NEW FORMS OF HOUSING SERVICES MANAGEMENT IN A COMPARATIVE PERSPECTIVE

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Abstract

In the area of public services, and in particular social services, housing services are a sector in which to observe the intersection between public and private spheres, between national and global dimensions, between common law and civil law systems. Therefore, they represent an interesting area for the application of comparative exercise, especially with reference to the forms of housing services management, and over all these aimed at establishing a relationship between the public actor, the private one and the community of service beneficiaries. Efficient and participatory management is thus the goal to respond to the housing sector's persistent inability to provide an adequate service to the most vulnerable. This form of management has been examined through the study and development of a U.S.-based institute, the Community Land Trust, and its feasible application in different legal and geographic contexts, such as the Italian one, due to its flexibility and adaptability. It allows to reflect on two profiles: the multi-participation management of the housing services and the preservation and circularity of them.

TABLE OF CONTENTS

1. Introduction: housing services.....1497
2. A comparative exercise: from the U.S. model to the Italian model of Community Land Trust.....1506
   2.1. Community-led housing and Community Land Trust...1507
   2.2. The classic model and the U.S. experiences.....1512
   2.3. The Italian model of CLT.....1520
3. The Italian model of CLT and the relevance of public-private partnership.....1526
4. Conclusions.....1536

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1. Introduction: housing services

The management of public services represents an interesting point of analysis in the panorama of comparative public law[1], because in this area of research comparison contributes to the creation of a communicating law, which can bring different dimensions into dialogue, and stimulate a constructive discussion[2].

The special focus of the paper concentrates on housing services, and the comparative path regards a new possible service management model, which starts from the Community Land Trust and its United States origins and then goes on with its potential applications in different legal contexts, especially the Italian one.

Before delving into the heart of the analysis, it is appropriate to place the issue in its context. The category of housing services is

[1] The comparative perspective has always been an essential component of public law and, in more detail, administrative law. «The globalisation that followed brought up the so-called global administrative law, a domestic branch of law thus becoming cosmopolitan», in S. Flogaitis, *Comparative administrative law: the unprecedented iter from national to global administrative law,* in G. della Cananea, C. Franchini (eds), *Il diritto che cambia. Liber Amicorum Mario Pilade Chiti* (2016), 176.

[2] M. D'Alberti, *Comparazione giuridica, diritto europeo e diritto globale*, in G. della Cananea, C. Franchini (eds), *Il diritto che cambia. Liber Amicorum Mario Pilade Chiti*, cit. at 1, 179. On the comparative public dimension, see also: G. Napolitano, *The transformations of comparative administrative law*, 4 *Riv. Trim. Dir. Pubbl*. 997 (2007), R. Scarciglia, *Diritto amministrativo comparato* (2020); G. Napolitano (ed), *Diritto amministrativo comparato* (2007); J.S. Bell, *Comparative administrative law,* in M. Reimann, R. Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2019), 1250-1275. «The scenario of legal comparison especially in the field of administrative law completely changed between the end of the twentieth century and the beginning of the twenty-first one, as a new age of public sector reforms and growing economic and legal integration took place all around the world», in G. Napolitano, *The transformations of comparative administrative law,* cit. at 2, 1004; F.J. Goodnow, *Comparative Administrative Law* (1893); S. Rose Ackerman, P.L. Lindseth, B. Emerson (eds), *Comparative Administrative Law*, second edition (2017); A. Von Bogdandy, P.M. Huber, S. Cassese (eds), *The Max Planck Handbooks in European Public Law, Vol. 1, The administrative state* (2017); S. Cassese, *Beyond Legal Comparison*, in *Yearbook of Comparative Law and Legislative Studies* (2012) 387-395; S. Cassese, *L'étude comparée du droit administratif en Italie*, *Revue international de droit comparé* 879-886 *(*1989); S. Cassese, *Administrative Law without the State. The Challenge of Global Regulation*, 37 *New York University Journal of International Law & Policy* 663-694 (2004); S. Cassese, *Lo studio comparato del diritto amministrativo*, *Riv. Trim. Dir. Pubbl.* 251-255 (1995); S. Cassese, *The rise of the administrative state in Europe, Riv. Trim. Dir. Pubbl.* 981-1008 (2010); J.B. Auby, *The transformation of the administrative state and administrative law,* in A. Von Bogdandy, P.M. Huber, S. Cassese (eds), *The Max Planck Handbooks in European Public Law, Vol. 1, The administrative state* (2017), 629.

exceedingly difficult to frame at national level[3], and even more complex in the European and even global framework. As for public services[4], the reasons for this complexity lie in several factors.

First, the lack of a stable definition. Housing service represents in fact one of the most indeterminate notions in the entire legal context. It is a category with uncertain and fluid boundaries[5]. The elasticity then of this category means that with the passing of

[3] For a historical discussion of public services, and the idea of a lack of a legal concept of public service, A. De Valles, *I servizi pubblici*, in V.E. Orlando (ed), *Primo Trattato completo di Diritto Amministrativo Italiano*, (1900), 379 ff. On the tormented concept of public services, also: M. Dugato, *I servizi pubblici locali,* III *Enc. Dir., I Tematici* 1086 (2022). For an in-depth discussion on the still preliminary notion of the activity of public authorities and the character of public interest of a series of activities, M.S. Giannini, *Diritto amministrativo, Vol. I,* (1970) 451-455. On the evolution of the tasks and functions of the State, following the advent of the multi-class State, and on the growing importance acquired by the activity of providing services to citizens, as well as on the idea that public services are nothing more than a true crossroads of administrative issues, E. Casetta, F. Fracchia (eds), *Manuale di Diritto Amministrativo* (2023), 648.

[4] Public services are those services aimed at satisfying the fundamental needs of the community and have traditionally been identified through the distinction from the notion of public function. C. Franchini, *La disciplina pubblica dell'economia tra diritto nazionale diritto europeo e diritto globale* (2020), 153. «Le service public désigne à la fois une obligation générale et permanente et une extension constante des obligations des gouvernants vis-à-vis des gouvernés», in C. Didry, Léon Duguit, *Ou le service public en action*, 52-3 *Revue d'Histoire Moderne et Contemporaine* 92 (2005). U. Pototschnig, *I pubblici servizi* (1964). On the concept of public function, G. Napolitano, *Funzioni amministrative,* in S. Cassese (ed), *Dizionario di diritto pubblico* (2006), 2631-2641; A. Sandulli, *Funzioni pubbliche (e servizi pubblici),* in F. Galgano (ed), *Dizionario enciclopedico del diritto*, Vol. I (1996), 720-721; M. D'Alberti, *Lezioni di diritto amministrativo* (2025). Regarding the origin of public services, L. Duguit, *Traité de Droit Constitutionnel*, Vol. II (1928). The distinction between function and service, it must be said that today this distinction is mainly relevant for the application of the rules of criminal law, and not so much for those of administrative law. This distinction does not therefore identify two opposing moments, but only two ways of being of the administration, two distinct angles of view in their relative dynamic moment. On the one hand, the administration as an authority whose activity is expressed in the exercise of power, and on the other, the administration as a service whose activity is expressed in the provision of services. These are therefore two different notions that express different and non-coincident moments, but which can be integrated and combined with each other, two moments of administrative activity. See G. Napolitano, *Funzioni amministrative*, cit. at 4, 2631-2641; G. Caia, *Funzione pubblica e servizio pubblico*, in F.A. Roversi Monaco, A. Romano, L. Mazzarolli, G. Pericu, G. Caia, F.G. Scoca (eds), *Diritto amministrativo, vol. II* (2005), 131 ff.

[5] P. Ciriello, *Public Services*, *Enc. Giur.* (1994).

time the forms of housing that it is possible to include in the notion are different. In Italy, for example, before only the public housing was included, today also the social housing and new forms like co-housing experiences or eco-solidarity villages. This elasticity also makes it possible to widen the scope of a service to expand the range of recipients, to better respond to the needs of the community and to reach where the market alone cannot reach. Besides, housing services are to be placed within the prism of social services, which intended to concretize the guarantee of the related social right. Social services are thus understood to mean all activities relating to the provision and supply of services, whether free of charge or against payment, or of economic benefits intended to remove and overcome situations of need and difficulty that the human person encounters during his or her life[6]. In addition, social services are characterized by the following elements. Their purpose is the protection and promotion of the wellbeing of the individual, the need to provide the public apparatus necessary for their management and, from the perspective of horizontal subsidiarity, the absence of a ban on private individuals carrying out such activities[7]. Among these services, there are housing services, alongside the better-known health services, school services, and social assistance services. This categorization obviously belongs mainly to the national context, but it also extends to the European one. As is evident, therefore, the housing services represent a set of services aimed at realising the need for housing, the need to have a space in which to realise one's personality and social dimension. They are configured as social services and realise the objectives of the Welfare State, and they respond to the constitutional right to housing, even if not expressly recognized, but recognized by constitutional case law[8] as a social right, the right of everyone to be

[6] Art. 1, c. 2, Law No. 328/2000, which refers to Art. 128, Legislative Decree No. 112/1998.

[7] E. Casetta, F. Fracchia (eds), *Manuale di Diritto Amministrativo,* cit. at 3, 655.

[8] Constitutional court, judgment 14 January 1976, No. 3; Constitutional court, judgment 11 February 1987, No. 49; Constitutional court, judgment 11 February 1988, No. 217; Constitutional court, judgment 24 March 1988, No. 404; Constitutional court, judgment 11 February 1988, No. 217; Constitutional court, judgment 16 May 1989, No. 252; Constitutional court, judgment 15 April 1996, No. 121; Constitutional court, judgment 19 June 2013, No. 161; Constitutional court, judgment 28 January 2020, No. 44. On the housing right, see: U. Breccia, *Il diritto all'abitazione* (1980); U. Breccia, *Diritto all'abitare*, in *XXI Secolo*, *Norme e idee* (2009); G. Marchetti, *La tutela del diritto all'abitazione tra Europa, Stato e Regioni e*

able to develop their personality in a space of their own. An inviolable human right, instrumental to the realization of a dignified existence and aimed at combating conditions of poverty, which must be understood as a situation of incapacity, impossibility of having certain opportunities for growth and development. The right to housing is therefore a right for all; everyone should have access to housing that is worthy and adequate for the development of their own personality.

Secondly, the differences in the administrative systems of the single nation states and the different welfare systems widened and complicated the definition. For example, in the European context, there are two different welfare models and thus also two models of housing services. On the one hand, there is the universalist model (e.g. the Netherlands[9]), which considers housing as a public responsibility towards the whole population[10] and housing is allocated based on waiting lists with or without priority criteria and local authorities have the possibility to reserve a certain number of housing units for those who present a housing emergency[11]. On the other hand, there is the selective welfare model, which believes that it is the market the main actor called upon to respond to the housing needs of households, and that the recipients of housing policies should only be those households that are not able to bear market prices on their own. Within this second category, countries with a

nella prospettiva del Pilastro europeo dei diritti sociali, 4 *Federalismi.it* (2018); G. Marchetti, *Il diritto all'abitazione tra ordinamento statale ed europeo e prospettive di valorizzazione nel quadro dell'europa sociale*, in P. Bilancia, *La dimensione europea dei diritti sociali* (2019); T. Martines, *Il "diritto alla casa",* in N. Lipari (ed), *Tecniche giuridiche e sviluppo della persona umana* (1974); M. Nigro, *L'edilizia popolare come servizio pubblico, Riv. trim. dir. pubbl.* (1957); E. Olivito, *Il diritto costituzionale all'abitare. Spinte proprietarie, strumenti della rendita e trasformazioni sociali* (2017); M. Delsignore, *Il diritto all'abitazione in emergenza*, 3 *Dir. Amm*. 476 (2023).

[9] For further information on the Dutch housing system, M.E.A. Haffner, *Solving the Dutch Housing Affordability Crisis?*, in B. Egner, M. Krapp (eds), *Housing in Crisis. Policies and Challenges in Europe* (2025), 153 ff; J. Hoekstra, *Housing and the welfare state in the Netherlands. An application of Esping-Andersen's typology*, 20 1 *Housing, Theory and Society* (2003); M. Vols, *The Netherlands,* in C.U. Schmid (ed.), *Ways out of the European Housing Crisis* (2022).

[10] M. Baldini, *La casa degli italiani* (2010), 136.

[11] https://www.programmaurbano.it/attachments/article/151/fascicolo4_impaginato.pd.

generalist approach (e.g. Austria[12]) should be distinguished from those with a residual approach (e.g. the United Kingdom, and Spain[13] for social rents). The first approach addresses all those who fall under an income ceiling, so that the perimeter also extends to those who find it difficult to access adequate housing due to a precarious income value, while the second approach is limited to the most vulnerable[14], those who identify themselves as marginalized or particularly disadvantaged[15]. Next to them there are also some models that combine percentages of the generalist model with percentages of the residual model, and this is what

[12] For further information on the Austrian housing system, Institute for Real Estate, Construction and Housing Ltd, *The Austrian Model of Affordable Housing* (2024); G. Koessl, B. Riessland, *The Austrian model of limited-profit housing – an example for other sectors of the economy?, 33 Congreso International del CIRIEC, Valencia, 13–15 June 2022;* W. Matznetter, *Social Housing Policy in a Conservative Welfare State: Austria as an Example, 39 2 Urban Studies* (2002); A. Mundt, *Housing benefits and minimum income schemes in Austria – an application of the residual income approach to housing affordability of welfare recipients, International Journal of Housing Policy* (2017); A. Mundt, *Privileged but Challenged: The State of Social Housing in Austria in 2018*, 5 1 *Critical Housing Analysis* (2018).

[13] On the promotion of tenancy at the expense of homeownership in Spain, S. Nasarre Aznar, M. Olinda Garcia, H.S. Moreno, K. Xerri, E. Molina Roig, *Tenancies as an alternative to homeownership in Spain, Portugal and Malta? The legal drivers in a European context*, in C.U. Schmid (ed), *Tenancy Law and Housing Policy in Europe. Towards Regulatory Equilibrium* (2018).

[14] M. Bronzini, *Nuove forme dell'abitare. L'housing sociale in Italia* (2014), 54-55; L. Ghekiere, *Le développement du logement social dans l'Union Européenne. Quand l'intérêt général rencontre l'intérêt communautaire, Cecodhas-ush-dexia* (2007).

[15] Opinion of the European Committee of the Regions - *Towards a European Housing Agenda,* 2018/C 164/10, point 2.8. And on this point also: M.G. Della Scala, *Il* social housing *come servizio d'interesse generale tra tutela multilivello del diritto sociale all'abitare e imperativi della concorrenza,* 2 *Rivista giuridica dell'edilizia* 185 (2019).

happens for example to the French[16] and German[17] models[18]. Finally, the Italian model is placed within the selective model and is endowed with a certain percentage of the generalist approach, envisaging, in fact, that part of the housing stock is allocated based on compliance with certain income criteria.

Thirdly, the assumption described above of the indefiniteness of the category reverberates on the applicable discipline, as well as on the applicable forms of management. Thus, there will be completely public forms of management or mixed forms of management or forms of outsourced provision to the private sector. In Italy, the main forms of management of public services are the following. The traditional forms are direct management and indirect management. In the first case, the activity is carried out by the structures of the authority which owns the service. In the second case, it is assigned to a public body that is responsible for providing the service[19]. In addition to this, there are also the in-house company[20], the mixed company and the public-private partnership of the contractual type, and finally the authorization of several managers to provide the service in

[16] For further information on the French housing system, C. Mialot, *Affordable and Workforce Housing in France,* 4 1 *Journal of Comparative Urban Law and Policy* (2020); C. Mialot, J. Ponce Solé, *Ten Years of the French DALO and the Catalan Right to Housing Act: European Innovation in the Fields of Land Use Planning and Housing,* 2 *Journal of Comparative Urban Law and Policy* (2017); N. Foulquier, A. Fuchs-Cessot, I. Hasquenoph, *SIEG logement social et droit français* (2024); M. Gimat, A. Guironnet, L. Halbert, *La financiarisation à petits pas du logement social et intermédiaire en France. Signaux faibles, controverses et perspectives, WP Chaire Villes, logement, immobilier,* 1 *Sciences Po* (2022); J.C. Driant, *Social housing in France: a sector caught between inertia and changes. The HLM system in the early 2010s, in* N. Houard (ed), *Social Housing across Europe, Paris, ministère de l'Écologie, du développement durable, des transports et du logement* (2011).

[17] For further information on the German housing system, A. Klopp, C.U. Schmid, *The role of tenancy law in the tenant countries Switzerland, Austria and Germany – macroeconomic benefits through a balanced legal infrastructure?,* in C.U. Schmid (ed), *Tenancy Law and Housing Policy in Europe. Towards Regulatory Equilibrium* (2018).

[18] M. Bronzini, *Nuove forme dell'abitare. L'housing sociale in Italia,* cit. at 11, 54.

[19] M. Clarich, *Manuale di diritto amministrativo* (2019), 374.

[20] The in-house company is entrusted with the service by means of a concession or convention, without, however, the tender procedure being carried out. This is thus a mode that is still *de facto* internal to the organization of the public administration.

competition with each other[21]. This shows that public services are in fact one of the administrative law scenarios in which the co-participation of public and private actors is unavoidable and has become increasingly interconnected. As the analysis will show, co-participation today must also include a third actor, namely, the community of service recipients, whose involvement can no longer

[21] The forms, through which the service is outsourced, partially or in its entirety, are the mixed company, with public and private participation, the public-private partnership of the contractual type, and, finally, finally the authorization of several managers to provide the service in competition with each other. The form of mixed company is a form of public-private partnership of the institutional type, in which the outsourcing of the service is only partially realized. The private partner must be selected through the launching of a tendering procedure and is entrusted with the management through the granting of a concession. The public and private entities are thus closely linked and manage the service jointly. The reference discipline is contained in Legislative Decree No. 175/2016.The other form of partnership, on the other hand, the contractual type, achieves complete outsourcing of the service, and represents a further form of management. It provides for the granting of the service concession to third parties selected based on competitive procedures in cases where, for technical or economic reasons, the service lends itself to being provided by a single operator (competition for the market). In this way, public control over the service is carried out by the provisions of the service contract, since there is no direct organizational involvement of the public entity. [For the sake of completeness, it is noted that a part of the doctrine makes a further distinction in the matter of public-private partnership, distinguishing between contractual, structured and institutional PPPs. According to this distinction, the mixed company should be placed within the category of structured PPP. On this point, A. Fioritto, *L'amministrazione negoziale: modelli di partenariato e problemi di applicazione*, in A. Fioritto (ed), *Nuove forme e nuove discipline del partenariato pubblico privato* (2017), 58. In the analysis carried out, instead, to follow the classic distinction, underlying the European discipline, between contractual PPP and institutional PPP is preferable]. The term outsourcing indicates the exercise of administrative activities entrusted to subjects other than the public administration, often by virtue of the principle of horizontal subsidiarity, in E. Casetta, F. Fracchia (eds), *Manuale di Diritto Amministrativo*, cit. at 3, 651. The last form is then that of the authorization granted to several operators who proceed to provide the service in a competitive relationship with each other. It thus determines a case of competition in the market. Finally, to clarify the term concession: pursuant to Article 2, Paragraph 1(c) of Annex I.1, of Legislative Decree No. 36 of 31 March 2023, the definition of concession is as follows: (c) "concession contracts" or "concessions" shall mean contracts for pecuniary interest concluded in writing on pain of nullity under which one or more contracting authorities or one or more contracting entities entrust the execution of works or the supply and management of services to one or more economic operators, where the consideration consists solely in the right to exploit the works or services which are the subject of the contracts or in that right accompanied by a price.

be excluded. The partnership between public and private actors can also be understood in light of the distinction between function and service. If the function is in fact the vertical activity of the administration, the service mainly represents the horizontal activity[22] and is not characterized by being an exclusive activity of the administration, but rather by being an activity also performed by private subjects in the cases and according to the discipline dictated by the system for each type of public service[23].

Therefore, this paper will analyse the public-private partnership as a feasible form of public service management[24], a form that has long been widespread in various national contexts of the various global macro-regions. Partnership is, in fact, a widespread and interesting phenomenon that makes it possible to combine public and private aspects for the better management and more efficient delivery of public services, as well as for the construction of infrastructures.

Finally, the other relevant element for describing the framework of housing services is the relationship between national level and European level about the definition of public services and especially social services. It is fundamental to understand how the influence of European law affects the category of social services. As is well known, in fact, with reference to the category of public services the European Union does not have specific competences in the field of housing services and, more generally, European law defines two categories, services of general economic interest and services of non-economic general interest. The European notion of public service does not correspond exactly to any of the single member states notions. Herein lies the cause and consequence of the difficulty in untangling the notions and applications of the related disciplines. On the one hand, the European notion of service tends to be a synthesis of different national experiences and to be characterized by original terminology. On the other hand, this original terminology is also the cause of the difficulty for each individual state to bring its own experiences into the right and corresponding European categories.

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[22] G. Caia, *Funzione pubblica e servizio pubblico*, cit. at 4, 143 ff.

[23] G. Caia, *Funzione pubblica e servizio pubblico*, cit. at 4, 131.

[24] «A new paradigm of housing governance based on shared and binding duties across public, private, and community actors», in C. Iaione, M. Manna, *Outcome Contracts and Partnerships: Public and Private Duties for an Emerging Customary Housing Law*, 3 *European Review of Contract Law* 416 (2025).

With reference to social services, it is relevant to observe that if the field of social services is restricted to services that are exclusively carried out in a non-entrepreneurial manner, and therefore those without economic relevance, this category will offer a service only to a small segment of the population. In this way there is the risk of having a not indifferent segment of people who in any case cannot satisfy their housing need and do not see their right protected. European law allows national law to develop a widening, an extension. In European law it is possible to speak, in fact, of social services of general interest with economic relevance or without economic relevance. They are in fact those services that meet the needs of vulnerable citizens and are based on the principles of solidarity and equal access. Regardless of their qualifications as social services, the distinction between those of economic relevance and those without economic relevance affects the type of regulation applicable. In particular, the application of competition law and state aid rules, and thus market rules[25]. The extension therefore takes place in the opening of social services to the market. And this is truly relevant because this extension makes it possible to broaden the category of recipients of the social service itself.

Regarding housing services, it can be stated that they should be understood as social services of general interest. The economic and non-economic relevance of housing services is determined by the way the service is provided on the market. The presence or absence of the market, in fact, is not the useful distinguishing criterion for the division between those with economic relevance and those without such relevance, while the mode of performance may be. The market, therefore, is often the result and not the premise of public intervention, which makes an economic activity contestable and susceptible to being carried out in an entrepreneurial way.

The possibility, therefore, of extending social services and classifying them in the light of European regulations into services with economic relevance or without economic relevance makes it possible to articulate a more complete range of services.

To identify possible new forms of housing services management in the Italian context, it was decided to take a closer

[25] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

look at an institute of U.S. origin, the Community Land Trust (CLT), and to assess whether its scheme, albeit with some modifications to some of its peculiarities, could preserve its collaborative and multi-participatory spirit in the management of housing units. The paper aims so to decline the CLT in the Italian context and to understand if its implantation in a different legal context finds a new answer to the following question. What can be an efficient form of management of certain forms of housing services, capable of channelling the participation of public, private and community sectors, to meet the housing needs of a wider segment[26] of the population?

2. A comparative exercise: from the U.S. model to the Italian model of Community Land Trust

To realize the comparative exercise and finds the answer to the above-mentioned question, first the historical and functional profiles of the Community Land Trust model[27] will be described, as well as its place in the broader category of community-led housing. Then a brief analysis of some experiences in the American context will be made to reinforce the idea of the flexibility and adaptability of the model, as well as its experiential nature and bottom-up

[26] The grey band of the population is made up of those who cannot access the market due to inadequate economic resources, and who do not even have the requirements to access public housing. For a reference, A. Carriero, F. Antellino Russo, S. Screpanti (eds), *Social Housing. Il mercato immobiliare in Italia: focus sull'edilizia sociale*, Monographic Report, 3 *Cassa Depositi e Prestiti* 32 (2014).

[27] «A community land trust is an organization created to hold land for the benefit of a community and of individuals within the community. It is democratically structured nonprofit corporation, with an open membership and a board of trustees elected by the membership. The board typically includes residents of trust-owned lands, other community residents, and public-interest representatives. Board members are elected for limited terms, so that the community retains ultimate control of the organization and of the land it owns», in Institute for Community Economics, *The Community Land Trust Handbook* (1982). For a complete view in Italian language, A. Vercellone, *Il Community Land Trust. Autonomia privata, conformazione della proprietà, distribuzione della rendita urbana* (2020). «A community land trust is a nonprofit corporation that buys and holds title to property, ordinarily by acquiring inexpensive land located in a depressed area or land whose purchase is subsidized by government loans, loan guarantees, or subsidies. The trust retains title to the land, but sells residences on the land, whether as single-family homes or condominiums, to lower-income purchasers at below market rates», in J.W. Singer, B.R. Berger, N.M. Davidson, E.M. Peñalver, *Property Law. Rules, Policies and Practices* (2017), 591.

origin. The landing place of this study is then to arrive at defining and outlining an Italian model of CLT, in which, through the modification of certain variables, a model can be traced which may represent a concrete answer to the question asked at the beginning.

This model could be, therefore, one of the most interesting new forms of public service management. It is a specific type of community-led housing. To have a clearer picture, it is necessary to clarify what the community-led housing is and the different legal forms applicable to collaborative forms of housing.

2.1. Community-led housing and Community Land Trust

In the housing area, beyond the public and private sectors, today it is necessary to consider also a third and principal character, the community, the service recipients as a whole and people who can also benefit indirectly from the service.

To hear the voice of the community, but also to involve them in housing management is necessary to sustain a solidarity-based, sustainable and inclusive housing policy.

Community-led housing is defined as a model of housing centred on three key principles: *(i)* the meaningful community engagement and consensus throughout the process; *(ii)* the local community owns, administers or has stewardship of the housing; and *(iii)* the benefits of the housing scheme benefit the geographic area in which the project is located or a specific community and are clearly defined and legally protected to last over time. These three criteria were defined in 2018 from the Co-operative Councils Innovation Network[28].

In this way, another question arises. What is the aim of the community's involvement? One of the most relevant reasons is to create a system of management that conforms to the needs and requirements of the most vulnerable people. It is perhaps a way of counteracting the emergence of urban space, starting with the target audience. Recipients thus go from being end users to being primary actors.

Then, after the definition of the three criteria described above, the expression Community-led housing encompasses a

[28] Co-operative Councils Innovation Network is a non-party-political active hub for cooperative policy development, innovation and advocacy. It is a collaboration between local authorities who are committed to finding better ways of working for, and with, local people for the benefit of their local community.

complex set of different forms of housing, legally encompassing both the ownership and rental scheme. According to the Co-operative Councils Innovation Network these different forms of housing are: *(i)* Housing co-operative: groups of people who provide and collectively manage, on a democratic membership basis, homes for themselves as tenants or shared owners. *(ii)* Cohousing: groups of like-minded people who come together to provide self-contained, private homes for themselves, but manage their scheme together and share activities, often in a communal space. Cohousing can be developer-led, so it is important to examine whether cases meet the broad definition of CLH given above, rather than simply use of the term cohousing as a marketing device. *(iii)* Community Land Trust (CLT): a not-for-profit corporation that holds land as a community asset and acts as the long-term steward, which can provide housing through rent or shared ownership. *(iv)* Community self-build: groups of local people in housing need building homes for themselves with external support and managing the process collectively. Individual self-building is not regarded as CLH. *(v)* Self-help housing: small, community-based organizations bringing empty properties back into use, often without mainstream funding and with a strong emphasis on construction skills training and support. *(vi)* Tenant-Managed Organizations: provide social housing tenants with collective responsibility for managing and maintaining the homes through an agreement with their council or housing association landlord. This category, like (developer-led) cohousing, is contested and needs specific case by case consideration to deem tenant management a meaningful form of community control.

They are the different forms of community-led housing, and to understand what the legal forms are applicable to them, it is possible to list, on the one hand, the condominium structure, and on the other one, cooperative/corporate-type structures. In addition to these models, there are also trust-based forms of ownership, and in a future perspective also trust-based tenancy. To be clear, when referring to the trust in this paper, the reference is not exactly to the legal institution of the trust but about a generic form of trust. The first movement of Community-led housing was in the United Kingdom in the nineteenth century.

Looking at the common elements of community-led housing, the collaboration or participation of the community is not the only relevant element. The model requires, in fact, also the

presence of common spaces to develop the relationship between members of the community. The presence of common spaces also affects the planning of urban spaces, and the way of provision of services to citizens. These common spaces are so the measure of the social dimension.

The question of the legal dimension of the different European and non-European contexts and the lack of an *ad hoc* legal regime for community-led housing leads to different consequences in the development of these models. Each context therefore uses its own legal instruments and adapts them to this three-dimensional form of housing policy.

In the condominium dimension, the residents own their private dwellings and share in the common parts and services of the building, in corporate or cooperative schemes the residents generally have a right of enjoyment and use of the dwellings, while ownership of the dwellings and common parts remains with the legal entity.

Within this broad category, this paper focuses on community land trusts and on one conceivable way to respond to the emergence of housing needs[29] for many people.

The Community Land Trust is a model that has been created to counter widespread forms of urban distress and, before that, rampant poverty in a part of American society in the late nineteenth century. This model takes the name Community Land Trust, although this expression was coined only later. It was, in fact, only in the late 1960s that Bob Swann[30] added the C for community to the model. Its current and most common definition is the following.

[29] «It is evident that housing is an important issue that has caught the eye of many national governments and the European Commission. At the same time, there is no common European approach to address the problems, since housing is not a task of the European Union and since housing provision in the various European countries is very different. As all countries may be quite different in various respects, the diagnosis is quite similar: Prices and rents for housing and energy are rising, and housing expenditure and the share of consumption expenditure of households also is», in B. Egner, M. Krapp, *Introduction: Housing in Crisis Across Europe,* in B. Egner, M. Krapp (eds), *Housing in Crisis. Policies and Challenges in Europe* (2025), 2.

[30] *Swann* himself defines his contribution in the following words: «The practice I added was open membership in the corporation bylaws to all people living in the region. This was my major contribution», in J.E. Davis, *Origins and Evolution of the Community Land Trust in the United States* (2014). For a complete view on the *Swann*'s activity, J. Meehan, *Reinventing Real Estate: The Community Land Trust as a Social Invention in Affordable Housing*, 8 2 *Journal of Applied Social Science* (2014).

A Community Land Trust is an organization created to hold land for the benefit of a community and individuals within that community. It is a nonprofit corporation with a democratic, open-membership structure and a community-elected board of directors. The board typically includes residents of the land owned by trust, other community residents, and representatives of the public interest. Board members shall be elected for limited terms so that the community retains final control of the organization and the land it owns.

About its origins, the theoretical substratum for the first elaboration of the model goes back to the economic analysis of Henry George, who in his work "Progress and Poverty" of 1879 highlights the contrast between development and economic progress, on the one hand, and growing poverty of a large part of the American population, on the other one. The other theory behind the development of the Community Land Trust is found in the studies of British urban planner Ebenezer Howard, who planned the so-called garden cities, the creation of urban areas that would surround major cities by combining the best features of the city and the countryside. The use of the expression land trust for these models that combined collective ownership of land and individual ownership of improvements belongs to Ralph Borsodi[31], who also coined the term *trusterty*[32], instead of property alongside the term land. The first appearance of the community land trust thus awaits the work of Bob Swann, C.B. and Slater King, who added the third component, the component of participation by the city or community even non-residents in the CLT. Therefore, they elaborate a new model of land ownership aimed at mitigating the difficult housing situation of African Americans in the rural South.

[31] He founded the School of Living in 1934, with the aim of associating a select group of artists, Craftsmen and teachers to demonstrate that a decentralized and self-sufficient life in the countryside can contribute to remedying the economic and psychological insecurities of the industrialization era; to study and develop the possibilities of home and farm as a productive and creative institution; and to offer those who can only go there for small visits a place to study life on the farm and make their lives more meaningful. This "school", which is in fact an idea, still exists and today it is a non-profit organization. You can visit the site at: https://www.schoolofliving.org/. For a detailed overview of Borsodi's activities, J. Meehan, *Reinventing Real Estate: The Community Land Trust as a Social Invention in Affordable Housing*, cit. at 23.

[32] R. Borsodi, *Seventeen Problems of Man and Society* (1968).

Leaving aside, in this analysis, a detailed evolutionary path of the Community Land Trust, it is possible to observe that the volume of 1972, devoted to CLT, described the peculiarities of the model, and devised its definition. In this way, the Community Land Trust constitutes a social mechanism that has as its purpose the resolution of the fundamental issues of allocation, continuity, and exchange.

Besides, the land trust concept is the best way to allow the maintenance of local control. The composition of the board determines and helps the balance between this control and the trusteeship function.

In 1982 the volume was updated with the inclusion of some organizational and operational refinements, suggested by more recent practical experiences, which highlighted the issue of housing preservation and the processes of redevelopment of residential neighbourhoods. The 1972 volume[33] focused more on reformulating the relationship between the individual and the land, the 1982 volume focused on the relationship between the individual and the community. A further profile of distinction is in the identification of the recipients and thus of the inherent purpose of the model. In 1972 there is the need to manage land resources in common, in 1982 there is moral responsibility, the obligation to use and develop land for the primary benefit of individuals, and not generic individuals, but those who are socially and economically disadvantaged.

After, the manual of 1982 defined the classic CLT model. It is a model in which there is a two-part ownership structure, on the one hand, the nonprofit corporation, which owns the land, and, on

[33] «The Community Land Trust, published in 1972, was built around Swann's experience working with New Communities, but it also drew practical lessons from older leased-land communities in the United States and Israel. It included, for example, the complete text of the Bryn Gweled ground lease. The authors admitted that the "somewhat hypothetical model" they were proposing "exists only in the form of various prototypes", yet they managed to describe many of the key features of ownership and organization that characterize the CLT of today», in J.E. Davis, *Origins and Evolution of the Community Land Trust in the United States*, cit. at 23. On the same point, J. Farrel Curtin, L. Bocarsly, *CLTs: a Growing Trend in Affordable Home Ownership*, 17 *Journal of Affordable Housing and Community Development Law* (2008). International Independence Institute, *The Community Land Trust. A Guide to a New Model for Land Tenure in America* (1972).

the other hand, the individual building owners, who lease the land on which the buildings insist[34].

Then, in 1992, for the first time, the notion of Community Land Trust was formally included in an act of Congress by the U.S. Department of Housing and Urban Development (HUD). An amendment[35] included the institution in the National Affordable Housing Act. Specifically, Section B on Community Housing Partnerships added CLTs alongside community housing development organizations (CHDOs), and described their purposes in the maintenance, rehabilitation, and construction of housing for low-and moderate-income families.

Two key features characterize the Community Land Trust: *(i)* the promotion of home ownership even for that segment of the population with low or moderate incomes, and *(ii)* the ability to maintain certain characteristics usually foreign to an individual ownership scheme. The latter refers to as the long-term affordability, the mechanisms of resale control, the constant maintenance of buildings and the prevention of foreclosure of lots.

2.2. The classic model and the U.S. experiences

To realize a comparative exercise, this paper deeps the U.S. model of Community Land Trust and tries to implant it in the Italian legal system.

Firstly, it is necessary to observe and understand the functioning of the model and its elements. It is important to underline that the classic model[36] is not a model from which any derogation is impossible, but one that represents the synthesis of the key features of the various CLTs spread across the U.S.[37]

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[34] «In a classic CLT, parcels are purchased by the CLT, which is typically a nonprofit corporation. The land portion of the parcel is severed from any improvement on the land, with the intention that the CLT will hold the land in perpetuity and in trust for the community. Any improvement on the land is sold as private property typically to individual homeowners, but potentially also to other nonprofit housing providers or governmental entities», in S.R. Miller, *Community Land Trusts: Why Now is Time to Integrate this Housing Activist's Tool into Local Government Affordable Housing Policies*, 9 36 *Zoning and Planning Law Report* (2015).

[35] Amendment by Pub. L. 102–550 to National Affordable Housing Act.

[36] A. Vercellone, *Il Community Land Trust. Autonomia privata, conformazione della proprietà, distribuzione della rendita urbana*, cit. at 21, 86.

[37] «However, variations on the classic model continue to proliferate as local groups adapt the classic model to local circumstances. It will continue to be important for the organizers of new CLTs to think through their own goals and

territories. Moreover, the classic model is based on the archetype of the townhouse typical of the U.S. suburbs, while its application to the condominium structure represents a deviation from it, even if a widespread one.

There are three elements that characterize it, the same ones that make up the name, *community, land* and *trust*, and four profiles that deserve to be addressed to develop, based on the peculiarities described in the CLT Technical Manual, a clear and illustrative treatment of the functioning of a U.S. CLT. The first element, community, indicates that the development is community-driven (community-led), meaning that the model involves the resident community in the activities, purposes and organizational structures affecting the CLT. The second element, land, indicates an asset permanently removed from the market, made available in the long term for the satisfaction of the purposes of the community residing there. In the CLT, the legal scheme imposed on the land generates a break with traditional ownership patterns, balancing itself midway between the extremes of individual property and private interest and collective property and common interest[38]. However, this is not collective property, but property owned by the CLT for the common good[39]. The third element, trust, does not indicate the form of organization of the CLT but indicates more generically how it operates in the management and administration of the land and

the realities of their own communities as they draft their own bylaws», in K. White (ed), *The CLT Technical Manual*, National Community Land Trust Network, 2011. Besides, «this continuing process of innovation and adaptation has helped the CLT to spread across a disparate international landscape and to thrive in a range of settings. At the same time, the diversity of meaning attached to the model and the variety of ways in which CLTs are structured have introduced a degree of difficulty to the task of explaining exactly what a CLT might be. Today, there is ambiguity – even dose of controversy - to be found in the description and implementation of every component», in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust* (2020), xxvi.

[38] J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30, xxvii.

[39] «Although a CLT's lands are frequently and fairly characterized as "community-owned" or, in the parlance of the present volume, as "common ground", these landholdings are neither collectively nor cooperatively owned by the people living on them or around them. Title is held exclusively by the CLT. A community land trust is ownership for the common good, not ownership in common», in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30, xxvii.

buildings that come under its care. The management differs according to the specific purpose for which the CLT comes into being[40].

Given these three elements, the four profiles to explore are the following. First, the dissociation between ownership of the land and ownership of the buildings; second, the legal relationship between the land-owning entity and the private entities that own the buildings, and thus the lease that binds them, also called ground lease. The third profile is the governance and thus the management of the CLT, and finally the mechanisms for the alienation of the buildings and the constraints on them.

The decoupling of landownership and building ownership[41] is the driving centre of the aims that animate CLT. Indeed, it is precisely the "subjective dissociation of ownership title" that allows for the socialization of land rents, lowering the cost of access, keeping the accessibility of land and buildings constant over time[42].

Beyond the classic dissociation that identifies two owner-occupants, the flexibility of the model and often also the relevant urban context require certain variations. Thus, alongside owner-occupied housing there is tenant-occupied housing. In some cases, in fact, the CLT retains not only ownership of the land, but also ownership of the building, whether residential or commercial. Other times, however, and this is often the case in CLT with a condominium character, the CLT does not own the underlying land, but enters into an agreement with individual condominiums

[40] «Some CLTs are focused less on the provision of housing, however, than on the preservation of watersheds, woodlands, or agricultural lands, either in rural or urban areas. The stewardship responsibilities of a CLT entrusted with managing such lands can look very different than the stewardship needed when affordable housing is a CLT's operational focus», in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30, xxviii.

[41] «The community land trust (CLT), also put forward an innovative solution by splitting the ownership of housing between the land and the buildings». In particular, «the local community (through the CLT) owns and controls the land while individuals are given home ownership opportunities in the buildings», in D.M. Abromowitz, *Community Land Trust and Ground Leases*, *Journal of Affordable Housing & Community Development Law* (1992).

[42] «The CLT's goal is to preserve access to land and provide "decent, affordable housing and home ownership opportunities for low and moderate income people *over an extended period of time and through a succession of owners*"», in S.J. Pastel, *Community Land Trust: a promising alternative for affordable housing*, 6 2 *Journal of Land Use and Environmental Law* 297 (1991).

to ensure the same criteria for housing accessibility in the event of resale.

The second profile concerns the contract that, as a rule, binds, on the one hand, the CLT[43] and, on the other hand, the owner of the building[44]. The reason, understood as the social economic function of the ground lease, is to allow the land to preserve access to low-cost housing in perpetuity, avoiding being overwhelmed by speculative building practices. The ground lease is particularly relevant and influential from two perspectives: first, in terms of property use, and second, in terms of its alienation, which goes into the fourth profile of analysis.

With reference to the property use, attention is drawn to the obligation to occupy the property, which must be constant, continuous, personal, and for residential use.

For this reason, a clause in the contract specifies the minimum duration of occupancy for each year, and the ground lease cannot be sublet or be transferred to a third party without the prior written consent of CLT.

With reference then to the duration of the ground lease, it is valid for 99 years generally [45].

The obligations for the parties are on the lessee's side, as mentioned above, the right to exclusive use of the property, on the lessor's (CLT's) side the right to perpetual control over how the land is used and how the accommodation is managed, considering the profiles of alienation, maintenance, renovation, and resale.

Typically, the ground lease stipulates that routine maintenance work is the responsibility of private owners, while extraordinary maintenance work is the responsibility of the CLT.

The ground lease is, moreover, a contract for consideration, in the sense that the performance of the CLT is matched by a counter-performance, in this case of a pecuniary nature, of the lessee. The latter is in fact required to pay a monthly fee in favour of the CLT, the so-called fee.

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[43] «The CLT as land-owner is primarily interested in preserving housing stability and affordability rather than maximizing revenue from the land», in D.M. Abromowitz, *Community Land Trust and Ground Leases*, cit. at 34.

[44] A. Vercellone, *Il Community Land Trust. Autonomia privata, conformazione della proprietà, distribuzione della rendita urbana*, cit. at 21, 98-99; D.M. Abromowitz, *Community Land Trust and Ground Leases*, cit. at 34.

[45] J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30, 6; D.M. Abromowitz, *Community Land Trust and Ground Leases*, cit. at 34.

Then, regarding the third profile, related to CLT management, it involves observing the mechanisms for the functioning of the CLT board and membership.

Community, as previously identified, is closely related to the issue of participation in CLT governance, which is normally tripartite. Such governance reserves an equal share of members on the board for each party. And so, one-third represents the interests of those who lease the land from the CLT; one-third represents the interests of residents of the surrounding community, not closely related therefore to the CLT; and finally, one-third represents the public interests. Tripartite management thus addresses the balancing of the interests involved, considering none of them as the predominant interest.

The main core of CLT management is in the board of directors, the CLT board of directors, composed of members elected by the assembly in proportion to the seats available for each component of the CLT.

Finally, regarding the fourth profile of the CLT, it is possible to consider some specific clauses included in the ground lease contract, such as the resale formula clause and the purchase option clause.

The obligation to preserve the affordability of the improvements that falls among CLT's duties in the ground lease contract implies that the CLT undertakes to keep the housing attractive in economic terms for subsequent owners as well. On the other hand, private parties, who decide to proceed with the alienation of the property, are required to comply with a series of constraints that prevent their unjustified enrichment upon the sale of the property.

The objective, therefore, of the subjugation of the property, in perpetuity, to access low-cost housing for families in need is achievable with the inclusion in the contract of the resale formula clause.

Then according to the purchase option (or pre-emptive option) the selling party sells the assets to CLT, on whom then formally falls the burden of selling the improvement to the new buyer, who must also enter into the ground lease agreement[46] with it. This is a pre-emption on repurchase and it is a mandatory step,

[46] J.W. Singer, B.R. Berger, N.M. Davidson, E.M. Peñalver, *Property Law. Rules, Policies and Practices,* cit. at 21, 835; American Law Institute, *Restatement of the Law (Second) Property 2nd, Landlord and Tenant* (1977).

which, where it does not occur, results in liability of the directors and it is a cause for their removal.

These mechanisms make it possible to guarantee collective interest in maintaining the land and property at affordable prices, but also a constant ease in finding the new buyer, thus representing aid for the homeowner interested in alienating the improvement, thus also satisfying an individual interest.

The CLT is a dynamic and flexible tool, allowing it to adapt to the distinct characteristics of the territory. This model has evolved over time and shown different peculiarities in different geographic areas.

Traveling geographically, from Burlington to Boston, from New York to San Juan, in Puerto Rico[47], and it is possible to observe that every model is different, and each model has its own peculiarity. The Champlain Housing Trust[48] is the perfect example of a mix of housing services (shelters for the homeless, community homes with built-in services, rental apartments, limited-equity cooperatives, limited-equity condominiums, co-housing, and resale-restricted houses on leased land). Then, Dudley Neighbors Incorporated (DNI)[49] of Boston is qualified as Urban

[47] The State of Puerto Rico is a territory incorporated into the United States, which has begun the process for the transition to a federal state of the United States, a transition that has not yet been completed.

[48] The first name was *Burlington Community Land Trust* (BCLT). About it, P. Arnould, N. Quintas, *Global study: Community-Led Housing in the COVID-19 context* (2020); J.E. Davis, *Shared Equity Homeownership. The Changing Landscape of Resale-restricted, Owner-Occupied Housing* (2006); B. M. Torpy, *The Best Things in Life Are Perpetually Affordable. Profile of the Champlain Housing Trust, Burlington, Vermont*, in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30; N.M. Davidson, *Localist Administrative Law*, 126 *The Yale Law Journal* 564-634 (2017).

[49] J.E. Davis, *Origins and Evolution of the Community Land Trust in the United States*, cit. at 23; J. Farrel Curtin, L. Bocarsly, *CLTs: a Growing Trend in Affordable Home Ownership*, cit. at 26; H. Smith, T. Hernandez, *Take a Stand, Own the land. Dudley Neighbors Inc., a Community Land Trust in Boston, Massachusetts,* in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30; J.J. Kelly, *Sustaining Neighborhood of Choice: From Land Bank(ing) to Land Trust(ing),* 54 *Washburn Law Journal* (2015); S.R. Foster, C. Iaione, *Co-cities. Innovative Transitions toward Just and Sel-Sustaining Communities* (2022); https://www.dudleyneighbors.org/; E.A Taylor, *The Dudley Street Neighborhood Initiative and the Power of Eminent Domain,* 36 *Boston College Law Review* (1995); J.J. Kelly, Jr., *Land trusts that conserve communities*, 59 *DePaul Law Review* (2009); C. Iaione, M. Bernardi, E. De Nictolis,

Redevelopment Corporation and it used the special power of eminent domain to develop the model on the ground. The Cooper Square CLT of New York[50] found its peculiarity in the hybridization between several models, CLT and limited-equity cooperatives (LECs), and finally, the Caño Martín Peña Community Land Trust[51] of Puerto Rico is a tool to remedy informal settlements; a CLT for a legal system that is half common law and half civil law, and it use the civil law institute of surface right.

The flexibility of this model shows that it is possible to export it to contexts that are also very different one from another, from the rural areas in which it originated to the urban areas in which it has continued to develop, from contexts of the great socio-cultural mix to contexts characterized by the informality of settlement, from contexts in which improvements and community had to be created to contexts in which the community existed before CLT and already occupied housing. CLT in its multiple declinations and persistent

La casa per tutti. Modelli di gestione innovativa e sostenibile per l'adequate housing (2019).

[50] https://nyccli.org/about/background/; T. Angotti, *Community Land Trusts and Low-Income Multifamily Rental Housing: The Case of Cooper Square, New York City* (2007); M.M. Ehlenz, *Community Land Trusts and Limited Equity Cooperatives: A Marriage of Affordable Homeownership Models?* (2014); J.E. Davis, *Origins and Evolution of the Community Land Trust in the United States* (2014); J.E. Davis (ed), The *Community Land Trust Reader, Cambridge, Massachusetts, Lincoln Institute of Land Policy* (2010).

[51] P. Arnould, N. Quintas, *Global study: Community-Led Housing in the COVID-19 context,* cit. at 41*;* M. Bernardi, *An Informal Settlement as a Community Land Trust. The case of San Juan, Puerto Rico*, *The Urban Media Lab* (2017), available at this link: https://labgov.city/theurbanmedialab/the-favela-as-a-community-land-trust-the-case-of-san-juan-puerto-rico/; J.E Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, Vol. 51, 1 *San Francisco Law Review* (2017); M.E. Hernández-Torrales, L. Rodríguez Del Valle, L. Algoed, K. Torres Sueiro, *Seeding the CLT in Latin America and the Caribbean. Origins, Achievements, and the Proof-of-Concept Example of the Caño Martín Peña Community Land Trust,* in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30; L. Algoed, M.E. Hernández Torrales, *The Land is Ours. Vulnerabilization and resistance in informal settlements in Puerto Rico: Lessons from the Caño Martín Peña Community Land Trust,* Vol. 1 1 *Radical Housing Journal* 29-47 (2019); L. Fiol Matta*, Civil Law and Common Law in the Legal Method of Puerto Rico,* Vol. 40 4 *The American Journal of Comparative Law* (1992); M. Veronesi, L. Algoed, M.E. Hernández-Torrales, *Community-led development and collective land tenure for environmental justice: the case of the Caño Martín Peña community land trust, Puerto Rico,* 14 1 *International Journal of Urban Sustainable Development* 388-397 (2022); S.R. Foster, C. Iaione, *Co-cities. Innovative Transitions toward Just and Sel-Sustaining Communities* (2022).

interest in land accessibility and housing affordability, for those with low or moderate incomes, proves to be a ductile and convergent tool, capable of adapting, as observed in the latest experience, even to legal systems that are not exclusively common law.

Community Land Trust is not a geographically limited experience, thus reaching other continents and other different legal systems. Today, CLT is common also in Europe, as well as in Africa, India, and Australia, for a total of six hundred CLTs spread across the globe. This is not a high number, but the development in recent years shows a significant increase in the application of the model. It is interesting to note how a model that originated in a common-law legal system has adapted and conformed to the civil law system, which is more prevalent in European countries. In Europe, the countries concerned are England, Belgium, the Netherlands, France, and Germany.

Among those with civil law systems that first promoted the implantation of the American-originated model is Belgium[52], and particularly the Brussels region, where a community land trust has been in operation since 2006. This is a completely private model that realizes the splitting of ownership between land and buildings above. It resorts to the civil law institutes of association and foundation to replicate the membership corporation and to that of

[52] «In Belgium, the non-profit sector has advocated for the development of CLT as an innovative model to develop affordable collaborative housing». Besides, «As the pioneer on the European continent, CLT Brussels (CLTB) played a major role in helping the model to spread in Belgium and across continental Europe», in Interreg North-West Europe Shicc, *Urban Community Land Trust in Europe. Towards a transnational movement*, 8 and 29, available at this link: https://vb.nweurope.eu/media/11838/shicc_eu-clt-guide_2020_en.pdf; G. De Pauw, N. Aernouts, *From Pressure Group to Government Partner. The Story of the Brussels Community Land Trust*, in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30; A. Vercellone, *Il Community Land Trust. Autonomia privata, conformazione della proprietà, distribuzione della rendita urbana*, cit. at 21; G. De Pauw, N. Aernouts, *From Pressure Group to Government Partner. The Story of the Brussels Community Land Trust*, in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30; S. Zolea, *Le droit de superficie aujourd'hui: entre dissociation juridique de l'immeuble et solidarisation du droit. Une analyse comparative des ordres juridiques français, belge et italien*, 1 *Roma Tre Law Review* (2021); P. Arnould, N. Quintas, *Global study: Community-Led Housing in the COVID-19 context,* cit. at 41; N. Bernard, G. De Pauw, L. Geronnez, *Coopératives de logement et Community Land Trusts,* 28 *Courrier hebdomadaire du CRISP* (2010).

the constitutive title, contractual in nature, of the surface right to replicate the ownership dissociation and socialization of the land rent.

In France, on the other hand, the introduction of the *Organisme de Foncier Solidaire* (OFS) by *Loi* ALUR of 2014 is relevant. The OFS represents a new actor of French housing policy, and the subject through which to apply the model of the community land trust, adapting it to French law. The aim is to ensure long-term affordability and sustainable home ownership. The key aspect to note is that it is a translation of the CLT model, but a partial translation, because the community element is missing, and the principle of solidarity is not accompanied by the principle of participation. This model therefore constitutes a unique model in the European context, in which the non-profit organization interacts with the recipients through the stipulation of a *Bail Réel Solidaire* (BRS)[53].

Leaving out the Belgian and French experiences here, it is interesting to illustrate the idea of implanting a CLT in Italy, where there are currently no concrete examples of CLT. It should be noted that an initial attempt was already made, which never came to fruition, and that a new attempt is now underway.

2.3. The Italian model of CLT

To describe the Italian model, it is necessary to consider the following elements.

Firstly, there is a civil law system and not a common law system. This point does not represent an impediment, because already the diffusion of CLT in the legal system of Puerto Rico, with predominance of the civil law system, has demonstrated the flexibility and adaptability of the CLT model.

Secondly, it is possible to maintain the three elements: community, land, and trust[54], but it is necessary to change some peculiarities of their relationship. So, it is possible to observe the

[53] O. Roty, M. Goetzmann, *French Community Land Trusts and the Creation of the Bail Réel Solidaire (BRS): A Contractual Innovation PromotingAutonomy and the "Right to Housing"?*, in 3 *European Review of Contract Law* (2025).

[54] For a deeper look at the elements of CLT: J.E. Davis, L. Algoed, M.E. Hernández-Torrales, *Introduction. On Common Ground*, in J.E Davis, L. Algoed, M.E. Hernández-Torrales (eds), *On Common Ground. International Perspectives on the Community Land Trust*, cit. at 30, xxv ff.

relationship between *service*, which is the intersection between land and trust, and *community*.

In the intersection between land and trust, it is possible to observe that, on the one hand, the destination constraint on the land, that allows to satisfy over time the right to housing for disadvantaged families, and, on the other, the purpose of the trust, as an organization that deals with the provision and management of the housing service on the land identified. The third element, the community, then represents the interlocutor of the element of *service*, produced by the intersection of land and trust. The community is composed of groups of beneficiaries of the service, for whom the benefit is not only in the housing unit, but also in the enjoyment of a healthy and functional surrounding life environment.

To trace the coordinates of the model, it is necessary to start with two notions: the exchange value and the use value[55] of assets. If the first notion (exchange value) is chosen, the value produced by the transactions of the housing unit will be considered, and so the richness produced by the exchange of the asset is considered. Therefore, the asset would be an investment tool. Instead, if the use value of the asset is chosen, the asset will be considered as an instrument for the satisfaction of right to housing.

Therefore, the housing unit would not be an instrument to set aside resources, a means of capitalization, but rather an instrument with a destination of use, which is housing. Besides, it would be directed at a group of people that are not able to satisfy their housing needs on the market. After this demonstrative process, it is possible to conclude that housing is a service.

This assumption generates two products: the providers of the service from one side, and the beneficiaries of the service from

[55] There are those who have reasoned about the value of use, out of the context that is proposed here, also in terms of recovery of the value of the existing and often disused real estate, and even as a motor itself of the market value. The existence of this work and its value for use are a potential which some urban regeneration operations can and must exploit to build up possibilities in the territories in crisis. If we were able to give evidence of this value (also innovating its contents and possibilities), we could put back in play the market value, producing a new positive yield. The availability of this great built heritage, accessible at low cost, and still with potential, can be an opportunity for the revival of some municipalities, in C. Cannaos, G. Onni, *Rendita urbana negativa, valore d'uso e politiche di rigenerazione urbana. Il caso della Sardegna*, 129 *Archivio di Studi Urbani e Regionali* 122 (2020).

the other. The former owns the property and manages the housing, while the latter are the recipients of the service and actively participate in the management of the property by paying a periodic fee.

To proceed with the description of the Italian model, a postulate of the U.S. CLT classic model needs to be changed. It is necessary, in fact, to shift the model from a property scheme to a rental scheme, with reference to the use of the good/service. The flexibility and ductility of the CLT allows this, but a relevant detail should be specified. The original idea of the U.S. model is the expansion of ownership in favour of the most disadvantaged households, and so the offer of an investment instrument. In the model described here, there is the idea of the long-term accessibility of housing units and a circularity in their enjoyment, and so a CLT is a service delivery instrument. This implies that in the operational modalities there will be no so-called resale formula, there will be no transfer of ownership from one household to another, but the transfer will be a transfer of use from a household that no longer has a current need for the housing unit to one that has a current need for it.

Now the Italian model can be described. Returning to the four profiles analysed for the U.S. model, it is necessary to start with the profile of the dissociation between land ownership and building ownership.

In the Italian model, the dissociation between ownership of the land and ownership of the buildings is not a mandatory step, since it is in fact a model that privileges the leasehold scheme, the owner of the land and the owner of the building are two figures that can come together in the same subject. Although not mandatory, a single figure will be assumed in the following description.

The entity that owns the land and the building, which is divided into multiple units, could be a participatory foundation (in Italian language "*fondazione di partecipazione*"). From a private perspective, the participatory foundation can configure itself as a

hybrid[56] of the aspects of the foundation[57] and the aspects of the association[58], whereas from a public perspective, it is an instrument of public-private partnership. It is a flexible instrument that allows for the meeting between public and private actors, as well as the involvement of the community, which in the present case is represented by the tenants of the housing units and those who live in the surrounding area and benefit from the services activated by the participatory foundation. It is, therefore, an instrument of interaction, a foundation opened in its genetic code[59].

Participatory foundations[60] are characterized by the following peculiarities[61]: *(i)* assets divided into an endowment fund and a management fund; *(ii)* open participation[62], even after incorporation; *(iii)* an internally controlling assembly body, including public members; *(iv)* the pursuit of a lawful purpose.

Notably, the assets are divided into two components, one fixed, consisting of the endowment fund, and another variable, consisting of the operating fund.

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[56] «La fondazione di partecipazione, come si è già avuto modo di asserire, non si scosta dall'impianto giuridico di riferimento delle fondazioni ma, per così dire ne estende la portata ibridizzandone le caratteristiche tipiche con quelle dell'associazione. In tal senso, sposta l'attenzione dall'oggetto (il patrimonio) ai soggetti (partecipanti) e alla loro capacità di contribuire alla tenuta finanziaria della fondazione stessa», in S. Russo, *Le condizioni di economicità e operatività delle fondazioni di partecipazione e il ruolo degli enti pubblici*, in G. Sicchiero (ed), *Le fondazioni di partecipazione* (2024), 166.

[57] About foundations, F. Galgano, *Fondazione. I) Diritto civile*, XIV *Enc. Giur.* (1989); P. Rescigno, *Fondazione (dir. Civ.)*, XVII *Enc. Dir.* 790 (1968).

[58] About associations, A. Auricchio, *Associazioni (in generale),* III *Enc. Dir*. 875-876 (1958); M. Santaroni, *Associazione, Dig. Disc. Priv., sez. Civ.,* 486 (1987); G. Alpa, *Manuale di diritto privato*, (2023), 289-290.

[59] E. Bellezza, *Fondazione di partecipazione e riscoperta della comunità,* in AA.VV., *Fondazioni di partecipazione. Atti del Convegno tenutosi a Firenze il 25 novembre 2006*, in *I Quaderni della Fondazione Italiana del Notariato*, available at this link: https://elibrary.fondazionenotariato.it/indice.asp?Pub=6&mn=3

[60] G. Sicchiero, *Fondazioni di partecipazione ed organi partecipativi,* in G. Sicchiero (ed), *Le fondazioni di partecipazione*, (2024), 57; C.M. Bianca, *Istituzioni di diritto privato*, (2022), 149.

[61] It should be remembered that in general the unifying element of non-profit-making bodies is as follows: a constituent act and a statute; a material element, consisting, depending on the category to which the body belongs, of persons or assets; and a formal element, which is constituted by the recognition by the State of the legal person (once called a moral entity). What is relevant is the connection between degree of subjectivity, financial liability of the institution, activities allowed to the institution, in G. Alpa, *Manuale di diritto privato*, cit. at 50, 290.

[62] A. Saporito, *Le fondazioni nel Terzo Settore*, 15 *Società e diritti* 176 (2023).

The constitutive nature of the asset element is determined by the payment of the individual share, which increases the assets, legitimizes participation in the organs of the foundation and gives the title of member. Furthermore, the assets are essential for the pursuit of the institutional purpose to which the foundation joins.

The endowment fund represents the non-transferable assets of the institute, intended to cover operating deficits to ensure a stable holding of the institute. The available part of the assets, the operating fund, instead, is subdivided into two different components, one composed of the restricted assets and another one composed of the unrestricted assets.

Moreover, the assets are open-ended, in a cause-and-effect relationship with the same open-ended character of the participation. Contributions are, in fact, also possible after the establishment of the holding foundation. Successive founders thus join the original founders who started the organization.

The control over the foundation's management is achieved by the presence of a shareholders' meeting[63]. This body thus sits alongside the directors, but performs distinct functions, whereas the directors, in fact, hold executive powers, the assembly holds policy-making powers.

About the fourth peculiarity, the participatory foundations must pursue a lawful purpose, and not necessarily a common purpose of public benefit, because what matters is the shared organization and management of the allocation of assets to a purpose[64]. The foundation is thus adaptive to any type of activity and purpose, including economic activity, if non-profitmaking[65].

Therefore, the interaction between public and private actors inevitably recalls the public-private partnership formula, which traces the public perspective of the institute.

Going on to consider further aspects of the U.S. model, it is worth noting that in the Italian model the legal relationship between the entity owning the land and the private entity owning the building is different. Here there is not any dissociation of

[63] S. Cassese, *Le persone giuridiche e lo Stato*, 1 *Contratto e impresa* 7-8 (1993).

[64] A. Di Sapio, *Le modificazioni*, in G. Sicchiero (ed), *Le fondazioni di partecipazione* (2024), 308.

[65] G. Sicchiero, *Fondazioni di partecipazione ed organi partecipativi,* in G. Sicchiero (ed), *Le fondazioni di partecipazione* (2024), 52; S. Cassese, *La disciplina delle fondazioni: situazione e prospettive,* in *Studi in onore di Pietro Rescigno, II. Diritto privato, 1. Persone, famiglia, successioni e proprietà* (1998), 164.

ownership. The relationship exists between the foundation of participation, owner of the land, subject to the constraint, and owner of the housing units, built on it, on the one hand, and the family units rented on it, on the other.

This relationship emphasizes the participation of the lessees in the participatory foundation and the stipulation of lease agreements, to regulate the housing unit assignment to the suitable family, on partial inspiration of the U.S. ground lease agreement. The lease contract must be proportional to the socio-economic conditions of the beneficiaries and must consider the value of land, on which the units insist and on which there is a destination constraint, to determine the periodic rent paid for the use of the property. The land ownership is bound, because it is part of the bound component of the operating fund. The mechanism of constraint operating on the property thus reproduces in the Italian legal model the U.S. mechanism of the trust.

With reference to the governance and thus the management of the model, the structure is multi-participatory. In fact, the presence of the assembly body allows those who live, manage, and use the services of the participatory foundation to participate in the power of institute direction. There are the private component, the public component, and the community of beneficiaries, for whom a component of the fee, paid periodically, constitutes the payment of a membership fee to the foundation itself. Open participation and possibility to contribute to the assets, even after the date of establishment, make the instrument of the holding foundation appropriate and proportionate to the pursuit and achievement of the purpose, which is not only lawful, but also of public benefit.

Finally, alienation mechanisms are not reproduced in the Italian model, which instead prefers the rental scheme to the property one. Transfers of ownership of the housing unit are therefore missing and are replaced by transfers of use of the housing unit.

The lifetime of the lease may be an ordinary four-year lease, with automatic renewal, subject only to the persistence of the requirements. Unlike traditional ordinary leases, the rent may not be free, but as anticipated, proportionate to two variables: *(i)* the value of the land bound to guarantee the accessibility of housing services; *(ii)* the socio-economic conditions of the household.

The model described here shows, at least in part, the same advantages as the US model. In fact, the economic subsidies paid

by the public sector are preserved in the long term, unlike the provision of non-returnable rent subsidies. In the described model, moreover, circularity in the use of the property is required to guarantee housing services in the long term for those who need them.

In this way, I want to demonstrate that changing certain aspects of the classic model, it is possible to implement this institute also in a civil law society, like Italian one. The most relevant approach is to think of the model not like a model to acquire ownership, but only like a model to guarantee the housing service and to make it affordable and long-term.

3. The Italian model of CLT and the relevance of public-private partnership

In the Italian Community Land Trust model described above, it emerges how the institution of the participatory foundation can in fact fit into the public-private partnership model. The public-private partnership is, moreover, a model for the management of public services, not limited to national borders. In fact, its use is widespread[66] at European level.

At the national level, there is a preliminary distinction between public-private partnership of the institutional type and public-private partnership of the contractual type[67], and two forms are identified, i.e. partial and total outsourcing of the service, respectively. As already seen in the first paragraph, in the first case, the institutional type, a mixed company is set up, an *ad hoc* body,

[66] With reference to the fortune of this institution, three motivations are important: the equal role of the private party vis-à-vis the public administration; the affirmation of horizontal subsidiarity, of which the PPP is considered one of the various expressions; the centrality of the social market economy in the context of the "economic constitution" of the European Union. M.P. Chiti, *Il partenariato pubblico privato e la nuova direttiva concessioni*, in G.F. Cartei, M. Ricchi (eds), *Finanza di progetto e partenariato pubblico-privato. Temi europei, istituti nazionali e operatività*, (2015), 4.

[67] In the first (contractual) case, the relationship between the public and private parties is based on exclusively conventional ties; in the second (institutional) case, the cooperation between the public and private parties takes place within a distinct entity endowed with its own legal personality and which allows the public partner to retain a relatively high level of control over the structure, consistent with a normal application of company law. G. Fidone, B. Raganelli, *Il partenariato pubblico privato e la finanza di progetto* (Art. 3, par. 15-ter; 152-160), in M. Clarich (ed), *Commentario al codice dei contratti pubblici* (2010), 739.

which is responsible for implementing the service. Therefore, the service is jointly managed by a public and private entity. The outsourcing of the service is only partial, and the private partner must be selected through the launching of a tender procedure and is entrusted with the management through the granting of a concession. The other form of partnership, on the other hand, the contractual type, achieves complete outsourcing of the service, and represents a further form of management. It provides for service delivery the concession to third parties selected based on competitive procedures in cases where, for technical or economic reasons, the service lends itself to being provided by a single operator (competition for the market)[68] .

However, before identifying which type of partnership is involved in this case, and therefore whether it is of an institutional or contractual nature, it should be noted that more generally speaking, partnership is a model with a prevalently descriptive value rather than a legal category[69], even though it represents a very relevant notion in the Italian context and not only, given its European matrix[70]. It is a legal phenomenon of collaboration

[68] M. Clarich, *Manuale di diritto amministrativo*, cit. at 14, 375.

[69] The PPP does not represent a legal category, encompassing institutes that, despite their peculiarities, have common features; but a descriptive notion by which one refers, without any particular legal consequences, to any type of situation - contractual or institutionalised - that is marked by the co-presence of public and private subjects. M.P. Chiti, *I partenariati pubblico-privati e la fine del dualismo tra diritto pubblico e diritto comune,* in M.P. Chiti (ed), *Il partenariato pubblico-privato. Concessioni. Finanza di progetto. Società miste. Fondazioni* (2009), 5. It should also be considered that French doctrine describes it as "anguille juridique". On the point, J. Dewost, F. Lichère, *Partenariats public-privé: rapports du XVIII Congrès de l'Académie Internationale de Droit Comparé/Public-Private Partnership: Reports of the XVIII Congress of the International Academy of Comparative Law, coll. «Droit administratif/Administrative Law»*, 4 *Revue International de Droit Comparé* 1039-1042 (2012).

[70] In the first place, this contractual form becomes, at the urging of the European Union, an essential tool - and, consequently, one of the main tools - for pursuing that objective of relaunching the economy referred to earlier, also due to the "leverage effect" that this type of negotiation allows on the market, certainly falling within those efficient models of allocation and management of public resources to the application of which the PNRR calls all Administrations. A. Giovannini, *Il partenariato pubblico-privato nel nuovo codice dei contratti pubblici. Prime impressioni*, Testo dell'intervento svolto al convegno "Il codice dei contratti pubblici (prime impressioni)", organizzato dalla Società Italiana Avvocati Amministrativisti, tenutosi presso il T.A.R. Calabria, Catanzaro, in data 13 luglio 2023. «The Organisation for Economic Co-operation and Development (OECD)

between the public sector and private operators aimed at the pursuit of public interests relating to the financing, construction or management of infrastructure or the provision of a given public service[71]. A phenomenon that is not unitary, but rather a systematic one encompassing a series of heterogeneous institutions from both structural and functional perspectives.[72]. It originates in the framework of the French legal system, with *Ordonnance* 2004-559, adopted in application of *Loi* No. 2003-591, in which it is configured as the third figure, alongside the traditional figures of *marchés publics* and *délégations de service public*[73], of the category of *contrats de commande publique*[74]. It then becomes a true instrument of governance[75]. Its forerunner, however, was born in the United Kingdom[76], in 1992, and is the so-called Private Finance Initiative

defines public-private partnerships (ppps) as long-term contractual arrangements between the government and a private partner, whereby the latter provides and finances public services using fixed capital and sharing the associated risks. This broad definition shows that PPPs can be designed to achieve a wide range of objectives in various sectors, such as transport, social housing and health care, and can be structured according to different approaches», in European Court of Auditors, *Special Report. Public-private partnerships in the EU: widespread failures and limited benefits, submitted pursuant to Article 287(4), second subparagraph, TFEU,* European Court of Auditors, 2018, available at the following link: https://www.eca.europa.eu/Lists/ecadocuments/SR18_09/SR_PPP_IT.pdf.
On European relevance, see also: R. Dipace, *Partenariato pubblico privato e contratti atipici* (2006), 55 ff. Besides, «the state has facilitated the delivery of services through public-private partnerships, which are often the object of comparative study», in J.S. Bell, *Comparative administrative law,* cit. at 2, 1266.

[71] E. Campagnano, *Le nuove forme del partenariato pubblico-privato. Servizi pubblici e infrastrutture* (2020), 85.

[72] E. Campagnano, *Le nuove forme del partenariato pubblico-privato. Servizi pubblici e infrastrutture*, cit. at 63, 85.

[73] This difference, for example, is absent in the U.S. tradition. On this point, D. Custos, J. Reitz, *Public-Private Partnerships,* 58 *The American Journal of Comparative Law* 559 (2010).

[74] A. Massera, *L'attività contrattuale,* in G. Napolitano (ed), *Diritto amministrativo comparato*, cit. at 2, 236.

[75] H. Wang, W. Xiong, G. Wu, D. Zhu, *Public–private partnership in Public Administration discipline: a literature review*, 2 *Public Management Review* 293 (2018); S.P. Osborne, *Public–Private Partnerships: Theory and Practice in International Perspective* (2000).

[76] The United Kingdom assumes fundamental importance as the home of the partnership, at least as far as the European context is concerned. G. Cerrina Feroni, *Il partenariato pubblico-privato nelle esperienze del Regno Unito e della Germania: alcune indicazioni per le prospettive di sviluppo dell'istituto nell'ordinamento*

(PFI)[77], which is part of the broader British privatization process, which began with the government of John Major and continued with that of Tony Blair. In Spain too, with Art. 11 of Ley 30/2007 the *Contrato de colaboración entre el sector publico y el sector privado* began to be envisaged, a contractual model inspired partly by the French model of the *contrat de partenariat,* and partly by the English PFI. Parallel to the French, English and Spanish experiences, the term public private partnership also began to spread in the United States from the late 1990s and early 2000s[78].

Having observed the descriptive nature of public-private partnership, it is appropriate also to highlight its polysemic nature[79], and thus the difficulty of encapsulating its meaning in a single and univocal definition[80], which also often contributes to the difficulty of identifying a single discipline. A peculiar feature of the

italiano, in G. Cerrina Feroni (ed), *Il partenariato pubblico-privato. Modelli e strumenti* (2011), 24.

[77] H. Wang, W. Xiong, G. Wu, D. Zhu, *Public–private partnership in Public Administration discipline: a literature review*, cit. at 67, 300; G. Cerrina Feroni, *Il partenariato pubblico-privato nelle esperienze del Regno Unito e della Germania: alcune indicazioni per le prospettive di sviluppo dell'istituto nell'ordinamento italiano,* cit. at 68, 26.

[78] D. Custos, J. Reitz, *Public-Private Partnerships,* cit. at 65, 555.

[79] D. Custos, J. Reitz, *Public-Private Partnerships,* cit. at 65, 556. To demonstrate its polysemic nature it is sufficient also to observe that Garvin and Bosso define it, for example, as follows: "a long-term contractual arrangement between the public and private sectors in which mutual benefits are sought and where, ultimately, (a) the private sector provides management and operational services and/or (b) it puts private financing at risk", in M.J. Garvin, D. Bosso, *Assessing the effectiveness of infrastructure public private partnership programs and projects,* 13 *Public Works Management & Policy* 162-178 (2008). OCSE (2008), instead, defined the public-private partnership as "an agreement between the government and one or more private partners (which may include operators and funders) whereby private partners provide the service in such a way that the objectives of the service provision are aligned with the profit objectives of the partners private and where the effectiveness of alignment depends on sufficient risk transfer to the private partner" (OCSE, 2008, 17). Other authors, on the other hand, have provided broader definitions, and so, for example, *Van Ham* and *Koppenjam* defined it as "cooperation between public-private actors where they jointly develop products and services and share the risks, costs and resources associated with those products and services", in H. Van Ham, J. Koppenjan, *Building public-private partnerships: Assessing and managing risks in port development,* 4 *Public Management Review* 593-616 (2001).

[80] D. Custos, J. Reitz, *Public-Private Partnerships,* cit. at 65, 557.

partnership is also its flexibility and variable structure[81], as well as being an obvious manifestation of the principle of horizontal subsidiarity[82] or, in the light of a certain doctrine, an expression of circular subsidiarity[83].

The purpose of the partnership is to create a cooperative process for the achievement of common goals for both the public and private sectors[84], especially regarding the provision of public infrastructures and services[85]. The provision of services and infrastructure also hopes to be more efficient[86], precisely due to the private sector involvement. The concept of PPP is often confused with several other terms that may appear similar but have different nuances. Thus, PPP is distinguished from privatization, outsourcing, and, finally, collaborative governance. The distinguishing criterion lies primarily in the degree of intensity of collective decision-making. The PPP requires a lower degree of collective decision-making process than collaborative governance, but higher than privatization or outsourcing[87].

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[81] G. Fidone, B. Raganelli, *Il partenariato pubblico privato e la finanza di progetto* (artt. 3, comma 15-ter; 152-160), cit. at 59, 740.

[82] G. Fidone, B. Raganelli, *Il partenariato pubblico privato e la finanza di progetto* (artt. 3, comma 15-ter; 152-160), cit. at 59, 743.

[83] C. Bevilacqua, *Il baratto amministrativo tra amministrazione condivisa e partenariato pubblico privato (*2022), 57-59.

[84] In general, it is interesting to observe the relationship between public and private and this relationship outside from his national borders. «Beyond the state, public and private law finds new ways of combining, borrowing tools and imitating solutions. In particular, when the public/private distinction goes international, it operates as a technology of global governance: it is a "proxy" for bringing given values into a new legal context and for recreating a "familiar" legal endeavor beyond the state. But this projection can be problematic: like in Lewis Carroll's "rabbit-hole," there is no guarantee that, when the values and legal mechanisms behind them are moved from one level to another, they will remain the same», in L. Casini, *"Down the rabbit-hole": The projection of the public/private distinction beyond the state*, 12 2 *International Journal of Constitutional Law* 402–428 (2014).

[85] H. Wang, W. Xiong, G. Wu, D. Zhu, *Public–private partnership in Public Administration discipline: a literature review*, cit. at 67, 302.

[86] D. Custos, J. Reitz, *Public-Private Partnerships,* cit. at 65, 571.

[87] «(1) PPP versus privatization. Privatization involves the full or partial transfer of state-owned assets to the private sectors. Privatization means that day-to-day production will be left to private operators, and the government will act as the regulator. Privatization also includes such practices as setting up concessions, franchises, leasing, and other practices. The differences between PPP and privatization (e.g. Concessions, franchises, and leasing) are found in the nature and degree of the risk transfer. The degree of risk transfer is very limited (with

In the 2004 Green Paper on PPPs, the term is used to refer generically to «forms of cooperation between public authorities and the business world that aim to secure the financing, construction, renovation, operation or maintenance of an infrastructure or the provision of a service»[88]. In the opinion of the Special Commission of the Italian Council of State, 29 March 2017, No. 755, (rendered on the outline of the guidelines concerning the "Monitoring of contracting authorities on the activity of the economic operator in public-private partnership contracts"), the Council of State further specified that the PPP indicates a complex legal phenomenon, of European matrix, in which an *equi*-ordering between public and private subjects takes place, for the realization of an activity, which is directed to the achievement of public interests. At the European level, therefore, the notion of PPP is consolidated[89], even if it lacks general discipline. It can be affirmed, however, that despite the variety of institutions that can be qualified as public-private partnerships, every PPP contractual scheme must deal, on the one hand, with the execution of works through the primary use of

concessions and franchising) or even non-existent (leasing) in privatization processes (Silvestre and Araujo 2012). There is nothing intrinsic about privatization that requires partnerships (Forrer et al. 2010). (2) PPP versus outsourcing. Outsourcing is one application of a make-buy policy. This involves a temporary and singular principal–agent relationship, in which the relevant government departments make the decisions of what and how, and then the private sectors ensure those things are done (Reynaers 2014). PPP, on the other hand, is suited to a project that is so complex that the relevant government is not able to unilaterally meet the objectives (Ham and Koppenjan 2001). Thus, outsourcing is quite different from PPP. (3) PPP versus collaborative governance. PPP requires collaboration to function, but PPP project's most important goal is often to achieve coordination, agreement, and joint production, rather than to achieve decision-making consensus. Collective decision-making is therefore of secondary importance in PPP. However, the institutionalization of a collective decision making process is central to the collaborative governance (Ansell and Gash 2008)», in H. Wang, W. Xiong, G. Wu, D. Zhu, *Public–private partnership in Public Administration discipline: a literature review*, cit. at 67, 302.

[88] Commission of the European Communities, 30 April 2004, No 327, Green Paper on Public-Private Partnerships and Community Law on Public Procurement and Concessions. With reference to the object and purpose, it is noted that the Green Paper aims to launch a debate on the application of Community law on public contracts and concessions to the PPP phenomenon. This debate thus focuses on the rules that must be applied when deciding to entrust a mission or task to a third party.

[89] E. Campagnano, *Le nuove forme del partenariato pubblico-privato. Servizi pubblici e infrastrutture,* cit. at 63, 88.

private resources, functionally intended for the provision of services in sectors traditionally subject to public monopoly; on the other hand, there must be an effective transfer of risk to the private party to be able to rely on the stability and transparency of the relationship, especially considering that it involves long-term collaborations[90]. It is then especially in recent recovery and resilience plans that the partnership has expanded its potential, as confirmed, at the national level, also by the ANAC resolution of 20 September 2022, No. 432[91] of 20 September 2022, which recognizes the exclusion of non-repayable loans from euro-unitary origin, also and above all in the context of the National Recovery and Resilience Plan (NRRP)[92], from the assessments regarding public control, and thus the perimeter of the 49% public contribution in PPP operations, as provided for under Articles 165, paragraph 2, and 180, paragraph 6, of the old public contracts code, Legislative Decree No. 50 of 18 April 2016. The public-private partnership is, in fact, a useful tool for overcoming so-called market failures, especially following major crises. Not only after the pandemic crisis, and thus with the subsequent recovery and resilience plans, but also following the economic-financial crisis of 2008, the partnership favoured the construction of infrastructures or works of social utility[93].

Remaining at the European level, the European Investment Bank also describes the public-private partnership «as an arrangement between a public authority and a private partner to provide a public infrastructure project or service under a long-term

[90] E. Campagnano, *Le nuove forme del partenariato pubblico-privato. Servizi pubblici e infrastrutture,* cit. at 63, 90-91.

[91] file:///C:/Users/aless/Downloads/Delibera%20n.%20432%20del%2020%20settembre%202022.pdf

[92] A. Moliterni, *Le prospettive del partenariato pubblico-privato nella stagione del PNRR*, 2 *Dir. Amm.* (2022). The transition process of the economic and social administrative system towards the strategic objectives of the PNRR reveals unprecedented spaces for the use of public-private partnership instruments and operations.

[93] The great economic crisis that hit all states in 2008 is contributing to the valorization - or, depending on the country, the discovery - of the PPP as one of the antidotes to overcome market failures. Especially, it is believed that it favors the realization of infrastructures and works of particular social utility, such as in the health and education sectors; and that it allows interventions in the local public services sector. M.P. Chiti, *I partenariati pubblico-privati e la fine del dualismo tra diritto pubblico e diritto comune,* cit. at 61, 3.

contract»[94]. It points out that «PPPs can cover all types of collaboration between the public and private sectors to deliver policies, services, and infrastructure»[95]. It is worth noting that the partnership does not stop only at European borders, conquering global interest[96] and becoming a valuable tool also and especially in developing countries to promote and attract capital and private investment in network industries[97]. One demonstration of this global interest is the possibility of organizing global PPPs[98], i.e. partnerships between international intergovernmental organizations and private companies.

Returning now to the national context, it is possible to observe its regulation through the public contracts code.

Nowadays, Legislative Decree No. 36, or the new public contracts code[99], defines, in fact, the PPP as an economic transaction

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[94] About this point, J. Foreman-Peck, *Public-Private Partnerships in Britain: Interpreting Recent Experience,* in M. Wright and others (eds), *The Oxford Handbook of State Capitalism and the Firm* (2022), 426.

[95] J. Foreman-Peck, *Public-Private Partnerships in Britain: Interpreting Recent Experience,* cit. at 86, 429. *J. Foreman-Peck* also points out that there are certain prerequisites for the success of the PPP, and notes that: «PPPs are more suitable when service quality is verifiable, demand risk is low or the firm can diversify risk, and when there are government contributions, or the initial capital investment is low. Recourse to private finance can however result in improved incentives for the operator if lenders bring expertise in monitoring the operator's effort, provided that this expertise was sufficient to offset the higher cost of private capital. In this respect, PPPs might be suitable also for high capital value projects (Iossa and Martimort, 2014)», in J. Foreman-Peck, *Public-Private Partnerships in Britain: Interpreting Recent Experience,* cit. at 86, 438.

[96] «Public-private partnerships (PPPs) have become popular tools to deliver infrastructure and public services around the world. […] Since 2014, China's central government has been promoting the use of PPP for the provision of necessary infrastructure», in H. Wang, W. Xiong, G. Wu, D. Zhu, *Public–private partnership in Public Administration discipline: a literature review,* cit. at 67, 297. For a global view on public-private partnership, S.P. Osborne, *Public-Private Partnership. Theory and practice in international perspective,* cit. at 67.

[97] G. Ruiz-Diaz, *The contractual and administrative regulation of public-private partnership*, 48 *Utilities Policy* 109 (2017); J. Stern, *Regulation and contracts for utility services: substitutes or complements? Lessons from UK railway and electricity history,* 4 *Policy Reform* 193-215 (2003).

[98] On this point, Y. Lin Tan, *Global PPPs and the Choice of Law Challenge,* 1 *The Chinese Journal of Comparative Law* 79-115 (2020); D. Aziz, *Global Public-Private Partnerships in International Law*, 2 *Asian Journal of International Law* 339- 375 (2012).

[99] In this, which is, therefore, the general context, the new code is inserted, which has, first and foremost, certainly the merit of finally giving a complete structure

in which the following characteristics occur jointly *(a)* a long-term contractual relationship is established between a grantor entity and one or more private economic operators in order to achieve a result of public interest[100]; *(b)* the coverage of the financial requirements related to the realization of the project comes to a significant extent from resources found by the private party, also due to the operational risk assumed by the same; *(c)* the private party is responsible for carrying out and managing the project, while the public party is responsible for defining the objectives and verifying their implementation; *(d)* the operational risk related to the works realization or the services management is allocated to the private party[101]. The code regulates the public-private partnership as an autonomous contractual figure, distinct from the procurement contract, and in particular, in the third paragraph of Article 174 it refers to the type of contract, emphasizing that it includes the figures of the concession, also in the form of project finance[102], financial leasing and availability contract, as well as the other contracts stipulated by the public administration with private economic operators, aimed at realizing interests worthy of protection[103]. The fourth paragraph then refers to the institutional one, specifying that it is achieved through the creation of an entity jointly participated by the private and public parties and is governed by the Consolidated Act on Public Entities Owned Companies (*Testo unico sulle società a partecipazione pubblica*),

to the institution of the public-private partnership, elected as a general scheme of public contract, entirely alternative to the contract and to which the concession contract is brought back, also in topographical terms. A. Giovannini, *Il partenariato pubblico-privato nel nuovo codice dei contratti pubblici. Prime impressioni*, cit. at 62.

[100] It is, therefore, a complex and long-lasting relationship. Complex in that several key elements coexist in the operation, in whole or in part: design, financing, construction and renovation, operation and maintenance. Long-lasting because, generally, alongside the construction phase there is a period of management determined in relation to the duration of the amortization of the investment or the financing arrangements. R. Cori, *Articolo 174*, in A. Botto, S. Castrovinci Zenna, *Commentario alla normativa sui contratti pubblici* (2024), 1342-1343.

[101] Art. 174, paragraph 1, Legislative Decree 31 March 2023, No. 36. For a comment on the article, F. Caringella (ed), *Nuovo Codice dei contratti pubblici,* Milan, Giuffrè, 2023, 1135 ff.; R. Cori, *Articolo 174*, cit. at 92, 1338 ff.

[102] Legislative Decree 31 December 2024, No. 209, correcting Legislative Decree 31 March 2023, No. 36.

[103] Art. 174, paragraph 3, Legislative Decree 31 March 2023, No. 36.

referred to in Legislative Decree No. 175 of 19 August 2016, and by other special sector regulations[104].

With reference to the "Italian CLT" model, which is implemented through the establishment of a participatory foundation, among the two figure of PPP, contractual and institutional, it is interesting to note that the best formula would be the institutional one, because it would create a joint private and public entity. This statement would entail, consequently, the application of the Consolidated Act on Public Entities Owned Companies (*Testo unico sulle società a partecipazione pubblica*), Legislative Decree No. 175 of 19 August 2016. Assuming the institutional formula, a form of long-term cooperation between public and private operators would develop, aimed at achieving a public interest which takes the form of a mixed company, where interests merge into a new legal entity[105].

It should be specified, however, that the model described of the participatory foundation does not create a company but a participating entity, as indicated in the new code of public contracts. This code therefore identifies a broader concept, which could go beyond public companies. This lack of consistency with the applicable rules may require that the legislator better specify the rules applicable to affiliated entities, which are not companies. However, without changing the legislation, it is not possible to frame the participatory foundation in the institutional model of public-private partnership, making it necessary to configure the contractual formula.

The latter will be governed by the rules set out in the code of public contracts, especially Book IV on public-private partnerships. The service, which is the focus of the partnership project, is awarded through competitive procedures. The allocation of operational risk, the duration of the contract, the method for determining the threshold and the method for calculating the estimated value are regulated in articles 177, 178 and 179 of the Code. Moreover, the contractual formula does not normally involve the direct involvement of the entity in the management of the service[106]; differently, in this case, the participation of the public

[104] On the distinction between the two formulas, V. Lopilato, *Manuale di diritto amministrativo, II, Parte speciale. Giustizia amministrativa* (2021), 1232.
[105] S. Russo, *Le condizioni di economicità e operatività delle fondazioni di partecipazione e il ruolo degli enti pubblici*, cit., 153.
[106] M. Clarich, *Manuale di diritto amministrativo,* cit. at 14, 375.

entity is inherent and linked to the establishment of the participatory foundation. In any case, regardless of the distinction between contractual and institutional formula, the PPP represents a way to ensure the optimization of public resources used and involves the sharing of risks with the private partner[107].

It is therefore a well-known and widespread phenomenon whereby public functions and traditionally public services are provided by private entities[108]. It is not so important the nature of the actor performing certain services, but the interest to be protected, which, in this case, is a very broad interest; a public interest materialized in the enjoyment of a housing unit, which allows the development of human personality.

4. Conclusions

Considering the spread and flexibility of the public-private partnership model in legal contexts, also very different from each other, and considering that the delineated attempt of CLT for Italian legal context is itself a form of public-private partnership, this model could be applied also to other contexts.

Wanting then to define some possible common features, which could allow an application of the same exercise elaborated so far, it could be necessary to list: *(i)* the housing need of an important grey band of the population, which is unable to satisfy its housing needs on the market; *(ii)* an expansion of social housing at the expense of the more limited public housing. Hence, fertile ground emerges for the implementation of management models for housing services that can help meet the needs of the population and increase the size of the social-welfare dimension, through

[107] C. Marcolungo, *Il partenariato pubblico privato istituzionalizzato: un tentativo di ricostruzione,* in M.P. Chiti (ed), *Il partenariato pubblico-privato. Concessioni. Finanza di progetto. Società miste. Fondazioni* (2009), 252.

[108] «Although these policies cover a variety of activities and varying arrangements, they typically share three features: the transfer of public functions, with the associated delivery risk, to private entities; the use of market-style competition to select the supplier; and a shift in the measurement of performance from a concern with process to the achievements of outputs. "Internal markets" have been introduced into the provision of such fundamental public services as health and education, organized around a separation between "purchasers" and "providers" and governed by sophisticated commercial contracts», in S. Palmer, *Public functions and private services: a gap in human rights protection,* 6 3&4 *International Journal of Constitutional Law* 585 (2008).

collaboration between the public and private sectors, when the public actor alone is unable to meet the needs of the community for structural and systemic reasons. These needs correspond to a fundamental human right, the right to housing[109].

In this context[110], therefore, even if a strong public connotation of the service is lost, it is possible to maintain the collaboration between the two actors and the involvement of the beneficiaries of the service, the capacity of the model to guarantee the provision of long-term services and its ability to respond to an increasingly broader public. It is possible that the service may become more public than ever before, addressing the needs of a wider audience and incorporating the demands of the service beneficiaries into its management.

[109] Housing Act, available at this link: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070195

[110] It is worth noting that «in the 2024 presidential election, the Social Housing Advocacy Consortium provided six policy suggestions: (1) Establish a diversified mode of social housing operation, such as increasing land supply, utilizing vacant public buildings, and more participation from private sectors. (2) Increase financial sources to provide affordable rent. (3) Clarify the division of labor among local and central governments. (4) Promote social housing welfare programs. (5) Adopt the waiting list system to replace the existing lottery system. A waiting list will create more pressure of the government to fulfil the housing needs of applicants. (6) Improve the Rental Incentive Development Program to ensure the original purpose of looking after the housing needs of disadvantaged people (OURs 2023)», in Y.-L. Chen, *Housing policies and their discontents,* in G. Schubert (ed), *Routledge Handbook of Contemporary Taiwan* (2025), 336; OURs Organization of Urban Reformers, *White Paper on Social Housing Policy for the 2024 Presidential Election by the Civil Groups* (2023).