
THE “LIVELLO” IN ITALIAN PROPERTY LAW: OWNERSHIP, EXTINCTION, AND THIRD-PARTY PROTECTION IN A COMPARATIVE PERSPECTIVE

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Abstract: This brief essay examines an institution peculiar to Italian law—virtually unknown even among legal practitioners—precisely because it lacks both a statutory definition and codified regulation: the “livello”. In the Italian legal system, this term designates a range of legal constructs, including a real right of enjoyment, a real burden encumbering land, and, more generally, a set of agrarian law relationships characterised by the grant of enjoyment of land by a large landowner (concedente) to a beneficiary (utilista), who undertakes to cultivate, improve, and pay a fee (also referred to as “livello”). It frequently occurs that, upon examining cadastral certificates, mortgage searches, or old title deeds in Italy, the existence of so-called “oneri livellari” (“livello burdens”) emerges with respect to a parcel of land, arising from contractual relationships both unknown and remote in time, whose respective obligations have likewise not been performed for a considerable period. This paper focuses on the contemporary legal implications of such findings for land transactions and due diligence, with particular attention to the identification of ownership, the conditions under which a livello may be extinguished or redeemed, and the protection of third-party purchasers where the transferor is the livellario (or an assignee) who, in practice, acts and presents himself as the full owner.

Keywords: Italian livello; Emphyteusis and land burdens; Long-term land rights in Italy; Redemption and affrancazione; Comparative property law (Europe).

1. Introduction

The *livello* is one of the most elusive institutions of Italian property and agrarian law. Despite its persistent presence in land registers, cadastral records, and historical title

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deeds, it remains largely marginal in contemporary legal discourse and is often perceived as a merely residual or archaic construct. This marginalisation is not accidental. The *livello* lacks a statutory definition, is not systematically regulated by the Civil Code, and oscillates—both in doctrine and in practice—between different legal qualifications: as a real right of enjoyment, as a real burden encumbering land, or as a broader agrarian relationship involving the long-term grant of land use against the payment of a fee. The main added value of this paper lies precisely in addressing this uncertainty, by offering a systematic and functional reconstruction of the *livello* as it operates today, beyond its traditional historical framing.

The analysis is not intended to provide a purely historical account of the origins of the *livello*, nor an exhaustive survey of all doctrinal positions or judicial decisions concerning it. Rather, the scope of the research is deliberately circumscribed. The paper focuses on the contemporary legal relevance of *livellary* relationships as they emerge in practice—often unexpectedly—during property transactions, due diligence activities, or cadastral and mortgage investigations. Particular attention is devoted to the legal consequences of the long-term inertia of the parties, the non-performance of the obligations originally associated with the *livello*, and the interaction between these relationships and modern concepts of ownership, circulation of land, and legal certainty.

Against this background, the research pursues three main objectives. First, it aims to clarify the legal nature of the *livello* within the Italian system, assessing whether and to what extent its assimilation to emphyteusis—frequently adopted in case law—can be justified on a systematic basis. Second, it seeks to identify workable criteria for addressing the practical issues most frequently arising in connection with *livellary* burdens, such as the identification of the true owner of the land, the possibility of extinguishing or redeeming the *livello*, and the legal protection of third-party purchasers who acquire land from a *livellario* acting as de facto owner. Third, the paper uses a targeted comparative perspective—drawing on French, Spanish, and German law—not as a descriptive exercise, but as an interpretative tool to test whether the difficulties encountered in Italian law stem from the intrinsic features of long-term land use rights or from the lack of a clear and coherent normative framework.

The paper is structured as follows. Section 2 outlines the historical origins of the *livello* and its traditional functions within agrarian systems. Section 3 examines the progressive assimilation of the *livello* to emphyteusis in Italian doctrine and case law, highlighting the limits of this approach. Sections 4 to 9 analyse the main practical issues raised by *livellary* relationships, including ownership, prescription,

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usucapion, redemption, and the role of public authorities in declaring or denying their extinction. Section 10 offers comparative remarks, focusing on functionally equivalent institutions in other European legal systems, before concluding with some final considerations on the systemic implications of the *livello* in contemporary property law.

2. Historical Origins of the "Livello" in Italian Law

The *livello* is a legal institution rooted in Italian law [1], whose origins may be traced back to the Roman era but which took on its characteristic form during the medieval period [2]. In the context of the Italian legal system, the *livello* essentially consisted of the grant of an agricultural parcel (and at times an urban property) in return for the payment of a rent.

A more comprehensive definition can only be achieved by means of certain simplifications, justified by the necessity of highlighting the common elements among various distinct legal scenarios under Italian law. In Italy, the Church, ecclesiastical bodies, members of the nobility, or municipalities [3]—in their capacity as landowners (also referred to as *livellanti* or *direttari*)—would grant (and it would not be incorrect to say "sell") the so-called *dominio utile* (to be understood as "possession and enjoyment") over the land, either in perpetuity or for a specified term, in exchange for the payment of an annual fee (likewise called *livello*)[4].

The contract established a real right of enjoyment (*diritto reale di godimento*) over the land, freely transferable *inter vivos* or *mortis causa* [5]. The grantor retained the *dominio diretto* (direct ownership) and would reacquire the *dominio utile* upon the termination of the relationship or upon the death of the *livellario*. Since the fee was generally quite modest and the grantee typically resided upon and fully exploited the land, the *livellario* was frequently regarded as the true owner.

The evolution of this institution within Italian law—particularly in the pre-unification legislation—meant that in certain cases the *livello* was transformed into a real burden (*onere reale*) [6] encumbering the land itself, and therefore the possessor who had become its owner, who was then solely obliged to pay the fee.

Such was the case with certain Italian municipalities that assigned, in full ownership, parcels of public land to the so-called *quotisti*, while reserving the right to collect the fee from the *livellari* [7]: not as owners (as in the case of emphyteusis), but rather as a legacy of ancient feudal regimes in Italy [8].

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3. Assimilation to Emphyteusis

With the entry into force of the Italian Civil Codes of 1865 and 1942, various agrarian legal relationships—previously identified as "livelli", "censi", and "enfiteusi"—definitively lost their individual identities, being grouped together under a single regulatory framework that ultimately equated [9] and merged them with the institution of *emphyteusis* [10]. This process was also confirmed by Italian case law [11], which, on certain occasions, nevertheless underscored specific differences between the various legal figures [12].

Pursuant to Articles 957 et seq. of the Italian Civil Code, *emphyteusis* is defined as a real right of enjoyment (*diritto reale di godimento*) in favour of the grantee or *utilista* over land that remains the property of the grantor (also referred to as *direttario* or holder of the *dominio diretto*). In light of the fact that this right typically pertained to large tracts of land, often uncultivated or unhealthy [13], contracts were generally stipulated "in perpetuity" or for a term not less than twenty years. The rationale for such lengthy durations lay in the need to afford a reasonable period for carrying out essential improvements [14] – an obligation imposed upon the *emphyteuta* in addition to that of paying a periodic fee.

Frequently, the interest of the landowner-grantor in the fate of the property diminished to such an extent that the *emphyteuta* began to act *uti dominus*, ceasing payment of the fee, neglecting cultivation of the land, and, in some cases, constructing his own dwelling thereon.

4. The Three Types of "Livello" in Italian Law

Three principal types of *livello* may be identified within the Italian legal system:

1. *Livelli* established over land located in the Veneto region (subject to Law No. 3 of 1974).
2. *Livelli* collected by state administrations and agrarian universities acting as grantors (subject to Law No. 16 of 1974, subsequently repealed, and to Law No. 222 of 1985).
3. *Livelli* granted by ecclesiastical entities or other bodies distinct from the state administration.

Livelli established over land situated in the Veneto region, as well as those collected by state administrations and autonomous state agencies [15] acting as grantors, by virtue of Article 1 of Law No. 3/1974 [16] and Article 1 of Law No. 16/1974 [17] or Article 60 of Law No. 222/1985 [18], have been declared extinguished *ope legis* (by operation of law) on grounds of economic inefficiency; accordingly, the right of the

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livellario has been converted into full ownership, with a corresponding right to update the cadastral registration [19].

If, on the other hand, the grantor is an ecclesiastical entity or a body other than the state administration—such as a municipality—the *livello* must be regarded as still existing, since the aforementioned statutes do not address such situations [20].

5. The Necessary Preliminary Investigations

In order to address the central question posed by this essay, it is first essential to ascertain the actual legal nature of the *livello* as it emerges from the relevant title deed (*atto di provenienza*) or from land registry certificates. It is necessary to distinguish whether the payment of the fee is connected to a merely obligatory relationship or is unequivocally linked to a real right (*diritto reale*) analogous to *emphyteusis* under Italian law [21].

In the former case, the *livellario* is the owner of the property, the sole true *dominus* of the land, subject only to the obligation to pay a periodic and perpetual fee (which is subject to prescription) [22].

If, instead, the property is encumbered by a *livello* that must be classified as an emphyteutic fee (*canone enfiteutico*) and the case does not fall within any of the statutory grounds for extinguishment of the grantor's right, it is then necessary to consider what options are available to the *emphyteuta/livellario* to "release themselves from the encumbrance".

6. Non-Payment of the Fee for More Than Twenty Years

If the *livellario*, his heirs, or successors have continued to possess the land without, however, paying the fee (*canone*) for more than twenty years, the grantor's right to receive payment of the *livello* does not become time-barred, nor is it extinguished by non-use, as it constitutes a perpetual prerogative inherent to the right of ownership. More precisely, it is necessary to distinguish between the obligation relating to individual annual payments that have become due and the obligation to pay the fee as a whole. While the former, being of a personal nature, is subject to a five-year limitation period (Article 2948, no. 1 or no. 4, Italian Civil Code), the latter is imprescriptible, being intrinsically linked to the right of the grantor. This constitutes an *obligatio propter rem* (a real obligation), which follows the transfers of the land, regardless of who becomes the owner.

The other side of the coin is that the *livellario* does not become the owner simply by virtue of not having paid the fee for over twenty years [23]. This is further confirmed

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by Article 972 of the Italian Civil Code, which entitles the grantor to seek, through judicial proceedings, the reversion (*devoluzione*) of the land (a form of judicial ascertainment of the extinguishment of the *emphyteusis* for breach of obligation, resulting in an order for restitution of the land [24]), without such reversion taking effect automatically [25].

7. Usucapion (Acquisitive Prescription)

As previously noted, while it is possible (under Article 970 of the Italian Civil Code) for the concessionaire's right to lapse as a result of twenty years' non-use [26], *dominio diretto* (ownership) is imprescriptible (Article 948, Italian Civil Code).

The question thus arises as to whether it is possible to acquire ownership through usucapion following uncontested possession for more than twenty years.

The answer is negative where the *livello* concerns public property (*bene demaniale*) or land that is inalienable municipal property.

In other cases, the answer is affirmative; however, proving that usucapion (Article 1158, Italian Civil Code) has occurred is genuinely problematic, since, for the *livellario/emphyteuta*, it is extremely difficult not only to demonstrate possession *ad usucapionem* for the statutory period [27], but also to prove that an *interversio possessionis* has taken place.

This latter requirement (mandated by Article 1164, Italian Civil Code) cannot consist merely in an internal or subjective intention on the part of the possessor, but must be manifested through one or more external acts that openly and objectively conflict with the rights of the true possessor, from which it may be clearly and unequivocally inferred that the relationship with the asset has fundamentally changed. In other words, it must be demonstrated that the *detentore nomine alieno* has ceased to possess on behalf of another and has commenced possession in his own name and for his own account. While this attitude may manifest itself in material acts evincing the intention to possess as owner, it must also be directed unambiguously against the actual possessor, or against the person on whose behalf the asset was previously held, so as to make it externally recognizable to the entitled party that the possessor intends to replace the prior intention of subordinating his own authority to another's with the intention of claiming the exercised right for himself, thereby converting prior detention into true possession [28].

8. Supplementary Evidence of Interversion of Possession

A primary effect of the assimilation of the *livello* to *emphyteusis* concerns the application of Article 969 of the Italian Civil Code, which regulates the grantor's

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right to demand recognition (*ricognizione*) of their right from whoever is in possession of the emphyteutic land, once nineteen years have elapsed since the contract was entered into or since the last act of recognition [29]. This act (known as "*devoluzione*") essentially serves to interrupt the running of the statute of limitations or the period for usucapion. It is, however, a mere faculty and not an obligation: if the grantor chooses not to exercise it, they do not, by that fact alone, forfeit their right to the property [30].

It follows, therefore, that the absence of acts of recognition does not operate to preserve the grantor's rights, nor does it result in any loss of ownership [31].

In the same vein, the Italian Supreme Court (*Corte di Cassazione*) has deemed irrelevant, for the purposes of intervension of possession and of redemption, the grantor's failure to renew a mortgage securing the payment of fees.

Presumptions of a change in the possessor's *animus* (intention to possess as owner) likewise cannot be derived from the failure to comply with contractual provisions upon which the real right was originally constituted, such as failure to return the asset at the contractual expiry, non-payment of the fee, or failure to improve the land (mere contractual defaults).

Of greater interest, for the purpose of establishing the possibility of acquiring full ownership by usucapion, are the following circumstances, in which the *emphyteuta* arrogates to himself the powers of the owner, exceeding a mere situation of contractual non-performance:

1. the construction of a building for non-agricultural use on rural land. The filing of the appropriate planning applications and the fulfilment of fiscal and cadastral obligations confirm that the *emphyteuta/livellario* presents himself to the community as the *uti dominus* of the land. By openly violating the obligation to improve the land, he seeks and obtains from the public administration the permit to build an urban structure, then proceeds with its construction, and, finally, obtains from the Land Registry the entry of full ownership of the former agricultural land in his own name;
2. except in the case of property belonging to the public domain (*beni demaniali*)[32] or land subject to collective civic use [33], the transfer to a good faith third party by the original *emphyteuta*, through a transaction for value (which is duly registered and transcribed), of full ownership of the land, making no mention of the rights in question and warranting the property as free of encumbrances [34]. After ten years from the date of

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registration, usucapion in favour of the good faith acquirer occurs, pursuant to Article 1159 of the Italian Civil Code [35].

9. Redemption of the "Livello" Fee

Rather than resorting to the complex litigation associated with usucapion, and in view of the assimilation between *livello* and *emphyteusis*, it is—at least in theory—much simpler and less costly for the *livellario/emphyteuta* to exercise the right of redemption (*diritto di affrancazione*) [36]. In other words, the holder may acquire full ownership of the land by paying an amount equal to fifteen times the annual fee (pursuant to Article 9 of Law No. 1138/1970 and Article 971 of the Italian Civil Code), or, if the fee is unknown, an amount corresponding to the revalued cadastral income (*reddito dominicale rivalutato*) [37].

From a technical standpoint, redemption is thus a potestative right of the *emphyteuta/livellario*; this means that the grantor cannot oppose the exercise of this right, nor can the grantor compel the *livellario* to redeem rather than continue paying the fee.

Redemption may result from judicial proceedings [38], but in such cases, the party seeking redemption must prove his status as *emphyteuta* by providing evidence of:

1. the existence of a constitutive title in his favour, or of acts of succession *inter vivos* or *mortis causa*;
2. the fact that the right has been conveyed to him through an unbroken chain of transfers [39]. An additional issue lies in the objective determination of the redemption price.

It is much simpler, where the original constitutive title of the *livello* is missing, to reach an agreement with the grantor by drawing up an actual contract. Such an agreement, often of a transactional nature, unlike judicial proceedings—where the redemption price is mandatory by law—may stipulate a consideration either higher or lower than the statutory amount [40].

10. When the Grantor is a Municipality

Starting from the 1990s, certain Italian municipalities, in the course of inventorying their real estate assets, discovered that they were acting as grantors of *livelli*. Upon finding that, in some cadastral transfers resulting from recent transactions, their rights had been omitted—without having been previously transferred—they proceeded to correct these "errors" of registration at the relevant land agencies. Recognizing their consequent right to collect an annual fee [41], the municipalities resolved to reestablish and update the *census (censo)*. They also issued payment

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requests—sometimes for substantial amounts—to all those identified as *livellari*. Some municipalities further questioned whether the *livellari* had the right to redeem (*affrancazione*) their position in accordance with the rules applicable to *emphyteusis* [42].

Since the right to collect the fee is imprescriptible and non-renounceable [43], and the *livello*, being assimilated to *emphyteusis*, is not subject to usucapion, the only solutions available to municipalities are as follows:

a) to carry out, also in cooperation with the competent regional offices, a thorough review of each case in which they are found to be entitled to fees, *censi*, *livelli*, or similar claims;

b) to provide for the possibility of redemption (*affrancazione*)[44], thus enabling the *livellari* to pay a lump sum (amounting to fifteen times the annual fee or, if the fee is no longer traceable, the revalued cadastral income of the land, increased by 80% [45] in addition to the ISTAT revaluation index) in order to obtain full ownership of the land [46]. The interested party will submit a redemption request to the municipality; subsequently, the municipal council, by resolution, will approve the request and determine the corresponding capitalized amount;

c) to seek recovery of the last five years of unpaid fees that have not become time-barred;

d) once payment has been received, to proceed with the redemption, which may also be implemented by means of an administrative order (*determinazione dirigenziale*)[47], to be registered with the tax benefits provided under Article 2 of Law No. 692/1981 and Circular No. 2/T/2004, authorizing the Land Registry official to record the measure free of taxes [48], and to effect the corresponding cadastral update, which will be performed by the applicant.

Naturally, the *livellario* or holder of the *dominio utile* may always sell the property encumbered by the *livello*. Such an encumbrance does not render the property inalienable; the transfer is effected with mention of the encumbrance among the adverse entries. It is then for the purchaser, after the deed is executed, to proceed with redemption should they wish to release the property from the burden deriving from the *livello*.

11. Comparative remarks on livello-like institutions in European property law

From a broader European perspective, the Italian *livello* does not emerge as an eccentric anomaly, but rather as a historically sedimented and only partially visible variant of a more general technique: the long-term separation between bare

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ownership and a strong, transferable right of enjoyment of land, coupled with a recurring fee and, often, duties of improvement. French, Spanish, and German law all provide codified instruments that pursue analogous economic and organisational functions. In French law, the *bail emphytéotique* confers upon the *emphytéote* a real right over immovable property for a term usually between eighteen and ninety-nine years, with powers to build, mortgage, and transfer, while the *bailleur* retains ownership of the land and the contract cannot be tacitly renewed [49]. In Spain, the *censo enfiteutico* is structured as a real right that divides *dominio directo* (vested in the *censoalista*) and *dominio útil* (vested in the *enfiteuta*), in exchange for an annual canon, thereby institutionalising a dualistic configuration of ownership that closely resembles the relationship between *concedente* and *livellario* [50]. German law, finally, frames the *Erbbaurecht* as an inheritable and transferable limited real right to have a building on another's land against payment of an *Erbbauzins*, which exists alongside, but is distinct from, the landowner's title and is governed by a specific statute, the *Erbbaurechtsgesetz* (ErbbauRG) [51].

What clearly distinguishes these regimes from the Italian *livello* is, in the first place, the explicit and systematic allocation of ownership positions and of the mechanisms for consolidating full title. In Spain, the question "who is the true owner?" is answered normatively by the dualistic scheme of *dominio directo* and *dominio útil*, together with the express recognition of *redención* of the censo, that is, the right of the *enfiteuta* to redeem the burden through payment of a capital amount, extinguishing the censo and consolidating full ownership in his or her hands [52]. German law adopts a different model: the *Erbbaurecht* is conceived *ab origine* as a time-limited burden on the land, created and made opposable *erga omnes* only upon entry in the land register (*Grundbuch*), and normally terminating with the reversion of the building to the landowner, who must pay compensation to the *Erbbauberechtigte* under the Erbbaurechtsgesetz and the contractual terms. French law, for its part, links the fate of constructions tightly to the term and vicissitudes of the *bail emphytéotique*: on termination, the landlord recovers the immovable with the buildings and improvements, subject to statutory and contractual compensation regimes; the *emphytéote* is recognised as holding a particularly extensive real right over the property as long as the contract subsists [53]. In all these instances, the questions that in Italian practice arise in relation to *livello* – identification of the "proprietor" in the presence of a long-term real right of enjoyment, and the conditions for extinguishing or redeeming the burden – are addressed within a clear codified framework that combines substantive rules with registration mechanisms.

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A second, crucial point of comparison concerns legal certainty in land transactions and the protection of third-party acquirers. In each of the regimes considered, the existence and essential content of long-term land burdens are, at least in principle, reflected in public registers and linked to clear rules on reliance. The Spanish *censo enfiteutico* is subject to the general principles governing the property register, so that a purchaser can, in theory, ascertain whether he or she is acquiring full ownership or merely the *dominio útil*, and under what conditions the *censo* may be redeemed [54]. In Germany, the *Erbbaurecht* comes into existence, is ranked vis-à-vis other encumbrances, and is documented through its own *Erbbaugrundbuch*, which significantly reduces the risk that a buyer will rely on a transferor who is in fact only an *Erbbauberechtigter* rather than a landowner [55]. French law similarly treats the *droit emphytéotique* as a real right whose opposability to third parties depends on appropriate land publicity, allowing purchasers to identify the chain of titles and the precise position of the *emphytéote* within it. By contrast, the Italian *livello* remains, in many cases, "filtered" through cadastral certificates and mortgage searches that are either silent or refer only generically to "oneri livellari", while the underlying contractual framework is opaque or lost, and the criteria for considering the burden extinct or redeemable are applied *ex post* by the courts, case by case, in the light of possession, prolonged non-payment and supplementary evidence of interversion. The comparative picture suggests that the problematic aspects of *livello* highlighted in this essay – the ambiguity of ownership positions between *concedente* and *livellario*, the uncertain boundaries of usucapion and extinction for non-payment, and the fragility of third-party reliance where the transferor is in fact a *livellario* who presents himself as a full owner – are not inherent in the economic function of long-term land burdens as such. They are, rather, the consequence of the absence of a modern statutory framework that would domesticate *livello* within the *numerus clausus* of real rights, define its relationship with emphyteusis and long-term leases, and, above all, coordinate substantive rules with the system of land publicity. Systems such as those of France, Spain and Germany show that the long-term separation between bare ownership and a strong right of enjoyment can coexist with a high level of legal certainty, provided that the content, duration, extinction and publicity of the right are clearly governed; in this perspective, the Italian experience of *livello* can be read as an argument in favour of either legislative intervention or, at the very least, a more coherent jurisprudential reconstruction.

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12. Conclusions and recommendations

This paper has addressed the *livello* not as a merely residual or historically exhausted institution, but as a legal technique that continues to produce tangible effects in contemporary Italian property and agrarian law. The main added value of the research lies in having reframed the *livello* beyond the traditional and often inconclusive alternative between real right and obligatory relationship, by analysing it as a structural device for the long-term separation between bare ownership and a strong right of enjoyment. Through this functional reconstruction, the paper has sought to clarify the legal consequences that arise when *livellary* relationships—often opaque, undocumented, and dormant for decades—re-emerge in the context of land transactions, judicial disputes, or administrative assessments. In doing so, it has offered criteria capable of orienting the interpretation of issues such as ownership, extinction, redemption, and third-party protection, which Italian practice continues to address in a fragmented and case-specific manner.

From a comparative perspective, the Italian experience of *livello* proves to be particularly instructive. As shown in the preceding section, other European legal systems are familiar with institutions that pursue analogous economic and organisational functions through the long-term dissociation of land ownership and use. French, Spanish, and German law all provide codified models—respectively the *bail emphytéotique*, the *censo enfiteútico*, and the *Erbbaurecht*—that channel similar interests within clear normative frameworks, combining substantive rules with robust systems of land registration. The relevance of the Italian case, therefore, extends beyond its national boundaries. Rather than representing an idiosyncratic anomaly, the *livello* can be read as a paradigmatic example of the difficulties that arise when long-term land use rights are not fully integrated into the *numerus clausus* of real rights and are left to be reconstructed *ex post* by courts and practitioners. In this sense, the analysis developed in this paper may offer useful insights for other European jurisdictions grappling with hybrid or atypical forms of land tenure and with the tension between functional needs and formal property categories [56].

At the same time, the research is subject to a number of methodological constraints that must be explicitly acknowledged. The *livello* is an institution that has attracted limited attention in international journal-based scholarship, which tends to focus on broader theoretical issues of property law rather than on historically contingent national constructs. As a result, the literature review necessarily relies on a combination of national doctrinal sources, comparative law studies, and theoretical contributions on property fragmentation and long-term land rights. This limitation, however, is not merely contingent. It reflects a structural feature of the subject-

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matter: institutions such as the *livello* often fall in the interstices between classical property law, agrarian law, and contractual arrangements, and are therefore underrepresented in mainstream comparative debates. The functional and comparative approach adopted in this paper is intended precisely to respond to this gap, by situating the Italian experience within wider analytical frameworks developed in international property law scholarship [57].

The implications of the analysis are not confined to theoretical reconstruction. The issues examined in this paper have a direct impact on the legal community and on legal practice. Uncertainty as to the existence, nature, and extinction of *livellary* burdens affects not only litigants, but also notaries, lawyers, judges, and administrative authorities, as well as third parties involved in land transactions. By identifying the points at which Italian practice departs from the standards of legal certainty observable in other European systems—particularly with regard to the coordination between substantive rights and land publicity—the paper aims to contribute to a more predictable handling of *livello*-related disputes and to a more informed assessment of risks in property transfers. In this respect, the analysis also resonates with broader discussions in property theory on the protection of reliance and the allocation of information costs in land markets [58].

Finally, some concluding remarks may be formulated in a forward-looking and policy-oriented perspective. The comparative overview suggests that the most problematic features of the *livello* do not stem from the economic logic of long-term land use arrangements as such, but from the absence of a coherent statutory framework capable of defining their content, duration, extinction, and publicity. While comprehensive legislative reform may not be immediately forthcoming, the Italian experience points at least to the need for a more consistent jurisprudential reconstruction, capable of aligning the treatment of the *livello* with clearer models of emphyteusis or other long-term real rights. From a broader European viewpoint, the case of the *livello* also underscores the importance of integrating functional land-use devices within transparent property law systems, a theme that continues to attract attention in comparative and economic analyses of property rights [59].

A further implication concerns developing and transitional legal systems. Although the *livello* is historically specific to Italian property law, the structural problems it generates—namely, the persistence of long-term land-use burdens, the opacity of title positions, and the uncertain coordination between substantive rights and land publicity—are not confined to European contexts. In many developing countries, land tenure arrangements often remain shaped by layered or informal rights of use,

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incomplete registries, and enduring obligations connected to agricultural land. The Italian experience may therefore serve as a cautionary example of the uncertainty that arises when hybrid forms of land enjoyment are left outside a clear statutory framework and reconstructed only ex post through litigation. From a policy perspective, functional land-use devices can support rural development and investment only if accompanied by reliable registration mechanisms, accessible redemption or consolidation procedures, and predictable rules ensuring third-party reliance.

Further research could build on these insights by extending the comparative inquiry or by examining empirically how historical land burdens continue to shape contemporary property relations in different legal contexts.

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Notes:

[1] M. A. Casino, Prescrittibilità di censi e livelli, in *Notariato*, 2017, No. 4, pp. 407–422; A. Pera, Prescrittibilità di canone non riscosso. Quesito n. 5350/C, in *Studi e materiali*, 2005, No. 2, p. 1837.

[2] The name derives from the Latin *libellus*, the document by which the relationship was formalized and the obligations imposed upon the *libellario* were specified. In particular, in "*duo libelli pari tenore conscripti*" ("two documents drawn up in identical terms"), all the conditions of the contract were set forth, so that each contracting party held a signed copy.

[3] A situation similar, though not identical, to the *livello* is that of the occupant of public land subject to civic uses (*demanio civico*), pursuant to Articles 9 and 10 of Law No. 1766/1927, who holds a right to use the land in return for the payment of an emphyteutic fee. On this matter, the Supreme Court of Cassation has held (Corte di Cassazione [Supreme Court of Cassation], Civil Section III, 1997, January 9, Judgment No. 64) that, despite the similarities, the two legal situations cannot be treated as fully equivalent, and therefore the

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right of agricultural pre-emption (*prelazione agraria*) does not apply to the *livellario* who is a direct farmer of land adjacent to that offered for sale. The distinction lies in the fact that, in cases of unlawful occupation of public land subject to the rules governing civic uses, the act of legitimization entails the transformation of public domain land into *allodium* (private property) and simultaneously vests the occupant with a perfect, real right (*diritto soggettivo perfetto di natura reale*) in the land concerned.

[4] C. A. Funaioli, *Canoni, censi e livelli*, in *Enciclopedia del Diritto*, 1959, Vol. V, p. 1082; M. C. Andrini, *Usi civici ed attività notarile*, in *Vita notarile*, 1991, p. 802; J. Balottin, *Alienazione di terreni gravati da livelli e canoni enfiteutici*, in *Rivista del Notariato*, 2008, p. 1211; M. A. Benedetto, *Livello*, in *Novissimo Digesto Italiano*, 1963, Vol. IX, pp. 987–990.

[5] The purchaser does not acquire ownership of the property and, in any case, remains obliged to pay the fee to the grantor. The *livello* is regarded under Italian law as a real right of enjoyment, closely analogous to *emphyteusis*, and is transferable both *inter vivos* and *mortis causa*, unless otherwise provided by the parties or by the constitutive title. The *livellario* may assert his rights before the courts, including by means of the summary proceedings under Article 702-bis of the Italian Code of Civil Procedure, upon documentary proof of the original attribution and payment of the relevant fees (see, recently, Tribunale di Livorno, Sez. civ., 27 January 2025).

[6] The legal figure of the "*onere reale*" (real burden) is likewise not expressly provided for in the Italian Civil Code, nor is there a specific statutory regime governing it. Nevertheless, it constitutes a "burden" encumbering a parcel of land or imposed upon its possessor. Such a burden automatically follows the land through successive transfers of ownership. This legal concept is characterized not only by the automatic succession to the passive side of the obligatory relationship, but also by the fact that the burden is extinguished in the event of the loss or destruction of the land as a consequence of the so-called "abandonment with release" (*abbandono liberatorio*). Furthermore, it is generally accepted that, in the event of non-fulfilment, the creditor is entitled to bring an action in rem (*azione reale*) against the land, regardless of the identity of its current owner or possessor, and to satisfy his claim with pre-emption from the proceeds of a forced sale.

[7] In such cases, the assignee is classified in the land registry (*Catasto*) as a "proprietario livellario" (owner under a *livello* grant). According to Italian case law, the Supreme Court of Cassation has held that "the person subject to a *livello* and the fee for redemption of civic use is the full owner of the encumbered land, being obliged only to provide services which constitute the consideration for the perpetual concession of the dominion over the land, following the consensual conversion into money of pre-existing perpetual obligations in kind; consequently, the redemption (*affrancazione*) of the improved colony, as practised in southern Lazio, is permissible with respect to such an individual" (Corte di Cassazione [Supreme Court of Cassation], Civil Section II, 1979, July 13, Judgment No. 5995).

[8] The reference is to the so-called "*decime dominicali*" or "*decime signorili*" (lordly or manorial tithes).

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[9] Royal Decree No. 1539/1933 (Approval of the Regulation for the Implementation of Legislative Provisions on the Reorganization of the Land Tax), in Article 55, addresses, for the purposes of registration, both the emphyteuta and the *livellario* together. Similarly, Article 29 of Royal Decree No. 2153/1938 (Approval of the Regulation for the Conservation of the New Land Cadastre) equates the figures of emphyteuta and *livellario* with respect to registration amendments. Furthermore, Article 13 of Law No. 607/1966 deems applicable the provisions concerning emphyteusis and perpetual land services to the Venetian *livello* fees referred to in Law No. 74/1958 (which also establishes the aforementioned equivalence, as does the subsequent Law No. 3/1974). Additionally, Article 1 of Law No. 327/1963 (Provisions on Improvement Contracts in Use in the Provinces of Lazio) states that *miglioria* contracts in use in the Provinces of Lazio, however denominated and however constituted (including, inter alia, *livelli*), where the farmer has possessed the land for over thirty years and has made improvements in accordance with local custom or agreement, are declared perpetual, and to such relationships—beyond the provisions of the present law—also apply the rules set forth in Title IV of Book Three of the Italian Civil Code and in Law No. 998/1925, as amended and supplemented. Pursuant to Article 1 of this statute: “*Emphyteutic fees, censi, and all other perpetual obligations of any nature may be redeemed by the debtor, notwithstanding any agreement, provision, or law to the contrary.*”

[10] P. Vaccari, *Enfiteusi. Parte storica*, in *Enciclopedia del Diritto*, 1965, Vol. XIV, pp. 916–919.

[11] Thus, the Supreme Court of Cassation has held (*Corte di Cassazione* Civil Section II, 2018, February 15, Judgment No. 3689) that “the ‘*livello*’ is a real right of enjoyment over the property of another, analogous to emphyteusis also in terms of its regulation, and is unrelated to the legal relationships governed by the special legislation on agricultural contracts...”. Similarly, the Supreme Court of Cassation (*Corte di Cassazione*, Civil Section II, 2012, June 4, Judgment No. 9135) stated that “the legal regime of the so-called ‘*livello*’ must be assimilated to that of emphyteusis, since the two institutions, although originally distinct, eventually became merged and unified, and, therefore, the former, like the latter, must be included among real rights of enjoyment.” To the same effect: *Corte di Cassazione* [Supreme Court of Cassation], Civil Section II, 2011, November 10, Judgment No. 23752; Judgment No. 64/1997; Judgment No. 1682/1963; and Judgment No. 1366/1961. With regard to administrative case law, see the Administrative Regional Tribunal of Lecce (TAR Lecce, Section I, 2020, July 16, Judgment No. 1336), which held that: “the *livellario* is included among those entitled not only to challenge acts of an expropriation procedure, since the *livello* constitutes a real right of enjoyment over the land and confers upon its holder a differentiated and qualified position with respect to the area in his possession, but also to take legal action to obtain compensation for damage suffered as a result of unlawful expropriation” (see also TAR Lazio, Section II, 2010, December 17, Judgment No. 29121). According to the Council of State (*Consiglio di Stato*, Section IV, 2020, November 2, Judgment No. 6863): “the *livello* is a real right, analogous to emphyteusis, with the

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consequence that reference must be made to the regulation of that institution, also for the purpose of determining the right of the *livellario* to compensation...".

[12] C. Calderoni, *Esecuzione forzata e presenza di livelli o canoni enfiteutici*, Studio del Consiglio Nazionale del Notariato, No. 18, 23 October 2008, <https://www.notariato.it/wp-content/uploads/18.pdf>. The Constitutional Court (Corte Costituzionale, 1959, Judgment No. 46) has stated that "the livello institution has been considered by the legislature in its own right and regulated according to autonomous criteria, which in part coincide with and in part diverge from the legal regime governing emphyteusis and similar institutions." Conversely, the Constitutional Court (Corte Costituzionale, 1974, Judgment No. 53) observed the impossibility of subjecting to the rules of emphyteusis those relationships in which there was no intention to create a real right. As a result of these decisions of the Constitutional Court, the assimilation of livelli to emphyteutic fees may be taken as a general guideline, but not as an absolute rule, given that in some cases livelli merely represent the consideration for the temporary enjoyment of land and do not involve a transaction of a constitutive or translational nature, as is the case with emphyteusis.

[13] Like emphyteusis, the livello served a specific social function: it aimed to repopulate territories that had been abandoned due to war and to facilitate the undertaking of improvement works on such lands.

[14] According to the Supreme Court of Cassation, "a contract cannot be regarded as establishing an emphyteusis if, in addition to not providing for the obligation of improvements, it establishes an objective use of the land that is incompatible with any subsequent improvement" (Corte di Cassazione, Civil Section II, 1994, October 13, Judgment No. 10646). Still regarding improvements, the Supreme Court of Cassation has held that "the provision of paragraph 1 of Article 975 of the Civil Code, according to which 'when the emphyteusis ends, the emphyteuta is entitled to reimbursement for improvements in the amount of the increase in value gained by the land as a result of the improvements themselves, ascertained at the time of return', is intended to encourage the improvement of emphyteutic land by ensuring that the emphyteuta, in any case of termination resulting in the full restoration of the relationship, is entitled to the economic benefit of the works carried out and is thus incentivized to fulfil his obligation to improve the land as stipulated in the contract (Article 960, Italian Civil Code). This provision applies not only to cases of termination without fault, but to all cases of termination, including those dependent on the emphyteuta, as is clearly shown by the wording of the statute, which draws no distinction" (Corte di Cassazione [Supreme Court of Cassation], Civil Section II, 1995, March 27, Judgment No. 3038).

[15] This includes the administration of the *Fondo per il culto* (Fund for Worship), the administration of the *Fondo di beneficenza e di religione* (Fund for Charity and Religion) in the City of Rome, and the administration of the consolidated assets from the *economati* of vacant benefices and religious funds referred to in Article 18 of Law No. 848/1929, as well as the special religious enterprises, namely: *Fondo clero veneto – gestione clero curato*,

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Fondo clero veneto – gestione grande cartella, Azienda speciale di culto della Toscana, and Patrimonio ecclesiastico di Grosseto, pursuant to Article 60 of Law No. 222/1985.

[16] Law No. 3/1974 established that, in respect of all *livelli* constituted in the Provinces of Veneto, the right of the *livellario* is automatically converted into full ownership upon payment of a sum of money. In particular, the rights of the grantors (*concedenti* or *direttari*) are converted into a credit right against the "*proprietari utilisti*" (beneficial owners), for an amount equal to twenty times the annual fee owed for the year 1970. This credit was to be extinguished within one year from the entry into force of the law and became time-barred after the following two years. Beneficial owners who did not wish to assume this debt were required to notify the counterparty and, within one year from the entry into force of the law, to participate in the act of recognition (*ricognizione*) provided for in Article 969 of the Italian Civil Code. In such cases, the rights referred to in Article 1 were regulated by the provisions on emphyteusis contained in Articles 957 et seq. of the Civil Code and subsequent relevant legislation. In this regard, the importance does not lie in the law itself, which concerns a geographically limited area, but rather in the decision rendered by the Constitutional Court (*Corte Costituzionale*, 1959, Judgment No. 46). Called upon to rule on the constitutional legitimacy of Law No. 74/1958 with reference to the principle of equality, the Court declared the issue unfounded, basing its decision on the fact that, in Veneto, the economic significance of *livelli* was considerable, unlike in other Italian regions where the economic value of *livelli* was negligible and the collection of fees was uneconomical. In essence, the Court was asked why this law was limited to the Provinces of Veneto and not extended throughout Italy. In this regard, the Court declared that elsewhere in Italy, *livelli* no longer had any reason to exist, as their fee was so insignificant that the cost of collection exceeded the amount of the fees themselves.

[17] Law No. 16/1974 provided for the extinction of perpetual and personal relationships established prior to 28 October 1941 (the date of entry into force of the new Civil Code), which served as the legal basis for state administrations and autonomous state agencies to collect emphyteutic fees, *censi*, *livelli*, and other payments in cash or in kind, where such payments amounted to less than 1,000 lire per year. This legislation applies only where the *livello* was fixed at less than 1,000 lire per year (Article 1) as of the date the law entered into force, or where the beneficiary entity has been dissolved (as commonly held in practice). Where these conditions are met, it is sufficient to submit to the Land Registry (*Catasto*) a request for the cancellation of the beneficiary entity's name from the relevant registration. Otherwise, the redemption procedure (*affrancazione*) must be initiated, unless the beneficiary entity executes an act of renunciation (*atto abdicativo*) of the real right, which, in any event, must be executed as a public deed. Many local authorities adopted the provisions of Law No. 16/1974, also waiving *livelli* valued at less than 1,000 lire. Law No. 16/1974 was repealed by Law No. 133/2008, which converted Decree-Law No. 112/2008, but only with effect from 22 December 2008. Consequently, existing *livelli* do not prevent the negotiation of the encumbered land, nor do they preclude the issuance of building licenses and/or permits.

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[18] By contrast, Article 60 of Law No. 222/1985 has not been repealed and currently provides as follows: "*Effective 1 January 1987, all perpetual real and personal relationships by virtue of which the Fondo edifici di culto (Fund for Religious Buildings), as successor to the dissolved Funds referred to in the previous Article 54 (Fondo per il culto and Fondo di beneficenza e religione in the city of Rome, the special religious agencies designated, under various names, for religious, charitable, and religious purposes) and to the assets referred to in Article 55 (the assets of the former economati of vacant benefices and religious funds), has the right to collect emphyteutic fees, censi, livelli, and other payments in cash or in kind not exceeding sixty thousand lire per year, are extinguished. The cash equivalent of payments in kind shall be determined according to the criteria set out in Article 1, paragraph 2, of Law No. 607/1966. The collecting offices shall close the relevant accounts, at no cost to the debtors, and notify the obligated parties and the relevant offices.*"

[19] The fact that the term "livello" appears in the land registry (*Catasto*) records does not constitute decisive evidence. In fact, the Italian Cadastre was established solely for tax purposes—to identify the debtor for land taxes. The terms "grantor" (*concedente*) and "possessore livellario" may have been historically entered without certainty, reliability, or any documentary foundation. Moreover, according to the Supreme Court of Cassation, "*the findings of the land registry cannot be accorded decisive probative value with regard to ownership of the property, ... since the cadastral system is secondary and subsidiary in relation to all the elements acquired through the evidentiary investigation*" (*Corte di Cassazione* [Supreme Court of Cassation], Civil Section II. (2011, 10 January). Judgment No. 342.2).

[20] As confirmed by the Italian Court of Auditors (*Corte dei conti*, 2006, Opinion No. 18), Law No. 16/1974 does not apply to assets belonging to local public entities. In this regard, the opinion states: "*It does not appear justified for the entity, on the basis of Law No. 16/1974, to unilaterally and generally resolve to extinguish perpetual and personal relationships to which the entity's entitlement to fees and livelli is linked and which are imposed on citizens holding real rights. It should be recalled that such fees and livelli, especially in Southern Italy, generally derive from the allodiazione of ancient collective properties, which, as such, enjoy imprescriptibility, inalienability, and immunity from usucapion. The municipality, as representative of the community and custodian of such ancient collective properties—or what remains of them from a public law perspective—is the holder of censi, livelli, fees, or other similar claims, irrespective of whether or not the municipality holds formal title to the individual property. It would in any event constitute a unilateral waiver, not expressly provided for by the law invoked, and, as an exception to general principles protecting public property, it is not susceptible to analogical interpretation. This does not preclude the need for the requesting entity, also in cooperation with the competent regional offices, to carry out a review of each of the different situations in which it is the holder of censi, livelli, fees, or other similar claims, for the purpose of collecting such amounts or of their redemption*"

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(affrancazione) at the initiative of those subject to such burdens, and in accordance with the procedures proper to that institution."

[21] On this point, it is necessary to mention the position of Casino (op. cit.), who classifies *censi* and *livelli* as real burdens (*oneri reali*) since, in his view, they are still governed by the abrogative laws (*leggi eversive*) predating the current Civil Code. He thus proposes an innovative theory regarding their prescription. According to this author, such rights are extinguished by twenty years of non-use (if *oneri reali* are to be regarded as real relationships), or by a ten-year statute of limitations (if they are to be regarded as obligatory relationships). By adhering to this reconstruction, the general legal regime of *emphyteusis* is not extended to *livelli*, but rather that of real burdens applies; in this way, the real estate market would be freed from the supposed perpetual dominion of the grantor. Furthermore, on the basis of this classification, Casino maintains that the adjacent *livellario* is entitled to exercise the right of agricultural pre-emption (*prelazione agraria*).

[22] Extinction is declared by the court following a negative declaratory action, by which the claimant asks the judge to declare that the defendant no longer holds a *livello* right over the claimant's land, due to the statute of limitations having run.

[23] Such is the consistent position of the case law regarding *emphyteusis* (*Corte di Cassazione* [Supreme Court of Cassation], Civil Section II, 1976, January 16, Judgment No. 323; 1973, January 19, Judgment No. 323; 1972, October 14, Judgment No. 3550; and 1962, July 11, Judgment No. 2904), according to which "*the failure to pay the fee, regardless of the duration, does not alter the nature of the possession, not even in the unusual case where the parties have attributed to such failure a recognitive effect.*"

[24] Default occurs if the *emphyteuta* fails to carry out improvements on the land or fails to pay two annual instalments of the fee.

[25] Reversion (*devoluzione*) does not take place if the *emphyteuta* has paid the outstanding fees before a judgment—even a first instance judgment—has been issued in the proceedings upholding the claim.

[26] In addition to redemption (*affrancazione*) and reversion (*devoluzione*), the right of the *emphyteuta* is extinguished by the expiration of the term (if the *emphyteusis* is for a limited period), by the destruction of the land (Article 963, Italian Civil Code), and by prescription (as a result of non-use for twenty years, pursuant.

[27] The mere material fact of continuous and uninterrupted conduct exercised over the property does not, in itself, allow one to distinguish possession from mere holding (*detenzione*), nor does it suffice to exclude the possibility of tolerance by the holder and thus to establish the inactivity of the right-holder against whom usucapion would run. Above all, it does not confer upon possession the requisite degree of unequivocality—either objective or subjective—necessary to determine the content of the corresponding real right allegedly acquired.

[28] *Corte di Cassazione* [Supreme Court of Cassation], Civil Section II. (2022, February 25). Judgment No. 6330; *Corte di Cassazione* [Supreme Court of Cassation], Civil Section

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II. (2021, October 28). Judgment No. 29594; Corte di Cassazione [Supreme Court of Cassation], Civil Section II. (2007, October 9). Judgment No. 21252.

[29] This provision applies only to *emphyteusis* established for a fixed term and not to perpetual *emphyteusis* (where no duration is specified, pursuant to Article 958 of the Italian Civil Code).

[30] The same principle has been affirmed by the Supreme Court of Cassation (Corte di Cassazione, Civil Section II, 1962, July 11, Judgment No. 2904).

[31] See the long-standing decision of the Supreme Court of Cassation (Corte di Cassazione, Civil Section II, 1957, July 12, Judgment No. 3405), which held that "the failure by the grantor to request recognition (*ricognizione*) of his right does not affect the existence of the *emphyteutic* relationship, unless it coincides with acquisition by usucapion by the *emphyteuta* who has possessed the property as full owner."

[32] Indeed, assets belonging to the *State*, provinces, or municipalities are not susceptible to usucapion (pursuant to Articles 823–824 and 1145 of the Italian Civil Code), nor are those of the regions (pursuant to Article 11 of Law No. 281/1970). Likewise, public law rights (*diritti demaniali*) over property belonging to others are imprescriptible (pursuant to Articles 823 and 825 of the Italian Civil Code and Article 11 of Law No. 281/1970).

[33] For such rights, there is only one means of extinction, namely the completion of the liquidation procedure for civic use (*uso civico*), which occurs through the *classification* and assignment in *emphyteusis* or through legitimization (*legittimazione*), followed, therefore, by redemption (*affrancazione*).

[34] In such cases, Article 1159 of the Italian Civil Code (the so-called "curative effect of registration") applies, providing that "a person who, in good faith, acquires from one who is not the owner an immovable property on the basis of a title that is suitable for transferring ownership and has been duly registered, acquires ownership by usucapion in his favour after ten years from the date of registration." This reconstruction does not apply, however, when the grantor is a public entity and the grantor's right is deemed to pertain to public domain property.

[35] It should be noted, however, that the presumption of good faith may be easily rebutted in all cases where it can be demonstrated that the purchaser was able to ascertain the seller's lack of title, or at least to doubt the existence of such title, simply by checking the land registry (*Catasto*) or examining the property records (Corte di Cassazione [Supreme Court of Cassation], Civil Section II, 2002, September 25, Judgment No. 13929).

[36] M. Leo & A. Ruotolo, *Affrancazione di livello*, Response to Question No. 5931-2005, 2006, CNN notizie; C. Lomonaco, *Prelazione artistica ed affrancazione di livello*, in *Studi e materiali*, 2007, p. 1318; A. Magnani, *Il livello oggi enfiteusi: che vi sia ciascun lo dice, cosa sia – e come si cancelli nessun lo sa*, in *Rassegna di diritto civile*, 2019, pp. 1437–1469.

[37] For relationships established prior to 28 October 1941, the fee (*canone*) may not exceed the amount corresponding to the cadastral income (*reddito dominicale*) of the land, determined with reference to the cadastral classification as at 30 June 1939 and updated by

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applying coefficients intended to maintain adequate correspondence with the actual economic reality (Article 1, Law No. 607/1966, to be interpreted in light of Constitutional Court Judgment No. 143/1997, and Article 1, Law No. 1138/1970). For relationships established from 28 October 1941 onwards, the fee may not exceed the amount corresponding to the cadastral income of the land, determined with reference to the cadastral classification and class existing at the time the relationship was constituted and updated by applying coefficients intended to maintain adequate correspondence with the actual economic reality. The fee for *emphyteusis* established after 28 October 1941 may not, in any event, be less than one fifteenth of the expropriation indemnity. In this context, it is necessary to distinguish the determination of the fee based on the type of *livello/emphyteusis* involved: a) *Emphyteusis* over agricultural land: the relevant legislation provides that the fee must not be disproportionate to the market value of the land subject to *emphyteusis*, but must be periodically updated by applying coefficients intended to maintain reasonable correspondence with the actual economic reality; b) *Emphyteusis* over land for building purposes: the value of the fee for such areas cannot be determined according to the rules for rural *emphyteusis*, in order to avoid speculative transactions; rather, the fee should be set by applying a fair rate of return to the value of the area considered as building land (Consiglio di Stato [Council of State], Opinion No. 661/1998 of 9 June 1998; Ministry of Finance, Note of 26 October 2000, e.g. I.C.I. value); c) *Emphyteusis* over developed land: buildings constructed on land subject to *livello* cannot be considered as improvements (*Avvocatura dello Stato* [State Legal Service], Note No. 8475/1991); the improvement activity required of the *emphyteuta* must be deemed inherently connected to the nature of the land itself, and any building transformation is therefore excluded (*Consiglio di Stato* [Council of State], Opinion No. 661/1998). Accordingly, the building is deemed to have been acquired by accession by the grantor as owner of the land. Finally, with four judgments (Constitutional Court Judgments Nos. 160/2008, 143/1997, 406/1988, and 53/1974), the unconstitutionality was declared of rules that did not provide for the updating of the reference value for determining the capital amount for redemption (*affrancazione*) in the four types of *emphyteusis* (rural *emphyteusis* established before and after 28 October 1941; urban *emphyteusis* established before and after 28 October 1941).

[38] G. Musolino, *Enfiteusi e affrancazione del bene*, *Rivista del Notariato*, 2007, No. 2, p. 154. This procedure is governed by the rules laid down in Law No. 607/1966, but only for relationships entered into before 28 October 1941. With regard to case law, see Supreme Court of Cassation (Corte di Cassazione [Supreme Court of Cassation], Civil Section II, 27 March 2000, Judgment No. 4352, in *Rivista del Notariato*, 2001, No. 2, p. 154), as well as Supreme Court of Cassation, Civil Section II, 21 July 1998, Judgment No. 7301, which states: "... Law No. 607/1966 provides for two distinct stages of proceedings: the first, of a summary nature, ... is to be concluded by an order of an ordinary nature, which becomes final only if not challenged; the second, which is optional and occurs if the parties file opposition to the order rendered in the summary phase, is entrusted to the Specialized Agrarian Section of the Tribunal and is decided by judgment, whether the order from the summary phase contains a

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decision on the merits (either granting or rejecting the redemption application), or consists of a purely procedural ruling of non-proceeding for reasons of law or jurisdiction, since even in the latter case, the measure ... is still of an interlocutory and not definitive nature, an order that concludes and exhausts the summary phase of the procedure, subject to appeal (pursuant to Article 5, paragraph 5, Law No. 607/1966) before the Specialized Agrarian Section of the Tribunal in full cognizance proceedings for review of the issue (both substantive and procedural) already addressed in summary consideration."

[39] Corte di Cassazione [Supreme Court of Cassation], Civil Section II. (1982, July 8). Judgment No. 4197.

[40] Consiglio Nazionale del Notariato [National Council of Notaries]. (1996). Studio n. 469 bis-479 bis: Accertamento di congruità dell'indennità di affrancazione di fondo enfiteutico [Assessment of the adequacy of the redemption indemnity for *emphyteutic* land].

[41] This expression conceals at least four cases: a) *Civic land* arbitrarily occupied, falling within the inalienable assets (*patrimonio indisponibile*) of the Municipality; b) *Allodial land* formerly civic and encumbered by a (public) fee of an *emphyteutic* nature. This concerns land that was unlawfully occupied but whose unlawful status was subsequently regularized administratively. By means of the Ministerial Decree of legitimization (now regional), an *emphyteutic* fee was imposed; the asset is considered allodial (no longer part of the public domain, but part of the assets of the Municipality or—according to recent Supreme Court case law—of the private possessor) and is freely transferable, although still encumbered by the fee; c) Civic land subject to allocation (*quotizzazione*) under Law No. 1766/1927, granted by way of *emphyteusis*. This concerns public land that was allocated by the Municipality to farmers under Law No. 1766/1927 (on the reorganization of civic uses), with an obligation to pay an *emphyteutic* fee. The beneficiaries have the right to redeem the fee, but until redemption (*affrancazione*) takes place, the land remains public and cannot be divided, transferred, or assigned for any reason (Article 21, Law No. 1766/1927); d) Non-civic land falling within the available assets (*patrimonio disponibile*) of the entity and granted by way of *emphyteusis* pursuant to the Civil Code. Such land is owned by the Municipality and remains so until the *emphyteusis* is extinguished by redemption. Of course, the *emphyteusis* extends to any buildings erected on the land itself.

[42] See, for example, the regulations on the redemption (*affrancazione*) of *emphyteusis*, *livelli*, and *usi civici* adopted by the Municipality of Martina Franca, available online. See also the proceedings of the conference held in Ragusa on 5 October 2009, "Restrictions on Land Ownership between Tradition and Effectiveness: The Problem of *Emphyteusis*, *Censi*, and *Livelli*?", which was prompted by the inventory undertaken by the Municipality of Caltagirone.

[43] Therefore, any resolutions by which the entity, unilaterally and in a general manner, orders the extinction of perpetual and personal relationships relating to *canoni* and *livelli* imposed on citizens holding real rights are unlawful. Cf. G. Musolino, *Il livello: un diritto reale assimilabile all'enfiteusi*, in *Rivista del Notariato*, 2013, No. 3, p. 702.

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[44] Redemption (*affrancazione*) has a derivative-translational nature: it does not entail the extinction of the beneficial ownership held by the grantor, but rather its transfer in favour of the party effecting the redemption, who thus acquires it by way of derivative title.

[45] This is provided by Article 3, paragraph 50, of Law No. 662/1996, which states that, until the date of entry into force of the new cadastral valuation rates, and solely for the purposes of income tax, cadastral and agricultural incomes are revalued by 80% and 70%, respectively. The increase applies to the amount used as the basis for the revaluation carried out pursuant to Article 31, paragraph 1, of Law No. 724/1994.

[46] The legislature also provides a specific regime with regard to mortgages. Pursuant to Article 2815, paragraph 1, of the Italian Civil Code, in the case of redemption (*affrancazione*), mortgages encumbering the grantor's right are transferred to the redemption price, while mortgages encumbering the *emphyteuta's* right are extended to the full ownership.

[47] The State Attorney General's Office (*Avvocatura Generale dello Stato*), when consulted as to whether a managerial determination (*determinazione dirigenziale*) constitutes a valid title for redemption (*affrancazione*), in its opinion CS/2749/02 of 15 January 2004, observed that a managerial determination must be considered a suitable title for redemption and for the resulting expansive effects on property rights associated with it.

[48] The following are the details of certain circulars and resolutions issued by the *Agenzia del Territorio* (Land Registry Agency) on the subject of redemption (*affrancazione*): Circular No. 29104/2011 (Redemption of *emphyteutic* fees, *censi, livelli* – Determination of fees and proper revaluation of cadastral income); Resolution No. 2/T/2008 (Mortgage taxes and special cadastral duties – Redemption of civic uses – Tax treatment of mortgage and cadastral registrations – Exemption); Resolution No. 1/T/2006 (Registration tax – Civic uses – Legitimation measures – Registration procedures). See also Resolution No. 64/2014, which reconfirms that acts of redemption executed after 1 January 2014 continue to benefit from the exemption regime from stamp duty, registration tax, and other taxes.

[49] Code rural et de la pêche maritime, art. L. 451-1; Guide des baux constitutifs de droits réels, Le Moniteur Juris, 2018, spec. chap. 3 (bail emphytéotique); see also "Le bail emphytéotique", in 119e Congrès des notaires de France, 2023; J. Carbonnier, Droit civil. Les biens; Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, Les biens.

[50] Spanish Civil Code, arts 1604–1664; B. Ariño, M. Faus, "Emphyteutic censo", in Aranzadi Legal Guides, Thomson Reuters, online update; L. Díez-Picazo y Ponce de León, Fundamentos del Derecho civil patrimonial. T. III: Las relaciones jurídico-reales, Civitas, 5th ed., 2008; A. Lambea Rueda, Censos and the right of superficies, Complutense University of Madrid, 2023.

[51] Gesetz über das Erbbaurecht (Erbbaurechtsgesetz – ErbbauRG), RGBl. 1919, 72; D. Pesl, Das Erbbaurecht. Geschichtlich und wirtschaftlich dargestellt, Duncker & Humblot, Berlin, 1910 (reprint 2013); BGB Kommentar, Gesetz über das Erbbaurecht (ErbbauRG), De Gruyter, DOI: 10.9785/9783504388287-090. Palandt, Bürgerliches Gesetzbuch, sections on Erbbaurecht; Staudinger, Kommentar zum Bürgerlichen Gesetzbuch, Erbbaurecht.

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[52] Código Civil español, arts 1642–1643, 1651 (redención del censo enfiteúatico); cfr. A. B. Martínez, Los censos: concepto y naturaleza, Estudios de Teoría y Filosofía del Derecho, UNED, available on revistas.uned.es.

[53] Code rural et de la pêche maritime, art. L. 451-1 s.; cf. *Guide des baux constitutifs de droits réels*, cit.; "Bail emphytéotique et bail à construction", note de synthèse, Cheuvreux, 2019

[54] Código Civil español, arts. 1604–1664; B. Ariño, M. Faus, op. cit.; A. B. Martínez, op. cit.

[55] ErbbauRG; voce "Erbbaurecht", cit.; cf. H. F. von Oefele & K. Winkler, *Handbuch des Erbbaurechts*, 4th ed., C. H. Beck, Munich, 2008.

[56] On long-term land use rights, the numerus clausus of property rights and functional equivalents of ownership in European property law, see, inter alia, B. Akkermans, Concurrence of Ownership and Limited Property Rights, in *European Review of Private Law*, 2010, Vol. 18, No. 2; S. van Erp, The functional comparative method in European Property Law – C. Godt Some comments, in *European Property Law Journal*, 2013, Vol. 2, No. 1, pp. 90–94, doi: 10.1515/eplj-2013-0006; B. Akkermans, The Functional Method in Comparative and European Property Law, in *European Property Law Journal*, 2013, Vol. 2, No. 1, pp. 1–3, doi: 10.1515/eplj-2013-0001

[57] For a theoretical framing of fragmented property rights and long-term land arrangements, see K. Gray, Property in Thin Air, in *Cambridge Law Journal*, 1991, Vol. 50, No. 2, pp. 252–307, doi: 10.1017/S0008197300080508; S. Blandy, S. Bright, S. Nield, The dynamics of enduring property relationships in land, in *Modern Law Review*, 2018, Vol. 81, No. 1, pp. 85–113, doi: 10.1111/1468-2230.12317.

[58] On reliance, information costs and land markets, see R. C. Ellickson, Property in Land, in *Yale Law Journal*, 1993, Vol. 102, No. 6, pp. 1315–1400 (JSTOR stable: 796972); H. Demsetz, Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership, in *Journal of Legal Studies*, 2002, Vol. 31, No. 2, pp. S653–S672, doi: 10.1086/342028; R. Cooter, The Cost of Coase, in *Journal of Legal Studies*, 1982, Vol. 11, No. 1, pp. 1–33, doi: 10.1086/467690.

[59] See also A. Gambaro, Property Rights in Civil Law, in *Tulane Law Review*, 1995, Vol. 69, pp. 1587–1609; U. Mattei, Efficiency in legal transplants: An essay in comparative law and economics, in *International Review of Law and Economics*, 1994, Vol. 14, Issue 1, pp. 3–19, doi: 10.1016/0144-8188(94)90032-9.