

PARTICIPATORY IRRIGATION MANAGEMENT: THE ITALIAN CONSORTIUMS

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ABSTRACT

The history of irrigation in Italy proves that the sector of water for irrigation has had, since ancient times, an institutional system based on the aggregation of the users. Irrigation Consortiums in Italy have a centuries-old tradition. The origin of the consortium institution has a private and voluntary character. For governing water resources, participatory management through the Consortium has always favourably responded to problems the individual would have not been able to solve autonomously. The role of irrigation Consortiums had been partially overshadowed in the past. Today it is newly appreciated and considered autonomously. This should lead the regional legislator to a similar orientation and guarantee to these authorities smooth and flexible regulations in view of maximum efficiency.

RÉSUMÉ

L'histoire de l'irrigation en Italie témoigne que le secteur de l'utilisation de l'eau en irrigation a eu, depuis les temps anciens, un système institutionnel basé sur l'agrégation des usagers. Les Consortiums d'Irrigation en Italie ont une tradition séculaire. A l'origine, l'institution du Consortium e eu un caractère privé et volontariste. La gestion participative des ressources en eau à travers les Consortiums a toujours répondu d'une manière adéquate à des problèmes que l'individu n'aurait pas été en mesure de résoudre tout seul. Le rôle des Consortiums d'Irrigation a été en peu obscurci dans le passé mais il est mieux apprécié aujourd'hui et considéré d'une manière autonome. Cette orientation devrait également guider le législateur régional pour garantir à ces administrations des règles plus souples leur permettant de réaliser la meilleure performance.

Irrigation is a centuries old tradition that plays a major role in the political and economic history of Italy.

Shortly after the year one thousand, in Lombardy, the Monasteries already practised irrigation. At the gates of Milan, the use of Vettabia waters by the Cistercians of the Chiaravalle Abbey remains memorable; it is also thought that the first "marcite" — the permanently irrigated meadows that produced fodder during the harsh winter period — were created on those lands using the spring waters having a temperature considerably higher than the external one thus allowing the cut of green fodder in a period when cattle could only be

fed by dried roughage. Certainly, the active political and economic movement that favoured the extension of agriculture over part of the Po Valley occurred at the Communal time; it was followed by the construction of the first canals that diverted water from the Alpine rivers and laid the bases, with inland navigation, for irrigation. For instance, it is in 1179 that the Great Canal that connects Milan to the "Lago Maggiore" was constructed; and it is in 1225 that the "Muzza" and "Fossa di Pozzolo" were built to divert tens of cubic meters per second of water for irrigation, respectively from the Adda and Mincio rivers. During the same period, free owners' associations started to be formed to reclaim the marshy lands and subsequently irrigate them. Irrigation continues to advance with ups and downs in the subsequent centuries and strongly developed in the middle of the 18th century with the set up of the liberal system, and to a different extent in the different areas of the country.

It is in this period that owners' associations developed

to manage irrigation jointly. In the middle of the 19th century, Camillo Benson Count of Cavour ordered the construction of an irrigation canal, named Cavour Canal, to irrigate three large irrigation areas: "Lomellina", "Vercellese" and "Basso Novarese".

Cavour played a fundamental role in the construction of this canal. It is worthy mentioning it on this occasion since we are firmly convinced of the need to institute a water users' association in charge of distribution.

Before the construction of the Canal, some irrigation channels, diverted from the Dora Baltea river, were present in the region; they belonged to the State that rented them to contractors

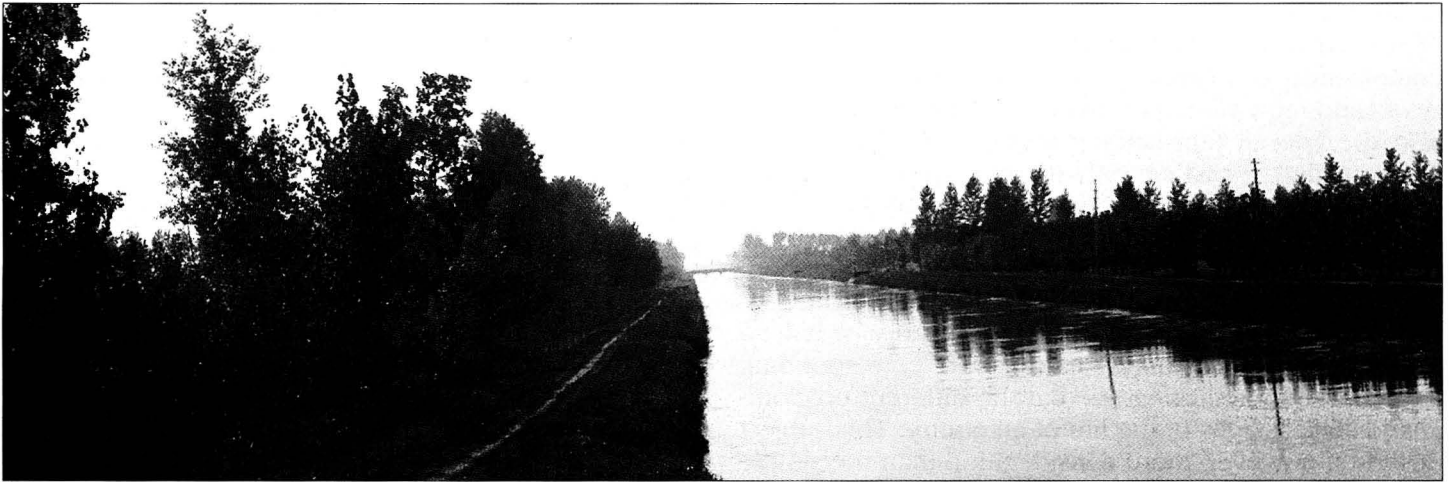
by a nine-year contract. These contractors, most of them being speculators, subleased them to owners and farmers of the area, making profits and creating permanent conflicts. Cavour proposed to gather all the users into one association appointed as concessionary of the State-waters and in charge of the management and distribution. This would have allowed farmers to make safer profits but, at the same time, this laid the bases for the design of a wider and more complex irrigation system. In 1853, the old concession contracts expired and Cavour — who had succeeded in constituting the users' associations — at meeting of the subalpine Parliament on 14 and 15 June illustrated and had the approval of a law by which the State waters of the Dora Baltea were granted for use. This created the legislative and political premises for the construction of the Canal. As Cavour emphasises, the most impressive feature of this operation was essentially a political one: it consisted in gathering into Consortiums — an absolutely unbelievable thing in Europe — as many as 3,500 owners, called upon to share costs and benefits within a collective institution. The success was unquestionable: the initial

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3,526 members became 5,959 in 1859 and 20,000 in 1884. The present West Sesia Irrigation Association was born on 13 July 1853.

At the eve of the Union of Italy, an extraordinary event that had previously occurred and that had introduced navigation and transformation in the Po Valley occurred again: the conveyance of huge amounts of water by a joint effort of individuals sometimes supported by the State. A couple of decades later, another large water way was constructed: the Villoresi Canal to irrigate the arid lands of upper Lombardy. On the other hand, in the Po valley, several users' associations had constituted spontaneously and were regulated by private law regulations; they could be considered to be similar to the commissions or the co-operatives, whereas in 1926 the East Sesia Irrigation Association was constituted. The history of irrigation in our country proves that the sector of water use for irrigation has had, since ancient times, an institutional system based on the aggregation of users. Irrigation Consortiums in Italy have a centuries-old tradition, since the Consortium as a tool to guarantee an efficient and profitable joint management has preserved its validity in the course of the economic and social evolution and with the changing legal systems. As I already stressed in one of my previous papers on this subject, the phenomenon can be broadly explained if we consider that in Italy, the development of the economic system and the evolution of the law in this specific sector, have converged towards weaker individualistic factors and progressively stronger collective factors. In particular, for governing water resources, participatory management through the Consortium has always favourably responded to problems the individual would have not been able to solve autonomously because of the impressive financial resources required, the technical problems related to water distribution, the excessive fragmentation of land holdings, the limits imposed on private autonomy in the use of a common good like water. Nor should one underestimate the basic aspect of users' co-ordination promoted through the Consortium. The origin of the consortium institution has a private and voluntary character. The constitution of the first consortiums is due to the free initiative of groups of owners of country estates who feel the need to gather into associations and take over the responsibility for community concern activities on the land where their holdings are situated, and aimed at their improvement for production purposes. This paper is not intended to make a historical analysis of the evolution of the discipline of this institution in its various regulations and subsequent historical stages. So, neglecting the analysis of the legislation before the constitution of the Italian State, the basic rules that originate the present forms of Consortiums are found in the civil code of 1865 in articles 657 to 661. The system of rules, although summary and at the embryonal state, has a non-

government character and, from the structural and functional point of view, Consortiums have a private nature either when they deal with hydraulic reclamation or irrigation. In fact, according to art. 657 "those who have a common interest in the diversion and use of water, or in the bonification or reclamation of lands, *can gather into Consortiums* to provide operation, conservation and defence of their rights. The adhesion of the people concerned and the regulations of Consortiums have to be expressed in a written deed": The constitution of the Consortium being on voluntary basis, the resolutions of the majority of participants are compulsory also for the dissenting minority, following on the provision dictated in art. 658 that refers to the rules established for the communion and societies. The Consortium is then initiated, according to these regulations of 1865, by free initiative and adhesion of the owners of country estates concerned with the use of waters and their defence. The law of 1865 paid special attention to the problems of irrigation, defence of waters and Consortiums, thus including the requests raised the increasing general interest in the sector due to the economic and social needs to be satisfied for the development of agriculture. After the middle of the 19th century, there is on one hand an increase in the number of private irrigation Consortiums according to the scheme of the civil code of 1865, on the other hand, many laws were issued (from the law of 29 May 1873 to the r.d. of 13 August 1926 n. 1907) that recognise the general concern of the irrigation sector. The result is the financial participation of the State in the execution of the works and the attribution of taxing powers to Consortiums. At the same time, the public nature of waters is extended and in 1933 (r.d. 11/12/1933 no. 1775) the basic principle is established that public waters are all those that are or may be of public interest. The functions of use and defence of waters are influenced, in this period, by the public character recognised to waters and related works. It also influences the structure of the consortium and disengages it, more or less strongly depending on the cases, from a rigorous private regime. Together with the voluntary Consortiums, of exclusively private nature, also public concern private Consortiums are established (Land improvement Consortiums) and the Consortiums having public legal personality (Reclamation Consortiums). The rigorously voluntary character of the Consortiums of the revoked civil code is maintained only by the former, that is the voluntary irrigation Consortiums of art. 918 c.c. This article provides for the constitution by free initiative and voluntary adhesion of individuals, of Consortiums among owners of neighbouring estates who wish to gather and share the use of the waters flowing from the same watershed or contiguous ones. The abovesaid subdivision originates from the deep and historical legislative reform on bonification of 1933, that introduces, for the first time in the Italian regula-



tions, a single juridical regime for those actions, referred to as “Comprehensive land improvement” covering all the public and private works aimed at the defence, safeguard, exploitation and development of land. Land improvement has extended to cover a comprehensive action not only for water defence works and water drainage, but also for the storage and use of waters, roads, waterworks, electrical plants, afforestation, etc. As emphasised by Eliseo Iandolo in the introductory lecture at the Meeting at S. Donà di Piave of 1962, it was Meuccio Ruini who, in 1922 at S. Donà di Piave, mentioned the term “comprehensive land improvement” that would have changed the legislative notion of bonification no longer considered as a public work but as a complex undertaking consisting of various actions that required the co-ordinated participation of the State and the concerned individuals. That’s the beginning of the evolution of land improvement which covers actions however aimed at the economic development of the concerned areas. A further extension is attributed to the concept of land improvement that becomes an increasingly complex tool, a condition and a stimulus for the global economic and civil development due to the services it can cover. The envisaged mechanism to ensure the actual implementation of all the actions, was to attribute to the State —as the only organism that could bear the costs —the execution of the public works beyond the interests and the possibilities of intervention of individuals. At the same time, the private owners were imposed duties about the execution of private works, complementary and integrative to the public works and needed for a profitable use of the latter. The special importance of the reform is also justified by the integration of public intervention with private activity. The implementation and management of public and private actions, falling within land improvement, are entrusted to the Consortiums by the Legislator of 1933. A distinction is made into two categories: Reclamation Consortiums and Land Improvement Consortiums. This qualification of public concern private institutions de-

rives from the special regime that the r.d. no. 215/1933 dictates for land improvement Consortiums that certainly are private law Consortiums. On this subject, the declared rule contained in art. 863 c.c., first sub-paragraph, has ended the dispute, raised in the years immediately after 1933 between the Ministry for Cooperations and the Ministry of Agriculture and among different scientists, in which also the State Council had intervened by the opinion of 12 March 1935 accepting the thesis of the private character of land improvement Consortiums. It has also to be observed that although these Consortiums are among those of private nature, they still keep an “atypical” feature for some public aspects present in their specific discipline. In particular, reference is made to their constitution (the only requirement is the adhesion of the users that represent most of the land, the measure is taken by a deed of the State which is now transferred under the competence of the Region); to the merging of several Consortiums, to the division and change in territorial boundaries, always ordered by the State and nowadays transferred to the Region. A similar remark generally applies to the control on such Consortiums performed by the State (nowadays the Region), as well as to the taxing power. This special regime grants the land improvement Consortiums the nature of public concern private institutions since it imposes rules not alien to the typically private sphere. These rules have their principle in the functions of common interest that such Consortiums are granted by the regulations in a sector, like the one of waters, whose collective use certainly has outstanding aspects of public concern. It should also be considered that the legislator of 1933, in identifying the two types of Consortiums —Reclamation Consortiums and Land Improvement Consortiums —regulated the other types of Consortiums within the two considered categories and assigned the task to the Ministry of Agriculture that had to take care of it depending on the presence or not, at that time, of the classification of the concerned land as “Reclamation scheme”. The already existing Irrigation

Consortiums, that had been constituted independently of a classification into land reclamation under their competence, were recognized to belong to the category of Land improvement Consortiums. At the same time, also the special legislation on Irrigation Consortiums was repealed, for which only the rules contained in the civil code are still in force, except for those recognized as land improvement Consortiums. That's the history of the legislation in force and the technical-juridical reconstruction of an institution, the one of the Irrigation Consortiums, that has represented, in the history of Italy, a fundamental step of users' aggregation, corresponding to a constantly recurring need at the different economic and social stages of the life of a country. This subject deserves, however, more consideration than the simple report of historical data though rich and important. This paper reports some general remarks on the role of Irrigation Consortiums in the contemporary society and in the more recent regulations. It is thought that, in a period when land policy in our country evolves towards a greater concern for the control of natural resources — land and water — all the institutions having a specific competence in this sector and that proved to be institutionally viable and efficient in the past should play a greater regulatory role. This is justified by the fact that the knowledge of the peculiar needs of the sector, and of land as well, the fact that it is an association of users - i.e. of people directly concerned with the implementation of a collective irrigation that supposes a so und use of waters, give these institutions a very special and important institutional and operational strength. In fact, the legislative evolution of the '90s in the sector of waters, on one hand recognises a greater value to the participation and aggregation of users; on the other hand, it starts a privatisation process consistent with the new orientations in governing the different sectors of economy. In this context, the legislator (law no. 36/1994, art. 27) had necessarily to attribute, for the productive uses of waters, a specific importance to Irrigation Consortiums that are indicated, together with the Reclamation consortiums, among the institutions that are granted, not only the traditional tasks of implementation and management of irrigation, but also new important functions consistent with the new objectives of water resource policy. In particular, it is a matter of multiple uses of waters as one of the fundamental principles of the new water policy. The role of the Irrigation Consortiums that had been partially overshadowed in the past, is newly appreciated and considered autonomously. This should lead the regional legislator to a similar orientation and guarantee to these authorities smooth and flexible regulations in view of maximum efficiency. On the other hand, the wide experience acquired so far by the large irrigation Consortiums in our country, has allowed to solve consensually and adequately the needs of the different users according to the principle of soli-

arity that characterises these institutions and that is widely recognized in the community regulations, where a greater attention has been recently paid the problem when introducing the modification to the Treaty of Maastricht of 7 February 1992. One lesson to be learnt from the innovations of the Treaty of Maastricht, is that the needs related to the safeguard of environment are not only preserved by control and repression but preventive measures, since art. 130 states that the policy of the Community is based on the principles of precaution and preventive action and on the principle of preventing at the source the damages caused to environment. The introduction of the principle of "precaution" in addition to "prevention" only contained in the single Act, leads us to think of the need of a system in which the people concerned are directly involved in this action through means aimed at tempering at the origin the economic and social interests and at finding out technical and behavioural rules that affect the performance of the same activity of the users for the social purpose of environmental preservation. Basically, the tendency is to move from an exclusively sanctioning approach to a behavioural one. These orientations lead to conclude that the institutional tools that unite economic operators who aim at a sound use of resources in compliance with the rules in force —like conservation and safeguard already belonging to the regulations of our Country —are a model which is widely recognised in the basic principles of the European single Act also with special reference to the "subsidiary" principle. If we consider that the Community policy on environmental matters has to contribute to pursue also the objective of a cautious and sound use of natural resources, the Consortium is the best guarantee based on solidarity; water users are, at the same time, the ones more directly interested in preserving and safeguarding the resource, thus certainly applying the policy of precaution through an economical, sound and co-ordinated use that requires generally behaving in compliance with the rules for the safeguard of the resource, through which also the sustainable preservation of economic development is ensured. On the other hand, the Community "subsidiary" principle, that will certainly influence, according to the prevailing doctrine, in each member States the relationships between the central government and local communities, gives rise to the principle according to which the State participation is required only when the minor communities, i.e. the territorial and local institutions, are not able to pursue the proposed public purposes. This would thus stimulate an efficient distribution of competences through institutions that, like the consortiums, are founded on principles of functionality and efficiency and within which cooperation, solidarity and concertation are performed. ●