

RIVISTAGIURIDICA  
DELL'  
**AMBIENTE**

*diretta da*

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Abstract

BARBARA POZZO

*Climate change litigation – Comparative law – Legal transplant*

*The article offers a comparative law perspective on climate change litigation, as it has developed in the US and in the EU, taking into consideration the issue of legal transplant. Climate change has undergone a process of international regulation, which has experienced its ups and downs, with international diplomacy devoting more and more attention to the phenomenon. The complex evolution of the international scenario has led to the development of alternative policy architectures for addressing the threat of global climate change, and to very heterogeneous results in the various regions. In particular, United States and the European Union share no common perspective on what should be done to fight climate change. In this context, the “climate change litigation” movement developed. In the US, this movement was not so much aimed at damage compensation but rather at “regulation through litigation”, while in the EU recent climate change litigation cases show that they are aimed at challenging the State, but also private companies, to adhere to more stringent standards to cope with climate change.*

Abstract

CATERINA OSIMANI

*Environmental damage – protection – sustainable development  
environmental pollution – health*

*The frequency with which environmental damage occurs requires an efficient system of protection. Environmental damage is included in the general case provided for by Article 2043 of the Italian Civil Code, which offers an adequate response to the emergencies posed by environmental damage limited to the criteria for the attribution of damage and the identification of all those responsible. Since the 1970s, the debate between doctrine and jurisprudence on environmental damage has continued with the purpose of guaranteeing the protection of the individual in the case of pollution. Over the years, opinions have also changed as to the good that is to be protected: those who support an anthropocentric conception whereby nature is protected because it meets human needs; or those who support an Ecocentric Theory, which raises the autonomous value of nature, which is not protected for exclusive utilitarian purposes but as such. In fact, the environment is the context in which man lives and relates and, therefore, environmental protection implies defence not only of the individual but also of the community as a guarantee of the principle of sustainable development.*

*The role of environmental pollution is fundamental in today’s definition of the relationship between man and environment, since man, through his actions or omissions, creates pollution causing serious damage to the environment and thus to the place where he lives. Man and the environment are interdependent: damaging actions reflect negatively on the environment but, at the same time, correct and conscious actions benefit the macro-system that is the environment, as well as us and our health.*

Abstract

DIANA CERINI

*Animal rights – 3R – Test on animals legislation*

*The article offers a comment on a recent judgment of the Highest Administrative Court concerning tests on living animals. This is the chance for a wider analysis of the position of animals and their legal status in the Italian system and in the EU Treaty, also in the light of the discussions for an amendment of the Italian Constitution, with the mention of provision animals, and the Civil Code. The paper also addresses the issue of the limits of the legitimacy of experimentation on animals.*

## Abstract

FLAVIA ROLANDO

*In the Luonnonsuojeluyhdistys Tapiola judgment the Court of Justice has interpreted some provisions which represent the pillars of the protection guaranteed by the Habitats Directive. In the case brought to the attention of the Court of Luxembourg, a Finnish environmental association had challenged two national measures authorizing the hunting of 7 canis lupus specimens, both to prevent damage and to reduce the phenomenon of poaching. The Court has therefore clarified the provisions of Article 16 of the Habitats Directive, which introduces some derogations to the regime of strict protection of animal species deserving special protection. In order to appreciate the importance of the judgment and its consequences on the protected species, we will first examine the subject of the dispute and the preliminary questions raised by the referring court. We will then briefly describe the protection guaranteed by the Habitat Directive, and then focus on the interpretation of art. 16 of this Directive given by the Court of Justice and on the application of the principles expressed in the judgment to the so-called Hunting for population management purposes.*

## Abstract

ELENA GUALCO

*Animal welfare – Freedom of religion – Art. 10 EUCFR – Non-discrimination  
Ritual slaughter – Regulation (EC) No 1099/2009*

*In its recent ruling *Centraal Israëlitisch Consistorie van België and o.* (C-336/19), the Court of Justice of the European Union (CJEU) has been asked to solve a dual dilemma: first, whether – and to what extent – the EU objective of general interest to protect animals at the time of slaughter or killing can lawfully compress the right to manifest religion. Second, whether the EU goal to protect animal welfare only matters in particular circumstances – e.g. in case of ritual slaughter – but has yet to apply onto further activities equally leading to animal killing. In the scenario just described, the approach followed by the CJEU is at time convincing and very disappointing. With regard to the first aspect, the present contribution highlights how the CJEU has for once implemented a reasoned investigation of the circumstances where the right to freedom of religion can lawfully be outweighed by the need to protect an (almost) equivalent EU value, i.e. animal welfare. Concerning the second point, and in sharp opposition to the clear methodology followed in the first part of the ruling, the paper points out a major flaw in the Court's decision: when asked about the compliance with the principle of non-discrimination of Regulation (EC) No. 1099/2009, on the protection of animals at the time of killing, the CJEU opts for no actual investigation of the issue, thus leaving the door open to the query whether such self-restraint was in fact an attempt to dismiss a question that – if properly tackled – would most probably lead to a negative answer.*

## Abstract

MICHELA LEGGIO

*Birds Directive – Special Protection Areas – Habitat – Artificial wetland  
Misuse of power – Discretion of the Public Authority – Land use control  
Land use limitations – Principle of proportionality*

*The article comments on a ruling by the Administrative Court about protected areas under the Birds Directive. The case concerned a deliberation of the Puglia Region with which an artificial wetland was qualified as Special Protection Areas (SPA) for the protection of the birdlife, without considering its man-made features. This essay explains and elaborates some passages of the judgement, especially, the one regarding the discretion of the Public Authority on land use limitation for environmental purposes and the consequences of such limitations. UNESCO in October 2003. Article 2 of the Convention provides that ICH must be compatible with sustainable development. The four intertwined dimensions of sustainable development are: society, environment, culture and*

*economy. The paper focuses on environmental sustainability. Chapter 6 of the Operational Directives for the Implementation of the Convention establishes a framework related to 'environmental sustainability'. The framework consists of three pillars. The first pillar relates to 'environmental impacts in the safeguarding of intangible cultural heritage'. The second pillar relates to 'knowledge and practices concerning nature and the universe'. The final pillar concerns 'community-based resilience to natural disasters and climate change'. In line with the first and second pillar, intellectual property rights, particularly, geographical indications, support environmentally friendly practices and recognise the community as bearers of knowledge about nature and essential actors in sustaining the environment. In line with the third pillar, in the context of COVID-19 pandemic, UNESCO and other organisations such as OECD are implementing initiatives to support states and communities to safeguard their ICH in order to ensure its viability. Among these initiatives are those related to digitization, VR and AR, with a particular view to strengthening the role of museums as crucial cultural institutions for the safeguarding of culture and the wellbeing of society. For museums, the goal would be to render these institutions as capable of developing integrated strategies for safeguarding not only collections and tangible objects but also intangible heritage and its viability.*

Abstract

ANTONELLA GALLETTI

*European Union's environmental policy – Art. 9 Italian Constitution  
Art. 117 and 118 Italian Constitution – Reform of Title 5 of the Italian Constitution  
State-regional competence in environmental matters*

*First of all, the paper analyses the European model of environmental policy and the legal basis for reference. After highlighting the importance of Art. 9 of the Italian Constitution, Articles 117 and 118 of the Constitution are examined before and after the 2001 amendment of Title 5 Cost., and their impact on the division of state-regional competences in environmental matters. Finally, the work analyses the initiative of the Marche Region, which requests, for the proposal for a European Directive on the reduction of the impact of certain plastic products on the environment, to be examined.*

Abstract

CATERINA ALESSIA DIBITONTO

*Energy from renewable sources and landscape:  
what law says and what common sense does*

*The paper analyzes the complex evolution of the scenario of the regional regulation on land uses and the European Convention on landscape, with emphasis on the Region Puglia, focusing on the balancing of environmental sustainability and the use of clean energy.*