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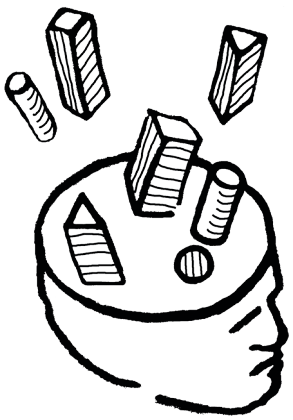

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Studi e ricerche

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Environmental Sustainability in the European Union: Socio-Legal Perspectives

Edited by
Serena Baldin and Sara De Vido

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Biodiversity as a common good: insights into the Natura 2000 network and traces of a nature-based approach in the European Union

SERENA BALDIN

1. Introduction

At international level, biological diversity is conceived as «the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems» (Art. 2, United Nations Convention on Biological Diversity of 1992). Biodiversity is worthy of protection because its conservation is considered a common concern of humankind. In other words, if not considered adequately, it will become a problematic issue with an enduring negative impact on future generations (for the differences between the concept of common concern of humankind and the principle of common heritage of mankind, see Bowling *et al.* 2016: 3). As a consequence, at national level biodiversity conservation should imply the adoption of policies addressed towards intergenerational equity, solidarity, shared decision-making processes and accountability.

Within the European Union (thereinafter EU), the competence of this supra-national organisation on environmental issues dates back to the Single European Act of 1987, when an «Environment Title» provided the first legal

basis for an environmental policy with the aim to preserve the quality of the environment, to protect human health, and to ensure the rational use of natural resources (Art. 130 R).

Currently, the EU environmental policy is based on Articles 191 to 193 of the Treaty on the Functioning of the EU (TFEU). Art. 11 TFEU also requires environmental protection to be taken into account within other EU policies. Indeed, according to Art. 2C, para. 2e, TFUE, the environment is included in the category of the shared competences between the EU and its member states. It means that EU countries exercise their own competences where the EU does not, or has decided not to, its own competences.

Regarding the notion of biodiversity, it is implicitly deduced in the reference to diversity included in Art. 191 TFEU. According to its para. 2, the EU environmental policy «shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union». With respect to secondary law, to date the EU has not approved a framework directive on biodiversity. As a matter of fact, the EU framework on the protection of biodiversity has been described as an «amalgam of directives, regulations, plans and programmes», also referred to in other sectors, such as the Common Agricultural Policy, the Common Fisheries Policy and the Common Commercial Policy (de Sadeleer 2017: 415, 418).

The EU biodiversity strategy to 2020[1] has the goals of preventing the loss of biodiversity and the degradation of ecosystem services as well as of restoring them in so far as feasible. Moreover, it has the goal of stepping up the EU contribution to averting global biodiversity loss. The main tool provided to pursue these objectives is the full implementation of the Birds and Habitats Directives, adopted under the legal basis of Art. 192, para. 1, TFUE[2].

The Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds[3] relates to the conservation of all species of naturally occurring birds in the wild state, while the Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and

[1] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Our life insurance, our natural capital: An EU biodiversity strategy to 2020*, 3.5.2011, COM (2011) 244 final.

[2] That states: «The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191».

[3] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, in OJ L 20, 26.1.2010, 7-25; the first version of the Birds Directive dates back 1979.

flora[4] aims to contribute to biodiversity protection through the conservation of natural habitats and of wild fauna and flora. Conservation, as defined in Art. 1(a) of the Habitats Directive, means «a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status». Although other provisions refer to restoration, the Directive gives no guidance on the parameter for returning ecosystems to be restored (Richardson 2016: 280).

The most ambitious EU project in the environmental field is the building of the Natura 2000 network. The Habitats Directive is the legal basis of the Natura 2000 network, which actually covers almost a fifth of the land area of the EU and over 250,000 square kilometres of sea surface. The network is inspired by the objectives of three international conventions: the U.N. Convention on Migratory Species (1979), the Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (1979), and the U.N. Convention on Biological Diversity (1993). The goal of this network is to create a dynamic system of protected sites linked together for the conservation of biodiversity and especially for the protection of habitats and of animal and plant species (Prieur 2003; Amirante 2003).

Having concisely outlined these aspects, the chapter unfolds as follows. Section 2 introduces some legal aspects of the Natura 2000 network and two recent judgements rendered by the Court of Justice of the EU (CJEU), namely the *Białowieża Forest* case of 2017 and the *Tapiola* case of 2019. Section 3 briefly illustrates some theoretical assumptions on the commons and makes reference to traditional practices carried out in forestry and agriculture in the protected areas. These practices are characterised by the management of collective pool resources, a feature attributable to the legal category of commons or common goods. A common good is a shared resource, co-managed and used by a community and that embodies social relations based on cooperation and mutual dependence. Typical examples are water, soil, forests and biodiversity. Section 4 introduces the issue of ecocentrism, giving a few examples of the application of the nature-based approach in the Natura 2000 sites. Lastly, Section 5 concludes with some reflections on the possible explicit recognition of the nature-based approach at EU level.

2. The Natura 2000 network

The Natura 2000 network represents a turning point in the EU environmental policy by virtue of its widespread approach, in the sense that protected areas are

[4] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in OJ L 206, 22.07.1992, 7-50.

no longer considered as islands outside residential areas, but rather as parts of a more comprehensive plan of territorial management. The Natura 2000 sites are selected on the basis of technical-scientific criteria with the aim to ensure a long-term survival of protected species and natural habitats according to the Birds and Habitats Directives. Once fully operational in all member states, the Natura 2000 network is enshrined in two legal tools: the so called Special Protection Areas (SPAs), regulated by the Birds Directive to protect the habitats of rare or vulnerable bird species and migratory species listed in its Annex I; and the Special Areas of Conservation (SACs), regulated by the Habitats Directive to protect particular non-birds habitats of interest. Regarding the stages of the selection of SACs, firstly each member state proposes a national list of sites; then, the Commission adopts a list of Sites of Community Importance (SCIs); lastly, the SCIs are designated at national level as SACs (Amirante 2003; De Vido 2016; de Sadeleer 2017).

In relation to the engagement of citizens in environmental decision-making, it must be stressed that the consultation procedures for the selection of the Natura 2000 sites are not set out at EU level. Therefore, the member states have adopted different approaches: in some cases, the identification of sites has been marked by in-depth discussions with owners and users of the areas involved, while in other cases the consultations with the interested parties have been scarce or null.

Once the sites have been designated, member states are required to provide suitable conservation measures and to avoid the deterioration of these areas and whatever significant damage to the species. It is noted that Art. 6 of the Habitats Directive plays a crucial role for the management of the Natura 2000 sites, insofar as it assigns to the member states the task of establishing the necessary activities for the conservation of the sites. Pursuant to its para. 1, the elaboration of necessary conservation measures involves the design of appropriate management plans and the adoption of appropriate statutory, administrative or contractual measures to fulfil the ecological requirements listed in Annex I and II of the Directive. With respect to the appropriate evaluation referred to para. 3, it is stated that any plan or project likely to have a significant effect on the management of a site shall be subject to appropriate assessment of its implications. The outcome of this assessment is legally binding for the competent national authority and it conditions its final decision.

With regard to the adoption of suitable statutory, administrative or contractual measures, it can be emphasised that contractual tools may include consensual forms of site management, such as contracts with private individuals or other negotiated planning tools (Amirante and Gusmerotti 2003). In order to be aligned with the 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental

Matters, in 2003 the EU adopted the Directive 2003/35/EC to guarantee the right of public participation in environmental matters (Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC – Statement by the Commission, in OJ L 156, 25/06/2003, 17-25). In the aftermath of this Directive, it has been noted that participatory approaches have emerged at national level, enforcing the acceptability of the Natura 2000 policy among stakeholders (Baffert 2012). These participatory mechanisms are similar to those envisaged for commons, since the necessary involvement of public bodies, private owners and local stakeholders is one of their most important characteristics.

Given the difficult implementation of Art. 6 in the member states, the European Commission has made available a specific Interpretation Guide, now updated to 2018 (Managing Natura 2000 sites. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC, 21.11.2018, C(2018) 7621 final). This Guide is intended to assist member state authorities, as well as anyone involved in the management of Natura 2000 sites and in the permit procedure, in the application of the Habitats Directive.

What are the most problematic issues related to the Natura 2000 sites that more often have been brought before the CJEU? The last two judgments are illustrative in this regard. The first decision concerns the site of the Białowieża forest in Poland, in the case C-441/17 R, *Commission v. Poland*, 17 April 2018. Because of the constant spread of a tree parasite, in 2016 the Polish Minister for the Environment authorised an intense harvesting of wood in the Białowieża forest district, and the carrying out of active forest management operations such as sanitary pruning, reforestation and restoration, in areas where any intervention was previously excluded. In 2017, the European Commission brought an action before the CJEU claiming that the Polish authorities had not ensured the integrity of the Białowieża forest during those operations, disregarding the adoption of the necessary measures for the conservation of this Natura 2000 site.

The Court (Grand Chamber) recognised the failure of the Republic of Poland to fulfil its obligations under: a) Art. 6(3) of the Habitats Directive, by adopting an appendix to the forest management plan without ascertaining that that appendix would not adversely affect the integrity of the SCI and SPA constituting the Białowieża forest Natura 2000 site; b) Art. 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive, by failing to establish the necessary conservation measures corresponding to the ecological requirements for which the SCI and SPA constituting the Białowieża forest Natura 2000 site were designated; c) Art. 12(1)(a) and (d) of the Habitats Directive, by failing effectively to

prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in this Natura 2000 site; d) Art. 5(b) and (d) of the Birds Directive, by failing to ensure that they will not be killed or disturbed during the period of breeding and rearing and that their nests or eggs will not be deliberately destroyed, damaged or removed in the Białowieża forest district (for a comment, see Koncewicz 2018).

In particular, it has been reaffirmed that the impact evaluation of a plan or project to be adopted in a site has a crucial importance, since the assessment is to be appropriate to meet any scientific doubt regarding possible detrimental effects of a measure. It must be kept in mind that, especially in this sector, information and data available for a decision to be taken by the competent authorities are often incomplete or unclear. Basically, a plan must comply with the precautionary principle enshrined in Art. 191 TFUE, which aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. In other words, if, after having considered all the scientific data available, significant doubts on the negative impact of a plan still persist, it should not be approved.

The second decision concerns wolf hunting in Finland, in the case C-674/17, *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo – Kainuu ry*, 10 October 2019. The practice of wolf hunting is aimed at preventing attacks against dogs and at increasing the residents' sense of security. Moreover, it is justified by the need to prevent illegal poaching. The case arises from a request for a preliminary ruling submitted by the Supreme Administrative Court of Finland concerning the interpretation of Art. 16(1)(e) of the Habitats Directive. Art. 12 of the Habitats Directive requires member states to establish a strict protection regime for certain animal and plant species, including wolves, while Art. 16 allows states to derogate from that strict protection system. Thus, the derogation may allow the deliberate killing of wolves but under specific conditions, namely: there must be no satisfactory alternative; the derogation must not be detrimental to the maintenance of the species at favourable conservation status in their natural habitat; and the derogation may only be applied for specific reasons. Over the years, this provision has been brought to the attention of the Luxembourg judges several times, and the case law makes it clear that any derogation should be interpreted strictly.

The *Tapiola* case significantly limits the possibility that hunting can be used as a management tool for wolf conservation. From the documents made available to them, the judges argue that it is not apparent that the conditions under which the derogation permits were granted and the manner in which compliance with those conditions is monitored ensure the respect of Art. 16(1)(e) of the Habitats Directive regarding wolf hunting in Finland. Moreover, this is a welcome decision because, for the first time, the CJEU has explicitly applied the precautionary principle in the context of fauna conservation.

The Court (Second Chamber) has affirmed that the Habitats Directive must be interpreted as precluding the adoption of decisions granting derogations where: a) the objectives invoked in support of such derogations are not defined in a clear and precise manner and where, in the light of rigorous scientific data, the national authority is unable to establish that the derogations are appropriate with a view to achieving that objective; b) it is not duly established that their objective cannot be attained by means of a satisfactory alternative, the mere existence of an illegal activity or difficulties associated with its monitoring not constituting sufficient evidence in that regard; c) it is not guaranteed that the derogations will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural area; d) the derogations have not been subject to an assessment of the conservation status of the species concerned and of the impact that the envisaged derogation may have on it; e) not all conditions are satisfied in relation to the taking, on a selective basis and to a limited extent, under strictly supervised conditions, in limited and specified numbers, of specimens of the species, compliance with which must be established in particular by reference to the population level, its conservation status and its biological characteristics.

Basically, the derogations must be granted in accordance with the precautionary principle and with other very strict requirements (for comments, see Heslop and Gallego 2019; Bétaille 2019).

3. The commons discourse: an overview

In recent years, legal scholars have shown an increased interest in the commons discourse, aimed at resisting enclosures, that is to say privatisations (Bailey *et al.* 2013; Marella 2013). The goods included in this concept are very diverse and, as a legal category, the commons are not consolidated except in a few states, mainly in Latin-America, where the practices of collective management of lands and water resources have been formalised at constitutional or legislative level (Foroni 2014; Ariano 2016). In addition to these experiences, there are worthwhile contributions to the current debate on the features of commons and proposals for their legal recognition in European countries. There are also movements aimed at requesting the recognition of commons at EU level, with the conviction that this could help reinvigorate Europe (Hammerstein and Bloemen 2016).

The paradigm of commons involves a redefinition of what should remain in the market and what should be left out. This assertion helps understand why several scholars see the commons as an alternative to the current economic model and the expansion of capitalism. In a broader perspective, commons are

conceived as key elements of the social-environmental issues and the related conflicts they trigger (Checa-Artasu 2019). In this regard, commons affect the (Western) concept of sustainable development, which is based on the supposed balance between economic growth, environmental protection, and social progress (for different visions related to the concept of sustainability, which do not include development, see Kothari *et al*. 2019).

In essence, commons are conceived of as a third option in addition to the concepts of public and private ownership or to the state/market dichotomy. They are resources to manage collectively according to the logic of distribution of power and with an inclusive and participatory approach. The Nobel prize Elinor Ostrom owes her reputation to the demonstration that people are able of developing rules and institutions that allow for a sustainable and equitable management of shared goods (Ostrom 1990). Commons are resources that, because of their characteristics, challenge the dominant idea of ownership and require joint responsibility; they are irreplaceable with other goods; and the access to these resources cannot be restricted, due to the fact that commons belong to a community which manage them taking into account collective needs. What must be kept in mind is that «the governance of commons works at local level only» (Carducci 2018: 48).

It is the use of a resource that defines whether it can be considered a common good or not (Scott Cato and Mattei 2016). Commons are relational resources to be used collectively, whose value of utility prevails over the value of exchange (Nivarra 2013). The reason for this lies in the fact that commons «express utilities functional to the exercise of fundamental rights as well as the free development of the person, and they are based on the principle of intergenerational safeguard of utilities» (Commissione Rodotà 2007).

It is worth noting that the community is not conceived of as a formal owner of a common good; a community is entitled to manage and to benefit from it independently if the owner is a public entity or a private individual or company (Ciervo 2012). In other words, the common feature of commons is given by the specificity of the ownership of the good. This is a particular type of ownership by an indistinct group of individuals, and therefore does not coincide with formal property, often a public one but not suitable (or no longer suitable due to privatisation constraints) to ensure the satisfaction of the general interest. This consideration leads to a relevant consequence in the context of justiciability: since a community is entitled to manage a common good, the legitimacy to bring an action before a court in defence of its rights as user should be guaranteed for all (Commissione Rodotà 2007).

A fundamental aspect in the debate on commons addresses the participation of users in the collective management of these types of goods. There is a growing consensus on the need of a new participatory model of management,

able to involve local communities alongside public and private entities and on equal terms in the decision-making process and in the stewardship of commons (Lucarelli 2010; Somma 2011). This is a requirement that gives value both to participatory democracy and to horizontal subsidiarity. In addition, the commons approach considers people as «actors deeply embedded in social relationships, communities, and ecosystems. This holistic perspective also tends to overcome dominant subject-object dualisms and to consider human activity as a part of the larger living bio-physical commons» (Hammerstein and Bloemen 2016: 63).

The current EU approach is far from the paradigm of commons. Nevertheless, there have been some efforts to redirect EU policies towards a commons configuration through the request of adoption of measures consistent with this perspective, namely a vision that «takes a community and ecosystem perspective, placing issues of stewardship, social equity and long-term stability at the forefront of policy» (Bloemen and Hammerstein 2015). In this respect, the draft of a European Charter of the Commons is an attempt to elaborate a new legal framework for the EU, addressed towards the recognition of the right of citizens to participate in the use and the management of commons, with the aim of tackling the threats to the public interest posed by privatisation (Simonati 2018; for references on water as a commons in the EU, see Varvello and Montaldo 2017).

In the Natura 2000 sites, activities referable to the category of common goods can be found. Traditional forestry, agricultural and pastoral practices are examples of the shared management of natural resources by local communities. The EU is well aware of the link between the environment and cultural heritage, expressed through the safeguarding of traditional knowledge and landscapes. In this respect, in the implementation of the Habitats Directive the broadest participation of local communities should be guaranteed in the planning of conservation measures and in the management arrangements addressed to the Natura 2000 sites. The aim of this is to safeguard local cultures and ancestral knowledge expressed in good practices on natural resource management.

Given that the measures adopted pursuant to the Habitats Directive have «to take account of economic, social and cultural requirements and regional and local characteristics» (Art. 2, para. 3), the question arises as to whether a traditional practice is in contrast with the goal of promoting the maintenance of biodiversity. It is worth pointing out that traditional activities, such as cutting trees or extracting peat, are allowed only on condition that they do not have a negative impact on species or habitats. This leads to the possible downsizing of local communities' interests in favour of a greater one, namely biodiversity. This helps understand that traditional methods of natural resource management do not always have a positive impact on biodiversity, as they could jeopardise the objective of its conservation.

The integrated management of the Natura 2000 network serves biodiversity, and biodiversity is conceived of as inseparable from the general objective of sustainable development, as mentioned in the recitals of the Habitats Directive. It is asserted that the objectives of Natura 2000 are in line with sustainable development due to the fact that Natura 2000 is a long-term conservation project of natural resources in Europe. It is a project that implies economic benefits as clearly affirmed by the European Commission: «By conserving and enhancing its natural resource base and using its resources sustainably, the EU can improve the resource efficiency of its economy and reduce its dependence on natural resources from outside Europe» (EU biodiversity strategy to 2020).

This means that the Natura 2000 network takes into account the importance of biodiversity without sacrificing the economic and social needs of the present generation. According to this view, biodiversity conservation is compatible with the use of soils and territories, and this compatibility is the precondition for their sustainable and enduring use. But this assumption clashes with the final evaluation of the sixth EU Environment Action Program of 2013, in which one reads that unsustainable trends continue in four priority areas: nature and biodiversity; climate change; environment and health; natural resources and waste. As argued by de Sadeleer, «the road to the reconciliation of economic development with the conservation of natural resources under the aegis of the principle of sustainable development – a key EU treaty objective – remains strewn with pitfalls» (de Sadeleer 2017: 427).

Biodiversity loss as well as climate crisis can no longer be faced on the basis of an ideal balance between economic and environmental interests in which, in reality, the former prevail all too often and where the concept of sustainable development has become an ambiguous guiding principle in environmental law, which can lead to misinterpretations (Rühs and Jones 2016: 1).

4. Ecocentric ethics and traces of a nature-based approach in the European Union

In the debate on the conservation of biodiversity, ethical approaches to ecological issues come into play, namely anthropocentrism and ecocentrism. Anthropocentrism is based on the separation between human beings and nature. This perspective, which is not necessarily in opposition to nature conservation, focuses on people and their needs and assesses nature through this point of view. The anthropocentric frame is at the basis of environmental strategies and of the role of law in ecological issues, and it permeates the concept of sustainable development. Conversely, in the ecocentric perspective, human beings are not conceived of as superior to their surroundings and are inextricably linked

to environmental systems and their abiotic aspects (Statement of Commitment to Ecocentrism 2019). Ecocentric environmental ethics disagree on the effects of the economic system, in the terms in which the law is addressed to guarantee only a conditional protection to the environment, to satisfy economic interests primarily. This leads to the necessary rebalancing of the relationship between humans and nature. The holistic perspective of commons appears to be in tune with the ecocentric approach. And it is in tune with the human and nature-centered perspective on which the Natura 2000 network is based.

From a legal point of view, supporters of ecocentrism are calling for the affirmation of ecological law in place of environmental law as the latter is considered unable to reverse the negative trends which are affecting the Earth. Their proposal is based on the concept of sustainability. As explained by Bosselmann (2016: 16), sustainability predates the concept of sustainable development. Sustainability derives from the notion of *Nachhaltigkeit* (sustainability), coined in 1713 by a German scientist, Hans Carl von Carlowitz, to indicate the system of forest management in which the preservation of natural systems supports human life. It is not to be confused with the notion of sustainable development, because the essence of sustainable «is neither 'economic sustainability', nor 'social sustainability', nor 'everything sustainable', but 'ecological sustainability'» (Bosselmann 2016: 64). According to this theoretical perspective, advocates of ecological law support measures of conservation with a nature-based rights approach. The idea of the rights of nature has been catching on gradually in this last decade, after several years of disregard since this theory was put forward by Christopher D. Stone in the Seventies (Stone: 1973/2010; on the current legal circulation of the idea of nature's rights, see Baldin 2014). The nature-based approach relies on a conceptual frame in which securing the right of the natural environment itself to be healthy and thrive also means securing the human right to a healthy environment, and in which the integrity of the ecosystems is more important than their economic value. The ecosystem approach, envisaged in the U.N. Convention of Biological Diversity, has a point in common with the nature-based approach in the terms in which it is defined as «a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way» (Secretariat of the Convention on Biological Diversity 2004: 6).

Can we trace cases of ecocentric or nature-based approaches within the Natura 2000 network? Given that ecocentrism is inherent in the cosmovision of indigenous peoples, as a first example it can be reasonably supposed that in the Natura 2000 sites in Northern Finland, where the indigenous Sámi live, this ethical approach is still prevalent (Markkula *et al*. 2019). As a second example, one may point out the Nassogne forest in Belgium, part of a Natura 2000 site. In

recent years, a project of transformation of the forest with the aim of restoring and improving the forest and biodiversity as naturally as possible has been set up. For its management, an innovative model of governance has been proposed at the social, institutional and environmental levels, following an integrated approach according to the commons paradigm (Piron 2016).

As a third example, ecocentrism also seems to be present in Italy, in the protected areas regulated by law no. 394 of 1991, which was approved a few months before the Habitat directive (which in Italy was adopted in 1997 with the Presidential Decree no. 357, subsequently modified and integrated by the Presidential Decree no. 120 of 2003). In the parks and natural reserves regulated by this law, the interest of biodiversity conservation is superior to any other public or private interest. A distinguished jurist and former Constitutional Court judge, Paolo Maddalena, has argued that the protected areas are common goods subject to collective ownership, in which private appropriation is allowed in exceptional cases only, and that law no. 394 of 1991 has envisaged a paradigm shift from anthropocentrism to ecocentrism where nature is the "subject" (not the object) to whom those rules are addressed (Maddalena 2011; see also Di Plinio 2008). Although the protected areas governed by law no. 394 do not perfectly overlap with the Natura 2000 sites, in actual fact these two types of areas partly match in several cases.

It is worth pointing out that the Natura 2000 sites are generally more extensive than the protected areas, and that in the protected areas environmental bans for biodiversity conservation are stricter than in the Natura 2000 sites. In this regard, the ecocentric vision prevails over the anthropocentric one in the areas of the Natura 2000 sites that overlap with the protected areas, at least for as long as law no. 394 remains in force. Indeed, currently it has been proposed to amend this law with the declared aim «to place man once again at the centre of the park». In this draft amendment proposal it is also asserted that the law in force considers humans subjected and dominated by the park and it calls for a change in line with green economy policy and its innovative function in terms of development (see http://www.senato.it/leg/18/BGT/Schede/Ddliter/48764.htm).

It is also remarkable that the case law of the CJEU seems to be in line with the nature-based approach. As Schoukens has recently highlighted, there are shared points between the rationale behind the theory of the rights of nature and the existing EU environmental law. These points are found through the interpretation of the Birds and Habitats Directives and the Water Framework Directive. This path towards a more ecocentric approach appears in several contexts, such as the notion of integrity of ecosystems, the precautionary principle, and non-deterioration obligations (Schoukens 2019).

5. Final remarks

In face of the ongoing environmental crisis, ecological sustainability is considered a fundamental concept for the transformation of environmental law and governance at global level, since it embeds the duty to protect and restore the integrity of the Earth's systems (Montini 2015: 246 ff.).

Sustainability has been incorporated in many national laws on nature conservation and, to a certain extent, is also present in the EU environmental framework. Besides the cases already mentioned, the 2015 report by the Horizon 2020 Expert Group on "Nature-Based Solutions & Re-Naturing Cities" is worth pointing out, where four goals have been identified for the promotion of systemic and sustainable nature-based solutions, namely: enhancing sustainable urbanisation, restoring degraded ecosystems, developing climate change adaptation and mitigation, and improving risk management and resilience. These recommendations are not addressed to the EU alone, but also to its member states (European Commission – Directorate-General for Research and innovation 2015: 8). Moreover, the increasing interest towards more effective approaches to the transition to a sustainable Europe has led the European Economic and Social Committee to commission a study on the "Charter of fundamental rights of nature" for the EU. This Charter should bring together «"ecological elements" in the "essential content" of fundamental Rights already established in the EU» and decline «the relationships between Nature and Human Interests in terms of the sharing of mutual "vulnerability"». This does not imply the draft of a catalogue of new rights. The theme of the rights of nature is considered here in the terms of interpretation of fundamental rights in an ecological view. In other words, the challenge is to reformulate the essential content of rights in an ecological, and not anthropological, perspective (AA.VV. 2019: 16).

In the U.N. Sustainable Development Goals Report 2019 it is underlined that the most urgent area for action is climate change and that the clock for taking decisive actions is ticking. Since the stake is the survival of all the living beings, a radical paradigm shift is needed, and also legal science has to be adapted to this reality. Perhaps, the ecological law may be one of the tools with which to face climate crisis and biodiversity loss.

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