

RIVISTA GIURIDICA  
DELL'  
AMBIENTE

*diretta da*

FAUSTO CAPELLI  
STEFANO NESPOR  
TULLIO SCOVAZZI

3-2021

Editoriale Scientifica  
NAPOLI

## RICCARDO VILLATA

### *Abstract*

*Pollution - Rule of law - Administrative case-law*

*The paper examines how the administrative case-law has dealt with the extremely delicate issue of the unrestricted applicability of the regulations introduced since 1997 on the subject of remedial obligations also regarding sites polluted as a result of activities that ceased many years before the entry into force of said regulations (the so-called historical pollution) and comes to the conclusion that the solution found by the case-law appears to be conditioned by the aim of rule out any burden on the community at the cost of sacrificing the principles of the rule of law.*

## FRANCESCO CIRO RAMPULLA - DIMITRI DE RADA<sup>\*\*</sup>

### *Abstract*

*Noise emissions - electromagnetic emissions - light pollution precautionary principle - civil law - administrative law*

*Immissions have been disciplined by private law since the Roman times. However, technological development has led to the emergence of new types of immissions, which are still insufficiently regulated by the Italian legal framework. In fact, besides the traditional noise emissions, electromagnetic emissions and light pollution have become subject of debate and of fragmented regulation; in fact, the issue is disciplined both at national and regional level. The discipline of these topics presents several difficulties, as it requires a balance between relevant and conflicting rights. The right to private property and to economic initiative, both private and public, must be balanced with the opposite right to private property, the right to health, and the right to private and family life. Domestic judges have been called to operate this balance. In this chaotic and unclear framework, case law offers a possible solution: the application of the precautionary principle. The application of this principle as a hermeneutical tool, in fact, offers standards and parameters for judges to assess the case, without the need of (possibly too rigid or too mild) limits set by law. This will ultimately provide more flexibility in balancing opposite rights, while taking into consideration environmental concerns.*

## GABRIELLA MARCATAJO

### *Abstract*

*Environmental damage - Environment - Right of the person human rights - Existential damage  
- Commons - Quality of life non-material damage - Environmental liability*

*In this essay the author proposes a reconstruction of the environment as a right of the person and of environmental damage as an existential damage aimed at filling that void of protection in environmental matters denounced by the internal and European courts.*

*In particular, in the Italian legal system, the absence of remedies that allow the individual affected person to obtain compensation protection reveals, on the basis of current legislation, within the Italian legal system, a dangerous vacuum of protection.*

*According to the author, the legitimacy of the injured party could be derived from a parallel reconstruction of the environmental damage that, regardless of the legislative configuration, identifies it as damage to the quality of life, in accordance with the enhancement of the environment as a fundamental right of the person, operated by*

*jurisprudence and confirmed by the principles of domestic and European legislation.*

*In this perspective, the author identifies in the reform of the commons, currently under consideration by Parliament, the opportunity to introduce a specific discipline for the private protection of the environment.*

*According to the author, in addition to the public legitimacy of the State, in the person of the Ministry of the Environment, provided for by the special environmental legislation, the reformed civil code could still establish the individual legitimacy of the person injured by a phenomenon of environmental damage, as damage to an individual existential condition.*