

**CONSTITUTIONAL PROTECTION OF THE ENVIRONMENT:  
EVOLUTION IN EUROPE BETWEEN ANTHROPOCENTRISM AND  
ECOCENTRISM - THE ITALIAN CASE**

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**SUMMARY:** Introduction; 1. Environmental Protection In European Constitutions; 2. Environmental Protection In Italian Constitution; Conclusions; Bibliography.

**ABSTRACT**

In modern European constitutions the concept of the environment has been considered in two main models: placing the environment and its protection within jurisdiction for the individual under the form of the right to a healthy environment or placing it within the framework of collective, widespread responsibility, such as generally obliging individuals and public authorities to protect the environment. In the Italian Constitution, no article identified the value of the environment and obliged protection. Protection of the environment was ensured only through the Constitutional Court's interpretations of combinations of articles 2, 9 and 32, which laboriously worked to define the terms of constitutional protection of environment.

Over time case law and legal opinion came to consolidate that the environment in the Italian legal system is a fundamental constitutional concept.

**KEY-WORDS:** Environment; Anthropocentrism; Ecocentrism.

**RESUMO**

Em modernas constituições europeias o conceito de meio ambiente tem sido considerada em dois modelos principais: colocação de meio ambiente e sua proteção no âmbito da competência para o indivíduo sob a forma do direito a um

ambiente saudável ou colocá-la no âmbito da responsabilidade coletiva generalizada, como geralmente obrigando os indivíduos e as autoridades públicas para proteger o meio ambiente. Na Constituição italiana, no artigo identificou o valor do meio ambiente e proteção obrigado. Proteção do ambiente foi garantida somente através Constitucional Tribunal interpretações das combinações dos artigos 2º, 9º e 32, que laboriosamente trabalhado para definir os termos de proteção constitucional do meio ambiente. Em tempo jurisprudência e parecer jurídico veio a consolidar que o ambiente no sistema judiciário italiano é um conceito fundamental constitucional.

**PALAVRAS-CHAVE:** Meio Ambiente; Antropocentrismo; Ecocentrismo.

## INTRODUCTION

The environment and its protection is one political, scientific, legal and philosophic concept that has been hotly debated in recent years. The need to develop increasingly advanced and effective models of protection has become even more apparent in light of the public's full perception of the tragic consequences of the ecological crisis (a truth long advocated by the scientific community). Mankind seems to have become aware of the need to reverse its traditional perspective of dominating nature which was supported by the dogmatic heritage of Judaeo-Christian religious thought<sup>1</sup> and tenets of

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<sup>1</sup> The problem of <<*dominium terrae*>> is also analysed in depth by A. AUTIERO, *Esiste un'etica ambientale?*, in V. Domenichelli – N. Olivetti Rason – C. Poli, *Diritto pubblico dell'ambiente. Diritto, etica, politica*, Verona, 1995, pp. 11 and following, which refer to Lynn White's hypothesis that dominant anthropocentrism according to the biblical precept underlies a dual concept in the relationship between man and nature and mankind's exploitation of it. See also, A. DE BENOIST, *Over human rights*, Rome, 2004, p. 44, who notes that in the Biblical tradition <<*The concept of dignity has a precise meaning: it elevates man above the rest of creation, giving him a separate condition. From the time when mankind has a soul, it is represented as being radically superior to other living beings*>>. See also A. GOLDMANN, *Les sources bibliques des droits de human*, on S. TRIGANO, *Y a-t-une moral Judeo-chrétienne?*, Paris, 2000, pp. 155 and following. See also, L. WHITE, *The historical roots of our ecological crisis*, in *Science*, Los Angeles, 1967.

The relationship between the concept of the environment and Christian doctrine was more recently explored in Italian debates by P. TOGNI and G. CREPALDI, *Ecologia ambientale ed ecologia umana. Politiche dell'ambiente e dottrina sociale della Chiesa*, Siena, 2007. To understand the position of the Catholic Church in the debate on the environment, see also the Pontifical Council for Justice and Peace, *From Stockholm to Johannesburg. An historical overview of the Concern of the Holy See for the environment*, Vatican City, 2002.

Scientific progress has inevitably impacted strongly on philosophical and religious concepts of the environment. The traditional view that the Earth centred on mankind and that a finite Universe centred on the Earth was firmly embedded in the collective consciousness for most of the modern age. As we know, it was first radically challenged and overturned by the Copernican revolution. The anthropocentric and geocentric conception which had been consolidated for centuries by the Aristotelian –Ptolemaic world-view, began to weaken around the mid-1500s with philosophical and scientific debate over Copernico's theory that the Earth rotated around the Sun. Giordano Bruno enthusiastically embraced the Copernican hypothesis which formed the basis of his speculations on the unity and infinity of nature. The next shock to the system undoubtedly came with Charles Darwin's publication of *The Origin of Species* in the mid-nineteenth century.

Porena, Daniele. Constitutional protection of the environment: evolution in Europe between anthropocentrism and ecocentrism. the Italian case. *Revista Eletrônica Direito e Política, Programa de Pós-Graduação Stricto Sensu em Ciência Jurídica da UNIVALI, Itajaí, v.5, n.1, 1º quadrimestre de 2010. Disponível em: www.univali.br/direitopolitica - ISSN 1980-7791*

Aristotelian philosophy<sup>2</sup> that persists<sup>3</sup>. Despite this, strong, cross-section ecological sensitivity has still to take root in the public consciousness, such as to break down the fences erected by the 'miniature environmentalist parties' that are characteristic of Italian and, frequently, European politics.

## 1. ENVIRONMENTAL PROTECTION IN EUROPEAN CONSTITUTIONS

In European Community law, the protection of the environment at first appeared to be firmly anchored to an anthropocentric concept<sup>4</sup>. In general, the Community's legal and political tendencies were effectively summed up in the document drawn up on occasion of the European Summit in Paris in 1972, which urged <<particular attention to the values and to non-material goods and to the protection of the natural environment, so that progress is placed in the service of man>>.

In the 1992 Treaty Establishing the European Union appeared concepts which, while not reneging the anthropocentric outlook, show a more "moderate" approach to the issue of the environment<sup>5</sup>. The second Article of the Treaty states that one of the tasks of the Community, is to promote <<*sustainable*,

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<sup>2</sup> The Aristotelian view of a finite universe, a celestial sphere with the earth at its centre, dominated science, philosophy and religious thought for centuries. With Aristotle ancient Greek philosophy seemed to affirm a more radical form of "anthropocentrism". Nature was conceived in terms of a hierarchy, with animals and plants in the world as mere tools of mankind. Aristotle stated that in the natural order Nature and animals were subject to man, just as the slave was subject to his master and woman was subject to man. Particularly eloquent on this point is "*La Política*", (di C. A. Viano), Bari, 1967, p. 7. In arguing in favour of human superiority over the rest of the animal world, Aristotle notes <<...*Words are used to indicate what is useful and what is harmful and consequently what is right and what is wrong but this pertains to Man rather than to the other animals because he is the only living being that is aware of good and evil, justice and injustice and all the other virtues (...)*>>.

<sup>3</sup> On this point, it might be useful to examine the different classifications offered by A. NAES, *The Shallow and the Deep, long-range ecology movements: a summary*, Oslo, 1973.

<sup>4</sup> This perspective derived from the absence of the issue of the environment in the Community mandate. Community legislation on the fight against pollution and the protection of the environment was originally justified on the grounds of needing to provide continual, balanced, harmonious development of the Community's economic policies. The obstacle to formal EU legislation on matters pertaining to the environment was definitively removed by the provisions of the 1986 Single Act, which introduced a separate section focussing on the environment.

<sup>5</sup> As shown by G. DI PLINIO, *Diritto pubblico dell'ambiente e aree naturali protette*, Torino, 1994, p. 138, the 1992 Treaty Establishing the European Union appears to apply a fundamental correction to the Community's traditional approach. In balancing the main aims to promote and maintain biodiversity and the economic needs, the author rightly placed the ruling in a median position between Biocentrism and the needs of local economies.

*non-inflationary growth that respects the environment*>>. The 1997 Treaty of Amsterdam seemed to push further in this direction as the European Union now has the task of <<(...) *promoting a high level of environmental protection and improvement of the quality of the latter*>>. The centrality of human activities (particularly the economic) remains in any case, in light of a systematic study of Community law, the focus of European Union attention. However, progressive limitations of expressions alluding to human interests, particularly the economic, seem to foreshadow gains in sensitivity towards moderated anthropocentric forms.

In modern European constitutions the concept of the environment has been widely debated. Upon examining the constitutions in several countries, legislation for protection of the environment emerged as essentially based on two main models: placing the environment and its protection within jurisdiction for the individual under the form of, in general, the *right to a healthy environment*, or placing it within the framework of collective, widespread responsibility, such as *generally obliging individuals and public authorities to protect the environment*.<sup>6</sup>

One example of the first model is found in the Spanish Constitution, according to which <<*everybody has the right to enjoy an appropriate environment for the development of the person, and the duty to preserve it*>><sup>7</sup>. The anthropocentric concept is also clearly set out in the principles of the Belgian Constitution which correlates protection of the environment with human dignity and the right to enjoy a healthy environment<sup>8</sup>. On the other hand, the Greek constitution states that <<*cultural and natural environment protection is one of the tasks of the State. The State is required to adopt special preventive or repressive measures in order to preserve the environment*>><sup>9</sup>. This suggests that the choices of the constituents are inclined to depart from, or at least to mitigate, the concept of

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<sup>6</sup> See B. POZZO, *La tutela dell'ambiente nelle costituzioni, profili di diritto comparato alla luce dei nuovi principi introdotti dalla Carta di Nizza*, in B. Pozzo - M.Renna, *L'ambiente nel nuovo titolo V della Costituzione*, Milano, 2004, pp. 6 and following.

<sup>7</sup> See art. 45 Cost. Spain, on [www.consiglioveneto.it/crvportal/banchedati/costituzioni](http://www.consiglioveneto.it/crvportal/banchedati/costituzioni).

<sup>8</sup> See art. 23 Cost. Belgium, on [www.consiglioveneto.it/crvportal/banchedati/costituzioni](http://www.consiglioveneto.it/crvportal/banchedati/costituzioni).

<sup>9</sup> See art. 24 Cost. Greece, on [www.consiglioveneto.it/crvportal/banchedati/costituzioni](http://www.consiglioveneto.it/crvportal/banchedati/costituzioni)

the environment as a projection of a human need. Between these two extremes, The French and German constitutions opted for the middle ground.

The recent reforms of the German and French Constitutions were accompanied by quite a few doubts. The *Grundgesetz*, which reformed this point in 1994 and again in 2002, obliges the State to protect the environment as it is responsible for future generations<sup>10</sup>. More specifically, the German Constitution places environmental protection among the duties assigned to the State<sup>11</sup>. The environment therefore is not one of the individual's subjective fundamental rights, but falls within the jurisdiction of collective law which can, as appropriate, limit or specify fundamental rights. However, even though a healthy environment does not appear to be the subjective right of the individual, the reference to future generations and the definition of protection of natural conditions of life (*Natürliche Lebensgrundlagen*) as an objective of the State drive constitutional law along an anthropocentric perspective<sup>12</sup>.

In France environmental protection was included in the Constitution after a laborious procedure and an in-depth debate. The importance that France gave to the environment in its recent Constitution is particularly solemn as environmental protection appears in the preamble to the Constitution, in the same position as the civil and political rights set out in the 1789 Declaration. There is not merely a reference to the duties of protecting the environment but an entire regulation drawn up on the basis of the 2003 Paper on the environment which contains a series of principles expounded in ten different articles.

The method the French constituents adopted, and their extension of constitutional law, has provoked debate<sup>13</sup>. Some argued the solemnity of this choice served to cushion the controversy stirred up by various French

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<sup>10</sup> The debate on the legalities of the environment in Germany is not however recent., See J. LUTHER, *Antropocentrismo ed ecocentrismo nel diritto dell'ambiente in Germania e in Italia*, in *Politica del diritto*, n. 4, 1989.

<sup>11</sup> See D. MURSWIEK, <<Artikel 20>>, in *Grundgesetz Kommentar* sd. Sachs, IIIº ed., 2003.

<sup>12</sup> See J. GERMAIN, *La protection de l'environnement dans la constitution Allemande, une nouvelle finalité assignée à l'Etat*, in *Les nouveaux objets du droit constitutionnel*, Toulouse, 2006, p. 56.

<sup>13</sup> See X. BIOY, *L'environnement, nouvel objet du droit constitutionnel ou: qu'est-ce que <<constitutionnaliser>>?* in *Les nouveaux objets du droit constitutionnel*, Toulouse, 2006, p. 25.

Governments choices because they were certainly not inspired by the principles of ecosystem protection<sup>14</sup>. Others claimed these principles had no practical effect<sup>15</sup>.

Between the lines of the regulations in the French Constitution on environmental protection all references have been lost to a single definition of the environment<sup>16</sup>. Although French constituents had no fear of using expressions that in some ways are very demanding<sup>17</sup>, the *Charte de l'Environnement* (Environment Charter) does not draw up a unitary definition of the environment. A definition emerges in French law from a combination of all the different rules. A collective and evolutionary human reference is clearly perceived in the drafting of the Charter which, along the lines of the 1789 text, is divided into <<rights and duties>>. Nature is conceived as a condition of human life, the environment is the <<*human being's common heritage*>> and the underlying principle is sustainable development so as not to damage the inheritance of future generations.

Above all, the Charter's first article which states <<*Everyone has the right to live in a balanced environment that is favourable to his health*>>, reduces protection of the environment to an example of individual right. As observed in the legal debate, the reform of the French Constitution shows protection of the environment is enshrined in an anthropocentric prospective<sup>18</sup>.

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<sup>14</sup> See D. TEGA, *Francia: il diritto all'ambiente "bussa alle porte" della Costituzione francese*, in [www.forumcostituzionale.it](http://www.forumcostituzionale.it). The proposer recalls how the Charter's content was, according to part of the French public opinion, "marked as a sort of fig leaf" to make people forget the nuclear tests in the Pacific Ocean.

<sup>15</sup> See C. HUGLO, *Une Charte de l'Environnement adossée à la constitution: pour quoi faire?*, in *"Environnement"*, n.6, 2003.

<sup>16</sup> See M. COHENDET, *Vers la constitutionnalisation du droit de l'homme à un environnement sain et équilibré*, in *SFDE, 20 ans de protection de la nature. Hommage à Michel Despax*, Pulim, 1998.

<sup>17</sup> In this connection, just the reference to the first premise of the Charter, according to which <<*resources and the natural balance determined the presence of Mankind*>>. The debate caused by certain expressions has given rise to bitter controversy arising from people who considered it inappropriate that French constituents had come to enshrine in the Constitution <<*l'origine de l'humanité, sur son avenir, sur la diversité piologique et sur le progrès des société humaines*>>. See H. ROUSSILLON, *Le nouveaux objets du droit constitutionnel*, Toulouse, 2006, note on p. 30.

<sup>18</sup> <<*La nature entre ainsi dans la Constitution non <<par elle-mem>> ou en tant que telle mais adossée à l'humanité*>> so X. BIOY, *L'environnement, nouvel objet du droit consitutionnel ou: qu'est-ce que <<constitutionnaliser>>?* in *Les nouveaux objets du droit constiutionnel*, Toulouse, 2006, p. 29.

The constitutions of Eastern European Countries that were previously in the <<Soviet block>> also pay particular attention to protection of the environment<sup>19</sup>. Once again constitutional protection of the environment which is designated as the right of an individual is distinguished from state obligation to protect environmental resources. For example, in accordance with the latter view Polish public authorities have, according to Art. 74 of the Constitution, the <<*duty to protect the environment*>><sup>20</sup>. The Constitution of the Czech Republic states <<*the State shall see to it that natural resources are used economically and natural wealth is protected*>><sup>21</sup>. On the other hand, the Hungarian Constitution moves in the opposite direction when it states <<*The Republic of Hungary recognizes and shall implement the individual's right to a healthy environment*>><sup>22</sup>.

## 2. ENVIRONMENTAL PROTECTION IN ITALIAN CONSTITUTION

Disappointingly, in the 1948 Italian Constitution, no article identified the value of the environment and obliged protection. Protection of the environment was ensured only through the Constitutional Court's interpretations of combinations of articles 2, 9 and 32, which laboriously worked to define the terms of constitutional protection of environment. The expression <<*protection of the environment, ecosystem, and cultural artefacts*>><sup>23</sup> was finally introduced into the Italian Constitution with the 2001 reform of Section V without, however, providing substantial progress. The scope of the innovation must not be overemphasized as Art. 117 deals with the division of powers between central and regional government. It is important to note how Italian constituents, although not expressly stating the environment ranked among the fundamental

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<sup>19</sup> A profound analysis of constitutional protection of the environment in Eastern European countries is provided by B. POZZO, *La tutela dell'ambiente nelle Costituzioni: profili di diritto comparato alla luce dei nuovi principi introdotti dalla Carta di Nizza*, in B. Pozzo and M. Renna, *L'ambiente nel nuovo Titolo V della Costituzione*, Milano, 2004, p. and followings.

<sup>20</sup> <<*Protection of environment shall be the duty of public authorities*>>, Constitution of Poland, art. 74.

<sup>21</sup> So art. 7 Czech Republic's Constitution.

<sup>22</sup> Constitution of Republic of Hungary, art. 18.

<sup>23</sup> Art. 117, let. s), Constitution of Italy.

values of the Constitution, highlighted a distinction between <<environment>> and <<ecosystem>>. The Italian word for <<environment>>, is <<Ambiente>>, a word of Latin origin, meaning <<surroundings>>. The etymological root of the expression refers to <<everything that surrounds man>>. Consequently, the anthropocentric connotations of the term used by constituents are pretty obvious. Otherwise, they could have chosen the term <<ecosystem>> which indicates all living beings, environment, physical and chemical conditions and interactions that are inseparably linked within a given space. Therefore the human community is part of the ecosystem and lives through interactions with other elements. Consequently one could conclude that the term <<ecosystem>> embraces a more ecocentric perspective<sup>24</sup>.

Over time case law and legal opinion came to consolidate that the environment in the Italian legal system is a *fundamental constitutional concept*<sup>25</sup>.

As highlighted by legal opinions and constitutional case-law, 2001 reform has not endorsed any form of extreme ecocentrism. In fact, recognizing the legal value of the environment in itself does not prohibit human interference and the environment does not become a sort of museum with man as a mere guest. The juridical dimension of the environment requires only the obligation to justify any intervention, thus reversing the centuries-old approach that man was entitled to interfere with the environment without limits or justification<sup>26</sup>.

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<sup>24</sup> One should bear in mind the Italian Constitutional Court recently observed that in light of the 2001 Reform of the Constitution <<the environment should be considered as a system and its dynamic nature should be taken into account>> (Sentence n. 378, 2007). Moreover, the Court emphasized the circumstances of the recent replacement of the word "environment" by the word "ecosystem". According to the Constitutional Court's ruling, the State has the onus of legislating for the environment and should consider it <<an organic unit and provide protection laws which take into account the whole and each individual part of the whole>>.

<sup>25</sup> For a thorough analysis of decisions by the Italian Constitutional Court on the concept of the environment see G. D'ALFONSO, *La tutela dell'ambiente quale <<valore costituzionale primario>> prima e dopo la riforma del Titolo V della Costituzione*, in F. Lucarelli, *Ambiente, territorio e beni culturali nella giurisprudenza costituzionale*, Napoli, 2006, p. 3 and following.

<sup>26</sup> The reference to this position is supported by B. CARAVITA, *Diritto ambientale*, Bologna, 2005, p. 29, Recognizing the environment or biological diversity has an intrinsic value to does not mean its inviolability or prohibition of any interference, but implies that whoever interferes with it should justify the intervention: this is the reversal of the rule that previously authorized man to intervene unrestrictedly on the environment.



Porena, Daniele. Constitutional protection of the environment: evolution in Europe between anthropocentrism and ecocentrism. the Italian case. *Revista Eletrônica Direito e Política*, Programa de Pós-Graduação *Stricto Sensu* em Ciência Jurídica da UNIVALI, Itajaí, v.5, n.1, 1º quadrimestre de 2010. Disponível em: [www.univali.br/direitopolitica](http://www.univali.br/direitopolitica) - ISSN 1980-7791

No less convincing, is a recent hypothesis on "the duties of anthropocentrism"<sup>27</sup>. It has the merit of overcoming the dilemma of recognizing that natural entities other than man have legal rights without yielding to forcibly ecocentric positions<sup>28</sup>. It states the environment no longer belongs to the individual as his right, and emphasizes the link that binds contemporary man to future generations and the environment<sup>29,30</sup>

It is clear from this framework that laws need to be underpinned by the following canon: it is the duty of individuals and public bodies to protect the environment.

## CONCLUSIONS

As already emphasised, mainly because of the Constitutional Court's work, the Italian Constitution has moved forward, and, hopefully, will continue to progress quickly. However, given the lack of a specific provision for the protection of the environment, the Italian Constitution is not, in my view, in step with more advanced constitutions of other Countries.

Therefore, one of principal hopes for environment's protection in Italy, continue to be that Italian constituents insert an article among fundamental principles of

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<sup>27</sup> See F. FRACCHIA, *Sulla configurazione giuridica unitaria dell'ambiente: art. 2 Cost. e doveri di solidarietà ambientale*, in *Dir. econ.*, 2002, pp. 215 and following.

<sup>28</sup> The issue was fully explored by F. FRACCHIA, *Governo del territorio e ambiente*, in *L'ambiente nel nuovo titolo V della Costituzione*, a cura di B. Pozzo e M. Renna, Milano 2004, pp. 45 e ss., who stated <<the ecocentric approach, in maintaining silence about the great difficulties that exist in representing non-sentient beings as possessing rights (even though animals and Nature herself have demands and needs, it is still however arduous indeed to recognise that they have rights in the accepted sense of the term or that there is legislation governing their behaviour) immediately generates the problem of a plurality of candidates for protection, with all the ensuing difficulties of raising one to the rank of "defensor">>.

See also P. MADDALENA, *L'ambiente: riflessioni introduttive per una sua tutela giuridica*, in *Ambiente&sviluppo*, 6/2007, p. 478.

<sup>29</sup> For M. CECCHETTI, *La disciplina giuridica della tutela ambientale come <<diritto dell'ambiente>>*, in [www.federalismi.it](http://www.federalismi.it), the anthropocentric principle, even in its "eco-friendly" guise, is essentially, whatever different conceptions may emerge, a construct of <<the human view of Nature and so the need to come to terms with Man's central position cannot be excluded>>.

<sup>30</sup> "Rights", when understood as a code of rules, are an abstract concept developed by human beings; therefore everything that is legislated for and identified as a <<value>> is the fruit of a manmade choice and preference.

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the Constitution and not only among the rules governing allotment of competence between the State and local government.

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