

2011 Referendum on water: results obtained after seven years

On June 2011 Italy held a referendum on a number of questions, including two that dealt with the repeal of recent laws on the privatisation of water services: 1) Repeal of the methods of assigning and managing local public services of economic importance; 2) Partial repeal of the norm for the determination of the integrated water service tariff based on the adequate remuneration of the capital invested. This second question, approved with 95.80% of the votes, prevents private water services to determine water tariffs based on the initial capital invested in the service. In short, with the repeal of paragraph 1 of article 154 of Law 152/2006, the "return on invested capital" will no longer be explicitly envisaged as a component of the final cost of the water services that the citizen pays in the bill

On June 1, 2018, a new government was formed in Italy, with collaboration of two political entities: the Five Stars movement (Movimento 5 Stelle) and the League (Lega). The collaboration was based on the agreement of both to a Contract for the Government of Change. The second point of the Contract for the Government of Change, signed last May by Deputy Prime Ministers Di Maio and Salvini, illustrates the need for investments in the integrated water service of public nature, applying the popular will expressed in the referendum of 12 and 13 June 2011.

Starting from 2013, two years after the referendum, public opinion began to question what was being done and what efforts were in place to achieve a full and effective application of the referendum outcome. In this regard, both WWF and Il Fatto Quotidiano (a national daily newspaper) exposed a very particular situation, in which the tariffs had not changed and no steps had been undertaken on the legal front, to ratify the real application of the results of the referendum. At the end of 2012 (December 28th), the ARERA (Autorità di Regolazione per Energia Reti e Ambiente-Regulatory Authority for Energy Networks and the Environment), the entity that deals with the definition of the criteria to be followed for the calculation of the tariffs for the water service, approved a Tariff Transitory Method (MTT) for the calculation of the tariffs for the years 2012 and 2013, in which a new item had been added, that of the "Repayment of financial charges", which seemed to all effects a loophole to guarantee the profits to the managers of the Water Integrated Services- Servizio Idrico Integrato-SII). For this reason, the organization coordinating associations for the protection of the environment and of consumers' rights, Codacons, together with the consumer forum Federconsumatori and the Water Common Good Onlus (Acqua Bene Comune Onlus Association) in 2013 filed an appeal with the Regional Administrative Court of the Lombardy Region, headquarters of ARERA. On May 26, 2017, after a series of legal disputes and appeals, the Council of State, with a sentence (number 02481 / 2017REG.PROV.COLL.) definitively rejected the appeal, explaining that under the current Italian and European legislation the Water Service is in effect a "Service of economic importance" and consequently the tariff must cover all costs according to the principle of the "Full Cost Recovery". Therefore the interests on the invested capital must necessarily be paid as indicated by the principle of industrial economy of "Total coverage of costs", since there cannot be any business of economic importance that does not consider its invested capital in its accounts and no referendum can establish the opposite. Although the sentence seems to deny the result of the referendum, according to the Council of State it is not so, in fact it claims that it was totally respected, since the remuneration of the invested capital no longer guarantees an annuity fixed by the legislator but it is established by the financial market and then transferred to the bills using complex mathematical formulas developed by ARERA, guaranteeing to the final users the total absence of aggravations or duplications and the complete service offered by the SII. The Water Service can be defined, according to the Council of State, as a local public service of economic importance that must be managed according to the laws of the market. The ruling highlighted the need for new legislative measures in order to make the SII totally public, considering that the referendum of June 2011 did not present these prerogatives, but the Partial repeal of the norm for the determination of the

integrated water service tariff law clearly provides for total coverage of costs, without charges to end users for undue and predetermined profits.

The issues related to the referendum on water are not limited to what has been exposed so far but have affected and still affect the Italian political environment, inflaming the political scenario leading to parliamentary clashes between the political forces (PD and M5S) during the previous legislation. In early 2016 the Democratic Party (PD) proposed a bill of popular initiative, which was taken up and updated by a mixed group of parliamentarians in the environment committee, which included members of Pd, Sel and Movimento 5 Stelle that had supported the 2011 referendum. The bone of contention of the bill are articles 4 and 6. In article 4 the substitution in paragraph 3 of the following words has been proposed: «Direct assignment can take place in favor of completely public companies »with« As a matter of priority, direct assignment is available in favor of totally public companies ». For article 6, which requires the assignment of the water service only to public bodies totally controlled by the State (no public-private companies), two amendments were proposed signed by Enrico Borghi and the other Piergiorgio Carrescia (Pd deputies) that propose to repeal paragraphs 1 and 2, profoundly changing the meaning of Article 6. The oppositions, Sel and M5S, requested that the amendment proposed by the Honorable Borghi be withdrawn, because, it cancels the article that provides that the 'water and its management as well as the infrastructure of water services is public as a consequence of the referendum of June 2011. The PD replied that the referendum questions of June 2011 posed other issues to citizens, the stop of forced privatization of the SII and the end of the fixed remuneration of the invested capital, so as to avoid that there are guaranteed profit margins on the water service and that their proposed amendments respected the 2011 referendum. The PD added that the M5S and Sel talked of a referendum that was never submitted to citizens, because they rejected were moved by their ideological conviction. This was also the subject of the then Premier Matteo Renzi twitting a text, published on the Unità newspaper of Luigi Marattin, economic consultant of Palazzo Chigi, in which he explains that the two questions in 2011 approved by citizens were to make "a joint decision to choose whether to tender or whether to entrust the service in-house "(without obligation) and that" water bills do not contain a "flat" cost coverage of investments in water infrastructure, but only the coverage of the costs actually incurred ". The position expressed by the Democratic Party did not convince WWF, which asked the government to withdraw the proposed amendments, in order to respect the will of 26 million Italians, since it was a paradox that the law by popular initiative that aimed at protecting water ends up being the key to restarting the process of privatization of water resources. However on 20 April 2016, the Chamber of Deputies approved the aforementioned DDL with 243 votes in favor, 129 against and 2 abstentions. The provision passed to the Senate, where from 19 April 2017 it is being examined at the appropriate committee. The events of the referendum do not end here. Recently they have enriched with a new chapter, linked to the M5S-Lega executive, which as mentioned before, has placed in the Government Contract the public water issue.

The 2011 referendum involves also city administrations, called on to apply the popular will. To date, seven years since the referendum, not many cities that have done or are doing something to bring water back into public hands. In this article we will deal with the activities carried out in the following cities: Naples, Turin, Florence, Rome, and Palermo. Cities that well represent the different characteristics of the SII in Italy.

Naples was the first Italian city that started to remove the water from the market. On July 31, 2012, a notary deed the Mayor of Naples De Magistris, started the transformation of the Arin Spa into ABC Naples (Acqua Bene Comune Napoli. Water Common Good Naples Municipality), a public company. In 2015, the the Campania Region (governed by PD) approved a new law on public water, which provides for the establishment of a regional ATO (Ambito territoriale ottimale- Optimal territorial area: a territory in which integrated public services are organized), or the EIC (Campania Water Authority) as the governing body of the integrated water service. This institution, opposed by public water promoters, ensures that all water decisions are centralized at regional level, reducing the autonomy of local authorities. The law proposed by

the Regional Council also includes five ATOs corresponding to the five existing territorial areas. But only the regional ATO adopts the Strategic plan, identifies the manager and provides the service (the regional government seems to prefer public-private managers), albeit in compliance with the forms of management defined by each District Council.

In Turin, in 2013, the city council started the transformation of the SMAT S.p.a. into a public law company. The next step was made in October 2017, when the city council decided that the water service operator, Smat Spa, cannot be a profit public limited company. This for the city of Turin is an important step towards the real public management of water. Today, the SMAT Spa is still a private entity whose shareholders are only public institutions. A mechanism that works, since the shares are in public hands, and does generate profits that are then invested, but it is not guaranteed that the company could be climbed by private parties.

Florence-On July 26, 2018, the territorial conference 3 of the Tuscan Water Authorities, including all the municipalities of the Florence, Prato and Pistoia areas, decided on a proposal from the mayor of Florence Dario Nardella, to return to a totally public management water. Therefore, the public water service that until now has managed water as a mixed public-private company, would become a totally public managed company at the end of the current term, implementing the popular will expressed in the June referendum. 2011. With the approval of a resolution by the Territorial Conference 3, the path of publicizing the water was officially formalized and the necessary verifications of the economic sustainability of the project were started. What has been decided by the assembly for the most populous part of the Tuscany Region, will be submitted in the future to the regional assembly.

Rome- The issue of public water in Rome has inflamed the city's policy since 2012, when the Alemanno government tried to sell 21% of Acea Ato 2 shares of the city, in order to create the holding company of Roma Capitale, totally contravening the referendum 2011. This initiative was stopped at the end of July 2012, when the Council of State decreed that the sale could not proceed without dealing with the 23,000 amendments proposed by the oppositions. The turning point on the issue of Roman public water came only in November 2017, when the assembly of the Conference of Mayors of the ATO2 started the establishment of the technical table for the re-publication of Acea Ato2, which manages the water in Rome and Province. Drafts of feasibility studies have already been presented.

In Palermo, during a meeting held on February 19, 2013 between the mayor Leoluca Orlando, the vice Mayor Cesare Lapiana and the President of the Municipal Aqueduct of Palermo. (AMAP) Dr. Enzo Costantino, and a delegation of the Sicilian Forum for Water and Community Heritage Movements laid the foundation for republishing the AMAP Spa, a company that manages the water service of the Sicilian capital. The first step in this direction, is the approval in the City Council of the process of transforming the AMAP from a private law Spa into a special company of a public nature; at the same time the municipal statute will be modified, to include water among essential and inalienable public goods, defining water as a common good and universal human right whose public and participatory management pursues the general interests of the community of reference. The republication of water in Sicily took a further step with the regional law 19 of 2015, also supported by the city administration of Palermo, for the republishing of waters and approved in August 2015 by the ARS (Sicilian Regional Assembly). This reform provided for the establishment of nine ATOs that could entrust the service to a public, mixed or private company in the case of offers deemed advantageous. However the law was abolished in May 2017 by the Italian Constitutional Court because it was considered unconstitutional in the part where the regional law that provides for reducing tariffs, to be fixed by decree of the President of the Region, and in the part that reduced the years of contracts entrusted to private individuals.

From what emerges locally and nationally, it is clear that the road to the republishing of water resources is still long and not without difficulties. To date, there are few cities in which public water is a reality, among

these, Naples and Turin, the first Italian cities in which public water has taken its first steps, but there are still many realities in which public water is still only on paper. After seven years from the referendum the situation is alarming not only for the reduced application of the referendum at the national level but also for the lack of a national law that can effectively guide the municipal administrations towards a truly public water. It is hoped that the new executive, which in the first place of its program, has included the public water issue and the application of the 2011 referendum, will start as soon as possible the drafting and implementing of a new law.

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