

EDITORIALE

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PAOLO COTZA

ABSTRACT

*Essential building variations – Normative type of problem
Abusive transfers – Landscape-environmental interests*

The study starts from the limits that betrays the relevant regulatory aggregate, in terms of legislative technique, since:

- at national level, it is claimed to associate a homogenizing ratio with the treatment to be reserved for abuses wrongly considered to be comparable for disvalue;*
- that ratio is however nullified by the regional implementing legislation, already penalized by a nebulous framework for urban planning and building skills; thus determining a fragmentation of the regime far beyond the instances of "identity" detail and therefore, contrary to the general principles of the Republic, a formulation heavily "in odor" of unconstitutionality.*

Attention then focused on the most striking example: offered by the alleged merged examination of the essential variations relating to the location of the building.

In this context, taking inspiration from a certain jurisprudential contribution, to which an epistemological approach to the problem has given favorable shore, it has been found that a more reasonable interpretative outcome (on the actual level) can derive from a "functionalist" approach. The latter, in turn, presupposes accepting the idea of a normative scheme of a consequentialist type as well as a dogmatic instrument (starting from an objectifying notion of the public interest, up to a corresponding updated meaning of administrative discretion) attributable to that meta-scientific "imposing program" of justification of choices that passes through the criterion of "falsification" of critical rationalism instead of that sort of "weak legal positivism" (tending to degenerate into "rationality with respect to value") that objects to the different expressions of "living law".

From here, a "strategy of transposition of the problem" of essential building changes according to mechanisms that make it recognizable by the legal system: without prejudice to the underlying point of view (marginal, pretermesse, supervening complexities), nor the need to safeguard (ab extra come ab intra) the organization in which it is inserted, through a work of continuous complementarization of the reference principles (government of the territory in the strict sense, protection of the landscape-environment, etc.). In this context, also recognizing that the task of (regimentation-)government is complex, due to a high rate of uncertainty (if not unpredictability) of the

future, whenever the “dynamics of scale” (connected to the space-time horizons that are assumed as reference) concern complex (sub-) systems that require to refer to adequate clauses. This is the case of ecological-environmental processes, in relation to which there is now a tendency to lean towards a guarantee of resilience, rather than for the integral conservation of a certain state.

Hence again, the “operational” implications, passing on the procedural side and in particular on the protection side.

FEDERICA EROICO

ABSTRACT

*Renewable energy – European Union
Regulation (EU) 2577/2022 – Directive (EU) 2023/2413*

The current historical moment, particularly the Russia’s invasion of Ukraine and the pressing energy crisis, have accentuated the urgency of accelerating the deployment of renewable energy in the European Union in order to phase out dependence on Russian fossil fuels.

In this context, on 22 December 2022, the Council adopted Regulation (EU) 2577/2022, which established a temporary framework for the deployment of renewable energy sources, providing for a simplification and acceleration of permitting procedures for renewable energy installations.

This article intends to focus on the analysis of the mentioned regulation by placing it in comparison with previous regulations in the sector, delving into the evolution in the field. In particular, it will focus on the provisions included in it in order to verify whether these at a first examination appear capable of leading to an effective acceleration in the penetration of renewable energies or whether, on the contrary, obstacles still remain for their immediate expansion.

CHIARA GAMBINO

ABSTRACT

*Sustainability – sustainable development – sustainable trade – non-trade issues
new generation agreements – Asian partners – division of competences between
the European Union and the Member States – common commercial policy
protection of the environment and of workers – Opinion of the Court of Justice 2/15*

Within the framework of its commercial strategy, the European Union places increasing emphasis on (both environmental and social) sustainability, as confirmed by the inclusion, within the most recently concluded free trade agreements (so-called new generation agreements), of specific commitments on sustainable development. The extension of cooperation to issues other than those that characterise traditional free trade agreements raises, however, from the perspective of EU law, significant questions regarding the existence, within the European Union, of the necessary competences and, in particular, the respect for the prerogatives of the Member States. This paper therefore aims to provide an analysis of the chapters of the agreements concluded, to date, with Asian partners dedicated to sustainable trade, with a view to ascertaining whether – as the Court of Justice pointed out in its Opinion 2/15 with specific reference to the treaty concluded with Singapore - it is possible (and, if so, under what conditions) to bring these commitments within the a priori exclusive competence that the European Union enjoys in matters of common commercial policy.

CARLA GULOTTA

ABSTRACT

*Corporate social responsibility – human rights due diligence
HRDD – social sustainability*

After examining the most recent EU regulatory initiatives providing for due diligence obligations to prevent adverse impacts of businesses on human rights, with a focus on the proposal on human rights mandatory due diligence, the article argues that the EU is attempting to develop its own approach to corporate social responsibility. Under the EU approach, the legal obligations of due diligence are backed up by a national and Union-level administrative apparatus designed to support companies in their compliance efforts. Moreover, the possible adverse spill-over effects of sustainability policies on the countries of the Global South are compensated for through the development of appropriate development aid and investment support policies.

JOSÉ JUSTE RUIZ

ABSTRACT

The article examines Spanish Law 15/2022 that recognizes the legal personality of the Mar Menor, placing it in the international context. After reviewing the main characteristics of the Law, a critical assessment is made of how the new Law incorporates the obligations derived from international and regional conventions and European law. To that end, the different methodologies that have marked the evolution of international environmental law in this field are analyzed, namely: the establishment of marine protected areas, the techniques of integrated coastal zone management and maritime spatial planning, and the new paradigm that recognizes the rights of nature. Finally, the article addresses the difficulties that arise in the incorporation of international norms into domestic law and in the functioning of mechanisms for public participation and control of compliance. In conclusion, it is argued that Law 22/2022 highlights the lack of adequate interaction between the multilateral governance system in the Mediterranean and the legal systems of the States.

Keywords

Legal personality, rights of nature; Barcelona Convention and Protocols; protected areas; spatial planning; systemic interlinkages; environmental access rights; communications to compliance bodies.

BERNARDO MAGESTE CASTELAR CAMPOS

ABSTRACT

Environmental damage – marine pollution – ship disposal

The article addresses the legal aspects arising from the sinking of the Brazilian aircraft carrier São Paulo in February 2023 and the risks of environmental damage caused by it. Through an analysis of pertinent rules of international law, the article evaluates the legality of the exportation of the decommissioned aircraft carrier to Turkey for dismantling and Brazil's decision to sink it in the Southern Atlantic. The case highlights the challenges in establishing accountability for environmental damages in similar situations due to the absence of clear rules and mechanisms of control in international law.

LUIGI PISCITELLI

ABSTRACT

*Sustainability in building - Energy Performance of Buildings
Urban planning and buildings law - Urban renewal*

The paper concerns the sustainability in building, in the perspective of urban planning and buildings law. It describes the evolution of the EU legislative framework (that includes the energy performance of buildings directives and the energy efficiency directives) and the national urban planning and construction law tools to achieve the EU's energy and climate objectives.

ELISA RUOZZI

ABSTRACT

*Climate change - social doctrine of the Catholic Church
Human rights - multilateral environmental treaties - developing States
Common but differentiated responsibilities*

The article provides an overview and a brief comment of the Apostolic Exhortation Laudate Deum, adopted by Pope Francesco in view of the 28th meeting of the Conference of the Parties of the United Nations Framework Convention on Climate Change. As results from its opening, the main purpose of the Exhortation lies in a strong rejection of any denial of climate change and of its anthropogenic origin that, according to a consolidated view of the Catholic Social Doctrine, are intimately linked to the "technocratic paradigm". The utilitaristic exploitation and the depletion of natural resources, including the climate system, resulting from these trends find reflection in the scarce results brought about by international conferences on climate. This worrying scenario is made even more unacceptable if one considers the unfair consequences of the climate crisis on Developing States, whose contribution to the problem has been limited by their delayed and uncomplete economic development and whose political role is, vice-versa, on the rise. Despite its pessimistic tone, the Exhortation reminds "all people of good will" of the duty and the possibility to remedy the omissive conduct of States and of the international community through the action of environmental NGOs and the influence that consumers can exert on economic actors, in so doing underlying once again the central role, in the creation as a whole, attributed to human beings by Catholic Social Doctrine.

RICCARDO D'ERCOLE

ABSTRACT

*Urban waste - Municipal exclusivity - Consolidated environmental text
Competition law - Green antitrust*

The issue of the extension of municipal privative rights to the activity of municipal waste recovery has been the subject of heated debate: in particular, the question is whether such privative rights should be said to apply only to municipal waste sent for disposal or also to waste to be sent for recovery.

This paper aims, therefore, to reconstruct the institution of privative rights through the analysis, first, of legislation and then of case law. Specifically, in relation to the former, there are three fundamental norms that characterize the evolutionary path of the aforementioned institution: the Ronchi Decree, Law No. 179/2002 and, most recently, the Consolidated Environmental Text.

In relation to the second, there were jurisprudential contrasts: one strand in favor of the extension of the private right and another against it. The Council of State, in the commented judgment, joined the second strand by ruling that the privative should apply only to municipal waste sent for disposal.

CECILIA CATERINA DI PRISCO

ABSTRACT

*Dieseltgate – Directive 2007/46/EC – Regulation 2007/715/EC
Emissions of pollutants – Defeat device – Protection of the interests
of an individual purchaser of a vehicle equipped with an unlawful defeat device
Right to compensation from the vehicle manufacturer on the basis of tortious liability
Method of calculating compensation – Consumer protection*

In the context of the case QB v. Mercedes-Benz (Case C-100/21), the Court of Justice of the European Union was once again called upon to rule on a preliminary question pertaining to the strand of the infamous Dieseltgate affair.

Specifically, a German court addressed the Court on, inter alia, whether the purchaser of a car that does not comply with the industry requirements has a right to damage compensation directly arising from the relevant EU legislation (namely, Directive 2007/46/EC and Regulation 2007/715/EC).

Following in the footsteps of previous rulings by the Court itself, the European judges provided a positive answer to the question, likely paving the way for a new wave of litigation directed against the automakers involved.

After analyzing the factual and legal issues relevant to this case, this paper briefly discusses the new developments in the field of consumer protection that have become necessary precisely because of the grim landscape uncovered by the Dieselgate scandal.

STEFANIA SQUILLACE

ABSTRACT

Contingent and urgent ordinances – Ordinary measures on waste and reclamation of polluted areas – Atypicality as a discrimen between them

According to a well-established guideline of administrative justice, in order for an administrative measure to be ascribed to the category of contingent and urgent ordinances, it is not sufficient that its function is to promptly remedy a dangerous situation, but it is also necessary that with the measure itself a power is exercised whose content is not specifically determined by law. There are many typical measures functional to the prevention of a danger (so-called necessitated acts) which, precisely because they are typical, cannot be qualified in the same way as contingent and urgent ordinances.

Legislative Decree No. 152 of 2006 grants specific powers in the areas of waste abandonment and environmental pollution, dictating their prerequisites and modalities, and the administration cannot evade these provisions by resorting to contingent and urgent ordinances, except when stringent reasons are offered for the inadequacy of the ordinary instrument to deal with a dangerous condition, such as to require recourse to the contingent measure. Otherwise operating, there would be no way to avoid the “escape” from the typified forms of administrative action.

ENRICO VENOSTA

ABSTRACT

The essay aims to analyze the changes that have occurred on how the protection of the cultural heritage is interpreted by the Italian administrative law doctrine, the Constitutional Court and the Administrative law Justices throughout the years.

The administrative law doctrine and the Italian Constitutional Court have progressively swung from interpreting the protection of cultural heritage as a prohibition to cause any alteration on the cultural buildings to seeing that protection as a balance of different interests: the public interest to defend the integrity of the cultural building and the public/private interest to promote the sustainable development.

Nonetheless, administrative case law has been uncertain until now.

The judgment nr. 8167/2022 of the Council of State seems to agree definitively with the thesis that claims the protection of cultural heritage as a balance of different private and public interests.

Keywords

Wind power; Protection of cultural heritage; Cultural buildings protection constraints; renewable sources plants; Administrative authorization procedures; Balancing of interests; Penetration of renewable energies; Administrative discretion

VALENTINA ZAMPAGLIONE

ABSTRACT

Usi civici – environmental protection – property right – right of defense state property – ius in re propria – ius in re aliena

With the sentence no. 119/2023 the Italian Constitutional Court censured the art. 3, paragraph 3, of law no. 168/2017, that provided that privately owned lands encumbered by “usi civici” not yet liquidated are non-alienable. The practice of these rights is not prevented by the inter vivos or mortis causae transfer of the encumbered land, because usi civici presents all the typical characteristic of Italian real rights. Therefore all they are transmitted together with the fund. These rights are also guaranteed by the landscape constraints imposed on the land.