

Module Jean Monnet PROHTECT Promoting operationalisation of One Health Through EU Juridical Tool

17 Aprile

One Health Policy Legal Clinic: Protecting Health Beyond
National and Disciplinary Boundaries



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Promoting operationalisation of One Health Through EU juridical Tool

1. The Three Pillars of One Health

– Human health

– Environmental
safety

– Animal welfare



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Promoting cooperation of One Health Through EU pre-KM4T Trail

2. One Health and the Specific Features of Italian Constitutional Law

- A pervasive legal system
- A legally “poor” system
- A rigid legal framework
- A slow-moving legal order

3. Obstacles Posed by Italian Constitutional Law to One Health

- Anthropocentric vs. holistic perspectives
- The notion of subjective rights
- Scarcity of explicit constitutional provisions



4. The Constitutional Law Scholars' Approach to One Health



COMPARATIVE ANALYSIS
WITH “VIRTUOUS” FOREIGN
SYSTEMS



EXPLORING THE POTENTIAL
OF EVOLUTIONARY
INTERPRETATION



CASE-LAW ANALYSIS



5. Before 2021...



ENVIRONMENTAL
PROTECTION IN
CONSTITUTIONAL CASE LAW



ANIMAL PROTECTION IN
CONSTITUTIONAL CASE LAW



HEALTH PROTECTION IN
CONSTITUTIONAL CASE LAW



6. Environment (1) / The Turning Point: 1986 and 1987

1986

Establishment of the
Ministry of the
Environment

1986

Judgment no.
151/1986

1987

Judgments nos.
192/1987, 210/1987,
641/1987



7. Article 117 – Original Wording

«The Regions shall enact legislative provisions in the following fields within the limits of the fundamental principles laid down by State laws, provided that such provisions do not conflict with the national interest or the interest of other Regions: [...] healthcare and hospital assistance; [...] museums and libraries managed by local authorities; urban planning; tourism and the hotel industry; regional tramways and bus lines; road systems, aqueducts and public works of regional interest; lake navigation and ports; mineral and thermal waters; quarries and peat bogs; hunting; inland fisheries; agriculture and forestry [...]».

8. Judgment No. 210/1987

«Recognition must be given to the ongoing effort to provide specific legal acknowledgment to the safeguarding of the environment as a fundamental right of the individual and a fundamental interest of the community, and to create legal institutions for its protection.

In other words, a unitary conception of the environmental good is being pursued, one that encompasses all natural and cultural resources.

It includes the conservation, rational management, and improvement of natural conditions (air, water, soil, and the territory in all its components); the existence and preservation of terrestrial and marine genetic heritage; of all animal and plant species living in the wild; and ultimately, the human being in all its expressions.

From this arises the repression of environmental harm, i.e., damage caused—intentionally or negligently—to persons, animals, plants, and natural resources (water, air, soil, sea), which constitutes an offense against a right held by every citizen, both individually and collectively.

These are values that, in essence, the Constitution foresees and guarantees (Articles 9 and 32), and in light of which the relevant legal provisions require an increasingly modern interpretation.

Furthermore, the European directive significantly commits the State to a coordinated approach to environmental protection, to the timely and proper implementation of the obligations undertaken, and to the adoption of appropriate, necessary, and indispensable measures».

9. Articles 9 and 32 of the Constitution

Art. 9 – «The Republic promotes the development of culture and scientific and technical research.

It safeguards the landscape and the historical and artistic heritage of the Nation».

Art. 32 – «The Republic protects health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent».

10. Judgments Nos. 641/1987, 356/1994 and 67/1992

641/1987 – Environmental protection as a primary and absolute constitutional value.

356/1994 – Environmental protection is autonomous and not absorbed by sectoral competences.

67/1992 – Environment as a unitary good to be safeguarded in its entirety.



11. After 2001...

Art. 117(2)(s) – «The State shall have exclusive legislative powers in the following fields: [...] s) protection of the environment, the ecosystem and cultural heritage.

Concurrent legislative authority shall apply to the following fields: [...] scientific and technological research and support to innovation in productive sectors; health protection; nutrition; sports; disaster relief; land-use planning; civil ports and airports; large transport and navigation networks; [...] national production, transport and distribution of energy; [...] enhancement of cultural and environmental assets, including the promotion and organisation of cultural activities [...]».

12. First Post-2001 Ruling: Judgment No. 407/2002 (1)

«It must be clarified that not all the subject areas listed in the second paragraph of Article 117 can, as such, be regarded as 'matters' in the strict sense, since, in some cases, they more precisely correspond to powers of the national legislature capable of encompassing a plurality of matters [...]. In this sense, legislative developments and constitutional case law lead to the conclusion that a technically defined 'matter' labelled as 'environmental protection' cannot be identified, since it does not appear to constitute a strictly circumscribed and delimited sphere of state competence. On the contrary, it overlaps and is inextricably intertwined with other interests and competences. In particular, the case law of the Court prior to the new formulation of Title V of the Constitution allows for an understanding of the environment as a constitutionally protected 'value' which, as such, gives rise to a sort of 'cross-cutting' matter. In relation to this, various competences may come into play — including regional ones — while the State retains the authority to adopt measures that respond to needs warranting uniform regulation throughout the national territory».

13. First Post-2001 Ruling: Judgment No. 407/2002 (2)

«The preparatory works relating to letter (s) of the new Article 117 of the Constitution, on the other hand, suggest that the legislature's intention was to reserve to the State the power to establish uniform standards of protection across the entire national territory, without however excluding, in this field, the competence of the Regions to pursue interests functionally connected to those strictly concerning the environment. Ultimately, it can therefore be inferred that, with regard to environmental protection, the aim was not to eliminate the pre-existing plurality of legal bases legitimising regional interventions that, within the scope of their competences, seek to meet additional needs beyond those of a unitary nature defined by the State».

14. Principle of Favor Naturae and the Balance Point (407 & 536/2002, 307/2003)

- Judgment 246/2006 – «The fact that a given regulatory provision falls within the scope of 'environmental protection' as referred to in Article 117, second paragraph, letter (s), of the Constitution certainly implies that the State has the power to establish uniform protection standards applicable throughout the national territory, which the Regions may not derogate from in a less protective sense. However, this does not preclude regional laws adopted in the exercise of the concurrent legislative power under Article 117, third paragraph, or the 'residual' power under Article 117, fourth paragraph, from also pursuing environmental protection objectives among their aims».
- Judgment 307/2003 – «The exposure limits in the field of electromagnetic pollution, as set by the State, must be considered binding on the Regions, even in the sense of precluding more stringent limits, insofar as they (assuming, as in this case, that their adequacy to protect health is not contested) represent the point of balance between the need to protect health and the environment, on the one hand, and the need to allow the installation of facilities of national interest, on the other».

15. The Ecosystem Enters the Picture (and the Stockholm Declaration): Judgment No. 378/2007 (1)

«When considering the environment as a 'matter' for the division of legislative competences between the State and the Regions, it is necessary to bear in mind that it is a material and complex good of life, whose regulation also entails the protection and safeguarding of the quality and balance of its individual components [...].

The object of protection — as also emerges from the 1972 Stockholm Declaration — is the biosphere, which is taken into account not only in terms of its various components, but also with regard to the interactions among them, their balances, their quality, the circulation of their elements, and so on. In other words, the environment must be viewed as a 'system', that is, in its dynamic dimension, which reflects its true nature, and not merely from a static and abstract perspective».

16. The Ecosystem Enters the Picture (and the Stockholm Declaration): Judgment No. 378/2007 (1)

«The power to regulate the environment in its entirety has been entrusted exclusively to the State, within the framework of the division of competences between the State and the Regions, by Article 117, second paragraph, letter (s), of the Constitution, which, as is well known, refers to the 'environment' in broad and comprehensive terms. It is also significant that the constitutional provision places the term 'ecosystem' alongside that of 'environment'.

It follows that it is for the State to regulate the environment as an organic whole — that is, to enact protective norms that address both the environment in its entirety and its individual components, understood as parts of that whole».

17. Judgment No. 85/2013: The ILVA Case and the Right to a Healthy Environment

«The rationale underlying the challenged provision lies in the pursuit of a reasonable balance between fundamental rights protected by the Constitution — in particular, the right to health (Article 32 of the Constitution), from which the right to a healthy environment derives, and the right to work (Article 4 of the Constitution), from which stems the constitutionally relevant interest in maintaining employment levels and the duty of public institutions to make every effort in that regard».

18. Diversification of Competences in Environmental Matters

- – Environmental impact assessment
- – Strategic environmental assessment
- – Landscape
- – Parks
- – Waste
- – Water bodies and discharge regulations
- – Industrial and environmental risk prevention
- – Geothermal resources
- – Cultural heritage protection and enhancement
- – Seabed dredging
- – and...

19. Animals!

Key judgments:

- – Judgment No. 210/1987
- – Judgment No. 99/2015
- – Judgment No. 536/2002
- – Judgment No. 7/2019
- – Judgment No. 16/2024

20. The Right to Health – The Ascending Phase

PHASE 1: THE STARTING POINT (1956–1972)

Context: The prevailing belief that constitutional provisions were merely programmatic; Article 32 had only residual application.

- – Judgment No. 81/1966: *Art. 32 sets out ethical-social principles, whose implementation depends on legislative discretion.*
- – Judgments Nos. 68/1967 and 74/1968 (psychiatric hospitals): *Laws are presumed constitutional unless they explicitly violate fundamental rights.*
- – Judgments Nos. 29/1957 and 144/1972 (medicine pricing): *Legislative control over prices is justified if it aims to guarantee the right to health, which can override economic freedom (Art. 41 Const.).*

Issue: Formalistic and restrictive interpretation; the right to health was affirmed only indirectly and subordinately.

21. Phase 2: The 'Revolution' (1973–1993)

Context: End of Italy's economic boom, Italy joins G6, Law No. 833/1978, new Constitutional Court.

- – Judgment No. 88/1973: Creation of public hospital entities based on democratic principles as a tool to implement Art. 32.
- – Judgment No. 103/1977: The patient is a public service user, holder of an unconditional right to care.
- – Judgment No. 88/1979: Health as a 'primary, absolute, and fundamental right', directly protected by the Constitution.
- – Judgment No. 245/1984: Ensuring equal healthcare services across the country prevails over cost-containment goals.
- – Judgment No. 184/1986: Right to compensation for health damages is unrestrictable since health is a primary good

22. Phase 3: The 'Rebalancing' (1994–2000)

Context: Economic crisis, end of boom, Berlusconi's rise, public debt surge, cuts to education and health.

- – Judgment No. 165/1996: Health (Art. 32) must never be compromised in prison (Art. 27).
- – Judgment No. 238/1996: Art. 32 complements other constitutional rights in respecting human dignity.
- But: Health as a 'conditioned right' (also Judgments 212/1983, 455/1990, 40/1991, 247/1992).

23. The Right to Health – The Descending Phase

Phase 4: The 'Weakening' (2001–2006)

- Context: 2001 constitutional reform; Court shifts from rights adjudication to managing institutional conflicts.
- – Judgments Nos. 252/2001 and 432/2005: Right to health applies to undocumented migrants despite financial constraints.
- – Judgment No. 278/2013: Shift: right to know one's origins recognized via reinterpretation of health (e.g., genetic risk, family history).
- **Issues:** Priority given to financial constraints; Art. 32 increasingly avoided; rise of principal-legitimacy disputes over incidental rights-based ones.

24. Phase 5: The Politicization (2006–Today?)

Context: Global economic crisis, balanced budget amendment (2012), politicization of bioethics and migration.

- – Judgment No. 10/2015: Retroactivity of constitutional rulings (Art. 30(3), Law 87/1953) is a balanceable principle.
- – Judgment No. 306/2008: Art. 80(19) declared unconstitutional for unreasonably excluding migrants from essential health services.
- – Judgment No. 96/2015 (Assisted Reproduction): Recognition of women's psycho-physical health as central to declaring donor IVF ban unconstitutional.
- – Cappato (No. 207/2018): Court recognizes unconstitutionality but defers to Parliament: a 'political' use of self-restraint.

Issue: Preference for Arts. 2 and 3 over Art. 32; shift from health to self-determination; Court's retreat from political conflicts.

25. Judgment No. 275/2016: Back to the Future?



«It is the guarantee of inviolable rights that impacts the budget, not the budgetary balance that conditions their mandatory provision».

26. Good and Bad News

- Anthropocentric reading of the Constitution does not preclude One Health

- The absence of 'environment' in the original Constitution allowed it to emerge as a right, leading to the inclusion of animal protection and their link to health

- The affirmation of environment and health through principal-legitimacy disputes resulted in highly fragmented subject-matter competence

- Refusal to treat health, environment, and animals as 'unconditional rights', and the growing weight of financial constraints, may hinder the implementation of One Health