

ANTONIO ARUTA IMPROTA MALTESE

ABSTRACT

*Environmental liability – Pollution damage – Ecosystem
Ecological responsibility – Prevention and remediation of environmental damage
Damage to natural resources – Environment*

More than eighty years have passed since the public interest in environmental protection arose in the arbitration dispute between the United States and the State of Canada over air pollution from the Canadian Trail smelter adjacent to the US border. And yet, even today, the international legal system is unable to produce uniform rules and exhaustive definitions on environmental liability. This considered, from the analysis of the most significant international treaties that regulate the specific cases of “pollution damage” an extraordinary notion of “ecosystem” also emerges, as a system of interrelationships between biotic and abiotic resources as well as between the services produced by the same. A qualification, the latter, which could constitute a solid starting point for reaching the approval of a single international model of “ecological responsibility”, therefore in a unitary key. As far as the European Union and Italy are concerned, these have respectively approved and implemented a specific regulatory framework on the prevention and reparation of environmental damage, but not for this without problems of a definitional and applicative nature. The notion contained therein of “damage to natural resources” strictly identified, does not in fact align with the systemic and all-encompassing conception of the environment previously formulated by international and European law as well as by Italian constitutional jurisprudence. Nor is it connected with other notional forecasts, even more reductive, concerning specific forms of ecological contamination contemplated by the same national environmental legislation. And here, the lack of systematicity is such that, up to now, there are dangerous regulatory overlaps for the very protection of the natural matrices considered in themselves and which could well be resolved, with a little political determination, through an adequate legislative intervention.

MARIO BROCCA

ABSTRACT

Woods – Landscape – Environment

A reflection on the so-called Serpieri law (r.d. n. 3267/1923), one hundred years after its approval, seems useful to grasp the influence of this law not only in the “construction” of the Italian forestry system, but also in the genesis of internal environmental law as well as in the development of other disciplines interesting to the territory, such as landscape law.

DIANA CERINI

ABSTRACT

*Animal welfare – Animal rights – Tourism
Wildlife activities – Sustainability*

The paper addresses the position of animals in the Italian legal system, starting with the new text of article 9 of the Republican Constitution (which was approved in December 1947 and entered into force on January 1st 1948) as later modified by Constitutional Law 1st February 2022 no. 1. In its new formula art. 9 Cost. now provides that “The Republic protects the environment, biodiversity and ecosystems, also in the interest of future generations. The law of the State governs the methods and forms of animal protection”. Such provision is to be considered a landmark in the progress of Italian animal law. The Author also examines other sources of Italian law as well as the evolution of the case law in the direction to protect animal welfare. The paper then turns to analyze how animal welfare is related to tourism, one of the most important economic and cultural activities in Italy.

ANNA MARIA CHIARIELLO

ABSTRACT

*Biodiversity – Transnational – Convention on Biological Diversity
Joint decision – Transnational Cooperation*

Biological diversity is extremely important for human life, economy and well-being, which is why its defense is essential, as evidenced by the protection provided so far in the multilevel legal system. That said, the purpose of this work is to verify if and how biodiversity is also protected through transnational administrative law. In particular, the study identifies, within the main instruments aimed at protecting biodiversity, some examples of principles, acts and procedures of transnational administrative law, verifying their source, attempting to offer, where possible, a classification in the light of the categories that have been so far outlined in transnational administrative law and highlighting any limitations or gaps or strengths.

STEFANO DOMINELLI

ABSTRACT

*Climate change litigation – States' obligations to reduce GHG
Fragmentation of law – Plurality of methods
Trends in international law*

The aim of this contribution is to contextualise the plurality of methods and approaches developed at the national and regional level in the field of climate change litigation, focus on the consequent fragmentation of solutions adopted so far, in order to dwell on the 'replicability' of certain decisions in light of the indeterminacy of international climate change law rules as 'integrated' with other sources of international law.

MICHELA LEGGIO

ABSTRACT

*Artificial Intelligence – Algorithm Environmental Decision Making
Transparency – Explainability – Algorithm principles
Environmental applications*

The paper analyzes the use of artificial intelligence techniques in the environmental governance. Such uses can be categorized depending on their influence on the public decision: an informative use, which widens the knowledge of public bodies, and a decisional use, which instead automates the decision-making process. The aim of the article is to research if the Algorithmic Environmental Governance affects environmental principles provided by European and domestic law, specifically the transparency principle and private engagement in administrative proceedings.

ANNA ROMEO

ABSTRACT

*Meteorological and climatological forecasts – Italian meteorological system
Artificial intelligence – Meteorological risk – Uncertainty – Prevention
Public decisions – Private decisions – Socio-economic impact
International collaboration tools*

The article examines the meteorological service from the point of view of the incidence of the tools offered by the new technologies in meteorological and climatological forecasts. In particular, after a brief survey of the Italian meteorological and climatological system, the article pauses to analyze the transformations that have marked it and those that it is destined to have following the use of artificial intelligence also in this sector. In fact, it is highlighted how, despite the continuing need for human intervention, meteorological and climatological forecasts remain less and less entrusted to the meteorologist and more and more, instead, deriving from physical-mathematical models that make use of artificial intelligence as a suitable tool for managing a considerable amount of real-time data from various sources, also through machine learning algorithms useful for improving the accuracy of forecasts. The problem to be addressed is, in fact, that of risk management, considering the significant impact of weather forecasts on countless human activities that require both public and private decision

making. Therefore, observations carried out highlight the need to ‘intercept’ meteorological phenomena in order to prevent the risks of disastrous events whose consequences are often relevant at a global level. Which explains the adoption of international programs on the subject of which the contribution accounts.

SCILLA VERNILE

ABSTRACT

*Circular economy – Green public procurement
Environmental criteria*

The article, inspired by the recent entry into force of the new Italian Public Procurement Code, focuses on the contribution that public demand can provide to the affirmation of the circular economy. In particular, moving from the examination of the provisions that oblige the contracting authorities to include environmental considerations in public contracts and, more specifically, to introduce, in the contract notice, the environmental criteria established by decree of the Ministry of the Environment and Energy Security, the essay analyzes the major critical issues concerning this obligation in the light of the judicial interpretation and then dwells upon the examination of some examples of environmental criteria to evaluate how their application may prove useful to foster the transition to the circular economy.

WALTER DI LINGUA

ABSTRACT

*Environment – Acoustic emission – Racetrack
Noise pollution – art. 844 cod. civ. and public regulation*

This essay analyzes a ruling by the Italian Court of Cassation which clarifies that acoustic emissions can be considered intolerable even if they respect the anti-pollution legislation. The paper aims to provide a focus on the Italian legislation in this subject and on the remedies available to the damaged.

ANNA SCIACCA

ABSTRACT

*Criminal protection of animals – abandonment of animals
Article 727 of the Italian criminal code – notion of “abandonment”
Abandonment of minors or incapacitated individuals*

The article analyses a ruling by the Supreme Court of Cassation, which upholds the conviction of an individual who abandoned six puppies in front of the gates of an animal shelter. In particular, the Court considers it a criminally relevant act under Article 727 of the Italian criminal code. The motivation behind the ruling is based on the fact that criminally relevant abandonment consists in the voluntary detachment from a domestic animal, which is capable of affection and in need of care, and suddenly finds itself in conditions that jeopardize its survival, regardless of the location where this occurs. For this reason, the abandonment of puppies in front of an animal shelter can be considered a criminally relevant act if there is no certainty regarding their acceptance by the facility. The author uses the ruling to criticize the thesis, incidentally mentioned in the pronouncement, according to which Italian criminal law protects the (human) sentiment towards animals. In particular, it is argued that the discussed ruling belongs to a different perspective in which the protected entity is the animal itself. To support this thesis, the author claims that the real reasoning of the ruling lies on the notion of criminally relevant “abandonment”, which is also present in the offense of abandoning minors or incapacitated individuals (Article 591 of the Italian criminal code): in that context, given the nature of the protected interest and in adherence to the principle of offensiveness, the notion of “abandonment” inevitably requires the existence of potential danger to the well-being of the passive subject. By drawing a parallel between these two offenses (Article 727 and Article 591), the author argues that it is not possible to justify the practical implications of the discussed ruling unless the focus of criminal protection is shifted to the animal itself.

LEONARDO SCUTO

ABSTRACT

*Photovoltaic plant – Environmental Impact Assessment (EIA) – EIA screening procedure
– National Guidelines – Single regional authorisation procedure – Basilicata Region*

The Council of State declared invalid the Basilicata Region’s obligation to proceed through an EIA Screening procedure for a renewable energy plant, deeming illegitimate

Regional Council's Resolution no. 35/2022, which imposed a generalised obligation to proceed through the aforementioned procedure, risking paralysing the development of renewable energy sources in the Region itself.

According to the Judges, agreeing with the reasons put forward by the operators, it is not possible, in the context of authorisation procedures for renewable energy source plants, to impose a merely procedural burden that is "directly contrary to a fundamental principle of the matter, contained in the state legislation still in force and that does not even comply with the principle of subsidiarity set out in Article 3-quinquies, paragraph 2, of the Environmental Code".

Lastly, the judgment confirmed the applicability, as well as the relevance, of the provisions laid down by the Ministerial Decree of 10 September 2010, which allow the proponent to directly submit a request for an Environmental Impact Assessment, as it is "a regulation, supplementary to the primary source, which leaves the operator the right to choose whether or not to avail itself of this simplification tool, without correlatively causing any damage to the interests being protected".