

Italy

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I- ENVIRONMENTAL LAW EVOLUTION SINCE 1992

Analysing the evolution of environmental legislation in Italy starting from 1992, it can be underlined that the main problem is the hypertrophism of this specialised legislation, according with a lack of environmental sensibility in our population, so that it is quite hard to create a strong and functional legal system.

To understand how deep and brilliant have been the recent environmental laws, we have to remember that in the constitutional law (1948) the only evident indication about “nature conservation” is provided by the art. 9, which establishes that the landscape defence is one of the fundamental aim of the Italian Republic.

As a result of this particular constitutional principle, the art. 117 of the Constitution provides to transfer specific competences (urbanistic and agricultural matter) to Regional Councils.

The environment as something to protect and preserve can be found in the Italian legislation just in the middle of the 80's (exactly in the 1986 with the law n°349/86 “Institution of the Ministry of Environment”), if we think to this date is quite easy to understand why, in Italy, it is so difficult to find laws that can completely satisfy all the needs of a new, but not to be ignored, environmental sensibility.

But even if a new Ministry was created Italian government did not provide an homogeneous system, because the competence about environmental problems was shared between: Ministry of Cultural Estates, Ministry of Works, Ministry of Merchant Marine and Ministry of Scientific and Technological Research.

Still now, 15 years after the creation of this new and specialised Ministry, we have great problem of co-ordination between all these different institutional subjects, so that it is quite impossible to have an environmental program that can be defined really effective.

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Nowadays we are improving this legal system and, in the last 9 years, we have seen a wide and deep development of environmental matter in our legislation, creating new legal instruments according with a new feeling with nature.

Because of the extreme wideness of the matter I think that it can be interesting to explain, in a short way, 4 recent laws which provide a strong and useful defence in 4 different and important matters, so that it can be easy to understand the newest evolution:

- law n°36/01 against E.M. pollution;
- law n°490/99 that provides a legal protection on environmental estates;
- law n°152/99 about water pollution;
- law n°22/97 that is the general law about waste.

Starting from the law n°36/01, we have to underline its originality, because of the absence of a European directive in this matter and the lack of precise answers about dangers of E.M. pollution on human health.

Creating this law it was possible to choose two different approaches: the first one was based on the concept that every E.M. field is dangerous for health (above all for tumour risks), the second one was based on the concept that the progress is always good, never evil, but we have chosen a third way.

This third way is based on a precise consciousness of the existence and seriousness of E.M. pollution problem, applying a precaution principle that is expressing a judgement of uncertainty about long term effect of E.M. fields. Shortly it is important to point out the ideal spirit of this law, because it has operated (and represents itself) a precise choice: E.M. radiations are an unknown and misunderstood problem, so the law n°36/01 is a forward step in comparison with the undervaluation and the silence of EU and other European countries normative about E.M. exposition dangers.

If we want to concentrate our attention on environmental estates, we have a typical Italian chaos. The main problem in this case is based on a paradox, in fact in Italy, we do not have specific law on coastal zones and it's strange for a country which is surrounded for $\frac{3}{4}$ by the sea. Now, starting from this paradox, we have to focus our attention, above all, on law n°490/99 that provides a legal protection on environmental estates.

This law is quite interesting because of the particular defence established for coastal zones, in fact, starting and inspiring from law n°1497/39, it evolves the concept of covenant (300 mt. *non-aedificandi* zone) transforming this one from a landscape bond into a landscape-environmental bond, according with the recent sensibility for the environment and the habitat.

This is a really important evolution because this recent law introduces, together with the aesthetic concept, a new concept based on the environment as respect of flora, fauna, eco-systems and ecological balances.

With law n°152/99 it has been approved the final normative text on water pollution defence, absorbing EU directives (n°271/91 and n°676/91) as established by the JCE in December 1996.

The final targets of this law are:

- To prevent and reduce water pollution;
- To improve water quality;
- To improve natural capability of self-depuration.

The previous laws privileged the regulation of waste, giving to local governments (regions) the power to decide and effect the reclamation of a water .

The new law starts from an integrated approach which combines not only waste limit, but also water quality.

Supposing, as resulting and respecting the main principles of EU directives, that it is not enough to check if waste respects legal limits, but that we need to guarantee that the whole assemble of waste has not to compromise water quality, we are moving our aim from the single font of pollution to a general and wider quality conception.

Law n°152/99 provides to analyse three different kinds of waste water:

- Domestic waste waters;
- Industrial waste waters;
- Urban waste waters.

This triple division is a practical way to distinguish different ways to treat different waste, in order to secure the quality of water, linking an efficient action to different realities (human, industrial, human+industrial).

Another really important and recent law is law n°22/97 that is our fundamental general law on waste, a law that determined macroscopic effect on political, administrative, industrial and judicial level.

The general structure of the waste system is based, above all, on a wiser conception of waste, no more a singular and particular vision linked to specific standards, but a wider and more comprehensive conception including air and water pollution matters too.

The most important thing to underline is that this law gives a precise legal definition of waste, so that it is easier to understand the application limits of system.

The law provides to define as waste “*every substance or object which is included in the table A (an analytical classification of substances and objects) whom the holder gets rid or decides or has to get rid*”.

Even if in this short passage it is impossible to describe all the different aspects of this system, it is important to point out how this new law has deeply changed the way to understand and relate waste reality in Italy.

In fact it has established rules focused on the constant check of waste, starting from the production of dangerous substances and arriving to their complete elimination or even new utilization, a sort of “life of waste” chronicle, which is able to face all the practical, social, economical and ecological aspects of this matter.

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Basic environmental legislation

- Law n°1150/42 “Legge urbanistica” (urban buildings construction rules);
- Law n°41/82 “Piano per la razionalizzazione e lo sviluppo della pesca marittima” (sea-fishing development);
- Law n°470/82 “Attuazione della direttiva CEE n°76/160 relativa alla qualità delle acque di balneazione” (seaside water quality);
- Law n°979/82 “ Disposizioni per la difesa del mare” (sea defence program);
- Law n°47/85 “ Norme in materia di controllo dell’attività urbanistico-edilizia, sanzioni, recupero e sanatoria delle opere edilizie” (abusive buildings penalties);
- Law n°431/85 “Disposizioni urgenti per la tutela delle zone di particolare interesse ambientale” (environmental interest zones defence);
- Law n°349/86 “Istituzione del Ministero dell’Ambiente e norme in materia di danno ambientale” (Ministry of Environment and environmental damage);
- Law n°183/89 “Norme per il riassetto organizzativo e funzionale della difesa del suolo” (ground defence);
- Law n°241/90 “Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi” (access to public documents);
- Law n°394/91 “Legge quadro sulle aree protette” (protected areas);
- Law n°22/97 “Attuazione delle direttive 91/156/CEE sui rifiuti, 91/689/CEE sui rifiuti pericolosi e 94/62/CE sugli imballaggi e i rifiuti di imballaggio” (waste treatment);
- Law n°152/99 “Disposizioni sulla tutela delle acque dall’inquinamento e recepimento della Direttiva 91/271/CEE concernente il trattamento delle acque reflue urbane e della direttiva 91/676/CEE relativa alla protezione delle acque dall’inquinamento provocato dai nitrati provenienti da fonti agricole”(water pollution);
- Law n°490/99 “Testo unico delle disposizioni in materia di beni culturali ed ambientali”(environmental and cultural estates);
- Law n°36/01 “Legge quadro sulla protezione dalle esposizioni a campi elettrici, magnetici ed elettromagnetici” (E.M. exposition protection)

II- SUGGESTIONS FOR THE FUTURE

I would like to start this various collection of ideas, suggestions and hopes about the future evolution of environmental law in Italy, citing an ancient Greek aphorism: “*Nature is not only around us, nature is inside us*”.

This must be the main principle of every environmental law, the necessary philosophical *substratum* that must be remembered and contained in every environmental legislation.

If we want to imagine the evolution of environmental legislation in Italy, we have to start, firstly not creating new laws or new rules, but building a new attitude, because the main problem is not the legislation but the people, the way of thinking, the way of travelling, the way of eating, the way working of our society, its own way of living must change and evolve in a more conscious way to relate ourselves to our planet.

The environment as an everybody's interest estate : this is the basic definition which must characterize Italian environmental normative system and inspire its political choice in this millennium.

Conscious of the main problems of environmental legislation in Italy and according to the topics selected, it is interesting to analyse some particular aspects which will characterize, we hope, the next law changes in Italy.

In the following paragraphs most of the topics are analysed from a whole point of view and not from a singular one, the basic idea is to join the different problems (such as local management of the environment, financing of the environment, biodiversity, etc.) with their possible practical solution, so to concentrate our attention on the hard reality.

It has been preferred this alternative conception because of the particular condition of environmental matter in Italy, nowadays it is a bit premature to treat such themes as integrated management of the environment, which are still unknown, but it has been considered better to choose specific lacks which are strongly felt by the public opinion and needful of a rapid solution, but always respectful of the environment.

Abusive buildings and local interests : which kind of defence?

Starting from this general remark we can begin this dissertation from a recent national report about the real condition of Italian landscape; this report focuses its attention, above all, on territory protection provided by national legislation and not even realized.

It is clear that the real weakness of the system can be found, essentially, at local level, at this level it is hard to prepare an efficient landscape defence action because of the strong economical pressures.

In the past the situation was quite different. In a country like Italy, with a lot of hills and mountains, landscape has been always defended in a really strong way and for a really long time, above all, at local level. Italian landscape has been, literally, "built" generation after generation: we can think at the numerous little walls which define, in really typical way, regional landscape, but this respect for nature was linked, above all, with agricultural activity which was the first and most important economical activity in the first part of the 20th century in a really young nation as Italy (1859 year of the Unity).

As we know the abandonment of mountains and hills by the young generations, the enormous urbanization and the savage industrialization, the

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great and fast changes of international economy, have transformed, in a really radical way, our own reality.

In the last decades, territory has been felt, more and more, like a resource common to everyone, from which everyone can easily draw the greatest economical individual richness, a sort of deep and magical well.

The recent ravage of the environment was not the final result of a collective insanity.

It has been the high price that we have paid for an economical development fast and, at the same time, chaotic, a kind of privileged entrance used to join modernity train, the fastest way to give a better life to the most part of population.

This particular historical reason of environmental Italian degrade cannot be forget. But, at the same way, we cannot forgive that, many times, the real limit is an absence of respect for the environment.

As underlined in the national report I was talking before, one of the greatest problem in Italy are abusive buildings, as resulting by recent surveys, in the period 1994-1998 in Italy it has been realized about 230.000 abusive buildings.

Above all, this massive abusivism is caused because of the weakness of local governments, a weakness which makes impossible to bring again Italian territory to acceptable conditions both from an aesthetic point of view and from a safety profile (frequently coincident), a weakness which paralyzes the will to say "no", so to stop new ecological horrors.

Local governors, because of their closures with citizens (which are, properly, their electors) and frightened to become unpopular are not able to take stray decisions in the right direction.

In this political field the central government is always advantaged, because it is far from local interests and it can be less sensible to pressure of these single voices, which can explain their own force just at local level.

Even if it can appear a bit unusual, it must be the central government the first institutional subject to provide a strong and efficient defence of territory, a defence that can by-pass the localisms and the selfish interests, because just a central and responsible political action can obtain good results.

Ethics and profit : short suggestions

In the next future one of the problem to solve in Italy will be the right privatization of public enterprises which provide to supply energy and water to population; the problem is connected to a wise use of these resources that are indispensable because the production and diffusion have to be spread in a way that must be respectful of nature and not slave of the profit.

The new economy is based on the same mistakes of the old economy, the same irrational and omnivorous hunger, the same philosophy, the same culture, the same men, the same aim: the profit without ethic.

The new economy leaders are not thinking to avoid the mistakes that have devoured the earth and trying to make right choices for planet health: to

limit consumptions or disproportionate wastes, to delete speculations and criminal commerce.

The basic philosophical idea that founds this kind of economy is always the same : "*the living standards is not negotiable*" that stands for "*the development model is not modifiable*", but what is the cost of this development?

This kind of chaotic development model, this wild expansion model is going to be applied to the future exploitation of energy and water, the profit is going to become the real god of exploitation.

The water is worth more than gold, this is the new economical reality. The conquer of the last oil-fields and gas-fields is the last (and ultimate) gold-rush.

The economical force of these resources is the reason why this kind of commerce is so alluring for private industries, because these resources are the greatest business of the new century.

But we have to remember that an exploitation of these resources based just on profit is not and cannot be the right way to satisfy the real needs of the whole population, because the water, the light, the air and the fire are not a private property open to few people, these elements common to mankind which must be shared among ourselves and guaranteed water and energy for everyone at low cost, so the central government must provide a control activity checking on these resources' commerce.

Italian laws between past and future

Truly it's been just a few years that we have understood all the damages made because of the chaotic technological evolution grown in a legislation without the capability to link a general welfare with respect of nature.

Italian constitutional law does not provide any definition of environment in a direct way, this definition is indirect, so the environment has always suffered of an indirect defence, less efficient than a direct one.

It is just because of the judges courts' activity, based on an innovative interpretative will, that was affirmed in the early 80's the primary and absolute value of environment as a constitutional principle, not only from an ecological point of view but, also, because of Italian historical and artistic heritage, from a cultural point of view, without forgetting the health right and the best life quality standard right.

Understanding the clear necessity of a strong environmental defence, it was decided, according with E.C. directives, to fill this legislation gap, even with a legislative activity which produced rules for particular fields, singular environmental estates, without a wide vision of environment in its own unity.

So it was produced an enormous legislative stratification, often the environmental matter has been regulated by different laws, with a great problem of superimposition and interpretation.

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In this situation it has been really important the interpretative decisions of Italian Supreme Court (Corte di Cassazione) with a supplementary activity, not always homogeneous but often precious.

Examining the legislative environmental system it easy to understand how it is needful of a deep critical revision, eluding maximalisms, reducing the numerous prescriptions and the formal impositions which are just limits and obstacles to commercial enterprises, starting, instead, from few and single principles without a long interpretative work.

A system based on fiscal incentives for enterprises which will conform their production cycle to ecological quality standards.

All these reasons must conduct to a general and complete law about the environment, so to disciple the matter in the best way.

So, it is clear the necessity of more understandable laws which permit to satisfy every kind of defence, above all because the order takes source from administrative field and without any need to refer, every time, to specific regulations.

Orders and penalties to be both clear, as we have already said, but, first of all, they have stay together because one of them in absence of the other one lacks effect.

The new political task fixes for heavy offences to environment a stronger penalization, but, its aim is to punish formal violations by administrative sanctions. This new task is considered respectful of environmental needs and technological developments, which cannot be stopped, but just turned in the right way, because the technological evolution is everyone's interest too.

But the problem of a new environmental law is much more difficult and it cannot find a solution in new sanctions: the environment defence is a governor's duty, but, it's not all, it is everyone's duty too, and, more, it could be an important commercial opportunity for economical development.

Environment has to be considered in its own unity as a natural and cultural reality: water, air, ground, flora, fauna, protective areas, marine milieu, natural beauties, historical and artistic estates are all faces of the same mirror and this must be remembered in every law produced in the next years.

European agriculture after the BSE fear

Consumers across Europe are increasingly worried about what they eat. The spread of BSE and the outbreak of foot-and-mouth disease are now widely blamed on so called factory farming.

Political momentum is building for radical changes to the way food is produced. But phasing out intensive agriculture is too glib an answer.

Certain practices associated with intensive farming do pose a risk to human and animal health. Others are considered ethically indefensible. Feeding dead sheep to cows is known to be dangerous, as is the indiscriminate use of chemicals and antibiotics. Veal crates, pig tethers or

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battery cages are banned in different countries. Governments must constantly review and, where appropriate, proscribe risky or unethical practices.

Intensive agriculture is also unacceptable when, encouraged by generous subsidies, it creates food surpluses that are then dumped on world markets.

A steady supply of cheap food is a public good that should not be dismissed lightly. Europe, indeed the world, needs efficient farms deploying modern techniques to provide it.

That means specialisation and trade, including arbitrage to take advantage of price differentials. There can be no return to a rural idyll of small-scale local production.

Where European farmers obliged to convert to less intensive or organic production they would need much greater subsidies than they receive today, or higher protectionist barriers in order to compete against their rivals in world markets.

There is undoubtedly public demand for food produced by less intensive methods. But the solution lies in largely in consumer choice. Shopper can choose to pay more for organic or free-range products. Farmers can then respond to the demand.

The role of government should be limited to ensuring a level playing field and, possibly, help with transition costs.

Over the long term, there is a compelling economic case phasing out state aid to agriculture.

In the meantime, the European Union must ensure that its remaining price support and direct subsidies encourage best practice in agricultural production, taking account of the impact on food safety and the environment. That would help to ensure that true costs of intensively produced food are better reflected in the price.