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ABSTRACT

The paper comments on the recent approval of the inclusion of an express reference to environmental protection in the framework of the fundamental principles of the Italian Constitution, as well as some changes in the provisions on the limits and direction of economic activity. The protection of the environment does not represent a new task for the State since the Constitutional Court had already deduced it interpreting the notion of landscape and the right to health. Nevertheless, the constitutional reform gives renewed attention to the methods and measures implemented so far and in the future by the legislator.

Keywords

Environmental protection, animal legislation, environmental purposes, constitutional reform

CARLOTTA CALEMME

ABSTRACT

The confiscation of illegal development of land is one of the most debated legal arrangements within Italian and supranational jurisprudence.

Neither its nature nor the scope of its application appear to have been defined.

*Although Italian jurisprudence considers confiscation amongst administrative sanctions, the pronouncements of the European Court of Human Rights define the measure as more extensively afflictive, bringing it within the scope of the “*matière pénale*”.*

While reconstructing the jurisprudential and doctrinal panorama, the author proposes a reflection on the need of the legislator's intervention and on the possibility to introduce restorative solutions as a preferred alternative to punitive ones, in line with the constitutional protected right to Property, the principle of proportionality and the needs of the general and special preventive functions of the punishment.

Confiscation, property, proportionality, restoration

LUCA GALLI

ABSTRACT

*Climate Change – Migration – Refugee Status – Subsidiary Protection
Humanitarian Protection – Fundamental Rights – Public Power – Case Law*

The article explores the issue of climate migrant's protection in the Italian legal system. Considering the Court of Cassation order no. 5022/2021 as a pivotal intervention, this research reflects on its meanings and its impacts on the most recent jurisprudence. Thus, the outcomes of the case law analysis show the need to strengthening the principles affirmed in the order no. 5022/2021, confirming the opportunity to reconduct climate migrant's legal status to the hypothesis of "absolute special protection" recognized by art. 19, comma 1, first part, Legislative-Decree n. 286/1998. Indeed, this rule ensures a more stable permanence for the migrant on the Italian soil and, even before, it binds the administrative power to grant protection when the migrant's fundamental rights are at risk in the country of origin due to the negative effects of climate change.

MICHELE MESSINA

ABSTRACT

The objective of this contribution is to conduct a reflection on the problem of locus standi of natural and legal persons before the Court of Justice of the European Union, which has received a new impetus as a result of the development of a line of case law attributable to the so-called "Climate justice". The reflection will take into account the rulings of the EU judge, with particular reference to the Carvalho case, but also the latest legislative developments on the subject, characterized by the recent adoption of the new Regulation on the application of the Aarhus Convention, concerning, inter alia, access to environmental justice, to the EU Institutions and bodies. As a preliminary point, a brief analysis of some important rulings coming from national courts on the matter will be also carried out.

GIOVANNA PIZZANELLI

ABSTRACT

*European Environmental Policies – EU-Russia Relations
Global Climate Policy*

The essay analyzes the evolution of EU environmental policies in relations between Europe and the Soviet Union from 1985 to 1994. During such a period, profound changes took place both on the inner side of the European legal space and on the Soviet side. In particular, in this historic step, supranational environmental policies have known a growing affirmation. Strong influences on national legal systems ensued, while the Soviet Union had to face the tragic consequences of the Chernobyl nuclear accident and then its dissolution, which took place in 1991. In the following years, European and global environmental policies have focused on the fight against climate change by posing new questions that put the role of the Russian Federation at the center. Finally, in the light of the ongoing conflict between Russia and Ukraine, the contribution deals with the geopolitical framework that sees the relations between the EU and Russia at the center regarding the energy sector, inevitably intertwined with climate policies.

L'ENERGY PERFORMANCE CONTRACT

ABSTRACT

Energy Performance Contract – Energy Efficiency – Public-Private Partnership

This article provides an overview of Energy Performance Contracts as an innovative approach for implementing investments in energy efficiency, mainly for the public sector, based on the purchase of a guaranteed level of energy efficiency and the remuneration related to the energy savings actually achieved. Energy Performance Contracts (EPC) are defined by the Directive 2012/27/UE as a contractual arrangement between the beneficiary and the provider of (an) energy efficiency improvement measures (usually an Energy service company - ESCo), verified and monitored during the whole term of the contract, in which the investments are paid for the relation to a contractually agreed level of energy efficiency improvement or other agreed energy performance criterion.

In recent years, given the silence of the legislator, there have been discussions about the traceability of the EPC in the public-private partnership or the public service contract. A debate that seems, only apparently, to have subsided with the recent legislative intervention that

explicitly included the EPC within the framework of the PPP. However, even after the legislative intervention, since the EPC is a new type of contract, hardly traceable to existing classes of contract, not all problematic profiles are exhausted.

After underlying that EPCs have many similar characteristics to PPP projects, this paper focuses on the potential and benefits of a correct intersection between EPC-PPP. For this reason, the conclusion of an EPC in a PPP should be a winning strategy to improve the energy system in public infrastructures. However, there are several obstacles to correctly disseminating the energy performance contract. Public authorities should start looking at EPCs favourably, especially in the logic of PPP, mainly because they are seen as a way to implement investments even in the presence of financial constraints and budget shortages, allocating the costs and risks of performance to the ESCo.

ALESSANDRO GASPARINI

ABSTRACT

Starting from the recent judgment of the Constitutional court no. 69/2022 which declared unconstitutional the article 29, paragraph 3 of regional law of Liguria no. 32/2020 in so far as it extends the hunting season beyond the deadline established by state law, the paper seeks to examine the issues of the division of competences between State and Regions with regard to hunting, considering the constitutional structure following the reform of Titolo V in 2001.

Keywords

Hunting season, division of competences, constitutional reform

VAS E TUTELA AMBIENTALE

ABSTRACT

*Environment – Environmental Information – EIA – Construction and Urban Planning
Land and Landscape – SEA – Urban Planning Techniques*

The following essay aims to carry out an in-depth analysis concerning the regulatory framework in force regarding the strategic environmental assessment

(SEA), in particular by focusing on a recent judgment issued by the Italian Council of State (decision n. 6152/2021).

By means of that decision, the Italian Council has provided some relevant indications about the interpretation and implementation that should be given to this framework.

When local administrations draw up construction programs which could potentially have an impact on the surrounding territory, the legislation requires a series of preliminary assessments relating the probable consequences resulting from these projects. That's why the SEA turns out to be an essential precautionary instrument aimed at ensuring an adequate level of environmental protection.

Indeed, the Italian lawmaker has provided a quite complex and fragmented framework – also due to numerous corrective interventions occurred over time. This legal structure has produced a lot of different application approaches, which have contributed to make the existing legislation undefined.

So, by taking advantage of Legambiente's appeal, the Italian Council of State has pointed out that the interpretation given to SEA must be oriented towards the principles of transparency and prevention, which hold up the legal structure.

In particular, the Council has focused its argument on the criteria that should be examined during the evaluation, and also on the connection existing among the different administrations appointed to carry out the technical assessment on construction plans. According to the Council, that connection must comply with principles of collaboration and subsidiarity

LA VICINITAS COME REQUISITO COMPROVANTE LA LEGITIMATIO AD CAUSAM

ABSTRACT

Territorial Representation – Vicinitas – Qualified Interests – Legitimacy To Act

The recognition in the order of the Supreme Court in question, of proximity criterion, involves local articulations of environmental associations legitimacy's recognition to challenge administrative acts affecting the use of the territory as a public good. The issue is interesting so long as the admissibility of the appeal is rooted on the basis of "qualified interest", without need individual's proof concrete danger or damage.