

RIVISTAGIURIDICA
DELL'
AMBIENTE

diretta da

FAUSTO CAPELLI
STEFANO NESPOR
TULLIO SCOVAZZI

2-2020

Editoriale Scientifica
NAPOLI

Abstract

ILARIA TANI

End of waste – Circular economy – Plastic waste – Plastic pollution International environmental law – Basel Convention

The paper addresses the role played by the concept of “end of waste” in the circular economy and the legal gaps thereof, with a focus on plastic waste. The analysis starts with the consideration that the concept of “end of waste”, widely used in the current debate at the national level, is actually absent in international environmental law. Despite the growing number of conventions, protocols and declarations indicating international law’s commitment to addressing the environmental crisis generated by plastic waste worldwide, this branch of law has evidently failed to grasp the very ontological dualism of waste. In fact, international environmental law does not conceive waste as a behavioral phenomenon, individual and collective, and focuses only on the materiality of specific solid products to be disposed of. In other words, international environmental law considers those products as a never-ending waste. Besides, international law addresses only specific hazardous types of waste, without considering the overall and multidimensional impacts generated also by other types of waste. Moreover, international environmental law does not directly aim at protecting the environment from waste, but rather puts in place a set of norms designed to manage the circulation and (re)distribution of waste on a global scale against payment. In light of this legal construction, it has been rightly pointed out that international environmental law has become waste law in a world where waste has become a global commodity. In such a situation, the goal of environmental protection eventually lies in the background, as a mere collateral effect of the system. The analysis continues with the consideration that the concept of “end of waste” is not a new one, but it has been constantly fought against by producers for decades, since its very beginning, in order to ensure increasing levels of production. The strategy used by the industry lies in a shrewd combination of two elements: a “moralization” of environmental problems that places on consumers all the responsibilities for the current environmental deterioration, without considering alternative systems of production; and an effective implementation of what Antonio Gramsci described as “cultural hegemony”, whereby the industry has efficiently organized itself through a communication strategy aimed at convincing consumers that there is no alternative to the current system of production.

Abstract

GIUSEPPE GARZIA

Canis Lupus – Tutela – Habitat Directive Favourable Conservation Status – Piano conservazione

In last few years the wolf population has greatly increased in Italy. This study is aimed at analyzing the national and international regulatory framework of the wolves protection and the jurisprudence of the Court of Justice. In this regards, two of the latest laws of 2018 – issued by the Autonomous Provinces of Trento e Bolzano – which allowed, in particular situations, the killing of wolves, will be examined in the light of the sentence of Corte Costituzionale n. 215 of 2019. Finally, possible legal tools will be selected in order to foster wolf-human coexistence.

Abstract

GIOVANNI BAROZZI REGGIANI

Public access – environmental information – F.O.I.A.

The paper aims to illustrate the evolution of public access to environmental information in the Italian and European legal frameworks, in order to describe how that form of access contributes to improve citizen awareness of environmental matters and public participation in environmental decision-making. The principal characteristic of the institute is the fact the individual trying to access environmental information does not need to demonstrate any specific (or personal) interest in relation to such access, which is the same characteristic of another form of access to the public information that is on force within the Italian legal framework: the so called “accesso civico generalizzato”, which discipline is similar to the one set by the American “freedom of information act” (F.O.I.A.). The principal characteristic of the institute is the fact the individual trying to access environmental information does not need to demonstrate any specific (or personal) interest in relation to such access.

Abstract

BENEDETTA UBERTAZZI

Cultural heritage – Environmental damage Climate change – Public health and safety

The Convention for the Safeguarding of the Intangible Cultural Heritage was adopted within the framework of 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

ELENA CARPANELLI

Paris Agreement – Climate change litigation – Human Rights Systemic Interpretation – Infrastructure projects

On 27 February 2020 the Court of Appeal of England and Wales (Civil Division) ruled that the plan to build a third runway at the airport of Heathrow was unlawful, as it did not take into account the State's international commitments under the Paris Agreement. While the expansion of the airport has not been ruled out for the future, any project in this direction should now pay due regard to international environmental law. On the one hand, the decision at stake provides further evidence of the supplement role that domestic courts may play in implementing international climate change commitments. On the other hand, when one compares it to other national decisions, the judgment under exam highlights how domestic courts may adopt diverging approaches in the way they rely on international law in climate change matters, thus strengthening a 'fragmentation' that may hinder the weight of their rulings beyond the specific case.

Abstract

CARLOTTA CALEMME

Landscape crime – administrative authorization – offence underground structure – visibility

The decision taken by Corte di Cassazione (last court of appeal in the Italian juridical system) analyses the important subject of landscape crime and unauthorized constructions. Specifically, the judges examined the criminal charges for constructions which have not been previously authorized from the public authorities, when the structures are under-ground and not visible from outside.