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Agriculture between constitutional dimension and *One Hearth-One Health approach*

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Abstract

This paper focuses on the effects that the new emerging vision of the man-nature relationship - from the recent review of the articles 9 and 41 of the Italian Constitution - has generated on the agricultural sector. Within this new perspective, the "rational exploitation of the soil" and the "fair social relations" (ex-art. 44 It. Cost.) become the object of an evolutionary reading prompted by the unavoidable needs of the ecological transition, highlighted by the One Earth-One Health perspective, where the integrated and unifying approach to health safeguard goes along with the importance of an adequate protection of air, water, soil, climate, food and clean energy production. Moreover, some serious criticisms of this irenic framework are not to be underestimated: one above all is the juridical conversion of the One Hearth-One Health approach, because it does not correspond to a One Law. Due to the ever-deepening relationship between natural and human sciences, constitutional law appears to be best suited to overcome the antagonism between environmental requirements and development models in an integrated and "proportionate" perspective.

Keywords*: One Hearth-One Health, Constitutional dimension of agriculture, Olive oil production chain, Conflict agriculture-renewable energy plants, Balancing and proportionality principle.*

1. Constitutionalism and environmental awareness

The recent revision of the Articles 9 and 41 of the Italian Constitution (*ex multis:* Nicotra, 2021; Cecchetti, 2021; Bifulco, 2022) has introduced three innovative constitutional guarantee profiles into the legal system: 1) the inclusion of the environment protection, biodiversity and ecosystems among fundamental principles, with specific reference to the interests of future generations; 2) the expressed provision for the animals protection as an element of autonomous importance in the context of environmental systems; 3) the legislative orientation of the public and private economic initiative for environmental (as well as social) purposes which, from now on, cannot be carried out in a way that harms health and the environment.

The question is whether constitutional reform represents a paradigm shift (Amirante, 2022). There has been talk about a renewal of the social contract (Camerlengo, 2020; Ost, 2021; Morrone, 2022), no longer focused just on the relationship between citizens and public authorities, but also on the affirmation of the principles of interdependence between the individual, society and nature.

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Human health depends on the health of the Planet. Earth's natural systems (air, water, land, biodiversity, climate) are our life support systems.

Yet climate change, biodiversity loss, scarcity of land and freshwater, pollution and other threats are degrading these systems. The emerging field of Planetary health aims to understand how these changes threaten our health and how to protect ourselves and the rest of the biosphere. Think of the need for proper water policies that would require investment in next-generation machinery, sustainable infrastructures and precision irrigation. Human, animal and Planet health are, as never before, interdependent and their guarantee is implemented through an integrated, unifying approach, a *One Earth-One Health* perspective recently addressed by the "One Health Joint Plan of Action-2022-2026" in which, alongside the integrated and unifying approach to health safety, the importance of adequate protection of air, water, soil, climate and a sustainable food (Canfora I., 2023) and energy system shall be taken into account.

Therefore, the constitutional revision suggests - consistently with the widespread emergence (in almost all the existing Constitutions) of the constitutional norms on the protection of the environment (Cuocolo, 2022), and with the latest European Union Programs in this area (*European Green Deal, One Hearth-One Health, EU's Biodiversity Strategy for 2030, Farm to Fork*) – a new connection between man and nature, promoting strategies to implement a holistic approach to the protection of the Planet (Myers and Frumkin, 2022). The latter becomes one of the protagonists of constitutionalism which, for the first time, guarantees the fulfillment of environmental demands as an ordering criterion both of action of public authorities, and of individual and collective behavior (Amirante and Bagni, 2022).

Until recently, as outlined in an authoritative and agreeable way, "the sectoral and parcelled approach to the study of environmental issues has led environmental law to develop on two parallel tracks: that of international law and that of administrative law, which are rarely in touch with each other. However, the emergence of the environmental crisis requires a holistic and interdisciplinary approach to the issue. In fact, the environmental law norms result from the convergence of technical-scientific knowledge and political-social choices. The constitutional dimension represents the only level capable of making the principles of international law concerning environmental matters more consistent" (Amirante, 2023). The constitutional provisions, open to the international dimension and binding for all domestic sources of law at the same time, represent the only source capable of imposing on national collectivities in an adequate and proportionate way. Indeed, the constitutional dimension - in a more appropriate and "consolidated" way (Cecchetti, 2021) than the international and eurounion one, but also less fragmented and sectoral than the administrative or jurisprudential level (Cecchetti, 2022) - is the most suitable to "relocate" the political sphere "inside" nature and to promote a different type of socio-economic development, no longer focused on the indiscriminate consumption and exploitation of soil and resources, but based on the integrated centrality of man "into" nature, in synergy with the environment. The constitutional positivization of the environmental awareness acquired by society and through pronouncements of different levels of jurisdiction, provides certain references to citizens and interpreters, reducing possible retreats or excessive discretionary power and marking the transition from antagonism to integration between environmental requirements and development models (Monteduro, 2020).

2. Legalization of the *One Hearth-One Health approach*: critical issues

The incorporation of the principles that aim to guarantee "a single healthy life system" (Carducci, 2020) into the Constitution has positivized "the interrelation between man and the living systems of which he is part" (Monteduro, 2019), by setting in a unique and strengthened way the awareness and values now rooted in the community and national jurisprudence. However, a higher and problematic degree of flexibility has been implicitly introduced into the regulatory system (Grassi, 2023). In fact, the extreme heterogeneity and interdisciplinarity of the sources

of environmental law (or, perhaps, *rectius*, "of environments"), poses as fundamental issue the balance between opposing values and interests (for example, the continuous tensions between environmental protection and property rights) or potentially antagonistic though being part of a homogeneous, albeit abstract, perspective of protection: consider the very current conflict between land use for renewable energy production and the installations impact on landscape, agriculture and biodiversity. If the *One Hearth-One Health approach* clearly recalls an ecological balance between the environment, human collectivity and the remaining animal kingdom, it becomes both necessary and particularly complex to change this holistic vision at the level of the legal system, because of the difficulty in coordinating the various levels of government competent to implement it, and because of the lack of interdisciplinary organization that requires such an approach on the institutional level. It is also considered that, even if the environmental phenomena have no boundaries, the *habitat* in which they manifest is territorially defined and variously characterized at the same time, making clear the need for interventions that - according to the mobile criteria defined by the principle of subsidiarity - give priority to state and regional regulation.

We can consider several consequences from the above said: 1) constitutional law, also in its comparative aspects, has a central role of the regulation of the relations between man and nature; 2) the legal order no longer regulates the plurality of environments as "separate units" but as interconnected and interdependent dimensions; 3) the absence of a precise distribution of functions and constitutionally provided coordination mechanisms brings up the issue of a high conflict between State and Regions; 4) the territory, understood both as soil and a space including air, water and subsoil, becomes a structural element of environmental protection: in fact, this is the place where conflicts between the interests concerning the various fields and different timings of its development, are created and have to be resolved; 5) the resolution of the conflict between environmental and economic interests also depends on scientific knowledge and technical solutions.

Therefore, the problem of regulating the way in which science is allowed to give its indications exists. Science is uncertain, so the regulation of how we arrive at this kind of results becomes fundamental. In this regard, a problem arises: within what limits the choices of the legislator may be called into question, and to what extent the constitutional courts and other jurisdictions may interpret the constitutional rules in environmental matters, given the concrete possibility to exercise themselves part of the political discretion needs to be assessed. At State level, as in the case of India, the emphasis should probably be on the role of specialized environmental jurisdictions (often referred to as "green jurisdictions") as "drivers" stimulating regulatory and constitutional innovation within environmental law. In any case, a change of perspective which leads to the idea of overcoming the traditional logic of balancing opposing interests needs to give birth to new logics of "integrated" protection. An increasing number of rights depends, more and more, on the maintenance of certain environmental conditions; thus, their guarantee has to be carried out through the protection of the respective instances, which need to be protected, not "despite" the presence of other interests, but just "in function" of such interests and rights which presuppose specific environmental conditions. However, as we will see later, here is the question whether, on a legal-constitutional level, the logic of "balancing" should be changed in favor of the "prevalence" of environmental interest above any other.

3. The constitutional dimension of agriculture in the *One Hearth-One Health* perspective

It seems obvious, starting from these premises, that the environmental constitutionalism and specifically the Italian constitutional revision are intended to reverberate their effects on the agriculture sector too, towards which the Italian Constitution devotes an entire article, the 44th (vv. aa., 2019). Hence, in the light of the new ecological perspective introduced by the reform, we can make an evolutionary reading of it. I refer to the two purposes to which the agricul-

tural activity and property must be inspired ex article 44: the achieving of "rational exploitation of the soil" and the "establishment of fair social relations". So, the *One Hearth-One Health* perspective gives the adjective "rational" a strong profile of flexibility (D'Addezio, 2019). This allows us to look at agricultural production, not only in economic and quantitative terms, but also qualitative. For this reason, it seems to be required the adoption of legislative measures aimed at the preservation of natural resources (D'Addezio, 2022; Simoncini, 2012). On this premises, it follows that the rational exploitation of the soil, while maintaining an important rooting in agriculture, also has close ties with other constitutionally relevant areas such as soil protection, land government, the regulation and use of water resources and the protection of the environment and the landscape with a view to sustainability. Under this perspective, the unity of the public interests that invest the soil involves a constitutionally oriented government. It is an ecological transition which, although focused on the "agrarian question" at the time of the drafting of the art. 44 Cost., is projected in a current issue where the reasons of food and water management are competing with those of energy security and freedom of enterprise; but it's also a vision that acknowledges the multifunctional nature of agriculture - just think of olive growing as an example – which constitutes a whole social, cultural, food and tourist heritage of great value.

Turning now to the definition of "fair social relations", it allows agriculture to be placed in a solidaristic framework that values the intangible elements that have characterized it in its evolutionary path, such as, for example, the spread of networks of reciprocity and mutual support. The farmer, therefore, abandons the role of mere producer of food and agricultural products and becomes, in addition, a provider of services in favor of the community in many ways: protecting the environment, preserving biodiversity and natural resources, designing the landscape, contributing to the socio-economic survival of rural areas and so on. These goods, in fact, must also be protected for the benefit of future generations, precisely because they are linked to the realization of the interests of all citizens: think of those experiences of agriculture that protect the land, as well as those that preserve native plant and animal varieties. The subjects carrying out these activities are not always the same: citizens, in the case of urban gardens; community cooperatives or other Third sector entities; protagonists of different experiences of collective management of the land, as well as agricultural enterprises when they engage in social or educational agriculture; G.A.L. (Local Action Groups) promoting "inner areas" (Pannacciulli, 2023) according to the *placed-based* approach. The considerations regarding the changing pattern of consumption and development are also certainly applicable to agricultural activities. The new constitutional paradigm cannot, then, disregard the principle of sustainability (environmental, social and economic), which implies an agriculture respectful of ecological balance and a development system aimed at a greater social equity in access to natural resources. This paradigm also requires a new model of production and consumption by reducing waste, increasing recycling and extending the life cycle of products, the so-called circular economy, with a view on real ecological regeneration. One of the most important challenges that our society needs to face is to make possible the coexistence between ecological and economic systems. An example, among many, is the olive oil industry. The olive tree is suitable for several ecosystems which are very different from each other. Olive oil is a product that can be intrinsically called "sustainable", because, tracing the stages of its production, starting from the origin, turns out that the olive tree has a much lower water requirement than other crops, a high efficiency in water use and an incredible capacity of CO_2 absorption and storage, proving to be a solid ally against climate change. From another point of view, this sector is particularly suitable for the implementation of circular economy projects in industrial processes, such as the use of pruning residues to produce thermal energy, the oil waste for energy production in biogas plants, virgin pomace for the extraction of compounds for cosmetic and pharmaceutical uses, detergents, paints and bioplastics. The by-products of the olive-oil chain can bring several benefits to

the bovine and ovine livestock chains, ranging from the production of quality feed for animal welfare to the functional quality of milk and cheese, with beneficial implications for human health, to the production of sustainable food packaging as biodegradable and bioactive.

4. Conclusions (Agriculture *versus* energy transition?)

Lastly, a final thought on the conflict between the multiple agriculture related interests and the urgency of the energy transition is needed. Under the pressure of international and supranational obligations, the implementation of decarbonization policies for climate mitigation, given their strategic importance for the essential ecological transition, is now to be considered a "priority" internally to each country (Bruti Liberati, 2021; Piperata, 2023): this implies that the suitability of a territory for the location of green energy production plants takes primacy above all the various interests which need to be balanced. On the one hand, this priority amplifies the conflict with other constitutionally protected values and assets (Carpentieri, 2021; Celati, 2023; Spuntarelli, 2023; Tonoletti, 2021), such as landscape, agriculture, biodiversity and even the quality of life, which become mostly recessive in relation to the goal of the widest diffusion of the energy-producing installations which use renewable sources; on the other hand, it reduces the application spaces for the vertical subsidiarity principle (with particular mortification of the local administrations), centralizing the allocation and balancing choices at an exclusive state competence level. Now the conflict is not only potential, but concretely fueled by legislative interventions that, in the wake-up call of climate emergency (Carducci, 2022), have accelerated and simplified the procedures for permitting plants, scheduling their planning, building and operativity consistently with the *overriding public interest*.

It also needs to be considered the existence of a consolidated jurisprudential orientation (constitutional and administrative) which is increasingly prone to ensure the principle of «maximum spread of installations from renewable energy sources» (Corte cost. It., sentt. nn. 27/2023; 121 and 216/2022; 267/2016; Cons. Stato, Sez. IV, 08.09.2023, n. 8235) without, however, "resolving the contradictions [...] that accompany the energy transition processes represented by the Green Deal, nor does it offer any general criteria to be used to reconcile conflicting interests" (Piperata, 2023). Therefore, given the intimate link between the free private economic initiative in the field of renewable energies and the environmental protection requirements, the first ends up being accorded a *favor* because it makes possible the accomplishment of a strategic interest: moreover, for the same reason, the *favor* provides a rationale for the containment of administrative burdens and the simplification of the transformation processes in the territory.

Such arguments risk to stiffen the protection of the environment – promoted by art. 9 and 41 Cost. – on industrial environmentalism positions (Carpentieri, 2021; Pignatelli, 2023) with little regard for the balance between conflicting interests, as the latter is mainly oriented by the prevailing interest in decarbonization compared to other public antagonistic interests and rights. In fact, the problem of proper balance cannot be solved by merely recognizing what is the priority among opposing interests, but more significantly by assessing the suitability of the medium for the purpose and the way in which recessive interest is sacrificed. Furthermore, once a strategic priority is assigned to a specific interest, and the latter is institutionally encouraged through the acceleration of authorization procedures, it becomes almost impossible to "balance" it with any other. It is often the refusal or inability to balance interests and values that hinders or delays transition processes.

Then, if environment protection affects "a complex and unitary property, considered by constitutional jurisprudence a primary and absolute value" (Corte Cost. It., sent. n. 367/2007), the ambiguity of coexistence, in the same spectrum of protection, of both the conservative vocation (landscapes, activities, ecosystems and traditional cultures) and the transformative one (building industrial plants capable of reducing climate-related emissions), can only be overcome in terms of "integration" (Corte Cost. It.,

sent. n. 85/2013), certainly not through hierarchy or exclusion. This also applies to the empowerment of regional legislators and the participation of local communities in ecological transition processes. The Regions should, in fact, "play a delicate role of intermediary between the general directions of development of renewables and the needs diffused in the territory, that is between competing general interests" (Celati, 2023).

Currently, the aprioristic definition of *primacy*, directly affecting the balancing criteria, and the lack of adaptation of regional planning tools, reduce, on the one hand, the other public interests of constitutional status; on the other hand, the value of the vertical subsidiarity principle is diminished, consequently mortifying local administrations. Thus, the multiple projects authorized for the construction and management of renewable energy plants, shielding themselves behind the character of «public utility», often take place in territories which are rich in biodiversity or threaten damages to agricultural enterprises that adopt an ecological approach, even leading to the expropriation of productive soils.

This perspective should be avoided, not only at local level, but geopolitically too: greenwashing, water grabbing, land grabbing and cat bonds remind us that sometimes environmentalism works as an excuse for business to replicate the same old dynamics of colonial power through the practices of manipulating the bond market and the public debt of poorer countries, though very rich in natural resources. It is necessary to be always vigilant.

References

Amirante D., 2022. *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*. Bologna: Il Mulino.

Amirante D., 2023. Metodo comparativo, ambiente e dinamiche costituzionali. *DPCE online*, 2/2023: 19 ss.

Amirante D., Bagni S. (eds), 2022. *Environmental Constitutionalism in the Anthropocene. Values, Principles and Actions*. London: Routledge.

Bifulco R., 2022. *Primissime riflessioni intorno alla L. cost. 1/2022 in materia di tutela dell'ambiente*. Retrieved November 2022, from http://www.federalismi.it.

Bruti Liberati E., 2021. Politiche di decarbonizzazione, costituzione economica europea e assetti di governance. *Diritto pubblico*, 2021: 432 ss.

Camerlengo Q., 2020. *Natura e potere. Una rilettura dei processi di legittimazione politica*. Milano-Udine: Mimesis.

Canfora I., 2023. La giusta transizione ecologica nel settore agroalimentare europeo: politica agricola comune, sviluppo sostenibile e strategie occupazionali. *Giornale di Diritto del Lavoro e di Relazioni industriali*, 3/2023: 563 ss.

Carducci M., 2020. Diritti della Natura e "forme di governo". In: Cuturi F.G. (ed.), *La Natura come soggetto di diritti. Prospettive antropologiche e giuridiche a confronto*. Firenze: Editpress.

Carducci M., 2022. Ordinamenti giuridici e sistema climatico di fronte all'autoconservazione. *Ars interpretandi*, 2022: 25.

Carpentieri P., 2021. Paesaggio, ambiente e transizione ecologica. Retrieved 4 May 2021, from http://www.giustiziainsieme.it.

Cecchetti M., 2020. *La Corte costituzionale davanti alle "questioni tecniche" in materia di tutela dell'ambiente*. Retrieved from http://www.federalismi.it (accessed: 2020): 46 ss.

Cecchetti M., 2021. *La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell'ambiente: tra rischi scongiurati, qualche virtuosità (anche) innovativa e molte lacune*. Retrieved from http://www.forumcostituzionale.it (accessed: 3/2021): 285 ss.

Cecchetti M., 2022. Virtù e limiti della modifica degli articoli 9 e 41 della Costituzione. Retrieved from http://www.cortisupremeesalute.it (accessed: 1/2022): 127 ss.

Celati B., 2023. La localizzazione degli impianti energetici da fonti rinnovabili nel difficile bilanciamento tra interessi locali e finalità di tipo sistemico. *Le Regioni*, 5/2023: 1025-1049.

Cristiani E., Di Lauro A. (eds), 2019. *Agricoltura e Costituzione. Una Costituzione per l'Agricoltura (In onore di Marco Goldoni)*. Pisa: Pisa University Press.

Cuocolo L., 2022. Dallo Stato liberale allo "Stato ambientale". La protezione dell'ambiente nel diritto costituzionale comparato. *DPCE online*, 2/2022: 1071 ss.

D'Addezio M., 2019. Mobilità, flessibilità, lettura sistemica dei principi rilevanti: il file rouge per riflettere intorno ai rapporti tra agricoltura e costituzione. In: Cristiani E., Di Lauro A. (eds), *Agricoltura e Costituzione. Una Costituzione per l'Agricoltura (In onore di Marco Goldoni)*, pp. 58-62. Pisa: Pisa University Press.

D'Addezio M., 2022. *L'art. 44 Cost*. Retrieved 23 February 2022, from http://www.lamagistratura.it (Commentario).

Grassi S., 2023. La tutela dell'ambiente nelle fonti internazionali, europee ed interne. Retrieved from http://www.federalismi.it (accessed: 2023): 3-5.

Monteduro M., 2019. Ius et rus: la rilevanza dell'agroecologia per il diritto. *Rivista Quadrimestrale di Diritto dell'Ambiente*, 2/2019: 4 ss., in part. pp. 22 ss.

Monteduro M., 2020. Funzioni e organizzazioni amministrative: dall'antagonismo all'integrazione tra ambiente e sviluppo. In: Rossi G., Monteduro M. (a cura di), *L'ambiente per lo sviluppo. Profili giuridici ed economici*. Torino: Giappichelli.

Morrone A., 2022. L'«ambiente» nella Costituzione. Premesse di un nuovo «contratto sociale». In: AA.VV., *La riforma costituzionale in materia di tutela dell'ambiente. Atti del Convegno AID Ambiente, Roma, 28.01.2022*. Napoli: Editoriale Scientifica.

Myers M., Frumkin H., 2020. *Planetary Health: Protecting Nature to Protect Ourselves*. Washington D.C.: Island Press.

Nicotra I.A., 2021. L'ingresso dell'ambiente in Costituzione, un segnale importante dopo il Covid. Retrieved from http://www.federalismi.it (accessed: 2021): 2 ss.

Ost F., 2021. Le droit constitutionnel de l'environnement: un changement de paradigme? In: Cohendet M.A. (dir.), *Droit constitutionnel de l'environnement*. Paris: Editions Mare et Martin, pp. 405 ss.

Pannacciulli C., 2023. L'esperienza delle Aree Interne pugliesi nella prospettiva dell'uguaglianza sostanziale. *Le Regioni*, 2-3: 445 ss.

Pannacciulli C., Giandolfi M., 2024. La strategia di sviluppo energetico dei Monti Dauni tra multilevel governance e le sfide della transizione ecologica. *Le Regioni*, 3-4: 575 ss.

Passaglia P., 2019. L'importanza della materia "agricoltura" nel tessuto costituzionale: una "retrospettiva prospettica". In: Cristiani E., Di Lauro A. (eds), *Agricoltura e Costituzione. Una Costituzione per l'Agricoltura (In onore di Marco Goldoni)*, pp. 58-62. Pisa: Pisa University Press.

Pignatelli N., 2023. *La dimensione ambientale nel più recente contenzioso costituzionale Stato-Regioni: profili processuali e sostanziali*. Retrieved from http://www.federalismi.it (accessed: 2023): 243 ss.

Piperata G., 2023. Territori da tutelare e transizioni ecologiche da promuovere: armonizzazione degli interessi e ruolo dei poteri regionali e locali. *Le Regioni*, 5: 914-921.

Simoncini A., 2012. Il terreno agricolo: profili costituzionali. In: *La terra coltivata: strumento di produzione per le imprese agricole*, I Georgofili: Quaderni, IV, p. 93. Firenze: Polistampa.

Spuntarelli S., 2023. Le rinnovabili per la transizione energetica: discrezionalità e gerarchia degli interessi a fronte della semplificazione dei procedimenti autorizzatori nel PNRR. *Diritto amministrativo*, 2023: 59 ss.

Tonoletti B., 2022. Le procedure autorizzative per le fonti rinnovabili di energia e il rapporto tra obiettivi di decarbonizzazione e la tutela di altri interessi pubblici. In: Bruti Liberati E., De Focatiis M., Travi A. (eds), *L'attuazione dell'European Green Deal*. Milano: Wolters Kluwer, pp. 89 ss.