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Abstract

Intangible Cultural Heritage - Safeguarding
Comparative study - Brazil - Italy

Italy has a well-deserved reputation as an open-air museum and, as regards the protection of tangible cultural heritage, it has one of the most advanced legislation on the planet. However, when it comes to intangible cultural heritage (ICH), Brazil precedes it. Knowing that the ICH is almost always tied to local communities, it is important to know how countries with complex geopolitical organization safeguard intangible heritage. This study, starting from the UNESCO Convention for the safeguarding of the ICH, adopted by both countries, goes through the national legislation and administrative practices, and confirms the hypothesis that Brazil is part of the international avant-garde in this specific legal subject and preferably uses it as an instrument of social insertion; Italy, in turn, not only values its culture, but also enjoys the economic results of its protection.

Sommario

Patrimonio culturale intangibile - Salvaguardia
Studio comparative - Brasile – Italia

L'Italia ha una ben meritata reputazione di museo all'aria aperta e, per quanto riguarda la protezione del patrimonio cultural tangibile, ha una delle legislazioni piu avanzate del pianeta. Tuttavia, in materia di patrimonio culturale intangibile (PCI), il Brasile la precede. Sapendo che il PCI e quasi sempre legato alle comunita locali, e importante conoscere come paesi con un'articolata organizzazione geopolitica proteggono tale patrimonio. Questo studio muove dalla Convenzione UNESCO per la salvaguardia del patrimonio culturale intangibile, di cui entrambi i paesi sono parti, e analizza la legislazione e le practiche amministrative nazionali. Esso conferma l'ipotesi che il Brasile e all'avanguardia internazionale in questo specifico soggetto giuridico e lo usa di preferenza come uno strumento di inclusione sociale; a sua volta, l'Italia non solo valorizza la sua cultura, ma anche trae beneficio dai risultati economici della sua protezione.

FABIO FERRARO

Abstract

Climate catastrophe - Environmental law
EU legal framework - EU policy - Green Deal

The climate catastrophe that our planet is approaching is forcing everyone to make choices that can no longer be postponed. Signs of change are beginning to emerge with respect to traditional national policies, but there is still widespread skepticism among the public as to the existence of a common will to protect the environment effectively, not least because of the lack of uniformity of views among the Member States on the measures to be adopted and the deadline for complying

with their obligations. In this problematic context, it is necessary to deal with the Union's environmental legislation, which is developed along several lines and covers many aspects. In particular, this paper examines the EU legal framework from the following points of view: 1) the evolution of the Union's objectives, both internally and in its external relations; 2) the state of implementation of Union legislation and incentives for better regulation; 3) the effectiveness of environmental protection instruments. The perspective of investigation adopted does not claim to reconstruct in an exhaustive manner the above-mentioned profiles of the relationship between the European Union and the environment, which are very broad, rather complex and constantly changing. Rather, the aim is to make a few observations in order to highlight the exponential growth of the EU's role in the environmental sphere as a result of its influence on national legislation and its credibility on the international stage, without, however, overlooking some of the critical issues that remain in this area in the identification of the new and ambitious objectives set by the Green Deal.

LUCA CALZOLARI

Abstract

Directive 2008/50/EC - Air Quality - Air pollution
Public and Private Enforcement - Right to clean ai

Air pollution is a global environmental problem and one of the greatest environmental risk to health. Air pollution is therefore tackled both at the international and EU level. While international conventions mainly focus on the reduction of the emissions, EU law also aims at protecting and improving air quality. The relevant legal regime is provided by Directive no 2008/50/EC (the "Directive"), which sets both procedural (e.g. the duties to monitor and assess the quality of the air and to draft air quality plans) and

substantive (e.g. the duty to comply with daily and annual concentration limit value of pollutants) obligations for Member States. The main peculiarity of the EU air quality regime, however, is that the Directive (as any other EU environmental rule) may benefit from the "privileged position" of EU law under the enforcement perspective. Indeed, the EU legal order is characterized by much stronger means of enforcement compared to the international one: within the EU, Member States' compliance with the Directive can be obtained through both public and private enforcement initiatives. The first term refers

to the infringement procedures that can be launched pursuant to Articles 258 ff. TFEU by the EU Commission against the Member States that fail to comply with the Directive. Private enforcement refers to the increasing number of actions that, in the light of the direct effect enjoyed by several dispositions of the Directive, are brought by private individuals (especially NGOs) before national courts, which are asked to ensure that Member States act in accordance with the Directive. This two-pillar enforcement system increases the deterrent effect of the Directive and determines an enhanced compliance by Member States. This paper aims at analysing the case law of the CJEU which has developed within the context of both public and private enforcement. On the one hand, public enforcement may lead to the involvement of the CJEU if the Member States do not comply with the requests made by the EU Commission during the so-called pre-litigation phase of the infringement procedure; on the other hands, during domestic litigation national courts may raise preliminary questions to the CJEU on the interpretation of the Directive pursuant to Article 267 TFEU. The purpose of the analysis that will be carried out is to highlight the interpretative solutions developed by the CJEU which, in line with the key principles of EU environmental law (such as the

principles of a high level of environmental protection, precaution and prevention set out in Articles 3 TEU and 191 TFEU) has constantly sought to enhance the effectiveness and the effet utile of the rules protecting and improving air quality. The approach of the CJEU has not only fostered the application of the Directive and amplified its deterrent effects vis-a-vis the Member States, but it has also suggested and somehow backed the idea that, in the EU legal order, individuals may be entitled to specific (procedural and, perhaps, even substantive) prerogatives related to a right to clean air.

PASQUALE PANTALONE

Abstract

Environment - rights - duties - administrative justice

Starting from a decision of the Plenary Assembly of the Italian Council of State (no. 6/2020), this paper aims at offering some brief general reflections with reference to access to administrative judicial protection of the environment as a typical super-individual interest, also with a view to safeguarding the interests of future generations.

ALESSANDRO BIFULCO

Abstract

Environmental matters – administrative functions
Principle of Legacy – unitary protection

The most interesting aspects of the ruling in comment concern the validity of the regional censored discipline and the limits to the allocation – by the Regions – of administrative functions related to waste management.

The first profile enables to understand the placement of Environmental matters in the system of divisions of competences. According to the appellant parties, the regional framework must be deemed to be repealed with the entry into force of the Environmental Code; the Administrative Judge, on the other hand, considers that the regional framework has been "validated" by the subsequent regional framework; for the Constitutional Court, finally, the entry into force of the Environmental Code has not led the automatic repeal of the regional censured discipline, but stated its unconstitutionality. According to the proposed interpretation, due to the cross-sectorial nature of Environmental matters, the intervention of the regional legislator concerning interests related to it must be regarded as legitimate without the need for "validation", provided that uniform levels of protection set at State level are respected.

As for the second profile, the primary importance of the Principle of Legality emerges in the judgment in question: the entitlement of administrative functions is identified by the law governing them. Regarding waste management, the Constitutional Court justifies the need for a state regulation and the mandatory of it by the regions on the grounds that are necessary to provide uniform protection of the Environment Asset. A question, then, concerns the possibility that the call to a unitary protection can limit the transfer of administrative functions by the regions, which, moreover, have legislative powers in competing areas related to the transversal Environment one. It is therefore desirable that the Environmental asset is protected in a uniform manner at National level, without excluding regional participation. The State legislature is responsible for establishing uniform standards of protection throughout the National territory, while regional regulation –

concerning interests related to the properly Environmental one – is legitimate, with the only limit of not being able to provide lower levels of protection: this argument is, at first, accepted by the Court in its judgment in question, which, however, comes to a more rigid conclusion. This mechanism would encourage the formation of a uniform but agreed discipline, which can provide unitary but also differentiated protection.

FRANCESCA PALAZZINI

Abstract

Greenwashing – Misleading advertising
Unfair competition – Environmental sensitivity

On 25th November 2021, the Court of Gorizia adopted the first measure punishing greenwashing conduct in Italy. The case was about the dissemination of certain environmental advertising messages considered excessively generic and not based on scientific data. In particular, the conduct has been referred to Article 2 of Legislative Decree No 145/07, which defines misleading advertising, and to Article 2589 of the Italian Civil Code, which disciplines unfair competition. However, the Court adopted stricter
judging criteria compared to an ordinary case of misleading advertising because of the great influence that green marketing has on consumers. Indeed, sensitivity towards environmental problems is very high nowadays and generic advertising messages are suitable for misleading consumers and creating an eco-sustainable representation of the company, without giving an account of what company policies allow a reduction of the impact on the environment.