

RIVISTAGIURIDICA
DELL'
AMBIENTE

diretta da

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Abstract

MARIA CLARA MAFFEI

Animal welfare - Article 13 TFEU - Ritual Slaughter - Freedom of religion - Organic production logo

Article 13 of the Treaty on the Functioning of the European Union (Lisbon, 2007) recognizes that animals are sentient beings. Consequently it provides that the Union and the Member States pay full regard to their welfare. However, the meaning of the terms “animals” and “sentient beings” is not precisely defined. Moreover, the obligation to pay full regard to the animal welfare is subject to the obligation to respect the legislative or administrative provisions and customs of the Member States relating, inter alia, to religious rites. In two judgments of May 2018 (C-426/16) and February 2019 (C-497/17) the European Court of Justice did not provide an interpretation of Article 13 but read in the light of its content the European regulatory provisions on slaughterhouse requirements and organic production logo. The first case concerns the ban in the Flemish region of slaughtering animals outside approved slaughter houses which satisfy the requirements of Regulation (EC) No 835/2004. This limitation, during the Feast of Sacrifice, could cause the Muslims to be unable to procure the meat required for this event with consequent violation of Article 10 of the Charter of Fundamental Rights of the EU and of Article 13. The Court found no issues capable of affecting the validity of Article 4(4) of Council Regulation (EC) No 1099/2009 read together with Article 2(k) thereof, having regard to Article 10 of the Charter of Fundamental Rights of the European Union and Article 13. The second case concerns the possibility of placing the organic production logo on products derived from animals which have been slaughtered in accordance with religious rites without first being stunned. According to the Court the logo cannot be placed on these products because this method of slaughter does not ensure a high level of animal welfare.

Abstract

VITTORIO PAMPANIN

*Health protection – Integrated Environmental Authorizations
Waste management and treatment - Odour emissions - Health Impact Assessment*

The contribution starts from the observation of the circularity in the dynamics of the relationship between discipline for the protection of health and discipline for the protection of the environment. Even though at first there is a substantial absorption of environmental profiles by the health discipline, in a second phase we observe a ‘distancing’ of the two disciplines. These disciplines stand to be interpreted according to different logics and then they reach the current phase, in which a new substantial rapprochement between the two spheres can be noted by virtue of the significant enhancement of health in the context of the main environmental protection instruments, in which it is not an implicit or implied element. In this perspective, therefore, two profiles are examined. They both have so far played only a marginal role in environmental protection authorization procedures: on the one hand, the assessment of the odor output of the emissions and on the other the health impact assessment procedure.

Abstract

SUSANNA QUADRI

*Sustainable development principle - value - international climate law
international energy law - UE climate and energy law*

The study outlines the main points of the measures contained in the Clean energy package, many of which have binding effects: the integration of the principle of sustainable development in its fundamental aspects is evident. This integration is common to many other international and European environmental and energy law acts. Therefore, this regulatory field establishes – often in abiding way – the wording of this principle. The examination of the package of rules leads, in conclusion, to some reflections on the consequences that the afore mentioned circumstances assume on the value and effects of the principle of sustainable development in international and European law relating to the sectors highlighted.

Abstract

PAULO AFFONSO LEME MACHADO

*Indigenous populations - Brazilian Law - Human Rights
International environmental law - Inter-American Court of Human Rights*

This article aims at reconstructing the legal framework of the rights and duties of indigenous populations in Brazil. The legal status of indigenous people is analyzed by observing the Brazilian Constitution, the ILO Convention No. 169 and national and international jurisprudence. In conducting the research, the author pays particular attention to the relationship between indigenous status and the protection of the environment. More in particular, he concludes that indigenous populations have to comply with national and international rules on the protection of the environment in the use and preservation of their lands.

Abstract

GIORGIO AFFERINI

Environmental – Pollution Environmental remediation– Waste

The following contribution is dedicated to the liability of the seller of a contaminated site. The analysis is carried out with respect both to the general rules on the liability of the seller of a good not in conformity with the contract and to the special rules introduced by the Italian Code of the environment. Particular attention is dedicated to the choice of the appropriate remedy, to the different means of price reduction, to the applicable prescription periods, and to the protection of the buyer of a good that is characterized by the presence of a so-called “real burden”.

Abstract

EDOARDO FERRERO

Rifiuti - End of waste - Sblocca cantieri Autorizzazioni - Recupero – Semplificazione

This paper addresses the regulatory changes introduced by the L.55/2019 pending the implementation of Directive UE 851/2019, which modify Article 6 of Directive 2008/98/CE. In particular, Article 1, paragraph 19 of L. 55/2019 amends Article 184-ter of D. Lgs. 152/2006 (Italian Environmental Code), concerning the End of Waste. This provision was imposed following the judgment of Consiglio di Stato n. 1229/2018, that denies the regional competence to granting authorisations in favour of state competence. The aim of this paper is to offer a reconstruction of the legislative and jurisprudential context, in order to provide a critical reading of the change introduced by the above mentioned Article 1, paragraph 19 of L. 55/2019 (also known as Sblocca Cantieri).

Abstract

TULLIO SCOVAZZI

*European Convention on Human Rights - Right to life - Right to private life
Right to the environment - Global warming*

A number of judgments of the European Court of Human Rights rely on a broad interpretation of Art. 2 (right to life) and Art. 8 (right to private life) of the European Convention on Human Rights in order to ensure the protection of the human right to the environment that is not specifically mentioned in the Convention. This approach has been followed also by some domestic courts, in particular the Dutch courts in deciding in 2015 and 2018 the Urgenda case, relating to the Dutch State's obligation to take measures against global warming.

Abstract

VALENTINA BURATTI

*Energy – Hydroelectric plants – Energy from renewable sources –
Land and landscape – Rivers and water streams.*

The issue concerning the setting of renewable source installments has seen, since its birth, the presence of a strong contrast between State and regions, including the special status ones, linked to the difficulty of defining the respective areas of legislative intervention.

The renewable energies field represents the context in which values of the utmost importance emerge. These include, for example, the protection of the environment, the landscape and the production of energy, which are issues that are often in conflict and that compulsorily need to be balanced.

The present contribution aims at developing, through the examination of a recent Constitutional Court ruling, a series of reflections on the state of the system.

The first part of this paper gives an overview on both national and European legal framework concerning renewable energies and the setting of instalments. Furthermore, a reflection on the distribution of the legislative power between State and Regions is also provided.

In the second part, instead, the role assumed by the Constitutional and European jurisprudence in the composition of the relevant interests is further investigated through the discussion of the guiding principles on renewable energies and proportionality.

Abstract

STEFANO DOMINELLI

The work comments the decision of the CJEU by which Italy is found to be in breach of EU law, namely of a judgment of the court. This being a case of ‘manquement sur manquement’ related to the implementation of the Waste water treatment Directive, offers the occasion to return on the analysis of the rules and procedures followed by the European Union to ensure that Member States comply with the system.