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Essays and Articles

The Concept and Regulation of Public Hearings in the Aarhus Convention and in EU Law (p. 571)

Emanuela Orlando

This paper places the analysis of the public debate in the context of relevant international and EU law developments. The analysis will focus on the concept of public participation as it emerges from the Aarhus Convention and the influence of this legal instrument in promoting and consolidating public participation rights within the European Union. It will therefore seek to examine the extent to which international and European law provisions affect the definition of the role, application and modalities of participatory processes at the national level, and of public debate in particular. The contribution will try to illustrate how, although the Aarhus Convention does not directly regulate the public debate, it nevertheless has a significant normative and interpretative value in guiding the national discipline in this regard, primarily through the concept of effective participation.

Major Infrastructure Projects and Democratic Participation: Some Reflections on the Italian Public Debate “à la française” (p. 607)

Nicola Posteraro

The participation of citizens in the public decision-making procedures plays a fundamental role in the construction (and, therefore, in the prior localization) of infrastructures of major interest for the community. Article 22 of the Italian code of public contracts introduced, for the first time at the national level, the public debate *à la française* on large in-

infrastructure and architectural works of social relevance having an impact on the environment, cities and regional planning. The paper examines the general characteristics of this new Italian instrument in order to highlight its strengths and weaknesses, while we wait for it to be actually implemented

The French Procedure of *Débat Public*: Defending the Environment or Defending Democracy? A Critical Review of the Participatory Democracy Public Policies in France, in the Occasion of the 25th Anniversary of Public Debate Procedure (p. 635)

Ilaria Casillo

The French experience of *débat public* has constituted and still constitutes, 25 years later, an essential point of reference – if not a model – for public participation procedures and, in general, for what could be defined as the institutional offer of participation. Since its creation in 1995, this legal institution has undergone several reforms that have strengthened it and made it one of the pillars of environmental democracy. In the first part of this paper, after briefly describing the institutional offer of participation in France, we will focus on the public debate procedure, highlighting its particularities and strengths as well as the logic that inspired the French legislator. In the second part, after mentioning the effects that this institution has had on the implementation of significant projects, we will identify its critical points and shortcomings. At the end, this critical reading will allow us to question the political scope of this institution from the point of view of strengthening democracy and its real legal effects from the point of view of environmental protection.

Participatory Rights in the Environmental Impact Assessment: Traditional “Tools” and Public Debate (p. 657)

Emiliano Frediani

The evolution of participatory rights concerning the environmental impact assessment procedure (E.I.A.) is consistent with the image of an “ascending parable”, as the evolution of the law demonstrates. In this evolution, it is possible to highlight the model of public-private procedur-

al cooperation not only “during” the procedure of E.I.A., but also at an “early stage” in the decision-making process. The recent introduction of the public debate in Italy is framed in this perspective: this figure, placed in relation to the E.I.A. procedure, is the expression of a new and relevant “stage” in the path of the “culture” of participation.

The Regional Legislation about Public Debate, also in the Light of the Judgement of Constitutional Court n. 235/2018 (p. 679)

Patrizia Vipiana

This paper examines the legal instrument of public debate as the regional legislation defines it. In particular, the paper will focus on the several features of this institute related to participatory democracy and deliberative democracy, concerning the object, the procedure and the outcome. The analysis will compare the regional legislation about the public debate with the relevant national State legislation. Moreover, this paper analyses the judgement of the Italian Constitutional Court n. 235/2018 that has declared the unconstitutionality of two legislative provisions of Region Apulia, one of which is almost equal to a provision of Region Tuscany still in force because not submitted to review of the constitutional judge.

Territorial Conflicts and the Public debate. The Case of Genoa’s “Gronda” (p. 701)

Gianfranco Pomatto

The article focuses on the first public debate on a significant infrastructure project carried out in Italy: a new stretch of highway in the city of Genoa strongly contested by the local community. The study highlights the finding that also in Italy, as in France, the public debate is generally not able to solve this kind of conflicts but, at the same time, it favours the development of win-win solutions that reduce the negative externalities for residents and depolarize preferences.

The Origins of the Administrative Procedure Act. The Period 1943-1947 (p. 721)

Mario P. Chiti

The paper examines political and institutional evolution of the Italian State during the years 1944-1947, a crucial period for the origin of public administration reform and, particularly, for the genesis of administrative procedure's legislation. The paper aims to reevaluate the findings of the academic debate on this subject as it demonstrates that reform proposals elaborated in that period were not minimal or purely conservative. If approved, they would have represented an important development of the public administration, notably with regards to the relations between administrative authorities and citizens. Finally, the paper seeks to clarify the reasons for the failure of the reforms attempted during that period.

Regional Observatory

Public Art between State and Regions (p. 777)

Alessandro Candido

This study analyses the law n. 717/1949, known as “law of two per cent”, which provides that for each new public building a fee of the total amount of works must be allocated to embellishment of the building with works of contemporary artists. This paper considers also the state of implementation of this regulation highlighting the potential of a law that could be an element of regional differentiation and an instrument to revive the art sector, making the art work a tool for effective integration and available in the places every day.