

Scenarios of Sustainable Development: Closing Remarks

by Anna Simonati

Sustainable development may be considered from various and different points of view. In fact, as is well known, it is a multi-faceted concept, with at least three main sides: economic, environmental and social sustainability. The relationship between these sides has not to be taken for granted, and it may have unexpected physiognomy. Of course, the “green” and “blue” policies may be extremely expensive and therefore require preventive study on their effective economic sustainability. Also the concrete implementation of the principle of (formal and substantial) equality – which is not based only on protection against discrimination, but on promotion of diversity as a source of richness for society as well – may be rooted in highly expensive public policies.

The composition of this first session of the meeting is a perfect mirror of such complexity, since all of the three faces of subsidiarity arise (sometimes, even more of them at the same time) from the contributions by the speakers.

The complexity is absolutely clear in Viviana Molaschi’s paper. Even though it is focused primarily on the protection of natural resources, it clearly points out that this issue has a multi-purpose value.

First, ecological sensitivity has progressively acquired universal importance: it is shared (at least, in principle, on the ground of general declarations) all over the world, and it seems to be perceived as a fundamental pillar for all of the legislators and policy makers. This of course has a double-side consequence. On the one hand, the protection of natural resources seems to be a priority which is able to affect and influence many different fields of public intervention, in a sort of holistic perspective. On the other hand, however, the aim to defend natural resources risks absorbing all of the other interests, therefore offering a false “monolithic” image of the public interest.

On the contrary, sustainability is always made of all and each of its

three components, and in the practical management of green policies, particular attention must be paid to its social side as well. So arises, for instance, from the explicit reference to inter-generational subsidiarity in the updated – and in force – version of article 9 of the Italian Constitution: even though it is directly linked to the protection of environment and its maintenance in the advantage of the young and next generations, it also has an immediate legal effect in the relationship of people of different ages. If without any doubt such sensitivity leads to the protection of children and adolescents (who may be weakened, from a social point of view, also because of the so-called “educational poverty”), another fundamental aspect of the same rule imposes to take seriously in account the needs of elderly people, who are increasingly numerous in Western societies and often hold interests which are somehow different than the ones of other groups of the population.

Therefore, the various souls of sustainability may more easily match thanks to their interaction with the principle of solidarity, which in the Italian legal system is codified in art. 2 of the Constitution, notwithstanding it represents the undervalued part of such rule. Taking seriously in account the principle of solidarity requires leaving room to empathy among human beings; on a methodical ground, administrative law is able to express this sensitivity especially through the tools for participation by local populations in the administrative decision-making action. The appropriate use of participatory instruments, in fact, may be the proper ground for the three sides of sustainability to be harmonized, since it allows the administration to grasp all of the relevant elements, in order to take the best possible decision. Moreover, participation allows even the most vulnerable part of the population to be heard, directly or through mediation by associations and other intermediate bodies. Finally, but not least, participation is also an important tool for knowledge sharing: consequently, the interested citizens are correctly and exhaustively informed about what is going to happen, and this may help overcome or prevent arguments and litigations. This can be considered, somehow, another side of sustainability of administrative action, both from the economic and from the social point of view.

It is evident, therefore, that the principle of sustainability, in its multiple expressions, is deeply connected to ethical dimensions. This is

true, primarily, looking at the relationship between human beings. Nevertheless, the treatment of animals has an ethical dimension as well. This point has to do with both social and environmental sustainability: with the former, because human behaviors must be ethical as a whole; with the latter, because the protection of environment and natural resources comprehend the animal species as well.

The legal sensitivity for animal sentience (which the second speech, by Vicente de Paula Ataíde Júnior, is focused on) has a variety of components.

One first side of the matter, which is a sort of collateral one, regards the possible distinction between different kinds of ownership on animals: notwithstanding the great majority of them may be technically considered private assets, some others are instead in public ownership. Of course, such distinction is not irrelevant, since the power to impose limitations and methodical boundaries in the treatment of animals to private subjects finds a natural counter-interest in the right of property and in the right of entrepreneurship, which are both protected (in Italy, but almost everywhere in the world) at the Constitutional level.

But other sides of the matter are even more interesting.

First, the issuing of new rules about respect for animal sentience requires peculiar attention by various authorities. Animals may play an “objectified” role as food, in medical experimentation, as sources of material in fashion, as help in many human activities, and so on. Of course, the relevance of all of these fields is significantly different, also from the legal point of view. Consequently, the degree of respect for animal sentience may be different in different cases, considering the higher or lower importance of the public interest of the action they are involved in. Such an evaluation must be done, at a first stage, by the legislators. However, it often requires specific case-by-case decisions to be taken in the implementation phase; therefore, from the perspective of public law, both administrative and technical discretionary power could be exercised, especially in order to properly understand whether the treatment is really necessary considering the quantity of suffering or discomfort imposed on the animal.

Inside this multifaced context, a specific field is particularly interesting and poses charming open questions. It concerns the involvement of animals in rites, ceremonies and art installations. This topic seems

particularly complex to me, because it has to do with the protection of the development of culture, which is everywhere considered as a primary Constitutional value. Especially when they are very ancient, such traditional ceremonies are not really respectful of animal sentience; a choice must be therefore made between conserving them as they are, completely erasing them or maintaining them with some changes and adaptations. The solution, of course, depends on the result of the balance between the various (public) interests arising in the case, and it may also happen that the updated collective sensitivity takes the policy makers to elaborate new procedures and best practices, able to conserve the traditional ritual significance and deep symbolism without hurting anyway the animals. Which is perhaps the real meaning and purpose of protecting not just culture in itself, but its development.

In order to obtain efficient and fair results for the protection of animal sentience, in whatever field it is taken into account, the principle of sustainability needs to be strengthened with participation in public decision-making by civil society. This is of course crucial since the creatures which are the owners of protected rights definitely have no voice at all. The opinion of the associations devoted to the protection of animals, therefore, have a double position. First, they should be heard by the competent authorities during the procedures for the issuing of acts affecting animals; in this step, they can help the administration in grasping hidden or unknown factors. Second, the constant presence of these associations is precious and crucial in case of undue or unreasoned breaches of rules or best practices; in fact, they may be considered as the holder of collective interests being able to act in order to ensure justiciability for the position of the silent ones.

The third speech of this session, by Luiz Guilherme Arcaro Conci, is issued on the rules about environmental displacement in Latin America.

This topic is interesting for many reasons, the first of which is its focus on the impact of factual change on traditionally accepted taxonomies. Nowadays, in fact, accepting a monolithic legal notion of migrant person is not possible anymore. According to the rules in force in an increasing number of Countries, the reason and purpose leading people to leave to a foreign State are becoming more and more relevant. What is amazing is that, as a matter of fact, self-determination is increasingly

seldom a real side of migration. On the contrary, migrant are often almost compelled to move, not only for economic issues, but also because life is not possible any more in their home place; the environmental conditions – and climate above all – are able to produce real emergency. That said, it is also true that emergency has lost its original nature of exception to a rule, and it has become, a little paradoxically, the rule itself. But the transformation of emergency into normality cannot be without legal consequences and it poses numerous problems on the ground.

There is sort of moral question: is the distinction between natural and anthropological causes for migration really possible? And, if it is, is it ethically and legally fair? This clearly has to do with taxonomies as well. The best answer is probably the phenomena are always an effect of various and different causes, which makes impossible to rigidly distinguish between human and natural facts, especially since – as we are at present increasingly aware – the contemporary natural transformations are a direct or indirect consequence of human behaviors. Therefore, what is really crucial is reasoning on the effects and the “tolerance level” of discomfort for people living in a specific place. From this perspective, several elements deserve consideration, and they often rely upon the effective implementation of the principle of sustainability by administration. On one hand, the problem of lawfulness arises from a broad perspective: as facts are so decisive in order to define emergency situations as the presumption for migration, their severity should be likely to be measurable on objective grounds. But, as a matter of fact, no stable and still criteria can be fixed and valid in legal rules, at least because normality and exceptionality in environmental displacement may be differently evaluated in different regions of the same National territory, with different orographic conditions.

Therefore, on one hand clear and homogeneous rules are required in each legal system, in order to establish what the minimum level of life quality which must be granted to all the people living within the boundaries of each Country is. This of course should consider some commonly recognized indicators, whose validity on scientific basis should be accepted at the supranational level as well.

However, at the same time, another issue to be carefully considered is the relationship between sovereignty and autonomy. In different regions of the same National territory, in fact, people and institutions may grasp

different problems; therefore, it is rational and proper that institutional answers are at least slightly different from one another. This is an effect of the full acceptance of the principle of sustainability.

Marcello Pollara has focused his speech on facilitation of renewable energy, especially from the point of view of the protection of all of the interested parties. His contribution as well, as a matter of fact, assumes the role of taxonomies as a starting point. In fact, a pivotal topic regards the legal significance of terms like environment and landscape, their mutual boundaries and their relationship with the idea of territory. Moreover, attention must be paid to planning law, within which the role of municipalities is fundamental. The field of facilitation of renewable energy can teach us, therefore, a preliminary lesson: the implementation of the multifaced principle of sustainability requires to be rooted in more than one legal branch. In particular, the legislative rules about energy providing can be issued both at the national and at the regional level, and also local best practices may be experimented through the loopholes in current legislation. Anyway, the possible co-existence of multiple legal sources can also represent a problem, especially in the perspective of legal certainty and of the intervention by case law.

Since the field of energy is very complicated and involves many different public and private interests, the proper management of administrative *iter* becomes really pivotal, since the procedure represents the space for dialogue between all of the stakeholders and for a fair balance between the views of interested and counter-interested parties. Therefore, two main principles must be fairly harmonized, in order to ensure economic, environmental and social sustainability of the action held by the competent authorities: they are the principle of participation by the stakeholders, on one hand, and the principle of quickness of decision-making, on the other hand; in the middle, so to speak, the principle of proportionality should suggest the best way to be followed in each case. In particular, the aim at quickness should not lead to deprive the preliminary step of the procedure of fundamental informative elements, which may pertain both to administrative discretionary and to technical discretionary power. From this point of view, it is interesting to point out that, according to the recent Constitutional case law, the regional legislators, in exercising their normative power, cannot provide for more

procedural steps than the ones that are provided for by the national legislator, while they could instead deprive the administrative procedure of elements which are considered unnecessary. One can wonder what is in such a context the role for participation by the private stakeholders and the involved communities, whose intervention can be really decisive in order to help the competent authority in choosing the best measure to be issued in the case. The recognition of the importance of their dialogue with administration is crucial, in order to ensure the full implementation of the principle of social sustainability.

Last but not least, another important element arises from the point of view of litigation. As it is clear in the recent administrative case law, in fact, the increasing awareness on the objective pulverization of the interest to enjoy renewable energy has led the courts to accept a broad idea of legal standing, which gradually overcomes the traditional presumption of *vicinitas* as a subjective fundamental factor.

Finally, Eduardo Parisi focused on the do not significant harm principle, which is typical of environmental law, but represents as well a very interesting scope for interpretation of the triple-meaning concept of sustainability. In fact, notwithstanding the primary dimension of the issue concerns of course the protection of natural resources and the prevention of pollution, other dimensions regard the economic sustainability of compensation for damages and social sustainability of the distribution of the negative externalities of pollution between the different groups of subjects.

One may be surprised, since in case law the possible or probable irreversibility of the harm produced is almost never considered as a criterion of quantification of the due compensation.

More generally speaking, the proper use of indicators arises as a pivotal unresolved issue. This problem is ineradicable, because the conversion of qualitative elements (the seriousness of the damage, in light of various factors) into quantitative ones (the indicators themselves) to be further used as coefficients for the correct calculation of sums of money is an extremely hard operation.

And it is clear as well that the best way should be represented by prevention of damage. However, one must recognize that, a bit paradoxically, the do not significant harm principle may represent a legal tool – even

though an imperfect one – to allow the protection of the interest of the most vulnerable groups, which otherwise would not be safeguarded.

In conclusion, the contributions presented in this session have double significance. On one hand, each of them is interesting in itself. But, even more importantly, they play a fundamental role as a whole, since they enlighten different sides of the same principle of sustainability and show both its relevance for administrative action and its complexity.