

Short text

This presentation aims to focus, first, on the evolution of the notion of environment within the relationship between the “Euro-unitary” and the Italian legal systems and, second, on how it is treated within the Italian economic constitution as a factor for limiting or “functionalising” the freedom of economic initiative.

Abstract

This presentation aims to focus, first, on the evolution of the notion of environment within the relationship between legal systems and, second, on how it is treated within the Italian economic constitution as a factor for limiting or functionalising the freedom of economic initiative. Indeed, since the publication of the famous European Commission “Eu Green Deal”, the legal notion of “environment” has undergone an incredible evolution, influencing its constitutionalisation. In fact, its *ratio* and content have contributed to the rewriting or drafting of several legislative measures within the “Euro-unitary” legal system (as recently called by Ruggeri, 2025), among which, from the theoretical point of view, the “Nature Restoration Law” Regulation might be considered the most important measure. This can be seen as a natural consequence of the emergence of non-economic elements as the implementation of the economic elements desired by the European integration project (Tuori, 2011), and at the same time, as a further and necessary dialectic between them. Thereafter, they have been incorporated into the Italian legal system which, in parallel, has taken up the most innovative aspects of this renewed “European awareness” with the famous Constitutional Reform n. 1/2022, which amended the articles 9-41 of the Italian Supreme Law, becoming the “Constitution of the ecological transition” (De Santis, 2023). We could define this form of communication within legal systems as a further evolution of the so-called “inter-level constitutionalism” (again, Ruggeri, 2013; D’Andrea, 2013), that, in my opinion, can be named “reverse constitutional synthesis” (Gugliandolo, 2025). This phenomenon is clear in those subjects that have become strongly EU-related, such as the environment, and partially overcomes the bottom-up approach of the common constitutional traditions’ integration process (as defined by Fossum, Ménez, 2012). Here, in the new art. 9, the notion of environment seems to enshrine a “general clause”, thanks to the juxtaposition of lexical elements that could be interpreted as a *genus-species* relationship that describe it as complex system, extending the social contract (Bifulco, 2023). In fact, the new art. 9, par. 3, It. Const, establishes that “[*the Italian Republic*] shall protect the environment, biodiversity and ecosystems, also in the interest of future generations. The law shall regulate the ways and forms of animal protection”. After that, the Constitutional legislator needed to reshape the so-called “external limits” to the freedom of economic initiative, including “the health and the environment”(art. 41, par. 2, It.

Constitution) and, finally, the so-called “internal limits”, which enable the legislator to intervene with “*appropriate programmes and controls so that public and private economic activity can be directed and coordinated for social and environmental purposes*” (art. 41, par. 3, It. Constitution). Arguing further, on the one hand, the new article 41, par. 2, seems to incorporate the new European DNSH principle; on the other hand, the new article 41, par. 3, recall for economic planning interventions with the aim of a structural conversion of the economy. The social purposes are now separated from the environmental ones, as if to evoke a possible “tension” between them. Indeed, both interact with each other in a perpetual time-based balancing operation (Grassi, 2023). The anthropocentric construction of the environmental good, although today strongly influenced by ecocentric elements, never abandons the economic aspect. For this reason, it remains susceptible to continuous and contingent rethinking in terms of balancing of fundamental values, with the prevalence of “presentist” assessments.

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