

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

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This article is intended to develop the topic of the relationship between UNESCO sites owned by the Italian state and the profiles of their profitability and sustainability. If it is true that a common characteristic of Italian (and not only) UNESCO sites is the heterogeneity of the legal titles of ownership of such objects, then at the same time, for UNESCO sites belonging to the Italian state (25 out of 55: 45,55%), the heterogeneity of management models is added to the multiplicity of legal regimes. In this case, the plurality of these properties affects both the valorization of the object and the quality of its management. The negative consequences of the fragmentation of the management of a UNESCO state site can be grouped as follows: 1) differences in recruitment approaches; 2) differences in management models; 3) qualitative differences in work experience; 4) differences in economic profitability; 5) differences in the accounting system. If such diversity is hardly understandable even when objects belong to different institutions, it is even less understandable when they belong to the state. The consequence of the absolute heterogeneity of the legal and organizational framework is the heterogeneity of economic results. The gap is huge and unacceptable: The Etruscan tombs of Tarquinia and Cerveteri bring in the following revenue: € 38 964,84 (2018) and € 57 127,00 (2019). At the same time, the income of the Archaeological Park Colosseum is: € 46 347 249,57 (2018) and € 48 465 096,71 (2019). If it is true that the award of UNESCO site status to a cultural monument is independent, as it should be, of its economic capabilities, then it is also true that increasing its economic profitability contributes to the achievement of the objectives of the UNESCO Convention: the protection and valorization of the cultural heritage object. Hence it is necessary to conduct autonomous financial reporting of UNESCO sites, which is currently absent in many state-owned UNESCO sites or they do not have their own accounting and financial autonomy. In conclusion, the topic of the fragmentation of ownership of the 55 Italian UNESCO sites and its impact on governance and financial returns allows us to explore the actual attention that the national legal system actually attaches to UNESCO sites, that is, the importance that, in addition to official declarations, UNESCO sites have in the domestic legal system.

**Keywords:** UNESCO, proprietary fragmentation, management plans, property rights, management of cultural heritage, valorization of the cultural heritage object, UNESCO sites.

## 1. Italian state UNESCO sites: public property

The theme of the fragmentation of the ownership of the 55 Italian UNESCO<sup>1</sup> 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<sup>2</sup>.

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<sup>1</sup> A list of the 55 Italian sites is available at: <http://whc.unesco.org/en/statesparties/IT> (accessed: 15.12.2020).

<sup>2</sup> The literature about UNESCO sites is very extensive. Among all, see: *Guerrieri A.* La tutela dei siti UNESCO nell'ordinamento italiano, tra prospettiva interna e comparata // *Il Diritto dell'economia*. 2019. No. 1. P. 461; *Armao G.* Tutela e valorizzazione integrata del patrimonio culturale dei siti UNESCO. Il ca-

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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 November 16, 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, paragraph 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 the analysis of their position within the Italian government’s organisation of cultural heritage enables not only the concrete management methods of each site to be analysed, 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 inscription of a site by UNESCO, if 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, Convention); 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 such 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 naturalistic 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, San Gimignano; the Amalfi Coast; Venice and its Lagoon. If anything, it is the duty of the public administration to ensure that the diversity of the legal regime does not adversely affect a site’s need for protection or public enjoyment, ensuring uniform enjoyment. If and how this happens will

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so del sito seriale “Palermo arabo-normanna e le Cattedrali di Cefalù e Monreale” // *Aedon*. 2018. No. 1. P. 1; *Camerini X*. L’attuale quadro normativo internazionale della tutela del patrimonio culturale mondiale // *Rivista di Diritto delle Arti e dello Spettacolo*. 2018. No. 2. P. 7; *Uccello Barretta L*. Quale tutela per i siti patrimonio dell’UNESCO? // *Osservatorio AIC*. 2016. No. 1. P. 1; *Migliorati C*. 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; *Garzia G*. 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; *Marchetti S*. La gestione dei Siti UNESCO di Villa Adriana e di Villa D’Este a Tivoli // *Ibid*. 2011. No. 1. P. 1; La globalizzazione dei beni culturali / a cura di L. Casini. Bologna: Il Mulino, 2010; and there, in particular, the essay of: *Macchia M*. La tutela del patrimonio culturale mondiale: strumenti, procedure, controlli // *Ibid*. P. 57–85.

On the protection of cultural heritage against illicit trafficking, cfr.: *Frigo M*. Approaches Taken by the Security Council to the Global Protection of Cultural Heritage: An Evolving Role in Preventing Unlawful Traffic of Cultural Property // *Rivista di diritto internazionale*. 2018. No. 4. P. 1164.

be the theme of this contribution, which will analyse the concrete management methods and their results, including the financial ones.

Italian jurisprudence has dealt with Italian UNESCO World Heritage 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 February 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 constitutional legitimacy of articles 134, 136, 139, 140 141 and 142, paragraph 1, of the Legislative Decree no. 42, raised with reference to articles 9 and 117, first paragraph 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, paragraph 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.

This principle is followed by the majoritarian strand of administrative jurisprudence (Regional Administrative Court of Lazio, Latina, section I, 30 January 2020, no. 46; Tar Campania, section 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 Regional Administrative Court of Toscana, section I, 12 December 2019, no. 1694, “the inclusion in the UNESCO list does not entail any automation 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 strongly majoritarian jurisprudence is partially contradicted by other rulings which have to date remained isolated. According to Regional Administrative Court of Lazio, Rome, section II-quater, 29 May 2020, no. 5757, for example, the UNESCO Convention of 1972 would oblige the State in which the site declared “World Heritage” is located to ensure its safeguarding regardless of any formalized binding measures. According to the 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 ‘particularly’ important cultural interest pursuant to art. 13 of that same Code: the principle of proportionality and reasonableness requires to ensure a degree of protection corresponding to the degree of value of the protected asset”. According to the 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 the 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 (25 out of 55: 45,55%), one can observe how the heterogeneity of legal ownership is also associated with a heterogeneity of management models. The effects on the management of the fragmentation of a given UNESCO World Heritage site, owned by the State, can be summarized as follows:

1) differences in management models; 2) differences in the recruitment of staff, especially of the 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; 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 in 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, by 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 develops in a single Municipality and, moreover, only a few meters apart (as in the case of Caserta).

If one takes a wider look at all of the 55 Italian World Heritage 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 (think of the Amalfi Coast), as well as sites where the property is public and private (Venice and its lagoon); sites belonging to foreign states that insist on the Italian territory since they are geographically located within it (Vatican City). When the enjoyment of the sites occurs mainly by admiring its exterior, as in the case of the 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, the 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.

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; Etruscan necropolises of Cerveteri and Tarquinia) that feature a traditional model of direct management by the site owner, with the exception of 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 then 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 to immediately receive financial resources but also to clearly report the expenses.

Within the same Italian state, other UNESCO World Heritage sites have been identified by the organizational regulations as institutes with a special autonomous status, pursuant to art. 33, paragraph 3, letter 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 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 World Heritage 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, the UNESCO site includes both institutes with special autonomy and museums without any autonomous profile: this happens, for example, for the site “Venice and its Lagoon” which includes both the Accademia Gallery of Venice — which has special autonomy pursuant to art. 33, paragraph 3, letter a) of Prime Ministerial Decree no. 169/2019 — and three museums (Galleria “Giorgio Franchetti” alla Ca’ d’Oro; the Archaeological Museum, the Museum of Oriental Art; Museum of 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 has no financial and accounting autonomy, but is 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 which could be

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<sup>3</sup> So-called statutory autonomy is entirely negligible, devoid of any practical consequence and improperly attributed to a profile of autonomy of the institute or place of culture (the statute, in fact, is not approved by the institute but by the top political authority; which 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 Consiglio di Stato, section V, 24.3.2020, No. 2055, part. § 4.1.2 and § 5.

On the normative level, for the distinction between museum-organs and museum-bodies, see d. m. 23 December 2014 about “Organizzazione e funzionamento dei musei”. In particular, on accounting autonomy, see article 3; on museums with special autonomy, including accounting and financial autonomy, distinguished among them, see article 8. For state museums not endowed with special autonomy, which are not included in Annex 2 of the Ministerial Decree of 23 December 2014, and which belong to the Regional Museums Directorate of the respective Region, see also articles 42 and 43, D. P. C. M. 2 December 2019, No. 169.

In the literature: *Tarasco A. L.*: 1) *Diritto e gestione del patrimonio culturale*. Bari; Roma: Laterza, 2020. P. 147; 2) *Patrimonio culturale // Enciclopedia italiana di scienze, lettere ed arti*. Roma, Istituto della Enciclopedia Italiana fondato da Giovanni Treccani, 2020. Vol. II. Appendice X; 3) *Sostenibilità del debito pubblico e gestione del patrimonio culturale (prima e dopo il coronavirus) // Cura e tutela dei beni culturali / eds G. Esposito, F. Fasolino*. Padova: Wolters Kluwer, Cedam, 2020. P. 297; 4) *Il patrimonio culturale. Concorso, problemi, confini*. Napoli: Editoriale scientifica, 2019.

defined as mixed) is the direct management model of property by the MiBACT Regional Museum Management (according to the 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), rather, only of certain aspects of the 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. Even from this point of view, if you analyze the financial returns of the various Italian UNESCO World Heritage sites that belong to the Italian State, whether exclusively or not, and are entrusted to MiBACT, one uncovers 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 towards individual sites. Reading the data, it turns out that the recognition of the site as a “world heritage site” does not lead to the overcoming of the notorious gap between sites of greater attraction and poorly visited sites. Yet, by presupposing an equal amount of dignity for all of them, also thanks to the UNESCO recognition, the different levels of tourism appeal highlight the 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 divide between sites is huge. The state UNESCO elements which are part of the site “City of Vicenza and the Palladian Villas of the Veneto” (namely Villa Badoer of Fratta Polesine) only made € 4638,10 (in 2019) and € 5346,50 (in 2018) from the sale of tickets. The revenue of Tempietto sul Clitunno, in Perugia, as part of the serial site “The Longobards in Italy. Places of Power” range between € 15 thousand (€ 14 897,00 in 2019 and € 15 668,00 in 2018). Similarly, revenue for the site “Etruscan Necropolises of Cerveteri and Tarquinia” reach a couple 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 the ticket revenues (€ 161 415,00 in 2019 and € 159 442,90 in 2018).

At the top of the ideal classification of Italian state World Heritage sites for 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, Palazzo Altemps, 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, just the archaeological site of the Colosseum 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 Regional Direction Museums Lazio and the sites of the Archaeological Superintendence of Rome, all included in the above-mentioned “Historic Centre of Rome” site.

<sup>5</sup> Tarasco A. L. Diritto e gestione del patrimonio culturale.

<sup>6</sup> L'Italia dei musei. Rome // Istat. 2019. Available at: [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: 12.12.2020).

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

As anticipated, measuring the financial proceeds of sites of exceptional universal value for the entire 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 those 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 the financial return is a measure of the effective use of the sites (also of UNESCO sites), since the area of financial return deriving from marketing and *fundraising* activities is very small, despite the flood of publications on the best practices observable at the moment.

Secondly, if it is true that the recognition of the “outstanding value” of the UNESCO site is independent not only of the property ownership regime but also of its profitability, it is also true that the increase in its income potential constitutes a tool for the full realization of the aims of the UNESCO Convention: the protection and enhancement of heritage. The 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 in the 1972 Paris Convention

The 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, part 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, part 2). For this purpose, Law no. 77 of 20 February 2006 containing “Special measures for the protection and fruition 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 interventions to support the enhancement, communication and use of the Sites and of the elements themselves (art. 4)<sup>8</sup>. The increase in profitability is, therefore, one of the useful means to implement the Convention itself.

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.

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<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), is 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, paragraph 2, Law No. 77/2006). Since its entry into force (2006) to 2018, 335 projects have been funded by the MiBACT, for a total of € 27 236 263,06. Over four million euros 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: Il Libro Bianco: Legge n. 77/2006 / Ministry for Cultural Heritage and Activities and Tourism. Soveria Mannelli: Rubbettino, 2013.

The implementation methods to access the support measures are defined by the notice of the Secretary General 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 to report on the implementation of the approved projects.

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 (San Leucio complex), the absence of legal, financial and accountant autonomy (Castel del Monte; Leonardo's Last Supper; Etruscan Necropolises of Cerveteri and Tarquinia; Early Christian monuments of Ravenna) represents an unjustifiable organizational arrangement. Indeed, the absence of such autonomy prevents from the outset such activity from being accountable and limits possible dynamism in the 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 income potential.

Unfortunately, the Italian management tradition has always stood out for notoriously inverting the relationship between means and ends, unjustly believing that the maximization of the ends requires the sacrifice of the financial dimension. The misunderstanding of the 1972 UNESCO Convention has accentuated this prejudice, perhaps giving excessive importance to the "symbolic value 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 dredging public resources. This is naturally a misunderstanding that is fuelled by the 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. In turn, an adequate organizational architecture that ensures good management is perfectly instrumental to achieving these purposes which are perfectly harmonious with respect to 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 which the Convention is based on is "the importance... of safeguarding this unique and irreplaceable property to whatever people it may belong", "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 Paris 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 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 additional and not replacement support. Indeed, precisely in consideration of the priority of the financial commitment of the State and that only subsidiary and possible international Organization, the theme of self-maintenance of the properties declared cultural or natural heritage of humanity assumes strategic importance: in fact, if it is true that the recognition of a UNESCO site is independent, and rightly so, of its income potential, it is true that the increase in its self-maintenance capacity is instrumental with respect to the achievement of the aims of the UNESCO Convention (protection and enhancement).

As anticipated, the legal framework deriving from the 1972 UNESCO Convention appears fully compliant with the Italian constitution: the increase in the profitability of the site (whether it is a UNESCO site or not) represents one of the means of management prefigured by the Constitution (art. 97, paragraphs 1 and 2 of the Italian Constitution) in order to achieve the ultimate aims of cultural promotion, which is provided by art. 9 of the Constitution. While respecting the primacy of the ultimate goal (cultural promotion and, therefore, the inner growth of man as a visitor of the site), the importance of the means shouldn't be underestimated and deemed an instrument of "commodification". Indeed, the means prefigured by the Constitution to achieve any public purpose are represented by the "efficiency" (art. 97,

paragraph 2, Italian Constitution; see below, in this paragraph) of administrative activity; this concept translates into the obligation of each Administration, including the holder of cultural goods, to act according to *efficacy* (relationship between expected and achieved objectives), *cost-effectiveness* (relationship between resources used and resources available) and *efficiency* (relationship between objectives achieved and means employed). In turn, the obligation to ensure “efficiency” is linked to the precept of paragraph 1 of that same art. 97 of the Constitution which commits all public administrations to compete to ensure the equilibrium of balance sheets and the sustainability of the public debt.

If this is the constitutional framework, it is clear that this *modus operandi* is barred from the outset when there isn't even the possibility of accurately reporting the management of the UNESCO site in financial and accounting terms due to the absence of a budget and the impossibility of assuming autonomous spending commitments (as is the case for the Etruscan Tombs of Cerveteri and Tarquinia, as well as in Castel del Monte). While this is a common limit for hundreds of Italian institutes and places of culture, it appears more remarkable in the case of UNESCO sites that art. 1 of Law no. 77/2006 solemnly declares “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 the internal organization, unlike for the two UNESCO World Heritage sites “Villa Adriana” and “Villa d'Este”, unified in a single site with special autonomy since 2014 (Prime Ministerial Decree no. 171/2014).

## **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 accounting reporting), others offer evidence of different management plans, inspired by a healthy outsourcing of functions.

In some cases, as for 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 the area which has been declared a world heritage site (i. e. the Su Nuraxi Archaeological Area, the Casa Zapata Museum Center and the Giovanni Lilliu Cultural Heritage Communication and Promotion Center).

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); which 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 the private law entity in which various public actors participate as well as the 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 decided to establish *ad hoc* legal entities, pursuant to art. 112 of Legislative Decree no. 42 of January 22, 2004, to which enhancement activities can be exclusively entrusted.

This is what happened for the “Early Christian Monuments of Ravenna”. These include the Basilica of Sant’Apollinare in Classe, the Baptistery of the Aryans, 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 Ministerial Decree of December 23, 2014 on “Organisation and operation of state museums”; this leads to limitations of a financial (giving and receiving money), accounting (reporting revenues and costs), and legal (adopting measures and entering into contracts) nature. Nonetheless, ticket revenues in 2018 (€ 1 108 685,00) decreased in 2019 to below 800 thousand euros (€ 797 836,00); however, the overall costs and therefore the quantification of losses are unknown.

The revenues of the “Archaeological Park of Classe RavennaAntica” Foundation are more than double the above amount. This foundation was established with the purpose of enhancing, also 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”. 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 while in 2017 they were € 1 818 056. Considering also the costs (€ 2 363 570 in 2018 and € 1 700 205 in 2017), the Foundation achieved a net profit of € 1 248 in 2018 and € 1 919 in 2017 (although this result was also achieved thanks to the contributions from various public bodies which amounted to € 1 134 574 in 2018 and € 992 239 in 2017). Therefore, whilst focusing on the same territory that boasts the 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 RavennaAntica Foundation, state revenues appear to be about half of those made 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 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 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 that has assumed the connotation of a “commercial entity” (also if not for statutory purposes).

This stage in the life of the Ravenna Antica 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, the 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 (article 9 of the Constitution) leaves unresolved the problem of finding adequate financial resources (article 97 of the Constitution). This is the case even where cultural resources, all things 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.

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 article 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 fully well-established, has scarcely been experimented on a large scale in administrative practice, but the few examples of such cases in the field of UNESCO have all been successful.

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## Фрагментация собственности и государственно-частное управление объектами ЮНЕСКО, принадлежащими итальянскому государству

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Статья посвящена таким аспектам объектов ЮНЕСКО, принадлежащих итальянскому государству, как их прибыльность и устойчивость. Если общей характеристикой итальянских (и не только) объектов ЮНЕСКО является неоднородность юридических титулов обладания такими объектами, то в то же время в отношении объектов ЮНЕСКО, принадлежащих итальянскому государству (25 из 55: 45,55%), к множественности правовых режимов добавляется неоднородность моделей управления. Плюрализм упомянутых свойств влияет как на валоризацию объекта, так и на качество управления последним. Негативные последствия фрагментации управления государственным объектом ЮНЕСКО подразделяются на следующие различия: 1) в подходах к набору персонала; 2) в моделях управления; 3) в опыте работы; 4) в экономической рентабельности; 5) в системе бухгалтерского учета. Если такое разнообразие едва ли понятно даже тогда, когда объекты принадлежат разным институтам, то оно еще менее понятно, когда они принадлежат государству. Следствием абсолютной неоднородности правовой и организационной базы является неоднородность экономических результатов. Разрыв огромен и недопустим: этрусские гробницы Тарквинии и Черветери приносят следующий доход: 38 964,84 евро (2018) и 57 127,00 евро (2019). В то же время доход археологического парка Колизей составил 46 347 249,57 евро (2018) и 48 465 096,71 евро (2019). Если верно, что присуждение культурному памятнику статуса объекта ЮНЕСКО происходит независимо от его экономических возможностей (как это и должно быть), то верно и то, что повышение его экономической рентабельности способствует достижению целей Конвенции ЮНЕСКО: охране и валоризации объекта культурного наследия. Отсюда вытекает обязанность ведения автономной финансовой отчетности объектов ЮНЕСКО, которая в настоящее время отсутствует во многих государственных объектах ЮНЕСКО, до сих пор не имеющих собственной бухгалтерской и финансовой автономии. В заключение отмечается, что тема фрагментации права собственности на 55 итальянских объектов ЮНЕСКО и влияния фрагментации на управление и финансовую отдачу позволяет выявить то фактическое значение, которое национальная правовая система на самом деле придает объектам ЮНЕСКО, т.е. значение, которое, помимо официальных деклараций, объекты ЮНЕСКО имеют во внутренней правовой системе.

**Ключевые слова:** ЮНЕСКО, фрагментация собственности, планы управления, управление культурным наследием, валоризация объекта культурного наследия, объекты ЮНЕСКО.

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