

Rodotà Commission Bill

Delegated legislation to reform the Civil Code articles concerning public property

Article 1, paragraph 1

The Italian Government is delegated to issue one or more legislative decrees to reform Chapter II, Title I, Book III of the Civil Code and eventually other parts of the same Book concerning right to property and goods, within ten months of this present bill entering into force.

Article 1, paragraph 3

The decrees mentioned in paragraph 1 are issued through the necessary coordination with the current regulations concerning this subject matter and by respecting the following principles and general directive criteria:

- a) Amendment of article 810 CC (Civil Code) with the aim of re-defining property as things, material or immaterial, whose utilities can form the subject matter of rights.
 - b) Establishment of three distinct categories of properties:
 - common goods
 - public property
 - private property.
 - c) Introduction of the category of “common goods”, that is things that are functional to the exercise of fundamental rights and to a free development of human beings. Common goods should also be protected by the legal system to the benefit of future generations. Holders of common goods can be either public or private legal persons. In any case they should guarantee the collective fruition of common goods in the ways and within the limits established by the law. If the holders are public legal persons, common goods are managed by public bodies and are located out of trade and markets; their concession/grant is allowed only in the cases provided by the law and for a limited time, with no possibility of extension. Examples of common goods are, among the others: rivers, streams, spring waters, lakes and other waters; the air; national parks as defined by the law; forests and wooded areas; mountain areas at a high altitude, glaciers and perpetual snows; seashores and coasts established as natural reserves; protected wildlife; archeological, cultural and environmental goods. The law concerning common goods should be in accordance with the existing customary law. Everyone is entitled to the jurisdictional protection of rights concerning the safeguarding and the fruition of common goods. [...]
 - d) Substitution of the categories of “public domain” and “patrimony of the State” [see articles 822-829 CC] with a classification of public properties belonging to public legal persons based on their nature and function:
 1. Necessarily public goods
 2. Social public goods
 3. Interest-bearing public goods
- 1) The “necessarily public goods” are goods that satisfy the general public interest; their protection is a prerogative of the State and of territorial public bodies. They are neither

usucaptionable [*usucapibili*] nor alienable. Examples of “necessarily public goods” are, among the others: works intended for national defence; beaches; roads, freeways and railways; the frequencies spectrum [*spettro delle frequenze*]; waterworks; ports and airports. Their property can be transferred only between the State and another territorial public body. [...]

- 2) The “social public goods” are goods that satisfy needs related to the civil and social rights of the human being. They are not usucaptionable. Examples of “social public goods” are, among the others: houses used for public housing, public buildings used as hospitals, schools, kindergartens; local public service networks. Their property can be transferred on condition that the intended public use of such buildings is not modified. [...]The “interest-bearing public goods” are goods that do not enter in the above mentioned categories. They are alienable and they can be managed by public legal persons through private law instruments. Alienation is allowed only on condition that the public use of a specific good is no longer necessary and that it is no longer possible to benefit of its property under economic criteria. Alienation is regulated by appropriate procedures that should emphasize the nature and the necessity of their disposal. [...]Definition of parameters to be applied to the management and to the enhancing the value of any kind of public good. In particular: Any use of public goods by a private should be subjected to the payment of a compensation, which should be proportional to the advantages the user would get from it and which should be identified through the comparison of different offers. When evaluating different offers, one should in any case take into account the social and environmental impact of the use of that public good. The public goods management should assure an appropriate maintenance and a suitable development, even with relation to changes in the service requirements.