

SUSTAINABLE DEVELOPMENT AND ITS RELATIONSHIP WITH THE LEGAL NOTION OF ENVIRONMENT IN THE ITALIAN PERSPECTIVE

Desenvolvimento sustentável e sua relação com o conceito de meio ambiente na perspectiva italiana

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Abstract

Sustainable development is a global, multifaceted and polymorphic concept which was born in an environmental context but nowadays seems to be essential and critical in fields that go far beyond the environment. On the other hand, the environment is a more ancient notion and its protection seems to require a correct application of sustainable development. This study intends to analyze the relationship between sustainable development and environment in the Italian legal system. The complexity of this analysis is increased by the fact that at national level (but also at the international one at least with regard to sustainable development) the two notions are difficult to define and, even if deeply investigated, they are not fully determined and clear.

Keywords: Sustainable development. Sustainability. Environment.

Resumo

Desenvolvimento sustentável é um conceito global, multifacetado e polimorfo, que nasceu no contexto ambiental mas nos dias atuais parece ser essencial e crítico em terrenos que vão além do próprio meio ambiente. Por outro lado, o meio ambiente é um conceito antigo e sua proteção parece requisitar a correta aplicação do desenvolvimento sustentável. Este estudo pretende analisar a relação entre tal tipo de desenvolvimento e meio ambiente no sistema legal italiano. A complexidade dessa análise aumenta devido ao fato de que no contexto nacional (mas também no cenário internacional, ao menos no que diz respeito ao desenvolvimento sustentável) os dois conceitos são difíceis de definir e, mesmo se profundamente investigados, eles não são completamente determinados e claros.

Palavras-chave: Desenvolvimento sustentável. Sustentabilidade. Meio Ambiente.

1 INTRODUCTION: SUSTAINABLE DEVELOPMENT, A MULTILEVEL LEGAL NOTION

This study intends to investigate the relationship between sustainable development and the notion of environment as expressed within the Italian legal system. To this end, it is necessary first of all to define these concepts from a legal point of view, starting with sustainable development.

The sustainable development is a global (ROSSI, 2017, p. 30), multifaceted (FREDIANI, 2014, p. 96), resilient and polymorphic (LILLO; SICLARI, 2020, p. 2053) concept, studied in multiple disciplines, from natural sciences to economics, from philosophy to architecture and law. For this reason, its definition is much debated in doctrine (SANDS, 1994, p. 303; DUPUY, 1997, p. 886; FINNEMORE; TOOPE, 2006, p. 188; SCHRIJVER, 2008, p. 217; PEPE, 2012, p. 54; BARRAL, 2012, p. 385; RENNA, 2012, p. 73; FREITAS; GARCIA, 2016, p. 99; BIFULCO; SCOTTI, 2016, p. 169) and has vague and imprecise boundaries. The concept at stake reflects this lack of clarity in its scope of application which has an uncertain and indefinite perimeter (LÉLÉ, 1991, p. 607; LIPSCHUTZ, 1991, p. 153; MCCLOSKEY, 1999, p. 153; KRÄMER, 2002, p. 71; ROSSI, 2017, p. 30).

Despite the uncertainties, sustainable development is the cornerstone and the cardinal principle of environmental law (CAFAGNO, 2007, p. 218; MONTEDORO, 2009, p. 1; DI PLINIO, 2011, p. 53; FRACCHIA, 2012, p. 437; PICOZZA, 2012, p. 3; MONTINI, 2012, p. 37; CORDINI, 2012, p. 131; CALABRÒ; GIANI, 2016, p. 260; SANDULLI, 2018, p. 11). Its relevance derives from the fact that it constitutes the most important inspiring parameter of environmental legislation at every level – international, European and national – and is often the means used to harmoniously integrate environmental policies with other sectoral policies.

The formulation of the principle at stake originates from the need to face the rampant environmental global crisis and the consequent unsustainability not only of the management model of natural resources but also of the overall model of economic, environmental and political development.

Having originated from a problem, or rather from a crisis, of global dimensions, it is not surprising that, like the principles of environmental law in general, the principle of development sustainability was first addressed at an international level, in particular in the so-called acts of soft law, and only later in Europe and then nationally (MARCHISIO, 2008, p.

21; BOLOGNA, 2008, p. 91; FRACCHIA, 2012, p. 578). Indeed, formulated lagging behind the other principles of environmental law, sustainable development appeared in embryonic form for the first time in the Stockholm Declaration of 1972, a non-binding document adopted at the conclusion of the First World Conference on the Environment held under the aegis of the United Nations. On this occasion – expression of the new international sensitivity to environmental issues, of the affirmation of non-governmental organizations in the environment field and of the launch of increasingly interdisciplinary relevant research – the environment is considered essential in a development policy, according to the slogan “*there is no development without environment*”. In particular, the duty of States is affirmed to cooperate in order to control, prevent, reduce and eliminate the harmful effects of environmental degradation and the responsibility of man, creature and architect of his environment, to safeguard and administer with wisdom the natural heritage, whose defense must have an important place in planning for development (Principles 1-4).

Although the Stockholm Conference was a milestone on protecting the environment, only modest practical results followed within the next ten years. This circumstance, together with the incessant ecological degradation and the economic crisis affecting much of the world, made it urgent to redefine the relationship between development and environment. The Independent Commission on Environment and Development set up in 1983 by the United Nations has therefore tackled the issue with greater decision. The result of the Commission's work was the issuance in 1987 of the document “Our common future”, better known as the Brundtland Report, which proposes twenty-two new principles for achieving sustainable development, recommending that States transpose them (MONTINI, 2012, p. 37; FRACCHIA, 2012, p. 578; CORDINI, 2012, p. 133).

In the Report, the term “sustainable development” appears for the first time and is defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (pt. 1). This definition encompasses two concepts. On the one hand, the concept of “needs”, as the sum of the needs of the present generation in the perspective of those of future generations with particular attention to the most disadvantaged groups. On the other hand, the concept of “limits”, that is, the constraints to be placed on production capacities and the excessive use of non-unlimited natural resources in order to govern development (pt. 1).

As a result of this definition, the slogan of the 1972 Stockholm Conference “there is no development without environment” is overturned into the more eloquent one “there is no environment without development”. The relationship between development and environment is reversed, making the latter a priority over growth. To be sustainable, development must ensure that the quality and quantity of natural heritage and reserves (which are exhaustible) are preserved. Only in this way it is possible not to compromise the future of the new generations and to maintain economic development compatible with social equity and ecosystems, in a long-lasting and global environmental balance regime. Growth has two limits: on the one hand, those imposed by technology and social organization, on the other, those resulting from the biosphere's ability to absorb the effects of human activities.

Also in the international context, following the Brundtland Report, sustainable development is further defined and declined on multiple occasions. Among these is the Earth Summit held in Rio de Janeiro in 1992, where the whole world gathered for the first time to discuss environment and development. Five agreements originated from this Conference, however without the legal force of international treaties (ROSSI, 2010, p. 8). Among these acts are the Rio Declaration on Environment, that comprises a proclamation of twenty-seven principles on nations rights and responsibilities for development and human well-being which still represent a benchmark for environmental discipline, and its implementation, Agenda 21, an environmental program that establishes the strategies and interventions for the promotion of sustainable development in the 21st century.

The Declaration acknowledges and implements the definition of sustainable development referred to in the Brundtland Report, elevating it to the guiding principle of the entire environmental matter. This development is the right and necessary condition of all human beings in order to satisfy the environment and development needs of present and above all future generations (Principles 1, 3, 8, 12). The traditional dichotomy between development and environment is therefore left intact. According to this dichotomy, the environment (or rather environmental quality) is a substantial precondition for economic development, while sustainable development and intergenerational equity are inextricably linked in order to ensure that access to natural resources is combined with the demand of responsibility towards future generations.

In acknowledging the guidelines of the Brundtland Report, the Declaration emphasizes the unity and interdependence of the planet and underlines the social, as well as

economic, side of the problem. In fact, considering the integration principle as an essential tool to effectively promote sustainable development, it affirms the goal of integrating environmental protection into socio-economic expansion policies. The Declaration also aims to ensure a more equitable distribution of goods in order to combat poverty. In fact, considering that the eradication of poverty is an "indispensable requirement for sustainable development", it is necessary to ensure greater equity in the distribution of resources among the populations of the world. In this perspective, all States must cooperate and are held responsible, but to a different extent due to the different richness and the different contribution to the environmental degradation of the planet (Principles 4, 5, 7). Notwithstanding the principles of equality and reciprocity of traditional international law, developed countries, both because they are the main architects of global pollution, and because they are equipped with the most advanced technologies and the necessary financial resources, have the duty to make the greatest efforts in view of the pursuit of sustainable development.

On a practical level, Agenda 21 draws up a global and multidimensional action plan to be translated to a regional and local level for the realization of sustainable development. It commits the States participating in the Rio Conference to integrate the needs of environmental protection with those of development according to an approach of international integration. In the Agenda, the sustainable development principle shows its expansive force, tending to extend its contents and its field of application, including economy, development models, social assets and environmental balances (FRACCHIA, 2012, p. 580).

On the occasion of the Rio Conference, the United Nations Commission on Sustainable Development was established. This Commission is entrusted with the task of supervising the implementation of the agreements, developing political guidelines, promoting partnerships between governments and social groups, and evaluating the activities of all countries in the light of the objectives of Agenda 21.

The traditional definition of sustainable development was partly revised by the World Summit held in Johannesburg in 2002 (TAMBURELLI, 2003, p. 33), aimed at updating the status of environmental protection and development and verifying the implementation of what was decided in 1992. However, even before the start of the Summit it was clear that the ecological degradation had increased, the fight against poverty was ineffective, the trade

liberalization of the 1990s seemed to have had a negative impact on the environment, and the gap between industrialized and developing countries was growing. To remedy this situation, the Summit adopted the Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development (containing recommendations to States), both aimed at reiterating and strengthening the conclusions of Stockholm and Rio Summits.

According to the Johannesburg Declaration, sustainable development is based on three fundamental “interdependent” pillars that support each other so that the collapse of one can determine the overall unsustainability of the system: economic development, environmental protection and social development (Principles 5, 11). This statement summarizes and simplifies the relationship between economic development, respect for the environment and social equity, according to the so-called balance rule of the three “Es”: Economy, Environment (or Ecology) and Equity. Sustainable development therefore appears to take on a tripartite conception. This, overcoming the previous dichotomy and enhancing the centrality of social needs, in fact provides for the compatibility of economic needs not only with environmental ones but also with social ones (MONTINI, 2012, p. 40). According to this new approach, the central position is not so much the ecosystem, and therefore the survival and well-being of all living species, but man as humanity, according to an anthropocentric perspective focused on the survival and well-being of mankind.

The Earth Summit of 2012, again convened in Rio de Janeiro, reiterates the political commitment to sustainable development. It verifies past international activity, reaffirms the need for interventions by governments and civil society and creates a new global governance for sustainable development policies. The Summit also proposed a broader definition of sustainable development. This is understood as a development whose objective is economic growth compatible with equitable results for the whole of humanity, ensuring a consumption of resources no higher than that offered by nature. With the aim of overcoming the major criticism leveled at Agenda 21, namely the lack of concrete and quantified objectives for sustainable development, the 2012 Summit closes with the decision to establish an inclusive and transparent intergovernmental process on the Sustainable Development Goals, open to all stakeholders, so that the global Sustainable Development Goals are approved by the General Assembly (Resolution adopted on 27 July 2012, *The future we want*, A/RES/66/288, para. 245-251).

Negotiations to implement this commitment ended in 2015 with the adoption of the document "*Transforming Our World. The 2030 Agenda for Sustainable Development*". Ambitious in its objectives, the 2030 Agenda consists of an action plan applicable to all countries that aims to ensure the balance between the three dimensions of sustainable development: the economic, the social and the environmental one. In particular, after reiterating all the principles of the Rio Declaration and acknowledging the unsustainability of the current development model, the 2030 Agenda establishes 17 Sustainable Development Goals (SDGs), to be achieved by 2030 and accompanied by 169 sub-objectives (targets) which partially quantify the Goals objectives. The UN member countries are committed to translating the objectives of the 2030 Agenda into their national legislation and to developing an action plan to achieve environmental, economic and social sustainability.

Even at the European level, the concept of sustainable development comes with a certain delay, gradually establishing itself both as a principle of a general and binding nature, and as an objective of EU action. There are several related references to be found both in the primary hard law sources and in the non-strictly binding acts drawn up by EU bodies. Limiting the analysis to primary sources, the 1992 Maastricht Treaty contains the first reference, albeit implicit, to sustainable development, meaning it as the primary objective of EU policy. In particular, according to the Treaty, it is the task of the Community to promote "sustainable and non-inflationary growth respecting the environment" and "harmonious" and "balanced" development of economic activities, safeguarding the dual interest in environmental protection and social protection (Arts. 2 and 6). From this first implicit reference it emerges that at the Community level the three aspects of development, environment and social needs begin to be connected.

Sustainable development explicitly became part of the UE objectives as a pivotal legal principle of Community policies with the Amsterdam Treaty of 1997. Thanks to this, two important elements have been introduced into the TEU. The first is the goal of achieving "sustainable" (as well as balanced and harmonious) development. The second is the need for the requirements connected with environmental protection to be integrated into the definition and implementation of Community policies and actions "in particular with a view to promoting sustainable development", determining the Member States to "promote economic and social progress for their peoples, taking into account the principle of sustainable development" (Arts. 1.5, 2.2 and 2.4).

With the Charter of Fundamental Rights of the European Union (2000), sustainable development, elevated to a programmatic principle, is for the first time evoked in the field of protection of fundamental social rights. In this act, therefore, the expansive *vis* of sustainable development openly takes it beyond the boundaries of economic and environmental matters, also embracing the social sphere. The Charter highlights the will to promote balanced and sustainable development and to ensure that a high level of environmental protection and the improvement of its quality are integrated into EU policies and are guaranteed in accordance with the sustainable development principle (Preamble and Art. 37).

The following Lisbon Treaty, in reaffirming the general and long-term objective of sustainable development, attributes to this principle a value that is no longer limited to market and economic activities (VIDETTA, 2012, p. 225). In fact, this Treaty not only states that the EU “shall work for the sustainable development of Europe” and “shall contribute to (...) the sustainable development of the Earth” (TEU, Art. 2, para. 3 and 5), but also annexes the Charter of Fundamental Rights of the European Union (which, as seen, evokes sustainable development in the field of protection of fundamental social rights) giving it the same legal value as the Treaties (TEU, Art. 6).

Finally, the TFEU also includes a reference to the principle at stake, stating that “environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development” (TFEU, Art. 11). Relevant in this sense is Art. 191 of the Treaty which, in terms of environmental policy, requires to consider, among others, the profiles of socio-economic development and the scientific and technological data available, as well as to carry out an analysis of the advantages and burdens deriving from action or from absence of the latter.

The multiple references found in the sources of EU primary law give the principle of sustainable development a binding scope. It must be respected both in the development and implementation of policies and actions of Community competence, and in the adoption of legislative instruments, and it must be promoted and protected by both the EU and its members.

2 SUSTAINABLE DEVELOPMENT IN THE ITALIAN LEGAL SYSTEM

From the EU context, sustainable development has overflowed into domestic law. As regards the Italian legal system, although the Constitution does not dedicate a specific space to this principle, it is nevertheless possible to discern its presence. Sustainable development can in fact be deduced from the interpretation of the combination of various provisions of the Charter (Articles 2, 9, 32, 41 and 42), especially from the perspective of the search for compatibility between economic development, environmental protection and human health (PENNASILICO, 2017, p. 9). In particular, sustainable development concept seems to be found, albeit only in an embryonic form, in Art. 9 of the Constitution, as amended by the recent constitutional reform (Constitutional Law 11 February 2022, No. 1). In fact this provision now states that environment, biodiversity and ecosystems must be protected “also in the interest of future generations”, thus introducing in the Constitution the inter-generational equity which is an element of Sustainable Development. Furthermore, in the same sense, Art. 41 of the Constitution, modified by the mentioned constitutional reform, states that private economic initiative “may not be carried out against the common good or in such a manner that could damage *health, environment, public security, liberty, or human dignity*” (emphasis added).

Also at a national level, the Environmental Action Strategy for Sustainable Development (Strategia d’azione ambientale per lo sviluppo sostenibile) adopted in 2002 defines sustainability in three different meanings: ecological, economic and social. In particular, ecological sustainability implies that the stability of internal processes in the ecosphere is left intact for an indefinitely long period without growing anthropogenic balances; economic sustainability includes high employment levels, low inflation rates and stability in international trade; social sustainability has to do with distributive equity, with human and civil rights, with the state of children, adolescents, women, the elderly and the disabled, with immigration and with relations between nations. This triple definition suggests, like international and EU sources, that sustainable development must be considered (and protected) not only from the perspective of the relationship between human and natural world, but also from the point of view of the relationship between advanced and

developing countries, as well as in relation to the fight against poverty in the world (MANTINI, 2006, p. 207).

Sustainable development has finally found expressed codification in the Legislative Decree 3 April 2006, No. 152 (so-called Environmental Code). In particular, Art. 3-*quater*, inserted by means of the corrective referred to in Legislative Decree 16 January 2008, No. 4, considers this principle as the end, parameter and limit of all public and private activities (FRACCHIA, 2012, p. 579; FRACCHIA, 2017, p. 189). More specifically, according to an anthropocentric approach, sustainable development must first of all inform every legally relevant human activity pursuant to the Environmental Code, with the aim of ensuring that the satisfaction of the needs of current generations does not compromise the quality of life and the possibilities of future generations (para. 1). The same principle must also conform to all the discretionary activity of public administration, which in the comparison of public and private interests is called upon to take priority account of those relating to the protection of environment and cultural heritage (para. 2). Sustainable development must therefore be observed even when public interventions are not specifically aimed at protecting the environment, thus assuming the dignity of a general principle of administrative activity and crossing the boundary of environmental law to spread to further sectors. Furthermore, as a parameter, sustainable development must make it possible to identify a balanced relationship, in the context of inherited resources, between those to be used and those to be transmitted. In this way it is possible to insert as part of the dynamics of production and consumption the principle of solidarity – the basic matrix of sustainable development –, aimed at safeguarding and improving the quality of the environment also in the future (para. 3). Finally, focusing on the methods of investigation and on the extent of the action effects on the environmental system, the aforementioned Art. 3-*quater* defines sustainable development as a criterion for resolving issues relating to environmental aspects, in order to safeguard the proper functioning and evolution of natural ecosystems from negative changes that can be produced by human activities (para. 4).

In light of all the foregoing, sustainable development is today a widely affirmed and defined principle in the multilevel legal system. However, this should not lead to the belief that it has been fully implemented. Indeed, there is a certain distance between the emphatic

proclamations that have been made of it and the scarce concretizations that have been given to it (ROSSI, 2020, p. 4574).

3 ELEMENTS OF THE SUSTAINABLE DEVELOPMENT NOTION

The traditional concept of sustainable development is outlined by the Brundtland Report, which defines it as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (pt. 1).

The analysis of this definition makes it possible to distinguish three constituent elements (SANDS, PILL, 2018, p. 253) individually examined in the following: (i) the fair and sustainable, prudent and rational use of natural resources; (ii) equity, which is expressed in inter-generational equity and intra-generational equity, i.e. equity in a static and dynamic temporal perspective respectively; finally, (iii) the integration principle.

Moving on to the study of the individual elements just outlined, sustainable development first of all requires that the use of natural resources be fair and sustainable, as well as prudent and rational. This factor reflects the environmental dimension of sustainable development, within which development must aim at the preservation and reproduction of natural resources (such as water, soil, air and diversity of species), as well as at the protection of non-renewable resources and the integrity of ecosystems. Of a programmatic nature (MONTINI, 2018, p. 38), it constitutes a guiding criterion for States in the application of their respective policies of environmental protection and economic development, both internally and internationally.

The second element of sustainable development is equity. This must be understood in a double meaning: intra-generational and inter-generational equity, which together reflect the second dimension of sustainability, namely the social one (Brundtland Report, pt. 3). Intra-generational equity concerns the present community and is aimed at guaranteeing access to natural resources, to goods considered fundamental and to conditions of well-being. Inter-generational equity, on the other hand, refers to future generations and is intended to ensure that they enjoy a vast natural and cultural heritage, not unlike present generations. This second meaning of equity, also of a programmatic nature, enhances the link between generations. In fact, it connects the older generations, the younger ones and

the future ones in a transversal way, uniting them together through the thread of the solidarity principle (ANTONIOLI, 2019, p. 201). This link implies the adoption of a long-term approach in the management of resources and, consequently, requires that States adopt strategic decisions and development policies capable not only of satisfying current needs, but also of guaranteeing those of future generations. In doing this, however, the effects that development produces on the ecosystem in terms of reduction and loss of natural resources and of diversity of plant and animal species cannot be predicted with certainty. Therefore, for the purposes of equity between generations it is necessary that (sustainable) development takes place according to a precautionary approach (MONTINI, 2012, p. 38), which ensures and protects the conservation of natural resources and biodiversity (Brundtland Report, pt. 13).

In light of the foregoing, inter-generational equity is aimed at ensuring that the present community, in the awareness that the availability of resources of each generation is influenced by the consumption of previous ones, is concerned for future generations and assumes dutiful (FRACCHIA, 2012, p. 575) responsibilities towards them, considering their rights and needs in order to ensure that a fair natural heritage comes to them as an inheritance.

It is a short step from inter-generational equity to intra-generational equity. In fact, the obligation on the part of present generations to future ones (obligation of "diachronic" solidarity) necessarily presupposes the same obligation on the part of the "more fortunate" generations to those of the same age in difficulty, to whom access to natural resources must be guaranteed (obligation of "synchronic" solidarity).

From the foregoing, the connection between the two aforementioned solidarity obligations appears seamless: while inter-generational equity concerns the future, intra-generational equity directly affects the application of sustainable development and is preparatory to the first.

Sustainable development must therefore be implemented in a distributed manner and this circumstance is a reason for some countries' reservations (FRACCHIA, 2012, p. 588). In fact, both meanings of equity limit the political autonomy of individual States as regards both the methods of satisfying present needs and their satisfaction in relation to the needs to be preserved for future generations. In particular, intra-generational equity requires that States, as seen, take on common but differentiated responsibilities. Only in this way is it possible to achieve the ultimate aim of guaranteeing equal access to resources

(environmental and other) for all inhabitants of developed, underdeveloped and developing countries, and therefore to ensure equality of opportunity and balance of interests both locally and globally. Considering States selfishness, the difficulties in implementing the above and therefore in obtaining a full and effective realization of sustainable development are evident.

Finally, the third element of sustainable development is integration between development policies and environmental and territorial protection ones. Logical completion of the concept of the rational and equitable use of natural resources, this third element calls each State to adopt rules in which the environment is attributed a central role. More specifically, it requires that the environmental variable be taken into account in defining any policy, even when not strictly related to the environment. In this sense, although an order of priority is not explicitly indicated, the administrative activity environment must be considered from the beginning of policy development, through the tool of strategic assessment. As regards the legislative function, constitutional case law requires the State legislator to set minimum levels of protection with specific environmental laws (FRACCHIA, 2012, p. 571). Lastly, environmental protection, if well implemented in economic development plans and programs, allows the fulfillment of the economic dimension of sustainability. This consists in the ability to generate income and work in a lasting way and to achieve a rational use of available resources with a reduction in exploitation of non-renewable resources (so-called eco-efficiency)

The three elements reflect the three-dimensionality of the sustainable development concept. As seen in the first paragraph, the concept at stake is in fact composed of three dimensions (or pillars): the environmental, the social and the economic one. More specifically, sustainable development measures the ability to bring about a development that over time is able to support the reproduction of world capital, which in turn consists of natural capital (environment and natural resources), social capital (individuals) and economic capital (*i.e.* that made by individuals).

The three dimensions of sustainable development, as well as its three elements, are not watertight compartments, but intersect and combine with each other. Each is necessary for the other, in a logic of mutual reconciliation, forming an unsolved *unicum*. The loss of one of the three pillars would weaken and “bring down” the concept of sustainable development, which is based on the balance between the three dimensions (pillars, in fact). This balance, as

it is dynamic, must be constantly sought. The continuous change of circumstances and the consequent pressures generated by it put the three dimensions and their respective priorities in perpetual tension and confrontation. These must be composed according to a holistic approach to development, *i.e.* according to a global approach to planning and assessment, in which economic, social and environmental development are closely interrelated.

4 SUSTAINABLE DEVELOPMENT AND THE LEGAL NOTION OF ENVIRONMENT: RELATIONSHIPS AND CONNECTIONS

The sustainable development principle has a clear environmental connotation. It established a deep relationship with the environment since its inception: sustainable development arises from the environment and from problems related to it, and encourages the remedies for these problems. In the internal system sustainable development is codified in a legislative act dedicated to the environment (FRACCHIA, 2010, p. 13) and traces of it are found in the Constitution. Its promotion and implementation are closely linked to the environmental issue. In fact, despite its expansion, the principle at stake has never ousted its environmental matrix (FRACCHIA, 2012, p. 583), not being able to completely go beyond it. Indeed, if we consider that, on the one hand, sustainable development protects the environment and, on the other, environmental protection must take into account development prospects, the two areas tend to merge (FRACCHIA, 2010, p. 20).

The foregoing is confirmed by the fact that the sustainable development principle seems to participate in those characteristics of the environment notion and of environmental law that qualify it as the ordering factor of complexity. In fact, it does not seem possible to deny that sustainable development, like the environment, must constantly face the challenge of composing a plurality of interests involved and is contested by both public and private groups of interest. Also in a similar way to the environment, sustainable development applies specific decision-making methodologies, often derogating from the principles of other sectors of law, first of all the administrative one. Furthermore, no less than the environment, sustainable development constitutes a transversal value (FREDIANI, 2015, p. 49).

Already clarified the meaning of sustainable development, for the purposes of the investigation into the relationship between sustainable development and environment, it

seems necessary to define the latter as well. However, the legal notion of the environment is not unique. Ductile and polyvalent, intrinsically composite and relational, legally controversial and debated, the term “environment” does not find in the Italian legislation a definition that fully and satisfactorily explains what the legislator intends to protect with this expression. The numerous efforts of the doctrine to identify the meaning of this legal notion show the difficulty, or perhaps the impossibility, of defining it fully (MORBIDELLI, 1996, p. 1121; ESPOSITO, 2008, p. 203; VIDETTA, 2016, p. 393). The synthesis of this complexity can be contained in the statement that “the environment is nothing because it is everything” (PALAZZOLO, 1989, p. 317).

Despite the foregoing, and in the impossibility of carrying out in this study an exhaustive analysis regarding the legal concept of environment in the Italian legal system, it is sufficient here to mention only some of the interpretations that appear most appropriate to explain the relationship between sustainable development and environment.

According to a recent thesis (FRACCHIA, 2012, p. 572), environment can be considered object of duties and a constitutionally protected value with which every disciplinary sector (that involves it) must deal with and with which it must align itself with regard to objectives (see also Italian Constitutional Court, decisions 26 July 2002, No. 407; 20 December 2002, No. 536; 7 October 2003, No. 307). This thesis finds comfort in the observation that the anthropocentric vision typical of subjective rights is not fully applicable to environmental matters (SCOCA, 1993, p. 402). In fact, recognizing that man cannot dominate nature (on the contrary, he often suffers it and is a victim of it), the legal system cannot guarantee rights in this regard. Consequently, in this context, the role of positive law is not so much that of offering guarantees to rights, but of assigning tasks and setting limits and penalties, assisted by the canon of dutifulness, of protection above all, pursuant to Art. 2 of the Constitution, in which the mandatory duties to be fulfilled are qualified as solidarity duties (FRACCHIA, 2002, p. 216; FRACCHIA, 2017, p. 185; FRACCHIA, 2021, p. 55). On the basis of this thesis, objective environmental law is made up of the set of requirements relating to the dutiful behavior of environmental solidarity. Examples of this are, in addition to the general duty to respect and protect the environment that is specified in the sector regulations, the duty to refrain from activities harmful to environmental assets and the duty to take precautions in the face of potential dangers for humans and for the environment.

With a certain affinity with the foregoing, sustainable development is based on the idea of duty towards future generations and has as its underlying matrix the principle of solidarity, aimed at protecting and improving the environment quality also in the future. Among the elements of sustainable development, equity enhances the bond between generations, connecting them in a transversal way through the thread of the solidarity principle. In fact, two main obligations arise from equity: that of “diachronic” solidarity and that of “synchronic” solidarity. While the first concerns the relationship between present and future generations, the second, on the other hand, refers to the relationship between the “more fortunate” present generations towards those of the same period in critical conditions.

In consideration of the foregoing, a link between environment and sustainable development can be identified in the perspective of duties, in particular those of solidarity, which are based in the aforementioned Art. 2 of the Constitution. The combined reading of this provision with the subsequent Art. 3, para. 2, which guarantees the full development of the person, suggests that the ultimate purpose of the two concepts at stake is not the protection of nature as such, but the development of the human person and, through it, the survival of the human species. In other words, environmental law and sustainable development appear to have in common the matrix of duty, and the fulfillment of the duties of environmental solidarity serves as a prerequisite for the full fulfillment of the constitutionally protected development of the human person (FRACCHIA, 2017, p. 184). The solidarity purpose is in fact present both in environmental law – which establishes a set of duties of solidarity aimed at guaranteeing the full development of present humanity by ensuring the existence of the future one for which the former is responsible – as well as in sustainable development – whose purpose is to satisfy the needs of present generations without compromising the ability of future generations to satisfy theirs. Both sustainable development and environment are therefore driven by a dutiful intention of solidarity, aimed at ultimately protecting the human species, present and future, in an inter- and intra-generational “feeling” (of solidarity, in fact) which translates – or better that it has to be translated – into action.

A further element of connection between the two notions at stake can derive from other interpretations of the environment concept. For example, it can derive from a holistic interpretation, capable of highlighting the relevance of the links between the multiple elements of which the environment is composed, and according to which under the label of

intangible asset the environment includes everything. In this perspective, the environment appears to assume the morphology of a system, whose values, properties and functions are not limited to the individual elements that compose it. These are relevant in their reciprocal connections and must be studied under the key of the interdependence that exists between them, thereby giving the environment a unitary identity with autonomous properties and characteristics, to be protected together with the benefits they bring (CARBONE, 2004, p. 36; CAFAGNO, 2007, p. 31). An element of connection between the two notions at stake can derive even from the inductive-aggregative interpretation, which around the word "environment" attempts to aggregate a series of contextual, concomitant, instrumental disciplines, according to the method of organic sectors by subject (AMATO, 2014, p. 79). In fact, these two interpretations also appear to be applicable to sustainable development, giving it the same evanescence or concreteness of the environment notion. In fact, the holistic interpretation allows the elaboration of a comprehensive sustainable development law that includes and goes beyond environmental law. The inductive-aggregative interpretation, on the other hand, leads us to consider sustainable development as the glue and key to the composition of the various disciplines.

It appears to be possible to identify a further connection between environment and sustainable development by adopting the perspective of fundamental goods law. The main purpose of this law is to ensure social harmony between peers (siblings) and between man and the environment. The fundamental goods of common use are made such by the systematic relationship between men and between them and the environment. This relationship is founded on fraternity, a human condition that "can be difficult, conflictual, but it is certainly unavoidable" (BAGGIO, 2007, p. 13; AMATO, 2014, p. 79) in order to open up to freedom and equality. Sustainable development, as defined in the Brundtland Report, aims to achieve a similar harmony in mankind (between current and future generations, between rich and poor generations) and between this and the environment. A certain assimilation can therefore be glimpsed between the fraternity that founds the relations connected to the common goods and the solidarity that governs the relations regarding sustainable development, even the latter difficult and conflictual but inevitable human condition. Solidarity on the other hand is nothing more than a feeling of fraternity that arises from the awareness of a common belonging and from the sharing of interests and purposes, and which

finds expression in behaviors of mutual help and altruism (MORELLI, 2019, p. 5; OROFINO, 2020, p. 571).

According to another interpretation, the overlapping of environmental choices, public policies and policies for sustainable development – where there is a question of the use of resources and where a challenge relating to the future of humanity arises – could lead to the transition from environmental law to sustainable development law, transforming the former into the latter. Based on this interpretation, sustainable development enriches its content, extends its scope and finally frees itself from its essential point of reference, which is nature. Unfettered sustainable development from environment, sustainability refers to sectors in which the latter emerges only indirectly. In this context, environmental protection is not so much a limit but a condition for development and is justified only if it is functional to protect humans. As a result of the aforementioned passage, the principle at stake rises to a “supreme canon capable of conditioning the strategic public choices that fall on future generations” within a framework of responsibility and solidarity (FRACCHIA, 2010, p. 22; ROSSI, 2015, p. 2).

5 CONCLUSIONS

Environment and sustainable development, at least at the level of the Italian legal system, have significant affinities, share similar characteristics, and can be read according to overlapping interpretative modules. However, they stay two elusive notions, difficult to define and subject to different interpretations. The difficulty in defining and fully understanding these notions is increased by their interdisciplinarity and by the multiple interests that are intertwined in them, and in turn increases the difficulty of determining the relationship between them.

The different interpretations set out above show that, despite the difficulty of definition, the environment and sustainable development are linked by a symbiotic and complex relationship at the same time. Depending on the point of view, in fact, on the one hand they seek and need each other, to almost overlap: in order to survive, the environment needs to be used in a sustainable way and sustainable development includes the environment as an element, a criterion and limit of the balance of interests at stake. On the other hand,

environment and sustainable development enter into tension and move away, to the point of almost excluding themselves: sustainable development goes beyond the environment, which becomes only a secondary and indirect reference, no longer a limit but a condition for the former.

The above is complicated if we consider the concrete application of the sustainable development principle. In fact, the analysis of the relationship between environment and development that is carried out as a result of the application of sustainable development seems to reveal the substantial failure of the latter notion and of its realization. In fact, this notion appears to have the limit of assuming development as a prime value, with respect to which the environment acts as a remora (ROSSI, 2020, p. 8). In other words, according to this perspective, environment protection would constitute only one of the elements to be considered in economic choices and not the prerequisite for a renewed system (MOLITERNI, 2020, p. 34). Sustainable development therefore appears insufficient, while a formula that highlights the environment, namely that of the “environment for development”, seems preferable (ROSSI, 2017, p. 20). In this new vision, environment and development are not simply compatible, but must operate in synergy, so that the former acts as a driving force for the latter.

In consideration of the foregoing, therefore, the environment and sustainable development must act in a combined way. One must be included in the other as a necessary primary point of reference, and one needs the other to be realized. The protection of the first must be framed in the logic of the second, which is the ultimate goal to aim for. In this context, sustainable development therefore appears to constitute not just a principle-canon, but the ultimate principle-end and true perspective towards which the legal system tends.

The foregoing is also confirmed with respect to biodiversity¹ - which can be included or at least approached to the environment -, as indeed the coexistence of the acts that promote biodiversity and sustainable development and the coexistence of these within these

¹ The definition of biodiversity universally accepted and most used by the legal community is found in the Convention on Biological Diversity, an international treaty signed in 1992, whose Art. 2, attributing independent legal significance to biodiversity, defines it 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”.

acts show (for example as it happens in the Italian National Strategy for Biodiversity and in the Italian National Strategy for Sustainable Development).

In fact, when the sustainable development principle comes into contact with biodiversity it tends to be omnipresent: the regulations set up to protect biodiversity usually include explicitly this principle or the paradigm of sustainability, and, even when the principle at stake does not appear explicitly, it is often possible to apply it in any case as an implicit principle. The "omnipresence" of sustainable development in the defense of biodiversity is explained by the essential reciprocal function that the two perform. On the one hand, the protection of biodiversity is based on the assumption of its sustainable (or lasting) use.

The conservation of biological diversity requires and includes not only the protection of this, but also the guarantee of its sustainable use. In summary, this use must take into account all its functions (ecological, economic, social and cultural and ethical) and it must respect all three pillars on which sustainability is based (environmental, economic and socio-cultural). The ability of ecosystems to sustain life (ecological sustainability) is the result of their intrinsic carrying capacity (ecological carrying capacity) and of the ecological and economic sustainability of the political choices made and of the consequent actions (ecological sustainability). On the other hand, sustainable development, in order to be achieved, requires an "intact" biodiversity. More specifically, development as a whole, in order to be sustainable, must be able to make use of those ecosystem services that biodiversity offers. Indeed, this plays an essential role in guaranteeing the functionality of ecosystems and preventing their ecological collapse. A biodiversity that is not safeguarded and continuously trampled on loses the ability to provide such services with the result of preventing the realization of a development characterized by sustainability.

Moreover, unsustainable development cannot really be called development. Behind the appearance of progress, it sooner or later translates into a greater regression than the starting point, resulting only in an ephemeral and illusory development, and requiring special (as well as very expensive) remedies. This process only causes constant disasters that require new human intervention to remedy them, increasing the impact of human activity and giving rise to a vicious circle in which action aimed at solving a problem ends up aggravating it, requiring in turn further remedy.

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