



The TEN-T Priority Project No 6 Lyon-Turin, between popular struggles and economic crisis

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The right to participate and the right to dissent

Brief notes on the militarization of Susa Valley in response to popular opposition to the
TEN-T Project no. 6 Lyon - Turin

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We can begin with a theoretical premise: participation and dissent both constitute essential elements of democracy. Norberto Bobbio defined dissent as a “*stimulator*” and as having a “*necessary*” link to democracy.

1. Participation and dissent in the Italian Constitution

The Italian constitution, consistent with the 20th century vision of European constitutionalism, goes beyond the vision of participation being relegated to electoral moments and speaks of “*effective participation*” (art. 3, c.2, Cost.). The principle of popular sovereignty (art. 1 Cost.) is also tangible in forms not foreseen by ordinances through spontaneous demonstrations of “*active citizenship*”. The No TAV movement, which utilizes methods and parameters that are coherent with a democratic approach, not only represents the legitimate exercise of popular sovereignty, but contributes to augment democracy through direct participation and as a guardian and overseer of institutions.

The No TAV protest constitutes the exercise of fundamental constitutional freedoms – the freedom to express opinions and the right of assembly first and foremost (art. 21 and 17 Cost.).

2. Ideas on participation and dissent in the European context

The European Court of Human Rights in Strasbourg, drawing on its own jurisprudence on the matter affirms: “*there can be no democracy without pluralism*”; “*one of the principal characteristics of democracy to be the possibility it offers of addressing through dialogue, without recourse to violence, issues raised by different strands of political opinion, even when they are irksome or disturbing. ...there can be no justification for hindering a political group that complies with fundamental democratic principles solely because it has criticised the country's constitutional and legal order and sought a public debate in the political arena*”¹. With regards to freedom of the press in particular, the Court establishes that “*in a democratic society even small and informal campaign groups... must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment*”². Moreover, the Court asserts that, notwithstanding every State’s discretion in making general political decisions, it must also take into account the environmental interests of its residents³.

Also worth mentioning, within the Community context, are references in the Treaty of Lisbon regarding participation: “*decisions are made in the most open manner possible and close to the citizens*” (art. 8A TUE) and transparency is required “*with the aim to promote good government and to guarantee the participation*

¹ European Court of Human Rights (www.echr.coe.int), *Case of Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, February 3, 2005 (parr. 45 and 55).

² European Court of Human Rights, *Steel and Morris v. United Kingdom*, February 15, 2005 (par. 89).

³ European Court of Human Rights, *Hatton and others v. United Kingdom*, July 8, 2003, (parr. 98 and 123).

of civil” (art. 16A TUE). The Aarhus c.d. Convention of June 25, 1998⁴, is dedicated to the protection of “public participation in the decisional process”, especially when the environment is involved.

3. Observations and conclusions

Within the context of the Italian constitution and given the consideration evident in the European Court of Human Rights and Community law, the priorities of guaranteeing citizenship participation and effective (not fictitious like in the Observatory for the Turin –Lyon railway link) public debate emerge, that is, responding with the opening of democratic spaces and not with the militarization of a territory (or the authoritarian re-qualification of the site of the project as an “*area of strategic national interest*”)⁵, responding to the requests and questions of informed, conscious citizens, the authors of a protest, more than two decades old, that is determined and peaceful.

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⁴ The Aarhus Convention was recognized within the EU context with Council decision 2005/370/CE on February 17, 2005. <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43ital.pdf> - <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

⁵ As in the draft c.d. Decreto sviluppo, spec. artt. 31, 36 and 108, created to accelerate procedures without paying any attention to the arguments of the opponents of the project and in infringement of legal norms.