LUCA BELVISO

ABSTRACT

Phytoremediation – Remediation – Nature Based Solutions
Sustainable development – Urban regeneration

This essay explores the topic of phytoremediation, a remediation technology for contaminated sites achieved through the planting of trees and plants, providing an alternative to more traditional methods.

After highlighting the advantages and disadvantages of this technique, the paper proceeds to reconstruct the legal framework, progressing from international and European law to national, regional, and local regulation. The twofold aim is to underscore the legal preference for this environmentally and economically sustainable technology and scrutinize rules, especially those found in the Environmental Code, that may impact the remediation process itself.

Finally, the theme will be examined from an urban perspective. Indeed, it is crucial for phytoremediation to be gradually applied not only in the current practice of marginal and peripheral areas, but also within urban contexts. This transformation positions phytoremediation as an essential tool for the sustainable development and urban regeneration of cities.

STEFANO CIVITARESE MATTEUCCI

ABSTRACT

Biodiversity protection – Big carnivores – Action plans – Institutional coordination

The article discusses the Action Plan for Protecting the Apennine Bear (PATOM) as an illustrative case of using contractual-like modes between public authorities to solve biodiversity challenges.

By analysing the process and implementation of PATOM and how its structure and objectives have changed over time, the paper casts light on a misalignment between the original science-based approach and the PLAN's realisation. In particular, neither the Managing Authority envisaged in the Plan as encompassing all the many bodies

and institutions involved in the policies affecting Bear's survival has been instituted nor have the most crucial actions envisaged been implemented. After analysing this upshot's possible legal and political causes, the article discusses reviving and boosting the conservation strategy by distinguishing between optimal but unlikely and incremental but underachieving solutions.

DAMIANO FUSCHI

ABSTRACT

Coastal protection laws – Comparative analysis – Environmental challenges
Legal frameworks and policies – Coastal erosion and climate change

Questo articolo presenta un'analisi comparata delle leggi sulla protezione delle coste e del loro utilizzo in Italia, nel Regno Unito (U.K.) e negli Stati Uniti d'America (U.S.A.). Lo studio esamina i diversi contesti giuridici e le politiche attuate in questi Paesi per affrontare le sfide ambientali lungo le coste, tra cui inquinamento, turismo, traffico marittimo e erosione costiera. Con l'aumento dell'impatto dei cambiamenti climatici e dell'innalzamento del livello del mare, la necessità di una gestione costiera efficace e sostenibile è diventata cruciale. L'analisi esplora la convergenza e la divergenza degli approcci legali e delle strategie operative in questi tre Stati, mettendo in evidenza l'equilibrio tra interessi privati e interesse pubblico, nonché la valutazione complessa delle preferenze umane e del loro impatto sulle coste. Lo studio discute inoltre le sfide affrontate da ciascun Paese, come la coerenza normativa, le competenze tra livello federale e statale (nel caso degli U.S.A.) e la protezione delle aree economicamente non strategiche. Esaminando le risposte giuridiche all'erosione costiera e alla mitigazione dei cambiamenti climatici, questa analisi comparata mira a fornire spunti sull'efficacia ed efficienza delle leggi sulla protezione costiera in diversi contesti giuridici. Riguardo al contesto italiano offre un approfondimento rispetto all'annoso conflitto che vede contrapporsi le necessità di tutela ambientale e istanze di sfruttamento economico delle aree costiere.

Keywords

Coastal protection laws; Comparative analysis; Environmental challenges;
Legal frameworks and policies; Coastal erosion and climate change

LUCA GALLI

ABSTRACT

Infrastructures – ecological transition – participatory democracy – state aids

Through an analysis of three different legal systems – U.S., European, and Italian – this article aims to investigate the extent to which participatory democracy tools can be used in the context of States' decisions aimed at supporting ecological transition. In particular, these pages focus on the decisions regarding the allocation of resources, in favor of private actors, for the construction of sustainable infrastructures, in order to investigate the possible advantages and disadvantages of these moments of civil society involvement in public choices.

GABRIELLA MARCATAJO

ABSTRACT

Il saggio propone una riflessione sull'ambiente come diritto fondamentale della persona autonomo rispetto al paesaggio e sulle conseguenze in termini di bilanciamento a seguito della riforma dell'art. 9 della Costituzione. La riforma consolida, secondo l'autore, un processo di autonomizzazione dell'ambiente connesso alla sua affermazione come valore personale, condizione esistenziale determinante la qualità della vita. Si assiste alla fine di una formale indistinzione che non si traduce, tuttavia, in rigida contrapposizione, piuttosto in costante interazione. L'ambiente, pur distinguendosi dal paesaggio, in qualche modo lo ricomprende, laddove come elemento determinante la qualità della vita, ne presuppone la conservazione. In questo contesto la costituzionalizzazione dell'ambiente come diritto fondamentale autonomo comporterà precise conseguenze. Nel conflitto con il diritto al paesaggio, tipici i casi di costruzione di impianti eolici, accusati più volte di minacciare l'estetica del paesaggio, il conflitto andrà risolto bilanciando diritti di pari rango, nessuno rivendicante posizioni tiranne. Nelle più recenti pronunce si assiste, infatti, ad un radicale capovolgimento di approccio sul tema. Il tema dell'intangibilità del paesaggio non è più difendibile come dato presupposto, laddove la costruzione di impianti fotovoltaici viene considerata come un'evoluzione dello stile costruttivo accettata dall'ordinamento e dalla sensibilità collettiva. La valorizzazione dell'estetica è chiamata allora a dialogare con una esigenza prioritaria, la salute del pianeta, che è, al pari, non anche a dispetto, delle bellezze naturali, condizione esistenziale, in nome cioè della comune direzione verso l'obiettivo della qualità della vita. Si tratterà di bilanciare valori di pari rango e colmare possibili vuoti di tutela, così come nelle ipotesi di conflitto con diritti di natura economica emergenti nei casi di inquinamento ambientale.

The essay proposes a reflection on the environment as a fundamental right of the person independent of the landscape and the consequences in terms of balance following the reform of art. 9 of the Constitution. The reform consolidates, according to the author, a process of autonomization of the environment related to its affirmation as a personal value, an existential condition determining the quality of life. We are witnessing the end of a formal indistinctness that does not, however, translate into rigid opposition, rather into constant interaction. The environment, while distinguishing itself from the landscape, in some way includes it, where as a determining element the quality of life, presupposes its preservation. In this context the constitutionalization of the environment as an autonomous fundamental right will have specific consequences. In the conflict with the right to the landscape, typical cases of construction of wind farms, repeatedly accused of threatening aesthetics of the landscape, the conflict will be resolved by balancing equal rights, no claiming tyrant positions. The most recent pronouncements show a radical reversal of the approach to the subject. The theme of the intangibility of the landscape is no longer defensible as a given assumption, where the construction of photovoltaic systems is considered as an evolution of the constructive style accepted by the order and collective sensitivity. The enhancement of aesthetics is then called to dialogue with a priority need, the health of the planet, which is, equally, not even in spite of, natural beauty, existential condition, in the name of the common direction towards the goal of quality of life. It will be a matter of balancing values of equal rank and filling possible gaps in protection, as well as in the event of conflict with emerging economic rights in cases of environmental pollution.

MORRIS MARINI

ABSTRACT

European Public Prosecutor's Office – Environmental crime Green New Deal Directive 99/2008/EC

The essay aims to verify the feasibility, in the abstract and in practice, of extending the European Public Prosecutor's Office's competences to environmental crime. First, it briefly traces the stages of the birth and development of the new supranational investigative body, analysing the criteria provided for by the EU legislation – unanimity, seriousness, transnational dimension – in order to extend its powers. Subsequently, after some remarks on the reasons and objectives of the European Green New Deal, the author dwells on the phenomenon of eco-crime. After a quick look at the data, he investigates the reasons for the failure of Directive 99/2008/EC, on the protection of the environment through criminal law, and examines the proposal for its revision – currently under negotiation –, with specific regard to the parts dedicated to the EPPO.

TOMMASO TORNIELLI

ABSTRACT

Environmental Law Principles – Precautionary Principle
Principle of Proportionality – Application structures
Judicial review

The paper examines the way in which the principle of proportionality limits the precautionary principle's applications and administrative discretion in the environmental law field.

Through the analysis of the respective application structures, both arising from European law, it is highlighted that only rigorous compliance with the principle of proportionality allows the legitimacy of the precautionary measure.

The paper also examines how the administrative case-law has dealt with the delicate problem of the judicial review of precautionary measures, in relation to their proportionality.

The conclusion is focused on the necessity, on the administrative side, that the administrative proceeding authority respects the application structures of both precautionary principle and principle of proportionality.

In the same way, it is important that the judicial review concerning precautionary measures is full, which means that the administrative court should review the technical environmental assessments that lead the public authority to the final precautionary measure.

MARIO BARBANO

ABSTRACT

Access to Justice – Article 9, para. 3, Aarhus Convention
Effective judicial protection – Environmental association (eNGO)
Locus standi – Motor vehicles – Defeat devices

The article comments on the Court of Justice of the European Union (CJEU) ruling on the Deutsche Umwelthilfe (defeat devices, DUH) case and examines its main implications for the enforcement of EU environmental law. After an overview of the case context and the relevant legal framework and case-law, the analysis focuses on the interpretation of the Aarhus Convention in light of the principle of effective judicial protection, followed by the examination of the substantive legal question on defeat devices. The DUH ruling widens the notion of environmental law and reaffirms the direct

application of the Charter of Fundamental Rights of the EU in the area of access to environmental justice. In any case, the extension of the range of legal proceedings where environmental associations (eNGOs) have locus standi does not affect the discretion of Member State to restrict access to approved eNGOs. In future perspective, it seems useful to harmonize at EU level the requirements for eNGOs' approval.

Il presente contributo esamina le principali conseguenze della pronuncia Deutsche Umwelthilfe della Corte di giustizia dell'Unione europea (C-873/19) sull'enforcement del diritto UE dell'ambiente. Dopo una breve ricostruzione della fattispecie e del contesto normativo e giurisprudenziale rilevante, è approfondita l'interpretazione della Convenzione di Aarhus accolta dalla Corte di Giustizia e il suo legame con il principio di tutela giurisdizionale effettiva. Segue un sintetico esame della questione di diritto sostanziale relativa agli impianti di manipolazione. La sentenza in commento amplia la nozione di normativa ambientale e le possibilità di applicazione diretta della Carta in materia di accesso alla giustizia ambientale. Tale approccio appare condivisibile nella misura in cui l'estensione del novero dei giudizi in cui le associazioni ambientaliste (eNGO) possono agire non pregiudica la facoltà per gli Stati membri di limitare tale accesso ad eNGO riconosciute. Sotto questo profilo, pare utile armonizzare al livello dell'Unione i presupposti per il riconoscimento.

GIULIO CARZANIGA

ABSTRACT

ARERA – Independent Authorities – Implied powers theory – Rule of law Tariff method for waste – Waste management

This paper aims to analyse the decision taken by the Region Administrative Court of Milan regarding the interdiction of ARERA to invoke the implied powers theory, to avoid the exercise of a faculty already practiced by another administrative apparatus. This judgement allows to reflect on one hand on the adversities to define boundaries within which the independent authorities can expand their actions, and on the other hand on the maintenance of the rule of law value.

LUCREZIA CORRADETTI

ABSTRACT

Remediation - preventive measures - landowner not liable
precautionary principle - principle of preventive action - past contamination

The essay analyzes a decision of the Italian Council concerning the preventive measures provided for by the Environmental Code and the possibility of their applicability to the landowner not liable for the contamination. The article focuses on their legal nature and on the possibility of their extension to past contamination, criticizing the thesis of the equivalence between prevention measures and emergency safety measures