Forever Young

Celebrating 50 Years of the World Heritage Convention

edited by
Elisa Baroncini, Bert Demarsin, Ana Gemma López Martín,
Raquel Regueiro Dubra, Ruxandra-Iulia Stoica

with the collaboration of Manuel Ganarin and Alessandra Quarta

Volume I

6 *Un'anima per il diritto: andare più in alto*

Collana diretta da Geraldina Boni

Mucchi Editore

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L'orizzonte meramente tecnicistico su cui ogni tipo di riflessione sembra oggi rischiare di appiattirsi non solo non cancella quegli interrogativi fondamentali che si confermano ineludibili per ciascuna disciplina in cui si ramifica il pensiero giuridico: ma li rivela, anzi, in tutta la loro impellenza. È dunque a tale necessità che facciamo riferimento nel cogliere e sottolineare il bisogno che si avverte di 'un'anima per il diritto', ispirandoci in modo particolare a quegli ammonimenti che Aleksandr Solženicyn rivolgeva a studiosi e accademici dell'Università di Harvard nel 1978 e che, a distanza di decenni, mantengono intatta la loro validità. Muovendo dalla domanda «se mi chiedessero: vorrebbe proporre al suo paese, quale modello, l'Occidente così com'è oggi?, dovrei rispondere con franchezza: no, non potrei raccomandare la vostra società come ideale per la trasformazione della nostra. Data la ricchezza di crescita spirituale che in questo secolo il nostro paese ha acquistato nella sofferenza, il sistema occidentale, nel suo attuale stato di esaurimento spirituale, non presenta per noi alcuna attrattiva»* – dichiarazione che si riempie di significato alla luce della vicenda personale, tanto dolorosa quanto nota, di colui che l'ha pronunciata –, l'intellettuale russo individuava infatti con profetica lucidità i sintomi e le cause di tale declino. In questo senso, ad interpellarci in modo precipuo in quanto giuristi è soprattutto l'osservazione secondo cui «in conformità ai propri obiettivi la società occidentale ha scelto la forma d'esistenza che le era più comoda e che io definirei giuridica»: una 'forma d'esistenza' che tuttavia è stata assunta come fondamento esclusivo e per ciò stesso privata dell'anelito a una dimensione superiore capace di giustificarla. Con l'inevitabile, correlata conseguenza che «l'autolimitazione liberamente accettata è una cosa che non si vede quasi mai: tutti praticano per contro l'autoespansione, condotta fino all'estrema capienza delle leggi, fino a che le cornici giuridiche cominciano a scricchiolare». Sono queste le premesse da cui scaturisce quel complesso di valutazioni che trova la sua sintesi più efficace nella seguente affermazione, dalla quale intendiamo a nostra volta prendere idealmente le mosse: «No, la società non può restare in un abisso senza leggi come da noi, ma è anche derisoria la proposta di collocarsi, come qui da voi, sulla superficie tirata a specchio di un giuridismo senz'anima». Se è tale monito a costituire il principio ispiratore della presente collana di studi, quest'ultima trova nella stessa fonte anche la stella polare da seguire per cercare risposte. Essa, rinvenibile in tutti i passaggi più pregnanti del discorso, si scolpisce icasticamente nell'esortazione – che facciamo nostra – con cui si chiude: «E nessuno, sulla Terra, ha altra via d'uscita che questa: andare più in alto».

* La traduzione italiana citata è tratta da Aleksandr Solženicyn, *Discorso alla Harvard University, Cambridge (MA) 8 giugno 1978*, in Id., *Il respiro della coscienza. Saggi e interventi sulla vera libertà 1967-1974. Con il discorso all'Università di Harvard del 1978*, a cura di Sergio Rapetti, Jaca Book, Milano, 2015, pp. 219-236.

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Section I

From Cultural Property to World Heritage

Chiara Alvisi

UNESCO CULTURAL HERITAGE AND GLOBAL COMMONS*

Abstract: The WHC provisions provide an important contribution to the debate on 'common goods' (or 'commons'), in which legal scholars specialized in several fields have been involved. As is widely known, WHC was adopted in order to safeguard and preserve cultural and natural heritage and to ensure its preservation for future generations (see article 4). The link between present and future generations as well as the general concept of cultural heritage of mankind, that inspires the WHC, is also at the heart of the concept of 'common goods' as generally held by legal theory. The concept of 'common goods' is rather controversial because it does not have a definition in the current law. Furthermore, theoretically, it includes a large and heterogeneous number of goods (both material and non-material, as well as urban spaces, etc). While there is not yet consensus on a legal definition of 'commons', legal scholarship agrees on the point that certain goods are actually vital to meet collective needs. Indeed, despite the variety of approaches and theories offered by both scholars and case-law, it is generally accepted that commons are neither public nor private goods and that their classification depends on their usefulness for satisfying both individual fundamental rights and communities' interests. Taking as a starting point the relevant WHC provisions, the proposed chapter will discuss – from a private law perspective – the theoretical notion of 'common goods' and its possible impact on cultural and natural heritage understanding and preservation.

1. *The Cultural Heritage of Mankind and the Private Law Categories: Things or Persons?*

The purpose of this essay is to examine whether the international law concept of cultural heritage of mankind can be translated into one of the Italian private law categories.

To classify an international law concept as a private law one is a prerequisite for a mutual understanding between scholarly disciplines. Indeed, although they deal, or should deal, with facts of common interest and research, they speak in different languages

that frequently do not communicate one another. To translate «cultural heritage of mankind» not only into the Italian language but also into the Italian private law categories means to lay the groundwork for an increasingly desirable interdisciplinary dialog between private law scholars and international law ones.

In a complex society marked by the diminished role of States' legislature and the multiplicity and entanglement of transnational sources of law, the search for a «common communication vocabulary»[1] is clearly not enough to simplify the interpretive process. Indeed, it could complicate it if we did not take the time to distinguish, validate, and invalidate the «plurality of meanings» that frequently underpins that process[2]. In our case, the concept of «cultural heritage of mankind» can be interpreted through widely diverse legal categories situated halfway between things and persons, at times leading to dubious practical outcomes. On the other hand, deciding against categorization means refusing to understand what «cultural heritage of mankind» means in domestic law, risking losing many opportunities for its safeguarding, as has happened for several decades in the recent past with the protection of diffuse interests[3].

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* Double-blind peer reviewed content.

[1] I am using here a phrase taken from N. Lipari, *Le categorie del diritto civile*, Giuffrè, Milan, 2013, p. 25, who, in turn, borrows it from P. Rescigno, *Sulle categorie generali del diritto privato*, in *Diritto civile*, directed by N. Lipari, P. Rescigno, I, 1, *Le fonti e i soggetti*, Giuffrè, Milan, 2009, p. 187. If not otherwise stated, all translations are by Francesco Caruso.

[2] As noted by N. Lipari, *Le categorie del diritto civile*, cit., p. 29: «un comune riferimento terminologico oggi quantomeno sottende una pluralità di significati e quindi, anziché operare quale meccanismo semplificatorio del procedimento interpretativo potrebbe finire per complicarlo» ("today, a common terminological reference implies, at the very least, a plurality of meanings, and thus, rather than 'simplifying' the interpretive process, it may end up complicating it").

[3] In this regards, N. Lipari, *Le categorie del diritto civile*, cit., p. 17, recalls that «nell'esperienza della seconda metà del secolo scorso non sono mancati casi in cui si sono incontrate resistenze a realizzare certe tutele proprio perché i fatti da tutelare non risultavano classificabili in categorie giuridiche note: basterebbe pensare, per limitarsi ad un esempio soltanto, alla difficoltà che ha incontrato nelle sue prime manifestazioni la tutela dei c.d. interessi diffusi, non riconducibili ad una sfera di titolarità previamente individuata e quindi non classificabili secondo la classica al-

The debate over the meaning of private law categories, brilliantly described by Nicola Lipari in his book *Le categorie del diritto civile*, published a few years ago, is still ongoing[4]. Some identify them with the institutions of private law; others instead perceive them more broadly as «schemes of thought», tools for knowledge that order reality by making it intelligible[5]; for others, including Lipari himself, private law categories are conceptual instruments involved in the interpretive process, keys to reading reality[6]. Finally, others, like Rodolfo Sacco, define legal categories as ways to learn about problems[7].

Traditionally, the general categories or doctrines of private law, to quote Santoro Passarelli, are those of persons, things, legal relations, facts, and juridical acts[8]. Therefore, the question is whether the cultural heritage of mankind fits into the theory of goods or in that of persons. Which to choose?

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ternativa tra diritti soggettivi e interessi legittimi» ("on several occasions in the second half of the last century, resistance was mounted against granting certain protection precisely because the facts to which protection had to be granted could not be classified according to familiar legal categories: it would suffice to mention, to cite just one example, the challenges met, early on, by the so called 'diffuse interests', which could not be traced back to a previously identified legal ownership and thus could not be classified according to the traditional division between subjective rights and legitimate interests").

[4] N. Lipari, *Le categorie del diritto civile*, cit.

[5] See G.B. Ferri, *Le stagioni del contratto e le idee di Guido Alpa*, in *Rivista del diritto commerciale*, 2013, p. 215.

[6] N. Lipari, *Le categorie del diritto civile*, cit., p. 12, «che altrimenti ci apparirebbe disperdersi in un serie infinita e scomposta di vicende e comportamenti» ("which would otherwise appear to be dispersed in an endless and disjointed series of events and conducts").

[7] R. Sacco, *Il fatto, l'atto, il negozio*, in *Trattato di diritto civile*, directed by R. Sacco, UTET, Turin, 2005, pp. 1-2: «coloro che vogliono porre ordine in ciò che sanno, far progredire il proprio sapere e comunicarlo al prossimo, debbono disporre di categorie ordinanti e di una lingua che le esprima» ("Those who want to organize, advance, and communicate their knowledge to others must have some organizing categories as well as a language in which to express them").

[8] See F. Santoro Passarelli, *Dottrine generali del diritto civile*, Jovene, Naples, 1989[9], *passim*.

To translate a foreign concept such as «cultural heritage of mankind» into a private law category entails giving things a name. However, for the positivist jurist «categories» are not predicates of beings, that is, a «form of being»[9]. For the positivist jurist, the name of the thing is not 'the name of the rose'. The name of the thing is rather the name of the action: of the action I perform with the rose, of the action with which I speak of the rose[10]. Since the language designs actions and not beings – at least according to a juridical idea of language – then 'cultural heritage', be it tangible or intangible, does not mean values, like the Beautiful, the Good, or Peace (capitalized), but resources that can be fruitfully used by everyone thereby enjoying their fundamental rights and freedoms.

It has been claimed that «cultural heritage» is an umbrella concept resulting from discussions surrounding the drafting of separate international instruments that eventually converged into the 1972 UNESCO Convention[11]. In this Convention, despite the still 'monumentalistic' definition of cultural heritage contained in Art. 1, the phrase «cultural heritage» replaces the notion of «cultural property» and broadens its scope to include intangible goods as well as the relationships that individuals entertain with cultural objects. The UNE-

[9] For Aristotle, the name of a thing is its predicate, as it describes its being, and knowing the being (that is, philosophy) is a secret activity reserved for a select few. N. Lipari, *Le categorie del diritto civile*, cit., p. 13, nt. 3, after recalling the Aristotelian theory (*Metaphysics*, 1017a 22-27) for which being is 'said' according to the different categories, and to each categorization concretely, substantially, and actually corresponds a different way in which being 'is', notes that in modern culture, and especially in legal modern culture, there is a «gap», an ultimately unbridgeable separation between being and language.

[10] See G.B. Contri, *Il nome della cosa*, *29-30 gennaio 2011*, in *Think! L'ordine giuridico del linguaggio*, Sic edizioni, Milan, 2017: «il nome della cosa è nome dell'azione: dell'azione che compio con la rosa, dell'azione con cui parlo della rosa».

[11] See A.A. Yusuf, *Article 1 – Definition of Cultural Heritage*, in *The 1972 World Heritage Convention: A Commentary,* edited by F. Francioni, F. Lenzerini, Oxford University Press, Oxford, 2008, p. 23 ss. The three categories of properties comprised in the notion of cultural heritage («monuments, groups of buildings and sites») must pass a «test of authenticity» (p. 46).

SCO Convention on intangible heritage of 2003[12] and that of 2005 on the «protection and promotion of the diversity of cultural expressions», where this diversity is defined «common heritage of humanity»[13], have brought that semantic extension to completion.

As opposed to the concept of property, heritage also indicates the use value for all mankind of cultural and natural resources that are classified as having «outstanding universal value». As a result, their protection affects all mankind as well as each individual person, transcending the national boundaries of a given property's State of origin and extending the chronological boundaries beyond the present generation, to the extent of protecting even the cultural interests of the unborn: indeed, the 1972 UNESCO Convention binds the present generations, beginning with the States Parties, to safeguard valuable historical, cultural, and natural entities for posterity.

The Operational Guidelines (henceforth: OG)[14], which establish the criteria for determining the outstanding universal value of cultural resources to be inscribed in the World Heritage List, have adjusted the definition of cultural heritage, ensuring its flexible and evolving application for the years to come. According to the OG application practice, a cultural resource has «outstanding universal value» if it is «the best of the best» in a cultural area, region, theme, or historical period.

In turn, the so-called Global Strategy[15], whose aim is to identify and fill gaps in the List, has led to a further broadening and

[12] 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

[13] 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions.

[14] The Operational Guidelines for the implementation of the World Heritage Convention are compiled by the United Nations Educational, Scientific and Cultural Organisation and the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage and are periodically revised to reflect the decisions of the World Heritage Committee.

[15] *Global Strategy for a Balanced, Representative and Credible World Heritage List*, proposed by the Expert Meeting in 1992 and with contribution from the Word Heritage Centre and ICOMOS.

transformation of the concept of cultural heritage in a relational sense, incorporating advancements in knowledge and in scientific thought, as well as relationships between cultures, in order to include in the List the various manifestations of outstanding universal value across diverse cultures[16].

This process has resulted in the evolution of the notion of cultural heritage[17], from a purely monumentalistic conception to an inclusive and diverse anthropological understanding of the richness and diversity of human cultures; from an approach aimed at selecting the world's most iconic wonders to a different one aimed at picking «the best of the best» based on relational, comparative, and representative listing criteria[18].

According to international law, the heritage of mankind thus includes not only tangible properties but also intangible ones, works of art, that is, products of the mind, and bodies of knowledge, and comprises contributions made by individuals, groups, and peoples. The heritage of mankind is protected inasmuch as it is deemed to represent prized cultural identities of interest to all humanity. This conception is based on a pluralistic understanding of the world and public space in which different cultures are, to quote Hanna Arendt, the «in-between» that keeps us from trampling on another and becoming massified, enabling us to relate to one another as

[16] See A.A. Yusuf, *Article 1 – Definition of cultural heritage*, cit., p. 35: «The Global Strategy led to the broadening of the notion of cultural heritage and to the establishment of a process of taking into account developments in knowledge, scientific thought, and view of relationships among cultures so that the List would become more receptive to the varied manifestations of outstanding universal value in different cultures». This development has made it possible to apply the 1972 Convention also to intangible heritage when tangible heritage is «directly or tangibly associated with events, living traditions, beliefs, ideas or artistic and literary works of outstanding universal significance».

[17] See also F.P. Cunsolo's essay published in this volume: *The Long Goodbye: The Shift from Cultural Property to Cultural and Natural Heritage in the World Heritage Convention*.

[18] See A.A. Yusuf, *Article 1 – Definition of cultural heritage*, cit., p. 48.

free individuals[19]. This cultural – that is, civic – public space is antithetical to mass psychology and ensuing conformism[20] and must be identified, preserved, and made accessible to all, including future generations. The ratification of the UNESCO Convention imposes on the Italian legislator the constitutional obligation (under Art. 117, para. 1 Const. [It.]) to recognize and protect individuals' and the community's right to access this pluralistic public space.

Once the notion of cultural heritage of mankind is transposed into domestic law and subject to a constitutionally oriented interpretation aimed at protecting the person, then the private law scholar sees it as the content of a subjective liberty (political, civil, cultural, of thought). To the international safeguard of the cultural heritage of mankind seems to be corresponding, in the domestic legal order, the recognition of every individual's homogeneous interest in accessing (i.e. being able to see, know, and judge) the 'best of the best' of other people's actions and discourse in the public space, that is, a space visible and accessible to everybody –

[19] See H. Arendt, *The Human Condition*, The University of Chicago Press, Chicago, 1998, p. 52.

[20] The ratification of the 1972 and 2003 UNESCO Conventions, as well as the 2005 UNESCO Convention on cultural diversity, could, for example, limit prohibitions such as that contained in Art. 28 of the French Loi du 9 décembre 1905 «concernant la séparation des Eglises et de l'Etat», when these works are inscribed in the World Heritage List. The latter provision states that «Il est interdit, à l'avenir, d'élever ou d'apposer aucun signe ou emblème religieux sur les monuments publics ou en quelque emplacement public que ce soit, à l'exception des édifices servant au culte, des terrains de sépulture dans les cimetières, des monuments funéraires, ainsi que des musées ou expositions».

As is well known, the French ban on the display of religious symbols in public places (with the exception of museums) was recently enforced in two cases. In the first, in response to an appeal by two 'free-thinking' associations to compel the mayor of the municipality of Sable d'Holonne to remove a statue of Archangel Michael from a public square, despite its artistic value, because it was deemed a religious symbol (Cour adminsitrative d'appel de Nantes, ruling of 16 September 2022, nos. 22NT00333, 22NT01448). In the second, in order to compel the mayor of La Flotte to remove from a public square a statue of the Virgin donated to that municipality after WWII, a sculpture which had been displayed there for a long time until restoration work was completed (Tribunal Administratif de Poitiers, ruling of 3 March 2022, no. 2100952).

qualities that are the conditions of the individual's freedom to action and discourse in that very same public space. We are speaking of interests that are subjective but not exclusively individual, as they are linked to resources that cannot be exclusively appropriated[21] and are currently under severe threat from mainstream ideology's and cancel culture's iconoclastic attitudes[22] as well as from totalitarian-like normalization and Web 2.0-imposed conformism. The transposition of the UNESCO Convention into the domestic legal order by virtue of a constitutionally oriented interpretation of its law of ratification[23] would allow for an enhancement of the constitutional protection of individuals, for it recognizes the access to cultural heritage as an individual as well as superindividual interest deserving of protection. However, even recently the Strasbourg Court has opposed this reasoning. Following a restrictive conception of world heritage of mankind as the object of human rights, the ECHR has denied that its system protects the right of people to access UNESCO's cultural heritage, recognizing and protecting it only as the right of minorities to free enjoyment of their culture, and as the right of indigenous peoples to conserve, control, and protect their cultural heritage[24].

[21] According to an objective criterion, a 'collective or diffuse interest' is an interest linked to the use or enjoyment of an indivisible property capable of being used or enjoyed by more people at the same time, see U. Ruffolo, *Interessi collettivi o diffusi e tutela del consumatore*, I, *Il problema e il metodo – Legittimazione, azione e ruolo degli enti associativi esponenziali*, Giuffrè, Milan, 1985, p. 21 ss., nt. 2: «gli interessi diffusi, che pure possono organizzarsi, non assumono carattere 'corporativo' ma restano caratterizzati dalla possibilità di pari soddisfacimento per tutti i membri della collettività» ("Even though they may be the focus of organized enjoyment, diffuse interests continue to be distinguished by the possibility of equal satisfaction for all community members").

[22] See F. Rampini, *Suicidio occidentale: Perché è sbagliato processare la nostra storia e cancellare i nostri valori*, Mondadori, Milan, 2022.

[23] L. n. 184/ 1977 (*Ratifica ed esecuzione della convenzione sulla protezione del patrimonio culturale e naturale mondiale, firmata a Parigi il 23 novembre 1972*).

[24] In its ruling on Ahunbay and Others v. Turkey (29 January 2019, Section II), although the «Court did not, a priori, rule out the existence of a joint European and international stance on the need to protect access to the cultural heritage», nevertheless it argued that «the international protection as it currently stands usu-

In contrast, in the domestic legal system, within the constitutional framework safeguarding the individual and their autonomy (the so-called subsidiarity principle), the protection of the cultural heritage of mankind implies the qualified recognition of the need of all individuals not only to see and become acquainted with 'the best of the best' of their own and of other people's culture, but also to participate – individually or through representative bodies, other than the local public bodies, protecting individual and collective interests – to the decision-making process of the policies concerning the natural and cultural resources constituting the heritage of mankind (from the nomination of the heritage entity to be listed to its inscription and management). Such a need for participation underlies a diffuse interest that can be enforced through an *actio popularis*, which grants an individual and collective legal standing to sue for injunction or damages also against public bodies that are responsible for the policies concerning the cultural heritage if they fail to fulfil the obligations imposed to State Parties by the rules set by the UNESCO Conventions[25].

There are, however, numerous passages in which the OG, as updated as of 31 July 2021, recommend that States Parties involve civil society in the various stages of «identification, nomi-

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ally concerns situations and regulations appertaining to the cultural rights of national minorities and the right of indigenous peoples to conserve, control and protect their cultural heritage». Indeed, the Court «currently saw no "European consensus", or even any trend among Council of Europe member States, potentially necessitating a reworking of the scope of the rights in question or allowing the Court to infer from the provisions of the Convention a universal individual right to the protection of a specific cultural heritage» (trans. *https://laweuro.com/?p=554*). This decision makes evident the conceptual gap between the positivist legal notions of 'subjective rights' (as the way to protect minorities and oppressed people) as they are expressed in the various constitutional systems and the notion of 'human rights' (namely the protection of the person themselves) as it is expressed in international law and case law. On this last point, see H. Kelsen, *Pure Theory of Law*, trans. M. Knight, Lawbook Exchange Ltd., Newark N. J., 2008[5].

[25] This position is based on an 'ecologic interpretation' of the provisions on civil liability as recently proposed, albeit on a different matter, by U. Mattei, A. Quarta, in *Punto di svolta. Ecologia, tecnologia e diritto privato. Dal capitale ai beni comuni*, Aboca Edizioni, Sansepolcro (AR), 2018, p. 205.

nation, management and protection processes of World Heritage properties»[26].

[26] By examining the OG, we can infer that only State Parties can present nominations to the Committee: indeed, the nomination dossier must contain «the original signature of the official empowered to sign it on behalf of the State Party» (III B 132.9). However, concerning the preparation of the Tentative List, the OG read: «States Parties are encouraged to prepare their Tentative Lists with the full, effective and gender-balanced participation of a wide variety of stakeholders and rights-holders, including site managers, local and regional governments, local communities, indigenous peoples, NGOs and other interested parties and partners. In the case of sites affecting the lands, territories or resources of indigenous peoples, States Parties shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before including the sites on their Tentative List» (II C 64). Similarly, and with regards to the sub-stage of the Nomination Process (which follows the preparation of the Tentative List), the OG stress the need to guarantee «effective and inclusive participation in the nomination process of local communities, indigenous peoples, governmental, non-governmental and private organizations and other stakeholders» in order to «enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to ensure that Preliminary Assessment requests involve appropriate stakeholders and rights-holders engagement. They are also encouraged to prepare nominations with the widest possible participation of stakeholders and shall demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained, through, inter alia, making the nominations publicly available in appropriate languages and public consultations and hearings. Where appropriate, States Parties are also encouraged to consult potentially concerned States Parties, including neighbouring States Parties, to promote consensus, collaboration and to celebrate cultural diversity» (III A 123). It should also be noted that the Committee, too, can involve «other international and non-governmental organizations with appropriate competence and expertise to assist in the implementation of its programmes and projects, including for Reactive Monitoring missions» (I H 38). Also with regards to what the Management System should contain, the OG indicate, among other things, «the development of mechanisms for the involvement and coordination of the various activities between different partners and stakeholders» (II F 111), noting that «States Parties are responsible for implementing effective management activities for a World Heritage property. States Parties should do so in close collaboration with property managers, the agency with management authority and other partners, local communities and indigenous peoples, rights-holders and stakeholders in property management, by developing, when appropriate, equitable governance arrangements, collaborative management systems and redress mechanisms» (II F 117).

In turn, Art. 11 of the 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions obliges States Parties to «encourage the active participation of civil society in their efforts to achieve the objectives of this Convention», since the Signing Parties «acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions».

The line of reasoning that has been pursued here entails that in order to «ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory» (Art 5, 1972 UNESCO Convention) the State Parties shall not only adopt public policy measures «which aim to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes» (Art. 5, a) but also all those legal measures encouraging the individuals' and communities' involvement in developing the public policies concerning the cultural (and natural) heritage of mankind. Individuals and communities shall be involved in the process of nomination, and citizens shall be granted standing so that they can cooperate and exert judicial control over the public policies concerning the cultural and natural heritage, given that these legal measures are included among those that the States Parties are required to take for the «identification, protection, conservation, presentation and rehabilitation of this heritage» (Art. 5, d).

There is no trace of such involvement in the 1977 law of ratification, which merely reproduces the text of the 1972 Convention, nor in the subsequent L. n. 77/2006 – containing «Special measures for the protection and use of Italian sites and elements of cultural, landscape and environmental interest, inscribed in the World Heritage List and placed under the protection of UNESCO» – which mandated the adoption of a Management Plan concerning all the sites inscribed in the World Heritage List, viewed as a tool to en-

sure their conservation and enhancement[27]. In contrast, some regional laws have recently provided for participatory processes for the nomination and management of cultural heritages, involving «public and private stakeholders that are interested in the preservation, enhancement, and enjoyment» of sites[28].

2. *Cultural Heritages of Mankind and Theory of Commons*

In one of his last writings[29], Stefano Rodotà viewed the common heritages of mankind as an instance of the theory of the commons, noting that the latter represents the point of arrival of a way of thinking about modernity. This theory has sought to limit the scope of property rights seen as an exclusionary model, and to formulate a new concept of property shaped by the individuals and their fundamental rights, which also implies a new concept of distribution of power. To quote Rodotà: in nature there is no such a thing like 'com-

[27] Art. 4 of L. n. 77/ 2006 states that the «supporting measures» are adopted «by Decree of the Minister of Culture in agreement with the Minister of the Environment and the Protection of the Territory and the Sea [as of today, Ministry of Ecological Transition], the Minister of Agricultural, Food and Forestry, and with the Permanent Conference for relations between the State, the Regions and the autonomous Provinces of Trento and Bolzano», and does not mention private stakeholders.

[28] See the regional law 11/2019 of Friuli Venezia Giulia – containing *Supporting measures in favor of the regional heritage inscribed in the World Heritage List and placed under the protection of UNESCO* – which specifies that the candidacy to inscribe «a material or intangible cultural good located in the territory [of the region]» in the UNESCO list can be advanced by a «local authority» (Art. 14) but may involve other parties: in fact, the law specifies that the authorities managing the sites (for instance the Municipalities in whose jurisdiction falls the UNESCO sites, Art. 2, para. 2) must adopt 'Programmi operativi annuali' [«Annual Operational Programs»] which, among other things, define the «strategic guidelines for promoting and supporting the conservation and enhancement of the site» according to a «participatory process involving public and private stakeholders that are interested in the conservation, enhancement and enjoyment of the site» (sec 5).

[29] S. Rodotà, *I beni comuni. L'inaspettata rinascita degli usi collettivi*, La scuola di Pitagora, Naples, 2018, p. 59.

mons'. Commons is a legal construct concerning material and intangible resources considered for their capacity to meet collective needs and fulfil fundamental rights. Commons are characterized by diffuse entitlement, belong to everyone and nobody, meaning that everyone must have access to them but no one can claim exclusive rights to them. They must be managed in accordance to the principle of solidarity, and everyone must be able to protect them, even by taking legal action to safeguard a common good located far from where they live («I beni comuni sono a titolarità diffusa, appartengono a tutti e a nessuno, nel senso che tutti devono poter accedere ad essi e nessuno può vantare pretese esclusive. Devono essere amministrati muovendo dal principio di solidarietà […] e ciascuno deve essere messo nella condizione di difenderli, anche agendo in giudizio a tutela di un bene lontano dal luogo in cui vive»)[30]. Since access to commons is the tool that makes the property immediately usable by those interested, without further mediation, the identification or recognition of a commons requires the construction of new social subjectivities that independently or with the help of public authorities are entitled to take legal action to protect those properties even in the form of direct and participatory management. However, these subjectivities need to be identified with greater accuracy, in order to avoid the risk of a return to abstraction and to leave no room for authoritarian logic, for those who appropriate the power to speak in the name of Mankind or Nature («Ma questi soggetti devono essere individuati con maggiore precisione per evitare i rischi di un ritorno all'astrazione e per non lasciare spazio a logiche autoritarie, a soggetti che si appropriano del potere di rappresentare l'Umanità o la Natura»)[31].

In this regard, one cannot fail to mention that global trend that proposes to subjectivize Nature or parts of it and grants them status as a legal person entitled to appear before a court for injunction or damages claims in order to protect themselves. Indeed, as has happened with the constitutions of Bolivia and Ecuador, which have de-

[30] *Ivi*, p. 67.
[31] *Ivi*, pp. 52, 53, 81, 83, 85, *passim*.

clared that Pacha Mama, Mother Earth, is a legal person, enforcing its rights by virtue of a series of constitutional mechanisms[32]. In turn, New Zealand's Parliament granted legal personality to the Whaganui River and appointed two legal representatives to protect its interests. Shortly thereafter, an Indian court followed suit, granting personality to the Ganges and its main tributary, the Yumana[33]. These conceptions go back a long way: Ugo Mattei has pointed out that in the famous case Sierra Club v. Rogers Morton, Secretary of the Intern of the United States[34], the splendid dissenting opinion by Justice William O. Douglas of the Supreme Court was grounded on the idea that the environment (and its parts) must be granted *locus standi* when they are the object of an environmentally harmful activity[35].

[32] *Ivi*, p. 88.

[33] Reported and discussed by U. Mattei, A. Quarta in *Punto di svolta*, cit., pp. 137 and 206, respectively.

[34] U.S. Supreme Court, Sierra Club v. Rogers C. B. Morton, Secretary of the Interior of the United States, 405 U. S. 427 (1972), decided 19 April 1972.

[35] In Justice Douglas' words: «The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers, and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation (see Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 *S. Cal. L. Rev*. 450 [1972]). This suit would therefore be more properly labelled as *Mineral King v. Morton.* Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole – a creature of ecclesiastical law – is an acceptable adversary, and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes – fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water – whether it be a fisherman, a canoeist, a zoologist, or a logger – must be able to speak for the values which the river represents, and which are threatened with destruction».

Justice Douglas' poetic words can be answered by Hans Kelsen's, who stated that primitive legal systems used to refer conducts and sanctions not only to human beings but also to animals and inanimate objects. Due to the lack of more sophisticated legal tools and, more importantly, since the principle of causality as an explanation for naturalistic events, which only came with the birth of science in the modern era, had not yet been proposed, in primitive animism «the behavior of animals, plants, and even inanimate objects was also regulated by a legal order»[36].

Stefano Rodotà criticizes these examples of attribution of legal personality, in which the constitutionalism of rights turns into a veritable cosmogony in which collective rights and public duties are more deeply rooted («dove il costituzionalismo dei diritti si converte in una vera e propria cosmogonia, nella quale si radicano più profondamente i diritti collettivi e i doveri pubblici»)[37] and of which individuals are ultimately dispossessed in favour of priest-like curators that monopolize them. In the personification of Nature we see an extensive use of *persona ficta* and a severe lack of democracy.

There is no need to revamp the ancient *genius loci* in order to provide effective protection in the domestic legal system for cultural and natural resources that are necessary for full human development: it is sufficient to embrace the theory of commons, which transcends the proprietorship model centred around the alternative public/private and the legal limitations that are supposed to guarantee the social function of private property[38]. As a result, the theory of commons advocates for a new humanism, a more extensive

[36] H. Kelsen, *Pure Theory of Law*, cit., p. 31 [adapted translation].

[37] S. Rodotà, *I beni comuni*, cit., p. 88 [adapted translation].

[38] Lipari acknowledges that the category of common goods is a classification criterion that goes beyond the principles contained in Art. 42 [of the Italian] Constitution on the social function of private property, for it has no links whatsoever to obligations or conducts imposed on their owner (N. Lipari, *Le categorie del diritto civile*, cit., p. 129, la categoria dei beni comuni è «un criterio che va al di là dello stesso principio consegnato all'art. 42 cost. sulla funzione sociale della proprietà perché non si riconnette in alcun modo ad obblighi o comportamenti imposti al titolare»).

constitutionalization of the person fostered by international sources of law: these have introduced in the domestic legal systems – as is the case with Art. 117 of the Italian Constitution – the protection of the common heritage of mankind that comprises resources (natural, cultural, productive) that are essential to the full development of human life.

In an important book on UNESCO heritage, edited by Elisa Baroncini, with regards to their work on the nomination of the Porticoes of Bologna, Valentina Orioli and Federica Legnani wrote that promoting the protection of this particular cultural heritage meant working to promote peace[39]. The theory of commons corroborates the truth of this statement: commons have indeed a «distinctive relational character» and bring about «social relations»[40]. Working to establish social relations means to promote peace.

3. *The End of Actio Popularis for the Protection of Collective Use of Third-Party Property and New Collective and Class Action Standing*

As is well known, Art. 825 of the 1942 Italian Civil Code signalled the end of *actio popularis* for the protection of collective use of third-party property, despite the fact that the Supreme Court of Cassation recognised it as late as the end of the nineteenth and the

[39] See V. Orioli, F. Legnani, *Bologna e i portici: Storia della candidatura alla* World Heritage List UNESCO, in *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, edited by E. Baroncini, Bononia University Press, Bologna, 2021, p. 479 ss.

[40] See S. Rodotà, *I beni comuni*, cit., p. 82, and N. Lipari, *Le categorie del diritto civile*, cit., p. 129, who notes that the public-private alternative can no longer absorb the whole theory of commons, because some properties are so inextricably connected with the most basic needs of human life that they escape any form of appropriation and can only belong to everyone («l'alternativa pubblico-privato non è più in grado di assorbire tutta la teoria dei beni, perché vi sono beni così intimamente connessi alle più essenziali esigenze di vita dell'uomo che si sottraggono a qualunque forma appropriativa non potendo che appartenere a tutti»). See also *ivi*, pp. 130-134.

beginning of the twentieth century[41] (as in the case of the closing of the gates of the Princes Borghese's Villa)[42]. On the other hand, the very same Civil Code opted to bring collective uses under State ownership. As a result, private citizens could not take legal action to afford legal protection to collective uses of Third-Party Properties since Art. 823, para. 2 gave the public authority the monopoly on the protection of publicly owned property.

This said, with the four joint-sections decisions (14-17 February 2011)[43] on the fishing valleys of the Venetian Lagoon (although they fell within the category of the so called *demanio necessario*), the Court of Cassation, «given the direct applicability» of Arts. 2, 9 and 42 of the Italian Constitution, stated «the principle of protection of human personality and its appropriate fulfilment also with regards to landscape, not only with reference to […] public and State-owned property, but also to those properties that […], on the basis of a comprehensive interpretation of the whole corpus of the

[41] Cass., 4 July 1934, n. 2722 recognized the right to collective used on publicly owned or third-party property as an enforceable civil right, see A. Di Porto, Res in usu publico *e "beni comuni". Il nodo della tutela*, Giappichelli, Turin, 2013, pp. 61-65.

[42] Cass., 9 March 1887, which granted the people the *ius deambulandi* ('right to roam') in the gardens of the villa, which was still in private hands, and ordered the re-opening of the gates, as discussed by A. Di Porto, Res in usu publico, cit., p. 53 ss. The author reconstructs the 1880s debate on public goods, which was strictly connected to the State-building process and popular legitimacy. In particular, he points out that R. Von Jhering in its *Law as Means to an End* (or. publ. 1877-1883, trans. I. Husik) emphasized the profound difference between an idea of State «produced by modern absolutism and the police State among the nations of modern Europe», a conception founded on the juxtaposition between the individual and the State, and the different concept of *res publica* in Roman Law for which «the State is nothing else than its citizens» and *res publica* is what the citizens «have in common with all the others», hence *actio popularis*, with which «the plaintiff, defending the common interest, defends also his own».

[43] Cass., sez. un., nn. 3665, 3811, 3812, 3936, 3937, 3938, 3939 of 2011, with commentary by E. Pellecchia, entitled *Valori costituzionali e nuova tassonomia dei beni: Dal bene pubblico al bene comune*, in *Foro italiano*, 2012, I, c. 573 ss.

law, are instrumental to pursue the interests of society», that is, of all citizens[44].

The decisions of the Court of Cassation were influenced by the opinions of distinguished public law scholars (Giannini, Cassese, Cerulli Irelli) as well as by the work of Paolo Grossi and the text of the bill presented by the Rodotà Committee established in June 2007. Although it did not produce any legislative outcome, the Rodotà Committee proposed to introduce in the Civil Code, in addition to private and public properties, a third category of property, common goods (which also included «archaeological, cultural, and environmental properties as well as other protected landscapes»). Art. 1 of the bill proposed to grant commons legal protection (injunction) with 'diffuse' standing («anyone can take legal action to protect the rights connected to the protection and enjoyment of common goods») without prejudice to the State's exclusive right «to sue for damages regarding common goods»[45]. In turn, private law scholarship took a step forward when it viewed in the category of commons an extension of the protection of the person, that is, superindividual legal rights to access, safeguard, enjoy and enhance common goods, for the protection of which private citizens can take individual and collective legal action.

But if the cultural heritage of mankind comprises common properties, what happens if the States signing the World Heritage Convention (WHC) do not adequately fulfil the obligations deriving from it? We know that the only sanction for failing to meet

[44] In this regard, A. Di Porto, Res in usu publico *e 'beni comuni'. Il nodo della tutela*, cit., p. 46 ss., notes that on the basis of a constitutionally oriented systematic interpretation, the Court of Cassation has identified «a category of common goods that, regardless of ownership, well being able to belong to both public and private entities, are by their intrinsic connotations, particularly environmental and landscape ones, intended to serve the interest of the citizens».

[45] See bill n. 2031, transmitted to the Senate President Office on 24 February 2010 and «delegating the Government the power to make amendments to the civil code concerning publicly-owned property». The bill was proposed by senators Casson, Finocchiaro, Zanda, Latorre, Bianco, Adami and others (published in *Atti parlamentari*. *XVI Legislatura – Disegni di legge e relazioni – Documenti*).

WHC obligations is for the property to be added to the List of World Heritage in Danger or be removed from the World Heritage List. These are merely reputational sanctions[46]. In consonance with the theory of commons, it can be argued that after its incorporation in the Italian domestic legal system by means of L. n. 184/1977, the WHC recognizes all citizens a subjective but not exclusively individual interest in that the signing States guarantee the identification, effective protection, and transmission to future generations of properties and bodies of knowledge of «outstanding universal value» (see Arts. 4-6 of WHC). The issue is, then, whether this interest can be enforced in the domestic legal system.

As is well known, diffuse interests – that is, an undifferentiated group's interests to pursue a so called *bene della vita*, which could be expressed as meaning everything capable of rightfully satisfying a human need – cannot be defended in court because of the lack of standing of a plaintiff who cannot lay a concrete and particularized claim on a property[47] under Art. 100 C.p.c. (Italian civil procedural

[46] It should also be noted that the control on the signing Parties' compliance with the obligations deriving from the WHC is for the most part demanded to a complex monitoring and reporting system articulated into: I. Periodic reporting (under Art. 29 WHC); II. Reactive monitoring, concerning properties «under threat» (see OG 2017, para. 169); III. Reinforced monitoring, concerning properties that have been already inscribed in the List of World Heritage in Danger. At the same time, although the involvement of single individuals and other stakeholders in the implementation of WHC policy is formally recognized, it has not been yet concretely actualized, see V. Guèvremont, *Compliance Procedure: Convention Concerning the Protection of the World Cultural and Natural Heritage*, 2019, published by *Oxford Public International Law* and freely accessible at: *https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3246.013.3246/law-mpeipro-e3246*.

[47] It has been observed, however, that «the fact that administrative acts adopted in violation of the considerable interests of a community may escape judicial review just because nobody is entitled to take legal action to protect those interests from a personal and specific position of advantage inevitably clashes with people's and legal common sense». What is a stake here, indeed, are «the fundamental goods and rights recognized by our [i.e., Italian] Constitution, such as health, environment, culture, education, freedom of thought, religious liberty, non-discrimination, equal opportunities, free market, and others, which cannot be infringed without causing enormous damage to the whole community» (N. Durante, *La tutela giurisdizionale degli interessi diffusi*, keynote speech held at Università della

law code). Since the 1970s, legal practice and theory have sought in the current legal system remedies capable of protecting superindividual interests distinct from public interests[48]. It was argued in this regard that a diffuse interest becomes a collective interest as long as a private body of any legal nature lays a claim to it and may legitimately stand for a non-occasional group of individuals who share or enjoy that interest[49].

Representative legal actions for the protection of consumers' collective interests have now become a general remedy by virtue of Directive 2009/22/CE (on injunctions) in the first place, and also of Directive 2020/1828/UE (on both injunctions and redress measures), whose transposition deadline was 25 December 2022[50]. At

Calabria, Cosenza, 29 April 2015, p. 2, freely accessible at: *www.forgionegianluca.it/PROCEDIMENTI_AMMINISTRATIVI/DOTTRINA/SITUAZIONI_LEGITTIMANTI/interessi_diffusi_collettivi_la_tutela_giuridsizionale_durante.pdf*).

[48] See, *ex multis*, U. Ruffolo, *Interessi collettivi o diffusi e tutela del consumatore*, Giuffrè, Milan, 1985, *passim*.

[49] Therefore, it can be argued that as long as interests are not subjectivized, we are dealing with diffuse interests, as per the ruling by Cons. Stato, sez. VI, 15 April 2008, n. 3507 (published on *Federalismi.it – Rivista di diritto pubblico italiano, comparato, europeo*, 2008, 15). In this decision, the court has specified that the private organizations' representative capacity, on which is grounded their *locus standi* to bring a lawsuit in order to enforce collective interests, is to be inferred from a number of requirements set by the courts of law over the last thirty years (and also considering dissenting opinions). More recently, Cons. Stato, ad. plen., 20 February 2020, n. 6, set forth the principle of law according to which «the representative bodies that are included in user and consumer associations lists, or those organizations possessing the requirements set down by case law [representativeness] can legitimately enforce the collective legitimate interests of specific communities or groups. More specifically, they can bring an annulment action before a court performing judicial review of administrative acts, even in the absence of a specific statutory provision».

[50] The European Court of Justice has addressed the matter of representative legal actions for the protection of people's collective (civic and not consumerist) interest in the safeguard of their personal data under Art. 80 of the EU General Data Protection Regulation (GDPR). In ruling on Meta Platform Ireland Limited v. Bundesverband der Verbraucherzentralen und Verbraucherverbände (28 April 2022), C-319/2020, L. S. Rossi (Rapporteur), the Court has stated that Art. 80, para. 2 GDPR does not prevent Member States from introducing legislation that allows a consumer protection association to bring legal proceedings «in the absence of a mandate conferred on it for that purpose and independently of the in-

first glance, there appears to be no similarly broad standing granted for the protection of superindividual cultural interests concerning UNESCO heritages. In contrast to other legal systems (such as Portugal's)[51], the Italian one does not expressly provide for class actions in cultural heritage cases. Nevertheless, L. n. 349/1986 states that environmental associations satisfying the requirements of the law are granted standing to protect environmental interests in the strict sense (pertaining to the physical and natural conditions of a certain area or territory)[52] as well as in the broader sense. The latter includes precisely the preservation and enhancement of cultural properties, the environment in large, urban, rural and natural landscapes, monuments, cities historical centres, the quality of life – all

fringement of specific rights of the data subjects, against the person allegedly responsible for an infringement of the laws protecting personal data, on the basis of the infringement of the prohibition of unfair commercial practices, a breach of a consumer protection law or the prohibition of the use of invalid general terms and conditions, where the data processing concerned is liable to affect the rights that identified or identifiable natural persons derive from that regulation».

[51] The Portuguese legal system provides for *class actions* in several cases, as with the so called *Cultural Heritage Law* (Lei n. 107/2001 de 8 Setembro) mentioned by N. Salazar Casanova, M. Afra Rosa*, Portugal*, in *The Class Actions Law Review*, edited by C. Sanger, Law Business Research Ltd., London, 2022[6] (freely accessible at: *https://thelawreviews.co.uk/title/the-class-actions-law-review/portugal*).

[52] In this regard, Art. 13 of L. 349/1986 states that «Nationwide environmental associations and those that are present in at least five Regions are identified by a decree issued by the Minister of the Environment on the basis of the strategic policy goals and the internal democratic system as contained in their by-laws as well as the continuity of their activity and public relevance, and after consultation with the National Counsel for the Environment to be held by ninety days from its request». Under Art. 18, «The associations identified according to Art. 13 of the present law have the right to intervention in litigations for environmental damage and to bring annulment actions before administrative courts». Therefore, these provisions, which allow environmental associations that possess certain legal requirements and are included in a special list to take action before a court for environmental damage, do so «in order to enhance the democratic control over any aspect concerning the protection, preservation and enhancement of the environment in the broader sense», as decided by Cons. Stato, sez. IV, 9 October 2002, n. 5365, in *DeJure*.

ideal goods and values capable of characterizing a geographical area or territory in a way that is unique, distinctive, and unrepeatable[53].

In May 2021, amendments to the Italian civil procedure code concerning two collective proceedings came into effect, namely, the new class action under Arts. 840*bis* and ff. C. p. c., and the collective injunction pursuant to Art. 840*sexiesdecies* C.p.c. With L. n. 31/2019, both were 'unhooked' from consumer law to be eventually 'de-consumerized' and transformed into general actions or remedies[54]. Each member of a class of holders of «individual homogeneous rights» (not necessarily consumers) may bring a compensatory class action, as may collective bodies whose statutory objectives pursue the protection of those same «individual homogeneous rights», provided that they are registered in a special list held by the Ministry of Justice. Despite the objections raised by eminent civil procedure scholars, the fact that a class action can only be filed to protect individual homogeneous rights under Art. 804bis C.p.c. does

[53] *Ibidem*. For similar conclusions, see the decision by Cons. Stato, sez. IV, 14 April 2011, n. 2329, in *DeJure*. In contrast, although it appears to be a minority position, see the ruling by Cons. Stato, sez. VI, 31 July 2013, n. 4034, according to which the environment, despite being a single intangible resource, is made up of various components that can be regulated, handled, and protected singularly and separately, as is the case of cultural properties. Hence, in order to establish whether environmental protection associations can be granted standing, it must be determined whether the protected interest pertains to the environment considered as a unit, or to the individual cultural property, singularly and separately. More particularly, in the case in point, a restoration project –that is a «direct intervention on a property by means of a set of operations aimed at the material integrity and the recovery of the aforesaid property, the protection and the transmission of its cultural values» (Art. 29, para. 4, D. Lgs. n. 42/2004) or, more specifically, a sponsorship agreement stipulated with the aim of restoring a cultural property – is an occurrence that does not fall within the scope of the protection of the environment but, rather, in that of public cultural properties, governed by the Cultural Property Management Office by means of authorizations pursuant to Arts. 21 and 24 of the aforementioned legislative decree. As a result, the status of environmental protection association does not grant standing to CODACONS [a consumer association; Translator's note] (The case here discussed concerns a sponsorship for the restoration of the Colosseum).

[54] See E. Minervini, *La tutela collettiva dei consumatori e la l. 12 aprile 2019, n. 31*, in *Le nuove leggi civili commentate*, 2020, 2, p. 346.

not prevent the use of this instrument to protect superindividual interests such as those connected with the common heritage of mankind. It has been argued that this laconic provision would limit class action remedies only to the protection of «individual rights, and not of collective or diffuse, or otherwise "ownerless" interests»[55]. While it is true that diffuse interests are essentially ownerless because they lack a legitimate holder, the same cannot be said of collective interests, which differ from the former in that they have a holder or centre of reference, which is typically identified with the representative body of a non-occasional group[56]. It should also be added that the formal structure of collective interests has been authoritatively argued to consist of subjective interests that are not exclusively individual as long as they are serial, that is, homogeneous for more or less extensive groups of individuals[57]. Indeed, these may join forces

[55] For Claudio Consolo, private associations and organizations that satisfy the requirements under Art. 840bis, para. 2 C.p.c. «may bring a class action and be granted standing in a lawsuit filed by a member of the class. The news is that they are able to do so independently and not as "representatives" (or agents). In this case, however, the class action will pursue a plurality of individual rights and not of collective, diffuse or somewhat "ownerless" rights» (C. Consolo, *Codice di Procedura Civile – Commentario, Artt. 840bis-840sexiesdecies. La nuova azione di classe e la nuova inibitoria*, Wolters Kluwer Italia, Milan, 2019, p. 8). Others have expressed a contrary and more convincing opinion, considering it unreasonable that a class action lawsuit cannot be filed to protect collective interests, see G. Finocchiaro, *Ammesse azioni nei confronti delle Pa e in sede penale*, in *Guida al diritto*, 2019, 23, especially p. 26. See also U. Ruffolo, *La nuova* class action *all'americana rischia di fare davvero troppi danni*, in *Milano Finanza*, 28 July 2022, p. 14, and E. Ferrante, *Diritti soggettivi e processo di massa*, in *Azione di classe: La riforma italiana e la prospettiva europea*, edited by V. Barsotti, Giappichelli, Turin, 2020, p. 67, and especially p. 81, nt. 37.

[56] M.S. Giannini, *La tutela degli interessi collettivi nei procedimenti amministrativi*, in *Le azioni a tutela di interessi collettivi*, Cedam, Padua, 1976, p. 351 ss., «when a diffuse interest finds a holder, it becomes either collective or public, depending on how this occurrence is framed by the positive law», a position echoed in U. Ruffolo, *Interessi collettivi o diffusi*, cit., p. 21.

[57] See V. Vigoriti, *Interessi collettivi e processo. La legittimazione ad agire*, Giuffrè, Milan, 1979, p. 17 ss., who contends that a collective interest can be structured as a concurrence or relation among subjective interests with the same content, that is, a concurrence or relation based on the individual's awareness that the interrelated interests do not present a solely individual dimension and can, in

in the court of law for the purpose of class action. Furthermore, the fact that the aforementioned amendments attribute the capacity to be sued in a class action (or in a collective injunction lawsuit) exclusively to companies, providers of public services, and public utilities authorities[58], does not appear to be an impediment to resorting to class action to protect cultural heritage of mankind: in fact, the public authorities involved in the protection and enhancement of the common heritage of mankind can be seen as providers of public services, not unlike what has happened, for instance, with museums[59].

4. *Conclusions*

To conclude, while it is true that currently the effectiveness of social remedies has progressively reduced, it is also true that the law has offered stimuli to the development of nature[60] – and of culture,

fact, gather together to pursue the very same goal. See also U. Ruffolo, *Interessi collettivi o diffusi*, cit., p. 22, who recalls the argument presented by Aldo Corasaniti, for whom «the distinctive trait of the diffuse interests is to be identified in the homogeneous content of the positions held by the members of the group», which may also be a class or a category (A. Corasaniti, *La tutela degli interessi diffusi davanti al giudice ordinario*, in *Rivista di diritto civile*, 1978, p. 180 ss.).

[58] We fail to see why class actions cannot be used to protect people's fundamental interests in enjoying the cultural heritages of mankind when public policies in this area are inadequate. We do not see an impediment to resort to this legal remedy in the fact that while Art. 140, para. 1 Cod. cons. ['Consumer Code'] in its broad formulation, did not limit the capacity to be sued, both Arts. 840*bis* C.p.c. and 840 *sexiesdecies* para. 2 C.p.c. require that individual as well as collective class actions can be brought only against companies, providers of public services, and public utilities authorities with respect to acts and conducts engaged in while carrying out their activities.

[59] See, in this sense, G. Piperata, *Scioperi e musei: una prima lettura del d.l. 146/2015*, in *Aedon. Rivista di arti e diritto online*, 2015, 3; C. Zoli, *La fruizione dei beni culturali quale servizio pubblico essenziale: il decreto legge 20 settembre 2015, n. 146, in tema di sciopero*, *ibidem*; M. Cammelli, *L'ordinamento dei beni culturali tra continuità e innovazione*, *ivi*, 2017, 3.

[60] As noted by U. Mattei, A. Quarta, *Punto di svolta*, cit., p. 207 ss.

it could be added. However, research by legal scholars on the scope of the transposition of UNESCO Conventions on the cultural heritage of mankind into domestic law is still ongoing. If we understand the heritages of mankind from the perspective of commons, they can broaden the constitutional protection of the person, make the world larger and extend the public realm, because the world is what appears to all and is what is real[61]. We have then discovered a new type of *res publica*, which is so not because it belongs or pertains to the State but because it is common to all, that is, it is essential to the complete fulfilment of each person. In the common world as it is envisaged by the UNESCO Conventions, reinterpreted in the light of the theory of commons, plurality stands out, that is, a world made up of the many and the different[62]. The UNESCO Conventions then encourage us to consider that the world is only certain and real when everyone can recognize differences, and that eradicating plurality entails the loss of the world and the demise of the public sphere.

[61] I am referring to the concepts of «world», «public realm» and «reality» (i.e., something that is being seen by others and can be shared) as defined by H. Arendt, *The Human Condition*, cit., pp. 50, 93, 136.

[62] Arendt examines "plurality" (which is a different concept from pluralism) in *ivi*, p. 127 ss.

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