positions taken on the theme of the CC (project manager); its approval

by the coordination group, the drafting of the information brochure (expert journalist in the field) in coordination with the project manger and its approval by the coordination group and at least the establishment of the group of citizens (project manager). The group recruiting process takes place in two phases. In the first phase the objective is to obtain a sufficient number of citizens available to participate in the CC. This is done by sending a letter of invitation and the information brochure to a large number of citizens randomly selected from the residents of the territory of reference (the return is normally 1 in 100)[107]. In the second phase the project manager sifts the answers to the invitation and selects the participants. The profiles of the potential members of the group are selected so as to guarantee the heterogeneity of the group's composition (gender, age, geographical origin, socio-economic status). It should be noted that the involvement of a sufficient number of citizens is an essential activity for the success of the CC, but at the same time it is a complex and time-consuming activity. Infact, the project manager takes care of constant contacts with all the actors involved in the implementation of the CC (group of citizens, group of experts, press, coordination group). Moveover, project manager takes care of the contractualization of resources and suppliers (project manager) and of the creation and constant updating of the website dedicated to the CC (project manager and information manager).

The presentation of the results follows the conclusion of the CC by a few days. Normally the organizers of the CC convene a press conference where, in the presence of the coordination group, citizens are given reading of the final document of the CC. The coordination group can undertake any corrective measures necessary for the improvement of the format for the implementation of future CCs. Within two weeks from the end of the CC, the project manager draws up a detailed report on the progress of the entire project; the report includes the collection of quantitative data and the results of the evaluation questionnaire submitted to citizens who took part in the CC. This questionnaire is submitted to the CC term and elaborated by the project manager and the facilitator in coordination with the coordination group. The coordination group decides whether to publish / publish the report.

6) Comparison among systems

Among the innovative and qualifying elements of the new Procurement Code, the art. 221, entitled "Transparency in the participation of stakeholders and public debate", prepared in implementation of the provisions contained in the letters ppp) 2 and qqq) 3 of the law delegated n.11 / 2016. Article 22 introduces the so-called "Dèbat Public"

[107] A.Colombo/R.Cucca, Innovare la democrazia. Teorie ed esperienze di deliberazione pubblica, 2011

(procedure already adopted in France for more than twenty years), which allows citizens to inform themselves and to express their point of view on the process and the feasibility of large infrastructural works and architecture of social relevance, impacting the environment, cities and land use. The first is identifiable with the reduction of the litigation: it is evident, in fact, that the public debate should allow the adoption of shared and participatory choices, defusing the presentation of appeals during the phase of approval of the projects. The second benefit is a corollary of the former, as the reduction in the litigation allows the reduction of costs and especially of the time required to carry out the works.

It therefore seems appropriate to highlight the closest aspects of the Italian system with the French one and above all to understand the peculiar differences. The first paragraph of the art.22 defines the subjective and objective scope of application of the law, ruling - it has already been said in a general manner, however, who are the proponents and for which works it is mandatory to proceed to public debate. Firstly, reference is made to the notion of "contracting authorities and contracting entities". Article. 35 of Legislative Decree no. 50/2016 provides a definition of the aforementioned categories, but there are also other subjects, such as individuals required to comply with the code, or in any case subjects not technically falling within the concept of "contracting authorities and contracting entities" that could carry out works such as those described in the first paragraph of art. 22, but which would not be subject to the procedure of public debate precisely in relation to the non-coincidence with the subjective sphere. In France, for example, but also in the L.R Toscana n.46 / 2013, what matters is the objective scope, that is, the nature and characteristics of the work and not those who make them. Another unclear aspect concerns the distinction between projects for which the start of the procedure will be mandatory and those for which it will be optional.

The second paragraph of the art. 22 refers, in fact, to a future decree the identification, within the works described in the first paragraph, of the interventions distinguished by type and size thresholds, for which the public debate will be mandatory, without specifying, as it happens, instead, in French model, which will be discussed below, if there is also an optional public debate and what will be the obligations (obviously "lightened") that will have to be respected (for example only the publication provided for in the first paragraph of Article 22?).

Again with regard to the objective sphere, it is also necessary to point out a possible contradiction between the first paragraph, for which the public debate seems to concern all the works having the described characteristics6, and the second paragraph, which seems to establish instead that a Prime Ministerial The scope of the works having the characteristics and purposes set forth in paragraph 1 may then introduce distinctions, limiting the application of the public debate only to some of them in relation to the type and dimensional thresholds. Consequently, obligations are

established for the implementation of the public debate not for all the works having the described characteristics but only for some of them, among those belonging to the category identified in the first paragraph.

It is therefore possible to hypothesize that the legislator will restrict considerably the objective scope of application of the law. It is then not clear what is meant by "dimensional thresholds": is it an economic value or does it only affect the impact on the territory? For example, in France, as will be better explained below, there is a table in which, for each category of works, they come indicated criteria, inherent either the impact of the works or the size of the same or both, determining the obligatory or optional nature of the use of the public debate procedure.

A profile of the decree to be clarified then concerns the concept of "new actions started after the date of entry into force of this code", which appears in the second paragraph. In reality, this is a provision that makes little sense, because, as it has been formulated, it implies that, until the decree is approved, any project will remain in a sort of stand by.

And then, what does "project started after the entry into force of the code" mean? Can the task of preparing the feasibility project be considered as a start, or is it just a preliminary activity? For example, pursuant to art. 216, 23rd paragraph, of Legislative Decree n. 50/2016 the discriminating element regarding the application or not of the new Code is represented by the approval of the preliminary draft. If this occurred before the entry into force of the code, the previous legislation will apply, while in case it has intervened subsequently, the project will be subject to the new code, even in the hypothesis in which a declaration of public interest has already taken place.

It is not clear then what is the relevance to be attributed to the results of the public debate, given that the last paragraph of art. 22 confines itself to establishing that they will be evaluated during the preparation of the final project and will be discussed during the services conference.

Article. 22 must finally be related to the provisions of art. 23, which regulates the levels of design and art. 27, which governs the procedure for approving projects.

In particular, this last provision focuses on the feasibility project (former "preliminary project") important decisions regarding the location and layout of the work that can not be modified during the drafting of the final project. It would be important to understand, in this regard, whether the public debate must precede any other assessment from an environmental or urban point of view, as happens for example in the French model, or if, for the sake of greater speed and procedural simplification, it can be activated, during the services conference, at the same time as the prescribed procedures.

Although in an approximate manner, provided that the implementing decree provided for by the second paragraph of art. 22, we are able to identify the major differences between the Italian and the French institutions. Article. 22 of the new Procurement Code makes no reference to the creation of an independent and neutral structure (see the French "Commission Nationale du Dèbat Public") invested with the institutional task of presiding over public debate procedures; the latter seems to represent rather a phase of the approval process of a project, not a possible power of preventive veto on the work. In a nutshell, the public debate is similar to any other concertation and consultation procedure, like, for example, the environmental impact assessment.

Could it be of any use for Italy to introduce a commission or any other similar body? According to some authors, the Italian problem at the decision-making level in infrastructural matters seems to be above all that of policies, often wavering. From this derives the structural weakness of the projects that derive from it; policies, on the contrary, should set up well-defined and time-based system projects. There is a need for the project to be the object of consultation: in the absence of it, or at least in its lack of precision, it could be useful to establish a neutral place to compare the various emerging positions. The Commission could take over the task of finding out who really is interested in resolving the conflict, rather than those who are interested in the conflict as such, and of course increasing the transparency of decision-making and achieving more meaningful public participation.

It should be noted, however, that, in France, the most relevant criticisms concerned this institute itself, and, in particular, its composition. As Bova points out, the decisions of the Commission are adopted by the majority and, therefore, the correct one representation of the interests involved through the appointment of the members is crucial to ensure an effective enhancement of this institution. The composition was thought to be the expression of state or governmental bodies: the appointments are in fact established "from above", ie the executive power or the parliamentary majority and the choice falls on subjects that already belong to the central institutions, thus coming to realize made a "over-representation" of central institutions at the expense of local ones. In this sense, the consequent lack of guarantees of independence and third party that would derive from it would end up compromising the legitimacy of the organ and, therefore, the quality of the participatory process itself.

The corrective to the procurement code approved on April 13 with Legislative Decree no. 56 of 2017 seems at least to strengthen the institute of the debate - in the sense of ensuring a more effective implementation - by providing for the issuing of a decree aimed at establishing the methods of monitoring the application of the institution in question. To this end, a Commission is set up at the Ministry of Infrastructure and Transport with the task of collecting and publishing information on public debates and proposing recommendations for carrying out the debate.

However, having incorporated the French model of débat public within the general framework of public procurement, despite being an undeniable step towards a new attempt at dialogue between the administration, businesses and citizens, - aimed at creating a stable procedural link between decision makers and private individuals for the purpose of greater sharing of works and the same decision to execute them - seems to show some critical profiles, in particular for the incompleteness of the discipline and for the attitude of extreme caution - even if partially corrected by Legislative Decree. n. 56 of 2017 - shown by the legislator in front of the new institute: even more important is that the contracting authority or the contracting entity proposing the work to call and take care of the procedure, thus departing from the French model, where the public debate is conducted by an independent commission.

And indeed, if it is true that any participatory process risks being manipulated - and therefore a broad decision-making autonomy must be assured to the subject managing the debate, - it is true that the French legislation has made sure to refer to a national commission that has real character of independence, which has the task of deciding which cases to open and to appoint, for each of them, the commission particulière, which will take over its management. Although its members are appointed by the government, the commission is an institution "separated from the government and endowed with a specific mission, as it rarely happens in other participatory processes". So, among the indispensable requisites that must be possessed by the person who will lead the public debate in our system, it is absolutely a priority that it is "a formally and substantially third body, able to gather the trust of citizens", in order to seek to heal the crisis in the relationship of trust between citizens and institutions. In Italy, however, according to the decree just dismissed by the Ministry of Infrastructure, the manager is selected by the proponent of the work, albeit with the caution of the case and that is the provision of public evidence procedures and the establishment of a monitoring committee that assists the manager during the debate.

As for the ways in which the public is involved, the French débat guarantees maximum publicity and invites the entire population to participate, thus implementing the classic "hot" deliberation, while the "cold" decision model includes restricted arenas and the consequent possibility of exclusion of a large population band. By virtue of these initial considerations, therefore, it seems very urgent to proceed as soon as possible to identify in our legal system the persons qualified and involved in the participation, also in relation to the primary importance, ultimately attributed to the discipline of public contracts, - which is enriched of a social dimension- now become essential also in relation to the "satisfaction of the needs of the community", which concern the right to health and safety at work, as highlighted in the following art. 23. In this regard, at least one should mention the 2004/18 CE and 2014/24 EU directives which - incorporating the jurisprudential cases of the EU Court- have intended to inaugurate a clear line of markedly social development of public procurement, no longer merely functional for the pursuit of administrative activity, but directly invested with social

and political objectives. Even if, in fact, it presented itself as "ancillary" objectives compared to those traditionally pursued as a priority by the public procurement rules, first of all competition, the need to valorise the cds was increasingly felt. Secundary considerations, and in particular the need to affirm the concept of sustainable procurement as indispensable.

Chapter 3

"Public Debate Problems: NIMBY Effect and analysis of concrete cases"

SUMMARY: 1. Introduction – 2. The "NIMBY" effect – 3. "Gronda di Ponente" case – 4. "Porto di Livorno" case – 5. "Grand Paris Express" case

1) Introduction

Among the many characteristics analyzed both in the Italian system and in the European system, the am-bivalent nature of the public debate certainly stands out. This judgment can be formulated for any participatory institution. The devices are made up of a set of procedural rules that can actually push participation in different or even opposite directions. If we want to talk about "ambivalence", we must take seriously the meaning of the prefix "ambi" and highlight how the device of public debate can fall on one side or the other. If anything, critical analysis should try to clarify which conditions favor one or the other landfall.

A delicate problem is the independence of the commission with respect to the proponents. It is clear that no procedural rule can absolve it absolutely, even if it can create the conditions to make it possible. Ambivalence lies above all in the outcome of these processes. Although the difference is (at least in France) both on the 'if' and on the 'how', at the end the pro-get are always there with a matte (even if more or less relevant). Out of 31 public debates concluded before 2006, only in 5 cases the proponent stated that he wanted to abandon the project following the debate, while in the other 26 cases the usefulness of the work was not called into question. The problem does not concern the purely consultative nature of the process, which would leave the proposer free hand. Apart from the fact that it is impossible to imagine how an informal and open venue can make binding decisions for the community bypassing representative institutions (who should decide: an assembly formed by who?), the lack of decision-making power constitutes a very important risor. Allows a more free, open and vital comparison; free the discussion from the impasse of formalities. It is true, of course, that in the end the owner will be able to choose in full autonomy which

proposals to accept and how, but - after a rich, tense and articulated comparison - he will not have particular interest in neglecting the reasons brought forward by a territory on which he will have to work in the following years. The main problem concerns the nature of the interlocutor. In the French model it is made up of a company (public or private) that initiates the debate by presenting a proposal and closes it by declaring its intentions. But the proposing subject may not be structurally able to respond to all the issues raised during the debate.

And yet, despite its limitations and its ambivalences, the public debate on large infrastructures represents a radical break with the climate of complacent and arrogant authoritarianism that marks the design of great works in Italy. The diffusion of processes of this kind, if carried out with care and respect for the citizens' reasons, could only do well for democracy, the environment, the local communities and also the infrastructures of this country. Despite the positive and negative aspects analyzed in this case, and especially in spite of greater involvement of private individuals in public activity, there remains a certain uncertainty within the public opinion that becomes real opposition in some cases. This last element is called "NIMBY Effect (Not In My Back Yard)", and was one of the main causes (in Italy above all) of the interminable bloc in the construction of large public works.

2) The "NIMBY" Effect

The discourse concerning the creation of great public works has always been one of the most difficult topics to tackle. There is the constant presence of two decisive fronts of public opinion: the first tends to consider prevalently the need to construct great works with respect to greater protection of environmental factors. The second front, on the other hand, poses enormous obstacles to the realization of great works by virtue of the attempt to try to protect the surrounding environment as much as possible. In this complex contest it can be inserted the concept of "NIMBY". The acronym NIMBY (not in my backyard), from the jargon of the environmental sector, has spread to the academic field of social science and media language, to become a word of common meaning. Its inseparability from the spatial dimension assigns it a particular geographical primacy. The NIMBY question fully enters the study of localized territorial conflicts[108], in particular the environmental ones[109], which constitute one of

[108] R.Brunet, Les Mots de la géographie, dictionnaire critique, Reclus-La Documentation française, 1992, 3e éd. 1993

[109] A.Turco/ P.Faggi, Conflitti ambientali: genesi, sviluppo, gestione, Unicopli, cop. 1999

the main research fields in which geographers investigate geographicalness, ie the relationship between society and space in its developmental processes of territorialization, as recognition, manipulation and structural appropriation of space by human groups. The explanations that emerge can then help, in the field of planning and land management, the identification of possible solutions to disputes that involve significant social costs. Two meanings of its meaning can be found. The first is that in which "phenomenon" NIMBY means a generic social opposition to the location of an undesirable work (LULU)[110]. Oppositions that are becoming more intense and widespread - but above all effective in rejecting projects - starting in the late seventies. If it is true that protests against technological systems or particular facilities have always existed, with the modernization and improvement of living conditions, the populations - also learning from the struggles against what had already shown in the facts to be able to procure harmfulness or tragedy- not only began to mobilize more, but also thanks to the introduction of new laws on planning and environmental regulation, to mobilize before the work was carried out; it is this anticipation of the choices or their execution by the public that characterizes, in my opinion, the territorial politics of modernity. In this ambivalent process, the technological complexity and the magnitude of its effects increase, but also the social complexity, the organization of movements and the demands of democracy.

However the term NIMBY, more than with the word phenomenon, is commonly accompanied by the word syndrome[111] indulging, perhaps involuntarily, the widespread negative judgment of those who consider its diffusion a social scourge that blocks the development , progress or realization of general interests due to irrational peculiarities / localisms; this view is justified, noting that, on the part of the opponents of a project, statements favorable to the necessity of the work emerge, but it is not accepted in the chosen location, which should take place elsewhere, for various reasons, depending on the type of project and from the local context.

Most people have very little effective power in conditioning the functioning of dominant institutions[112]". Consequently, the need to seek new ways of social transformation through forms of "real" democracy, in opposition to those of "institutional" democracy, seems clear, even if this does not exclude that there may be a willingness to transform the institutions themselves or to create a relationship between them and the various forms that self-organization can take (movements, observers, committees, etc.).

[110] G.Shively, Technical Change and Productive Efficiency: Irrigated Rice in the Philippines, The Authors Journal compilation, 2007

[111] M.J. Dear and S.M. Taylor "NOT ON OUR STREET", Pion Limited, 1982

[112] J. Brecher, T. Costello, B. Smith, Come farsi un movimento globale. La costruzione della democrazia dal basso, DeriveApprodi, 2001, p. 53.

Often, however, the relationship with the institutions is a conflict: in this case it is probable that the legitimacy of the institutions is not recognized - or at least not completely - and the objective is their abatement. Or, on the contrary, the institutions could be considered the privileged interlocutor to turn to: it is understood that in this case they will be recognized not only full legitimacy, but also skills and competences. In between, of course, infinite nuances ranging from more or less occasional collaborations to the utilitarian "exploitation" of the institutions considered nothing more than tools to pursue certain ends.

Statistically, the reasons for the opposition to the most widespread public works are damage to the environment and health, excessive costs of the work and doubts about their usefulness: the fact that a certain work is objectively not motivated, or motivated on the basis of poorly expressed and not verifiable arguments, in terms of costs and benefits, it makes the emergence of an opposition more likely. According to the 2010 Aris-Nimby Forum[113] data, regardless of the type of plant in question, the main reasons given by those who are mobilized are always the same.

Almost always, local actors have to measure themselves not only with their respective interacting counterparts at the same level, but also with higher demands: that is to say that environmental conflicts are often characterized by the classic center-periphery scheme. The environmental conflict, in fact, generally develops along two axes: "center versus periphery", ie strong national powers against weak local authorities and "environmental protection versus economic development". On the two axes of the conflict we can distinguish protagonists of a different nature: in the center-periphery pole we find the local administrations (Provinces and Municipalities), the regional administrations and the national administration. In the other pole we can find, in addition to environmental associations, also trade associations, parties, entrepreneurs and entities of various kinds. On the "development" side, one of the advantages that the promoters most frequently invoke regards the employment fallout, that is the amount of jobs that will be created thanks to the new work and the fact that the workers will be recruited on the territory, among the residents. On the "environment" side, on the other hand, environmental associations are the ones that fight in a more or less unitary and constant way, raising questions of a landscape-naturalistic, ecological and health nature.

As for the center-periphery pole, the conflict is played along the complicated - and certainly not obvious - attribution of the qualification of "local interest" or "national

[113] This is a research project on the phenomenon of environmental territorial disputes managed by the non-profit association Aris - Information and Society Research Agency. He was born in 2004 with the aim of analyzing the development of the NIMBY syndrome and constitutes a national database of public utility works that are subject to challenges. It is almost the only source of information on the NIMBY phenomenon in Italy, but the database does not contain information on the outcomes of the disputes, merely counting the works contested year by year. Furthermore, no information is available on plants at risk of being disputed but not disputed. “www.nimbyforum.it”

interest". Among the accusations most frequently made to residents who oppose the realization of the work of turn, there is that according to which, in the name of a "selfish localism"[114] we would oppose the collective good and the political choices of the institutions. According to this thesis, the participants they would be «moved by the blind selfishness of those who do not want a certain plant in their own home, but would not move a finger if it were proposed in the house of others»[115].

Local communities evaluate projects and alternatives, studying an inexhaustible amount of documents, invoking, as if it were a mantra, sustainable development and defending democracy, is the general interest. Just as easily it may be that the particular interest, on the contrary, is where blindly and undoubtedly claims support, a project that is likely to see the intertwining of "political contractors and contractors ". While admitting that the great works produce a certain economic growth, this is not necessarily due to a general interest, especially if a certain socio-economic model rises to the polar star of the development policies. As for the protagonists of environmental conflicts, the committees are particularly active in seeking a dialogue with local administrations and very often, they support the environmental associations of which Italia Nostra, Legambiente and WWF are some of the most combative examples. Frequently, the associations are the driving force behind the protest, taking on the role of counter-expertise: they act as information disclosure and activate a process of reflection among the local population. The committees and associations, however, are often not coordinated with each other and use different methods of protest. Since the nineties, environmental movements have developed that in addition to being poorly coordinated (in different protests staged and in which they are involved), seem to harbor a certain mutual mistrust[116].

The conflict can also be triggered by forces outside the territory, such as national environmental associations, but could then develop and radicalize among local citizens through a process of awareness and communication made of assemblies, debates and leaflets, up to more extreme forms such as demonstrations square, occupations and sit-ins functional to a compaction of public opinion.

As far as organizational structures are concerned, alongside the more classical forms such as committees, assemblies and coordination, in recent years we have witnessed the development of dense weldings connected to the place as physical and social space. The principals are structures that in the environmental mobilization have acquired an ever greater importance, representing "the concrete expression of the mobilization, constituting the center of aggregation and discussion. The garrison becomes the

[114] A. Algostino “Democrazia, rappresentanza, partecipazione”, cit., p. 159

[115] “Un processo equo per una localizzazione equa”, L. Bobbio e A. Zeppetella, in “Perché proprio qui? Grandi opere e opposizioni locali”, Franco Angeli, 1999, p. 186.

[116] M. Maretti, “«Governance» e desiderabilità sociale delle energie alternative nel caso abruzzese”, in L. Pellizzoni, Conflitti ambientali, op. cit., pp. 139 ss

catalytic place of protest, in some ways transcending it, as it is a meeting place, where the reconstruction of a social bond is realized, in other respects, expressing fully its popular character»[117]. In the garrison, as a place of aggregation, discussion and decision, spontaneous forms of democracy are experimented where everyone is called to express their opinion and make a contribution. In short, it is a political laboratory, where decisions are made during periodic open assemblies. Beyond the weight that individual people can have in these assemblies, the discussion is real and on the clashes that could take place between different points of view, usually ends up by the sense of unity and the need to find solutions as much as possible shared.

As for the modalities of action, given their informal nature, the committees and the movements can act with a certain flexibility and freedom. In addition to more traditional forms of mobilization, they are able to promote legal actions and to challenge the proposed projects with technical-scientific arguments and languages. This is because they are usually supported by professionally competent people: they are able to obtain technical expertise. In cases of environmental conflict, experts are often called into question as bearers of qualified knowledge, generally legitimized by professional appointments and awards obtained in science and academia. On the one hand, they intervene to support the motivations of the proponents for the installation of the great work, trying to convince the local community of its usefulness and showing its value as super partes and the clear prevailing of the advantages on costs; on the other, in support of the opponents' concerns.

From the 1960s onwards, popular mobilisations increasingly used expertise, in particular to promote actions on issues related to ecology and health. This is because the conviction has now become established that all initiatives must be founded "on a solid basis of scientific data and all the" no "must be accompanied by the indication of concrete, realistic, practicable alternatives"[118]. The professionalization of environmental movements should, at least in the intentions, be the panacea of the "NIMBY syndrome"[119] often invoked to de-legitimize the protest; leaning on technical-scientific expertise, as a repository of knowledge capable of opposing the

[117] A. Algostino, “Democrazia, rappresentanza, partecipazione”, op. cit., p. 183.

[118] L. Pellizzoni, Conflitti ambientali, op. cit., p. 15, on www.legambiente.eu/scienza/index.php.

[119] For some years now, the press and specialized literature have documented an increasing number of examples of the opposition of the local population - and not only - to the establishment of large infrastructural works defined as strategic. These oppositions, from which conflicts originate environmental, they are often labeled with acronyms, which in most cases assume a derogatory connotation: NIMBY (not in may back yard); LULU (locally unwanted land uses); NOOS (not on our street); NIABY (not in any back yard) to the most fundamentalist visions: CAVE (citizens against virtually everything); BANANA (build absolutely nothing anywhere near anyone); NOT PE (not on the planet Earth). Finally there is the typology oriented to the role not of the administration, but of the administrator: NIMTOO (not in my term of office) and NIMEY (not in my electoral yard). This type of environmental conflict usually occurs when the construction of the plant is perceived as beneficial for a wider reality, but a harbinger of risks and costs at the local level.

arguments supporting the great works, can certainly help opponents to free themselves from the NIMBY stigma. Thanks to its authoritativeness, the expertise, or better the counter-expertise, can present evaluations and reasoning able to contrast those of the promoters of "flaunted" interventions as strategic for the country and the community.

From some surveys carried out it is possible to derive a descriptive statistics. The most sought-after skills, on the one hand to counteract the realization of the project, on the other to give scientific validity to the assessments made to demonstrate its usefulness, are the medical and engineering ones. On the basis of the project in question, also chemists, urban planners and geologists are approached, with different distribution. Moreover, in environmental controversies, social scientists (economists, sociologists, historians, environmental policy scholars, etc.) are hardly ever present. Finally we see that the professional placement is distributed equally between universities and other institutions. In general, we can state that, in most environmental conflicts, the experts involved are numerous and of different disciplinary backgrounds, even if the different expertise end up intertwining, assuming different weights depending on the events.

We know that more often the experts are questioned by the opponents, but their promoters and institutions take advantage of their consultations; more frequently they are summoned as part experts than as impartial authority. In this regard, a dynamic that often triggers in environmental controversies is the so-called[120]:"usual strategy of delegitimizing the opinion of an expert consists in calling into question a counter-expertise with the same credibility. All this ends up in a negative sum game, in which expert knowledge, on the whole, see their credibility eroded». It creates a certain mutual disavowal between the main protagonists in terms of expertise: each one considers the other not very competent. So citizens end up not knowing more than whom to trust and this crisis of trust, characteristic of the last decades, generates fear. The crisis of trust that now distinguishes the relationship between administrations-citizens and proponents- citizens is one of the main causes of territorial conflict. [121]There is a tendency, on the part of environmentalist associations, to place themselves as "authentic spokesperson of the public interest" to counter the incompetence and impartiality of institutions: paradoxically that that should be a neutral expertise, or that called in question by the public administration, becomes a partisan expertise, while the environmental associations, which by nature are so, go to occupy a sort of "moral center" and present if themselves as the bearers of impartial knowledge .

Different expertise plays a major role in decision-making processes, but they often struggle to maintain their autonomy with respect to the conflicting parties and as a result there is sometimes a "relative erosion of the credibility of the same expertise,

[120] A. Agustoni e S. Sanseviero, La forza del vento. Il conflitto sull'installazione di impianti eolici in Abruzzo, in L. Pellizzoni, Conflitti ambientali, op. cit., pp. 110 ss

[121] M. Bartolomeo, "Libro Bianco su Conflitti territoriali e Infrastrutture di Trasporto", cit.p. 5.

often unable to preserve the stigma of impartiality"[122]. Consequently, we can point out that "attempts at political experimentation often result in a genuine politicization of expertise". It should be emphasized that, within the institutions themselves, there is a lack of expert knowledge, equipped with cognitive tools and resources to avoid disputes over the creation of great works. This fragility from the technical point of view creates a crisis of trust on the part of citizens and in this context of cognitive deficiency - and often normative - the role of expertise[123] assumes considerable importance, above all in environmental, urban planning and infrastructural matters in general.

In this fragmented and incomplete picture, the local communities often appear disoriented (also because they are not perfectly informed) and then the environmental associations acquire, as a counter-expertise, an ever greater weight "both as sentinels of the territory and therefore as opinion leaders, both as privileged interlocutors of institutions "[124]. So the ability to mobilize and organize a counter-expertise that is able to articulate solid technical, legal and economic arguments, proves to be an essential ingredient to ensure that opponents are not simply branded as "ignorant and irrational" and to prevent administration to entrench itself behind the urgency of the decision (the "DAD syndrome": Decide, Announce, Defend).

For all this, the price to pay is the risk for the expert, as soon as he gains access to the mass media public arena, to be "transformed into a political subject that manifests not so much his scholarly objectivity as his belonging to one of the two parties in conflict"[125]. Each of the conflicting parties will contrast their expertise by trying to deconstruct and neutralize the opposing one. And given that as the complexity of the problems increases, the involvement of the experts also increases, rather than reducing the conflict, often the use of technical-scientific knowledge exacerbates it. In this case, what emerges from it is a very complicated picture in which scientism of politics and politicization of science mix up, sometimes, with the impasse[126] of decision-making.

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[122] E. Perry, J. Mata, T. Gieryn, "Science and the discursive politics of policy: examining credibility and policy framing, paper presentato all'Annual Meeting of the American Sociological Association", New York, 10 agosto 2007.

[123] Here we mean expertise in both meanings, that is, as accredited exogenous resources (ie technicians "enrolled" by the administrations) and as endogenous resources (ie the counter-expertise, an expression of the territory and in particular of environmental associations).

[124] M. Maretti, "«Governance» e desiderabilità sociale delle energie alternative nel caso abruzzese", in L. Pellizzoni, Conflitti ambientali, cit., p. 145.

[125] D. Padovan, A. Alietti, O. Arrobbio, "Le opportunità discorsive dell'expertise nel conflitto sul Tav in Val di Susa", in L. Pellizzoni, Conflitti ambientali, cit., p. 258.

[126] The impasse is one of the typical phases of an environmental conflict identified by Luigi Pellizzoni in order to contribute to highlighting figures and roles typical of expertise. The first phase is that of "tearing", during which there is a break in the relational balance in force in the policy process and this breakdown is consumed more on the technical and political level. In this case the experts play a role of contrast and become counter-expertise. The second phase is that of "impasse": each party in

Although it can not be denied that expertise is "an important piece in the conflict's chessboard, the object of moves and countermoves"[127], we must not even assume that it is always a determining factor - or simply significant - in environmental disputes, territory and health: it is good to keep in mind the national and local peculiarities of conflicts and movements. In any case, the role of expertise is always complex, better clarified only in the specific case of each case. Italy has signed the Aarhus Convention since its opening and ratified it by law March 16, 2001, n. 108. Yet, the assessment of the compatibility of our system with the Convention can only be negative[128], at least as regards the pillar of participation: there is still a great deal to be done regarding the effective affirmation of the principles of participatory democracy. The numerous environmental conflicts that have arisen in Italy and their results are a testimony to this.

The data[129] relating to the "approval" of large public works show a general favorable situation towards the construction of new subways (85% favorable to the national level); 87.9% of Italians are favorable to investments in ordinary railways; 41.5% at the Strait of Messina bridge; only a minority favored Mose (36.9%). However, from a statistical survey[130] it was found that the overwhelming majority of the sample-subjects declared themselves not willing to contribute their money to the financing of a major work. This datum can be read both as an indication of a general disagreement

conflict "deploys" its expertise accusing the adversary of "partisanship" and trying to scratch the credibility of the antagonist experts. In the subsequent "confinement" phase, on the other hand, reserved discussion areas and technical tables are set up in order to "separate" the technical plan and the political plan. At this stage the technicians are called to make clear data and options possible and the politicians to decide between them. In this way, individuals can not be accused of influencing decisions, while others can justify their choices on the basis of efficiency assessments on which, in turn, they have not influenced. Obviously this is what should happen in theory: in reality, we know that technique and government end up confusing and indeed, in the final phase, there often occurs a phase of "inclusion" open to negotiations, in which the separation between the technical plan and the plan political becomes more permeable. Not necessarily the different phases described above all present themselves in every environmental controversy, nor is it said that they present themselves in the same way and with the same order.

[127] L. Pellizzoni, "Conflitti ambientali", cit., p. 328

[128] It is considered appropriate to recall the 2009 law proposal by the Hon. Scandroglio (and 138 other deputies) able to modify the art. 18 of the l. n. 349/1986 totally contrary to the Convention of Aarhus. It is suspected of the activities of environmental associations to implement a system based on reckless quarrel: what they intend to do is not to protect the environment, but to paralyze the "shipyard Italy" by delaying the infrastructure. For this reason, based on the proposal of the Hon. Scandroglio, if the appeal is found to be manifestly unfounded, the environmental associations will be condemned, not only to pay court costs, but also to compensation for damage for failure to complete the work and, as can be easily imagined, often the damage amounts to figures astronomical. With the arrival of the XVII Legislature, this bill has lapsed.

[129] These are data from the North-West Observatory, "Valsusa"

[130] L.Pellizzoni, "Conflitti ambientali", cit., pp. 8 ss.

with the politics of great works - compared to other policies, above all social[131] - and as a sign of reluctance to contribute to the public budget, also in the light of a negative perception of management of public finances. To give just one example, from the data of the Northwest Observatory[132], there is a strong distrust in the economic management of the construction of the work, in the case of the Tav in Val di Susa: 84.4% of the Valsusini and 61, 4% of the Piedmontese envisaged that this management would be «unclear and transparent».

Since 2004, Nimby Forum has been monitoring environmental conflicts in Italy. According to the results of the ninth edition of the project, there are three hundred and thirty-six infrastructures and plants built in opposition and this number is expected to grow by about 3.4% each year.

The report prepared by the Observatory on the costs of non-doing, on the other hand, has quantified the cost of the missing works as being object of disputes in approximately two hundred and sixty billion euros, determined in fifteen years; in total the costs of justice have also been counted since, as is known, when construction sites stop almost always legal disputes arise.

The exorbitant number of environmental conflicts that have arisen in recent years is a wake-up call, leaving us to understand that, at the procedural level, something in our country does not work. Of course one would wonder if the Italians are not able to accept the infrastructural progress, one wonders why in the fifties, when for example the A1 motorway was built, renamed Autostrada del Sole, nobody protested too much. It must be said however, to be fair, that while then the country actually needed to to equip itself with an infrastructural network, today it is necessary to resort to the myth of the "strategic" work. Moreover, social change has matured and an environmental awareness has developed in the Italian community - and not only - for which today the "no" committees are born everywhere and it is even possible to militarize the building sites.

Given these numbers, it is clear that, in all likelihood, an orderly problem exists and is found in the run-up to the Italian legislation to the model of speed in the construction of large works to the detriment of the extended consultation. With the law 21 December 2001, n. 443, so-called "objective law"[133], in fact the procedural times were halved as regards the construction of infrastructures of strategic interest, in particular

[131] D. Della Porta e G. Piazza, "Le ragioni del no. Le campagne di protesta contro la TAV in Val di Susa e il Ponte sullo Stretto", Feltrinelli, Milano, 2008, p. 103.
[132] It is a research institution of the University of Turin that three times a year interviews a sample of the Italian population on social, economic, political and cultural issues. "www.nordovest.org"
[133] It is a law aimed at establishing the procedures and methods of financing for the construction of large strategic infrastructures in Italy in the period between 2002 and 2013.

those works included in the list[134] drawn up by the Interministerial Committee for Economic Planning (CIPE), that is to say most of the projects related to the transport sector and all the railway, port and airport infrastructures connected to the sections of the trans-European transport networks (TEN-T)[135].

Even today, this law, which has been included in the Code of public contracts[136], gives space to speed instead of consultation, representing "a clear example of legal and political culture not inclined to discuss with local administrations and populations decisions on the location of so-called strategic works"[137].

The environmental conflict could represent a great opportunity, if only the legal system was willing to embrace a certain meaning of participation: if it were willing, that is, to endorse collaborative participation. But for this type of participation to be realized, it is necessary to allow consultation and dialogue upstream, before any planning solution is taken over by the administration. Furthermore, the idea of participation in the prevention of conflict must be applied, based on the lack of preconceptions: it is a model that can be realized when all social factors, enjoying a certain mental and cultural openness, are willing to change their mind. Only this can be the logic that can guide the resolution of the conflict.

3) "Gronda Di Ponente" Case

Despite the influence of the so-called "NIMBY" effect in the debate on the construction or not of great works, nevertheless a whole series of ambitious attempts to overcome this effect in Italy are recorded: one of the earliest examples to remember is surely the one that concerns the construction of the "Gronda di Ponente" in Genova.

The Genova public debate took place on a project that had a long history behind it. The new highway section of the west had been planned already thirty years earlier to alleviate the congestion of the Genovese knot «with its deadly junctions» (De Gregori 1992). The project, defined during the 1980s, consisted of doubling upstream the

[134] This is a list of major works, without hierarchy of importance and without an integrated plan, which can be started with special procedures for approval and implementation, which allow the use of accelerated lanes and the use of derogations on the rules that regulate the procurement.
[135] A real map of the entire continent on which the connecting axes are drawn North and South and East and West. The TEN-T European projects also included the Messina Strait Bridge, but was later canceled.
[136] Code of public contracts related to works, services and supplies in implementation of the directives 2004/17 / CE and 2004/18 / CE, Legislative Decree 12 April 2006, n. 163, updated by Decree Law 90 of June 24, 2014.
[137] M. Roccato e T. Mannarini, "Non nel mio giardino. Prendere sul serio i movimenti Nimby", Bologna, Il Mulino, 2010.

current A10 coastal motorway between Voltri and Genova Ovest and building a new bridge over the Polcevera Valley, creating an alternative to the well-known Morandi bridge. But, once the project had been approved by the institutions, the rebellion of the inhabitants of the valley (and in particular Rivarolo, where many houses should have been demolished) had forced the promoters to abandon the project in 1990 after the intervention of a sentence of the TAR[138].

He had returned to speak ten years later and in 2006, after various warnings, a memorandum of understanding had been signed between ANAS, the Regional Government and local authorities that envisaged a different route: the two motorway sections, the existing one and the new one to be built upstream, would have flowed to the point where the current Moranti bridge is located, which would have been demolished and rebuilt with double width. This route also involved heavy interference with the homes and with some industrial areas of the Val Polcevera (in particular with the historic Ansaldo plant).

But even this solution did not last long. The new center-left city administration led by the mayor Marta Vincenzi believed that the route was too much for an industrial district and tried to agree with Autostrade per l'Italia (ASPI) a route that would go further upstream in an area less urbanized. The Liguria Region objected that such a solution would have been little rational on the transport plan and proposed to maintain the route identified in 2006 with a small variant (the reconstruction of the Morandi bridge towards the sea and no longer upstream as it provided the solution agreed) in order to safeguard the Ansaldo plants. In turn, Autostrade per l'Italia formulated an alternative alternative that envisaged the passage of the motorway in half of the valley. At the end of 2008, five different alternatives were outlined for the crossing of the Val Polcevera: two similar "low" alternatives that both envisaged the demolition and reconstruction of the Morandi bridge: the one agreed in 2006 and the one subsequently promoted by the Region; an "intermediate" alternative proposed by Autostrade and two "high" alternatives suggested by the Municipality. The stretch between Voltri and Val Polcevera - mainly in the tunnel - was common to all five alternatives. The entire route is located in the territory of the Municipality of Genova which, as is well known, is very vast and involves the territory of four circumscriptions (or municipalities).

At that point, the best solution for the city of Genoa was to dissolve the uncertainties related to the tracks and smooth out the differences with the Region through the opening of a public discussion on the variations of the route. In this way, he would have avoided managing the issue in the restricted circuit of insiders and would have reduced the risk of finding himself in an impasse similar to that of 1990 when the Val Polcevera leaders had succeeded in blocking the realization of the highway already formally approved. The mayor focused on the model of the French public débat, on

[138] G.Ieraci, “Le teorie delle coalizioni politiche”, Morano, 1994

which a reflection had been opened in Genoa for a few years following a conference organized by the of trade with the participation of some protagonists of the débat public on the TGV Côte d'Azur line in the nearby French region PA-CA[139]. The proposal obtained the full adhesion of the proponent subject, the company Autostrade per l'Italia, which was interested in experimenting with an innovative path that focused on consensus rather than on imposition.

In the case of Genoa, in the absence of any legislative provision, the Municipality chose, in December 2008, in agreement with ASPI, to entrust the management of the debate to a commission made up of experts outside the Genovese context[140] and to provide it with a robust staff[141]. The commission, as is the case in France, had the task of carrying out preliminary preliminary investigation, of disseminating information on the project among citizens, of establishing the calendar of the debate and of declaring the opening after having approved the initial proposal of the proponent subject prepared in non-specialized language. While in France this preliminary phase lasts six to eight months, in Genoa it was compressed in just one month: the local administrators had, in fact, laid down the condition that the whole process should be completed before the European elections scheduled for the June 2009. In this short period of time, around sixty interviews and some surroun- dings were still possible. On 6 February 2009, the commission agreed to open the debate, despite the document presented by ASPI containing some serious omissions and publicly declaring what aspects of the document would have been necessary.

If in France the debate has a fixed duration of 4 months and is structured through public meetings located in the territories concerned, in Genoa the clients imposed a shorter period (3 months). Furthermore, 14 public meetings of the Assembly type were envisaged (and carried out with some minor changes), including six presentation meetings, seven thematic meetings dedicated to the most relevant aspects of the project and a final meeting. The meetings were held mainly in the quarters of the western Genovese directly involved in the tracks. It is difficult to estimate the total number of participants, since many citizens have attended more than one meeting. The concentration of the process, despite its obvious limitations, has hindered accelerating the reaction and reflection times of all the interested parties and of bringing to the public attention concerns, protests, support, objections and proposals that otherwise

[139] The conference, entitled "Débat public and objective law: two comparative experiences" took place in Genoa on 28 January 2005.

[140] The committee was composed of Luigi Bobbio (University of Turin), president and Jean-Michel Fourniau (Inrets, Paris), Andrea Mariotto (Iuav University of Venice), Paola Pucci (Polytechnic of Milan).

[141] The committee staff was formed by Eleonora Parlagreco, Gigi Mac- cio and Elisa Videtta (Municipality of Genoa), Stefano Bonabello, Laura Longoni and Monica Penco (Department of Political and Social Sciences of the University of Genoa), Andrea Pillon (Urban adventure) and Gianfranco Pomatto (University of Turin).

would have made they struggle to be heard and confronted, or they would have ended up too late, to things done. Furthermore, the existence of a final deadline allowed the widespread preoccupation of a certain part of the Genovese public opinion that saw the public debate as an expedient devised by the mayor to postpone the decision indefinitely.

Throughout the course of the debate, the commission has committed itself to the dissemination of information and to a laborious work of transparency. The website of the public debate[142], which has been enriched day by day with documents, detailed maps, written contributions, interventions on the forum, minutes and videos of public meetings, has constituted a fundamental reference point.

The Commission set out to respond to all citizens who had come to her to ask questions or formulate objections and substantially managed to keep the commitment. This was an important aspect because it allowed for a distance dialogue with hundreds of interlocutors, some of whom had difficulty intervening or taking part in public meetings. The most controversial choice made by the committee was to publish, after the first week of debate, the street numbers of the houses that would be destined for demolition for each of the five routes. It was objected - even by local politicians - that in this way fuel was thrown onto the fire, but this operation of transparency allowed the mobilization of citizens directly interested and of physically facing all the possible interlocutors.

The French public débat uses a method of classical involvement, that is the convocation of assemblies open to all. And so it was also done in Genoa. The method has the advantage of guaranteeing maximum publicity and promoting "hot" deliberation, unlike those approaches that, based on the construction of small arenas, protected areas[143] or minipubblic[144], they aim at a more reasoned comparison - the «cold deliberation» - with the risk, however, of sacrificing the publicity of the process or of excluding subjects with more intense preferences. Faced with an acute conflict, such as that which occurs on great works, the choice to open assemblies to all may be justified because it shows the will to not hide anything and allows each participant to be directly involved. This does not mean that it is necessary to identify instruments to "cool down" the debate, either by means of certain measures in conducting the meetings, or by convening smaller meetings.

The preparation of open spaces in which everyone could make their voices heard was a powerful stimulus for the mobilization of the opponents. In the west of Genova there were some historical committees that immediately took over the reins of the protest,

[142] http://urbancenter.comune.genova.it/spip.php?rubrique7068
[143] R.Chambers, “Ideas for Development”, 2005
[144] A.Fung “Democratic Theory and Political Science: A Pragmatic Methodof Constructive Engagement”, 2007

but within a few weeks, committees of citizens were reorganized in all the villages of Val Polcevera. During the debate they gave life to the «Coordination of the Committees of the Val Polcevera and the Ponente» that organized assemblies and demonstrations.

This also posed a problem. All participatory processes aim to directly express individual citizens, rather than organized groups. For this purpose the commission had established that in the six presentation assemblies the public interventions were drawn in order to give the same opportunity to all the participants. The committees have challenged this procedure that would have questioned their monopoly of representation and, in the first public meeting in the area (Voltri, 14 February 2009), asked to be able to open the discussion with their own intervention and, in front of the rejection of the commission, they invited those present to leave the hall. The tug of war on representation has been going on for the whole three months of the debate with alternating events. We have arrived several times on the brink of rupture, but without ever exceeding it[145]. The commission had every interest in making some concessions to complete the debate and the committees could not afford to put an end to a mechanism that offered visibility to their positions in the city arena. The organized action of the "no Gronda" committees has strongly marked the progress of the debate, but very important contributions have been made by individual citizens that have allowed us to focus on problems that otherwise would have risked going unnoticed.

The mandate that the Commune of Genoa had entrusted to the commission at the beginning of the debate had been drastic: it concerned exclusively the discussion on the five alternatives of crossing the Val Polcevera. This entailed the exclusion from the debate of the other parts of the route for which no alternatives had been foreseen (in particular, the Voltri node) and above all the impossibility of opening the debate on the opportunity of the Gronda from the moment that this infrastructure had already been included among the list of works of national interest provided for by the objective law and that the Genoa municipality had explicitly committed itself to it in the 2006 program agreement and could not allow the public debate could question it. And yet, as soon as the debate opened, these limitations were overwhelmed. The protest also affected the parts of the track that initially had not been included among the topics of the debate. And, above all, the question of the opportunity of the work has rapidly become one of the central nodes of the comparison. The assemblies have been invested from the criticism of the new motorway, judged as expensive and useless, and from the formulation of possible alternatives through rail transport, ordinary viability or the adoption of forms of "soft" mobility.

The committee could not help accepting this opening. He convened a public meeting on the analysis of mobility flows, to check - in the presence of numerous experts - how

[145] G.Pomatto, “Grandi opere e dibattito pubblico. L'esperienza della Gronda di Genova”, 2009

relevant were the forecasts provided by ASPI on the increase in motorway traffic and to what extent the railway alternative could be practiced.And, following this meeting, he set up the aforementioned workshop on mobility scenarios in which the antagonist groups (environmentalists, citizens' committees, ASPIs, Railways, Municipality, Province, Confindustria, Port Authority) they are compared on plans, data and projections.

Basically the debate started from the comparison of the five route alternatives, but then came to wider reflections on the mobility and exploration of possible non-motorway solutions. The redefinition of the themes on the carpet shows that public debate is a powerful mechanism: once started it can hardly be contained within predetermined borders. Deliberation can only be an unconstrained process[146], it tends to take its own spaces. As recognized even within the French experience, in a public debate it is impossible to avoid discussing whether the work should be done or not.

The debate was organized around the criticisms raised by the opponents and tried to give relevant answers with the help of experts - largely outside the context of Genova. The arguments that have been advanced in the assemblies are placed on three different levels of generality. The first level consisted in reporting the impact of the car on the territory. In fact, the citizens focused on the risks associated with the management of construction sites (traffic of heavy vehicles, disposal of excavation material and in particular of the amiant- ly rocks abundantly present in a part of the excavation) and those related to the exercise infrastructure (air pollution, dust, noise). The Autostrade company was prompted to publish detailed maps of the construction site roads and to clarify the technologies that would have been used for tunnel excavation and for the disposal of the rubble. The direct comparison with other building site experiences for large works was proposed in the assembly (Brennero). Independent experts have publicly assessed the surveys carried out by Autostrade on the presence of asbestos along the route.

In this context, the most burning and often evoked theme was the impact on housing, both on those that should have been expropriated and demolished, and those that would have been destined to live with the new motorway. The pressure of the protest that emerged in the assemblies prompted the Municipality to tighten an agreement with Autostrade on the times and the value of the expropriations and the relocation of the inhabitants. The content of the agreement was presented by the mayor himself, in the last month of the debate, in front of the assembly of 18 April.

The second level consisted of proposals for alternative motorway solutions, which were less penalizing for the territory. These proposals did not contest the definition of the problem formulated by the proponent, ie the need for a new motorway to cope with traffic congestion, but indicated possible variations of the route of different width. The

[146] J.Bohman, “Public Deliberation: Pluralism, Complexity, and Democracy”, MIT Press, 2000

contributions in this direction were numerous and were offered mostly by individual citizens, with limited action by the urban committees. Both proposals for altogether alternative routes (tangential over the Apennines, passage of the sub-river motorway below the Polcevera stream), as well as circumscribed variations on single sections (to Vesima, to Voltri, on the left Polcevera) have been proposed. The authors publicly exhibited their proposals in the assembly on 18 March and were subsequently confronted directly with Autostrade who had submitted their critical remarks for each proposal.

The third level consisted in questioning the problem as it was formulated by Autostrade, ie the need for the new motorway. The focus of this discussion was the contesting of the traffic forecasts formulated by Autostrade and the comparison on possible alternative projections, on which experts of various origins were measured and the same representatives of the committees, first in assembly and then in the smaller laboratory. A very close debate took place on the cost-benefit analysis of the new motorway requested by the commission to two well-known Milan economists, which resulted in a considerable disproportion between the investments that would have been necessary and the advantages that would be derived in terms of improvement traffic flows[147]. On this ground the protagonists were the "no Gronda" committees and the environmental associations. During the debate this point of view was evoked with the expression "zero option", but obviously the proposal was not to leave things as they are, but to develop alternative forms of mobility to the motorway, through the upgrading of ordinary viability or the development of metropolitan rail transport. Great attention has been paid to the hypothesis of a different logistics of the goods of the port of Genoa with the transfer of containers by means of a conveyor belt to the retroport located beyond the Apennines. This level of discussion has allowed us to focus on the strategic problems of the gypsy node.

The debate also served to address the "after" problem, ie how to ensure that any subsequent phases of design could continue to be managed in close relationship with the territory and to ensure that the compensation fund was not distributed "to rain", but destined to coherent measures for the improvement of the areas crossed. To this end, a "guarantee table" was created, made up of the Municipality of Genoa and the 4 municipalities involved in the Gronda route, to which the representatives of the Coordination Committee have been added (which however left the table at the last meeting, while showing interest in the initiative) and environmental associations. From these meetings emerged the decision to set up a local Observatory, made up of local institutions and elected citizens, who will have the task of permanently

[147] A. Cappato," Gronda di Ponente: dati di traffico e ragioni del fare"; G. Bruno," A proposito di costi e benefici della Gronda e di altri interventi per la mobilità genovese", on urbancenter.comune.genova.it

interacting with the proponent subject both in the planning phase and in the implementation phase.

The French public débat does not take decisions and has no legal effect. After the closing of the debate, the commission publishes a final report in which it presents the positions, topics and proposals that emerged during the discussion. In fact, the essential purpose of the debate is to do the tour des arguments, that is to say all the possible arguments (of a more or less general nature) relating to the work in question. Then the word goes to the proponent subject who, within a pre-established period, declares whether he intends to proceed with the design of the work and, if so, how he intends to keep account of the topics arising from the debate and presented in the final report of the committee. In Genova the commission presented its final report[148] in mid-May 2009, fifteen days after the closing of the debate. And, in turn, Autostrade per l'Italia, in the following fifteen days, has made public its intentions[149]. In his document he enumerates the "discoveries" arising from public meetings.

Autostrade per l'Italia recognizes that "the debate was neither virtual nor fake ... and therefore it served ... to make the project acquire the added values ... that made it possible to reconfigure and propose a new design solution". The solution identified by ASPI is, in fact, significantly different from the original ones and takes account of some of the arguments raised during the debate. The chosen design solution is based on one of the five alternatives to cross the Val Polcevera (the alternative number 2), but it provides significant corrections in both the western part (Voltri), where it introduces some variants to avoid the impact with the village of Vesima and to make the crossings of the Cerusa and Leira valleys less problematic, both in the eastern part (left Polcevera) where the highway layout is redesigned following the comparison with the proposals made by three citizens. What changes is the impact of the motorway on urbanized areas. The solution agreed in 2006 with local authorities provided for the demolition of 357 dwellings (and the evacuation of 503 residents). Alternative 2 in the original version reduced the number of dwellings to be demolished to 174 (and involved 261 residents). According to the resolution that emerged at the end of the public debate, the impact on housing was further reduces: there are 93 demolition lodgings and 122 residents. This solution was made a few months later by the competent authorities (ANAS, Province and Municipality of Genoa) with the memorandum of understanding signed on February 8, 2010 which also established the establishment of the local Observatory, which I already spoken. The Liguria Region did not sign the agreement because it required the insertion of a further motorway in a completely different area (Rapallo). However, the agreement authorizes ASPI to proceed with the preliminary design. The public debate cost 191,000 euros (about a

[148] Commissione per il dibattito pubblico sulla Gronda di Genova, "Relazione conclusiva. Posizioni, argomenti e proposte emersi dal dibattito", urbancenter.comune.genova.it

[149] "La dichiarazione di Autostrade per l'Italia", urbancenter.comune.genova.it

fifth of the average of the French public debates), of which 37% was charged to the Municipality of Genoa and 63% to ASPI. In particular, the company Autostrade provided the equipment for the rooms, paid for the press and dissemination of the information material prepared by the committee and paid part of the staff selected by the committee.

The solution adopted by Autostrade per l'Italia at the end of the debate can be evaluated differently depending on the point of view. It can be considered as an original and innovative choice that would not have been possible without the contributions offered by the debate and in particular without the grafting of practical knowledge of citizens on the most abstract knowledge of the designers, as happened for some parts of the route where - some residents have been used by ASPI to redesign them in a less invasive way. However, the new design solution can also be seen as a missed opportunity, which eludes an overall rethinking of the way to set up mobility in the Genoese metropolitan area. The objections to the new highway were rejected and in the end it was decided to reconfirm the project, albeit in a less invasive form.

The final outcome of the public debate went in the direction initially desired by the Municipality. He had opened the public debate to move the path further upstream, against the opposite hypothesis supported by the Region and has promptly obtained it. One could also argue[150] that the public debate has been resolved in an alliance between committees, environmentalists, local politicians and Autostrade companies at the expense of Italian motorists. With the new layout, the costs could be further increased (due to the greater sections in the tunnel) compared to the already exorbitant ones of the original project (with easy coverage through the increase of the toll on the whole national network managed by Autostrade per l'Italia). These chiaroscuro are also present in the reflections on the French experience. In a recent essay, Simon Charbonneau(2010) denounces the ambivalent nature of public debate: apparently it is presented as an open dialogic mechanism, but in reality it almost always ends up confirming - at least in substance - the infrastructural choices proposed at the beginning. In fact, out of 37 public debates concluded in France after the 2002 reform, only in 4 cases the proponent has declared to want to renounce the intervention, while in the other 33 cases the initial project has been confirmed, albeit almost always with even significant changes[151] (only in 7 cases the the project has been re-proposed as such).

Unlike what could be imagined, the problem does not concern the purely consultative nature of the process, which would leave the proposer free hand. In fact, the lack of decisional power is a very important resource: it allows a more open and vital confrontation and frees the discussion from the impasse of formalities. It is true, of course, that in the end the proponent will be able to choose in full autonomy which

[150] P.Beria/M.Ponti, "Lo stato della regolazione dei trasporti in Italia", 2009

[151] "Commission Nationale du Débat Public 2009", pp. 73-74

proposals to accept and how, but, after a rich, tense and articulated comparison, he will not have particular interest in neglecting the reasons brought forward by a territory on which he must work in the following years. Case by case you will have to examine able influence that the debated has managed to have on final decisions.

The problem concerns if ever the nature of the interlocutor. In the French model it is made up of a company (public or private) that initiates the debate by presenting a proposal and closes it by declaring its intentions. But the proposing subject may not be objectively able to respond to all the issues raised during the debate. It is evident that the problem of mobility in a metropolitan node can not be dissolved by a motorway concessionaire. Certainly in the course of the debate, other subjects with wider visions and responsibilities have also been pronounced, but in the end the last word has just come to Autostrade per l'Italia. This is a difficult dilemma to solve. In the case of Genoa, the problem was aggravated by the fact that the granting public subject, ANAS, although constantly present in the debate, has maintained a defiled role, having already long been granted in concession to Autostrade per l'Italia the design of that infrastructure. The fact remains that if the interlocutor is a specialized subject (and this also happens in France) the debate will hardly succeed in "overturning the table" and in making alternative approaches mature.

As a final explanation to the nascent project called "Gronda di Genova", the site of "Autostrade per l'Italia" clearly defined the project: "The new infrastructure, called the Gronda di Genova, includes 72 km of new motorway routes and is connected to the junctions that delimit the city area (Genova Est, Genova Ovest, Bolzaneto), it connects with the A26 line at Voltri and it is rejoined with the A10 in the Vesima area Given the complexity of the territory crossed by the orographic view, the new road system develops almost entirely underground and provides 23 tunnels, for a total of about 54 kilometers, about 90% of the the entire route, with sections ranging up to 500 square meters of the interconnecting chambers between the motorway axes The outdoor works include the construction of 13 new viaducts and the expansion of 11 existing viaducts. Also the ring-road function for urban traffic and traffic with very high traffic volumes, in many points of the network there are flows exceeding 60,000 daily transits aliers, with a high percentage of commercial vehicles. It is therefore essential to divide the city traffic from the crossing and the flows connected to the port. The Genoa Gronda Project aims to lighten the stretch of A10 more interconnected with the city of Genoa - that from the toll gate of Genoa West (Port of Genoa) to the town of Voltri - transferring the traffic passing on the new infrastructure, which will be added to the existing one, effectively constituting an "out of office" expansion ".

The viaduct on the Polcevera was practically "to term": built in the Sixties, at least it was planned to declass it just after the construction of the Gronda, the bypass to be excavated in the mountains behind Genoa to bypass the current node composed of three motorways (A7, A10 and A12). After decades of never-ending controversy,

Operation Gronda had the EU's approval, necessary for its financial architecture. Given the lack of public money, the work would be built by Autostrade per l'Italia, in exchange for a four-year extension of its concession in force: the deadline would shift from 2038 to 2042. A way to mitigate tariff increases for tolls necessary for the Gronda and the other "minor" works (mainly third and fourth lanes) provided for by the Government-Aspi agreement. The OK EU is necessary because the operation requires that the concession, instead of being reassigned with tender at its natural deadline as required by the European competition rules, will be extended to the current concessionaire. A mechanism already applied by Italy, which for this had already been repeatedly criticized by the EU. Not only. To avoid further problems, in 2014 a path was started to agree with the EU an exception to the Community rules. The EU Commission has given the ok, setting some conditions, as Maurizio Caprino writes in this article. Obviously these are valid conditions for all the highway works planned by the Government, among which the most important are the Genoa Gronda and the completion of the Asti-Cuneo (of the Satap, Gavino group), with total investments of 10 billion. In the middle of the final discussion on the approval / final realization of the Genoa Gronda, the terrible tragedy that saw the city of Genoa hit by the collapse of the now famous "Morandi Bridge", with several dead and injured, has unfortunately happened. The provision was necessary in order to urgently enact some measures necessary for the population affected by the collapse of the Polcevera viaduct of the A10 motorway (known as the Morandi bridge), which occurred on the morning of August 14, 2018, and in order to demolish of the viaduct and to realize the infrastructures necessary to restore at least temporarily (pending the construction of a new bridge) the roadway and some areas of the city of Genoa. The main measures include the appointment of an Extraordinary Commissioner, within 10 days, with a 12-month mandate and renewable up to a maximum of three years from the first appointment. Subsequently, Autostrade per l'Italia is excluded from the reconstruction of the bridge and the institution of a state guarantee of up to 360 million (30 million annually from 2018 to 2029). Furthermore, this decree provides for the establishment as from 1 January 2019 of the National Agency for the Safety of Railways and Road and Motorway Infrastructures (Ansfisa). Re-introduction, by way of derogation from the Jobs Act, of the extraordinary redundancy fund due to termination of activities is envisaged (it is authorized up to a maximum of 12 months in total for 2019 and 2020). Chapter I of the provision contains provisions concerning urgent interventions for the support and economic recovery of the territory of the Municipality of Genoa. In Article. 1 the appointment and functions of the Special Commissioner for emergencies are regulated, in order to urgently guarantee the activities for the demolition and disposal of waste materials, as well as for the design, assignment and reconstruction of the infrastructure and the restoration of the road system.

He is the Extraordinary Commissioner with a term of 12 months (extended or renewed for no more than three years from the first appointment), which provides, through a

support structure, the activities of demolition, removal, disposal and landfilling of the waste materials and activities for the design, assignment and reconstruction of the bridge, being able to appoint two sub-commissioners for this purpose. For the performance of these activities, the Extraordinary Commission operates in derogation from any provision other than the penal one, without prejudice to compliance with the provisions of the anti-mafia laws and prevention measures, as well as the mandatory obligations deriving from membership of the European Union. With a D.M. of the Minister of the Interior, which must be adopted within 15 days of the entry into force of the conversion law, special administrative simplification measures have been identified for the release of the anti-mafia documentation, also by way of derogation from the law.

As a concessionaire, the Autostrade per l'Italia Company is responsible for maintaining the infrastructure in complete safety and functionality, to meet the costs of constructing the same and restoring the road system. Article. 1-bis, introduced during the examination in the Chamber, provides measures for the protection of the right to housing, contemplating a procedure aimed at ensuring the rapid possession in possession, by the Commissioner, of the real estate units object of the eviction orders issued following the collapse of the Morandi bridge, accelerating the reconstruction operations of the collapsed infrastructure. Particularly important are the paragraphs 2, 3, 4 and 5 which regulate the payment of compensation to owners and usufructuaries providing that the payment is made by the company Autostrade per l'Italia and that, in the event of failure to pay the deadline, provide directly the Commissioner to replace and to the detriment of the same concessionaire. The licensee also has the obligation to undertake the activities of verification and safety of all the road infrastructures subject to conventional acts, with regard to bridges, viaducts and overpasses, in a priority with respect to any other planned intervention. These activities must be completed within 12 months from the date of entry into force of the conversion law and are conducted by the concessionaire under the supervision of the National Agency for the Safety of Railways and Road and Motorway Infrastructures.

Article. 3 provides for tax measures relating to buildings that have suffered damage as a result of the collapse or which have been the subject of an eviction order, contemplating the exemption Irpef, Ires, Irap, Tasi and Imu, also excluding from direct taxation the contributions, indemnities and compensation obtained by private individuals following the collapse of the Morandi bridge until the exemption from the payment of stamp duty and registration tax for the applications, contracts and documents presented to the public administration until 31 December 2020, as well as the exemption from inheritance tax, from mortgage and cadastral taxes and taxes and from stamp duty for buildings demolished or declared unusable as a result of the collapse. There are also forms of exemptions from the payment of electricity, gas, water and telephony supplies, and from August 14, 2018, as of December 31, 2019, the terms of notification of payment files and those for the collection of executive

assessment documents are suspended. The deadlines set for the enforcement activities by the collection agents, as well as the limitation and limitation periods relating to the activity of the credit institutions.

Regardless of the innovative intervention of the "Genoa Decree", there are no major changes regarding the construction of the work called "Gronda di Genova". At present, the work involves an investment of 4.3 billion euros, totally paid by Aspi, for the construction of 72 kilometers of new motorway routes (54 in the tunnel) and 13 new viaducts and the expansion of 11 existing viaducts. However, despite the huge costs now set aside by the Italian government, and despite the tragedy that took place in August, the hesitations from partisan bodies continue that try to postpone as much as possible a final decision on the beginning of the works of the "Gronda" of Genoa ".

4) "Porto Di Livorno" Case

The Regional Law 46/2013 "Regional public debate and promotion of participation in the elaboration of regional and local policies", which established the obligatory nature of the Public Debate on the works falling within certain types and economic thresholds, came into force while the Authority Port of Livorno was carrying out the approval process of the new Port Regulatory Plan (PRP). This process was rather complex and long because it provided for the drafting of the PRP documents by the Port Authority (2002-2013), the adoption in the Port Committee (December 2013), according to the national and regional regulations in force, the agreement with the Municipality of Livorno (which approved a variation to its ad hoc town planning instruments), the Province of Livorno and the Tuscany Region, and finally the approval by the Regional Council (March 2015).

The drafting of the PRP was flanked by a series of listening meetings addressed to the so-called "port community" and to all social and institutional stakeholders. At a later date, a series of public meetings aimed at citizenship and aimed at presenting the general outline of the plan was envisaged. Finally, the Strategic Environmental Assessment procedure and the relative consultation with the Environmental Competent Persons and the neighboring municipalities are of fundamental importance.

In 2014, however, it was clear that the most important forecast of the Port Regulatory Plan, the Europa Platform, had characteristics of strategic nature and cost that would

fall under the mandatory activation of the Regional Public Debate[152]. For this reason, as soon as the Port Town Planning Plan was approved, the Port Authority of Livorno (APL) has contacted the Authority for the guarantee and promotion of regional participation (APP) and a series of preliminary meetings have begun context, conditions and the timing of activation of the Public Debate. In particular APL and APP have come to the determination to activate DP not only on the Europe Platform, but also on another development project contained in the PRP concerning the area of the passenger port (ferries and cruises): the Maritime Station. For this reason, the object of the Public Debate is identifiable in two distinct areas by function, implementation procedure and progress of projects. The first area discussed by the project concerns the construction of the "Europe Platform". The Europa Platform, that is the expansion at sea that practically doubles the extension of the port area, is undoubtedly the most important work. The second relevant area dealt with by the project concerns the establishment of the Maritime Station area: it concerns a fundamental junction between the port area destined to cruise and ferry traffic and the historical center of the city of Livorno. In the same months of definition of the Public Debate two important calls for tenders were prepared. The first is the so-called "PROJECT FINANCING PLATFORM EUROPA".

The Port Authority has decided to use the Project Financing tool for the construction and management of the first phase of the Europe Platform. Part of the works are carried out directly by public subjects (Port Authority with their own funding, regional and state) through a traditional public contract; part of the works will be carried out together with a private partner that will invest its own capital in exchange for the concession for the management of the container terminal for 50 years. The private partner that supports the Port Authority in the construction of the port works and that will then manage the container terminal is identified through a public call in two phases.

In detail, the call for tenders consists of a restricted procedure for the awarding of the contract for the granting, construction and management of a public work through project finance which includes the definitive and executive design of the first phase of the Europe Platform, including the terminal for containers and all the works connected to it. Furthermore, the present call for tenders involves the execution of the construction of the container terminal of the Europa Platform and the preparation of the terminal for the carrying out of port operations and the consequent management of the terminal.

The first phase of the call, initially with a deadline set at 30 June, but then postponed to 15 December 2016, was a pre-selection or pre-qualification procedure. Once the deadline has expired, the Port Authority proceeds in a session reserved for the opening

[152] Regional Law “46/2013”

of the applications containing the applications for participation and the verification of completeness and formal regularity, ascertaining which applications can be accepted to proceed to the second phase of the call. The invitation letter and the feasibility study of the first phase of the Europe Platform are then sent to the competitors who have passed the first phase.The competitors, during the offer, will have to prepare the preliminary project. The competitor who realizes the best preliminary project wins the tender and can then proceed to the definitive and executive design, to the execution of the works of construction of the Europa Platform and to the preparation of the terminal for the carrying out of port operations, and will be its management of the terminal for the next 50 years.

The second call for tenders concerns the sale of the shares of the company "Porto2000". The Porto2000 company was in fact controlled by the Port Authority and the Chamber of Commerce, but during 2016 the call for tenders was announced for the purchase of 66% of the quotas by an operator in the sector (deadline extended to 11 October 2016). The old majority shareholders have each maintained 17% of the property and the new member (the winner of the call for tenders) is of enormous importance in the operational management of the maritime station area and its development. The award criterion was that of the most economically advantageous bid: up to a maximum of 35 points were awarded to the economic offer, but for the award of the tender they had a considerable weight (65 points out of 100) also the marketing and management actions of the company that will allow an increase in traffic volumes and employment. In particular, the Financial Economic Plan, the Business Plan and, last but not least, the project proposal of the area under concession are considered fundamental. The winner of the tender and future manager of the area will then compete in defining the final proposal for an implementation plan. The times of the Public Debate were therefore coordinated in the best possible way with the times of the competitions in progress.

The Public Debate could not have been activated earlier because the Regional Law of 2 August 2013, n. 46 "Regional public debate and promotion of participation in the elaboration of regional and local policies" foresees to be able to activate the procedure on the works, not on the plans (for example of the Port Regulatory Plan), however before the EIA procedure.

The Public Debate could have been activated after the identification of private partners, but the projects related to the works in that phase would have been already better defined and, especially in the case of the Europa Platform, we would have already passed from a feasibility study (not yet approved) to a preliminary project already approved.Finally, it is necessary to remember that at the end of July 2016 the reform of the port authorities was approved which led to significant changes to the system of governance of port management bodies. The Port Authority of Livorno and that of Piombino were in fact merged into the Authority of the Port system of the

Northern Tyrrhenian Sea. Some of the innovations introduced, however, go in the same direction as specific requests emerged from the Public Debate, which can then be enhanced.

The Port Authority has edited the information material necessary to support the Public Debate and in particular has first provided the basic material to the Authority for the guarantee and promotion of regional participation (APP) and to the Head of the Public Debate, a identified time. Subsequently, the Authority produced a dossier describing the projects covered by the Debate pursuant to the Internal Regulation of the Authority for the guarantee and promotion of participation. The dossier was revised and finally approved by both the members of the APP and the responsible of the Debate and was therefore summarized in a summary, a short text of a few pages that provides essential information to the participants.

The difficulties that emerged most clearly concerned two specific elements. First of all, the need for synthesis: on the Europa Platform there are documents prepared and updated in the last 15 years, of a specialized nature, contained in the Port Regulatory Plan and in the feasibility study; it is about hundreds of pages and dozens of graphic tables and it is unthinkable that a citizen can access that amount of information, often not completely known even by technicians and professionals. For this reason all the information contained in the existing documents have been screened and selected to define a minimum informative content suitable for disclosure, although the original documents have always been made available on the proponent's website and during the Public Debate meetings.

Moreover, great difficulties have been encountered regarding the translation of languages: the selected information was then translated into a less technical language, in which the explanations could be understandable to a citizen with a medium knowledge of port issues, also referring to use of a glossary specially designed for the best understanding of the dossier.

The Port Authority has made available to the Authority for the guarantee and promotion of regional participation (APP)[153] 80,000.00 euros, on a total cost for the organization of the Public Debate of 130,000.00 euros. In addition to the merely economic factor, the Port Authority has made available some human resources that have supported the staff of the Debate in the various phases of organization and carrying out of activities.

The Port Authority participated in all the meetings of the Coordination Table, established by the Debate Manager, who met before the Debate and at the most significant moments of the process, with the aim of informing and coordinating the actions of the main subjects and adapt the Debate to the needs of the moment, found

[153] Legislative Decree “4 August 2016, No. 169”

in its course. Commissioner Giuliano Gallanti and Secretary-General Massimo Provinciali alternated in attending the main public meetings and meetings with the manager of the Debate and the APP.

Finally, the Port Authority has made available the premises necessary for the preparation of the preparatory meetings and public meetings of the Public Debate, in particular Fortezza Vecchia, the port center, it has been used for all the coordination table meetings and as an available office of the staff of the debate to meet the citizens both during the official debate meetings and at other times, by appointment. The Canaviglia room: it was used for the meeting with the stakeholders (13/4) and for the closing meeting (14/6). Finally Fortezza Vecchia, the Ferretti hall of the Fortezza Vecchia was used for the final press conference (14/6).

Thanks to the teaching and exhibition space of the Livorno Port Center, managed by the Port Authority, the Public Debate has been able to take advantage of a structure that has materialized the participatory intent of the process itself, being in turn a place for sharing information and knowledge at the port of Livorno.

The Port Center was inaugurated in November 2015 within the "Old Fortress", also managed by the Port Authority, on the basis of a project developed by the Authority itself in the last two years, following the results achieved with the project "Porto Aperto" which since 2007 aims to involve citizens in the problems of the port, through guided tours, television broadcasts and themed meetings. In line with the other European centers and with what is shown in the "Charte des missions of a Port Center", drafted by the international association "Villes et ports", which is also responsible for the "Port Center Network", the Livorno Port Center is a place open to citizens and tourists (with particular attention to schools and students) who, pursuing the goal of sensitization and enhancement of the port activity, offers the public the opportunity to get to know it better through pedagogical animations, guided tours and permanent exhibitions, ranging from topics such as industrial activities related to the port and logistics, international exchanges, port trades, up to the more general theme of integration between port and city.

As described in the final report of the Head of the Public Debate, during the months of the Process the Port Center was opened to the public every morning, Saturday and some afternoons. The Port Authority staff welcomed the public to explain the operation of the port and the components of the project thanks to the interactive tools present in the Port Center. An ad hoc section relating to the Public Debate and to the port areas taken into consideration by the participatory process - the Europa Platform and the Maritime Station - was prepared by the Port Authority in the interactive table located in the middle of the exhibition hall, and a live map of the port, presents the characteristics of the port, the subdivision in terminal and the historical evolution of the port. The live map has been integrated specifically for the Public Debate of information regarding the projects under discussion and also the room sheet,

accompanying document to the interactive tools of the Port Center, has seen the integration of the contents concerning the Public Debate inserted in the living map. On Tuesday and Friday from 10 a.m to 3 p.m, the staff of the debate and / or the Responsible of the Debate have become available, always at the Port Center, for specific meetings, to be determined with citizens, stakeholders, political groups, representatives elected representatives local and associations. At the Port Center, communication tools were also made available to the public, while a direct line allowed the constant availability of the Public Debate staff to provide information and collect reservations for events and activities planned in the context of the debate. The "Old Fortress" has in turn offered the opportunity to have available well-identified spaces for public meetings, in the heart of Livorno and the port, allowing to expand the presence at the meetings. Facilitated by the venue of the Debate and the meetings, the comparison was greater and this for a sector like the port can only benefit its development.

The research to involve and sensitize citizens to the future projects of the port is therefore also passed through the Port Center tool which in itself already represents a front of commitment with a view to developing and maintaining the conditions of a harmonious and advantageous presence of the port in the city. Several times reference was made during the discussions of the Debate to the organic relationship that links the port, its city and its territory. A link that touches many aspects: from investments to the use of resources, from employment to the conquest of a higher and more qualified added value of living in a port city, from monitoring and managing potentially negative impacts to potential effects of promotion of the destination. More evident in the past, when the port was more present, even physically, in the city, this intense link today necessitates opportunities to facilitate a constant dialogue among all the stakeholders. Precisely this dialogue is also a motive and opportunity at the same time of every participative process. The Port Center's mission goes in this direction, which aims to bring a greater number of subjects closer to the port, starting with the simple citizens, who often remain unrelated to the port dynamics, to other stakeholders (private and public operators), he found in the Public Debate a first opportunity to reveal this intent. Analyzing the possible consequences of strategic choices before their implementation produces unexpected outcomes is now decisive in port policy, as well as promoting an open attitude to anyone who wants to make a critical contribution. Beyond the concrete effects of the Debate, this experience has allowed the Port Center to move to an inclusive dimension directed only 4 months after its opening, on the one hand making the future scenarios more transparent and on the other, expanding the context in which decisions are taken, since the direct observation of citizens and the return of experiences constitute an added value for this instrument which, in turn, will establish a mechanism that continues once the Debate concluded. The literature also explains that the success of a participatory concertation does not guarantee a continuous discussion with the public, which therefore becomes necessary to make it

possible and lasting through some tools that can facilitate this level of knowledge as the Port Center. If, in short, you want the final result is not a simple account of preferences or criticism, you need to focus on a continuity that a space like that of the Port Center can allow. It is clear that the knowledge and information that the Port Center wants to convey are to be understood as a continuous process able to improve not only a more harmonious integration of the port within the economic situation, productive and social at local level, but also the overall management of the port itself. As it is clear that the opportunities that allow us to take stock of the results achieved and the intentions and expected results can only be useful, both for citizens, who can better understand the presence of the port, which, more or less importantly, directly or indirectly, can interest them, that for private operators. Therefore, if the Public Debate found in the Port Center a place that made it more visible and facilitated a more immediate participation, the Port Center in turn was able to use this participatory process to embody its intent to give life to a process of listening and, as far as possible, of accepting requests and requests from those who are living expressions of the territory and want to know it in depth. The ultimate goal of the Port Center to become an ideal laboratory or, even better, experimental in the management of complex processes such as those involving the sharing of knowledge and the combination and convergence of interests sometimes distant between port and city could not find better opportunity for the Debate Public to manifest. The Public Debate, which has a long tradition in France, being widely used in the Alps since the 90s to encourage the participation of citizens in the design of major projects, in Livorno has had a virtuous example of application of regional law n. 46 of 2013, which provides for the obligation of a public comparison for works that exceed the threshold of 50 million euro[154].

It was a satisfaction for the Livorno Port Authority to be the protagonist of such an innovative project, which in the City of the Four Moors had an almost unexpected success.With the fundamental support of the Region, has been set up a debating course of confrontation with the citizens on two major macro themes in a very short time: the Europe Platform and the redevelopment of the port / city, favoring an open discussion as much as possible on the critical points of the two projects. The results obtained were very interesting. The Public Debate has proved to be an important opportunity to allow the Port Authority and the players involved to know the doubts, the proposals and the problems raised by the citizens.

The contributions received, although they can not be translated into immediate projects because of the tenders in progress, represent a basis for discussion that the Port Authority will take into account for subsequent developments. In fact, concrete problems have been faced in connection with the implementation of the Port Regulatory Plan, and the organization of the meetings has allowed a very significant direct relationship with institutions and citizens. This made it possible to find

[154] www.dibattitoinporto.it/wp-content/uploads/2016/03/

indications for project improvement, to make them more suited to their business objectives and those of the entire city.

The debat public is definitely a step forward along the path of a new form of participatory democracy. The involvement of the public opinion is always desirable when it comes to projects that are going to impact, for better or for worse, on the life of citizens.

Precisely in order to ensure a better participation of the community in the design phase of the Port Regulatory Plan that, in 2011, the Authority promoted and launched a series of consultations addressed to insiders (from the various institutions working in port, as the Port Authority and the Guardia di Finanza, to the pilots, to the mooring workers, to the Terminalists, up to the trade unions) in a consultative and proactive approach regarding the main planning instrument of the port. It is therefore part of the Port Authority's approach to gathering suggestions, constructive criticism and reports. The Port Master Plan then followed the ordinary procedures, including the "publication" and the possibility of making observations.

The experience of the Public Debate gave the Authority the opportunity to open the discussion even more to different and more numerous subjects, providing the space for direct dialogue with the citizens who wanted to take part in the meetings. The Public Debate turned out to be a true bi-univocal path, where the Port Authority tried, hoping to succeed, to transmit as much information as possible to the participants, and at the same time also received very important feedback.

Direct comparisons with citizens on the PRP and its initiatives have allowed the dissemination of information, allowing also a closer relationship of the Port Authority, often perceived distant from the neighboring territories. In some cases the questions and comments received by the participants seemed naive to the insiders, confirming that not all citizens know the daily life of the port and its operational profiles; but also these interventions have been very useful, because they provide the Port Authority with precious elements to continue working on the dissemination of knowledge of the port and to understand if it has been able to make outside the importance of the projects on which it is discussing.

It is also important to contextualise the considerations just made taking into account two fundamental elements. First of all, the close relationship between the port of Livorno and the port and interport areas must be considered. In addition, the new structure created by the reform law of the national port system, which provides for the unification between the port of Livorno and the port of Piombino.

All these factors push to reason according to a "scale or system" logic, widening the context of reference to the territory behind the port and to the whole coast up to Piombino: even those who do not "live in port" will have to be more interested to issues related to the port itself and to the development of the territory connected to it.

5) “Grand Paris Express” Case

Paris is the most populous city and the capital of France, capital of the Île-de-France region (established in 1976) and French commune-department, divided into 20 arrondissements. It is located in the center of the Bassin parisienne, on a bend in the Seine, between its confluence with the Marne and the Oise. According to the INSEE census, the City of Paris had more than 2.2 million inhabitants as of 1 January 2010, while its vast area (agglomeration and periurban crown) included 12.2 million inhabitants. On the territory of Paris there are several levels of government which have historically made the coordination of urban policies between the central municipality, the crown of the banlieu and the external departments contributing to forming the Île-de-France Region extremely complicated. In addition to the City of Paris Department (75), the three departments of the so-called small crown Hauts-de-Seine (92), Seine-Saint-Denis (93) and Val-de-Marne (94) and the four departments also belong to it. of the "grand couronne": Seine-et-Marne (77), Yvelines (78), Essonne (91) and Val-d'Oise (95). The complex interweaving of institutions is added to the forms of inter-municipal cooperation activated starting from the decentralization laws of the nineties. Of particular relevance in this sense are the Etablissement public de coopération intercommunale (EPCI), with their own tax system, which bring together several municipalities and play an important function of integration and cooperation. It must be remembered that the urban law provides that such structures develop real inter-municipal plans. Two laws have introduced the obligation for all municipalities of the departments of the Grande Couronne to adhere to forms of intercommunality: the process is managed by departments that have established departmental schemes for inter-municipal cooperation (SDCi); this obligation does not apply to the municipalities of the first crown. This framework is completed by various institutions and bodies that have important decision-making and operational roles, with respect to some issues and issues: SOREQA, Societè de requalification des quartiers anciens (created by Paris and Plaine Commune); STIF (Syndicat des Trasports of Ile-de-France), which coordinates and finances public transport and is under the control of the Ile-de-France Region, supplied by RATP and SNCF, which remain largely coordinated by the State; the SEDIF (Syndicat des Eaux d'Ile-de-France), to which 142 municipalities belong except Paris; SYCTOM (Syndicat Intercommunal de traitement des ordures menageres), includes 4 departments and 180 municipalities. Finally, there is a complex network of actors who have long played a role of political and / or economic proposal and planners such as, to name the most important, the IAU (Institut d'Aménagement et d'Urbanisme de la Région Ile-de-France), the APUR (Atelier Parisien d'Urbanisme) and the Chamber of Commerce. Lastly, we should add the very

important weight of the fact that Paris, being the seat of the national government, has to deal daily with the needs and the administrative weight of this cumbersome subject.

To avoid fragmentation and administrative conflicts, in 2001 the idea of a new wide-area consultation vehicle was launched to try to give some order to the dense overlapping of roles and competences. On the impulse of the mayor of Paris, Bertrand Delanoë, and his assistant Pierre Mansat, this idea was transformed in 2006 into the Metropolitan Conference. The mayors of the Paris region participated in this project from the beginning to discuss the diagnosis and the territorial projects of shared interest. The Presidents of the EPCI, the departments and the Ile-de-France gradually join in this informal forum of dialogue and concertation. Between July 2006 and July 2009, the Metropolitan Conference met twelve times, more than 100 Communauté participated in its work.

Finally, in June 2009 the "Assises de la métropole" became the "syndicat d'études" Paris Métropole, an organ of a voluntary nature, which has the task of debating and seeking solutions to problems of a metropolitan nature.

The salient features of the new body, which is not recognized by law and therefore does not belong to the subjects provided for by the French legislation on decentralization and local government, concerns the entire budget. In fact, the allocated resources will depend on the fees paid by the member institutions: 24% is paid by the municipalities, 17% by the forms of intercommunality (EPCI), as well as by the city of Paris (17%) and the Ile-de-France Region (17%); 25% from the departments. The shares are paid by the municipalities at € 0.15 per inhabitant and € 0.10 per EPCI, with a weighting mechanism based on the financial capacity of the members. It is also possible to use other resources; 1 million euros is the starting capital. As for the member organizations, there are 149 municipalities, 45 inter-municipal associations, 8 departments and 1 region with the right to one vote; the duration is limited to the pursuit of the objectives, which can be modified in the time. The extension / modification of the perimeter is subject to the approval of the syndical committee, which approves with a qualified majority of the votes cast in each college.

The part of the territory involved in this discourse corresponds to a total of 2 546 sq km (out of 12,000 sq km in the Ile-de-France region), with an involvement of 9.3 million inhabitants (88% of the total Parisian agglomeration). The form of government adopted is a kind of voluntary cooperation, pending a national law currently under discussion; in the state of things one can join and even withdraw without significant constraints. As far as skills are concerned, there are no competences defined by law, since this is a voluntary association; however, it proposes to produce knowledge to build metropolitan projects and policies. 4 priority axes of work are identified, both strategic and operational: "développement et solidarité, déplacements, logement et projets métropolitains", ie development, mobility, home and projects of metropolitan importance.

The institutional model provides for the election of a president (lasting one year); a Comité syndacal which is a kind of parliamentary composed of one representative for each participant: one institution = one vote; a Bureau that remains in office for a year and is a technical body of assistance of the president, is elected by the Comité syndacal and includes a representative of the Region, the City of Paris, departments, municipalities and EPCI. The last organism is the Comité des Partenaires, working on issues of relevance to Syndicat; includes by law Chambres consulaires, consortia, bodies and public bodies that manage metropolitan services; collective associations; it can include unions, schools, representatives of the economic and civil world.

The history of this subject is very tormented and is intertwined with the complexity of the relationships between various local subjects and an attention to alternating and ambiguous current from the national government to the needs of coordination and functioning of the metropolitan area. The difficulty of political relations between different and changing majorities seems to have, temporarily, now found in Paris Metropole a "neutral" place for debate and elaboration of development projects, although balance remains precarious. In 2007, President Sarkozy announced he wanted to propose a new law to reform the institutional set-up of the Parisian urban region; in 2009 ten teams of architects and planners are called to present proposals and projects in a competition of ideas on the future of Paris. The works produced are exhibited for six months in an exhibition held at the Cité de l'Architecture et du Patrimoine and presented publicly during a conference at the Palais de Chaillon. On June 3, 2010 the law n. 597, concerning "Grand Paris", a project of national interest, which unites the great strategic territories of the Ile-de-France region, promotes sustainable economic development and aims to reduce social, territorial and fiscal inequalities (art. 1). The project is based on the creation of a public transport network whose financing is guaranteed by the state. At the same time, the law provides for the activation of "territorial development contracts", defined and implemented jointly by the State, the municipalities and their groupings; these contracts take part in the goal of building 70,000 new housing units each year in the capital region, thereby intervening to regulate urban expansion on the Ile-de-France territory. Finally, the Grand Paris project fosters research, innovation and industrial development through the creation of a scientific and technological center on the Saclay plateau, whose agricultural space is protected. For the realization of the project two new public bodies are created: the Société du Grand Paris and the Établissement public de Saclay-Paris, the first in charge of the planning and realization of the public transport network, the second of the development of the scientific and technological center of Plateau de Saclay. An ad hoc secretary of state is also designated to follow the implementation of the law. As indicated in the law, the Grand Paris public transport network will link the center of the Parisian agglomeration, the main urban, scientific, technological, economic, sporting and urban centers.

As indicated in the text of the law, the Grand Paris public transport network will link the center of the Parisian agglomeration, the main urban, scientific, technological, economic, sporting and cultural centers of the Ile-de-France region, the high-speed rail network and international airports, favoring the exit from the isolation of the most marginal territories. The law also regulates the procedures for participation and consultation of territorial communities and public bodies prior to the preparation of the final project. Specifically, within four months from the issuance of the law a "public debate" (débat public) on the project (motivations, objectives, main characteristics) of the new Grand Paris public transport network will have to be organized. The task of elaborating the overall project (Schema d'ensemble) and ensuring its realization, which will include the construction of new lines and stations, belongs to the Société du Grand Paris.

The implementation of the objectives of the law is largely entrusted to the conclusion of "territorial development contracts" (contrats de développement territorial - CDT) between the secretary of state, the municipalities and the inter-municipal cooperation bodies (EPCI). The Region, the departments concerned, the Conference of Mayors of the Ile-de-France and the syndacat mixte Paris Metropole are consulted in advance with the signing of each contract. The contracts define, in compliance with the principles established in the code de l'urbaisme, the objectives and priorities in the areas of urban planning, housing development, transport, the fight against building expansion, the development of commercial, economic, sporting and cultural activities. , protection of natural, agricultural and forest areas, landscape and natural resources (Article 21). CDTs are also the subject of a "public inquiry" prior to their signature. All municipalities and / or inter-municipal cooperation organizations (EPCI) of the Paris region can join them. The signing of contracts is preceded by a phase of diagnosis of the local situation of the dwellings, in particular of social housing. In light of this diagnosis, the contract specifies the number of dwellings and the percentage of social housing to be built. Spatial development contracts entail specific commitments to reduce greenhouse gas emissions, energy efficiency and renewable energy production, to preserve the quality of air, water, soil and subsoil, natural resources, biodiversity, ecosystems and parks, conservation and restoration of ecological corridors, prevention of natural hazards and pollution. The measures envisaged in the CDT must be compatible with the strategic guidelines outlined in the Schéma directeur régional (Sdrif). Currently about twenty CDTs are being processed. Thirteen territories have signed framework agreements (documents that set the guidelines for future contracts), and three territories have already approved their CDT beforehand, before submitting them to the public inquiry[155].

After the last presidential elections, there was a change by the government in tackling the Grand Paris issue. The project of the Grand Paris Express, the new public transport

[155] http: //www.iau-idf.fr

network, has been partially modified, whose work will begin in 2015 and will end in 2030. The new Grand Paris Express project involves the construction of five new public transport lines: the line 14, the metropolitan line which is the extension of the current line 14; line 15, a ring-line that connects the metropolitan ring-like loop that connects Noisy-Champs, Champigny Center, La Défense, Saint-Denis-Pleyel, Rosny-Bois-Perrier, Champigny Center; lines 16 and 17, which complete the ring traced from line 15 via the Paris-Charles-de-Gaulle airport; Line 18, a ring-shaped subway line, which connects Paris Orly Airport to Nanterre, via the Plateau de Saclay and Versailles. The new president of the Republic plans to equip Paris with appropriate instruments of action and has identified in Paris Métropole the instrument that, already associating around 200 local authorities, can assume this role. The initiative is part of a series of strategic reforms aimed at putting labor policies, youth policies, social cohesion and economic competition at the center of metropolitan governance. With this in mind, in order to guarantee in Paris the capacity to achieve the expected results, the municipalities of 300,000 inhabitants in the small crown and 200,000 inhabitants in the dense area are expected to organize themselves in forms of inter-municipal cooperation by December 31, 2015. In the same spirit, the project provides for the strengthening of cooperation through the creation, by 1 January 2016 of the "Métropole de Paris", intended as a necessary tool to strengthen in particular planning programs and policies for the home, with the aim of creating at least 70,000 new housing per year.

Starting from 1 January 2016 the "établissement public de coopération intercommunaleà fiscalité propre à statut particulier" La métropole du Grand Paris "». This includes the City of Paris, the Municipalities of the Departments Hauts-de-Seine, Seine-Saint-Denis and Val-de-Marne, all of which are united in a single 'self-imposed' inter-municipal association. On the favorable opinion of the respective municipal councils, may be part of other municipalities (if they already belonged, as of 31 December 2014, to an "établissement public decoopération intercommunale à fiscalité propre" with at least one municipality belonging to the Hauts-de-Seine, or Seine - Saint-Denis or Val-de-Marne.) They will therefore be part of the Métropole de Paris: the Municipalities of the Proche Couronne will conquer possible enlargement under the conditions established by law. The Métropole of Grand Paris is divided into territoires of at least 300,000 inhabitants. The chairmen of the Conteil du territoire will be vice-presidents of the Conseil de la Métropole du Grand Paris by law. It will ask the Conseil to formulate opinions (rapports de présentation and projets de délibération) on economic, social and cultural development, amenagement of the metropolitan area and local politics and much other to enhance a model of consultation in which, however, individual municipalities but inter-municipal associations with a demographic dimension that are conspicuously eco-active do not refer to the 'local' reference to the most complex metropolitan strategies and policies. From 1 January 2016 the Métropole du Gran Paris is managed by the President of the Métropole (the

Mayor of Paris). The presence of the metropolitan council (a councilor for the municipality, a metropolitan councilor for every 30,000 inhabitants for the municipalities over 30,000 inhabitants, ¼ of the councilors are designated by the Conseil de Paris) and the metropolitan conference, composed of the presidents of the Conseil de territoire , by the president of Métropole, by the president of the Conseil régional d'Île-de-France and by the chairmen of the Conseils généraux de la région of Île-de-France, 'afin de guaranteeir la cohérence et la complémentarité de leurs interventions, dans l 'intérêtde the ensemble des territoires de la région'. The Conseil de développement, which brings together the economic, social and cultural partners, is also important: it is consulted on the main strategic guidelines.

The Métropole will have as perimeter the urban area defined as dense area by the INSEE, an area that concentrates 90% of the Ile-de-France population and about 10 million inhabitants. It should develop a "schéma métropolitain de l'habitat et de l'hébergement", composed of "a plan climat énergie" for the control of the sustainability of new buildings and a "plan of social urgency" with objectives of social cohesion. Home policies will not be completely transferred, but will have a real delegation and specific fiscal resources. It may also decide to launch "opérations d'aménagement d'intérêt métropolitain" for which, in place of the State, it will recognize the authorizations to proceed; it will also support local communities on the subject of housing and services, with specific funding. The project foresees that the region will develop a "schéma régional du logement", which will however have to be approved by Métropole. The latter will enjoy "fonds d'investissement métropolitain" and "fonds de solidarité of 60 million euros" as a fund for rebalancing between rich and poor departments.

Conclusions

For several years now, turning on the television or radio, flipping through a newspaper or simply surfing the net, it is not uncommon to come across news that speak of the oppositions put in place by the various communities - especially local - towards the construction of plants and infrastructures considered strategic. Keep in mind that the complaints reported by the press represent only the tip of the iceberg: they identify the cases in which the phenomenon of dispute occurred, but nothing tells us about the cases potentially at risk. Consequently, they do not allow us to accurately estimate the context conditions and the types of plant most subject to protest phenomena, nor do they tell us what the subsequent effects of the complaints on infrastructure investments are in terms of costs and implementation times.

Even today, however, the idea that these forms of protest are typical of the most economically advanced countries and that they have only begun to appear in the last thirty or forty years, is widespread in public opinion. On the other hand, scientific research has shown that such mobilisations are not exclusive to states with a solid market economy, but, on the contrary, they also occur in developing countries: an example is the Indian populations who opposed the construction of nuclear power plants on their territory1. Moreover, even in past centuries, forms of local mobilization have been manifested to prevent the construction of works unpleasant to residents. For

example, in 1858, on Staten Island, after decades of protests and riots, residents ended up razing a hospital to host quarantined patients.

With the proliferation of environmental and local conflicts, since the end of the Nineties, the publications with which it was intended to offer readings and analysis of the cases of protest against the construction of plants and works have also significantly increased: a theme, today more than never, hot and very timely. The thesis supported here, however, is that according to which, if we want to reach the ideals of efficiency and social justice, there are no valid alternatives to tackling environmental and local conflicts through decision-making processes "transparent, flexible, built according to the here and now technological, economic, sociopolitical and values to which they refer »2. The need is to take seriously the oppositions that from time to time come to light, without stigmatizing them, pointing them out or underestimating them, but striving to listen to them and understand them and then manage them in the best possible way. For this reason, the introduction of the "Public Debate" within the Italian / European legislation sets the ambitious goal of allowing an increasingly numerous and effective participation of citizens in choices that are decisive for their way of life.

Even today, large sections of the political class and the media continue to accuse the opponents of putting the short-sighted and selfish maintenance of the status quo in pursuit of economic, technological and social progress. Since the last quarter of the last century, a growing portion of the scientific community has begun to question the validity of such an interpretation-accusation, obtaining interesting insights into the reasons for the oppositions, possibly with the intent to understand how to react to resolve the impasses that more and more frequently occur. From that moment, the first empirical data emerged with which it was shown how debatable it was to consider the local oppositions as entities based solely on particularistic and utilitarian movements, on ignorance, or on a conservatism that we could define as "luddist". Also in that period, the idea that "infrastructure" is no longer synonymous with economic growth began to circulate, and we began to take an interest in the ecological impact of what is being built. Not surprisingly, the research of Saint, Flavell and Fox3 has shown that in the United States and in the United Kingdom environmental protection emerges as the first concern of the local populations who oppose the work and consequently, as the main cause of their opposition, while the procedures adopted by the proponents in the relationship with the population do not seem to cause particular problems. The latter element is absolutely relevant in the mobilisations of our country, where citizens say they feel unheard and excluded from the decision-making processes. The active participation of private individuals in decisions of collective interest is essential, since the process of creating a potentially unwelcome work can only be successful if it is ultimately accepted, or at least tolerated, by the residents. As a consequence, one of the essential tasks of the promoters of the work becomes that of interacting with the local community in every phase of the project, considering in a serious and honest way all feasible alternatives, including the "zero option", which consists of to renounce tout

court to the realization of the work, where the environmental, economic and social impacts were not sustainable. In this respect, Italy is dramatically backward and this is undoubtedly one of the main reasons for the increase in the number of protests and the radical nature of the conflicts that arise4.

As is obvious, this is not the only cause that makes it difficult to build plants and infrastructures in our country: it is also necessary to take into account other aspects, such as the length of construction that are lengthened disproportionately, the costs that rise during the d the work and the dissatisfaction that more and more often derives from the final quality of the work. Furthermore, it is good to recall another series of dynamics typical of our country: the involvement of different levels of government, sometimes even in competition with each other; the presence of contradictory and redundant laws and regulations; the low quality of design and feasibility studies; the fact that meritocracy is often irrelevant as a criterion for decision-making; an inefficient and farraginous institutional and administrative system; the weakness and myopia of the ruling classes; the increasing smallness of the public economic resources destined to the realization of the big projects and finally the lack of interest shown by private companies towards investments for the construction of public works. According to the approach followed during this work, however, the main reason why environmental conflicts spread is a process quality deficit in the decision-making process that determines if and where to place the work and, in this logic, the oppositions of residents must be read and interpreted as a symptom of excessive distance between administrators and administrators and as a result of a substantial lack of representativeness of citizens' requests.

We can therefore consider the numerous environmental conflicts as the result of inadequate decision-making and communication processes, insufficient and not very respectful of the procedural rights of information and participation. Alternatively, so-called "consensual approaches" have developed, a family of methods and techniques based on the direct involvement of citizens in public decision-making processes. It is good to specify that "consensual" means the comparison between the different points of view that characterizes the process and not the result that one wants to pursue, because - it may seem paradoxal - the ration behind this type of approach is precisely that of giving space to the reasons for dissent, thus leaving the free conflict to emerge.

We must assume that to be entitled to express their opinions can not be only the authorities, experts and technicians, but must also (and above all) those who are destined to experience first hand the effects of the decision. Following this logic, it becomes fundamental to involve citizens at every stage of the process of localization and design of the work, both for a moral reason and for a pragmatic one. In this sense, preventing conflict does not at all mean stifling dissent, but, on the contrary, creating the conditions for it to emerge freely, in order to compare - and possibly to reconcile or at least integrate - the various positions in the field. Consensus approaches, which

are inspired by the model of participatory democracy, can help to manage conflicts in a positive and constructive way. On the one hand, they limit the situations of wall to wall that are created when the directly involved are faced with the fait accompli, decisions already taken and projects defined and packaged; in this way it is possible to prevent residents and promoters from ever stiffening on their respective positions. On the other hand, participatory decision-making processes allow the individuals involved to bring to light claims that, if accepted, could produce an improvement in the projected work. To build an unwelcome work, it is therefore essential to obtain some form of consent from the community destined to host it through its active participation in the decision-making process: as Luigi Bobbio points out to us, if the NIMBY syndrome represents a challenge for democracy, it does not it can only be overcome with more democracy.

BIBLIOGRAFIA

Dottrina

ARENA, La partecipazione dei privati al procedimento amministrativo: analisi dell'esperienza americana, in Rivista trimestrale di diritto pubblico, 1976, n. 1.

ARGENIO, L'accordo nell'azione amministrativa, in Consiglio di Stato, 1992, vol. II.

ARNSTEIN, A Ladder of Citizen Participation, in Journal of the American Planning Association, 1969. AVERARDI, Amministrare il conflitto: costruzione di grandi opere e partecipazione democratica, in Rivista trimestrale di diritto pubblico, 2015, n. 4.

BACQUÉ-REY-SINTOMER, La démocratie participative: un nouveau paradigme de l'action publique, in Gestion de proximité et démocratie participative. Une perspective comparative, Parigi, 2005.

BARONE, L'intervento del privato nel procedimento amministrativo, Milano, 1969.

BARRA CARACCIOLO, Funzione amministrativa e ordinamento neutrale nell'ordinamento U.S.A., Quaderni del Consiglio di Stato, n. 2, Torino, 1997.

BASSANINI, Conclusione di AA.VV., Programmazione, decisione e localizzazione degli impianti e delle infrastrutture strategiche. Proposte di riforma delle regole e delle procedure, a cura di Astrid, Roma, 2010. BAUMAN, Modernità liquida, Roma-Bari, 2007. BAUMAN, Vita liquida, Roma-Bari, 2006

BAZZOCCHI, Riconoscimento, libertà e Stato, Pisa, 2012.

BENGONZINI, L'attività del privato nel procedimento amministrativo, Padova, 1975.

BENVENUTI, Funzione amministrativa, procedimento, processo, in Rivista trimestrale di diritto pubblico, 1952.

BENVENUTI, Il nuovo cittadino, Venezia, 1994.

BENVENUTI, alla voce Contraddittorio(diritto amministrativo), in Enciclopedia del Diritto, vol. IV, 1961.

BENVENUTI, alla voce Parte (diritto amministrativo), in Enciclopedia del Diritto, 1981, vol. XXXI.

BERTI, La parabola regionale nell'idea di partecipazione, in Le regioni, 1974, n. 1.

BERTI, Procedimento, procedura, partecipazione, in Studi in memoria di Enrico Guicciardi, Padova, 1975. BESSON, Deliberative Demoi-cracy in the European Union: Towards the De-territorialization of Democracy, in Deliberative Democracy and its Discontents, a cura di BESSON-MARTÍ, Farnham.

BÉTAILLE, La contribution du droit aux effets de la participation du public: de la prise en considération des résultats de la participation, intervento alle Ie Journées Doctorales sur la participation du public et la démocratie participative, organizzate dal Gruppo d'interesse scientifico Participation du public, décision, démocratie participative,Lione, 27-28 novembre 2009.

BETTINI, La partecipazione amministrativa, Milano, 1973

BIFULCO, alla voce Democrazia deliberativa, in Enciclopedia del Diritto, 2011, Annali n. 4.

BIGNAMI, Tre generazioni di diritti di partecipazione, ne Il procedimento amministrativo europeo, a cura di CASSESE-BIGNAMI, in Rivista trimestrale di diritto pubblico, 2004, quaderno n. 1.

BILANCIA, conclusioni di Per governare insieme: il federalismo come metodo, a cura di ARENA-CORTESE, Padova, 2011.

BIN, Atti normativi e norme programmatiche, Milano, 1988.

207 BLATRIX, Devoir débattre : les effets de l'institutionnalisation de la participation sur les formes d'action collective, in Politix, 2002, n. 57.

BLATRIX, Genèse et consolidation d'une institution: le débat public en France, in Le débat public: une expérience française de démocratie participative, a cura di REVEL-BLATRIX-BLONDIAUX-FOURNIAU-DUBREUIL-LEFEBVRE, Parigi, 2007.

BOBBIO L., Dilemmi della democrazia partecipativa, in Democrazia e diritto, 2006, n. 4.

BOBBIO L., Discutibile e indiscussa: l'Alta Velocità alla prova della democrazia, ne Il Mulino, 2006.

BOBBIO L., Il dibattito pubblico sulle grandi opere - Il caso dell'autostrada di Genova, in Rivista italiana di politiche pubbliche, 2010.

BOBBIO L.-DANSERO, La TAV e la Valle di Susa, Torino, 2008. BOBBIO N., Il futuro della democrazia, Torino, 1984.

BOCCALATTE, Brevi osservazioni sulla nuova legge toscana in materia di qualità della normazione, con particolare riguardo all'obbligo di motivazione delle leggi, in Rassegna parlamentare, 2009, n.1.

BÖCKENFÖRDE, Stato, Costituzione, democrazia, Milano, 2006

BOSETTI-MAFFETTONE, Democrazia deliberativa: cosa è, Roma, 2004.

BOHMAN, The Coming of Age of Deliberative Democracy, in Journal of Political Philosophy, 1998, n. 6.

BOMBARDELLI, Decisioni e pubblica amministrazione, Torino, 1996. BONICHOT, Compatibilité, cohérence, prise en compte: jeux de mots ou jeude rôle?, in Mélanges en l'honneur d'Henri Jacquot, Orléans, 2006.

BOVA, Gli istituti del débat public e dell'enquête publique nell'ordinamento giuridico francese, in Democrazia partecipativa e nuove prospettive della cittadinanza, a cura di DE MARTIN-BOLOGNINO, Padova, 2010.

BRUTI LIBERATI, La regolazione dei mercati energetici tra l'Autorità per l'energia elettrica e il gas e il Governo, in Rivista trimestrale di diritto pubblico, 2009.

BUCHANAN-KEOHANE, The Legitimacy of Global Governance Institutions, in Ethics and Int'l Affairs, Cambridge-UK, 2006, n. 20/4. BUSH, Politica e società, Bologna, 2008.

CARDI, La manifestazione di interessi nei procedimenti amministrativi, Santarcangelo di Romagna, 1983, vol. I.

CAMMEO, Commentario delle leggi sulla giustizia amministrativa, Milano, 1911, vol. I.

CAMMEO, Della manifestazione della volontà dello Stato nel campo del diritto amministrativo, in Trattato completo di Diritto amministrativo italiano, a cura di ORLANDO, op. cit., vol. III.

CARDARELLI, La motivazione del provvedimento, in Codice dell'azione amministrativa, a cura di SANDULLI M.A., Milano, 2010.

CARETTI, alla voce Motivazione (diritto costituzionale), in Enciclopedia giuridica, Roma, 1990, vol. XXII.

CARLASSARE, Il ruolo del Parlamento e la nuova disciplina del potere regolamentare, in Quaderni costituzionali, 1990.

CARLI, Lo statuto della Emilia Romagna. Principi e partecipazione, ne Le istituzioni del federalismo, 2005.

CARLOTTI, La partecipazione procedimentale: Feliciano Benvenuti e la riforma della legge n. 241/1990, in Jus, 2008, nn. 2-3.

CASETTA, Compendio di diritto amministrativo, Milano, 2009.

CASETTA, La partecipazione dei cittadini alla funzione amministrativa nell'attuale ordinamento dello Stato italiano, in AA.VV., La partecipazione popolare alla funzione amministrativa e l'ordinamento dei consigli circoscrizionali comunali.

CASETTA, La 'partecipazione democratica' nell'ordinamento regionale, Roma, 1972.

CASINI, Gli strumenti di partecipazione alle scelte sulla localizzazione di infrastrutture strategiche, in AA.VV., Programmazione, decisione e localizzazione degli impianti e delle infrastrutture strategiche. Proposte di riforma delle regole e delle procedure, op. cit. CASSESE, Dalle regole del gioco al gioco delle regole, in Mercato concorrenza regole, Bologna, 2002, n. 2.

CASSESE, Il diritto globale, Torino, 2009.

CASSESE, Il privato e il procedimento amministrativo, in Archivio giuridico Filippo Serafini, Modena, 1970, n. 2.

CASSESE, La partecipazione dei privati alle decisioni pubbliche, in Rivista trimestrale di diritto pubblico, 2007, n. 1.

CASSESE, Negoziazione e trasparenza nei procedimenti davanti alle Autorità indipendenti, in AA. VV., Il procedimento davanti alle Autorità Indipendenti, op. cit. CASSESE, Poteri indipendenti, Stati, relazioni ultrastatali, ne Il Foro italiano,1996.

CASTORINA, Considerazioni sui profili costituzionali dei limiti di partecipazione al procedimento amministrativo, in Diritto processuale amministrativo, 1994.

CERULLI IRELLI, Aspetti costituzionali e giuridici delle Autorità, ne L'indipendenza delle Autorità, a cura di GRASSINI, Bologna, 2001, p. 54.

CERULLI IRELLI, Corso di diritto amministrativo, Torino, 2001.

CERULLI IRELLI, Lineamenti di diritto amministrativo, Torino, 2012.

CERULLI IRELLI, Politica e amministrazione tra atti 'politici' e atti 'di alta amministrazione', in Diritto pubblico, 2009.

CHARBONNEAU, De l'ambivalence du débat public, in La participation du public aux décisions de l'administration en matière d'aménagement et d'environnement, a cura di HOSTIOU-STRUILLOU, op. cit. CHEVALLIER, L'État post-moderne, Parigi, 2003.

CHEVALLIER, Le débat public en question, in Mélanges en l'honneur de Michel Prieur, op. cit. CHIEPPA RO., Mario Nigro e la disciplina del procedimento amministrativo, in Rivista trimestrale di diritto pubblico, 2010.

CIANCAGLINI, Il giusto procedimento fra i livelli essenziali delle prestazioni, ne Le Regioni, 2010, n. 5.

CIANCAGLINI, Un'ulteriore tappa nel processo di consolidamento della democrazia partecipativa, in Osservatorio sulle fonti, Torino, 2014.

CICCONETTI, Diritto parlamentare, Torino, 2010, p. 213. CLARICH, Autorità indipendenti - Bilancio e prospettiva di un modello, Bologna, 2005.

COCCONI, L'obbligo di motivazione degli atti amministrativi generali, in Rivista trimestrale di diritto pubblico, 2009, n. 3.

CORLETTO, Vizi 'formali' e poteri del giudice amministrativo, in Diritto processuale amministrativo, 2006.

CORSI, Democrazia partecipativa e procedimento amministrativo: un raffronto attraverso l'esperienza della legge toscana, ne La partecipazione politica e sociale tra crisi e innovazione: il caso della Toscana, a cura di BORTOLOTTI-CORSI, op. cit. CORTESE, Decisioni amministrative complesse e hard cases: il caso Dal Molin, in Per governare insieme: il federalismo come metodo, a cura di ARENA-CORTESE, op. cit.

COTTA, Il concetto di partecipazione politica: linee di un inquadramento teorico, in Rivista italiana di scienza politica, Bologna, 1979.

CRISAFULLI, I partiti nella Costituzione, in AA.VV., Studi per il ventesimo anniversario dell'Assemblea Costituente, Firenze, 1969.

CRISAFULLI, La sovranità popolare nella Costituzione, in Stato popolo governo, Milano, 1985.

CRISAFULLI, Principio di legalità e 'giusto procedimento', nota a Corte costituzionale, sentenza n. 13/1962, in Giurisprudenza costituzionale, Milano, 1962, n. 1.

CUGURRA, L'attività di alta amministrazione, Padova, 1972.

CUNIBERTI, Autorità indipendenti e libertà costituzionali, Milano, 2007.

D'ALBERTI, La 'visione' e la 'voce': le garanzie di partecipazione ai procedimenti amministrativi, in Rivista trimestrale di diritto pubblico, 2000.

DELLA CANANEA, Al di là dei confini statuali-Principi generali del diritto pubblico globale, Bologna, 2009.

DELLA CANANEA, Gli atti amministrativi generali, Padova, 2000.

DELLA CANANEA, I pubblici poteri nello spazio globale, in Rivista trimestrale di diritto pubblico, 2003, n. 1.

ESPOSITO, I partiti nella Costituzione italiana, ne La Costituzione italiana-Saggi, Padova, 1954. FEDI MANNARINI (a cura di), Oltre il Nimby. La dimensione psico-sociale della protesta contro le opere sgradite, Milano, 2008.

FERRAJOLI, Principia iuris - Teoria del diritto e della democrazia, n. 1, Teoria del diritto, Roma-Bari, 2007.

FERRARA L., La partecipazione tra 'illegittimità' e 'illegalità': considerazioni sulla pronuncia dell'annullamento non pronunciabile, in Diritto amministrativo, 2008.

FERRARA R., Introduzione al diritto amministrativo - Le pubbliche amministrazioni nell'era della globalizzazione, Bari, 2002.

FERRARA R. -MILONE, La v.i.a. delle opere strategiche, in Trattato dei contratti pubblici, a cura di M.A. SANDULLI-DE NICTOLIS-GAROFOLI, Milano, 2008, vol. IV.

FERRARESE, Le istituzioni della globalizzazione, Bologna, 2000.

FIGORILLI, Il contraddittorio nel procedimento amministrativo, Napoli, 1996.

FISICHELLA, Elezioni e democrazia, Bologna, 1982.

FRANCHINI, I principi applicabili ai procedimenti amministrativi europei, ne Il procedimento amministrativo europeo, a cura di CASSESE-BIGNAMI, op. cit.FRANCO, Il nuovo procedimento amministrativo commentato, Padova, 2001.

FREGO LUPPI, L'autorizzazione alla costruzione eall'esercizio delle centrali elettriche, in Diritto amministrativo, 2007, n. 3. FREY-GEE, Fair Siting Procedures. An Empirical Analysis of Their Importance and Characteristics, in Journal of Policy Analysis and Management, 1996.

GALLINO, alla voce Partecipazione, in Dizionario di sociologia, Torino, 1988.

GALLO C.E., La partecipazione al procedimento, in Lezioni sul procedimento amministrativo, a cura di ALBERTI-AZZARITI-CANAVESIO-GALLO C.E.-QUAGLIA, Torino, 1992

GIANNETTI, Modelli e pratiche della democrazia deliberativa", in Strumenti della democrazia, a cura di PASQUINO, Bologna.

GIANNINI, alla voce Motivazione dell'atto amministrativo, in Enciclopedia del Diritto, 1977, vol. XXVII.

GIANNINI, Diritto amministrativo, Milano, 1993.

GIANNITI-LUPO, Corso di diritto parlamentare, Bologna, 2008. GIGLIONI-LARICCIA, alla voce Partecipazione dei cittadini, in Enciclopedia del Diritto, Milano, 2000, aggiornamento n. 4.

GRISOLIA, Il ravvicinamento formale/procedurale delle fonti comunitarie e nazionali: la valorizzazione dei meccanismi di partecipazione/consultazione nell'attività normativa del Governo, in Osservatorio delle fonti, Giappichelli, 2007.

LEVI, Partecipazione e organizzazione, in Rivista trimestrale di diritto pubblico, Milano, 1977, n. 2.

LOMBARDI P., Il governo del territorio tra politica e amministrazione, Milano, 2012.

LOMBARDI R., Funzione di controllo e processo decisionale della pubblica amministrazione, in Procedimento amministrativo e partecipazione, a cura di CROSETTI-FRACCHIA, Giuffrè, 2002.

LUCIANI, Art. 75 - Il referendum abrogativo, in Commentario della Costituzione, a cura di BRANCA-PIZZORUSSO, Bologna, 2005.

MANIN, On Legitimacy and Political Deliberation, in Political Theory, Londra, 1987, n. 3.

MANETTI, alla voce Autorità indipendenti (Dir. cost.), in Enciclopedia giuridica, 1997, vol. IV.

MANETTI, Poteri neutrali e Costituzione, Milano, 1994.

MANGIA, Consigli Regionali e partecipazione politica nei nuovi statuti, ne I principi negli Statuti regionali, a cura di CATELANI-CHELI, Bologna, 2008.

MANNINO, Diritto parlamentare, Milano, 2010.

MAZZONI HONORATI, Diritto parlamentare, Torino, 2001.

MELA-BELLONI-DAVICO, Sociologia dell'ambiente, Roma, 1998.

MENENDEZ, The European Democratic Challenge, Oslo, Arena, 2008.

MERLONI, Infrastrutture, ambiente e governo del territorio, ne Le Regioni, 2007, n. 1. MERUSI, Considerazioni generali sulle amministrazioni indipendenti, in Accademia dei Lincei, Lo stato delle istituzioni italiane-problemi e prospettive, Milano, 1994.

MERUSI, Giustizia amministrativa e autorità indipendenti, in Associazione italiana dei professori di diritto amministrativo, Annuario 2002, Milano, 2003.

MERUSI, L'affidamento del cittadino, Milano, 1970. MILBRATH, Political participation, Chicago, 1965.

MORBIDELLI, Il procedimento amministrativo, in Diritto amministrativo, a cura di MAZZAROLLI-PERICU-ROMANO-ROVERSI MONACO-SCOCA, Bologna, 2005, vol. I.

MORBIDELLI, La disapplicazione dei regolamenti, in Diritto processuale amministrativo, 1997.

MORBIDELLI, Note sulla riserva di procedimento amministrativo, in Studi in memoria di Franco Piga, Milano, vol. II, 1992.

MORBIDELLI, Sul regime amministrativo delle autorità indipendenti, in Scritti di diritto pubblico dell'economia, quaderno Cesifin n. 6, Torino, 2001.

MORTATI, Il lavoro nella Costituzione, ne Il diritto del lavoro, Roma, 1954, n. 1.

MORTATI, Istituzioni di diritto pubblico, Padova, 1962.

MORTATI, Sui limiti della delegazione legislativa, in Jus, 1952.

NANZ-STEFFEK, Global Governance, Participation and Public Sphere, in Government and Opposition, Oxford, 2004, n. 4. NAPOLITANO, Regole e mercato nei servizi pubblici, Bologna, 2005.

NEWMAN, Globalization and Democracy, in GREVEN-PAULY, Democratic Governance beyond the Nation State, Lanham-Oxford, 2000.

NIGRO, Il nodo della partecipazione, in Rivista trimestrale di diritto processuale civile, Milano, 1980.

NIGRO, L'azione dei pubblici poteri, in AMATO-BARBERA, Manuale di diritto pubblico, Bologna, 1984.

NIGRO, relazione introduttiva a Il procedimento amministrativo fra riforme legislative e trasformazione dell'amministrazione, a cura di TRIMARCHI F., Milano, 1990.

OCCHIENA, Situazioni giuridiche soggettive e procedimento amministrativo, Milano, 2002.

OCCHILUPO-PALUMBO-SESTITO, Le scelte di localizzazione delle opere pubbliche : il fenomeno Nimby, Questioni di economia e finanza - paper n. 91, a cura della Banca d'Italia, Roma, 2011.

ORLANDO, La giustizia amministrativa, in I Trattato completo di Diritto amministrativo italiano, Milano, 1901.

PACI, Welfare locale e democrazia partecipativa, Bologna, 2008.

PAPADOPOULOS-WARIN, Are innovative, participatory and deliberatory procedures in policy making democratic and effective?, in European Journal of Political Research, Oxford, 2007, n. 4.

PAPALDO, Giustizia e pubblica amministrazione, in Scritti giuridici, Milano, 1959.

PARRY, The Idea of Political Participation, in Participation in Politics, Manchester, 1972.

PASSARO, Le amministrazioni indipendenti, Torino, 1996.

PASTORI, Considerazioni introduttive a La disciplina generale del procedimento amministrativo - Contributi alle iniziative legislative in corso, Milano, 1989.

PATRONI-GRIFFI, La dimensione costituzionale del rapporto tra politica e amministrazione nel dettato della Costituzione e nelle più recenti pronunce del giudice delle leggi, in Federalismi.it, 2009.

PAULUS, The International Legal System as a Constitution, in Ruling the world? - Constitutionalism, International Law and Global Governance, a cura di DUNOFF-TRACHTMAN, New York, 2009.

PERICU, I procedimenti di massa, ne Il procedimento amministrativo fra riforme legislative e trasformazione dell'amministrazione, a cura di TRIMARCHI F., op. cit., p. 96.

PICCHI, Modelli di 'governance' regionale: i rapporti con la società civile, ne I nuovi statuti delle Regioni ordinarie: problemi e prospettive, a cura di CARLI-CARPANI-SINISCALCHI, Bologna, 2006.

PIGNATELLI, Il governo del territorio nella giurisprudenza costituzionale, Torino, 2012.

PIRODDI, Il Parlamento europeo nel Trattato di Lisbona tra democrazia rappresentativa e democrazia partecipativa, in Rivista italiana di diritto pubblico comunitario, Milano, Giuffrè, 2011, n. 3.

PIZZANELLI, La partecipazione dei privati alle decisioni pubbliche, Milano, 2010.

PIZZORUSSO (Partecipazione e Parlamento, in Parlamento, Istituzioni, Democrazia, Milano, 1980.

POLITI, alla voce Regolamenti delle Autorità amministrative indipendenti, in Enciclopedia giuridica, 2001, vol. XXX. PORTINARO, alla voce Legittimità, in Enciclopedia delle Scienze Sociali, vol. V, Roma, 1996.

PREDIERI, L'erompere delle Autorità amministrative indipendenti, Firenze, 1997.

PRIEUR, Droit de l'environnement, Parigi, 2004.

PROIETTI, La partecipazione al procedimento amministrativo, in Codice dell'azione amministrativa, a cura di SANDULLI M.A., op. cit. PRZEWORSKI, Deliberation and Ideological Domination, in ELSNER, Deliberative Democracy, op. cit. PUBUSA, Procedimento amministrativo e interessi sociali, Torino, 1988.

PUGLIESE, Il procedimento amministrativo tra autorità e 'contrattazione', in Rivista trimestrale di diritto pubblico, 1971. QUIRK, Industry Influence in Federal Regulatory Agencies, Princeton, 1994.

RAMAJOLI, Procedimento regolatorio e partecipazione, ne La regolazione dei servizi di interesse economico generale, a cura di BRUTI LIBERATI-DONATI, quaderno Cesifin n. 44, Torino, 2009.

RANIOLO, La partecipazione politica, Bologna, 2007.

RAWLS, Una teoria della giustizia, Milano, 2008

RIZZA, La partecipazione popolare, in AA. VV., Scritti in onore di Egidio Tosato, Milano, 1982, vol. II.

ROBBE, La démocratie participative, Parigi, 2007.

RODRIK, La globalizzazione intelligente, Bari, 2011.

ROLLA-GROPPI, L'ordinamento dei Comuni e delle Province, Milano, 2000.

ROMAGNOLI, Art. 3 - II. Il principio di uguaglianza sostanziale, in Commentario alla Costituzione, a cura di BRANCA poi PIZZORUSSO, op. cit. ROMANO M.C., alla voce Atti amministrativi generali, in Dizionario di diritto pubblico, a cura di CASSESE, Milano, 2006.

ROMI, Le débat public dans le droit positif, in Le débat public : une expérience française de démocratie participative, a cura di REVEL-BLATRIX-BLONDIAUX-FOURNIAU-DUBREUIL-LEFEBVRE, op. cit.

ROSANVALLON, La légitimité démocratique, Parigi, 2008.

ROUSSEAU D., De la démocratiecontinue, in La démocratie continue, Parigi, 1995.

SABINE, Storia delle dottrine politiche, Milano, 2003.

SALA, Potere amministrativo e principi dell'ordinamento, Milano, 1993.

SALA, Procedimento e processo nella nuova legge 241, in Diritto processuale amministrativo, 2006.

SANDULLI A., Il procedimento, in Trattato di diritto amministrativo, a cura di CASSESE, Milano, 2000.

SANDULLI A.M., Diritto amministrativo, Napoli, 1954.

SANDULLI A.M., Sugli atti amministrativi generali a contenuto non normativo, ne Il Foro Italiano, 1954, parte IV.

SANTANIELLO, Gli atti amministrativi generali a contenuto non normativo, Milano, 1963.

SARTORI, Democrazia: cosa è, Milano, 2007.

SATTA F., alla voce Imparzialità della Pubblica Amministrazione, in Enciclopedia giuridica, Roma, 1989, vol. XV.

SAVIGNANO, La partecipazione politica nell'ordinamento costituzionale italiano, Napoli, 1979.

SCARCIGLIA, La motivazione dell'atto amministrativo, Milano, 1999.

SCHARPF, Governing in Europe: Effective and Democratic?, New York, 1999.

SCHWARZE, Il controllo giurisdizionale sul procedimento amministrativo europeo, ne Il procedimento amministrativo europeo, a cura di CASSESE-BIGNAMI, op. cit.SCIULLO, 'Giusto procedimento tra giudice costituzionale e giudice amministrativo, in Jus, Milano, 1986, n. 3.

SEIDENFELD, Demystifying Deossification, in Texas Law Review, Austin, 1997, n. 75.

SGUEO, Modelli di partecipazione alle procedure di regolazione generale su scala regionale, in Quaderni regionali, 2009, n. 2.

SHAPIRO, "Deliberative", "Indipendent" Technocracies v. Democratic Policies: Will the Globe Echo the E.U.?, in Law and Contemporary Problems, Durham, estate/autunno 2005.

SIMI, in Nuovo trattato di diritto del lavoro, a cura di RIVA SANSEVERINO e MAZZONI, Padova, 1971.

SINTOMER-HERZBERG-RÖCKE, Les budgets participatifs en Europe, Parigi, 2008.

SLAUGHTER, Sovereignty and Power in a Networked World Order, Stanford Journal of International Law, Stanford, 2004.

STELLA-RICHTER, alla voce Opposizione (diritto amministrativo), in Enciclopedia del Diritto, 1980, vol. XXX.

STEWART, The Reformation of American Administrative Law, in Harvard Law Review, 1975.

STIGLER, The Theory of Economic Regulation, in Bell Journal of Economics and Management Science, Santa Monica, 1971.

Giurisprudenza

Conseil Constitutionnel, decisione 18 settembre 1986, n. 217.

Conseil Constitutionnel, decisione 19 giugno 2008, n. 564.

Conseil d'État, sottosezioni II e I riunite, sentenza 14 giugno 2002, n. 215154.

Conseil d'État, sottosezioni X e IX riunite, sentenza 17 maggio 2002, n. 236202.

Conseil d'État, sottosezioni II e I, sentenza 13 dicembre 2002, n. 229348.

Conseil d'État, sottosezioni VI e I riunite, sentenza 5 aprile 2004, n. 254775.

Conseil d'État, sottosezioni X e IX riunite, sentenza 20 aprile 2005, n. 258968.

Conseil d'État, sottosezioni VI e I riunite, sentenze 28 dicembre 2005, nn. 267287 e 277128.

Conseil d'État, sottosezioni VI e I riunite, sentenze 15 novembre 2006, n. 291056.

Conseil d'État, sottosezioni VI e I riunite, sentenza 6 giugno 2007, n. 292942.

Conseil d'État, sottosezioni VI e I riunite, sentenza 19 marzo 2008, n. 297860.

Conseil d'État, sottosezioni VI e I riunite, sentenza 21 maggio 2008, n. 301688.

Conseil d'État, sentenza 3 ottobre 2008, n. 297931.

Conseil d'État, sottosezioni VI e I riunite, sentenza 18 dicembre 2008, n. 310027.

Conseil d'État, sottosezioni VI e I riunite, sentenza 23 febbraio 2009, n. 292397.

Conseil d'État, sottosezioni VI e I riunite, sentenza 23 aprile 2009, n. 306242.

Conseil d'État, sottosezioni VI e I riunite, sentenza 29 maggio 2009, n. 297522.
Conseil d'État, sottosezioni VI e I riunite, sentenza 27 luglio 2009, n. 301385.
Conseil d'État, sottosezioni VI e I riunite, sentenza 23 marzo 2011, n. 329642.
Conseil d'État, sottosezioni VI e I riunite, sentenza 16 novembre 2011, n. 344972.
Conseil d'État, sottosezioni X e IX riunite, sentenza 9 dicembre 2011, n. 324294.
Conseil d'État, sottosezioni X e IX riunite, sentenza 1 marzo 2013, n. 353009.
Conseil d'État, sottosezioni VI e I riunite, sentenza 20 marzo 2013, n. 354321.
Conseil d'État, sottosezioni VI e I riunite, sentenza 25 settembre 2013, n. 352660.
Conseil d'État, sottosezioni VI e I riunite, sentenza 16 luglio 2014, n. 365522.
Consiglio di Stato, sez. IV, sentenza 4 settembre 1992, n. 724.
Consiglio di Stato, sez. V, sentenza 23 aprile 1998, n. 474.
Consiglio di Stato, sez. VI, sentenza 18 maggio 1998, n. 836.
Consiglio di Stato, sez. IV, sentenza 26 ottobre 1999, n. 1625.
Consiglio di Stato, sez. IV, sentenza 22 giugno 2000, n. 3556.
Consiglio di Stato, sez. V, sentenza 9 febbraio 2001, n. 580.
Consiglio di Stato, sez. IV, sentenza 22 marzo 2001, n. 1683.
Consiglio di Stato, sez. V, sentenza 22 maggio 2001, n. 2823.
Consiglio di Stato, sez. V, sentenza 6 giugno 2001, n. 475.
Consiglio di Stato, sez. VI, sentenza 29 gennaio 2002, n. 491.
Consiglio di Stato, sez. VI, sentenza 16 febbraio 2002, n. 961.
Consiglio di Stato, sez. IV, sentenza 29 febbraio 2002, n. 4343.
Consiglio di Stato, sez. VI, sentenza 1 ottobre 2002, n. 5105.
Consiglio di Stato, sez. IV, sentenza 31 maggio 2003, n. 3037.
Consiglio di Stato, sez. VI, sentenza 6 aprile 2004, n. 1872.
Consiglio di Stato, sez. IV, sentenza 22 luglio 2005, n. 3917.
Consiglio di Stato, sez. VI, sentenza 16 marzo 2006, n. 1409.
Consiglio di Stato, sez. VI, sentenza 11 aprile 2006, n. 2007.

Consiglio di Stato, sez. VI, sentenze 20 aprile 2006, n. 2201.

Consiglio di Stato, sez. VI, sentenza 27 dicembre 2006, n. 7972.

Consiglio di Stato, sez. V, sentenza 10 gennaio 2007, n. 36.

Consiglio di Stato, sez. VI, sentenze 1 febbraio 2007, n. 416.

Consiglio di Stato, sez. VI, sentenza 22 aprile 2008, n. 841. Consiglio di Stato, sez. VI, sentenza 25 giugno 2008, n. 3234.

Consiglio di Stato, sez. VI, sentenza 29 luglio 2008, n. 3786.

Consiglio di Stato, sez. IV, ordinanza 29 luglio 2008, n. 3992.

Consiglio di Stato, sez. IV, ordinanza 1 ottobre 2008, n. 5067.

Consiglio di Stato, sez. IV, sentenza 24 dicembre 2008, n. 6554.

Consiglio di Stato, sez. V, sentenza 29 aprile 2009, n. 2737.

Consiglio di Stato, sez. VI, sentenza 2 marzo 2010 n. 1215.

Consiglio di Stato, sez. VI, sentenza 13 aprile 2010, n. 2047.

Consiglio di Stato, sez. VI, sentenza 2 maggio 2012, n. 2521.

Consiglio di Stato, sez. III, sentenza 31 agosto 2012, n. 4661.

Consiglio di Stato, sez. IV, sentenza 15 luglio 2013, n. 3861.

Consiglio di Stato, sez. V, sentenza 11 marzo 2014, n. 3568.

Consiglio di Stato, sez. VI, sentenza 4 marzo 2015, n. 1060.

Consiglio di Stato, sez. VI, sentenza 20 marzo 2015, n. 1532.

Consiglio di Stato, sez. IV, sentenza 22 febbraio 2016, n. 723.

Corte Costituzionale, sentenza 25 febbraio-2 marzo 1962, n. 13.

Corte Costituzionale, sentenza 29 giugno-6 luglio 1965, n. 59.

Corte Costituzionale, sentenza 9-20 marzo 1978, n. 23.

Corte Costituzionale, sentenza 22-25 ottobre 1985, n. 324.

Corte Costituzionale, sentenza 5-14 aprile 1995, n. 126.

Corte Costituzionale, sentenza 17 ottobre-5 novembre 1996, n. 383.

Corte Costituzionale, sentenza 2-4 giugno 1997, n. 170.

Corte Costituzionale, sentenza 18 luglio 1997, n. 240.

Corte Costituzionale, sentenza 25 settembre-1 ottobre 2003, n. 303.

Corte Costituzionale, sentenza 1-7 ottobre 2003, n. 307.

Corte Costituzionale, sentenza 13-29 gennaio 2005, n. 62.

Corte Costituzionale, sentenza 11-14 ottobre 2005, n. 383.

Corte Costituzionale, sentenza 8-17 marzo 2006, n. 104.

Corte Costituzionale, sentenza 20 novembre-1 dicembre 2006, n. 399.

Corte Costituzionale, sentenza 19-23 marzo 2007, n. 104.

Corte Costituzionale, sentenza 19-23 novembre 2007, n. 401.

Corte Costituzionale, sentenza 15-23 luglio 2009, n. 232.

Corte Costituzionale, sentenza 22-26 marzo 2010, n. 120.

Corte Costituzionale, sentenza 26-28 maggio 2010, n. 186.

Corte Costituzionale, sentenza 23 giugno-22 luglio 2010, n. 278.

Corte di Giustizia delle Comunità Europee, sentenza 23 ottobre 1974, causa n. C-17, Transocean Marine Paint Association c. Commissione.

Corte europea dei diritti dell'uomo, sentenza 20 marzo 2007, causa n. 5410/2003, Tysiąc c. Polonia.

TAR Friuli Venezia-Giulia, sentenza 22 giugno 2004, n. 291. TAR Lazio, Roma, sez. II, sentenza 10 luglio 1996, n. 1394.

TAR Lazio, Roma, sez. II-bis, sentenza 8 ottobre 2001, n. 8271.

TAR Lazio, Roma, sez. I, sentenza 31 maggio 2004, n. 5118.

TAR Lazio, Roma, sez. III, sentenza 20 marzo 2006, n. 2001.

TAR Lazio, Roma, sez. III, sentenza 8 agosto 2006, n. 7098.

TAR Lazio, Roma, sez. II, sentenza 2 luglio 2009, n. 6376.

TAR Lazio, Roma, sez. I, sentenza 3 novembre 2010 n. 33133.

TAR Lazio, Roma, sez. III-ter, sentenza 11 luglio 2012, n. 6320.

TAR Liguria, sez. II, sentenza 13 marzo 2009, n. 311.

TAR Liguria, sez. II, sentenza 13 ottobre 2010, n. 9201.

TAR Lombardia, Brescia, sez. II, sentenza 9 dicembre 2013, n. 1114.

TAR Lombardia, Milano, sez. III, sentenza 9 gennaio 2008, n. 30.

TAR Lombardia, Milano, sez. III, sentenza 6 aprile 2009, n. 3150.

TAR Lombardia, Milano, sez. I, sentenza 10 gennaio 2012, n. 53.

TAR Marche, sentenza 11 gennaio 1997, n. 44.

TAR Puglia, Bari, sez. II, sentenza 7 febbraio 2000, n. 466.

TAR Valle d'Aosta, sentenza 19 febbraio 1997, n. 25.

TAR Veneto, sez. I, sentenza 16 dicembre 1998, n. 2509.

TAR Veneto, sez. I, ordinanza 18 giugno 2008.

SUMMARY

With the new Procurement Code, Legislative Decree 50/2016, the public debate was introduced for the first time in Italy, at national level. The public debate, in a nutshell and with the exception of its characteristics, is an institute born in France with loi n. 95-101 of 2 February 1995 and represents the instrument through which private individuals can participate in public choices. In fact, the institute of public debate has been planned for some years now. In particular, the Tuscany region has regulated it for the first time in 2007, through the regional law n. 69 of 27 December 2007. In order to fully understand the Italian legislative novelty, it will be necessary first of all to analyze the scope within which it is inserted, that is that of participatory democracy; secondly, it will be useful to see how this form of democracy has developed in the various national legal systems, analyzing in particular the experience of England and France. The choice to examine the English and French model is linked to the fact that these countries have always been attentive to the issue of participation, preparing

different tools over the years to make it effective. In examining the individual legal systems, particular attention will also be paid to the suggestions deriving from the supranational legal system, since this is precisely why much of the merit goes to developing the concept of participatory democracy.

The final objective of this study is to verify the elements of closeness between the public debate recently introduced in our legal system and the foreign models examined, identifying the elements that characterize it and the conditions for its effective operability in our legal system.

Despite the initial absence in Italy of a participatory culture, even in our legal system, in recent years, various attempts have been made in order to introduce participatory tools similar to those of other European countries.

The initial difficulty of our country does not seem to be linked to the absence of a regulatory context unfavorable to participation. The Italian legal system does not provide for any element impeding the introduction of participatory instruments; the Constitution outlines a model based on the permanent participation of all citizens in the management of public affairs: participatory democracy was seen by the constituent fathers as complementary to representative and direct. Therefore, the fact that it did not foresee the ways and forms within which it should develop, certainly can not be read as an obstacle to its development.

Another important factor is represented by the law n. 241/1990. If it is true that this law has given a new reading to the Public Administration-citizen relationship, generalizing the institution of participation, it does not have the characteristics of participatory democracy. The one outlined by Chapter III of l. 241/1990 is in fact a participation that takes the form of a cartel contradictory, between a number of predefined subjects, that is the PA and subjects directly and indirectly affected by the provision. Furthermore, this law, in article 13, excludes participation in proceedings aimed at adopting planning and planning acts; therefore participation in the sector in which, over time, this has become more developed is excluded.

The same article, however, refers to particular rules that regulate its formation; It is precisely this specification that makes it clear to part of the doctrine that the will of the legislator was not to exclude a priori participation in such procedures, but to open them to specific participatory models provided for in sectoral regulations as modeled according to the specific characteristics of proceedings themselves.

A significant opening to the theme of participatory democracy was contained in the proposal formulated in 1984 by the Nigro Commission, responsible for preparing the general law on the administrative procedure, which called for the public inquiry to be launched before the adoption of planning instruments, plans commercial and landscaping. This attempt to institutionalize the investigation did not succeed because the proposal was not subsequently followed in the law on the administrative procedure.

Greater correspondence with participatory democracy has been achieved in regional regulations. Regions such as Tuscany, Emilia-Romagna and Umbria were particularly attentive to the participatory theme. In particular, Tuscany was the first region to envisage participation as an ordinary instrument of administration. Through the law n. 69/2007 the instruments supporting the local participatory processes and the public debate have been included in the Tuscan regional system.

In consideration of the experimental nature of the law, there are no similar experiences at regional or state level, Tuscany has decided to give itself a time within which to understand if public participation in institutional decisions could give positive results. Precisely for this reason within the l. 69/2007, an abrogation clause had been inserted, which effectively involved a 5-year rule of the law, after which, in the event of positive confirmation of the operation of these instruments, a new law would be issued along the lines of the previous one. Given the effective operation of the instruments introduced, Tuscany, through the law 46/2013, has confirmed the definitive validity, making some changes to the institute of public debate, which has been reshaped along the lines of the French public débat.

At the national level there have been several times attempts to introduce the institute of debate. In fact, for several years in Italy there has been talk of the introduction of the public debate. On 30 October 2012 the Monti Government presented a bill entitled "Rules and delegations in the field of infrastructures, transport and territory" where it envisaged the introduction of the public consultation, an instrument similar to the debates; later the Working Group on institutional reforms, created by the then President of the Republic Giorgio Napolitano, in the final report of 12 April 2013 underlined the need to introduce the debate by taking the French débat, for example; finally, always on the false line of the precedents, there was the bill Realacci presented on May 14, 2013. These attempts were realized thanks to the Legislative Decree 50/2016 and s.m.i. (the new Procurement Code). Before entering into the merits of the institution it should be noted that, to date, the discipline of the institute must be completed; Article 22 of the Code of Contracts (entitled "Transparency in the participation of stakeholders and public debate"), in the second paragraph, refers to a DPCM, to be adopted within one year after the entry into force of the code, the definition of the works to be assigned to debate, the modalities progress and deadlines by which the procedure must be completed. To date, yet, this decree has not been issued; however it is possible to find information about what will be the guidelines in the drafting of the DPCM on the site of the Ministry of Infrastructures and Transport53.

The outline of the decree, fired by Minister Del Rio at the conference of Mit "Connecting Italy. Strategies and results of a new season of mobility ", foresees the obligatory public debate for infrastructural and architectural works of a certain size (between 200 and 500 million euro depending on the type) and, regardless of the value,

if it is done requested by: central administrations (Council Presidency and Ministries); local authorities (a regional council, a province, a metropolitan city, a number of municipal councils representing at least 100,000 inhabitants); citizens (at least 50,000 voters). The proposer can finally decide to open public debate whenever it deems it necessary.

The debate, following the regulatory framework, intervenes in the processing phase

of the feasibility project and the results of the debate contribute to the elaboration of this project; this last aspect is fundamental, since the grafting of the participatory process in the decision-making process takes place when the project alternatives are still possible, thus being able to effectively speak of participation. The debate lasts four months, extendable by two more in case of proven need. As regards the conduct, information, discussion, discussion and conflict management meetings are planned; moreover, the collection of proposals and positions by citizens, associations and institutions is planned.

Another delicate aspect is represented by the management of the procedure, or better, by the identification of the subject entrusted with the task of managing the debate; the scheme foresees that the debate is managed by an independent figure who performs his own tasks and coordinates his activity with the proposer and with the Monitoring Committee. This committee, formed by the local authorities directly involved in the intervention, assists the proposer during the procedure and has the task of: contributing to the definition of the methods for carrying out the debate; collaborate in the realization of the debate; solve the problems that may arise during the procedure; contribute to the discussion about the evaluation of the proposals that emerged during the debate. The person in charge of the debate is selected by the proponent of the work through public evidence procedures; in particular, suitable subjects are invited to the tender included in a list drawn up by the National Commission for public debate. Within three months of the end of the debate, the proposer must present a final dossier containing the decision to implement the project and any changes it decides to make, as well as the reasons for the decision taken.

At the Ministry of Infrastructures there is the National Commission for the public debate made up of thirteen members (two representatives of the Ministry of Infrastructures, a representative of the Ministries of the Environment, of Cultural Heritage, of Economic Development, of Health and of Justice; for the State Regions Conference, a representative for the Union of Italian Provinces, a representative for the ANCI). The Commission: monitors the proper conduct of the debates, expresses recommendations and develops guidelines, manages a website with all the documentation relating to the various debates and also, every two years, must present a report on the progress of the debates and propose corrections to the chambers .

Since this is a simple regulatory proposal, any further possible comment on the institution seems to be, to date, premature. The comparison with the previous situation, the analysis of the analogous institution in the French legal system and the examination of the national proposal undoubtedly affirms that Article 22 represents for our system a significant step forward for participatory democracy. Considering that the scheme of the decree configures the Italian public debate on the model of the French public dèbat, if the scheme becomes a decree, the conditions seem to exist for the institute to have the same success in Italy in France.

Despite the ambitious attempt, the case is flawed in a whole series of essential components. Among the main causes of inefficiency we certainly find the exclusion of the application of the public debate for the works created by private individuals, the reduction of the reference parameters with the application of the institute for the only works falling within the UNESCO sites and not even for sites burdened by particulars. landscape, environmental and architectural constraints. Furthermore, in the decree there is the failure to set minimum thresholds for the hypotheses in which it is possible to resort to the optional debate and the exclusion from the public debate of the so-called "completamenti", a notion in which the different functional lots of which it is composed can be included. a work, split over time to find the necessary financial coverage. In the D.P.C.M. it is established that the Monitoring Commission formulates the necessary recommendations to identify the correct procedure to be observed in the public debate, while art. 22 of Legislative Decree. he attributes to it only a power of proposal, since it is the competence of the D.P.C.M. The D.P.C.M. moreover, it foresees that the obligatory public debate will take place only on the feasibility document of the project alternatives while the art. 23, 5th paragraph of Legislative Decree n. 50/2016 foresees this hypothesis as a faculty not as an obligation. The provision that the optional public debate can also be initiated during the start-up phase of definitive planning, to the diversity of the obligatory public debate, is incompatible since this conflicts with the law the art. 22.1 paragraph of Legislative Decree no. 50/2016 prescribes that the public debate will take place on the feasibility project. Furthermore, it is not possible to understand how the monitoring committee is set up, with the exception of a generic reference to representatives of the territorial administrations concerned and above all if it expresses an obligatory or optional opinion (in any case non-binding). There is excessive stringency in setting the procedural procedures for carrying out the public debate (publication of the results of the public debate is not foreseen) and it is not clear whether the transitional provisions extend the hypotheses in which it is possible to proceed to the optional public debate envisaged by the D.P.C. In specific cases, since this decision appears to be left to the will of the contracting authority and the contracting entity without time limits and on the procedural steps of the design levels of public works.

As can be easily understood, the institute of the "Italian Public Debate" takes its cue from the most important European experiences. Among the national laws that first

introduced the instruments of participatory democracy, as anticipated, the French and the English ones deserve to be reported.

In particular it is precisely in these systems that the institute of the public inquiry has developed, respectively the public inquiry in England and the enquête publique in France.

Despite the common starting point, the institutions of participatory democracy in England and France have had different sorts over the years; while England has taken a "backward step" compared to its beginnings, France has made a lot of progress, being able today to speak of a real participatory culture.

Public inquiry was born in England in the nineteenth century. In reality, already from the eleventh century the institute was present in the English system but with a different function, being a mere cognitive means for the PA. The affirmation of the investigation, as a participatory tool, occurs with the Inclosure Act of 1801, with which a commission was appointed to proceed with the consultation and hearing of the owners of the land before dispatching the acquisition (inclosure). Public inquiry consists of an instrument for participation and consultation of interested parties in complex decision-making procedures; it is a sub-procedure, a non-decision-making inquiry, which provides for the holding of hearings, consultations, public meetings that are added to the written observations. An extensive use of the survey was in urban planning. In particular the Town and Country Planning Act of 1947 it provided that the local administration, following the publication of the plan, obligatorily indicated an inquiry or other form of hearing. The investigation was conducted by an inspector who had the opportunity to listen to witnesses through cross-examination, to prepare round tables to deal with particular points of the plan and also to conduct hearings ie informal meetings on points not particularly problematic of the plan but on which the subject had made observations. The inquiry ended with a final report drawn up by the inspector; the administration could also decide to depart from this, but motivating this choice.

The limits of the institute soon became apparent. In 1957 the Committee on Tribunals and Inquiries Report pointed out that the system implemented by the investigation was slow and cumbersome, as it was very formal, underlining the need to prepare more rapid instruments. Given the need to improve the investigation, the English system has introduced, over the years, a series of tools that certainly remedied the problem of formality and cumbersome but that were to the detriment of participation. Exemplary is the tool of the examination in public. The public examination is based on a seminar-type setting where a general right to take part is not guaranteed, being able to participate only if invited by the inspector or the minister. The points on which to discuss them decide a panel made up of subjects chosen by the minister. At the end of the exam, the panel provides a final report that is not binding for the administration, without prejudice to the obligation to state reasons in the event that it disregards it.

From a brief analysis of the examination in public, it is possible to notice that some of the fundamental points that make it possible to classify an instrument as fully participatory are missing. Firstly, only the subject who receives the invitation to do so participates, therefore the most relevant aspect is missing, ie the participation of any subject possessing a knowledge; secondly, the intervention of the called takes place in a too advanced moment of the procedure, thus undermining another fundamental aspect, that is the possibility of choosing among several alternatives.

The French route was different. In view of the limits shown by the investigation, the French legal system has prepared a less formal, more rapid instrument that has not sacrificed the participatory profiles: the débat public. The enquête publique30 and the débat public have thus created, in France, a model for the inclusion of social groups in the most important public decision-making processes at international level.

The public inquiry originated in England but it is in France that finds greater success. Initially prepared as a cognitive tool for the PA and relegated to the expropriation field31, with the loi n.83-630 of July 1983 (cd loi Bouchardeau) concerning "the démocratisation des enquêtes publiques et à la protection de l'environnement" has become participatory tool. The law n. 83/30 represents the starting point of a more extensive plan of protection established by the French legislator. France, in fact, in an avant-garde way compared to other systems, not only national but also international, considering that the only way to face the problem of environmental protection was to involve the public in the choices of institutions, from the 80s of the XX century introduced specific legislation that offers stronger protection. Loi Bouchardeau called for a public inquiry to be carried out whenever works or works that had an impact on the environment were carried out.

With the passing of the years, given the strong development of the institute and the proliferation of the types of investigations, it was necessary to intervene in order to regroup and order them. Various rules have intervened to modify the institute32; among these, it is a duty to give an account of the cds. loi Grenelle I and loi Grenelle II. The first, loi n. 2009-967 of 3 August 2009, simplifies, regroups and harmonises the rules inherent in the investigation, intervening in general on the concept of participatory democracy. La Grenelle II, loi n. 2010-788 of 12 July 2010, has the merit of having extended the investigation, until then only provided for urban planning, including environmental protection. He also introduced the new art. L. 123-1 of the Code de l'environnement, according to which "the public inquiry has as its object the assumption of information and the participation of the public so that the interests of third parties are taken into account in the preparation of decisions likely to influence the environment "additionally" the observations and proposals collected during the investigation are taken into account by the client and by the competent authority for make the decision ". Finally, Grenelle II has fully implemented the provisions of the Aarhus Convention.

Parallel to the changes to the institute of inquiry, the French legislator has prepared what is today one of the most participatory tools, ie the débat public.

The institute of public debate was born in France with the loi n. 95-101 of 2 February 1995 "related to the enforcement of the protection of the environment" (c., Loi Barnier). The importance of this law transcends the national sphere, having become a real model of participatory democracy also for other countries, including Italy. The public debate is the response that France has given to the supranational institutionalization of the principle of participation; while the investigation was introduced when there was no mention of participation in the other jurisdictions, the débat was introduced following the affirmation of the participatory principle in the International and Community law and perfected in its functioning with the entry into force of the Aarhus; this is precisely the reason that leads us to say that in France a participatory culture has developed.

The French legal system has not limited itself to introducing instruments that would allow the development of participatory democracy, but in the face of the limits shown by the various institutes and of the evolution on the participatory theme at a supranational level, France is endowed with new and more efficient instruments such as the débat public. The 95-101 loi stipulates that all major infrastructural projects of national interest of the state or local communities, before being eventually subjected to environmental impact assessment or public inquiry, must be submitted to débat public; this debate will cover the main objectives and characteristics of the projects and will be organized by the Commission National edu Débat Public (CNDP).

Initially the debate had difficulty in establishing itself. The major limits of the institute were linked to the exceptional character, therefore to the optional activation, and to the fact that the CNDP had limited powers and operated with limited means.

Following the entry into force of the Aarhus Convention and the new centrality at international level of participatory democracy in the environmental field, France with the loi n. 2002-276 of 27 February 2002 reorganized the institute. In particular, the CNDP was classified as an independent administrative body and given more powers. The scope of the debate has also been expanded: as regards the subjects, the Commission has been called to take into consideration the environmental impact, including that on territorial governance; as for the evaluation profiles of the projects, the examination of the CNDP will no longer concern only the main characteristics of the project and its objectives but also its opportunity, ie the feasibility of the intervention and the actual benefits that can be derived from this with respect to the environmental impact of the work itself. The Commission, as a result of the reform, becomes the guarantor of participation, having the task of forming and guaranteeing the conduct of the debate.

Even the debate, like the investigation, has been the subject of various changes, all aimed at improving its application in practice to make it increasingly participatory without compromising its speed. The major interventions concerned the provision of thresholds within and beyond which the activation of the debate is mandatory or optional; the transformation of the CNDP into an independent administrative body and the consequent attribution to it of greater powers such as that of self-adhering.

Another important step in the evolution of participatory democracy in France was the constitutional reform carried out by law n. 2005-205. Thanks to this reform, the Charte de l'environnement has been equalized in the Constitution, but without becoming part of it; This equation has meant that Article 7 of the Environmental Charter, which provides that everyone can participate in the preparation of public decisions that are relevant to the environment, became a constitutional principle, also appliable to the judge. With law n. 2012-1460, "relative à la mise en œuvre du prince de participation du public", as defined in Article 7, the legislator has specified meaning of "public participation"; the principle of participation is that under which everyone must be informed of projects that affect the environment and which will be the object of public decision, so that interested parties can formulate their observations; observations that will be taken into consideration by the authority that has to decide on the project.

Today the débat public is governed by Section III of the Code de l'environnement and is outlined as a step in the decision-making process: it is therefore neither the moment when the final decision is taken nor the moment in which it is negotiated to arrive at the final decision. The débat public is a moment of dialogue in which those who are interested in a project can inform themselves and express their ideas, under the guidance and control of the CNDP and according to pre-established rules. The ultimate goal is to legitimize the final decision democratically. In the phase that precedes the beginning of the debate, the project is evaluated; in this phase the client (maître d'ouvrage) must carry out a series of preliminary studies in order to determine the opportunity and feasibility of the work, also making an estimate of the costs to be incurred. The estimate of forecast costs is fundamental as this and the characteristics of the work depend on whether the debate is mandatory or not. With the decree of the Council of State 2002-1275 of 22 October 2002, all the categories of works subject to the procedure were listed: linear infrastructures (highways, railway lines, high voltage power lines, etc.), precise infrastructures (dams, airports) , nuclear power plants, etc. ...). For each category of great work there are two thresholds of relevance and particular criteria according to which the request to the CNDP, for the start of the procedure, is mandatory or optional.

Once the application is submitted to the CNDP, it has two months to decide whether or not to proceed with the debate; following an examination In fact, the Commission could assess that there is no such requirement. More specifically, this examination concerns the actual belonging of the project to those listed in the decree 2002-1275,

its main characteristics and finally its own opportunity, that is the national interest of the work and the socio-economic issues related to it. If the CNDP decides negatively, the debate will not take place and the project will continue in its ordinary course until the public inquiry. If instead it decides to proceed with the débat, the CNDP directly organizes the debate by entrusting to a commission created ad hoc, the Commission Particulière du Débat public (CPDP).

The choice of the legislator was not to restrict the activity of the Commission which can therefore operate freely; fundamental is that this limits the object of the debate, as if it were too vast it would be generalized; if, on the contrary, it was too small, it would risk being superficial. The Commission will get in touch with the client and anyone with an interest in intervening in the debate because it is linked to the project in question. All those involved in the debate do so in an equal position with respect to others.

The client, within six months from when the CPDP is established, must prepare the dossier du maître d'ouvrage containing all the necessary documentation on the project so that the participation of the public is as aware as possible. This dossier, drawn up also thanks to the collaboration of the CPDP, must be finally evaluated by the CNDP and after the validation of this must be published in a special website dedicated to the debate. The public débat lasts from four to six months and participation can be oral or written. Private participation can take place in public meetings, informal meetings or thematic meetings; or through the website where you can leave comments; alternatively, a dialogue can be opened with a specific question-answer system. Within two months of the discussion phase, the CPDP and the CNDP must draw up a report (compte-rendu) and a final budget (bilan); these acts must not under any circumstances contain an opinion on the project, the commissions must remain impartial. From the publication of the report and the financial statements, the client has three months to decide how to act; he can alternatively choose to carry on the project, not to carry it forward or modify it. In any case, although the decision is free must be motivated.

The discourse concerning the creation of great public works has always been one of the most difficult topics to tackle. There is the constant presence of two decisive fronts of public opinion: the first tends to consider prevalently the need to construct great works with respect to greater protection of environmental factors. The second front, on the other hand, poses enormous obstacles to the realization of great works by virtue of the attempt to try to protect the surrounding environment as much as possible. In this complex contest it can be inserted the concept of "NIMBY". The acronym NIMBY (not in my backyard), from the jargon of the environmental sector, has spread to the academic field of social science and media language, to become a word of common meaning. Its inseparability from the spatial dimension assigns it a particular geographical primacy. The NIMBY question fully enters the study of localized territorial conflicts , in particular the environmental ones , which constitute one of the

main research fields in which geographers investigate geographicalness, ie the relationship between society and space in its developmental processes of territorialization, as recognition, manipulation and structural appropriation of space by human groups. The explanations that emerge can then help, in the field of planning and land management, the identification of possible solutions to disputes that involve significant social costs. Two meanings of its meaning can be found. The first is that in which "phenomenon" NIMBY means a generic social opposition to the location of an undesirable work (LULU) . Oppositions that are becoming more intense and widespread - but above all effective in rejecting projects - starting in the late seventies. If it is true that protests against technological systems or particular facilities have always existed, with the modernization and improvement of living conditions, the populations - also learning from the struggles against what had already shown in the facts to be able to procure harmfulness or tragedy- not only began to mobilize more, but also thanks to the introduction of new laws on planning and environmental regulation, to mobilize before the work was carried out; it is this anticipation of the choices or their execution by the public that characterizes, in my opinion, the territorial politics of modernity. In this ambivalent process, the technological complexity and the magnitude of its effects increase, but also the social complexity, the organization of movements and the demands of democracy.

However the term NIMBY, more than with the word phenomenon, is commonly accompanied by the word syndrome indulging, perhaps involuntarily, the widespread negative judgment of those who consider its diffusion a social scourge that blocks the development , progress or realization of general interests due to irrational peculiarities / localisms; this view is justified, noting that, on the part of the opponents of a project, statements favorable to the necessity of the work emerge, but it is not accepted in the chosen location, which should take place elsewhere, for various reasons, depending on the type of project and from the local context. Most people have very little effective power in conditioning the functioning of dominant institutions". Consequently, the need to seek new ways of social transformation through forms of "real" democracy, in opposition to those of "institutional" democracy, seems clear, even if this does not exclude that there may be a willingness to transform the institutions themselves or to create a relationship between them and the various forms that self-organization can take (movements, observers, committees, etc.). Often, however, the relationship with the institutions is a conflict: in this case it is probable that the legitimacy of the institutions is not recognized - or at least not completely - and the objective is their abatement. Or, on the contrary, the institutions could be considered the privileged interlocutor to turn to: it is understood that in this case they will be recognized not only full legitimacy, but also skills and competences. In between, of course, infinite nuances ranging from more or less occasional collaborations to the utilitarian "exploitation" of the institutions considered nothing more than tools to pursue certain ends.

Despite the imposing effect of the "NIMBY" effect, the process for the introduction of the Public Debate and for the realization of large The first case in which the citizens of a Municipality were involved in the decision-making process concerning the construction of a public work it concerns the Tuscan municipality of Montaione (Florence) where, in 2007, a public debate was held on the redevelopment of a medieval village; as a result of this procedure, the City Council approved a variant to the urban planning implementation, taking into account the observations of the citizens. Subsequently, the Municipality of Genoa adopted the same procedure, in the context of an infrastructural process of national strategic importance. The debate, open to all citizens, was organized and managed by a municipal nomination committee, made up of experts not resident in the city, and was held in thirteen meetings - each of which saw an influx of people quantifiable in the order of the hundreds - to which three thematic meetings have been added. Favorable and against - the latter were numerically preponderant - they participated in the debate until the end; proposals were received from public bodies, businesses, individual citizens and members. The proceeding authority was determined to implement the infrastructure, regardless of the findings of the debate, whose object was restricted - in the initial intentions - to a choice of five route variants. However, the pressure of citizens has forced the commission to expand the thema decidendum, including the opportunity of the work. At the end of the story, the infrastructure was created. Nonetheless, one of the subjects who proposed to build the infrastructure has publicly acknowledged the opportunity to take into account the elements that emerged in the discussion. The definitive layout has taken as its basis one of the five initial hypotheses, but has made significant changes to it, in consideration of the observations made by the intervening citizens. Some commentators have noted that the debate has reduced the area of dissent, facilitating the adoption of a shared solution between administration and population: the opposition to the realization of the work has been limited to the more extreme sectors. At the same time, the benefit brought to the good performance of the administrative action was nullified, considering that the execution of the new project involved a much higher expense, compared to the initial hypothesis. Ultimately, since it is an impromptu and occasional institution, not regulated by any rule, and therefore devoid of any legal effectiveness, the Genoese public debate is to be considered extraneous to the procedural participation. However, this experience shows that even on a local scale - at least in a metropolitan area - intervention can be promoted popular in a decision of national relevance, using the method of deliberation. Nothing prevents such experiments from becoming the subject of an organic discipline, given that the single text of local authorities - as highlighted above - prescribes to the municipalities the enhancement of popular consultation, with a view to pursuing the collective interest.

Another very important case for the evolution of the public debate in Italy concerns the extension of the Port of Livorno. On April 12, 2016 Debate took off in Porto, the first regional public debate for large works of collective interest, on the project of

development and redevelopment of the port of Livorno object, in the coming years, of major transformation interventions that will result in a expansion towards the sea of the port area and a reorganization of the current spaces and functions. The two objects of the debate, presented on this occasion, were the project of the Europa Platform and the redevelopment of the Maritime Station area. The Tuscany Region has long been in possession of laws on the matter and the current Regional Law 46/2013 provides for the obligatory nature of the Public Debate for public or private initiative works involving total investments of more than 50 million euros, as the works planned for the development and redevelopment of the port of Livorno.The Debate was articulated through informative moments, visits to the port and laboratories. The events are aimed at all those who deal with the city: institutions, port operators, citizens and associations. At the end of the works, the Livorno Port Authority will not be bound to respect the outcome of the Public Debate, but has committed publicly and immediately to hold it in full consideration, clarifying, in a timely manner, the reasons for failure or partial acceptance. Unlike a participatory path, in the Public Debate there is a direct comparison with the proponent of the project and is characterized by the responsibility of three main subjects. First of all the Authority for the guarantee and promotion of the participation of the Tuscany Region, then the Responsible of the Debate identified by the Tuscan Authority and finally the proponent of the work, the Port Authority of Livorno, which is available to contribute to the diffusion information on projects. The presentation of the two projects covered by the Debate was deepened in the various meetings scheduled from April to June to ensure adequate information to citizens so as to enable them to participate in the Debate "properly".

Sophie Guillain, a French consultant appointed as Head of the Public Debate by the Tuscan Authority, one of the leading experts in public consultation and débat public introduced in France for about twenty years, has opened the work outlining the three important moments in the opening meeting. First of all the explanation of the projects subject to debate by the actors involved the work at the tables, carried out by citizens registered in the Debate, for the formulation of questions and requests for further study and finally the final return of each table, for a comparison with the proponent. The possibility of building a new terminal was not a choice linked to productivity or the conquest of new markets but rather a necessity because currently, in the container sector, the port of Livorno was no longer able to receive the megaships, ie ships that now circulate and that transport around 7,000 containers and that in a short time will reach up to 10,000.

As for the Europa Platform or the construction of a large square at sea divided into two specific areas by a large central canal (Darsena Europa), it constitutes the expansion for a greater reception of ships, the result of the port regulatory plan approved on 25 March 2015 from the Region.

The Europa Platform is made up of two large areas: the larger southern embankment will develop as a container terminal and will also be served by a railway branch serving both quays. The north embankment, on the other hand, is destined to traffic by the motorways of the sea and will be used by cargo and passenger ships and ferries to the islands. At the root of the two embankments an operational area will be developed to accommodate various logistic and transformation activities. The object of the Public Debate was the first implementation phase of the Europa Platform, that is the realization of the necessary works for the new container terminal (southern embankment), able to accommodate the latest generation ships.

The elements taken into consideration with regard to the impacts are of different types: hydrogeological and coastal dynamics, consumption of raw materials, interference with the natural ecosystems of neighboring areas, quality of port and coastal waters (also in relation to dredging activities), emissions in the atmosphere, noise increase, waste production, energy consumption, changes to the coastal landscape, public health and major accident risk.

The total estimated cost for the first phase of interventions on the Europa Platform is about € 866 million, of which 540 come from public funds (AP mortgage, Tuscany Region loan, CIPE loan) and 326 from private investments (winner of the call for tenders) of project financing). The time required for implementation is approximately four years from the approval of the project.

As for the Maritime Station, this is an urban project that has the ambition to produce an overall redevelopment, especially in the historic city, allowing it to benefit from the growth of cruise traffic. The new passenger port provides a close intertwining with the city, especially with the pentagon of Buontalenti, the historic city.

The project of reorganization of the area will involve a series of interventions including: the creation of a "hinge" zone, a transition between the port areas and the urban space; the construction of the new maritime station building in a central position, connected to the various terminals directly at the quay; the inclusion of spaces for more typically urban functions, such as commercial, service, management and tourist-accommodation activities; the construction of an area with a new accessibility system directly connected to the Florence-Pisa-Livorno highway, with the coastal railway line and the one connecting Pisa to Florence; the recovery and enhancement of historical and cultural heritage of the city such as the Fortezza Vecchia, the Forte San Pietro, the Water Customs. The Maritime Station project is a unitary system to be implemented in functional sections and with the help of the Municipality, the urban planning operation manager, the construction management will be organized. While the the Europa Platform project was developed through a general feasibility study and a specific study related to the first implementation phase, that of the Maritime Station area refers only to urban planning requirements and to indications still under study.

The work proposed at the eight tables formed in the first meeting involved the compilation of an individual file for all the components of the table and a collective sheet based on the individual reflections of the table components. The objective of the individual and collective cards was to respond to a series of solicitations on the main opportunities and problems with respect to the two projects and to identify the specific topics that the participants would like to be treated during the process of the Public Debate.