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ENVIRONMENTAL PROTECTION AND CONSTITUTIONAL COURTS

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1. Introduction. A broad legal context

A multitude of legal sources regulate the environment. Over the last half century international environmental law has hugely expanded. Supranational laws – as European Union law – have increased. Many Constitutions contain provisions for environmental safeguard. National statutes have multiplied. Constitutional Courts act within this broad context.

This speech will concisely underline the main features of these laws and the role played by the Italian Constitutional Court. Final remarks will follow.

2. International and supranational law

A first feature of international environmental law is that it often lays down binding and science-based obligations for the States. For example, the Paris Agreement of 2015 establishes to hold the increase in global average temperature to well below 2°C above pre-industrial levels (art. 2). This norm is founded on scientific evidence.

A second feature is public participation in decision-making processes, in accordance with a trend established long ago.

Finally, the principle of intergenerational equity has been often reaffirmed.

As for supranational law, allow me to consider EU law.

The “European Climate Law” (Regulation EU 2021/1119) is of particular importance. It confirms the Paris Agreement reduction target of greenhouse gases but renders it more rigorous establishing intermediate deadlines for reduction in view of climate neutrality in 2050.

EU law, in addition, pays the utmost attention to “nature-based solutions”, mainly thanks to the Regulation on “Nature Restoration” (EU 2024/1991) with the aim of restoring biodiverse degraded ecosystems. Among these solutions are carbon capture and storage, re-wetting of peatlands, restoration of forests. Nature-based solutions are more respectful to the landscape than photovoltaic parks or wind turbines. All these measures are essential for environmental safeguards and should be coordinated.

2.1. Constitutional law

Many Constitutions promote environmental protection. In Latin America, a land rich in natural resources, there has been a wave of environmental constitutionalism, and several Constitutions provide for a right of all inhabitants to a healthful environment fit for present and future human needs.

In Europe, the German Constitution establishes that the State shall protect the “natural foundations of life”, mindful also of its responsibility towards future generations. The Italian Constitution of 1948 – revised in 2022 – lays down that the Republic protects the “environment, biodiversity, and ecosystems, also in the interest of future generations”.

All this is in accordance with IEL.

3. The Italian Constitutional Court

Three features of the Court’s judgments will be concisely examined.

First. The Court has confirmed a wide notion of environment, stressing that it is “an element which determines the life quality”, being “a natural habitat” where men and women live, and has a “primary value” (judgment no. 641/1987).

Moreover, even before the 2022 amendment and since the 1980s, the Court has emphasized the importance of environmental protection in the interest of present and future generations. The context in which these decisions came out is significant. Social sciences had stressed the necessity of strongly protecting the “commons”, goods belonging to the whole of mankind and indispensable for human survival. Among them environmental goods – such as forests, glaciers, seas – were deemed to need protection in the present and future. This context implicitly influenced the Court in its judgments on waters, renewable energies, collective properties (judgments no. 1002/1988, 419/1996, 246/2009, 142/2010, 93/2017, n. 237/2020, 119/2023).

Second. The Constitution lays down that the State has exclusive legislative competence on environmental protection (art. 117, par. 2, s). The Court has considered this competence as horizontal and possibly interfering with regional statutes on matters of regional competence, such as health or hunting. Regions can enhance the level of protection guaranteed by state legislation when the latter provides for a minimum standard of safeguard (judgment no. 7/2019; and no. 16/2024). Therefore, environmental defence can increase.

Third. A balance is needed between the construction of “green infrastructures” – like solar panels or wind turbines – and the use of “nature-based solutions”, such as restoration of natural resources.

On the one hand, the Court held that there is a principle of maximum diffusion of renewables to reduce the dependence on fossil fuels (judgment no. 85/2012).

On the other hand, the Court underlined the importance of preserving natural habitats, also referring to the EU Regulation on Nature Restoration. The Court held that, according to this Regulation, construction of plants for the production of energy from renewable sources shall be presumed to be in the overriding public interest (art. 6, par. 1). Nevertheless, member States may restrict the presumption, in justified and specific circumstances, to parts of their territory and to certain technologies (art. 6, par. 2).

Thus, favour for renewable energy plants can be lessened in case of construction of biomass plants in national and regional parks (judgment no. 134/2025).

4. Final remarks. Global implementation needed

The Italian Constitutional Court takes environmental protection seriously. Other Courts intervene actively, as the German one. But Constitutional Courts only have a national impact while environmental protection is a global issue.

As for the global level, the International Court of Justice, in its Advisory Opinion of 23 July 2025, held that climate change treaties establish binding obligations for States parties. And that some binding obligations stem from customary international law.

Nevertheless, States do not act the same way everywhere. Poorer countries still need low-cost energy based on fossil fuels. Some developed countries still demand coal energy to support their growth.

As for economic operators, carbon intensive undertakings suffer from restrictive regulations. Automotive industry faces high costs in moving on to produce hybrid or electric vehicles.

Therefore, implementation gaps persist. How can we fill these gaps?

IEL is part of international law. However, it is peculiar because it responds to the interests of the international community as a collective: not only States but innumerable non-State actors, such as non-governmental organizations, indigenous peoples, and undertakings.

Non-State actors can play an important role in implementing the rules. For instance, relevant pro-environment initiatives launched by non-profit foundations are expanding.

Finally, environmental law needs compliance by society in the whole world. Everyone should be aware that the Amazonian deforestation or the loss of wetlands occurring somewhere can affect the entire planet in terms of serious environmental risks. This awareness can help promote general compliance and cooperation.