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THE LAW OF 5 JANUARY 1994 N. 36: FOUNDATIONS OF THE REFORM OF WATER SERVICES IN ITALY

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Ten years ago, a few days before Christmas, the Chamber of Deputies gave their definitive approval to the law for reforming water services (which came into effect after publication as law 36/94).

This was the final act in a discussion and confrontation that had continued for three years both inside and outside Parliament.

In order to grasp the significance and importance of this law, passed by a large majority, we must go back to its beginnings.

The will and political awareness of the need to introduce integrated reforms was sparked off by the emergency, particularly widespread in the north of the country during 88/89, caused by water being polluted by chemical substances used in agriculture.

At that time, it was understood that the solution to the problem could not be limited to emergency forms of intervention. We had to go beyond the emergency mindset and re-think our entire system of water management.

And here we have the first and fundamental point of view in our discussion of the birth of this reform: it is the environmental question which calls for a new model of management. That is to say, we must overcome not only council borders but also the fragmentary nature that characterised the water cycle (under the old order, the construction and management of aqueducts, sewers and purification plants each followed a separate and different logic).

In other words, an organisational model needed to be defined that would be concerned with water from the protection of sources to the return of water to the environment. We can therefore maintain that the environmental question was the lever that resulted in the integrated water service, a service that must be concerned with a vast area in close relation to the hydro-graphic basin or sub-basin.

Protecting the water environment means safeguarding water tables, surface courses of water and lakes.

To achieve this aim, it is necessary to:

- Extract water in a measure “compatible with the capacity for renewal”;
- Create sewers;
- Purify waste water;
- Protect springs, water tables and lakes both as “hydro environments” and as the great reservoir of drinking water.

The cultural horizon drawn to mind by Article 1 of the law 36/94 is that of “global common goods”: water is an essential condition for life and for the quality of life, not only for the current generations but for those of the future. Thus, both the concept of “property” (who does water belong to?) and that of “contemporariness” are both superseded.

The underlying principles of the new organisation of the governance and management of water consist lie in two essential factors:

1. the declaration that all surface and underground water, not as yet extracted, is of public domain and is to be safeguarded for future generations;
2. priority must go to human consumption before all other uses.

Therefore, in order to organise the best integrated water service on a territorial level, it is essential that local councils get together to define the kinds of institutional collaboration and programme of interventions necessary in order to protect water supplies and ensure their rational use.

This is the crucial point, the real cultural and organisational difficulty of “getting together” so many councils. And here we also have the cultural and political challenge: to succeed in “governing together”, essential for managing the integrated water service.

By applying regulatory principles and defining a vast area within which councils must perform their tasks in association, we reach the third and final step: industrial management of the service.

The new environmental and territorial nature of the service requires, or rather demands that there be an industrial management based on a territorial context that can be viewed as optimal in terms both of its overlapping with the hydro-graphic basin and of the number of users supplied with the service.

The law lies precisely in this.

The structure of the organisational model is complex, in the etymological sense of the word, since it interweaves the three large topics outlined above:

1. the environmental question;
2. the need for collaboration between institutions (Regions – Local Authorities);
3. industrial management as the foundation of an efficient, efficacious and economic service.

The reform moves ahead slowly, but has already gone beyond the point of no return. The delays, if we examine these closely, derive from a cultural and political deficit. The liberalising and privatising processes begun after the law was approved have undoubtedly led to new problems. Thus the European trend towards a belief that public interests do not coincide with public ownership of business but with complete freedom for enterprise leaves small enterprises without the power to compete. . However, even bearing in mind these ulterior problems related above all to what we may term the “failed industrialisation” of the integrated water service, what really matters, in my opinion at least, is the fact that approval for the reform occurred at the same time as crisis arose amongst the political parties with the consequent disappearance (or nearly) of leadership and guidance at the local level. Lacking the teaching capacity of the political parties, council administrators were not able to grasp the meaning of the law, the direction in which things were moving, or the need to adopt a new viewpoint. This had to derive, not from theoretical considerations but directly from the dramatic reality before our eyes, that widespread pollution is increasing and that we are still far from attaining satisfactory protection of our water resources, too far from the parameters established by the European Union and reflected in our laws.

Given this the question is, again, essentially political in nature.

Politics must ensure that the reform law has the destined effects.

Politics must guarantee that there are reformers capable of interpreting and applying the reform.

Politics must carry out its mission to the very end since politics is not the art of the possible but the art of extending the limits of the possible.