

## *Law and Environment*

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Whatever legal consideration on environment can be made, the consciousness of the importance of this good has to be recognised as a priority. Without any authentic understanding of the role and the substantial benefit that this factor has for the whole community it is not possible to feel the need to give any general environmental protection and consequently a legal one. The idea of community is not only based on a legal order but it is also intended as a group of persons living and interacting with the surrounding *habitat*. But the preservation of the environment makes sense if the importance and the value of the protected good has been understood. This happens for all the values protected by our legal order and therefore for all the environmental issues too. The subject shows immediately its complexity because of its always developing aspects which require a constant attention and an effective ability of action. On the 12<sup>th</sup> May 2009 a study seminar has been held in Rimini, in the Faculty of the University of Bologna with the title "Legal environmental conservation".

In particular, the papers dealt with the importance of a normative action in the matter, pointing out the necessity of legal rules even if it is not possible to code the environment completely. The economic science asserts that the environment must be ordered. The legal instruments can be inadequate, but they become necessary to offer an effective protection.

Under the legislative point of view, the environment was born recently. In 1986 a ministry of the same name was found and the environment become a public interest and so its protections must be pondered with other considerable interests of our order.

The environmental subject has an international origin and the Italian legislator took part more times in the evolution legal process, as acknowledging common rules as suiting many rules made in the matter.

The last stage of this process was the decree requiring the approval of Parliament n. 152 of 2006. The reason of this normative *corpus* was the necessity to acknowledge, even if six months later, the guidelines of UE in the matter of VIA and VAS. This action served the purpose to organize environment law and so environment code issued. In fact it is a simply restyling of consolidated rules with some small change to organize the matter.

The papers pointed out lights and shades of environment code in order at its extent and its incompleteness.

Nevertheless, this aspect can be as normal if we think about the particular moment we are living in, full of changes and with much sudden modifications, but the worry is that some aspects of law certainty have been lowered.

The code might be the solution of many problems, the arrival definition of unsettled questions. The old codes, as Giustiniano's code and Napoleone's code

were defined “cathedrals of laws”, while this code has a totally different setting, because it doesn’t house a full regulation of the subject.

It’s difficult to give a judicial notion at the environment, because the normative production is very abundant and made in a few years and so it often changes and it is tangled to distinguish every its part, disciplined in special laws, from the regulation of environment, considered in all.

The speakers remarked how it can’t be thought only self by self, but it must be account as a cross matter that touches aspects necessary intersect the organization of public administration or particular characteristics of other subjects.

Besides, the environment for its ontological sides and for its character has inevitable connections with, for example, the urban planning, the landscape, the health, and with the tourism and so these contact points and the plot of this elements must be a specific and correct discipline.

In case, the problem is how interpret this regulation *id est* how make that trade off among the different interests that it is often the objective of the evaluation and decision of the public administration or of the judges.

However, the speakers said when the judge takes part to defend the environment, the damn is already made and the legislator missed the mark; the preservation and the prevention must be made in the other offices.

But there is more. The consideration of environment value has all along an important role. Indeed principles and instruments were born specifically for environment, then have been extended and enforced in the other sectors too.

So, the reasons for progress, those for the market and for the tourism should be evaluated and weighted including in relation to the environmental value and the interpreter in each case must decide what protection should be prepared and what the value or the field will suffer limitations.

The culture of protecting the environment today is rooted, and this fact has also affected the economy and sustainable development. The environment is by law to bring a new methodology, as can be seen also as a new way of reading things like the tool of the class action at issue in the application area.

Finally, were also treated some aspects of administrative simplification in the environmental field and profiles of the general theory of matter. This, since it is an interest-cutting, which occurs both in the proceedings from their protection and prosecution-oriented simplification. This need is increasingly felt, both in general and in special sectors, particularly with reference to conference services, a tool to facilitate the composition of the various interests at stake.

In conclusion, it was noted that following the reform of Title V of the Constitution the environment has become a matter of exclusive state. However, this did not limit the production of regional laws on the cross of matter.

Therefore, the relationship with future generations, the issue of affordable conceived in terms of prudence, the common use of the environment, as a public good or the education in the protection and respect of the same will be played in taking proper care and consideration of everyone involved, even at different institutional levels.