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MAURIZIO FLICK

ABSTRACT

Climate Change – Subsidiary Protection – Fundamental Rights Public Power
Case Law – Forestry Law – Commons – Property Law

The essay addresses the issues related to the National Forestry Strategy approved in Italy in 2022 in the national and international context. This innovative measure provides the opportunity to outline the structure of Italian forestry legislation and its future prospects. After tracing the historical path followed by the forestry legislator during the 20th century, several issues are addressed, including: the novelties introduced by Legislative Decree No. 34 of April 3, 2018, Consolidated Text on Forests and Forest Supply Chains; the unresolved issues related to forest governance; the importance of planning; the problem of property fragmentation; the evolution of the concept of the social function of forests; and the future prospects for forest commons to which the legislator seems to somehow open glimmers. All these issues are analyzed in the light of the changes introduced by the Forestry Consolidation Act and the National Forestry Strategy. What emerges from the picture outlined is a forestry legislation that is indeed in the vanguard but not always coordinated with other norms of the system with the consequent risk of friction and conflict in the near future.

DIRITTO ALL'*OUTDOOR* E PESTE SUINA AFRICANA

ABSTRACT

Right To Outdoor – African Swine Fever – Federalism – Science And Law
Rule Of Law – Due Administrative Procedure

The paper works out a fundamental right to outdoor – as a corollary of the right to personality development and in relation to the freedom of movement – and deals with opposite public interests concerning the protection of economic activities from the virus. An analysis of the european and national legislation on the contrast of swine fever is provided and it opens the way to the discussion of some aspects of the opposition between

the fundamental right to outdoor and antagonistic public interests, like: the organization of public bodies with special attention to the powers of the regions (in a sort of upside down cooperative federalism); the relation of science and politics/law (the first providing a cognitive frame which influences but doesn't bind public powers); the rule of law and the respective roles of legislation and administration (with the guarantees involved in administrative procedures). The outcome is that regional governments, after having been empowered to regulate outdoor activities in the restricted area, have shown a clear awareness of the political and administrative substance of their function, despite the scientific aspects involved, and have been able to balance reasonably the right to outdoor and the opposite and concurrent public interests.

SILVANA DALLA BONTÀ

ABSTRACT

Environment – Conflict – Litigation – Facilitation – Mediation

After highlighting the difference between environmental conflicts and disputes, the author compares litigation with facilitation and mediation as mechanisms to resolve them. Environmental conflicts affect lasting relationships of people living in a certain place. They are highly complex, technical and characterized by information asymmetry between the conflicting parties. Therefore, they must be handled by highly qualified personnel and resolved quickly and predictably. The author of this paper argues that facilitation and mediation are the most appropriate and effective mechanisms for resolving environmental conflicts since the former are better suited to the features of the latter. As a confidential ADR mechanism, oriented towards an interest-based and win-win solution, mediation proves to be the most suitable means of resolving environmental disputes. While encouraging a wider use of this ADR mechanism in the Italian legal system, the author concludes by observing that the forthcoming Italian reform of civil procedure and ADR seems to create the conditions for this to happen.

LA TUTELA DEGLI ANIMALI NEL DIRITTO INTERNAZIONALE SENTENZA *KAAVAN*

ABSTRACT

Animal Rights Law – Legal Anthropocentrism – International Law

By commenting the case law, mainly of the Islamabad Supreme Court, the work seeks to contribute to current legal debates surrounding the protection of animals in international law. More in particular, the case law is critically analysed to determine its limited effects over the evolution of international law. On the contrary, the methodological approaches of the judgments are the subject of a new reading in the re-definition of traditional anthropocentric models as they ultimately lead to an indirect, albeit not absolute, extension of the right to life to non-humans. Such a case law is also taken as an example to evaluate the current inadequacy of ethical grounds upon which protective patterns are currently

LA DIFFICILE GESTIONE DEGLI ORSI "PROBLEMATICI"

ABSTRACT

Ursus Arctos – Pacobace – Ordinanze Contingibili E Urgenti
Captivazione Permamente

This paper is aimed at studying the policies for the managment of "troubled" bears, which have been adopted by the Autonomous Province of Trento (PAT) over the last few years in the light of legal framework of general (State and supranational) and local nature (provincial regulations and PACOBACE) . Namely, the analysis is addressed to the difficult legal issue regarding the bear known as M49. Such a matter shows the difficulty met by the PAT both to apply properly the different regulations in force, which refer to the protection of Ursus Arctos, and to create an atmosphere which fosters a peaceful relations between bears and humans.

LA *LAW OF TORTS* ALLA PROVA DEI CAMBIAMENTI CLIMATICI

ABSTRACT

Tort Law – Torts – Climate Change – Global Warming – Climate Change Litigation Australia – Australian Law – Sharma Case – Comparative Law – Common Law

Negligence – Duty Of Care – Causation – Statutory Interpretation
Environment Protection and Biodiversity Conservation Act 1999 (Cth)
EPBC Act – Quia Timet Injunction – Representative Proceeding

This work analyses the judgments of the Federal Court of Australia at first instance and on appeal in the Sharma case. These decisions highlight that some relevant problems arise when the conceptual tools of the Law of Torts are applied in the context of Climate Change Litigation. This work identifies and discusses these problems in a Comparative Law perspective, drawing also possible lines of evolution of the law in this field.

IL CASO REPUBBLICA FEDERALE DI GERMANIA E A. C. COMMISSIONE EUROPEA

ABSTRACT

The case of the Federal Republic of Germany and O. v. the European Commission: what are the implications for the smart cities' access to climate justice?

This contribution aims to examine and comment on the recent sentence "the Federal Republic of Germany and O. v. the European Commission" with which the CJEU declared inadmissible for lack of active legitimacy the action for annulment presented by the cities of Paris, Brussels and Madrid against the EU Regulation 2016/646/UE, with which the European Commission set the new values relating to the mass releases of NOx not to be exceeded during the tests aimed at measuring the polluting emissions of transport as part of the approval procedures for motor vehicles. In particular, the contribution seeks to verify whether this decision is appropriate to the role and policies of the EU in the field of the environment, and to assess whether the Court's current approach to greenhouse gas emissions contributes to the promotion of climate justice based on respect for fundamental human rights.

FEDERICA BENAROIO

ABSTRACT

Environmental remediation – Historical pollution – Environmental liability
Principle of legality and legal certainty – Polluter pays principle

This paper examines a recent ruling by the Council of State which takes up an earlier case-law by the Plenary Session on the topic of Environmental remediation (see Plenary Session, n. 10/2019). In particular, the ruling analyzed by this article brings back to light the issue of the environmental remediation of sites which were polluted before Ronchi Decree (which for the first time outlined the institution of environmental reclamation in the Italian legal system) entered into force. More specifically, it examines the consequences and risks of a retroactive application of the discipline of environmental remediation, which are mainly connected to a potential breach of the principles of legality and legal certainty.

FEDERICO CECI

ABSTRACT

Reference for a preliminary ruling – Energy – Directive 94/22/EC
Conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons – Grant of several authorisations to the same operator
Directive 2011/92/EU – Environmental impact assessment

The paper provides a brief overview of the judgment rendered in the Case C-110/20 by the Court of Justice of the European Union, wherein the latter gave a preliminary ruling on the interpretation of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons. Specifically, the Court defined the scope of Directive 94/22/EC with regard to the extent of the geographical area covered by hydrocarbon prospecting permits and the number of authorisations that may be granted by a Member State in favour of an operator. Furthermore, those profiles were addressed taking also into consideration the compliance with the requirements of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, in order to avoid a significant impact on the environment. Indeed, the judgment of the Court shows some interesting aspects arising, on the one hand, from its first ruling on the authorisation regime for the prospection of hydrocarbons laid down by Directive 94/22/EC and, on the other hand, from the connection made between those rules and the requirements of environmental protection, which Directive 2011/92/EU is aimed at. Moreover, the judgment is particularly relevant, and therefore worthy of consideration, having regard to the pressing need, at this historical juncture, to foster the development of new energy supply resources within the territory of the Member States, due to the high dependence of the European Union on the importation of hydrocarbons.