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Protecting the Environment and Animals: A Recent Amendment of the Italian Constitution

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Abstract

The contribution analyzes the protection of the environment and animals following the amendment of the 2022 Constitution. In particular, with reference to the environment, it considers the European sources of laws, the coordinated protection systems, then accounting for the division between State competence and regional competence at the national level.

With reference to animals, also considering the disciplines that protect animals, it identifies the interests taken into consideration by them.

Keywords

environment, animals, protection, biodiversity, interest of future generation, amendment of Italian Constitution 2022

Introduction

A recent amendment to the Italian Constitution in 2022[1] expressly protects the environment,[2] and also gave recognition to the protection of animals. The amendment

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[1] Constitutional Law No. 1 of 11 February 2022, entered into force on 9 March 2022. Guido Alpa, *Note sulla riforma della Costituzione per la tutela dell'ambiente e degli animali.*, 2 Contr. e impr. 361 – 369 (2022).

[2] In the publicist perspective, within the notion of good *de quo*, see the definition of "environment", on which Giannini, Predieri and Morbidelli have commented. Cf. Massimo Severo Giannini, *I beni pubblici* (Rome, 1963); Massimo Severo Giannini, *Diritto pubblico dell'economia* (Bologna, 1989); Alberto Predieri, *Significato della norma costituzionale sulla tutela del paesaggio* in Alberto Predieri, *Urbanistica, Tutela del paesaggio, espropriazione* (Milan, 1969); Alberto Predieri, *Significato della norma costituzionale sulla tutela del paesaggio* in *Studi per il ventesimo anniversario dell'assemblea costituente,* vol. II, p. 381 (Florence, 1969); Alberto Predieri, *Paesaggio* (voce) in *Enc. dir.*, XXXI (1981); Guido Alpa, *Aspetti civilistici della nozione di "paesaggio" elaborata da Alberto Predieri* in Morbidelli and Morisi (eds), *Il "paesaggio" di Alberto Predieri* (Florence, 2019); Nicola Capone, *Diritti, Stato e Territorio tra primo e secondo Novecento. I contributi di Santi Romano e Tomaso Perassi e la svolta costituzionale di Alberto Predieri* in *Pol. dir.*, p. 1 (2021); Giuseppe Morbidelli, *Il contributo fondamentale di Alberto Predieri all'evoluzione e alla decifrazione della nozione giuridica di paesaggio* in Morbidelli and Morisi (eds), *Il 'paesaggio' di Alberto Predieri* (Florence, 2019).

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primarily affected one of the fundamental principles centered on Article 9. Originally, the provision consisted of two paragraphs, and the formula stated:

> «The Republic promotes the development of culture and scientific and technical research.
> It protects the landscape and the historical and artistic heritage of the nation».
> On paragraph 2, the legislator has now added a third paragraph: <It protects the environment, biodiversity and ecosystems, also in the interest of future generations. The law of the state regulates the ways and forms of animal protection>.
> At the same time, on the subject of freedom of private economic initiative, the amendment to Article 41 of the Italian Constitution affects paragraph 2, on limits, by adding the words 'to health and the environment' to the damage to be avoided. The current formula states: <It may not be carried out in conflict with social utility or in such a way as to cause damage to health, the environment, security, freedom, and human dignity>. Finally, Paragraph 3 of the same provision, after establishing that the law determines the programs and controls appropriate so that economic activity, both public and private, may be directed and oriented towards social ends, also adds the adjective 'environmental', and thus, provides that the law may direct and coordinate the exercise of economic activity to the pursuit of environmental ends.
> The result is an overall picture that assumes among the purposes of the Republic, the purpose of environmental protection, where consideration for the interest of future generations as well, accentuates the valuation of the environment as an asset subject to transversal protection and the competence of a plurality of legal disciplines. Finally, the intention to provide for legislative limits to economic initiative that are not in conflict with the Constitutional value of environmental protection, aims to avoid, as has already happened in the past, in the balancing act between conflicting fundamental rights, the prevailing of the interest of economic initiative[3] over the protection of the environment (and health). And the strengthening of environmental protection by the law may also be accentuated by the provision of the third paragraph of Article 41, with the intention of making economic initiative subject to greater and more penetrating controls by the law, in order to direct it and/or coordinate it more effectively to the protection of environmental purposes.

Cerulli Irelli, then, distinguishes the territory, considered as an administrative notion, the landscape, considered as the image of the territory (but Predieri considers it instead as referring to natural and cultural goods, traditions, etc.), the environment understood as *habitat* and then the common goods for collective use. Vincenzo Cerulli Irelli, *Diritto pubblico della "proprietà" dei "beni"* (Turin, 2022); Vincenzo Cerulli Irelli, *Proprietà, beni pubblici, beni comuni* 3 Riv. trim. dir. 639-646 (2022); Guido Alpa, *Proprietà privata, funzione sociale, poteri pubblici di "conformazione"* 3 Riv. trim. dir. pubbl. 599-638 (2022).

[3] Ilva case. See Bin R., *Jurisdiction or Administration, Who Must Prevent Environmental Crimes? Nota alla sentenza "Ilva".* 3 Giurisprudenza costituzionale 1505 (2013); D. Pulitanò, *Una nuova "sentenza ILVA". Continuity or turning point?*. 2 Giurisprudenza costituzionale 604 – 611 (2018).

The protection of the environment is, moreover, already expressly protected, in a comparative perspective, by many European constitutions, either as constitutions more recent than ours originally, such as, for example, the Spanish constitution of 1978,[4] or as the effect of constitutional amendments, earlier in this respect than ours, such as that of the Netherlands in 1983, of Germany in 1994, and subsequently further amended, in terms of animal protection in 2002[5] or of France in 2005.[6] The Environmental Charter, constitutionalised by Constitutional Law of 1 March 2005, no. 2055, in function of a plurality of purposes, in which, among other things, is explicitly mentioned, 'the future and the very existence of humanity, (which) are inseparable from its natural environment', gives rise to the constitutional protection of the environment, through the provision of no less than ten precepts, which include, among other things, both the right of each individual to live in a balanced environment favourable to his or her health and the duty of each person to participate in the protection and improvement of the environment.[7] It should be noted that our Constitution appears to be the most comprehensive in allowing the law to place external limits on economic activity in order to prevent damage to the environment, that is, to coordinate it and or target it for environmental purposes. In other Constitutions, however, it has been preferred to opt for a balancing of other fundamental rights correlated to environmental protection. In this sense, for example, the Slovenian Constitution, which in Article 67, under the heading "property", states "The law establishes the ways of acquiring property, so that its economic, social and ecological function is ensured".

Even at the apex of the sources of European Union law, and at the international level, environmental protection is explicitly mentioned. In the first perspective, the Charter of Fundamental Rights states in Article 37, under the heading 'Protection of the Environment': 'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'. And, similarly,

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[4] Article 45 Spanish Const. states that: "1. *Todos tienen el derecho a disfrutar de un medio ambiente adecuado para el desarrollo de la persona, así como el deber de conservarlo. 2. Los poderes públicos velarán por la utilización racional de todos los recursos naturales, con el fin de proteger y mejorar la calidad de la vida y defender y restaurar el medio ambiente, apoyándose en la indispensable solidaridad colectiva. 3. Para quienes violen lo dispuesto en el apartado anterior, en los términos que la ley fije se establecerán sanciones penales o, en su caso, administrativas, así como la obligación de reparar el daño causado*". See Baini, *La nuova legge spagnola sulla responsabilità ambientale* 3 Resp. civ. e prev 722 (2008).

[5] Article 20 a states: "The State shall also protect in responsibility towards future generations the fundamental natural conditions of life and animals, through the exercise of legislative power, within the framework of the constitutional order, and of executive and judicial powers in accordance with the law and the law". Cf. Sannwald, *Die Reform des Grundgesetzes*, *NJW* 3313 (1994).

[6] See Prieur, *La Charte de l'Environnement et la Constitution Francaise* 35 Environmental Policy and Law 134 (2005); Prieur, *Promesses et réalisations de la Charte de l'Environnement* 43 Les Nouveaux Cahiers du Conseil constitutionnel 18-25 (2014); Chiu & Le Quinio (eds.), *La protection de l'environnement par les juges constitutionnels* (Paris, 2021).

[7] See in this regard, also Alpa (2022), *cit.,* p. 361, where the comparative view is extensive.

the TFEU states in Article 191: '1. Union policy on the environment shall contribute to pursuit of the following objectives:

– preserving, protecting and improving the quality of the environment,
– protecting human health,
– prudent and rational utilisation of natural resources,
– promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

– available scientific and technical data,
– environmental conditions in the various regions of the Union,
– the potential benefits and costs of action or lack of action,
– the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.'.

A high level of environmental protection is established, anchored in a plurality of principles such as, above all, those of precaution, and sustainable development, articulated at the apex of the sources of Union law. A protection, in short, not only aimed at 'preserving'[8] the environment, i.e. preserving and maintaining its qualities, as, for example, explicitly in some European Constitutions, and in particular *in* Article 3 of the Constitution of Croatia, where 'conservation' of nature and the environment is mentioned; likewise, Article 53 of the Constitution of Estonia, which speaks

[8] According to the definition provided by the Treccani Encyclopaedia Dictionary, 'to preserve' means to protect, in the sense of preserving.

of 'preserving the human and natural environment'. Likewise, the Constitution of Greece, which, under Article 24, expresses itself in terms of special preventive or repressive measures for the 'conservation' of the environment. But, rather and instead, a more extensive and wide-ranging protection, aimed at also including the 'improvement' of the quality of the environment (and in accordance with this principle, the reference to the interest of future generations in our current Constitution (as well as in the Constitution of Germany) can contribute significantly here).

It may also be recalled, how the European Union, also with reference to the Paris agreement on climate change, has committed itself to pursuing the Agenda 2030 for Sustainable Development, with its specific numerous Goals for Sustainable Development, adopted in 2015 by the United Nations Assembly. Moreover, the principle of sustainable development is also expressly mentioned, as already mentioned, at the apex of the aforementioned sources of European law, and more specifically in the Charter of Fundamental Rights under Article 37.[9]

In the parliamentary proceedings, with reference to the protection of the environment, after pointing out that the environment is understood in a very broad and "systemic meaning, such as environment, ecosystem and biodiversity", it was pointed out that the protection of ecosystems, recalls the legislative competence of the State under Article 117, paragraph 2, of the Constitution, with attribution in this regard of a necessary minimum protection to the exclusive competence of the State, but with the possibility of a broader and integrative protection of the minimum protection, relative to the valorisation of environmental assets entrusted to the concurrent legislative power of the Regions (operating in this regard a perspective that traces, that of the division of competences, between the European legislative authority and the legislation of the member states, when implementing the directives of minimum harmonisation).

From this perspective, it has been noted that the environment as a constitutionally protected value goes beyond an exclusively 'anthropocentric' perspective because in the formula in Article 117, paragraph 2 of the Constitution, environment and ecosystem are not resolved in an endiad, since, while the first term is intended above all to refer to what concerns the habitat of human beings, the second term is intended more specifically to concern the conservation of nature as a value in itself. And so, as already established also by a decision of the Constitutional Court shortly before the parliamentary work that led to the amendment of the Constitution, in the subject,[10] the

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[9] On the principle of sustainable development Guido Alpa, *Responsabilità degli amministratori di società e principio di «sostenibilità»* 3 Contr. e impr.721 (2021); Guido Alpa, *Il nuovo codice della* corporate governance *delle società quotate* 2 Contr. Impr 567 (2020); Massimo Franzoni, *La responsabilità civile fra sostenibilità e controllo delle attività umane* 1 Danno e resp 5 (2022); Francesco Capriglione, *Corporate Social Responsibility and Sustainable Development*. 1 Riv. Trim. dir. economia 1–25 (2022); Ilaria Speziale, *Il nuovo paradigma dell'impresa sostenibile* 3 Contr. e Impr. 752 (2022).

[10] Corte Cost., Sent., 9 March -10 April 2020 in *Giur. cost.* 770 (2020). On the protection of the environment pursuant to Article 117(2)(s) of the Constitution, more recently, in doctrine, among others, see Michela Michetti, *La tutela dell'ambiente nella giurisprudenza della Corte costituzionale* in *Scritti in onore di Antonio D'Atena* (Milano 2015); G. Vosa, *La tutela dell'ambiente 'bene materiale complesso unitario' fra Stato e autonomie territoriali: appunti per una riflessione* at federalismi.it (2017).

competence of the state legislature, is aimed at establishing, a uniform minimum level of environmental protection, without prejudice to the right of the Regions, to establish levels of protection wider than the minimum prescribed by the State. The Sentence of the Constitutional Court no. 88 also of 2020[11] reiterates the orientation just described, stating that the State has jurisdiction in environmental matters, such as to prescribe a uniform minimum level of protection, while the Regions, have jurisdiction related to the care of interests "functionally connected" with those more properly environmental (reserved to the State), implying in this regard, the faculty of the Regions, to adopt within their own competence, higher standards of protection.

With reference to the protection of animals, the constitutional amendment has a twofold significance: on the one hand, as is clear from the regulatory formula, the inclusion of a principle of protection expressly provides for a reservation of the law governing the forms and methods of the same.[12] On the other hand, as is also clear from the current placement of the rule, right within art. 9, the principle does not only have the meaning of wanting to sanction a specific protection of animals as protection of the ecosystem and biodiversity of species, but aims to express a recognition of the value of animals, correlated to the greater centrality of the multiple protected interests at stake, just as multiple central interests are also recognisable for cultural heritage (and historical heritage, also listed in art. 9 of the Constitution), such as to reflect the need for protection of all these assets that is no longer only related to a substantially proprietary perspective. Still on the subject of animal protection, Article 3 was introduced, which provides for a safeguard clause for the special statute regions and the autonomous provinces of Trento and Bolzano, on the subject of animal protection. This, again, prevents the recognition of animals as new subjects of law alongside human beings, but instead allows them to still be considered 'goods', as are wild animals ('fauna') that are part of the State's non-disposable assets, without the danger of creating fractures in the overall system of the legal system. The fact that the proposal to include the protection of animals as 'sentient beings', according to the formula in Article 13 of the TFEU,[13] was not accepted during the parliamentary debate on animal protection also leads to the same conclusion. At the same time, however, the greater centrality of the interests of animals in the legislature's assessment in connection with the constitutional amendment also leads to the fact that the option, also present during the parliamentary debate, of not including any provision on the protection of animals was not followed, as it was already considered to be fully included in the notion of ecosystem and biodiversity as set out in the amendment.

It now seems appropriate to dwell more specifically, on the provision at the apex of the sources of European law, which expressly refers to the protection of animals,

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[11] Corte Cost., 15 May 2020, No 88, in *Giur. cost.*, 3, 1135 (2020); *Foro it.*, 10, I, 2970 (2020).

[12] At the same time, the original Art. 3 of the Constitutional Amendment Bill was repealed, which stipulated that point *(s) of* Paragraph 2 of the Constitution should be replaced by including the protection of animals among the subjects falling within the exclusive competence of state law, in addition to the environment, the ecosystem and cultural heritage. But see *above* in the text for a more precise illustration on this regard.

[13] On which *infra* in this paragraph.

the aforementioned, Article 13 TFEU. It states in this regard: 'In formulating and implementing the Union's policies on agriculture, fisheries, transport, the internal market, research and technological development, and space, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage'. There appear to be two points to focus on. The first is related to the direct protection of animal welfare, as sentient beings. On the one hand, this emphasises the need for specific protection of the interests of animals not as such, i.e. as part of the animal world, which includes all existing animal species (including all insect species, including mosquitoes). But by limiting legal protection directly related to animal welfare, and thus to the interests underlying such welfare, only to those animals that can be considered 'sentient beings'.

Until recently, precise identification did not pose any particular problems. Both biological and philosophical animal research made a distinction within the animal world between animals, sentient beings and animals without such character. The former were those endowed with a central nervous system, and as such, capable of making them subjects of feelings, capable of experiencing pain, anger, joy, affection, and all the other emotions correlated with the being's 'sensitivity'. In philosophy then, research on animals as sentient beings, had in its most extreme perspective, led to questions on the need to recognize, to animals as sentient beings, a true legal subjectivity, no longer limiting only to humans the capacity to be subjects of law, a center of imputation, of rights (and of duties).[14] The same philosophical approach had then focused attention on the capacity for understanding and knowledge of animals, again as sentient beings, recognizing their possible juridical subjectivity in this aspect as well. It had however been emphasized, that humans have juridical subjectivity as such, and even if they are completely deprived of the capacity to understand, even if they are in a coma. And so this more specific and dangerous drift in the debate was fortunately abandoned.[15]

Theoretically, the question of a real subjectivity recognised to animals makes little sense in the world of law, not least because, in our legal system, personality rights are recognised to any subject of law, not only to natural persons as in other systems, and this in itself would lead one to question the legitimacy of economic initiatives having as their object the breeding of animals (for meat or fur, etc.)[16]. A real question, however, has arisen in this regard when the latest frontiers of biological research have revealed that even certain animals with no central nervous system at all, such as octopuses, are endowed with sentience and can manifest emotions, such as pain, anger,

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[14] See Regan, *Animal Rights* (Milan, 1990); Regan, *Defending Animal Rights* (Urbana – Chicago, 2001).

[15] See on this point the contrast in philosophical reflection between animal protectionism (or welfarism) and abolitionism (on which see Francione-Garner, *The Animal Rights Debate: Abolition or Regulation? (Critical Perspectives on Animals: Theory, Culture, Science, and Law*) (New York, 2010).

[16] In particular, for legal approaches such as Galgano, which considers personality rights, rights found and not created by objective law. Francesco Galgano, *Private Law,* p. 95-96 (Milan, 2023).

pleasure, etc., which, of course, could lead to the recognition of the fact that animals with no central nervous system are not able to express emotions. Which of course, could lead to recognizing a more specific protection related to the interests underlying animal welfare for those without a central nervous system but nonetheless sentient beings (contrary to the current perspective). And yet without being able to identify with certainty the basis of protection, and correlatively, to establish the limits of possible protection.

In reality, it should be considered that the wording of the European provision recognises the importance of the action (including legal action) of the Union and the Member States on the welfare of animals as sentient beings, but this in itself, if it leads to considering the interests of the animals underlying such welfare as relevant, does not in itself lead to transforming these interests into subjective rights of the animals, but rather to taking into account in the legislative protection of animals the multiple interests at stake, which also include the interests of humans converging with those of the animals, that is to say, always aimed at the welfare of animals as sentient beings. In this sense, for example, the perspective related to the protection of animals subjected to experimentation for scientific and didactic purposes as first set out in legislative decree, no. 116 of 1992,[17] later repealed and replaced by legislative decree, no. 26 of 2014, implementing directive 2010/63/EU on the protection of animals used for scientific purposes.

In this regard, *recital* no. 1 of the 2010 directive specifies that the substitution appeared justified by the consideration that the previous directive of minimum harmonization had given rise to implementation disciplines that differed greatly from one another, because while some countries had already pursued a high level of animal welfare protection, others had limited themselves to complying with the minimum requirements of the same directive, thus creating further obstacles to the proper functioning of the corresponding market, i.e. 'the trade in products and substances for the development of which animal experiments had been carried out'. It should be noted, therefore, that the justification of the most recent directive, appears to be functional to the protection of the proper functioning of the market and, therefore, to the underlying human interests even if in close correlation with the animal welfare interests, referred to in *recital* 2, with reference to Article 13 TFEU, already mentioned. More specifically then, in *recital* 6, and thus again in justification of the issuing of the directive itself, it is noted that at the time new scientific knowledge is now "...available with regard to the factors influencing animal welfare, as well as their capacity to experience and express pain, suffering, distress and lasting harm. It is therefore necessary to improve the welfare of animals used in scientific procedures by strengthening the minimum provisions for their protection in line with the latest scientific developments'. The directive is thus articulated in a plurality of profiles, each and every one related to ensuring the greater welfare of animals used for scientific purposes, and aimed, by way of example, at guaranteeing, first and foremost, respect for

[17] Legislative Decree No. 116 of 27 January 1992 implementing Directive 86/609 EEC on the protection of animals used for experimental and other scientific purposes.

the principle of proportionality in the choice of the species of animals used according to what may turn out to be the specific scientific objectives pursued in the procedures (thus avoiding the use of non-human primates unless strictly necessary), in then ensuring a minimum space appropriate to the welfare of the animal, for each specimen of animal under consideration, depending on the species, as also clarified by the relevant annex, (Annex III on, inter alia, housing and care of animals, where minimum measures considered appropriate with respect to each species, for each cage), avoiding the use of inappropriate methods for killing the animal, when necessary, and thus adopting methods that are in any case appropriate with respect to the species, i.e. again inspired by the principle of proportionality, so as to avoid as much as possible, pain and unnecessary suffering for the animals concerned, by the competent personnel.

Ultimately, the protection of the interests of animals as sentient beings is what is already happening in our legal system at present, as can be seen from the regulations implementing the directive mentioned here.

In this respect, it would have made no sense to repeat the formula of the protection of animals as sentient beings in the constitutional amendment. The precept contained in the TFEU, is already part of the sources of law, (in the integrated system of which we are part) and is already binding for all of us.

However, it should be pointed out in this regard that the precept in Art. 13 TFEU does not, however, stop at establishing the need to protect the welfare of animals as sentient beings, but contains an equally important continuation of the provision (which is, however, sometimes overlooked) and which states that the legislative (and administrative) provisions as well as the customs of the Member States must be respected 'at the same time' with regard, in particular, to religious rites, cultural traditions and regional heritage, where it is, moreover, common ground that the interests at stake are the interests of humans alone, even if they are related to animal welfare. And this is a precept just as important as the first in its significant scope, and necessarily closely connected with it, as is evident from the formula that speaks of 'at the same time' to introduce this second and more specific part of the provision. The provision can lead in the interpretative assessment to a balancing in concrete terms, of the interests underlying the protection of animals as sentient beings with these other interests especially in the limiting function of a view focused exclusively on the interests related solely to the welfare of animals as sentient beings. In this sense, by way of example, religious rites that justify, the killing of animals in certain ways on specific occasions, regional cultural traditions, which may allow the eating for humans of the meat of animals such as dogs, normally excluded from the diet for (the rest) of the European Union where the very idea, is considered repugnant, (even if it is normally part of the traditions of Asian peoples, such as the Chinese). This is what happens, because it corresponds to cultural traditions in Greenland.[18] The law in this regard mentions, as we have seen, religious rites, customs and cultural traditions. Religious rites are mainly dependent on the religion(s) of the territory within the

[18] But if we want to consider Europe in a geographical, though not political, sense as a European Union, this is what is still happening in some rural areas of mountain cantons in Switzerland.

countries of the European Union, and remain largely unchanged or change, possibly, very slowly over time, Customs are unwritten law, and they too change very slowly over time (unlike the law as expressed by the legislative authority), making their possible impact on the animal protection assessment in question rather easy for both. The case is different with regard to cultural traditions, also of the region possibly concerned. Cultural traditions, reflecting the people settled in the territory within the countries of the European Union, change more rapidly today and over time, so, for example, with regard to the treatment of animals in our country, in the post-war period and until the 1960s, it was still a cultural tradition in many rural areas, to nail the goose in the late autumn to stuff it to the point of exhaustion and lead it with foie gras to death before Christmas, and at the same time, the use of animals as labour force was carried out at a pace that was tight and unthinkable today (and I still remember the beating of the mule, used because it was cheaper, instead of oxen, in ploughing small mountain plots). It should also be borne in mind that cultural traditions, precisely because they reflect the customs and practices of the people settled in the territory, may be changing rapidly in recent years, even within the European Union, as our societies and the peoples of the Union become increasingly multicultural as a result of immigration from third countries, leading one to question the evolution and changes affecting cultural traditions themselves and the rapid changes they may reflect in the corresponding legal interpretations of animal protection.

It should also be pointed out that the EU's delegated legislation[19] sometimes has a broader perspective on animal protection than a view that animals are only protected as sentient beings. Thus, for example, the regulation permitting the free movement of pet animals as a result of the free movement of EU citizens in the corresponding annex listing pet animals also includes animals that are not sentient beings such as ornamental aquatic animals (fish belonging to the superclass *Agnatha and the* classes *Chondrichthyes* and *Osteichthyes,* or bony fish such as the "famous goldfish") and invertebrates, with some exclusions.[20] These species are excluded because in relation

[19] See Reg. (EC) 1099/2009 of 24 September 2009 on the protection of animals at the time of killing; Dir. 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes; Dir. 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production; Dir. 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens; Reg. (EC) No. 589/2008 of 23 June 2008 laying down detailed rules for implementing Regulation (EC) No. 1234/2007 as regards marketing standards for eggs; Dir. 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves; Dir. 2008/120/ of 18 December 2008 laying down minimum standards for the protection of pigs; Dir. 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos; Directive 2010/63/EU on the protection of animals used for scientific purposes Reg. (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Reg.

[20] In particular, A. I to Reg. (EU) No. 576/2013 of 12 June 2013 on the non-commercial movement of pet animals and repealing Reg. 998/2003/EC includes among the species of pet animals not only dogs (*Canis lupus familiaris*), cats (*Felis silvestris catus*), ferrets (*Mustela putorius furo*), amphibians, reptiles, birds, mammals (rodents and rabbits other than those intended for food production and defined as "lagomorphs") but also ornamental aquatic animals such as fish belonging to the superclass *Agnatha* and the classes *Chondrichthyes* and *Osteichthyes* (or bony fish), as well as invertebrates with some specific exclusions. In fact, Annex I to the regulation, in excluding the latter categories, refers to

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to them the function of protecting the *affectio* that binds man to the animal, which becomes part of his family unit, is excluded.

Ultimately, it is confirmed that the protected interest is that of the EU citizen who circulates freely and who moves to another EU country may take his or her friend and family member with him or her, even if not only a four-legged friend.

another directive in which these species are indicated, instead, for purposes of animal health, prevention and control of infectious diseases in certain particular sectors (such as aquaculture). Thus, among the invertebrates, molluscs belonging to the *phylum Mollusca* and crustaceans belonging to the *subphylum Crustacea are* excluded, referring to Article 3(1)(e)(ii) and (iii) of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals; as well as bees (*Apis melifera*) and bumblebees covered by Article 8 of Directive 92/65/EEC laying down animal health requirements governing trade in and imports of animals, semen, ova and embryos not subject to animal health requirements laid down in more specific legislation (Annex A dir. 90/425/EEC). So what is the common purpose of these exclusions? In fact, on closer inspection, the categories of animals excluded, even though they lack a central nervous system and therefore are not sentient beings, do not only obey the purpose pursued by the specific public health reference directive alone, but are also justified because the types of animals excluded (mussels and molluscs again) do not give rise to that *affectio that* binds human beings to animals, such as to make them worthy of being part of the human family nucleus.