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## **Proprietary fragmentation and public-private management of UNESCO sites owned by the Italian state**

### **1. Italian state UNESCO sites: Public property**

The theme of the fragmentation of the ownership of the fifty-five Italian UNESCO sites and its effects on management and financial returns enables us to investigate, from an original point of view, the actual consideration that the national legal system recognizes for UNESCO sites, i.e. the de facto importance that, beyond official declarations, the UNESCO sites have within the internal legal order.

As is known, the “Italian UNESCO sites and elements” have long been contained exclusively in the Convention for the Protection of the World Cultural and Natural Heritage signed in Paris on 16 November 1972 by the countries adhering to the United Nations Educational, Scientific and Cultural Organization (UNESCO), and enforced in Italy by Law no. 184 of 6 April 1977. This was then supplemented – thanks to art. 1, para. 1, letters b), c) and d) of Law no. 44 of 8 March 2017 – by the Convention for the Safeguarding of Intangible Cultural Heritage, adopted in Paris on 17 October 2003, and enforced in Italy by Law no. 167 of 27 September 2007.

Leaving aside for present purposes the elements of intangible cultural heritage and focusing only on tangible UNESCO sites belonging, even on a non-exclusive basis, to the Italian State, one can observe that an analysis of their position within the Italian government’s organisation of cultural heritage makes it possible to analyze not only the concrete management methods of each site, but also to understand if and to what extent the organizational reforms of the Italian Ministry for Cultural Heritage and Activities and Tourism (hereinafter: MiBACT) have taken into account the UNESCO qualification previously operated by the United Nations (UN).

As is known, the selection of a site by UNESCO, although, on the one hand, it does not alter the legal status of the goods which it includes, on the other hand, it obliges the Contracting States to recognize that the heritage identified by the International Organization “constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate” (art. 6 the UNESCO Convention 1972); furthermore, “the duty of ensuring the identification, protection, conservation,

presentation and transmission to future generations of cultural and natural heritage (...)” – according to art. 4 – “belongs primarily to that State”, that is, to the state in which the sites are located.

The recognition of a site as “world heritage” does not, therefore, imply that the site is owned by a sole entity; like a web, the UNESCO site covers places that the history of administration has scattered all over the place. Nonetheless, once a place is recognised as a “world heritage site”, public authorities cannot remain indifferent towards ensuring not only a level of protection for the site but also adequate management so as to allow the public to grasp the original unitary value of the site.

In other words, the recognition of UNESCO sites is independent of the sites’ ownership model; it occurs for natural or historical and cultural reasons, and – rightly – has nothing to do with the underlying proprietary ownership model: this is the case for the historic city of Rome; the historical centers of Florence, Naples, Siena, and San Gimignano; the Amalfi Coast; and Venice and its Lagoon. If anything, it is the duty of the public administration to ensure that the diversity of legal regime does not adversely affect a site’s need for protection or public enjoyment, ensuring uniform enjoyment. If and how this happens will be the theme of this article, which will analyse concrete management methods and their results, including financial ones.

Italian jurisprudence has dealt with Italian UNESCO sites mainly because of the possibility that this qualification may or may not, per se, lead to the independence of the area, regardless of the adoption of administrative measures that identify the area in question as cultural or landscape property.

The Italian Constitutional Court (C. cost., 11.02.2016, no. 22) has clarified that UNESCO sites “do not enjoy protection of their own right, but, also because of their considerable typological diversity, they benefit from different forms of protection for cultural and landscape heritage, according to their specific characteristics”. Consequently, it declared as inadmissible the questions of the constitutional legitimacy of articles 134, 136, 139, 140, 141, and 142 para. 1, of the Legislative Decree no. 42, raised with reference to articles 9 and 117 para. 1 of the Italian Constitution. They do not provide the municipal administration with an obligation to protect UNESCO sites in its territory, nor do they include these sites among the landscape assets subject to legal restrictions; and art. 142 para. 2 letter a) of the same Decree – in the part in which it does not exclude the urban areas recognized and protected as UNESCO heritage from the possibility of derogating from the landscape authorization regime provided for areas A and B of the municipal territory – in relation to the interposed parameters provided by the articles 4 and 5 of the UNESCO Convention 1972.

This principle is followed by the predominant strand of administrative jurisprudence (Regional Administrative Court of Lazio, Latina, sec. I, 30 January 2020, no. 46; Tar Campania, sec. VII, 13 December 2018, no. 7151, according to which the recognition of an area as a UNESCO site does not coincide with the automatic imposition of an absolute building constraint on it). In particular, according to the Regional Administrative Court of Toscana, sec. I, 12 December 2019, no. 1694, “the inclusion in the UNESCO list does not entail any automatic procedure for the purpose of qualifying

the asset that is a cultural asset, given that pursuant to art. 7 *bis* of Legislative Decree no. 42/2004, for this purpose, the conditions for the applicability of art. 10 must exist”.

This clearly prevailing jurisprudence is partially contradicted by other rulings which have to date remained isolated. According to the Regional Administrative Court of Lazio, Rome, sec. II-quater, 29 May 2020, no. 5757, for example, the UNESCO Convention of 1972 would oblige the State in which a site declared “World Heritage” is located to ensure its safeguarding regardless of any formalized binding measures. According to administrative judges, in fact, “UNESCO World Heritage sites as recognized as having ‘outstanding universal value’ from the point of view of cultural or landscape interest must benefit from a degree of protection at least corresponding to that guaranteed to the landscape assets bound by the National Authorities, insofar as they are recognized as having ‘significant’ landscape interest, pursuant to art. 136 of Legislative Decree no. 42/2004 (Code of Cultural Heritage and Landscape), or declared of ‘particularly’ important cultural interest, pursuant to art. 13 of that same Code: the principle of proportionality and reasonableness requires ensuring a degree of protection corresponding to the degree of value of the protected asset”. According to administrative judges, it would be paradoxical not to protect the most valuable goods; if this happened, a “dangerous ‘protection vacuum’ would be created precisely for areas of greater value, even of a ‘universal’ level of value – declared ‘Common Heritage of Humanity’ precisely on the basis of the recognition of their absolutely ‘exceptional’ importance (therefore of an importance of higher degree than the importance of only a ‘notable’ degree required in the internal system for being subject to landscape constraint, pursuant to art. 136 of Legislative Decree no. 42/2004)”.

## 2. From UNESCO state sites ownership to management plans

By focusing on UNESCO sites owned by the Italian state (twenty-five out of fifty-five: 45.55%), one can observe how a heterogeneity of legal ownership is also associated with a heterogeneity of management models. The effects of the fragmentation of a given UNESCO site, owned by the State, on the management of that site can be summarized as follows: 1) differences in management models; 2) differences in the recruitment of staff, especially of top figures; 3) differences in quality and methods of use; 4) differences in economic profitability; 5) differences in the accounting framework, which are also associated with difficulties in clearly reconstructing costs and revenues in managing the site; and 5.1) the absence of a clear reconstruction of the costs and revenues of the site, which consequently makes it impossible to define any strategic program to reduce costs and/or increase revenue.

Looking, for example, at the Bourbon royal complex of Caserta, one can notice how the unity of the UNESCO site is broken up by the different ways in which the various elements are managed, each of which is subject to multiple proprietary regimes (State: Royal Palace; Municipality: complex of San Leucio). The fragmentation in ownership affects the management of the site, since the management of the municipal part is

public and entirely direct. The site is nothing more than an office of the Municipality: it is neither an organ of the Municipality nor a third-party body with a legal personality. In the state part, on the other hand, management is partly direct and partly, for certain services, outsourced to the public sector. However, the Royal Palace of Caserta is not a mere office but rather a ministerial body that is qualified as a management office (among other things of a general kind, atypically general, as it is not articulated into subordinate management offices). It is evident that this organizational diversity (negatively) influences the enjoyment of the site, since the conditions for the enjoyment of the site are different, including from a financial point of view (different entrance fees). This is why, for example, when visiting one, there is no certainty that the others can be visited on the same day and at the same time. And if the diversity of enjoyment (not so much from a proprietary point of view) is already, in principle, unequal between several elements of the same UNESCO site, this is even more so when the site spreads within a single Municipality and, moreover, to elements only a few meters apart (as in the case of Caserta).

If one takes a wider look at all of the fifty-five Italian UNESCO sites, it becomes apparent how these describe a rather varied panorama by reason of the legal regime they belong to: sites of exclusive private ownership can be found (the Amalfi Coast), as well as sites where the property is public and private (Venice and its Lagoon); sites belonging to foreign states that exist on Italian territory, since they are geographically located within it (the Vatican City).<sup>1</sup> When the enjoyment of the sites occurs mainly by admiring its exterior, as in the case of historical centers, the plurality of subjects who own the individual elements that make up the site does not significantly affect the enjoyment of the site; in such cases, an applicable legal framework is offered not only by the law of cultural heritage (national and international law) but, first and foremost, by urban planning law.<sup>2</sup>

<sup>1</sup> The bibliographies on the subject of UNESCO sites are very extensive. Prominent items are: A. Guerrieri, "La tutela dei siti UNESCO nell'ordinamento italiano, tra prospettiva interna e comparata", *Il Diritto dell'economia* 2019, no. 1, p. 461 ff; G. Armao, "Tutela e valorizzazione integrata del patrimonio culturale dei siti UNESCO. Il caso del sito seriale 'Palermo arabo-normanna e le Cattedrali di Cefalù e Monreale'", *Aedon* 2018, no. 1, p. 1 ff; X. Camerini, "L'attuale quadro normativo internazionale della tutela del patrimonio culturale mondiale", *Rivista di Diritto delle Arti e dello Spettacolo* 2018, no. 2, p. 7 ff; L. Uccello Barretta, "Quale tutela per i siti patrimonio dell'UNESCO?", *Osservatorio AIC*, 30 gennaio 2016, p. 1 ff; C. Migliorati, "Il sito archeologico di Pompei a rischio di cancellazione dalla lista del patrimonio mondiale", *Diritto comunitario e degli scambi internazionali* 2013, no. 4, p. 723 ff; G. Garzia, "La valorizzazione dei beni e degli spazi pubblici di interesse culturale attraverso la diffusione delle moderne tecnologie informatiche: il caso della c.d. 'Piazzetta degli Ariani' di Ravenna", *Aedon* 2013, no. 3, p. 1 ff; S. Marchetti, "La gestione dei Siti UNESCO di Villa Adriana e di Villa D'Este a Tivoli", *Aedon* 2011, no. 1, p. 1 ff; *La globalizzazione dei beni culturali*, ed. L. Casini, Bologna 2010, in this book particular see chapter: M. Macchia, *La tutela del patrimonio culturale mondiale: strumenti, procedure, controlli*, p. 57 ff. On the "right to culture" in international conventions, even beyond those rights stipulated in UNESCO, see: A. Budziszewska, "The Right to Culture in International Law", *Diritto umani e diritto internazionale* 2018, no. 2, pp. 315–332.

<sup>2</sup> On the overlap between different levels of regulation of historic centers, see: M.V. Lumetti, "Il centro storico, un «iperluogo» tra urbanistica, cultura, paesaggio e immaterialità", *Diritto e processo amm.* 2018, no. 2, p. 583; T. Bonetti, "Pianificazione urbanistica e regolazione delle attività commerciali nei

This situation is only apparently simpler when the UNESCO site includes elements belonging exclusively to a single public entity and, for present purposes, to the Italian State. In this case, it is not so much the ownership that is fragmented, but rather the various management models. Analysing these assets allows one to verify the (ir)rationality of the choices of the legislator on an organizational level.

Indeed, some sites (Castel del Monte; Cenacolo Vinciano; the Etruscan necropolises of Cerveteri and Tarquinia) feature a traditional model of direct management by the site owner, except for certain public services. Such structures are governed in the same way as they were governed before the 2014 reform (Prime Ministerial Decree no. 174 of 29 August 2014), namely without any legal (administrative), financial, and accounting autonomy; the directors are recruited internally to the Administration of cultural heritage among officials (non-managers). This means, among many other things, that the non-executive director cannot, in principle, take on expenditure commitments, which are instead the responsibility of the superordinate executive; the absence of a budget determines the impossibility not only of directly receiving financial resources but also of clearly reporting expenses.

Within the same Italian state, other UNESCO sites have been identified by the organizational regulations as institutes with a special autonomous status, pursuant to art. 33 para. 3 letters a) and b), Prime Ministerial Decree no. 169 of 2 December 2019. These sites, like the ones mentioned above, are also directly managed by the body owning it (the Italian State, specifically the MiBACT). However, the particular legal qualification it assumes within the ministerial organization gives them a legal, financial, and accounting autonomy that the ones mentioned above do not possess<sup>3</sup>. In this way, at least the above-mentioned limitations are overcome. This happens, for example, in the UNESCO site which includes the archaeological areas of Pompeii, Herculaneum, and Torre Annunziata (where the Archaeological Park of Pompeii and the Archaeological Park of Herculaneum are located). Similarly, in the "Historic Centre of Rome" we find, in addition to private places or those belonging to various public bodies, the Archaeological Park of the Colosseum and the Barberini Palace, the National Roman Museum, and the Archaeological Superintendence of Rome, which all possess legal, financial and accounting autonomy within the state organization.<sup>4</sup>

In other cases, a UNESCO site includes both institutes with special autonomy and museums without any autonomous profile: this happens, for example, with the site

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centri storici", *Rivista Giuridica di Urbanistica* 2017, p. 386; A. Sau, "La rivitalizzazione dei centri storici tra disciplina del paesaggio, tutela e valorizzazione del patrimonio culturale", *Le Regioni* 2016, p. 955 ff; *I centri storici tra norme e politiche*, eds. C. Lamberti, M.L. Campiani, Jovene, Napoli 2015.

<sup>3</sup> So-called statutory autonomy is entirely negligible, devoid of any practical consequence and improperly attributed to a profile of the autonomy of the institute or place of culture (the statute, in fact, is not approved by the institute but by superior political authority; this appears to be the exact opposite of the concept of autonomy).

<sup>4</sup> For the distinction between museums-organs (organizational structure of the ministerial juridical person) and museums-bodies (endowed with independent legal personality with respect to the constituent ministerial body) see the Council of State, sec. V, 24 March 2020, no. 2055, para. 4.1.2 and para. 5.

“Venice and its Lagoon”, which includes both the Accademia Gallery of Venice – which has special autonomy, pursuant to art. 33 para. 3 letter a) of Prime Ministerial Decree no. 169/2019 – and three museums (the Galleria “Giorgio Franchetti” alla Ca’ d’Oro; the Archaeological Museum, the Museum of Oriental Art; and the Museum of the Palazzo Grimani) which have no legal, financial, or accounting autonomy since they are organizational structures of the Regional Museum Directorate of Veneto (art. 42 Prime Ministerial Decree no. 169/2019). In other cases, a UNESCO site, as far as its ministerial status is concerned, is in use by third parties (as is the case of “Su Nuraxi” in Barumini, assigned to the Regional Museum Management of Sardinia and, therefore, having no financial and accounting autonomy, but being granted for use to the Municipality of Barumini and entrusted by the latter to the “Fondazione Barumini Sistema Cultura” in Sardinia). This case, although scarcely known or analysed, is interesting from a legal point of view since it testifies to the fact that the outsourcing of the management of an archaeological area declared common heritage of mankind to a private entity is common (from a legal point of view, this case would be equivalent to outsourcing the management of the archaeological area of the Palatine and the Colosseum or of Pompeii, Herculaneum, and Torre Annunziata, both equally archaeological areas declared universal heritage by UNESCO). Another management model (and one that could be defined as mixed) is the direct management model of property by the MiBACT Regional Museum Management (according to a scheme of the absence of financial and accounting autonomy) and the entrustment to third parties only of site enhancement activities (this is the case for the “Early Christian Monuments of Ravenna”: see below). In this case, it is not the management of the site as a whole which is outsourced (as in the case of Su Nuraxi), but rather, only certain aspects of enhancement.

### **3. The financial results of the management of UNESCO state sites: A jagged picture**

The heterogeneity of the legal and organizational framework stands alongside equally heterogeneous financial results. From this point of view, if one analyzes the financial returns of the various Italian UNESCO sites that belong to the Italian State, whether exclusively or not, and are entrusted to MiBACT, one discovers a rather varied reality. Considering that at least 90% of state revenues derive from ticket sales<sup>5</sup>, the diversity of returns allows us to analyze the geography of use and, therefore, the interest of visitors vis-à-vis individual sites. Data shows that the recognition of the site as a “world heritage site” does not lead to an overcoming of the notorious gap between sites of greater attraction and poorly visited sites. Yet, by presupposing an equal amount of dignity

<sup>5</sup> As analyzed in: A.L. Tarasco, *Diritto e gestione del patrimonio culturale*, Laterza, Bari – Roma 2019, *passim*. The financial data that I present later in the current article has been calculated by the writer on the basis of data which were provided by the SISTAN of the Italian Ministry of Culture Heritage and Activity and Tourism.

for all of them, also thanks to the UNESCO recognition, the different levels of tourism appeal highlight a persistent rigidity in the demands of cultural tourism. As all statistical surveys have long revealed,<sup>6</sup> cultural tourism remains focused on a narrow list of places, and this is true also for UNESCO sites.

The differences among sites is huge. The state UNESCO elements which are part of the site "City of Vicenza and the Palladian Villas of the Veneto" (namely the Villa Badoer of Fratta Polesine) only made €4,638.10 (in 2019) and €5,346.50 (in 2018) from the sale of tickets. The revenue of Tempietto sul Clitunno, in Perugia, as part of the serial site "The Langobards in Italy. Places of Power" ranges around €15,000 (€14,897.00 in 2019 and €15,668.00 in 2018). Similarly, revenue for the site "Etruscan Necropolises of Cerveteri and Tarquinia" reaches several thousand euros (€38,964.84 in 2018 and €57,127.00 in 2019). Even the state places that are part of the UNESCO site "Rock Drawings in Valcamonica", despite collecting larger sums (and, therefore, being proportionally visited by a larger number of people) still make modest profits, as can be indirectly deduced from ticket revenues (€161,415.00 in 2019 and €159,442.90 in 2018).

At the top of the list of Italian UNESCO state sites with the highest financial returns, there are the state-owned properties which are part of the site "Historic Centre of Rome, the Properties of the Holy See in that City enjoying Extraterritorial Rights, and San Paolo Fuori le Mura", namely the Colosseum, the Domus aurea, the Roman Forum and the Palatine, Meta sudans, the Arch of Constantine, the Crypta Balbi, Palazzo Massimo alle Terme, the Palazzo Altemps, and the Baths of Diocletian. Overall, all these sites made a total of €123,733,802.17 in 2018 and €79,943,047.64 in 2019;<sup>7</sup> in particular, the archaeological site of the Colosseum by itself collected €46,347,249.57 in 2018 and €48,465,096.71 in 2019. One must also add to such proceeds the revenue of the National Roman Museum, the Ancient Pinacoteca, the Roman state museums of the Lazio Regional Direction of Museums, and the sites of the Archaeological Superintendence of Rome, all included in the above-mentioned "Historic Centre of Rome" site.

As anticipated, measuring the financial proceeds of sites of exceptional universal value for all of humanity is important for at least two reasons. Firstly, having estimated that the sale of tickets constitutes more than 90% of the revenue of institutes and state-owned cultural sites in Italy, measuring total profits of the UNESCO world heritage sites also means measuring the attractiveness of those sites. The financial data shown coincide with that deriving from the ticket office. On top of this, there may be an additional source of returns, which on average is no higher than 10%. In summary, with reliable approximation, it can be said, at least in Italy, that financial profitability is a measure of the effective use of the sites (also of UNESCO sites), since the area of financial return deriving from marketing and fund raising activities is very small, despite the flood of publications on the most irrelevant issues in practice.

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<sup>6</sup> Istat, *L'Italia dei musei*, Rome, 23 December 2019, [www.istat.it/it/files/2019/12/LItalia-dei-musei\\_2018.pdf](http://www.istat.it/it/files/2019/12/LItalia-dei-musei_2018.pdf) (accessed: 4.05.2021).

<sup>7</sup> Unlike data previously discussed, these also partially include sources of income other than the ticket office alone.

Secondly, if it is true that the recognition of the “outstanding value” of a UNESCO site is independent not only of the property ownership regime but also of its profitability, it is also true that any increase in its income potential constitutes a tool for the full realization of the aims of the UNESCO Convention 1972: the protection and enhancement of heritage. An increase in profitability, despite not being an end in and of itself, represents a rather significant means of ensuring the achievement of long-term objectives.

#### **4. The financial dimension of cultural heritage in the Italian Constitution and in the 1972 Paris Convention**

Financial profile is one of the dimensions that the 1972 treaty recognizes as essential to “ensure the identification, protection, conservation, preservation and transmission to future generations of cultural and natural heritage” (art. 4 sentence 1). These objectives must be achieved by each State which must “do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation”; the actions to be implemented concern the “financial, artistic, scientific and technical” fields (art. 4 sentence 2). For this purpose, Law no. 77 of 20 February 2006, containing “Special measures for the protection and enjoyment of Italian sites and elements of cultural, landscape and environmental interest inscribed in the ‘World Heritage List’ and placed under UNESCO protection”, was issued. This provision provides for the creation of financial intervention to support the enhancement, communication, and use of the sites and of the elements themselves (art. 4).<sup>8</sup> An increase in profitability is, therefore, one of the useful ways to implement the Convention itself.<sup>9</sup>

<sup>8</sup> The interventions and the amount of state contributions towards UNESCO sites, regardless of the owner of the sites (whether it is the State or otherwise), are established by decree of the Ministry for Cultural Heritage and Activities and Tourism, in agreement with the Ministry for the Environment and of the Protection of the Territory and the Sea, with the Ministry of Agricultural, Food, Forestry and Tourism Policies and with the Permanent Conference for relations between the State, the Regions and the autonomous Provinces of Trento and Bolzano (art. 4 para. 2 Law no. 77/2006). Since its entry into force (2006) up to 2018, 335 projects have been funded by the MiBACT, for a total of €27,236,263.06. Over €4 million have been used by the sites to draw up and update their Management Plans. For a prompt reconstruction of experiences applying Law no. 77/2006, see: Ministry for Cultural Heritage and Activities and Tourism, *Il Libro Bianco: Legge n. 77/2006*, Rubbettino, Soveria Mannelli 2013. The implementation methods of accessing the support measures are defined by the notice of the Secretary General of MiBACT 28 May 2019, no. 24, which first identifies the possible recipients of the funding, as well as the contact persons of the sites and elements, to whom the task of submitting the funding applications is entrusted, and that of reporting on the implementation of the approved projects.

<sup>9</sup> The scope of the cultural heritage financial needs taken into consideration and acknowledged by UNESCO is analysed by P. Mastellone, “Tutela e promozione del patrimonio culturale nella disciplina internazionale ed europea: dall’insufficienza dei finanziamenti pubblici alla valorizzazione della leva fiscale per stimolare l’intervento dei privati”, *Rivista di diritto tributario internazionale* 2018, no. 2, p. 137 ff., which also focuses on the “paradoxical applicability” of the European discipline on state aid for the public funding of culture.

Therefore, as the Italian Constitution affirms, there is no opposition between cultural promotion and the creation of for-profit commercial activities (see art. 97 of the Italian Constitution), nor is the existence of any such opposition suggested by the founding acts of the 1972 Paris Convention.

As true as this may be, it is also the case that the qualification of a site (or part of a site) as a mere instrumental office of the public body that owns the site (the San Leucio complex) and the absence of legal, financial, and accounting autonomy (Castel del Monte; Leonardo's Last Supper; the Etruscan Necropolises of Cerveteri and Tarquinia; the Early Christian monuments of Ravenna) represent an unjustifiable organizational arrangement. Indeed, the absence of such autonomy from the outset prevents such activity from being accountable and limits any possible dynamism in management. Similarly, the direct management of the site, even where there is legal, financial, and accounting autonomy, would still not lead to a full exploitation of the site's income potential.

Unfortunately, the Italian management tradition has always stood out for notoriously inverting the relationship between means and ends, wrongly believing that the maximization of the ends requires sacrificing the financial dimension.

Because of this way of thinking, also based on the erroneous assumption that the immeasurable humanistic value of heritage also implies the impossibility of attributing a material value to it, it was believed, erroneously, that – to achieve the “pure” objective of cultural promotion – management of cultural heritage should exclude any profitability-related strategy. In this perverse logic, although the enhancement function was affirmed in the second half of 2000, the concept of the profitability of cultural heritage is still debated in Italy,<sup>10</sup> regardless of the fact that in many European countries, as in neighbouring France, cultural heritage is ordinarily considered a fundamental asset for balancing public budgets.<sup>11</sup> There the *capacité d'autofinancement* (self-financing capacity) *des musées nationaux* is measured, and the related *taux d'autofinancement* is examined, appreciated, or criticized by the Court des comptes – an experience very far from the Italian one, both in terms of active administration and control.

In this distorting logic, in which cultural heritage is placed in an ideal protective category, its material component is spiritualized and considered detached from the entire public financial system (at least in terms of its instrumentality with respect to income). So, with respect to the regulatory obligations to optimize *sub specie* management of increasing revenues and reducing expenses, cultural heritage is constantly preserved. In this way, an idea slowly matures that the realization of the noble end (promotion of culture through the care of its assets: Article 9, first and second paragraphs, of the Constitution) would justify any financial means. In this way, the constitutional precepts

<sup>10</sup> Stemming from: A.L. Tarasco, *La redditività del patrimonio culturale. Efficienza aziendale e promozione culturale*, Giappichelli, Torino 2006.

<sup>11</sup> On top of what was already claimed in: A.L. Tarasco, *Diritto e gestione...*, p. 162 ff., let me draw the attention of the reader to Court des comptes, *La valorisation internationale de l'ingénierie et des marques culturelles. Le cas des musées nationaux. Communication à la commission des finances du Sénat*, Paris, mars 2019.

that should govern the actions of each public administration are considered inapplicable, especially to the cultural heritage sector.

Thinking of this issue with this mind-set, it is easy to forget that an increase in the profitability of cultural assets represents one of the management tools supposed as a prerogative by the Constituent Assembly (art. 97 paras. 1 and 2 of the Constitution) to achieve the ultimate aims of cultural promotion (stated, instead, in art. 9 of the Constitution).<sup>12</sup> While not wishing in any way to undermine the primacy of the *ultimate goal* (cultural promotion and, therefore, the inner growth of human beings as visitors to the site), the importance of the medium cannot be devalued, liquidating it as a “commoditizer”. In fact, the means prefigured by the Constitution to achieve any public purpose are represented by the “good performance” (art. 97 para. 2 of the Constitution) of the administrative activity; this concept translates into the obligation of every administration, including the holder of cultural assets, to act according to effectiveness (the relationship between objectives set and achieved), cost-effectiveness (the ratio between resources used and resources available), and efficiency (the ratio between objectives achieved and means used). In turn, the obligation to ensure a “good performance” is linked to the precept of para. 1 of the art. 97 of the Constitution which commits all public administrations to compete to ensure the balance of budgets and the sustainability of public debt.<sup>13</sup>

These constitutional parameters, where no opposition can be drawn between the aim of cultural promotion and the realization of instrumental commercial activities (art. 97 of the Constitution), appear fully in line with the legal framework obtainable from the 1972 UNESCO Convention.<sup>14</sup>

The misunderstanding of the 1972 UNESCO Convention has accentuated this “means-ends” prejudice, perhaps giving excessive importance to the “symbolic value

<sup>12</sup> For the distinction between means and effects, see: A.L. Tarasco, *La redditività...*, more recently: *idem, Diritto e gestione...*, *passim*.

<sup>13</sup> On these issues, see, in general: A.L. Tarasco, *Diritto e gestione...*, *passim*; *idem*, “Sostenibilità del debito pubblico e gestione del patrimonio culturale (prima e dopo il coronavirus)” [in:] *Cura e tutela dei beni culturali*, eds. G. Esposito, F. Fasolino, Wolters Kluwer Cedam, Padova 2020, p. 297 ff.; *idem*, “Modelli giuridici per l’incremento della redditività del patrimonio culturale: Italia, Francia e Gran Bretagna a confronto” [in:] *Scritti in onore di Eugenio Picozza*, vol. II, Editoriale scientifica, Napoli 2019, p. 1601 ff. Recently, concerning the general constitutional law of art. 97, comma 1, Cost., see: S. Cimini, “Equilibrio di bilanci e principio di buon andamento” [in:] *Scritti di onore di Eugenio Picozza*, vol. I, Editoriale scientifica, Napoli 2019, p. 393 ff. In constitutional jurisprudence, on the principle of good performance and the balance of public budgets, see: C. cost. 29 November 2017, n. 247, [www.corte-costituzionale.it](http://www.corte-costituzionale.it), according to which “the new wording of the first paragraph of art. 97 of the Constitution concerns, in the first part, the balances of individual entities, while in the second part it relates to the necessary contribution of the latter to the common, macroeconomic objective of ensuring the sustainability of the national debt”. From this concept, it follows that “the first precept is embodied in the prohibition – for each entity – of economic deficit forecasts and in the obligation of a continuous search for balance in financial management, in relation to the internal and external dynamics that characterize policies for the implementation of concrete financial statements. The second statement calls for the necessary contribution of each administration to the pursuit of national and European public finance objectives, thus ensuring specific financial resources and behavior”.

<sup>14</sup> See below, in this paragraph.

of sites and elements of cultural heritage” (art. 1 of Law no. 77/2006); this seems to have contributed to the “spiritualization” of the theme of site management, neglecting the concept of financial sustainability and, if anything, focusing attention on exclusively exploiting public resources.<sup>15</sup> This is naturally a misunderstanding that is fuelled by an ignorance of other normative sources: for example, the “management plans” provided for by art. 3 of Law no. 77/2006 also include “actions that can be carried out to find the necessary public and private resources, in addition” to the “support measures” referred to in art. 4 of Law no. 77/2006.<sup>16</sup> In turn, an adequate organizational architecture that ensures good management is perfectly instrumental in terms of achieving these purposes, which are perfectly in accord with the Italian constitutional framework. If it is true that the purpose of the 1972 UNESCO Convention is to prevent the “deterioration or disappearance of any item of the cultural or natural heritage” which would constitute a harmful impoverishment for all the peoples of the world, the value premise on which the Convention is based is “the importance (...) of safeguarding this unique and irreplaceable property to whatever people it may belong”, and “the outstanding interest” of natural cultural heritage which requires them “to be preserved as part of the world heritage of mankind as a whole.”

If this is the final shared objective pursued by the UNESCO Convention of 1972, it is true that nowhere does the treaty exclude the economic and income-related importance of the sites: this is also deduced from the theme of the “adequacy of resources”, which seems to have been introduced when the Convention speaks of “insufficient

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<sup>15</sup> Emblematic is the thought that the well-known archaeologist S. Settis expressed, in St. Petersburg as on many other occasions, during a debate on “The Future of Museums” held on 30 June 2006. In the speech, occasioned by the award of the Grinzane Ermitage (then entitled “Ma il museo ha un future”, *La Repubblica*, 30 June 2006, p. 53), the archaeologist concluded saying that “the real, the great ‘profitability’ of cultural heritage doesn’t stand in its commercialization, nor in tourism and in the related profit it generates, but in that deep sense of identification, belonging, citizenship, which stimulates the creativity of present and future generations with the presence and memory of the past”. This thought, as will be explained below, obviously confuses the end with the means and, to put it in constitutional terms, superimposes the values evoked in art. 9 of the Constitution (known to the archaeologist) with those contained in art. 97 of the Constitution (unknown to the author). The horizon drawn is, in itself, fully acceptable, but does not detract from the need to seek the means of survival, of support, and enhancement for that cultural heritage. In practice, precisely in order to reach that noble and desirable humanistic outcome, it is necessary to pose the problem of finding the means necessary to achieve the goal. Describing only the destination, without being interested in the way in which the journey to reach it must be conducted, embodies superficiality and, in some cases, even selfishness when that journey must be made by others.

<sup>16</sup> Over management strategies of UNESCO sites see: G. Garzia, “Tutela e valorizzazione dei beni culturali nel sistema dei piani di gestione dei siti” *UNESCO, Aedon* 2014, p. 1; F. Badia, “Contents and Aims of Management Plans for World Heritage Sites: A Managerial Analysis with a Special Focus on the Italian Scenario”, *Encarc Journal of the Cultural Management and Policy*, December 2011, vol. 1, issue 1, p. 40 ff; F. Badia, E. Gilli, “Il piano di gestione come strumento di misurazione e valutazione delle performance per i siti UNESCO. Analisi dello stato dell’arte nazionale e prospettive di sviluppo”, *Azienda pubblica* 2011, p. 275 ff; A. Cassatella, “Tutela e conservazione dei beni culturali nei Piani di gestione UNESCO: i casi di Vicenza e Verona”, *Aedon* 2011, p. 1 ff; S. Marchetti, M. Orrei, “La gestione dei Siti UNESCO di Villa Adriana e di Villa D’Este a Tivoli”, *Aedon* 2011, p. 1.

economic, scientific and technological resources of the country where the property to be protected is situated”, with respect to which the Convention proposes to offer its own support, which is additional and not in replacement. Indeed, precisely in consideration of the priority of the financial commitment of the state and the merely subsidiary and possible financial support of an international organization.<sup>17</sup> the theme of the self-maintenance of the properties declared cultural or natural heritage of humanity assumes strategic importance: in fact, although it is true that the recognition of a UNESCO site is independent, and rightly so, of its income potential, it is also true that any increase in its self-maintenance capacity is instrumental with respect to the achievement of the aims of the UNESCO Convention (protection and enhancement).<sup>18</sup>

To sum up, having reconstructed the regulatory framework (constitutional, international, and ordinary), it appears evident that the measurement of the self-financing capacity of museums, as ordinarily occurs in France regardless of the site’s classification as a UNESCO one, is originally prevented when there is even a lack of the possibility of reporting with accuracy of the results of the management of certain exhibition

<sup>17</sup> Pursuant to art. 25 of the Convention, “the financing of the necessary works must, in principle, be taken into charge only partially by the international community. The financial participation of the State benefiting from international assistance must constitute a substantial part of the resources allocated to each program or project unless its own resources allow the structure to be self-reliant”.

<sup>18</sup> The topic of the economic profiles of the management of UNESCO sites in the world is not unknown to literature (see for example: G. Alexandrakis, C. Manasakis, N.A. Kampanis, “Economic and Social Impacts on Cultural Heritage Sites: Results of Natural Effects and of Climate Change”, *Heritage* 2019, vol. 2, p. 279 ff.). This topic was particularly treated by corporate experts, with harmful consequences for the legal framework, which generally proposes or analyses rules, while ignoring the concrete reality of administration, of which the economic dimension cannot be denied. While correctly underlining the need that the “enhancement actions must (...) consider in joint terms both the cultural and identity profiles and the economic and managerial profiles, in an effort of dialogue and cooperation between scientific disciplines that are often distant from each other” (F. Badia, F. Donato, E. Gilli, “Profili economici e manageriali per la governance delle istituzioni culturali: il caso dei siti UNESCO”, *Annali dell’Università degli Studi di Ferrara Museologia Scientifica e Naturalistica*, January 2012, Special Volume, p. 6), generally the point of view stemming from entrepreneurs is not so much that of the financial self-maintenance of the structure declared by the UNESCO heritage of humanity, as much as of the development of an economy connected with the UNESCO site. Andrea Cenderello is another academic that discusses the need to have a marketing policy in the work *Marketing of Heritage Sites*, more specifically in *Heritage Interpretation for Senior Audiences Focuses on the Need for Marketing Action. A Handbook for Heritage Interpreters and Interpretation Managers*, eds. P. Secombe, P. Lehnes, ([http://www.interpret-europe.net/fileadmin/Documents/projects/HISA/HISA\\_handbook.pdf](http://www.interpret-europe.net/fileadmin/Documents/projects/HISA/HISA_handbook.pdf), accessed: 4.05.2021), July 2015, according to which “applying marketing strategies and techniques to heritage sites represents the opportunity to link cultural heritage, artistic expression and local economic, social development”. Of course, this does not mean that there are no differences between the cultural heritage sector and other “profit-oriented” sectors which, in the cited text, are clearly highlighted. On marketing actions in Ireland, see: L. Fullerton, K. McGettigan, S. Simon, “Integrating Management and Marketing Strategy at Heritage Sites”, *International Journal of Culture, Tourism and Hospitality Research* 2010, vol. 4, p. 108 ff.; S. Mourato, E. Ozdemiroglu, T. Hett, G. Atkinson, “Pricing Cultural Heritage: A New Approach to Resource Management”, *World Economics* 2004, vol. 5, no. 3, p. 95 ff., focus on the pricing policies of UNESCO sites and on the various effects they can produce, both as regards their financial management and as regards the better conservation of the site. They focus, in particular, on the citadel of Machu Pichu.

sites of cultural heritage (as in the cases seen in the Etruscan tombs of Cerveteri and Tarquinia, or Castel del Monte). These general considerations are equally applied to UNESCO sites, without any possibility of differentiating their statutes, at least from this point of view.<sup>19</sup>

While this is a common limit for hundreds of Italian institutes and places of culture,<sup>20</sup> it appears more remarkable in the case of UNESCO sites that art. 1 of Law no. 77/2006 solemnly declares their importance to be “due to their uniqueness, points of excellence of Italian cultural, landscape and natural heritage and their representativity at an international level.” This notation shows how, at least in these cases, the international qualification did not affect internal organization, unlike for the two UNESCO sites “Villa Adriana” and “Villa d’Este”, which have been unified in a single site with special autonomy since 2014 (Prime Ministerial Decree no. 171/2014).

It can be deduced that despite the activism of the legislator in reforming, counter-reforming and re-reforming the organization of MiBACT, at least the UNESCO state sites have remained ignored, since they have not been the subject of any special attention (with the few exceptions described above).

## 5. UNESCO site management plans: Outsourcing

### 5.1. The case of “Su Nuraxi” in Barumini (Sardinia)

With the above in mind, in order to achieve these purposes (“finding the necessary public and private resources”: art. 4 of Law no. 77/2006) the organizational prerequisites useful for understanding the direction taken and/or to be pursued appear fundamental. Whilst such UNESCO state-owned sites continue to be managed in the most traditional way possible (direct public management with no independent reporting of accounts), others offer evidence of different management plans, inspired by a healthy outsourcing of functions.

In some cases, as in the case of the archaeological site of “Su Nuraxi” in Barumini (Cagliari, Sardinia), the “Barumini Sistema Cultural Foundation” is entrusted with the task of protecting, preserving, managing, and enhancing the cultural heritage of the Municipality of Barumini, including an area which has been declared a world

<sup>19</sup> Among other things, it should be underlined that the Italian internal legal system does not have a different legal framework for UNESCO sites, unlike other legal systems, such as Australia or South Africa.

<sup>20</sup> State-owned places of culture number in total 740, if we consider the 134 state archives, the 46 state libraries, and the 560 museums and archaeological areas. In particular, if there are 159 sites that belong to the 39 institutes with special autonomy (also in financial and accounting terms), there are as many as 307 state sites that, belonging to the 18 Regional Museum Directories, lack any possibility of reporting practices and autonomous spending capacity; to these numbers, the 94 archaeological areas also have to be added, as they report to superintendencies.

heritage site (i.e. the Su Nuraxi Archaeological Area, the Casa Zapata Museum Center, and the Giovanni Lilliu Cultural Heritage Communication and Promotion Center).<sup>21</sup>

In particular, the area of “Su Nuraxi”, assigned to the Regional Directorate of Museums of Sardinia and, therefore, with no financial or accounting autonomy, is granted for use to the Municipality of Barumini and entrusted by the Municipality to the “Barumini Sistema Cultural Foundation”. It is interesting to highlight how the Foundation presents profits as the difference between revenues (€2,342,796.00 in 2019; €2,236,256.00 in 2018) and production costs (€2,159,510.00 in 2019; €2,101,753.00 in 2018). This produces a net operating profit of €180,519.00 in 2019 and €129,906.00 in 2018.

However, it should be noted that the Foundation receives public grants worth €1,055,937.00 (in 2019) and €1,051,232.00 (in 2018). The presence of these contributions, while it demonstrates the non-integral self-sufficiency of the Foundation, does not neutralize the high self-maintenance capacity of this private law entity in which various public actors participate nor its capacity to constantly monitor costs and revenues.

## 5.2. The case of the “Early Christian Monuments of Ravenna”

In addition to the full management plans of an archaeological area declared world heritage, among the UNESCO sites belonging to the state, it is possible to identify a further kind, namely places for whose management the Public Administration has decided to establish *ad hoc* legal entities, pursuant to art. 112 of Legislative Decree no. 42 of 22 January 2004, to which enhancement activities can be exclusively entrusted.

This is what happened with regard to the “Early Christian Monuments of Ravenna”. These include the Basilica of Sant’Apollinare in Classe, the Baptistery of the Aryans, and the Mausoleum of Theodoric. These sites also lack special autonomy (and, therefore, legal, financial, and accounting autonomy); as such, they do not have their own management functions, but belong to the Regional Directorate of Museums of Emilia Romagna (MiBACT), pursuant to the Ministerial Decree of 23 December 2014 on “Organisation and operation of state museums”; this leads to limitations of a financial nature (giving and receiving money), an accounting nature (reporting revenues and costs), and a legal nature (adopting measures and entering into contracts). Nonetheless, ticket

<sup>21</sup> The “Barumini sistema cultura” Foundation was established on 20 December 2006, on the exclusive initiative of the Municipality of Barumini, in order to “a) protect, conserve, enhance and manage the cultural and artistic-monumental assets of the Municipality of Barumini, in order to promote knowledge of this heritage and ensure the best conditions of use and public enjoyment; b) protect, conserve and enhance also other movable and immovable property that is not part of the municipal property but must be located in the Sardinia Region and must be part of cultural heritage assets pursuant to the Code of cultural heritage and landscape. Such places are normally owned by other subjects, with whom the Foundation requires a specific agreement to carry out its activities”. It should be noted that neither in its deed of constitution of 2006 (from which the above is cited) nor in the statute (of 19 September 2018) and in its statutory amendment (31 January 2020), is the Ministry ever designated as the granting subject of the archaeological area „Su Nuraxi” by Barumini in respect of the Municipality.

revenues in 2018 (€1,108,685.00) decreased in 2019 to below €800,000 (€797,836.00); however, overall costs and, therefore, the quantification of losses are unknown.

The revenues of the “Archaeological Park of Classe RavennAntica” Foundation are more than double the above amount. This foundation was established with the purpose of enhancing, including for tourism purposes, the archaeological, architectural, and historical-artistic heritage consisting of the ancient city of Classe, the Basilica of Sant’Apollinare in Classe, the Domus of the “Stone Carpets” in Ravenna, the eighteenth-century Church of Sant’Eufemia, and the fourteenth-century Church of San Nicolò, and therefore, in part, also of the state-owned places included in the site declared by UNESCO as “world heritage.”<sup>22</sup> The Foundation is the concessionaire of various additional assets alongside the Early Christian Monuments of Ravenna (directly managed by MiBACT). It also manages certain commercial services within the properties declared world heritage and brought back under the direct care of MiBACT (which, therefore, bears the entire maintenance costs).

The Foundation’s total revenues in 2018 were €2,406,340.00 while in 2017 they were €1,818,056.00. Considering also costs (€2,363,570 in 2018 and €1,700,205 in 2017), the Foundation achieved a net profit of €1,248.00 in 2018 and €1,919.00 in 2017 (although this result was also achieved thanks to contributions from various public bodies, which amounted to €1,134,574.00 in 2018 and €992,239.00 in 2017). Therefore, whilst focusing on the same territory that boasts a recognition of the UNESCO brand, and even if the sites managed by the Directorate-General for MiBACT Museums are different from those managed by the Ravenn Antica Foundation, state revenues appear to be about half of those achieved by the foundation; it should also be noted that – even if they not accurately quantifiable – the costs of preserving UNESCO elements are borne exclusively by MiBACT (and not by the Foundation).

If the ultimate purpose of the Foundation is the conservation and public use of Ravenna’s heritage as well as the promotion of further historical-archaeological research, these objectives are achieved thanks to intense commercial activity which, since 2000, has been exercised through the management of the museum of the Domus dei Tappeti di Pietra di Ravenna, the management of the archaeological site of the Ancient Port of Classe, the museum site at the ex-church of S. Nicolò in Ravenna

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<sup>22</sup> The Foundation was established on 22 December 2000 in execution of the Protocol of Intent signed on 5 December 1997 by the Municipality of Ravenna, the University of Bologna, the Superintendence for Archaeological Heritage of Emilia-Romagna, the Superintendence for Environmental and Architectural Heritage for the provinces of Ravenna, Ferrara, Forlì-Cesena, and Rimini, by the Archdiocese of Ravenna-Cervia, and by the Cassa di Risparmio di Ravenna Foundation. Pursuant to art. 1 of the statute, the Foundation pursues the aim of “ensuring adequate conservation and public use of the cultural assets conferred and/or given in concession or in use; improving the public use of the cultural assets conferred, and/or given in concession or in use while ensuring their adequate conservation; implementing the integration of the management and enhancement activities of the cultural assets conferred and/or given in concession or in use, with those activities concerning the assets conferred by other participants to the Foundation, increasing the services offered to the public in the territory, improving their quality and making savings management; in order to realize forms of national and international valorisation of the cultural heritage, along with restoration of the assets”.

entitled “TAMO All the adventure of mosaics”, and the additional services of the Civic Archaeological Museum Tobia Aldini in Forlimpopoli, in agreement with the Municipality of Forlimpopoli (the owner). The intensification of the management of these sites and, therefore, of commercial activities has determined, starting from 2015, the modification of the (fiscal) nature of the entity, which has assumed the connotation of a “commercial entity” (if not for statutory purposes).<sup>23</sup>

This stage in the life of the RavennAntica Foundation confirms, in practice, how carrying out commercial activities, even on UNESCO sites, is completely possible and leads to beneficial financial effects which, on the contrary, are not recorded when the subject (MiBACT) presumes to carry out the traditional business of selling tickets only, without also pursuing an aim of financial equilibrium.

In other words, experience confirms that the values encapsulated in articles 9 and 97 of the Italian Constitution are fully compatible, and not conflicting. Focusing exclusively on maximising the ends (art. 9 of the Constitution) leaves unresolved the problem of finding adequate financial resources (art. 97 of the Constitution). This is the case even when cultural resources, all things being equal, would enable profits to rise.

The coexistence within one area declared a “world heritage site” of a publicly-managed structure and a private structure, albeit with non-profit ends and made up of (mostly) public persons, seems to confirm the argument put forward elsewhere on the possibility of achieving cultural promotion ends according to a method of company efficiency, which can be put in place by entities other than those that own the goods, and irrespective of the legal nature of that managing entity.<sup>24</sup>

Furthermore, entrusting a state archaeological area which has been declared a world heritage site (such as the one of Su Nuraxi) to a private Foundation demonstrates that its inalienability, pursuant to art. 54 comma 1 of Legislative Decree no. 42/2004, does not imply that its management cannot be entrusted to third parties. This legal route, despite not being entirely well-established,<sup>25</sup> has scarcely been experimented with on a large scale in administrative practice, but the few examples of such cases in the field of UNESCO sites have all been successful.

<sup>23</sup> Article 149 para. 1 Presidential Decree 22 December 1986, no. 917 (TUIR), states that regardless of the forecasts of the articles or memorandum of association, an entity loses the status of a “non-commercial entity” if it mainly carries out commercial activities for an entire tax period, particularly with regard to some elements connected to the activity effectively exercised which must be valued, such as the prevalence of revenues deriving from commercial activities when compared to the normal value of sales or services relating to institutional activities, and the prevalence of fixed assets relating to commercial activity, net of depreciation, with respect to the remaining activities.

<sup>24</sup> A.L. Tarasco, *La redditività...*, *passim*; *Diritto e gestione...*, *passim*.

<sup>25</sup> See, for example, the interview released to: M. Pirelli, “Tokenizzare la Gioconda? Vendere si può ma non si fa”, *Il Sole 24 ore – Plus 24*, 16 maggio 2020, p. 18.

## 6. Conclusions: Timeless prejudices and timeless values

From the above discussion, it clearly emerges that, despite formal proclamations, solemn declarations of principle, and frequent international conferences, the Italian legislator (at least the state one) has not taken into consideration the qualification awarded by UNESCO for a particular site; the consideration of UNESCO sites, in terms of administrative organization (most recently, in seven years of uninterrupted reforms between 2014 and 2020), cannot be said to be special or differentiated from that of other institutes or places of culture referred to in art. 101 Decreto Legislativo n. 42/2004 (with the exception of Villa Adriana and Villa d'Este). The feared "adaptation of Italy to international standards in the field of museums" and the "improvement of promotion for the development of culture, also in terms of technological and digital innovation" (art. 14 comma 2 *bis* Decreto Legislativo 31 May 2014, n. 83) have passed by such sites as Castel del Monte, the Last Supper, and the Etruscan Necropolises of Cerveteri and Tarquinia, which are still run according to traditional methods of direct management by the institution's owner, with the exception of certain public services. This seriously compromises, at least in some cases, not only the quality of use but also financial profitability, which is certainly very modest compared to the sites' potential.

In other cases, the ownership fragmentation of sites has not been compensated for by management plans (art. 3, Law no. 77/2006) capable of overcoming different ownership and modes of use: an ownership regime continues to prevail over the needs of unitary and optimal use, considerably reducing the concept of "state property" understood as a service to the public on the part of public goods.

On the financial level, studies of the self-financing of UNESCO sites are very rare, and the only profiles investigated (by business experts) appear to be those of the positive externalities coming from public investments, as well as the positive externalities coming from loans obtained through the traditional lever of general taxation (by the tax authorities).

Coping with this backwardness, one of the few bright points is represented by the experience of outsourcing the entire management (and not only of certain services, such as the ticket office) of the state archaeological area of Su Nuraxi, in the Municipality of Barumini, in Sardinia: first, in favour of the local municipal administration and, subsequently, granted to the "Barumini Sistema Cultura" Foundation, owned by the Municipality itself. This is an example of how a state archaeological area, inalienable pursuant to art. 54 para. 1 Decreto Legislativo n. 42/2004, and, further, recognized by UNESCO as "universal heritage of humanity", can be managed by a private entity, moreover with more than satisfactory financial results.

If only timeless ideological prejudices were buried and the quality of the service provided to the public was to become the main goal to be attained, this model could be extended to many other exhibition places of cultural heritage, and not only for those with the UNESCO brand attached to them. Also, hitherto barely tolerated balances of financial statements should become a priority, for these are never to be ignored (art. 97 para. 1 of the Constitution).

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## Summary

**Antonio Leo Tarasco**

### **Proprietary fragmentation and public-private management of UNESCO sites owned by the Italian state**

The paper discusses the relationship between UNESCO sites belonging to the Italian State and profiles of profitability and sustainability. If it is true that the general characteristics of UNESCO's Italian (and not only Italian) sites is a heterogeneity of legal ownership, at the same time in the UNESCO sites belonging to the Italian State (twenty-five out of fifty-five: 45,55%) to the plurality of legal regimes is added a heterogeneity of management models. In this case, plurality of properties affects success, since it also affects the management of the site.

The negative effects of the fragmentation of State-owned UNESCO sites can be summarized as: 1) differences in staff recruitment; 2) differences in management models; 3) differences in the degree of available enjoyment; 4) differences in economic profitability; and 5) differences in accounting framework. If diversity is barely comprehensible when sites belong to different institutions, it is even less comprehensible when they are state-owned.

A consequence of the complete heterogeneity of legal and organizational frameworks is a heterogeneity of economic results. The gap is huge and unacceptable: Tarquinia and the Cerveteri Etruscan tombs – €38,964.84 (2018) and €57,127.00 (2019); the Coliseum archaeological park – €46,347,249.57 (2018) and €48,465,096.71 (2019). Not to mention that to such incomes, we should add the incomes from the Roman National Museum, the Ancient Art Gallery, and the State Roman museums appertaining to the Direzione Regionale musei Lazio, and sites of the Archaeological Superintendence of Rome.

If it is true that the award of UNESCO status to a site is independent, as it should be, of economic potential, it is also true that the increase of a site's economic potential is instrumental in achieving the purposes of the UNESCO Convention: protection and valorisation. The increase of a site's profitability is, therefore, a potential which is inherent to the UNESCO award and, at the same time, a requirement; it is, as it were, a means towards the ends of the UNESCO Convention. From this derives the obligation of autonomous financial reporting of UNESCO sites, something that is, at the moment, lacking in many State UNESCO sites, which currently do not have their own accounting and financial autonomy.

In conclusion, the theme of the fragmentation of ownership of the fifty-five Italian UNESCO sites and its effects on management and financial profitability makes it possible to investigate the actual consideration that the national legal system gives to UNESCO sites, i.e. an importance that, beyond official declarations, UNESCO sites have in the internal legal system.

**Keywords:** UNESCO management plans, 1972 Paris Convention, UNESCO ownership, management of UNESCO sites, law and management of cultural heritage

## Streszczenie

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### **Pluralizm własnościowy i publiczno-prywatne zarządzanie obiektami wpisanymi na Listę Światowego Dziedzictwa UNESCO, należącymi do Republiki Włoskiej**

W artykule poddano analizie związku między obiektami światowego dziedzictwa UNESCO należącymi do Republiki Włoskiej a zagadnieniami dochodowości i ideą zrównoważonego rozwoju. Ponieważ cechą charakterystyczną statusu obiektów wpisanych na Listę UNESCO – nie tylko włoskich – jest heterogeniczność własności, w modelach zarządzania nimi pojawia się wielość reżimów prawnych. Spośród 55 włoskich obiektów własność państwową stanowi 25, co daje 45,55%. Pluralizm własnościowy przekłada się na praktykę; negatywne skutki stanu rozdrobnienia dają się zauważyć: 1) w rozbieżnych zasadach rekrutacji personelu, 2) w wielości modeli zarządzania, 3) w niejednakowym dostępie dla publiczności, 4) w różnicach w rentowności oraz 5) w różnych modelach finansowo-księgowych. Stan rozdrobnienia wywołuje niemałe trudności

w wypadku obiektów należących do różnych podmiotów, a staje się jeszcze mniej zrozumiałą, gdy chodzi o obiekty państwowe.

Następstwem owej heterogeniczności jest zróżnicowanie rentowności poszczególnych obiektów. Luka jest znaczna i nie można jej zaakceptować. Przykładowo, Tarquinia i etruska nekropolia Cerveteri przynoszą €38.964,84 (rok 2018) oraz €57.127,00 (rok 2019), podczas gdy Koloseum w Rzymie — €46.347.249,57 (rok 2018) i €48.465.096,71 (rok 2019). Do przychodów tych należy dodać przychody Muzeum Narodowego w Rzymie (Museo Nazionale Romano) i Narodowej Galerii Sztuki Starożytnej (Galleria Nazionale d'Arte Antica), a także przychody muzeów państwowych należących do Regionalnej Dyrekcji Muzeów Lacjum oraz stanowisk podległych Zarządowi Archeologicznemu Rzymu. Jakkolwiek jest oczywiste, że wpisanie danego obiektu na Listę UNESCO jest i powinno pozostać niezależne od jego potencjału ekonomicznego, to sam fakt rentowności obiektu ma wpływ na realizację celów konwencji UNESCO z 1972 r., w tym na ochronę i promocję wartości kulturowych. Z tego powodu ustalenie potencjału ekonomicznego jest jednym z wymogów wpisu; pieniądze są środkiem do realizacji celów konwencji. Konsekwencją tego stanu rzeczy jest prawny obowiązek zapewnienia niezależnej sprawozdawczości finansowej, co jednakże stoi w prakseologicznej sprzeczności ze skutkami pluralizmu własnościowego: obiekty nie mają obecnie zapewnionej autonomii finansowej ani nie prowadzi się w stosunku do nich odrębnej księgowości.

Reasumując, zjawisko pluralizmu własnościowego 55 włoskich obiektów z Listy UNESCO oraz wpływ tego zjawiska na zarządzanie nimi i ich rentowność nasuwają pytanie o rzeczywistość, a nie tylko deklarowaną pozycję tych obiektów w porządku prawa krajowego.

**Słowa kluczowe:** plany zarządzania UNESCO, konwencja paryska z 1972 r., własność obiektów wpisanych na Listę UNESCO, zarządzanie obiektami wpisanymi na Listę UNESCO, prawo i zarządzanie dziedzictwem kultury