

Cultural heritage and the category of the commons: a path to the recognition of a right to beauty?

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Abstract

The work aims to address the discussion on beauty in a legal dimension linked to the realisation and development of the human personality and society. In this dimension, the analysis starts from art. 9 of the Italian Constitution, which recognises protection of the interest - of individuals and the community - in the fruition of cultural heritage and the landscape, in order to analyse the assets not in their materiality nor in consideration of public or private ownership but in relation to the function they perform. A particular perspective, that of cultural heritage, which does not aim to privilege the static profiles of the ownership of goods, whether private or public, but rather to bring out the relationship between the person, as the centre of interests, and the goods that contribute to the realisation of the human personality. This issue needs to be compared, in the light of the peculiarities of cultural heritage, with the emergence of the new category of common goods and the rediscovery of forms of collective property in the Italian legal system.

1. Introduction: The human being and the need for beauty

The dimension of beauty, beyond what might be considered beautiful or conversely ugly, urges the jurist to reflect on the fulfilment and the development of the personality of the human being and the advancement of society (Settis, 2015; Cabiddu, 2020; Sciancalepore, 2023).

The reference to beauty intends to reconstruct the human experience in relation to the hierarchy of values expressed in our Constitution such as the fundamental principles of freedom, equality, solidarity, dignity, cultural development, memory and identity, in order to identify interests worthy of protection and to make their realization effective.

In his studies, Salvatore Settis, proposes a hermeneutic approach to enhance Italian legal history both before and after Italian Unification¹, beginning with Croce, promoter of the first landscape law (law no. 778 of 1922), and leading up to the formulation of Article 9 of the Constitution (Settis, 2010).

¹ See the Bourbon laws of 1840 where the views of Neapolitan landscapes were safeguarded, limiting the right to property in favor of the right to enjoy the view, deemed a "public servitude." *Il diritto del popolo di godere delle bellezze naturali* (the right of the people to enjoy natural beauty) was recognized. See again the order of the Royal Patrimony of Sicily in 1745 which declared the woods on the hillside of Mount Etna and the antiquities of Taormina as "protected".

In this dimension, an analysis can be made beginning with that Article 9 of the Constitution, which recognizes the protection of individuals' and the community's interests in order to benefit from the cultural heritage and landscapes, and considers not the materiality of goods, but rather the value expressed in them (M.S. Giannini, 1991; Santoro Passarelli, 1969).

The theme of the right to beauty will be addressed by considering how certain goods, whether tangible or intangible, including goods that are part of the cultural heritage and landscape, contribute to the realization of the human being. A particular perspective related to cultural heritage, which does not aim to favour the static profiles of the property of private and public goods as in the Constitution (art. 42) and in the Civil Code, but rather brings about the relationship between the individual, as the centre of interest, and goods that correspond to the realization of said interests.

If cultural goods play a vital role in the realization of the human being, the legal system should be structured in such a way to guarantee access and use by the community.

2. Cultural goods and their cultural purpose

The purpose of this work is not to review the many statutes, both national and supranational, where the concept of cultural goods emerges and finds its legal structure, but rather to consider its qualities related to the function it is intended to carry out.

On the one hand, cultural goods have an intrinsic purpose for use and collective access, but also contribute to establishing the identity of a community or population, by expressing the history, traditions, and the very identity of the community itself, regardless of ownership.

Although the Constitutional Charter does not refer directly to goods, it offers the direct protection of cultural goods in Article 9 which states that the Republic protects the nation's historical and artistic heritage and promotes culture. In this direction, an analysis, beginning from Article 9 of the Constitution, recognizes the protection of the interests of individuals and the community in the use of cultural heritage and the landscape and considers goods not in their materiality but the value expressed in them. As the Constitutional Court has remarked, these goods have primary value in the constitutional sphere² and culture cannot be protected separately from cultural goods³.

Cultural goods not only possess the essential quality of being destined for the community but are able to express society's history and evolution⁴.

² Corte Cost. April 1, 1985, No. 94, in *Giust. cost.*, 1985, No. 2, p. 604; Corte Cost., Dec. 21, 1985, No. 359 *ivi*, No. 6, p. 2522; Corte Cost. July 26, 2002, No. 407, in *Giur. It.*, 2003, p. 417; Corte Cost., June 24, 2003, No. 222, *ivi*, 2004, p.465; Corte Cost., January 20, 2004, No. 26, in *Foro it.*, 2005, p.1998; Corte cost. July 22, 2009, No. 226, *ivi*, 2010, p.394; Corte cost., July 22, 2012, No.278, *ivi*, 2012, p.977; Corte cost., June 20, 2013, No.145, *ivi*, 2013, p. 3349; Corte cost., October 24, 2013, No. 246, *ivi*, 2013, p. 3349; Corte cost., July 18, 2014, No. 2010, *ivi*, 2014, p. 2651.

³ Corte cost. March 9, 1990, no. 118 in *Foro it.* 1990, I, c. 1101.

⁴ The term cultural heritage first appeared in a legislative text with the establishment of the Ministry of Cultural Heritage in 1974 (now Ministry of Culture l. March 1, 2021, No. 22). The definition of cultural heritage "goods that constitute material testimony with value of civilization" is thanks to the Commission of Inquiry for the protection and enhancement of things of historical artistic and archaeological interest and of the landscape established by L. April 26, 1964 No. 310. It has been pointed out that the concept of cultural heritage is indeterminate in that it requires reference to non-legal disciplines

Beyond the normative references⁵, which are enriched by supranational disciplines, European regulation and European directives and international conventions, now cultural goods are considered an “open category” that must be understood in relation to the cultural interest or value that a good, either tangible or intangible, expresses and is necessary for public use (Giannini, 1976; Santoro Passarelli, 1972)⁶.

In a broader dimension, the "Council of Europe Framework Convention on the Value of Cultural Heritage for Society" (the so-called Faro Convention, from the Portuguese city where the Convention was signed on Oct. 27, 2005) recognizes that «rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights» and recognize «individual and collective responsibility towards cultural heritage».

The Faro Convention emphasise that « the conservation of cultural heritage and its sustainable use have human development and quality of life as their goal» and that « cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions».

Deserves a mention, the term "cultural heritage of the mankind" which the 1972 UNESCO Convention and subsequent Conventions put forth, with the goal of safeguarding the protection and promotion of sites, tangible and intangible resources, which, when recognized to be of outstanding universal value, are added to the World Heritage List. Additions to the list of cultural heritage protected by UNESCO involve the entire community and pertain to fundamental human rights and freedoms, transcending the national boundaries of the state where the good is located and even goes beyond the temporal boundaries of today's generations⁷.

Considering the complexity of inserting cultural heritage of the mankind within civil categories, which lies between the world of things or goods and that of people, it has been noted how the UNESCO Convention seems to imply an idea of cultural, or rather, civic public space, which must be identified and preserved in order to guarantee access for all, including future generations; a public space, in which both individuals and the community have the right to access, which is recognized by the UNESCO Convention itself, which has placed on the national Legislator the obligation to recognize and protect it (Alvisi, 2023: 5).

and categories and is linked to administrative discretion, in the form of cultural interest for public goods and the declaration of cultural interest for goods owned by private individuals.

⁵ Il *Codice dei beni culturali e del paesaggio* (d.lgs 22 gennaio 2004, n. 42) all'art. 2, comma 2, states that cultural heritage is represented by movable or immovable things that are of artistic, historical, archaeological, ethnoanthropological archival and bibliographic interest. Thus, the concept of cultural good is part of the broader concept of cultural heritage that also encompasses the landscape with a view to sustainable development ex art. 2, comma 1, del *Codice*. Gli artt. 10 e 11 make a more precise listing.

⁶ Today, cultural heritage is described by current legislation (which incorporates a notion already put forth by the Franceschini Commission) as "testimony having the value of civilization". This definition has also been embraced by jurisprudence, which has repeatedly noted the shift from a materialistic meaning, linked to things *quae tangi possunt*, to a different connotation, of an immaterial type, which sees the expressive value of a historical and social environment in cultural heritage. See Cons. St., VI, Oct. 17, 2003, no. 6344. According to the more recent the definition of cultural heritage, see Corte Cost., 17 luglio 2013, n. 194.

⁷ On this point most recently see Consiglio di Stato sez. VI, 10/07/2023, n.6752 in *dejure.it*

These remarks lead one to reflect on the indifference of property ownership, whether it be public or private property, and to place the problem of cultural goods within the framework of most modern theories of *legal* goods, and lastly, to determine a new category of goods known as the commons (Grossi, 1977; Grossi 1992; Mattei, 2011; Mattei, Reviglio and Rodotà, 2007; Lucarelli, 2007; Carapezza Figlia, 2008; Marella, 2011; Marella, 2012; Nivarra, 2012). Underlining the indifference of property ownership is necessary in order to emphasize the importance of collective use instead of viewing goods without ownership⁸. It has been noted how the link between goods and their collective use leads to a more correct identification of the legal regime of the good and not to imagine a universal property (Perlingieri G., 2022: 144).

3. The category common goods: beyond the public and private?

The same dissatisfaction with a privatized form of economic management of Italian cultural heritage has led to views revolving around the category of commons goods.

In fact, the perspective chosen leads to the reconstruction of the category of cultural goods not for their individual normative peculiarities that distinguish them on both a Italian and international level, but the reinterpretation of a more modern theory of goods according to which the *res* is identified in relation to the function it is intended to perform and, therefore, of the interests it is destined to achieve.

With respect to cultural goods, questions regarding the category of the common good may in fact emerge, despite its uncertain boundaries (which encompass both determinate and corporeal goods as well as indeterminate and more abstract goods), has been criticized for its classificatory utility (Perlingieri G., 2022: 145). However, in addition to critical remarks that will be further examined below, cultural goods share with the common good certain characteristics that need to be emphasized.

According to an important doctrine, the category of the common good, leads to three perspectives which will be further examined because they are related to guaranteeing access to and enjoyment of cultural goods. Cultural goods go beyond the static dimension of ownership and allow for the public property-private property dichotomy to be reconsidered. Moreover, their management concerns active involvement and participation on behalf of the community in question. In addition, apart from collective enjoyment, the need for preservation also emerges, especially for the benefit of future generations (Carapezza Figlia, 2012: 538).

As for the issues pertaining to overcoming the public-private property dichotomy, the distinction, used by both the Constituent and our Civil Code, based on the static profile of ownership between a public and private property, fails to offer recognition and protection for a range of interests related to the enjoyment of property.

The cultural rather than legal process which has led to the reinterpretation of the category of the *commons* can be useful in pointing out how the proprietary model, based on property ownership and *ius excludendi alios*, fails to capture the complexity and variety of interests underlying the relationship between the person and the good.

Therefore, the category of common goods may be useful in reaffirming the need to overcome the patrimonial view of property as the object of exclusive rights of ownership classified, as

⁸ Cf. Council of State sec. VI, 09/05/2022, no.3605 in *dejure.it*

public or private, in favor of a theory of property constitutionally-oriented toward the protection of the human being (Rodotà, 2011: 107).

In Italy, the Commission, also known as the Rodotà Commission, formed by decree of the Minister of Justice on June 21, 2007, proposed a possible reform of the *Capo II del Titolo I del Libro III* of the Civil Code by presenting a *tertium genus* of property - beyond public and private property - represented by the commons. Based on American economic theories (Ostrom, 2006), followed in Italy by those who went against the privatization of cultural goods (Lucarelli, 2002; Marella, 2012), where common goods were considered functional to the primary needs of the human being. The classification of common goods should focus on the free enjoyment by the community, as a guarantee of the realization of human beings, instead of focusing on profiles of belonging. According to the Rodotà Commission, the reform aimed to make "a conceptual inversion from the legal traditions of the past" that would identify goods, both tangible and intangible, as "bundles of utilities," a classification related to their economic and social significance. Therefore, no longer a legal regime based on the static profile of ownership, but rather a dynamic profile related to the function exercised by the property.

The Commission modified Article 810 of the Civil Code regarding the definition of goods (from "things that can form the object of rights" to "things, tangible or intangible, whose uses can form the object of rights"). The Commission also put forth the distinction of goods into three categories: common goods, public goods and private goods. The new category of common goods expresses the relationship between the good and the utilities it produces, where the utilities are important to fundamental rights and to the free development of the person⁹.

Despite the success of this cultural, political and legal approach in Italy, after the work done by the Rodotà Commission, real legislative reform was not brought about. The category of the commons - which «by their intrinsic nature or finalization, prove to be, based on a complete interpretation of the entire legal system, functional to the pursuit and satisfaction of the interests of the community» - is recognized by the Supreme Court (*Sezioni Unite*) in light of the constitutional framework (Art. 2, 9, 42)¹⁰.

In 2011, The Supreme Court applied the constitutional principles set forth in Articles 2, 9 and 42 of the Constitution and overcame «a purely patrimonial-proprietary vision to lead to personal-collectivist perspective». This case dealt with the ownership of maritime state property of fishing valleys in the Venice lagoon and offered the Court the opportunity to revisit the current regulatory system, particularly the constitutional data, affirming, «where a good (real estate), regardless of its ownership and given its intrinsic value, (whether environmental or related to the landscape), destined to the realization of the welfare state, said

⁹ According to the Accompanying Report to the Draft Delegated Law prepared by the Rodotà Commission, a summary by M. Di Masi in A.A.V.V. can be found, *Oltre il privato ed il pubblico*, cit., p. 163, there is, first of all, a new fundamental category, that of common goods, which do not fall *stricto sensu* within the category of public goods, since they are of widespread ownership, being able to belong not only to public entities, but also to private individuals. They include, natural resources, such as rivers, streams, lakes and other bodies of water; 'air; parks, forests and wooded areas; high-altitude mountainous areas, glaciers and snowy areas; stretches of coastlines declared environmental reserves; wildlife and protected flora; as well as other protected landscape areas. It also includes archaeological, cultural and environmental properties.

¹⁰ Cass., Sez.. Un., February 14, 2011, no. 3665 in *Rass. Dir. civ.*, 2012, p. 524.

good is to be considered (...), common, or in other words, related to the realization of the interests of all citizens»¹¹.

However, it is worth noting that the category of common goods often represents “ambiguity” and refers to a «concept that is in many ways superfluous, a symbol of possible misunderstanding and of little use» (Perlingieri G., 2022: 139; Francesca, 2017). While highlighting the importance of the issues underlying the discussion on common goods, which has certainly raised awareness among the doctrine most refractory to personalism and solidarity, it has been affirmed that the construction of the new category “beyond the public and private” is not necessary (Perlingieri G., 2022: 140).

In this perspective, it is the particular type of good - whether it may be cultural, environmental or related to the landscape - which, regardless of its ownership, the law limits or restricts ownership because of the need to ensure the good’s enjoyment by a wider range of citizens.

Without the need of a new category capable of founding tripartite distinctions or legal regimes, property is not one but several, differentiated in relation to the good which is the object of the right as well as its owner (Pugliatti, 1964: 309; Rodotà, 2013: 240). Goods, characterized by their collective use and the necessary purpose for the community, calls for more serious improvement of the social function of property as well as the social utility of economic initiative established by the Italian Constitution (art. 42, secondo comma e 41 secondo comma) (Perlingieri P., 1971). A closer look at property and the theory of property through a constitutional lens conforms to the requirements for the protection and preservation of the human being. (Perlingieri P., 2021: 108; Perlingieri P., 2019: 1184; Perlingieri P., 2020: 280; Caterini, 2013: 592; Nivarra, 2021: 29).

With this in mind, cultural goods-are goods necessarily intended to meet the human needs essential to guarantee the person a free and dignified existence. The social function they represent justifies a series of obligations and constraints that shape their legal regime, functional to the implementation of a super-individual interest, defined by some as Universal (Gentili, 2017: 229), which follows the regime of the good regardless of its ownership.

The theory of goods that takes into account social evolution and in particular Italian Constitution can lead to the identification of non-patrimonial utilities and interests of the community, related to the necessary collective purpose of the goods that are functionalized by them. This shows how the category of common goods is not useful for establishing it is a *tertium genus* - between private and public belonging - but can provide new arguments for revisiting the theory of goods in relation to the protection of constitutionally relevant interests that are expressed with it (Perlingieri G., 2022; Francesca, 2017; Lobbuono, 2021).

The theory regarding the social function of property leads to the functionalization of property, and to the «realization of fundamental interests crucial for the full development of the human being»¹². The social function «should be read in close correlation with fundamental human rights, or rather, according to personalism and solidarity, which characterize Italian Constitutional Charter and make the unitary reconstruction of the system possible»

¹¹ Cass., Sez. Un., February 14, 2011, no. 3665. See Edu Court September 23, 2014, No. 46154 in www.dejure.it, where the Court did not get into the qualification of the fishing valleys of the Venetian lagoon as “common goods” but recognized that the national court, more than the international court, can assess the function of the public utility of a good, because of the direct knowledge that the national court itself has of its society and its needs.

¹² Cass. sec. un. February 14, 2011, no. 3665 in *Rass. dir. civ.*, 2012, p. 524 ff.

(Perlingieri P., 2021: 362). This is brought to the forefront with a reference to public property (in Art. 42 Const.), where the social function is an essential characteristic of property and its purpose and private property is related to the pursuit of constitutionally relevant human and social interests (P. Perlingieri, 1971; Nivarra, 2021).

4. Collective property, civic uses and collective domains

When looking at goods with a collective purpose, the active participation on behalf of the community of citizens in the management and enhancement of the common good is key.

Examples of collective participation, Italian civil law institutes called civic uses and collective domains (Cervale, 2022), which deviate from the traditional proprietary paradigm, are worth mentioning in that they reflect the peculiarities of the interests considered, which concern the protection of a given community as well as the preservation and enhancement of certain goods of common use.

Therefore, the social function of property is reaffirmed not only in terms of property ownership but of participation in decisions concerning certain categories of property (Rodotà, 1981).

Analyzing the phenomenon of civic uses¹³ (Grossi, 1977; Fulciniti, 2018; Cervale, 2022) can lead to the identification of a community with the ability to manage and enjoy certain goods.

Civic uses are often deemed “eccentric” (Marinelli, 2022: 665; Grossi, 1977) and have ancient and controversial historical origins (Grossi, 2017). Recently, however, in addition to Law No. 1766¹⁴ of June 27, 1927, Law No. 128 of Nov. 20, 2017 on collective domains, based on the constitutional principles expressed in Articles 2, 9, 42 and 43, recognizes collective domains as the “primary legal system of the original communities capable of managing the natural, economic and cultural heritage that belongs to the territorial base of collective property, considered as inter-generational co-ownership”. The regulation, therefore, also formally recognizes, alongside public property and private property, the collective domain as being rooted in the territory and gives a legal personality of private law and statutory autonomy.

The “common reasons” of such forms of property with the category of common goods (Marinelli, 2013) have been highlighted, and focus on ensuring access to common goods by all who have an interest in them, within reasonable limits, and ensuring their future sustainability

Both civic uses and collective domains differ from the commons, based on the observation that in collective domains a community of reference is still present, to which the ownership of

¹³ This expression attempts to indicate a phenomenon that is internally heterogeneous and concerns both civic uses in the strict sense, i.e., the real rights of public interest over private property (*iura in re aliena*) and private collective property, as an indivisible communion without parts that belongs to the community. Some prefer to use the verbal expression “*assetti fondiari collettivi*”.

¹⁴ Law No. 1766 of 1927 was put into place to grant World War I veterans plots of land for agricultural use and to encourage the development of agriculture and forestry. This law was intended to be applied to the entire national territory, with the exception of the Alpine arc, and led to establishing how civic uses cannot be sold or subject to acquisitive prescription (*insucapibilità ed imprescrittibilità*). The historical reference to the period of fascist rule in which the law was enacted should not influence the reader’s view on the subject that has involved numerous contributions since the nineteenth century (Venezian, 1888; Ranelletti, 1992).

goods is attributed, highlighting the necessary connection with collective interests of the group (whether open or closed) (Cervale, 2022). Instead, the theory of common goods does not focus on this connection where the expression of interests is ascribable to a more undifferentiated community (Perlingieri P., 2024: 85). Legislation pays close attention to the social relevance of goods, related to the satisfaction of existential interests, leading to goods that cannot be sold or subject to acquisitive prescription (*inalienabilità, imprescrittibilità, insucapibilità*) (Cervale, 2022).

Therefore, collective domains show the prevalence of interests related to the use and enjoyment by a community; a community that is united by the same agricultural, productive, bio-sustainable and environmental needs that go beyond the individual's interests and focus on collective needs, which, by virtue of solidarity, conditions the legal system (Pugliatti, 1964: 209; Perlingieri P., 1971: 53). This reflects the social function of the ownership of particular goods, based on their nature and function, related to their access, use, enjoyment and collective management, and in accordance with the principle of horizontal subsidiarity (art. 118 Cost., comma 4).

5. The right to beauty and its possible protection

Reference to common goods also shows the emergence of popular or collective interests in the access, use, enjoyment, and enhancement of common goods, also from a sustainability standpoint. As outlined at the beginning of this work, the collective purpose of cultural goods includes their sustainable use that preserves their characteristics and qualities over time, even for future generations. Therefore, access and widespread use of cultural goods should be guaranteed but limits should also be put into place in order to ensure their sustainability.

It is therefore necessary to question whether and in what terms a right to the use and enjoyment of the goods by the community can be identified and whether these goods can be protected and preserved. The proper management and control of goods, as well as the rights of future generations should also be taken into consideration when dealing with applicative outcomes of theoretical reconstructions. It may be noted how the theory of common goods, when the ownership of property is concerned could result in the difficulty of identifying a person responsible for the improper management of these goods (Perlingieri G., 2022: 152).

From this perspective, it is also useful to consider the possibility of individual action for the protection of these positions, which are the focal point of any legal reconstruction that also leads to the emergence of a so-called "right to beauty."

Emphasizing this hermeneutical approach could lead to the recognition of access to cultural heritage as a subjective and/or super-individual legal situation deserving of protection.

While acknowledging that there is a European and international consensus on the need to protect the right of access to cultural heritage, The European Court of Human Rights¹⁵ in 2019,

¹⁵ The European Court of Human Rights Feb. 21, 2019 (Appl. No. 6080/06) *Affaire Ahunbay et autres v. Turquie*. The case concerned the construction of a dam ordered by the Turkish authorities that was capable of damaging the archaeological site of Hasankeyf, located in Batman. According to the plaintiffs, the destruction of an archaeological site that is thousands of years old, would violate not only humanity's right to education today but also for future generations. The plaintiffs had acted on the basis of the right of every individual to be aware of their cultural heritage and share cultural knowledge

denied that at the current state of interpretation of the rights expressed in the European Convention on Human Rights, "a universal individual right to protect cultural heritage" can be affirmed, as cultural heritage rights involve the right of minorities to freely enjoy their culture and the right of indigenous peoples to preserve, control and protect their cultural heritage under the Convention.

This discussion must be further addressed in relation to the possibility of the protection of widespread interests by the individual user of the common good, or rather the good intended for public use.

As pointed out in the doctrine (Di Porto, 2018; 2013), "property intended for public use" beginning with property belonging to private entities, has been at the center of a long jurisprudential history that since 1887, recognizes the right of public use of Villa Borghese.¹⁶ Bearers of this right were not the public authorities as legal entities, but rather the individual components of the community, or in other words, the Roman people (Albanese, 2017) .

The jurisprudential analysis carried out by the doctrine (Di Porto, 2013) shows how these approaches, partly abandoned with the entry into force of the new Civil Code of 1942 which bases the distinction of goods related to the profiles of ownership, are in some cases used in the application of Art. 825 the Civil Code which states that rights are recognized over the goods of others "for the pursuit of public interest corresponding to those for which the goods themselves serve."¹⁷ .

In these considerations regarding public use, the Supreme Court has recognized the individual legitimacy of subjects, *uti civis*, without necessary *lis pendens* with the entity (municipality or other entity) representing the community¹⁸. According to the Supreme Court, when a community possesses widespread interest but is not organized, the possibility of an individual initiative to protect the use and enjoyment of the good¹⁹ must be recognized.

The matter surrounding the protection of goods intended for collective enjoyment must be addressed, otherwise theoretical reconstructions cannot be applied (Irti, 2013: 386).

In this perspective, the recognition of popular action to protect the rights of public use on private goods is not prevented by the provision in Article 825 of the Civil Code. It seems unreasonable to consider precluded by Article 823, 2^o comma of the Civil Code, similar recognition to protect the rights of use (common, collective or public,) on the ownership of public goods, which perform the same role of achieving the goals of public interest (Di Porto,

freely, without which the right to information and the transfer of values between civilizations would be hindered.

¹⁶ Cf. Cass. Of Rome March 9, 1887 was recognized - in the form of *jus deambulandi* - the free transit for the "people of Rome" in the Villa Borghese park (Cass. March 9, 1887). This sentence paved the way for considerations prevalent in the first decades of Italian Unification, by carefully addressing issues concerning rights of public use rights over rights of private use and, more generally, matters concerning "collective situations of ownership."

¹⁷ Cf. Cassazione di Roma a Sezioni Unite, April 14, 1917, in *Foro it.*, I, c. 751; Cass. Regno, March 22, 1928 in *Foro it.*, *Rep.* 1928, *v. servitù pubbliche*, n. 31 all cited by Di Porto, 2018: 170 ff. He stresses how Article 825 of the Civil Code constitutes the only rule within the discipline contained Capo II del Titolo I of the same code (...) to refer to the function of state property, provinces and municipalities.

¹⁸ Cass. Civ. Jan. 10, 2011, No. 333; Cass. Sec. un. Dec. 18, 2020, No. 29106 in www.dejure.it.

¹⁹ Cass., Oct. 3, 1996, No. 8653, in *Just. Civ., mass.*, 1996, no. 1363; Cass., May 9, 1987, no. 4284 in *Just. Civ., mass.*, 1987; Cass., June 13, 2019, no. 15931, in *Just. Civ. mass.*, 2019; Cass., July 19, 1974, no. 2183, in *Rep. Foro it.*, 1979, voce *servitù pubbliche*, n. 2.

2018: 178). The collective use of property does not mean denying the ownership of the good, whether public or private, but recognizing property with multiple owners, so that the 'exponential entity' and the individual each have their own title and own legitimacy (Irti, 2013: 388) .

Moreover, The Rodotà Commission had also considered the individual legal standing to bring proceedings for the judicial protection of rights "related to the preservation and enjoyment of common goods", contemplating an injunction related to the subjective right to enjoyment, which added to state legal standing for the action of damages caused to the municipality²⁰.

Despite the diversity of opinions on the matter (Alpa, 1993; Scoca, 1989), according to a distinguished civil law doctrine (Perlingieri P., 2024: 86), when diffuse interests have as their object goods for common use must be managed in the common interest. In these cases, the bearers of this interest individually possess an autonomous (so-called popular) action to protect its use and its proper management.

These considerations could be enriched by the protection of collective interests, that is, referring to an organized community and also referring to the provision contained in Article 18, Comma 4, Law No. 349 of July 8, 1986, where the possibility of a compensatory action brought by environmental associations is also allowed for the protection of environmental heritage, including the preservation and enhancement of cultural heritage. According to a part of administrative jurisprudence, environmental protection could also include the preservation and enhancement of cultural heritage²¹, while according to other jurisprudence it is necessary to verify in concrete terms whether the interest asserted relates to the environment as a whole, or to the individual cultural good, considered isolated and separate, since in the latter case the action would not be available within the scope of environmental protection²² .

However, the possibility of individual action can also be analyzed in relation to the provision of the *class action* now provided for in Art. 840 *bis* cpc and the collective injunction provided by Art. 840 *sexiesdecies* cpc, which have been removed from the exclusive consumer protection and now considered as a general remedy (Minervini, 2020; Amidei, 2023)²³. Here the norm recognizes individual protection for holders of homogeneous individual rights. Despite the different points of view, part of the doctrine has identified the use of such actions also for the protection of humanity's cultural heritage protected by international conventions (Alvisi, 2023: 25). Further studies will necessarily focus on this point, between opposing doctrinal reconstructions (Consolo, 2019; Ferrante, 2020).

²⁰ The enforceability of an action aimed at injunction or restoration results in a benefit to the entire community while, on the contrary and regardless of concrete evidence of damage, the compensatory action, does not. This justifies different standing for the two actions.

²¹ Cons. st., Oct. 9, 2002, no. 5365 ; Cons. st., Apr. 14, 2011, no. 2329 in www.dejure.it

²² Cons. St., July 31, 2013, No. 4034 at www.dejure.it.

²³ According to Article 840 *sexiesdecies*, "Any person who has an interest in the pronouncement of an injunction against acts and conduct, which have been put in place to the detriment of many of individuals or entities, may bring an action to obtain an order to cease or prohibit the repetition of the omissive or commissive conduct. Nonprofit organizations or associations whose statutory objectives include the protection of interests adversely affected by the conduct referred to in the first sentence are entitled to bring the action if they are registered in the list referred to in Article 840 *bis*, second comma. The action may be brought against companies or entities that manage public services or public utilities with respect to acts and conduct carried out in the course of their respective activities".

In conclusion, the topic of property continues to offer many insightful considerations that go beyond a purely patrimonial vision and refer to certain types of goods - among which one must consider cultural goods – and where a necessary collective and personalist vision should be underlined. The right to enjoy and to access goods highlights the importance of interests that are related to constitutional principles and underlying values. Rediscovering the collective purpose of such goods can lead to the affirmation of collective property, where the active involvement of communities can contribute to the proper enhancement and emergence of widespread, collective and individual interests worthy of protection.

Keywords

Right to beauty, Cultural heritage, Common goods, Civic uses, Collective domains

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