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Usi Civici: Open Evaluation Issues in the Italian Legal Framework on Civic Use Properties

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Abstract: Physical spaces and assets vary in legal nature and as such can be subjected to both private and public ownership. Therefore, rights and obligations connected with the use and enjoyment of the different goods depends on the juridic nature of the good itself. In the Italian legal framework, private goods are subject to homogeneous regulation, whereas public goods might comprehend a plethora of heterogeneous categories each of them featuring a specific legal regulation. Among those, collective-owned goods present a complex case as they have the typical characteristics of common goods but might be the object of specific rival and exclusive rights that are guaranteed to certain communities with the system of "civic use rights" (*usi civici*). This peculiar legal regime is typical of rural areas, where, traditionally, common ownership of the land was pursued and encouraged resulting in the creation of a common agri-sylvan-pastoral heritage. As such, the areas susceptible to being left behind or even abandoned due to a lack of public resources or initiatives that can foster their intrinsic cultural, social, and economic value. We intend collective goods to be long-term physical assets that trigger ecosystems of social entrepreneurial, innovative partnerships, and impact investing that can meet long-lasting and/or emerging social and collective needs. This paper aims to achieve two objectives. Firstly, we investigate the Italian juridical regime of "shared-ownership rights" and "civic use rights" aiming to define a taxonomy that provides support in categorising these goods according to pre-defined legal clusters. Secondly, we explore the evaluation issues related to land appraisal processes.

Keywords: common property rights; civic use rights; common properties; state property; economic evaluation; environmental evaluation; natural resources preservation

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1. Introduction

From a juridical perspective, properties are generally distinguished into private, being rival and exclusive, and public, being non-rival and non-exclusive. The rights attached to both private and public properties regulate the enjoyment of the goods and the possibility to use those goods. Property rights should not be seen as two separate categories, but rather as a spectrum, where between the two extremes of public and private ownership there are serval forms of collective (or promiscuous) property rights. Those can be attributed to public bodies, collective private entities, such as associations or cooperatives, or the community, being a formal or informal group of individuals. Among those rights, a peculiar form of collective enjoyment of a single property is represented by the so-called "*usi civici*" (civic use rights), defined as perpetual real (or use) rights belonging to the members of a given community over a public or private property [1]. Those rights are particularly relevant in Italy where over 600,000 hectares of the total agricultural surface [2] and over 3 million hectares of the national forests [3,4] are encumbered by civic use rights.

Civic use rights can be understood as a product of the feudal system that was in force in the Italian Peninsula throughout the Middle Ages and that survived until nowadays, despite the legislations enacted starting from the 19th century aimed at limiting them. At

present, civic use rights lost their original objective to guarantee access to agricultural properties to peasants subjected to a landlord and, as such, with the Law 1766/1927 all civic use rights over private property have been suspended providing that all properties subjected to civic use rights shall fall within the public property assets. In that sense, civic use rights, given the fact that in the vast majority act upon properties covered with woods and permanent graze, also became a tool to protect natural resources and the landscape, as recalled by the Law 168/2017.

However, clear comprehension about the definition and characteristics of civic use rights is still not clear in the Italian context as the implications of civic use rights over public properties are still relatively underexplored. In particular, estimating the economic value of the properties encumbered by civic use rights is not that straightforward and requires taking into account the characteristics of the land as well as the specific regulations that apply to the specific property subjected to civic use rights. Furthermore, despite the claimed centrality of civic use rights in protecting rural and agricultural landscape and preserving natural resources, a model that allows the evaluation of their value from an ecosystem point of view has not yet been developed. Thus, throughout the paper we aim to frame the appraisal and evaluation demand included in the different regulations that applies to civic use rights defining a general framework that can guide practitioners and decision-makers to define the most accurate method of conducting an appraisal in accordance with the legislative framework. By addressing this question, we aim to achieve two objectives. Firstly, we investigate the Italian juridical regime of "shared-ownership rights" and "civic use rights" aiming to define a taxonomy that provides support in categorising these goods according to pre-defined legal clusters. Secondly, we explore the evaluation issues related to land appraisal processes.

Descending from the above, in this paper we will provide state-of-the-art research about the Italian and regional legislation on the topic of civic use rights and will map the diffusion and typology of civic use rights in the different regions, understanding their functions and values. Furthermore, we will provide a set of different appraisal and evaluation methodologies that can satisfy the requests included in the legal tests analysed. In this sense, a particular attention will be devoted to the valuation of the ecological value of the properties in light of the recent legislative reform that introduced the possibility to transfer civic use rights from a property to another public property where those lands lost their argi-pastoral-sylvan value (Articles 8-bis and 8-ter, Law 168/2017). Before concluding, in light of the recent legislative reforms, we provide recommendations about the main issues to be taken into conditions to develop a management model that allows the enhancement of both the economic and ecosystem values of civic use rights. This paper aims to set a research agenda on the topic of civic use rights by highlighting some of the challenges that still remain open which apply to the national and regional regulation on the topic.

2. *Usi Civici*: Civic Use Rights in the Italian Legislation

2.1. Origin, Definition and Characteristics of Civic Use Rights

The Italian legal system defines the "*usi civici*" as perpetual rights belonging to the members of a given community (municipality, association, cooperative, etc.) over a public or private land, or a portion of it (Articles 11 and 12, Law 1766/1927 and Article 3, Law 168/2017) [1,4,5]. Those properties are divided into two main categories: lands covered by forest or perpetual graze, and land that could be used for agriculture. As such, those rights entail shared ownership and enjoyment of land based on the assumption that communities, according to Article 4 of the Law 1766/1927, are entitled to the use of land in order to satisfy their primary needs (essential rights) as well as to conduct entrepreneurial activities thanks to the fruits of the land subjected to civic use rights (exploitative rights) [3–5].

In this sense, civic use rights allow to broaden the spectrum of property rights creating a cluster of properties subjected to non-exclusive yet rival rights [1,3,4]. In fact, properties encumbered by civic use rights, being collective rights, are recognised to the entire community and not to specific members, thus entailing that those rights allow more than one

member of the community to enjoy the goods at the same time [3]. Whereas, on the other side, the fact that one member of the community uses a certain portion of the land, or its resources, prevents others to benefit from the same resources, thus limiting the number of resources available for the entire community [3,6]. In this sense, civic use rights feature properties that are similar to the commons in the definition given by Ostrom [6] or to the category of collective or semi-public goods [1–4]. The latter are to be considered as properties where the entire community can exercise a right of use, or in other cases, a right of property, and where the use of the resources by one member limits the resources available to the rest of the community.

What is relevant from this reconstruction is the fact that properties encumbered by civic use rights are different from both public properties and private properties. In fact, unlike the latter, properties encumbered by civic use rights present the characteristic of non-exclusivity, while private properties can only be used by the owner. On the other side, the presence of civic use rights over public properties makes them rival in the sense that using a portion of the land for a certain scope prevents other beneficiaries to use the same resources at the same time. Moreover, by a closer look, properties encumbered by civic use rights differ also from forms of collective ownership of the land by the fact that civic rights act upon public property and they do not entail a transfer of the ownership right from the municipality to the community [1,7].

The category of civic use rights is a very heterogeneous one as the rights included wherein are highly diversified. In fact, the category comprehends both shared ownership rights as well as shared use of rights over a single public or private good. For this reason, the goods subjected to civic use rights are inalienable, nor subjected to acquisitive prescription, thus making the rights inextinguishable. The content of the civic use rights is, although, quite standardised, and it includes: the right to graze; the right to collect woods or grass; the right to cultivate; and the right to glean the fields together with the rights to transform the fruits of the land and to sell them.

The term "*usi civici*" in Italy appeared for the first time at the beginning of the 19th century with the works of the "*Commissione Feudale Napoletana*" (Neapolitan Feudal Commission) that was in charge of translating medieval uses into legislation as part of the modernisation effort undertaken by the Kingdom of Two Sicilies. The commission recognised that ownership rights can be divided into direct ownership, belonging to the landlord, and useful ownership, belonging to the peasants subject to the landlord. However, the origin of those rights is rather uncertain, and historians of law present two interpretations. According to a minority interpretation, forms of collective ownership of agricultural land can be traced back to the pre-Roman era and developed into forms of civic use rights during the time of the Roman Empire [8], whereas the majority of the academics defend the thesis that civic use rights as we know them today originated during the Middle Ages as a result of the feudalism and landlordism [1,4,9].

Following the Age of Enlightenment and the progressive diffusion of Capitalism, the phenomenon of civic use rights became less relevant as legislations all over Europe started to limit their scope. Italy, in this sense, was no exception, and the Kingdom first and the Republic later followed the approach of the pre-unitary states in dismantling civic use rights over private properties. Despite this, civic use rights and other forms of collective land ownership survived until nowadays and find their regulations in a series of normative acts. Among those are as follows: the Law 1766/1927; the Royal Decree (R.D.) 332/1928; the Law 1078/1930; the Law 278/1957; the Law 168/2017; and several regional regulatory acts.

The Italian regulation on civic use rights was originally formulated in an attempt to harmonise the discipline on those rights all over the Italian territory. In fact, the Law 1766/1927 started a process of de-privatisation of land subjected to civic use rights providing a transfer from the original owner to the municipalities and other local public bodies (Article 1). The law requires first an act of juridical existence of the civic use providing that the right existed before the entry into force of the legislation (Articles 2 and 3); the evaluation about the existence of the civic use is conducted by a special commissioner as

provided by the law. The commissioner is also responsible for the economic valuation of the property in order to compensate the original landlord (Articles 5 and 6).

What must be taken into consideration here is the fact that Article 3 of the cited law set a term of six months from the publication of the law itself, or from the discovery of the existence of civic use rights, to proceed with the declaration of civic use by any interested party. Therefore, once the term expires, it will no longer be possible for the parties to act for the recognition of the civic use rights. From a reading of this article, it seems that the properties that have not been dismissed in favour of public bodies, following 1927, became part of the private assets of the original owner and the collective use rights have been extinguished as a result [1,4,9]. In this sense, the law ends the feudal practice of collective use rights over private properties.

As mentioned above, the Law 1766/1927 provides that all public properties subjected to civic use rights shall be divided into two categories: (a) land covered by forest or perpetual grazing; and (b) land that can be used for agricultural purposes (Article 11). Once the destination of use has been established, the beneficiaries of the civic use rights can use the land either for the satisfaction of personal or family needs or for entrepreneurial purposes (e.g., selling the wood collected in the forest; selling agricultural products or transforming those products to be placed in the market; selling dairy or meat produced thanks to animals reared in the pastureland, etc.).

The management of the property subjected to civic use rights is devolved to the municipality or any other local public body recognised as the landlord. According to Article 15 and subsequent of the law 1766/1927, the management can be devolved to a delegate of the municipality or to the technical director of the entity. The R.D. 332/1928 further expand on the regulation for the management of the civic use rights specifying that following the decree of notoriety of the civic use rights, in the cases of perpetual forests or grazing, the municipalities will adopt special regulations for the exercise of the civic use rights by the community, safeguarding the general clause included in the law on the safeguard of natural heritage and landscape (today Law 431/1985, referred to as Law Galasso). In all cases, the management of the civic use rights could be devolved to agricultural associations, collective bodies representing the farmers residing in the municipality (Article 15 ss, Law 1766/1927)[1].

The properties subjected to civic use rights for agricultural purpose can be divided into portions and they can be attributed to the families from the local community or associations of local farmers in the form of emphyteusis (Article 19, Law 1766/1927) against the payment of an annual fee and with the duty to maintain and improve the quality, and therefore the value, of the property. The annual fee is determined by the municipality on the basis of the value of the portion attributed to the single family. The annual fee can be paid in currency or in agri-food products based on the type of use of the land that is accorded to the local community and the traditions of the areas where the properties are located [10].

As we have seen above, the properties subjected to civic use are inalienable and excluded from the application of the discipline on acquisitive prescription (Article 3, Law 168/2017 and Article 12, Law 1766/1927). Although in the cases in which the properties do not have a land surface sufficient to be used collectively by the community, the municipalities can ask the Region to proceed with the alienation of the properties. The decision about the alienation is taken by the Minister of Agriculture in concert with the Regional Commissioner for civic use rights (now the Regional Councillor for Agriculture; Article 39, R.D. 332/1928). In a similar manner, in specific cases regulated by Article 41 of the Royal Decree 332/1928, the destination of use of properties subjected to civic use can be changed over time upon request of the municipalities. The change of destination of use of the properties is only possible in those cases in which a higher benefit for the community can be proved (e.g., plantation of experimental crops for economic purposes; installation of plant nursery, among others). In any case, once the new destination of use is no longer possible or no longer profitable for the community, the property shall return to its original

destination; if not possible, the Minister of Agriculture can attribute to the property a new destination of use (Article 41, R.D. 332/1928).

The Table 1 synthesises the types of rights and faculties in connection with the two categories of civic use properties.

Table 1. Table summarising the main rights and faculties connected to civic use properties.

Rights		Forests or Perpetual Grazing	Agricultural Properties
Essential rights	Right to graze	✓	✗
	Right to collect woods or grass	✓	✓
	Right to collect the fruits of the land (including mushrooms)	✓	✗
	Right to cultivate	✗	✓
	Right to glean the fields	✗	✓
Exploitative rights	Collect fruits of the land for economic purposes	✓	✗
	Right to cultivate the land for commercial properties	✗	✓
	Right to graze farm animals whose products will be used for economic reasons	✓	✗
Faculty to divide the property in portions		✗	✓
Faculty to alienate the property		✗	✓ (if land surface is not sufficient for collective use)
Faculty to change the destination of use of the property		✓ (if proven an additional benefit for the community)	✓ (if proven an additional benefit for the community)

2.2. Mapping Civic Use Rights at the Regional Level: The Relationship between National and Regional Legislation

From an analysis of the legislation discussed above, we can say that the national law provides a general legislative framework that regulates all aspects related to the recognition and enjoyment of civic use rights, the properties that can be subjected to civic rights and their destination of use, the management of collective properties and properties subjected to civic use rights, as we have seen in the previous paragraph. The Law 1766/1927 delegated to the Regional Commissioners for civic use rights—nowadays the Regional Councillor for Agriculture (or the Provincial Councillor in case of the Provinces of Bolzano and Trento)—the responsibility to adopt the decree to recognise the existence of civic use rights all over the regional territories and the Royal Decree 332/1928 attributes to them specific powers in the process of alienation and the change of destination of use of civic rights.

The mapping of existing civic use rights has been conducted by all regions recurring to different approaches ranging from special archives to geoportal and open data platforms, among others. The process of mapping started in the early 1930s and was then interrupted by World War II and recovered only in the 1960s and the 1970s. While a certain number of civic use rights has been recognised so far, many requests of recognition of civic use rights pursued by the local communities are still under investigation by regional bodies. As there is no "one-stop shop" model for the recognition and mapping of civic use rights, it is particularly hard to draw national statistics about the cases that are still under investigations and those that have been recognised. The only thing that is certain is that civic use rights are widespread all over the Italian territory with 2233 municipalities (35% of the total) being owner of properties subjected to civic use rights [2–5].

Following the entry into force of the Constitution and the attribution of exclusive and concurrent legislative power to the regions[2], in order to give execution to those powers,

all regional councils adopted specific legislative acts to implement the national legislation at the regional level and to give execution to the procedures there included, in particular those referring to notoriety of civic use rights, liquidation of the rights to private landlords, alienation of civic use properties, and change of destination of use. Furthermore, many regions adopted specific legislative acts to regulate some civic use rights that are not comprehended in the national legislation such as the right to collect mushrooms, truffles, chestnuts, among others. Whereas in other cases, the regional legislation regulates specific cases as the special regulation for the use of marble quarry in Carrara.

In several cases, the regional laws include also specific rules regarding the management of the civic use rights in a way to harmonise municipal regulations at the regional level. In fact, the Law 1766/1927 and the Royal Decree 33/1928 request municipalities to adopt regulations comprehending the rights and responsibilities of the users, the annual fee, the rules for exploitation of the properties for commercial reasons, and the division in quotas, if applicable. This led to a fragmentation of the management models for the civic use rights that the regions tried to overcome by creating separated administrative entities ("*Amministrazione separata*") in charge of managing all properties subjected to civic use rights[3]. With the entry into force of the Law 168/2017, the management of civic use rights has been harmonised at the national level by recurring to the involvement of the "*Enti esponenziali*" representing the community beneficiary of civic use rights and, only when not possible, to a separated administrative entity created by the municipality or by the region (Articles 1.2 and 2.4, Law 168/2017).

Table 2 below presents a synthesis of the state of the art in terms of mapping of the civic use rights and adopted legislative acts at the regional level.

Table 2. A synthesis of the state of the art of mapping of civic use rights at the regional level and the main regional legislative acts on civic use rights.

Region	Civic Use Mapping	Regional Legislative Acts
Valle d'Aosta	Latest recognition carried out regularly by a special commission of the regional chamber of commerce (Camera Valdaostana) All communal forests are subjected to civic use rights of collecting woods and grazing. No shared ownership over agricultural properties has been found.	Law 16/1985 regulating the management of civic use rights transferred by the state to the regional bodies. Special rules have been adopted regarding grazing.
Piemonte	Civic use rights present in over 57% of the municipalities in the region. Main forms are forests and graze in the mountains.	Law 29/2009 containing the general framework for the enjoyment and management of civic use rights in line with national legislation. Law 9/2007 prescribes a deduction of 80% of the indemnity to be corresponded to the municipalities in cases of alienation of properties discovered later to be subjected to civic use rights.
Liguria	Perpetual forests and graze present particularly in the mountain areas. Few properties for agricultural use present in inner areas	Law 27/2002 general rules on civic use rights in coherence with national regulations. Regulation 4/2007 containing the rules for the exercise of the civic use rights.
Lombardia	Last mapping conducted in 1997. Civic use rights are widely used in the mountain areas. The most frequent uses are the rights to graze and the right to collect wood.	Law 31/2008 provides the specific disciplines to conduct the inquiries about the existence of civic use rights that have not yet been concluded by the region.
Veneto	Civic use rights present in 52% of the municipalities. Civic use rights are more frequent in mountain areas and the main rights are grazing and collection of wood.	Law 31/1994 related to the existence of civic use rights over the regional territory, the proceedings for alienation, and change of destination of use: the management model.

Table 2. *Cont.*

Region	Civic Use Mapping	Regional Legislative Acts
Provincia Autonoma di Trento	Perpetual forests and graze present in almost all municipalities in the province.	Law 6/2005 providing a general framework for the management of civic use rights in lines with the requirements of the Law 1766/1927 and special rules for the communities in Spinale and Manez.
Provincia Autonoma di Bolzano	Civic use properties are mainly forests, permanent graze and "malghe" (rural farming communes). Those properties cover over 60% of the Süd-Tirol surface.	Law 16/1980 contains the discipline on the management of civic use rights in compliance with national law.
Friuli Venezia Giulia	Perpetual forests and graze present all over the mountain areas. Fisheries and molluscs farms are also subjected to civic use rights.	Law 34/1990 contains general rules on civic use rights in accordance with national law. Law 12/2009 regulates the functions of the special commissioners on civic use rights. Special regulations for molluscs farming and mountain communes.
Emilia Romagna	Regional archive of civic use rights. Civic use rights present both in mountain areas and over farming properties in inner areas.	Law 35/1977 and subsequent modifications containing the general regulation in compliance with national law.
Toscana	Civic use rights have been mapped by the regional government and are currently present in about 50% of the municipalities.	Law 27/2014 containing general rules on civic use rights in line with national law. Adopted a set of special laws for different types of civic use rights (e.g., marble caves or forests).
Umbria	Civic use rights are frequent in mountain areas, especially in the southeastern part of the region, both in the forms of perpetual forests and agricultural land.	Law 1/1984 containing the general rules on civic use rights and special legislation for the collection of mushrooms and truffles.
Marche	Perpetual forests and graze present all over the mountain areas. Few properties for agricultural use present in inner areas.	Law 24/1998 on the attribution of civic use rights to "Comunità Montane" (mountain preservation associations). Law 37/2008 on separate administration for civic use rights.
Lazio	Civic use rights present in all the provinces in the forms of agricultural properties and perpetual forests. GIS data available.	Law 1/1986 and subsequent modifications to rule all aspects related to notoriety, management, and liquidation of civic use rights in conformity with national law.
Abruzzo	About 1/3 of the regional surface is covered by civic use properties. In the vast majority of cases, these properties are forests.	Law 25/1988 and Law 68/1999 regulate all aspects about notoriety, liquidation, alienation, and change in destination of use.
Campania	Civic use properties amount to approximately 30% of the regional soil.	Law 11/1981 gives execution to the national legislation.
Molise	Civic use rights present in mountain areas; no specifications about the form.	Law 14/2002 on the management of civic use rights in accordance with national legislation.
Basilicata	Civic use rights present in mountain areas; no specifications about the form.	Law 57/2000 on the management of civic use rights giving execution to the national legislation.
Puglia	Mapping under process. Civic use properties are present in all provinces with a majority of rights over agricultural land.	Law 7/1998 regulates all aspects about notoriety, liquidation, alienation, and change of destination of use in accordance with national law.
Calabria	Civic use rights more diffused are grazing; collection of woods and collection of dried grass and leaves to be used for animal litter.	Law 18/2007 regulates general and special aspects of civic use rights giving execution to national law. Not yet entered into force as execution regulation is still under approval.

Table 2. *Cont.*

Region	Civic Use Mapping	Regional Legislative Acts
Sicilia	81% of the municipalities present civic use properties. Fisheries is the most typical case.	No specific law on civic use rights, but a series of regulations on management of civic use rights has been included in several regional laws.
Sardegna	6.7% of the total regional surface is subjected to civic use rights with an additional 8% under investigation. This is a phenomenon that involve about 43% of the municipalities in the region.	Law 12/1994 gives execution to the national law at the local level.

As we have seen since the entry into force of the constitution, and in particular following the adoption of the Constitutional Law 3/2001 that introduced a revision of the division of legislative competence between the state and the regions, the discipline of civic use rights has been subjected to both national and regional legislation. This reform, combined with the so-called Law Galasso—Law 431/1985 that introduced for the first time in the Italian legal system the safeguards for the preservation of natural landscape and natural resources—and the relevance of civic use rights with regard to the preservation of environmental heritage and landscape, generated a question of primacy of legislation in those cases in which the regional laws provide norms for the change of destination of use or the dispossession of properties subjected to civic use. Therefore, a question of whether civic use rights should serve or prevail increased public interest.

The question of primacy of the law was resolved thanks to a judgement of the Constitutional Court. In fact, with the Sentence n. 345/1997, the Court recognised that properties subjected to civic use rights cannot, under any circumstances, be dispossessed or used for public utility without a prior change in their destination of use[4]. Thus, recognising that, given their nature, civic use rights prevail over public interests. The jurisprudence of the Court, since then, has been consistent in recognising the prominence of the national legislation over the regional legislation, thus confirming that for their configuration, civic use rights fall within the scope of private law and, as such, the discipline regarding the extinction and disposal of properties encumbered by civic use rights must follow the discipline of the Law 1766/1927 [4–9]. The same was confirmed by the Sentence n. 71/2020 with regard to the changes of destination of use of the properties subjected to civic use rights that shall always be determined according to the economic benefit for the community [9]. Although this crucial point of conflict between national and regional law has been solved by the Constitutional Court, regional legislations on civic use rights survived and might be object of future controversies with the national legal framework.

Following these judgements and in a way to clarify the relationship between national and regional laws and to re-affirm the primacy of national legislation, the Law 168/2017 prescribes its application also to special statute regions and to the "*Province Autonome*" (autonomous provinces) of Trento and Bolzano. The regional laws, in this sense, can only give execution to the national legislation, while all cases of discrepancy between the regional and national law should be solved in favour of the latter.

3. Methodologies to Evaluate Economic and Ecological Value of Civic Use Properties

3.1. Methodological Issues for the Appraisal of Properties Subjected to Civic Use Rights

As can be seen from the regulatory framework described above, the estimation of the value in use of a property subjected to civic use rights depends on the characteristics of the land, and the national and regional regulations governing the case in point, as well as its destination of use and management arrangement. Civic use rights, as mentioned, are perpetual, non-alienable, and not subject to acquisitive prescription. As such, an approach to economic valuation must be developed accordingly.

When defining the evaluation issues that may arise in the application of the law and the management of civic use rights, a first distinction must be made with regard to the ownership status of the property on which these rights encumber, that is, whether the land is privately or publicly owned. In the first case, as prescribed by the Law 1766/1927, when the right of civic use encumbers a private property, it can freely be tradable, retaining the encumbrance of civic use in the transfer unless it is enfranchised beforehand. Whereas, in the case of a civic use rights over a public property, on the other hand, the good cannot be alienated unless the squatter of the land has been legitimised through the process of conciliation.

With respect to such cases, the main estimative questions may concern:

- the estimate for enfranchisement ("affrancazione") of civic use rights;
- the estimate for legitimation of occupations of state-owned properties;
- the estimate for the reintegration ("reintegrazione") of occupied lands;
- the estimate for the dissolution of promiscuity;
- the estimate for concession and change of use destination.

Enfranchisement represents a procedure by which a private citizen can free the land from the encumbrance of civic use (Articles 1865–1869 of the Italian Civil Code). In cases as such, the compensation to be paid may be set in a portion of the land or in an equivalent annual fee.

In the first case, the landowner gives the municipality an in-kind share of the land encumbered by civic use determined with respect to the nature of the civic use. In case of essential civic use rights (essential rights), the property is divided into two shares between the owner and the municipality, with the latter being entitled to a portion ranging from one-eighth to one-half of the entire property. Meanwhile, in case of useful civic use rights (exploitative rights), a share ranging from one-third to two-thirds of the property is assigned to the municipality and the remainder is attributed to the owner. The criterion on the basis of which to determine the share of the land is the market value of the land, attempting to avoid the excessive fragmentation of the land with respect to its overall size.

Legitimation consists in the transfer to a private owner of a parcel of state-owned property that has been continuously occupied and cultivated for at least 10 years and that has undergone agricultural improvements. In such a case, a royalty of an emphyteutic nature will be paid to the municipality. The loyalty corresponds to the market value of the same fund decreased by the improvements and increased by at least 10 years of interest. Thus, the emphyteutic rent can be calculated according to the following formula:

$$Ca = [(Vml - Vi) + 10(Vml - Vi)\ \ \mathrm{r} \quad (1)$$

Ca = emphyteutic rent
Vml = market value of the land
Vi = value of the improvement
r = legal interest rate

On the other hand, according to Article 9 of the Law 1766/1927, last paragraph, reintegration of occupied lands occurs in those cases in which legitimation cannot take place. It consists in the acquisition by the civic domain of lands that have been illegally occupied. In this case, the occupier will have to pay the municipality the unduly obtained fruits within the limits of the decade prior to reintegration. In the case in which there is more than one illegal occupier, each of them will pay the fruits related to the period of possession. In cases of reintegration, the assessment criterion refers to the most probable market value of the land, that is, the valuation of the lost income that the managing entity could have enjoyed if it had been in the possession of the land.

Furthermore, in cases where legitimate promiscuities are present, i.e., communions between municipalities or between municipalities and hamlets, the relevant dissolution is affected by assigning to each municipality a share of the land whose value is equal to the extent of the mutual rights in relation to the population and its needs.

Lastly, in the case of assignment of a portion of civic use under the management of a third party, the estimative issue will concern the assessment of the feasibility and convenience of the concession, demonstrating that the exercise of the civic rights is not impaired or that, in any case, the resource necessary to satisfy the annual exercise of the civic right is not lacking, based on the estimation of an annual market fee. To this, any compensation for the temporary compression of the civic use right that the concession suffered may be added (quantification of lost income). The income generated by the fee should be reinvested for the benefit of the community. Entrustment to a third party may also be accompanied by a change of use of the plot of land concerned (Article 12 of the Law 1766/1927). In this case, the estimation criterion to be concerned will be that of the transformation value.

3.2. Methodological Issues Related to the Ecosystem Services Evaluation of Civic Use Properties

With respect to the public civic use properties (Article 9, Law 1766/1927), additional evaluation instances concerning preservation emerge. Actually, public civic use properties are subjected to protection, being included among landscape heritage by Article 142(h) of the Legislative Decree 42/2004. Especially in the case of civic use rights transfer and exchanges[5], the evaluation focus is on the environmental value, because this value is the driver for finding corresponding and equivalent lands. Under this perspective, it is widely recognised that environmental goods encompass multiple values in addition to the use values that are widely recognised [11]. Civic use properties play a role that goes beyond their productivity and capability to produce incomes from the economic activities they support. Moreover, given the increasingly aggravating scarcity of natural resources, a particular emphasis should be placed on non-use values, such as the existence and the bequest values, as component parts together with the direct and indirect use values of the notion of Total Economic Value [12].

During the past three decades, considerable efforts have been devoted by sustainability scholars and environmental economists to stress the dependency between natural resources conservation and human societies. The introduction of the Millennium Ecosystem Assessment (MA) in 2005 has provided an evaluation framework to strengthen the existence of a strong interrelation between ecosystem changes and human wellbeing. The findings of MA experts' work pointed out the importance to consider Ecosystem Services' value into the economic analyses. Many studies have demonstrated that the overall values of natural habitats can exceed the private benefits after conversion [13,14].

According to the notion of Ecosystem Services (ESs), defined as benefits humans gain from ecosystem action [15,16], four categories of services have been identified to be analysed, measured, and evaluated: the provisioning services, the supporting services, the cultural services, and the regulating services. Thus, a multidimensional evaluation framework namely based on environmental, social, and economic values is introduced. Additionally, Assumma et al. [17] have highlighted the emerging instance to measure ES in monetary terms. Under this perspective, the most frequent methodologies are Benefit Transfer, Contingent Valuation Method, and ESA in the European context, whilst still few studies propose an integrated framework for Economic, Social, and Cultural values.

More recently, the emphasis on economic evaluation has been criticised by shifting the attention to the market-inspired principles beyond the conservation of ES and to the risk of commodification of nature due to the assumption of utilitarian environmentalism as a driver of environmental protection [18]. In order to overcome the limitations of the traditional ES economic evaluation methodologies, in line with West et al. [19], these scholars suggest moving from a morality founded on utility to a morality founded on care, where relational values prevail. Given the specific features of civic use rights that refer to an extended interest, integrated methodologies focused on relational values are strongly recommended. In the Italian appraisal tradition, the intuition of Carlo Forte regarding social use value appears to be crucial within this context.

Almost half a century after its publication, the book entitled "*Valore di scambio e del valore d'uso sociale dei beni culturali*" [20] provides a theoretical framework for positioning complex choices even in the absence of an explicit market and for expanding evaluation to a multiplicity of both tangible and intangible values. Forte introduces a new notion of "value" based on social preferences and ties as founding elements of cultural heritage preservation actions [21]. Similarly, the introduction of a wide concept of value, with a special focus on social and intangible costs and benefits, could encourage the consideration of civic use rights as an opportunity for natural resources preservation and for reconciling individual with collective interests, more than as a legislative burden. On the operational side and with a compellent reference to the above-mentioned Art. 3, comma 8-bis of the Law 168/2017, the Total Economic Value [12] seems to be the most adequate value infrastructure for integrating the ES under a social perspective.

As described by Figure 1, ES' taxonomy provides a further analytical level both for use-values and for the non-use ones. Among the ES, the cultural services, namely recreational, educational, and social activities, suggest how to assess the multiple faces of environmental value, when dealing with plots of land under civic use laws and regulations. The economic evaluation of the ES implies a comprehensive survey of civic uses as well as asking or inferring individual preferences for an environmental good or an environmental bad. For this reason, what deserves to be considered is the intragenerational incidence or rather the bias in the willingness to pay criterion for eliciting economic values. The Stakeholder Analysis can contribute to mapping the distribution of individual preferences before their aggregation into a monetary measurement.

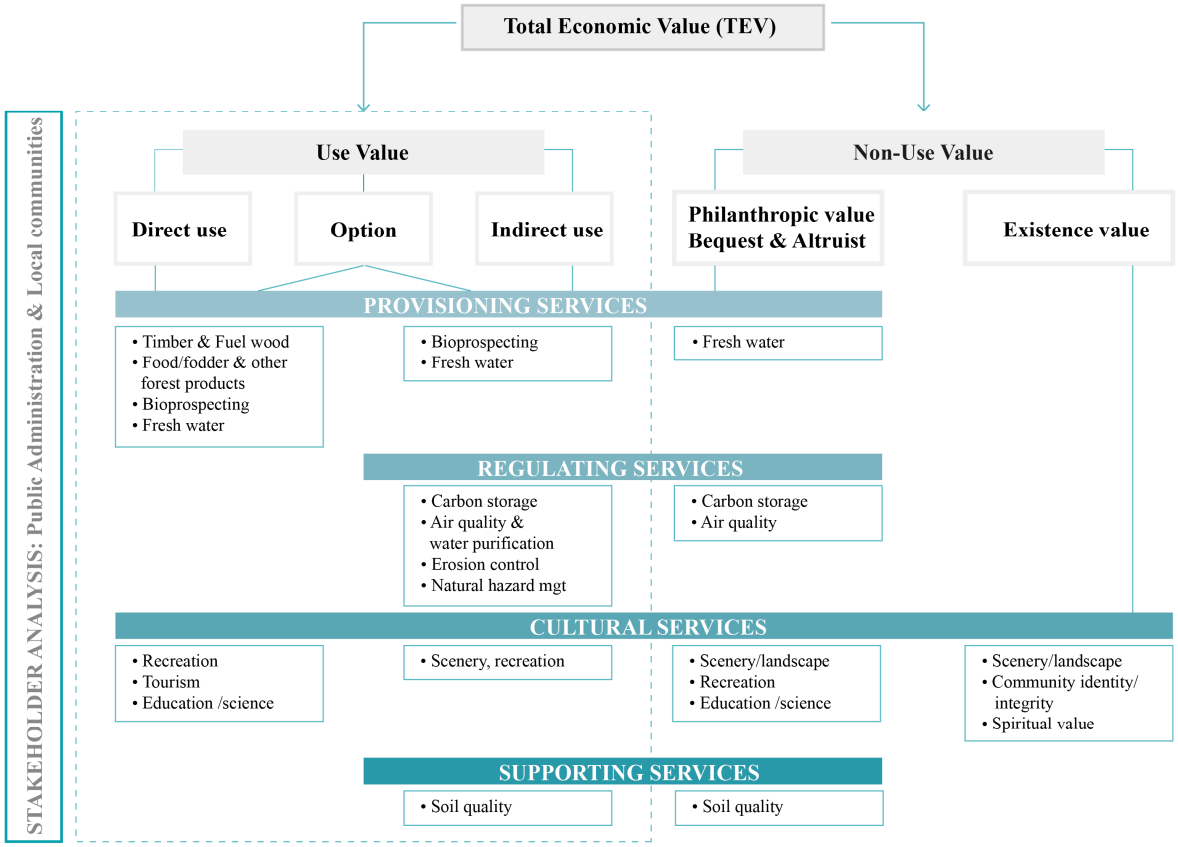

Figure 1. Integration of Total Economic Value with ES under a social perspective. Adapted from Pearce 1992.

4. Managing the Properties Subjected to Civic Use Rights: Open Challenges

As mentioned in Section 2, the latest legislative reform has been introduced with the Law 168/2017 that includes, among the categories of collective properties, those resulting

from the dissolution or liquidation of civic use rights or other promiscuous rights over properties[6]. In this sense, the law recognises shared-owned lands as a "*tertium*" between public and private ownership, recalling, as we have seen above, the notion of the commons [6] understood as a pool of resources belonging to the entire humankind and in this sense being non-excludable and subtractable and for this reason requiring a shared stewardship and a management model that involves the entire community of users and beneficiaries. Although the category of properties encumbered by civic uses presents a difference in terms of ownership with respect to collective properties, they can still be analysed as a single category with reference to the uses and functions they allow. As such, those rights have a role in terms of nature preservation, as demonstrated by the inclusion of surface water among the goods subject to collective properties (Article 3, Law 168/2017). In this light, beyond the evaluation issues addressed above, a management challenge emerges when discussing civic use properties.

The real innovation brought by the law lies in the introduction of the civic use rights in the Italian Constitution by recalling Articles 2, 9, 42, and 43 of the Constitution directly in the text of the law and, thus, recognising their private nature as part of a juridical order of the original communities presenting a self-governing model for the management of the agricultural and natural heritage (Article 1, Law 168/2017) [7]. In this sense, the "*usi civici*" shall be understood as social agreements or networks created for the management of collective-ownership goods, aiming to protect the natural and agricultural resources, in connection with Article 9 of the Constitution while generating an economic and social benefit for the local community. Therefore, the economic value is intrinsically linked with civic use rights goods through the possibility of using the goods to develop entrepreneurial activities that can be later devolved or transferred to public or collective bodies [7].

The Law 168/2017 recognises the function of civic use rights in connection with the effort of preservation and valorisation of the natural heritage and landscape (Articles 3.6, Law 168/2017). For this, their perpetual agri-sylvan-pastoral destination of use (Article 3.3, Law 168/2017) and their role as a stable component of a natural ecosystem is crucial in the landscape preservation efforts[7] [7]. For this reason, even in those cases in which the management of civic use properties is devolved to a private entity, this shall be addressed to the satisfaction of a general and collective interest and not for the pursuit of private gains [3,4,7]. Civic use rights become, in this way, a means to preserve ecological ecosystems consistently with the evolution of agriculture economy and environmental protection legislation.

Furthermore, thanks to the latest reform introduced with the adoption of the Law 108/2021, Governance of the Italian National Plan for Recovery and Resilience (PNRR), specific provisions regarding the transferral of civic use rights and trade-in of properties are subjected to civic use rights. In particular, the new Articles 8-bis, 8-ter, and 8-quater of the Law 168/2017 provide that administrative bodies can allow municipalities to transfer civic use rights over superficial lands to their disposable assets, proven that there has been an irreversible and lawful transformation of the property itself. This means that civic use rights can be transferred from lands that no longer pursue the original destination of use (e.g., former graze hosting telecommunication infrastructures) towards lands with an equal ecological and environmental value as the original land encumbered by civic uses assessed according to the methodology presented in the previous paragraph. Thus, the role of civic use rights in the effort towards natural resources preservation is enhanced.

Descending from the above, we can say that the Law 168/2017 addresses civic use rights in light of the general interest of the community to preserve natural resources and, at the same time, introduces a form of self-management of the collective use rights over common properties. In this sense, we can speak about civic use rights over collective properties as socio-ecological systems (SES), i.e., systems in which anthropic and natural aspects interact constantly in a way that natural resources promote the well-being of local communities [6–22]. In a complex SES, as it could be the one represented by a civic use right over public property, subsystems can be identified. In particular, here we can

define resource system (e.g., a forest), resource units (e.g., trees), users (lumberjacks, local community), and governance system (e.g., *Ente esponenziale* according to Law 168/2017), as described in Figure 2.

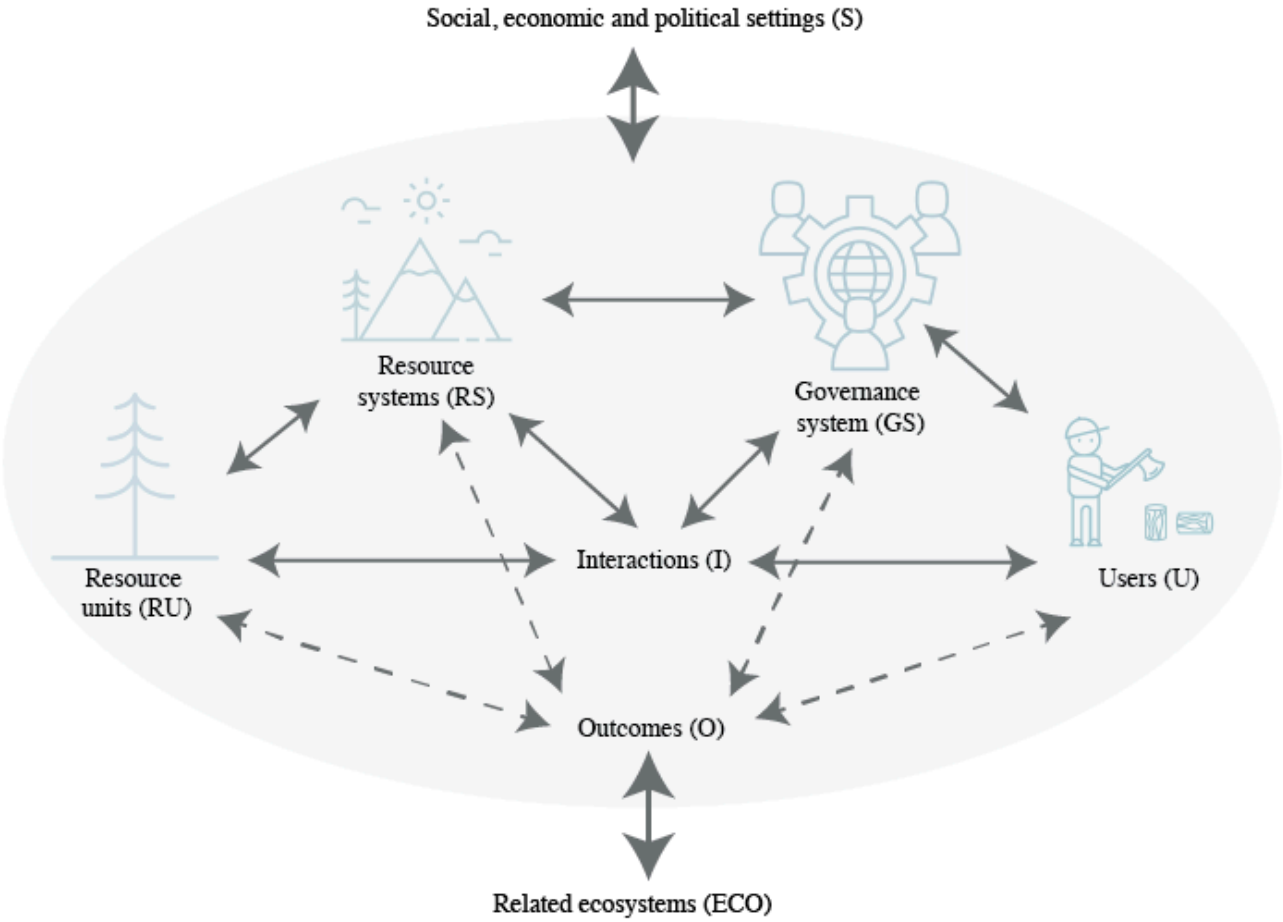

Figure 2. The core subsystems and their interactions in a framework to analyse socio-ecological systems. Adapted from Ostrom, 2009.

Those subsystems, although relatively separable, interact with each other to produce outcomes at the SES level, which can, in turn, affect these subsystems and their components. In a system like this, the life of the local community is highly interlinked with the preservation of natural resources; thus, it is foreseeable that the local community will be able to define a management model that ensures everyone's enjoyment of the natural resources while preventing their overexploitation by users [6]. Therefore, a self-management model that implies multiple stakeholder stewardships for the protection of natural resources allowing access to them by the entire community and enhancing their use must be found, although in a context of scarcity. By conducting an analysis according to the SES framework, it is possible to identify the connections between the different subsystems and understand how different combinations might bring different results for the entire SES. This is crucial in order to understand who the users of the resources within the property encumbered by civic use rights are and how the use of resources can be managed and self-regulated to avoid overconsumption by the community [6]. Thus, this analysis supports local municipalities and communities to understand the factors that can be controlled in a way to enhance environmental and ecosystem conservation efforts as well as the specific context variables that can support in this effort. While conducting the analysis about the management model, users shall take into account the ecosystem value of the property evaluated according to the method provided in the previous section.

Therefore, what is necessary in these cases is to define a management system aiming at the long-term survival of the common resources that interact with the existing national and regional law to promote shared ownership of the resources themselves while guaranteeing equal returns to the local communities. Performing an analysis according to the SES framework can enhance the value of public properties subjected to civic use rights to pursue the general interest and to preserve natural resources as recalled by the Law 168/2017 in a way to prevent the so-called "tragedy of the commons" [23] while empowering local communities to take actions in the natural resources' preservation in connection with administrative bodies and promote social and ecological benefits for the entire ecosystem.

Lastly, in those cases in which the civic use rights are transferred from one property to another, given that the former underwent irreversible transformation and lost its original environmental value, conducting an evaluation according to the SES framework can help in identifying the stewardship model to be applied to the new property to be encumbered by civic use rights. In fact, building on top of the results of the ecosystem service assessment provided in paragraph 3.2., the analysis according to the SES framework allows public bodies to address the issue of stakeholders' composition and subsystems' interactions in the identified land and define ex ante a collaborative governance model that contributes to the overall goal of preserving natural resources and agri-sylvan-pastoral landscapes. Doing so will allow from the very beginning a definition of a self-management model that allows for protection of natural and ecological resources while creating positive outcomes for the beneficiary community.

5. Discussion and Conclusions

Civic use rights are conceptualised in the Italian legal system as perpetual use rights belonging to the members of a given community over a public or private property. Those rights, although of uncertain origin, guarantee communities, villages, or hamlets common ownership of land and at the same time, they can enable rational and sustainable use of natural resources. As we have seen throughout the paper, the category of civic use rights comprehends two main categories of rights attributed to the local communities: essential rights, generally connected with the survival of the beneficiaries and with traditional uses of the land (e.g., graze), and exploitative rights, allowing local communities to generate economic revenues. Rights as such are recognised to the entire community and everyone has an equal right over the common property, unless a division of the land for agricultural purposes is done. Civic use rights can act both on sylvan-pastoral properties (forests or perpetual grazing) as well as on agricultural properties. As such, and descending from the history of their formation, civic use rights can exist over both public and private properties.

In this light, civic use rights have been analysed through the lens of the commons, understood as non-excludable and subtractable pool of resources belonging to all humankind and, as such, presenting a shared stewardship model for their preservation [6]. In the paper, we have seen how the existence of a civic use rights over a property allows for non-exclusive yet rival use rights by the beneficiary community that can use those limited and finite resources for both essentials and exploitative purposes according to the law. In this sense, although the property of the land is retained by the municipality or any other relevant public body, the existence of a civic use right entails the need to create a self-management model participated in by all members of the community in order to guarantee everyone the possibility to benefit from the civic use property.

Almost a century ago, civic use rights were regulated at the national level (Law 1766/1927, Royal Decree 332/1928, and Law 1078/1930) in an attempt to harmonise the legislation at the Italian level and to provide clear guidelines in terms of management of properties subjected to civic use rights—that became part of the state or municipal property—and property appraisal in cases in which compensation to private landlord is needed. In this light in the paper, we highlighted different economic appraisal models that can be used by municipalities or experts taking into account different situations in which those analyses are necessary. Cases include enfranchisement, legitimation, and the

consequent calculation of emphyteutic rent, as well as feasibility assessment in cases of concession of properties subjected to civic use rights to specific members of the communities and for specific purposes. In this way, it will be possible to estimate the economic value that those properties can generate for the entities owning the properties subjected to civic use rights and for the beneficiary community.

Since the entry into force of the Law 431/1995 (so-called Law Galasso), civic use rights became crucial in terms of preservation of the natural and agri-sylvan-pastoral landscapes. Therefore, the need to also include an ecosystem service evaluation when conducting the appraisal of public properties subjected to civic use rights is highlighted. In particular, this kind of evaluation can balance the economic evaluation and allow the understanding of the dependency between natural resources conservation and human societies. Thus, social, environmental, and cultural benefits descending from properties subjected to civic use rights are highlighted. Evaluations as such are crucial to shift from a utilitarian understanding of natural resources towards environment preservation. In fact, conducting an ecosystem service evaluation can enable the comprehension of civic use properties as a complex socio-ecological ecosystem, where the local community plays a fundamental role in the management of the common natural resources. In this sense, understanding the social, environmental, and cultural value that the property subjected to civic use rights has on top of economic value for the entire community and the territory will empower the members of the community in preserving the natural landscape and common pool of resources.

Lastly, descending from the understanding of civic use rights as complex socio-ecological systems (SES) [6], the paper addresses the issue of analysing the interaction between the pool of resources, the users, and the governance system adopted. Conducting this kind of evaluation supports public bodies in understanding the best management model that applies to different settings and contexts. The result of this analysis can enable processes of co-creation and collaborative governance involving the members of the community or their association in order to maximise social outcomes at the community level.

Conducting an integrated assessment as presented in this paper is particularly crucial in cases of transferral of civic use rights from a land that lost its original environmental protection purpose to other properties that have an equivalent ecological value according to Article 3, paragraph 8bis, and 8ter of the Law 168/2017. In particular, the combination of TEV and ES allows for understanding the original environmental value of the land encumbered by civic use rights allowing to find a pool of properties with an equal value. Attached to this, an evaluation according to the SES framework allows the evaluation of the typology of interactions between different subsystems within the complex SES and the quality of those interactions, thus supporting the definition of the resources' stewardship and management model to be applied to the specific case. Moreover, this analysis supports in understanding how social value is generated at the community level, thus understanding better what is the general interest in which the civic use rights act and preserve the natural environment, adding in this sense to the evaluation conducted according to ES. Lastly, once the new property to be encumbered by civic use rights has been identified, the appraisal methodologies described can support the municipalities in addressing the economic value of the land, especially in those cases in which the new property is not already part of the public property.

This paper built upon several studies conducted on the topic of appraisal of properties subjected to common use and developed a comprehensive methodology that can be used in a wide variety of cases. In this sense, the paper can be seen as a first step in a wider research agenda that aims to understand the economic, social, and environmental value of civic use rights in connection with management arrangement defined by the local communities that benefit from the civic use rights. As discussed above, the mix of methodologies provided is particularly relevant when addressing the cases of transferral of civic use rights according to Article 3, paragraph 8bis, and 8ter of the Law 168/2017, taking into account a multiplicity of values attached to the property encumbered by civic use rights. Despite

this, the paper is not free of limitations as the methodology presented here has not yet been applied to specific cases and thus it might require some adaptation and revision in the future. In this light, future research shall be conducted involving specific case studies in order to understand better the added value of the presented methodology for public bodies and practitioners.

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Notes

[1] The Law 168/2017, then, introduced the figure of "*Enti esponenziali*" to comprehend all private, public, or mixed collective bodies that can manage a property subjected to civic use.

[2] Article 117 of the Constitution.

[3] Examples of this are given by the regional laws adopted in the Marche, Piedmont, and Valle d'Aosta regions, among others.

[4] The judgement of the court originated from a controversy over a law from the Abruzzo region (regional Law 23/1996) aiming to simplify the procedures to sell or change the destination of use of properties subject to civic use rights that have been irreversibly transformed for public interest purposes, giving full decision-making power to the mayor and assuming that the public utility of the infrastructure would in any case contribute to the wellbeing of the collective.

[5] Art. 3, comma 8-bis, Law 168/2017 and Art. 63bis Law 108/2021.

[6] Article 3 of the Law 168/2017 mentions 7 categories of collective properties:

(a) Properties that are subject to a collective right *ab origine* and that belong to a municipality or other public or collective body;
(b) Properties assigned to a community as a result of the liquidation procedure of collective use rights in favour of a municipality or other public body;
(c) Properties deriving from the dismissal of collective ownership or collective use rights according to the procedures included in the Law 1766/1927, as well as lands obtained by the municipalities through extinction of civic use rights or donation from privates;
(d) Public and private properties subject to civic use rights;
(e) Collective properties that fall within the scope of Article 34 of the Law 991/1952, Articles 10 and 11 of the Law 1102/1971, and Article 3 of the Law 97/1994;
(f) Surface water over which local communities exercise civic use rights.

[7] In particular, the law follows the prescription of the so-called Law Galasso (Law 431/1985).

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