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Access to information in environmental matters: European and Italian perspectives

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General Index

Introduction 5
Chap. 1 – Environmental law: International, European and Comparative law 9
The notion of environment 9
The rise of the environmental question 11
National Environmental Policy Act (NEPA) 14
The ‘70s and ‘80s 17
The fight against climate change and the idea of sustainable development 23
International environmental law 28
The environmental law of the European Union 34
Comparative Environmental law 40
Chap. 2 – Right to access to information 44
Introduction 44
Right’s guarantee of access to information in environmental matter 44
Freedom of Information Act 49
The Aarhus Convention 53
Citizen science technologies and access information and political participation 56
Chap. 3 – European regulation on the right of access to information on environmental matters 62
EU Primary Law 62
The Council Directive 90/313/EEC of 7 June 1990 64
The Regulation (EC) No 1049/2001 of the European Parliament and of the Council of May 30, 2001 65
The Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 68
The Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 71
Access to justice in EU environmental law 72
Council Decision (EU) 2018/881 of 18 June 2018 and new developments 74
Chap. 4 – National regulation on the right of access to information on environmental matters 77
Environmental law in Italy 77
The Legislative Decree n. 152 of 2006 – The environmental code 79
Environmental information 82
Access to environmental information in the Legislative Decree n. 195 of 2005 85
Comparison between access to document in general and access to environmental information 86
Access to environmental information in the Legislative Decree n. 152 of 2006 88
Legislative Decree n. 33 of 2013 – The so-called “Transparency code” 89
Legislative Decree n. 97 of 2016 and the introduction of FOIA in the national law 90
Monitoring and implementing the right to access to environmental information 92

Chap. 5 – Cases 94
Case C-57/16 P ClientEarth v European Commission 94
Previous judgments 94
The case C-57/16 P ClientEarth / Commission 100
The arising of the case 100
The judgment of the General Court 102
The opinion and the appeal to the European Court of Justice 104
Conclusions and further developments 107
Case ILVA 108
Introduction 108
The origins of ILVA 109
The start of the legal proceedings 110
The judgment of the Constitutional Court 112
The Cordella Case 113
The possible use of Art. 10 of the European Convention of Human Rights in the Cordella case 115
Conclusions 117
L'Affaire du Siècle 117
Conclusion 120
Bibliography 125
Government Legal Documents, Institutional Reports/documents 143
Newspapers, Website sources 155
Summary of the Paper 157

Introduction

The Emissions Gap Report[1] UNEP (United Nations Environment Programme) of November 2018 underlines the widening of the difference between the expected level of pollutant emissions in 2030 and the one compatible with the objectives set by the agreement of Paris in December 2015 at the climate conference (CoP21).[2] The Paris agreement, adopted by 195 nations, contains the objective of strengthening the global response to climate change by increasing the global temperature well below 2°C compared to the pre-industrial period and, at the same time, seeking to pursue the intent of circumscribing the increase to 1.5°C.

As highlighted by the report of October 2015 of the Intergovernmental Panel on Climate Change (IPCC), a UN body for the assessment of climate change-related science, it is necessary to reduce emissions dramatically and rapidly, with an unprecedented commitment in history to convert the energy system and current industrial, if we do not want to face serious effects on Planet Earth as we know it.[3] The report calls for a maximum temperature increase of 1.5°C which could go hand in hand with the conquest of a fairer and just society, through a path that goes through sustainable development, the eradication of poverty and the reduction of inequality.[4]

But the states are not taking the necessary measures to contain global warming and its devastating consequences. Co2 emissions are growing steadily and 2018 was worse than in 2017. The only period in which emissions fell was the two-year period of the 2008-2009 economic crisis.

Welfare and sustainability can be achieved by building a balanced ecosystem that ensures a good quality of life for all human beings. The Global Agenda for Sustainable Development and the Sustainable Development Goals to be achieved by 2030, approved at the UN in New York in 2015,[5] a drastic judgment on the unsustainability of today's development model, replacing the idea that sustainability is only an environmental issue with an integrated view of the different dimensions of development (environmental, social, economic, etc.).[6]

Economic accounting must be accompanied by an ecological accounting. The value of natural capital must influence political and economic decision-making processes so as to make a new approach to our economies possible.[7] One of the prerequisites for this paradigm is the strong investment that must be made on human capital, culture and training, including the technical one.[8]

[1] UNEP, *Emissions Gap Reports 2018*, United Nations Environment Programme, Nairobi, 2018.
[2] UNITED NATIONS, *Paris Agreement*, 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.
[3] IPCC, *Global warming of 1.5°C*, Special Report, Intergovernmental Panel on Climate Change. Switzerland, October 2018.
[4] MAFFETTONE S., *Rawls. An introduction*, Polity Press, Cambridge, 2010.
[5] UNITED NATIONS, *Transforming our world: the 2030 Agenda for Sustainable Development*, 2015, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E
[6] GIOVANNINI E., *L'utopia sostenibile*, Editori Laterza, Bari, 2018.
[7] RAWORTH K., *Doughnut economics: Seven Ways to Think Like a 21st Century Economist*, Random House Business Books, London, 2017.
[8] MAZZUCATO M., *The Value of Everything. Making and Taking in the Global Economy*, Allen Lane, an imprint of Penguin Books-Random House, UK, 2018.

The impacts on human beings resulting from climate changes become more and more visible, every year a greater number of disasters specifically affects the less well-off society. As a result, people begin to understand the urgency of the threat.

Ordinary people can do many things both in their personal behavior and in trying to introduce these topics to the political table and to the attention of leaders at every administrative level: municipal, regional and national. At the origin of the delays in the responses to climate changes that are worsening global warming, there are also disinformation at all levels on environmental issues, a lack of knowledge of public policies for the implementation of green economy measures and a lack of understanding technologies used to cope with the climate crisis.

A new path of sustainable development could be based on policies centered on latest technologies, territories and social participation. The objective of politics will no longer be the acceptability of territories, but changing the paradigm will require that the needs and demands of the territories themselves can produce a mobilization from below to contain global warming and win the environmental and climate challenge.[9]

One of the major innovations of public governance, in pursuing primary public interest, is represented by the attribution of great importance to the protection and enhancement of the environmental legal asset. The need to combine world economic growth with the defence of the environment involves the creation of new green legal institutions.[10] The environmental policy certainly implies initial economic costs, but offers irrefutable socio-economic benefits in the medium and long term. The person who embarks on this path must maintain constructive and proactive behavior: informing oneself to consciously protect the quality of the living environment. Access to environmental information, public participation in environmental decisions and access to justice, the three principles enshrined in the Aarhus Convention thus they become the basis for the new growth model.[11]

Last but not least, an emerging theme should be pointed out to increase and consolidate political participation and the ever more direct relationship between citizens and institutions for the common good that is represented by the tumultuous development of information technologies and the introduction into daily life of blockchain technology[12] and artificial intelligence.[13]

Ours is now a digital society and the technologies at the base can deeply affect the forms of political participation and offer decisive support to allow the launch of innovative experiences of active and informed citizens' participation in public decisions.[14]

[9] SETTIS S., *Azione popolare. Cittadini per il bene comune*, Einaudi, Torino, 2012.

[10] MORANO G., *Pubbliche amministrazioni e nuovi istituti green. Strumenti giuridici del cittadino per proteggere l'ambiente in cui si vive*, Aracne Editrice, Ariccia (RM), 2016.

[11] UNITED NATIONS, CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS done at Aarhus, Denmark, on 25 June 1998, http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf.

[12] CLIMATE LEDGER INITIATIVE, *Navigating blockchain and climate action. An Overview*, 4 December 2018, https://www.climateledger.org/resources/CLI_Report-December2018.pdf

[13] GALETTA D. U., CORVALAN J. G., *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Potenzialità, rischi e sfide della rivoluzione tecnologica in atto*, in www.federalismi.it, 3/2019.

[14] FEOLA M., *Ambiente e democrazia. Il ruolo dei cittadini nella governance ambientale*, G. Giappichelli editore, Torino, 2014.

The most attentive to this challenge are private investors, financial institutions, funds, asset management companies and investment banks, while China and India and not Western nations are the ones that in terms of investments are trying to fight global warming more decisively. Many governments, unfortunately, are still absent from the appeal, we are therefore ordinary citizens that must defend our right to live in a healthy environment saving so the planet. We must use our rights to demand from our governors the proposition and implementation of rules that support the technological and economic growth of countries so as not to negatively affect the environment.[15]

Access to environmental information and justice and active participation are, therefore, essential for creating a consensus for the necessary cultural change in favour of a circular economy focused on responsible and caring consumption patterns:[16] for example, the increasing protests against pollution caused by plastics gives us great hope that we will, in the coming years, improve the quality of the environment in which we live.[17]

In the first chapter we will first examine the concept of the environment and the environmental question, the foundation of the Club of Rome and the Report on the limits of development.[18] Then we will proceed to illustrate the main stages of the fight against climate change through the most important conferences, such as those of Stockholm in 1972, Rio de Janeiro in 1992, Kyoto in 1997 and Paris in 2015, and the 2015 Agenda 2030. Finally, we will conclude the chapter with an outline of international environmental law, environmental law of the European Union and environmental law in a comparative perspective.

In the second chapter we will examine how we arrived from a general right of access to information to an increased right to information in environmental matters. We will then explain the Freedom of Information Act of the United States,[19] the three pillars of the Aarhus Convention and the new possibilities that are opening up for citizens thanks to science technologies in particular for what concerns access to information and political participation.[20]

In the third chapter we will analyze the evolution of European legislation on the right of access to information on environmental matters up to the most recent developments and how the European Union seeks to facilitate access and participation of the highest possible number of citizens.

In the fourth we will follow the path taken by the national legislation on the right to access to the information, in particular in the environmental field: the introduction in the national legislation of generalized civic access and the compulsory use of the public debate procedure for major infrastructure works having a significant impact on the environment, on the cities and on the spatial planning. We will also deal with the administrative

[15] ZAGREBELSKY G., *Diritti per forza*, Einaudi, Torino, 2017.

[16] BIANCHI D. (a cura di), *Economia circolare in Italia. La filiera del riciclo asse portante di un'economia senza rifiuti*, Edizioni Ambiente, Milano, 2018.

[17] BURANYI S., *Usciamo dalla plastica*, The Guardian, Regno Unito, Internazionale, Italia, 21 dicembre 2018, p. 44.

[18] MEADOWS D. H., MEADOWS D. L., RANDERS J., BEHRENS III W. W., *The Limits to Growth: A Report for THE CLUB OF ROME'S Project on the Predicament of Mankind*, Universe Books, New York, Earth Island, 1972, https://www.clubofrome.org/report/the-limits-to-growth/.

[19] THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552, https://www.justice.gov/oip/freedom-information-act-5-usc-552

[20] HECKER S., HAKLAY M., BOWSER A., MAKUCH Z., VOGEL J. & BONN A. (edited by), *Citizen Science. Innovation in Open Science, Society and Policy*, UCL Press, London, 2018.

system aimed at environmental protection through the interaction between citizen, business and public administration, also with reference to new technologies.

In the fifth chapter we will proceed to illustrate some relevant case-studies. The first one examined is Case C-57/16 P ClientEarth v European Commission, that is "an action for annulment brought before the European Union Court by the ClientEarth against two decisions of the European Commission that have denied them access to certain documents".[21] The second is represented by the Italian case of the ILVA company, that is, in a nutshell, from the relationship between "the interest to the continuation of the productive activity" and the "inviolable constitutional rights related to the protection of health and life itself" and "the right to work in a safe and not dangerous environment".[22] The third is an appeal against the French State for inactivity with respect to climate change called "The Secular Affair", presented on December 17, 2018 by four associations and whose petition was supported by almost two million citizens.[23]

[21]COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017—ClientEarth v Commission (C-57/16 P).
http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[22]CORTE COSTITUZIONALE, Sentenza n. 58/2018,
https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2018&numero=58

[23]L'AFFAIRE DU SIECLE, *Inaction over climate change: let's fight for justice. climate change, it's time for L'Affaire du siècle (the Trial of the century): 4 NGOs are suing the French State for its failure to address the most urgent priority of our time*, Notre affaire à tous, Greenpeace France, Fondation pour la Nature et l'Homme (FNH) and Oxfam France, 17 December 2018.

Chap. 1 – Environmental law: International, European and Comparative law

The notion of environment

The legal notion of the environment has required multiple efforts to be fully defined, both from a theoretical and a practical point of view, and to become the common heritage of governments and citizens on which to build rules and principles to protect the environment itself.[24]

A first notion of environment reported states "both material assets and biotic and abiotic realities, such as resources and natural habitats, fauna, flora, air, sea, minerals and soil, and both intangible assets and realities, such as cultural heritage and the result of territorial and urban planning".[25] However, this definition does not always allow us to reach correct conclusions.

It is necessary to first clarify the relationship between man and the environment, the anthropocentric conception that revolves around man must evolve towards a new vision that puts the environment at the center, namely the naturocentric or ecocentric one.

The notion of dynamic environment influences the models designed for its legal protection. The first hypothesis is to consider environmental law as a fundamental human right,[26] that can be related with another fundamental right, that of health (see Charter of fundamental rights of the European Union that in Chapter IV Solidarity includes art. 35 the right to health care and to art. 37 the right to environmental protection).[27] It should be noted here that the very rights we will be dealing with in greater detail, those relating to access to information, public participation in decision-making processes and access to justice in environmental matters (Aarhus Convention) have for years been considered fundamental given that they assign to individuals, as part of the legal systems, some subjective situations that are indispensable for the possibility of enjoying a healthy environment. The second hypothesis, as opposed to the first, links environmental protection to an obligation of protection by the public administration, which must carry out this task of considerable importance even in the absence of an ascertainment of a violation of the legal sphere of persons.

[24] BOYD, D. R., *The Environmental Rights Revolution, A Global Study of Constitutions, Human Rights, and the Environment*, University of British Columbia Press, Vancouver, Toronto, 2012; CAPACCIOLI E., DAL PIAZ F., *Ambiente* (*Tutela dell'*), (Parte generale e diritto amministrativo), in Nss. D. I., Appendice, I , Torino, 1980, pp. 257 ss.; CARAVITA B., CASSETTI L., MORRONE A. (a cura di), *Diritto dell'ambiente*, il Mulino, Bologna, 2016; CECCHETTI M., *Principi costituzionali per la tutela dell'ambiente*, Giuffrè, Milano, 2000; CORDINI G., *Diritto ambientale comparato*, in DELL'ANNO P., PICOZZA E. (diretto da), *Trattato di diritto dell'ambiente. Vol. I: Principi generali*, CEDAM, Padova, 2012, pp. 101 ss.; GIAMPIETRO F., *Diritto alla salubrità dell'ambiente. Inquinamenti e riforma sanitaria*, Giuffrè, Milano, 1980; GRASSI S., *Problemi di diritto costituzionale dell'ambiente*, Giuffrè, Milano, 2012; PORENA D., *La protezione dell'ambiente tra Costituzione italiana e* "*Costituzione globale*", G. Giappichelli Editore, Torino, 2009.

[25] GIUFFRIDA R., AMABILI F. (a cura di), *La tutela dell'ambiente nel diritto internazionale ed europeo*, G. Giappichelli editore, Torino, 2018, p. 5.

[26] BERLENGHI T., *Storia del Diritto Ambientale*, Primiceri Editore, Padova, 2018.

[27] EUROPEAN UNION, *Charter of fundamental rights of the European Union ((2012/C 326/02)*, Official Journal of the European Communities, 26.10.2012 https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A12012P%2FTXT

On the other hand, the complexity of the concept of environment allows in any case to configure both individual and collective interests and, consequently, a multiplicity of subjects can take legal actions to protect the possible use of a single part of the same environment.

In Italy, probably, no discussion on the notion of environment is independent from the examination of the known tripartition of Giannini, on the basis of which it is necessary to distinguish: discipline of landscape protection (naturalistic notion), the environment as a juridical object, object of active and passive juridical situations with man as the only referent; discipline of protection from forms of pollution (health notion), the environment becomes intangible and it is necessary to analyze the relationships that are established between the subjects interested in the use or exploitation of specific natural resources; and discipline of protection of the territory (urban notion), the environment as an object and at the same time result of the planning of the public administration.[28]

At this setting Predieri has contrasted a bipartition between the naturalistic notion and the one constituted by the binomial health-territory.[29] This thesis had the merit of truncating with the vision of nature distinct from man and of allowing us to study the relationship and mutual influences between nature and man.

The unitary notion of environment includes two different meanings that are complementary to each other: 1. that of the environment in a limited sense, a substance that etymologically surrounds, in other words that represents the set of external conditions in which live men, vegetables and animals (the Italian world ambiente (environment), the French environnement and the English environment have similar meaning); 2. that of the ecosystem which concerns the totality of living beings who are in a specific enclosed space and who are mutually united. This definition was also used in the new text of the art. 117 of the Italian Constitution as the terms environment and ecosystem appear.[30] Regarding the examination of the art. 9 of the Italian Constitution please refer to the next paragraph Comparative environmental law of this chapter and to chapter 4 - National environmental law in Italy.

Finally, it should be pointed out that the notion must in any case be explained with reference to the legal principle of sustainable development, a rule adopted by the international community starting with the Rio Convention.[31]

[28]GIANNINI M. S., *Ambiente: saggio sui diversi aspetti giuridici*, in *Rivista trimestrale di diritto pubblico*, 1973, pp. 15 ss.

[29]PREDIERI A., under heading *Paesaggio*, in Enc. Dir., XXXI, Milano, 1981, pp. 507 ss.

[30]Cf. the text of the art. 117, comma 2, lett. s. of the Constitution.

[31] GIANNINI M. S., *Genesi e sostanza dei principi generali del diritto*, in *Scritti in onore di Alberto Predieri*, II, Giuffrè, Milano, 1996, pp. 901 ss.; GRASSI S., CECCHETTI M. (a cura di), *Governo dell'ambiente e formazione delle norme tecniche*, Giuffrè, Milano, 2006; DE SADELEER N., *I principi ambientali tra diritto moderno e post–moderno*, in AMIRANTE D. (a cura di), *La forza normativa dei principi. Il contributo del diritto ambientale alla teoria generale*, CEDAM, Padova, 2006, p. 26; DELL'ANNO P., *Diritto dell'ambiente*, CEDAM, Padova, 2018; AMIRANTE D., *Profili di diritto costituzionale dell'ambiente*, in DELL'ANNO P., PICOZZA E. (diretto da), *Trattato di diritto dell'ambiente. Vol. I: Principi generali*, CEDAM, Padova, 2012, pp. 233 ss.; D'ALBERTI M. (a cura di), *Le nuove mete del diritto amministrativo*, Il Mulino, Bologna, 2010; GRAGNANI A., *La codificazione del diritto ambientale: il modello tedesco e la prospettiva italiana*, in «Giust.it», 8/2008; CERBO P., *Le novità nel codice dell'ambiente*, in «Urbanistica e Appalti», 5/08; CAFAGNO M., *Principi e strumenti di tutela dell'ambiente come sistema complesso, adattativo, comune*, G. Giappichelli editore, Torino, 2007; MADDALENA P., *L'ambiente. Prolegomeni per una sua tutela giuridica*, in Foro Amministrativo – TAR, 2007, pp. 1501 ss.

Only in the last few years the protection of the environment started to be regulated as an organic discipline by international law. The relevant regulatory sources are based on principles formulated as guidelines during various international conferences and then accepted and included in various agreements and treaties of a universal and regional nature. These principles, that started to change our world, have taken on a fundamental value by contributing to the construction of general rules in the environmental field and have been recognized as real legally binding rules.[32]

In the following paragraphs we will address the history of the environmental question up to the present day.

The rise of the environmental question

In the sixties of the last century, while economic development in Western countries was very strong, mass consumption started and people start talking about an economy boom and a "welfare society",[33] due to rising pollution and environmental disasters, the most important modern environmental movements were born. The paradigm of limitless growth collided with the serious environmental repercussions caused and with the effect that pollution had on the health of the population.

At the end of World War II, around the two winning powers, the United States and the Soviet Union, two opposing blocs were created, the western and the communist blocs. The increasingly powerful arms race that followed caused nuclear proliferation and the balance of terror.

In particular, the roots of this new way of thinking and environmental culture can be found, therefore, in the studies on the effects that the experimental explosions of atomic bombs caused to the environment, to their impact in the air and on the earth, with the introduction in the atmosphere of waste and radioactive pollutants for centuries that circulated all over the planet and were assimilated by man and other living beings.

The 1961 saw the birth of WWF (World Wild Fund for Nature), followed by other environmental associations such as Friends of the Earth in 1969 and Greenpeace in 1971. A leading position in the history of ecological thought is occupied by the US marine biologist Rachel L. Carson,[34] that, in 1962, with the book "Silent Spring", exposed in a simple and clear way, at the same time scientific because supported by a large amount of data, the structural damage caused to human health and the environment by the use of pesticides. The paper showed that the use of synthetic chemicals had affected the food chains of terrestrial and aquatic fauna. The book was extraordinarily successful and laid to the US ban on DDT since 1970. The prophetic messages of

[32] AMATO G., BARBERA A. (a cura di), *Manuale di diritto pubblico*, il Mulino, Bologna, 1984; CAFAGNO M., *Principi e strumenti di tutela dell'ambiente come sistema complesso, adattativo, comune*, op. cit.; CAIA G., *La gestione dell'ambiente: principi di semplificazione e di coordinamento*, in GRASSI S., CECCHETTI M., ANDRONIO A. (a cura di), *Ambiente e diritto*, Olschki, Firenze, 1999; CAMERA DEI DEPUTATI Servizio Studi XVIII legislatura, *L'Agenda globale per lo sviluppo sostenibile*, 29 ottobre 2018; FERRARI G. F. (edited by), *Introduction to Italian Public Law*, Giuffrè, Milano, 2008; FIMIANI P., *Il debito ambientale tra mercato e giurisdizione*, LEXAMBIENTE.IT, www.lexambiente.com, 24 marzo 2017; LAMPUGNANI D., *Co-Economy. Un'analisi delle forme socio-economiche emergenti*, Fondazione Giangiacomo Feltrinelli, Milano, 2018; MASSARUTTO A., *Un mondo senza rifiuti. Viaggio nell'economia circolare*, il Mulino, Bologna, 2019; RONCHI E., *La transizione alla green economy*, Edizioni Ambiente, Milano, 2018.

[33] GALBRAITH J. K., *The Affluent Society*, Houghton Mifflin, Boston, 1958.

[34] CARSON R. L., *Silent Spring*, Houghton Mifflin, Boston, 1962.

the writer are still fundamental today, the pollution from plastic materials related to her statements on the fact that substances and elements absorbed by living beings frequently pass from one organism to another and not last the idea that the consequences of man's work negatively affect the living conditions of the inhabitants of the planet in the future.

The sixties were a period of great changes and social and cultural transformations in which, favored by the new climate of international collaboration, by a wind of freedom and a sense of emancipation, by the birth of youth culture and by enthusiasm and by the creativity that this brought about. From the implementation of Keynesian economic policies that distributed income more evenly and guaranteed greater well-being, to the extension and greater observance of rights, there was a considerable growth in environmental sensitivity.

The Catholic Church, with the Encyclicals of John XXIII "Mater et magistra" in 1961 and "Pacem in terris" in 1963 and, above all, with the Second Vatican Council and, in 1967, with the Encyclical "Populorum Progressio" by Paul VI, took its first steps towards environmental culture. In 1971 Paul VI himself wrote on the environmental question, stating that it is a dramatic consequence of man's limitless activities: «Man is suddenly becoming aware that by an ill-considered exploitation of nature he risks destroying it and becoming in his turn the victim of this degradation.».[35]

In the field of economics, thanks to the precursors of modern environmental economics such as Kenneth Ewert Boulding and Nicholas Georgescu-Roegen, studies and analyzes begin to link biology with the economy and lay the foundations for a new economic model: the circular economy.

Those are the words with which in 1966 Boulding,[36] the president of the association of American economists, affirms that the GNP does not consider the scarcity of natural capital and the costs of environmental pollution, “For the sake of picturesqueness, I am tempted to call the open economy the "cowboy economy," the cowboy being symbolic of the illimitable plains and also associated with reckless, exploitative, romantic, and violent behavior, which is characteristic of open societies. The closed economy of the future might similarly be called the "spaceman" economy, in which the earth has become a single spaceship, without unlimited reservoirs of anything, either for extraction or for pollution, and in which, therefore, man must find his place in a cyclical ecological system which is capable of continuous reproduction of material form even though it cannot escape having inputs of energy. The difference between the two types of economy becomes most apparent in the attitude towards consumption. In the cowboy economy, consumption is regarded as a good thing and production likewise; and the success of the economy is measured by the amount of the throughput from the "factors of production," a part of which, at any rate, is extracted from the reservoirs of raw materials and noneconomic objects, and another part of which is output into the reservoirs of pollution. If there are infinite reservoirs from which material can be obtained and into which effluvia can be deposited, then the throughput is at least a plausible measure of the success of the economy. The gross national product is a rough measure

[35]PAUL VI, Apostolic Letter *Octogesima adveniens* (14 May 1971), 21: *AAS* 63 (1971), 416-417 http://w2.vatican.va/content/paul-vi/en/apost_letters/documents/hf_p-vi_apl_19710514_octogesima-adveniens.html

[36] BOULDING K. E., *The Economics of the Coming Spaceship Earth*, In JARRETT H. (ed.) 1966. *Environmental Quality in a Growing Economy*, pp. 3-14. Baltimore, MD: Resources for the Future/Johns Hopkins University Press.

of this total throughput. It should be possible, however, to distinguish that part of the GNP which is derived from exhaustible and that which is derived from reproducible resources, as well as that part of consumption which represents effluvia and that which represents input into the productive system again."

The author builds an extraordinary image comparing the economy of those times based on an infinite growth perspective, defined as the "cowboy economy", with the "astronaut" economy, whose foundations are based on the observation that, instead, the physical and natural environment is finished and, consequently, a careful use of natural resources is needed, which seeks to reduce waste and to recycle the maximum possible.

Even the father of the GNP Simon S. Kuznets always pointed out the critical points of this number which does not take into account the indirect costs produced by economic development: "As a general formula, the desirability of as high and sustained a growth rate as is compatible with the costs that society is willing to bear is valid; but in using it to judge economic problems and policies, distinctions must be kept in mind between quantity and quality of growth, between its costs and return, and between the short and the long run.".[37]

In 1971 Georgescu-Roegen argued that to study and predict the future of man we must necessarily take into due consideration the laws of physics and, in particular, the second law of thermodynamics.[38] In the production process, by applying the law of entropy, a part of energy is lost and, therefore, removed from future generations and proportionally waste is produced that will be dispersed in the environment. If man wants to save himself, he must develop the "bioeconomy", analyzing and integrating economic and financial flows with ecological ones, that is natural resources and physical waste.

Today's international environmental law was also born in those years; in civil society and in the scientific world the perception of environmental degradation caused by industrialization was affirmed, in addition to the nuclear pollution and the chemical pollution of which we have said, in March 1967 there was the sinking of the oil tanker Torrey Canyon, the first environmental catastrophe caused by the release of huge amounts of oil that flooded the Cornish coast and even reached France. The shipwreck represented a real Apocalypse in the great trust given by people to the technological capacity of transport without the risk of very polluting materials. In the wake of this occurrence in 1969 the International Convention on Civil Liability for Oil Pollution Damage (CLC) was adopted to impose compensation to ship owners.[39] In previous years there had been international conventions for the protection of birds (Paris, 1950), for plant protection (Rome, 1951), for the prevention of pollution of marine waters by hydrocarbons (London, 1954), on the 'high seas (Geneva, 1959), the Antarctic Treaty (Washington, 1959), as well as the 1963 Moscow Treaty Partial Test Ban Treaty; the first commitments of the international community were therefore dedicated to the conservation of flora and fauna and to the tragic consequences on the environment of nuclear and oil racing.

[37] KUZNETS S. S., *How To Judge Quality*, in "The New Republic", October 20, 1962, p. 29.
[38] GEORGESCU-ROEGEN N., *The Entropy Law and the Economic Process*, Cambridge (Ma), Harvard University Press, 1971.
[39] CRISTOFARO L., *Disastri ambientali in mare e sistema dei fondi per inquinamento marino da idrocarburi*, in www.dirittoambiente.net, 2010.

National Environmental Policy Act (NEPA)

In the wake of these events, in 1969, the American Congress felt the need to increase the environmental protection system and, therefore, approved the National Environmental Policy Act (NEPA),[40] a law that represents a fundamental step in American environmental law and that will constitute a model for the legislation of many other nations and for the EU.[41] The norm establishes a national environmental policy and, in particular, that a preventive study must be carried out on the possible consequences of environmental policies and plans and can provide for the establishment of a Council on Environmental Quality (CEQ).

The CEQ oversees the implementation of the NEPA, it ensures that federal agencies comply with NEPA obligations, monitors the application of the environmental impact assessment process and issues regulations and other guidelines.

In 1970, the Environmental Protection Agency (EPA) was founded. It is the federal agency specialized in environmental protection. The EPA is the implementing body of the NEPA and manages the Environmental Impact Assessment (EIA) procedure for the main works, through the Environmental Impact assessment Statement (EIS). The EIA procedure will be gradually adopted in a large part of the world with almost similar characteristics.[42]

In 1966 the Freedom of Information Act (FOIA) was issued, a federal law that established an effective legal right to access information from the government and federal agencies and which we will examine in depth in the next chapter.[43] The purpose of the FOIA is to ensure that there is an informed citizenship, essential for the functioning of a democratic society. All federal agencies, including the EPA, must make the required documents available, apart from the one that cannot be disseminated due to exemptions provided by the FOIA. These two tools made possible the right of the population to information and participation and allowed the verification of governmental actions by interested groups and individuals, also through the obligation to disclose the environmental effects determined by the choices made.

Section 101 illustrates the purpose of the NEPA and US environmental policy: "The Congress, recognizing the profound impact of activity on the interrelationships of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and

[40] THE NATIONAL ENVIRONMENTAL POLICY ACT of 1969, as amended. https://www.energy.gov/nepa/downloads/national-environmental-policy-act-1969

[41] LINDSTROM M. J., SMITH Z. A., *The National Environmental Policy Act. Judicial Misconstruction, Legislative Indifference, & Executive Neglect*, Texas A&M University Press, College Station (Texas), 2001; ECCLESTON C. H., *NEPA and Environmental Planning: Tools, Techniques, and Approaches for Practitioners*, CRC Press Taylor & Francis Group, Boca Raton (Florida), 2008.

[42] GILPIN A., *Environmental impact assessment (EIA): cutting edge for the twenty-first century*, Cambridge University Press, Cambridge, 1995; CANTER L. W., *Environmental Impact Assessment*, Mc Graw-Hill, New York, 2d ed., 1996; CLARK R, CANTER L. W. (edited by), *Environmental policy and NEPA. Past, Present and Future*, St. Locie Press, Boca Raton (Florida), 1997; DI GENNARO A., *Un'introduzione alla VIA. Analisi dei sistemi ambientali e valutazioni d'impatto,* ed. Clean, Napoli, 2004.

[43] TUONI G. M., *NEPA and the Freedom of Information Act: A Prospect for Disclosure*, Vol. 4, Boston College Environmental Affairs Law Review, 1975, pp. 179-201. http://lawdigitalcommons.bc.edu/ealr/vol4/iss1/11; BARKAS J., *Nuking Freedom of Information and Community Right to Know: how Post-9/11 Secrecy Polictics Could Make America Less Safe*, in Environmental Law and Policy Journal, University of California, Davis (California), XXVIII:2, 2005. *https://environs.law.ucdavis.edu/volumes/28/2/barkas.pdf*

new and expanding technological advances and recognizing new critical aspects of cooperation with state and local governments, and other public service organizations, to create and maintain conditions under harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. ". This approach is aimed at creating and maintaining the conditions in which nature and man can live together in harmony.

Letter (b) of section 101 establishes that the federal government must use all the tools at its disposal to coordinate programs, activities and resources so that the US can: fulfill the responsibilities of each age as custodians of the environment for generations successive; to ensure all Americans safe, healthy, productive and pleasant environments; use the environment in a sustainable way: protecting it, protecting it and avoiding risks to human health; preserve the historical, cultural and natural aspects of the national heritage and maintain an environment that makes the diversity of individual choices possible; achieving a balance between population and use of resources that allows high living standards; and improve the quality of renewable resources and encourage the maximum possible recycling of exhaustible resources.

Section 102 states that all federal government agencies must use a systematic and interdisciplinary approach that ensures the integrated use of natural and social sciences and environmental design in planning and decision-making that can impact the environment and identify and develop methods and procedures, in consultation with the Council on environmental quality, to be followed for the elaboration of a valid analysis of public and private initiatives that can change the territory.

Each legislative proposal must include a detailed report on the expected environmental impact, on any negative effects that cannot be avoided if the proposal is implemented, on the alternatives to the proposed action, on the relationship between the local short-term uses of the environment and the long-term productivity improvement, and on any irreversible and unrecoverable commitments of resources that would be used in the proposed action.

The EIA procedure was, in 1978, supplemented by the CEQ regulations (40 CFR Parts 1500-1508)[44] that have implemented the NEPA and is divided into several phases.

The first phase of the procedure is the responsibility of the applicant, public or private, who is obliged to transmit the project to the competent federal agencies with the information required by section 102 of the NEPA. The proposal begins, therefore, the preliminary phase with the evaluation if it must be subjected to EIA. The federal government has previously established which activities have no significant consequences on the environment and, therefore, the projects that fall within the categorical exclusion are exempt from analytical environmental analyzes. For other activities, federal agencies must first prepare an environmental assessment (EA) with the aim of verifying whether the proposal can be qualified as "major actions significantly affecting the quality of the human environment" (MASAQHE). If the EA gives a negative result, the project

[44]COUNCILON ENVIRONMENTAL QUALITY EXECUTIVE OFFICE OF THE PRESIDENT, Regulationsforimplementing the procedural provisions of the National Environmental Policy Act, Reprint 40 CFR Parts 1500-1508 (2005), https://www.ecfr.gov/cgi-bin/text-idx?SID=30655823cf5f0dcb1c5ee59d01883b89&mc=true&tpl=/ecfrbrowse/Title40/40chapterV.tpl.

must still be subject to public consultation and ends with the Finding of No Significant Impact Act (FONSI), according to which the proposal will not cause significant effects on the environment. If the EA is successful, the agency informs that the EIS will be launched. The next phase, called scoping, consists of an examination aimed at finding the fundamental aspects on which the procedure for analyzing the effects of the project examined on the environment must be carried out. At the end of the scoping, the drafting of the environmental impact report begins. The EIS is the document that analytically identifies the outcomes of a proposal, representing the possible alternatives and their effects. Once the EIS draft is completed, the report is delivered to the other competent agencies and to the public, which in turn can comment on the document. These comments will be considered in the drafting of the final EIS which will then be sent to the CEQ who will verify and comment on it.

The notices of EA and EIS are public and allow representative associations and the general public to participate in the decision-making process by formulating proposals and comments in order to address environmental choices. The consultation thus becomes an essential tool for the development of a culture of participation and the related procedures must ensure that citizens are more likely to collaborate in order to identify problems more easily and lead to more informed decisions. Information, communication and education activities by public administrations are indispensable to favor the creation of a participatory ecosystem that allows to multiply within the population the opportunities for discussions and debates.

The EPA must therefore guarantee, in respect of the FOIA, the private participation in the administrative procedure in environmental matters, dialoguing with those who exercise the right of documentary access. In NEPA, to implement the principle of transparency of administrative action, a very broad subjective legitimization is regulated. All US citizens can request access to information, even in a very simple way, by performing an online procedure or by sending an email. Even through the archive on the EPA's institutional website, can be obtained documents and information already made available by the Agency itself. In this way, an obligation to publish the data in its possession is traced to the EPA, which makes the administrative activity more transparent in the eyes of the citizen. The opportunity for easy access to texts and news related to the environmental theme allows the direct control of the user community and implements the principles of legality and transparency. The Anglo-Saxon model of public administration is becoming an increasingly shared approach. Accountability is therefore fundamental since the discretion of managers in making decisions is high: it becomes essential that the citizen can evaluate strengths and weaknesses of the choices made.[45]

[45] AA. VV., *Environmental Law Handbook*, 23rd Edition, Bernan Press, Lanham (Maryland), 2016; BRADDOCK T., *California Environmental Law and Natural Resources Handbook*, 13th Edition, State Environmental Law Handbook, Bernan Press, Lanham (Maryland), 2018; ANDRISANI P. J., HAKIM S., SAVAS E. S., *The New Public Management: Lessons from Innovating Governors and Mayors*, Kluwer Academic Publishers, Boston, 2002; BARZELAY M., *The New Public Management: Improving research and policy dialogue*, University of California Press, New York, 2001; LANE J. E., *New Public Management*, Routledge, New York, 2000; O'TOOLE JR., RAINEY H. G., BRUDNEY J. L., LAURENCE J., *Advancing Public Management: New Developments in Theory, Methods and Practice*, Georgetown University Press, Washington D.C., 2000; FERLIE E., ASHBURNER L., FITZGERALD L., PETTIGREW A., *The New Public Management in Action*, Oxford University Press, New York, 1996; RHODES R.A.W., *Understanding Governance, policy networks, governance, reflexivity and accountability*, Open University Press, Buckingham, 1997.

The ‘70s and ‘80s

In 1968 the biologist Paul Ralph Ehrlich stated that the exponential growth of the population represented a danger to the ecological balance.[46] In 1971 the debate on "ecology" was reinvigorated by another American biologist Barry Commoner,[47] founder of the magazine "Environment". In Commoner's opinion, Ehrlich's thesis, which indicates overpopulation as the main cause of the environmental crisis, is incorrect as it is necessary, as well as reducing population growth, reorienting the economy and changing production techniques and consumption styles to decrease pollution.

The first Earth Day dedicated to environmental protection was celebrated on 22 April 1970. In 1969, at a UNESCO conference in San Francisco, peace activist John McConnell proposed a day to celebrate the planet and peace. Later United States Senator Gaylord Nelson established this feast.

The discussion turned further thanks to the publication of a study in 1972 of some researchers of the Massachusetts Institute of Technology carried out for the Club of Rome.[48] In April 1968, Aurelio Peccei, an Italian entrepreneur, had founded, together with other intellectuals, scientists and politicians, the Club of Rome. The mathematical model at the base of the analysis was able to reproduce the interactions between population growth, industrial production, consumption on the one hand and pollution and the end of natural resources on the other. The conclusions reached by the research can be summarized as follows: if the planet's population continues at the current rate of growth and industrial production and pollution will increase, then the availability of water and food will be limited, health will deteriorate, the raw materials will be scarce and a global catastrophe will be very likely. The book revealed, in a nutshell, that the economic model of development followed was unsustainable.

In addition, Peccei, an expert in the automotive industry, having worked at FIAT for many years, wrote an article in 1971 where he anticipated the difficulties that the growth of the number of private cars in the city would cause to people's lives.[49]

The book came out when the discussion on the environmental future of the Earth and the possibility of a common international environmental strategy was very intense and shortly before the launch in Stockholm of the United Nations Conference on the Human Environment of 1972.

Until the early 1970s, international environmental law consisted of a complex system of industry regulations, almost devoid of mandatory and sanctioning implementation procedures and without coordination by the relevant global institutions. There are therefore numerous reasons that give the Stockholm Conference a special importance: the decisive contribution to the affirmation of a strict relationship between the environment

[46] EHRLICH P. R., *The Population Bomb*, Ballantine Books, New York, 1968.
[47] COMMONER B., *The Closing Circle*, Alfred Knopf, New York, 1971.
[48] MEADOWS D. H., MEADOWS D. L., RANDERS J., BEHRENS III W. W., *The Limits to Growth: A Report for THE CLUB OF ROME’S Project on the Predicament of Mankind*, op. cit.
[49] PECCEI A., *L’automobile contre les hommes*, Preuves, n. 6, 39-43, II semestre 1971.

and human rights; the creation of new laws to protect the world environment; the impulse given in environmental cooperation to the creation of specific international institutions.

The relationship between the environment and human rights and, specifically, the notion of environmental law and the environmental aspect of human rights did not appear in any legal science text up until then.

In the Preamble of the Charter of the United Nations (signed on 26 June 1945, in San Francisco) the promotion of social and economic progress of the world population through the use of international instruments cannot be considered a reference to the environment and sustainability.[50] Other ideas on environmental law can be found in the Universal Declaration of Human Rights (adopted by the United Nations General Assembly on 10 December 1948, in New York) in whose text is provided for in art. 3 that "Everyone has the right to life, liberty and security of person.",[51] and then in the International Covenant on Economic, Social and Cultural Rights (adopted by the United Nations General Assembly on 16 December 1966), in whose content is established in art. 11 that "1. The States to the present Covenant to recognize the right of the family, including adequate food, clothing and housing, and to the continuous improvement of living conditions "and to the art. 12 that "1. The States to the present Covenant to recognize the right of the highest standard of physical and mental health. 2. The steps to achieve the full realization of those right shall include those necessary for: ...; b) The improvement of all aspects of environmental and industrial hygiene ".[52]

None of these three acts, although considered to be of decisive importance in the proposition of human rights, contains an objective organic link with the environment, but has few references that do not reveal that very close relationship between today's rights to life and health and protection. environmental.

On 30 July 1968, the United Nations Economic and Social Council (ECOSOC) with resolution no. E 1346 (XLV), urged the General Assembly to start the process of preparing a conference dealing with "the problems of human environment", as "*Convinced* of the urgent need for intensified action, at the national and international level, in order to limit and, where possible, to eliminate the impairment of the human environment and in order to protect and improve the natural surroundings in the interest of man.".[53]

It was the first time that it was decided to examine the environmental question in a structured way in the context of international cooperation through negotiations under the aegis of the UN and the stipulation of agreements. The ECOSOC, consequently, on the one hand confirmed, to the governments and to the public opinion of the member countries, the attribution of responsibility on the environmental question and the importance of the production of specific contributions, on the other it is highlighted the importance that on this thematic there was a vision and an address coordinated by means of the UN.

[50] CHARTER OF THE UNITED NATIONS, https://treaties.un.org/doc/publication/ctc/uncharter.pdf

[51] UNITED NATIONS GENERAL ASSEMBLY, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.un.org/en/universal-declaration-human-rights/[accessed 11 March 2019]

[52] UNITED NATIONS GENERAL ASSEMBLY, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 2200A (XXI), https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

[53]UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL (ECOSOC), Resolution n. E 1346 (XLV), 30 July 1968. https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/591/48/IMG/NR059148.pdf?OpenElement

During the twenty-third session, on December 3, 1968, the UN General Assembly examined and adopted Resolution 2398 (XXIII) - Problems of the Human Environment - in which the decision was taken to convene the United Nations Conference on Human Environment in 1972 and begin preparatory work.[54] In the following Resolution 2581 (XXIV), the United Nations Conference on Human Environment, the General Assembly accepted Sweden's request to host the Conference and to provide guidelines for, action by Governments and international organizations designed to protect and improve the human environment and preventive impairment, by means of international co-operation, bearing in mind the importance of enabling developing countries to forestall the occurrence of such problems".[55] On December 20, 1971, Resolution 2849 (XXVI) was adopted, entitled Environment and Development, in which the international community was called to intensify cooperation in the environmental field and to use natural resources rationally, while promoting social and economic development policies.[56]

The Stockholm Conference, which was held from 5 to 16 June 1972 with the participation of representatives from 113 countries, was the first occasion in which the international community signaled the values of education and environmental information as fundamental means for protecting and enhancing the human environment. The environmental issue and the exploitation of natural resources become goals of international cooperation and issues that begin to involve citizens and businesses as well as public institutions.

The most important action decided by the Conference is the Declaration on the Human Environment.[57] It consists of a preamble divided into seven paragraphs and twenty-six Principles on the rights and duties of man towards the environment which are considered, even now, valid for the conservation and enhancement of the environment.

The Stockholm Declaration has established a relationship between the right to the environment and human rights since the first two paragraphs of the Preamble "1. Man is both a creator and a moulder of his environment, which gives him physical independence and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race has been reached when, through the rapid acceleration of science and technology, has acquired power to transform the environment into countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, even to the right to life itself. "And" 2. The protection of the environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the people of the whole world. ". Paragraph 6 acknowledges that "A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or

[54] UNITED NATIONS GENERAL ASSEMBLY, *Problems of the Human Environment*,3 December 1968, Resolution 2398 (XXIII).
[55] UNITED NATIONS GENERAL ASSEMBLY, *United Nations Conference on Human Environment*, 15 December 1969, Resolution 2581 (XXIV).
[56] UNITED NATIONS GENERAL ASSEMBLY, *Environment and Development*, 20 December 1971, Resolution 2849 (XXVI).
[57] UNITED NATIONS, *Report of the United Nations Conference on the Human Environment*, Stockholm, 5-16 June1972, http://www.un-documents.net/aconf48-14r1.pdf

indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend." and at 7 it claims that "A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest. The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.".

In the Declaration the healthy environment becomes a prerequisite for the effectiveness of the right to health and therefore the individual right to environmental protection is considered a fundamental human right, Principle 1 states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and to bear solemn responsibility to protect and improve the environment for present and future generations. In this respect, promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated. ".

Principle 21 is also of considerable importance,[58] for which the States have the right to use their own resources and at the same time the responsibility to guarantee that the activities carried out within the scope of their own control do not cause damage to the environment of other States, as it is widely accepted as a rule of customary law.[59] Principle 11 mitigates the provisions on the responsibility of a country, differentiating it on the basis of development conditions so as not to worsen the living conditions of the poorest ones.

Other principles represent lines of tendency established in the international community, such as the obligations of states to govern their resources rationally (Principles 6 and 7), of planning general growth and of each citizen compatibly with environmental protection (Principle 13) and to cooperate to prevent or reduce environmental disasters (Principle 24).

Environmental information is composed of different regulatory principles: the citizen's right of access and the obligations of publicity, transparency and dissemination of information by public administrations. The main objective is to guarantee the widest possible dissemination of environmental information in order to safeguard the environment.

The subject of environmental information is deepened in the principles 19 and 20, in particular the 19th states "Education in environmental matters, for the younger generation as well as adults, giving two aspects to the underprivileged, an enlightened opinion and responsible conduct by individuals, communities and communities in protecting and improving the environment in its full human dimension." The dissemination of information through mass media, research and scientific innovation, the transfer of scientific information and

[58] Principle 21: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereignright to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

[59] KISS A. C., SHELTON D., *Guide to International Environmental Law*, Martinus Nijhoff Publishers, Leiden, Boston, 2007; BIRNIE P. W., BOYLE A., REDGWELL C., *International Law and the Environment*, Oxford University Press, Oxford, 2009; CASSESE A., *Le sfide attuali del diritto internazionale*, il Mulino, Bologna, 2008.

the provision of environmental technologies to developing countries are the essential tools with which to involve citizens in choices and in decisions concerning environmental policies.[60]

The Declaration does not express itself clearly on the issue of access to environmental information, but one of the Recommendations for action at the international level of the Action Plan for the Human Environment adopted in the Conference is dedicated to the theme.[61]

An "Action Plan" was also decided, consisting of 109 recommendations, and on the basis of the elaborations of the Conference, the UN General Assembly adopted, on December 15, 1972, Resolution n. 2997 (XXVII), "Institutional and financial arrangements for international environmental cooperation".[62]

The Action plan for the human environment was composed by: The global environmental assessment programme – Earthwatch (Evaluation and review, Research, Monitoring, Information exchange), Environmental management activities and International measures to support the national and international actions of assessment and management (Education, training and public information, Organizational arrangements, Financial and other forms of assistance).

The Res. N. 2997 (XXVII) established the United Nations Environment Programme (UNEP), which is a subsidiary body of the UN General Assembly and is based in Nairobi (Kenya).[63] UNEP carries out both research and operational activities, it offers technical assistance to developing countries, adopts non-binding acts (recommendations and guidelines) and environmental convention schemes, coordinates work to protect the environment carried out in the context of UN and is the secretariat for various environmental treaties.

The following years at the Stockholm Conference, therefore, saw a significant increase in international environmental treaties (see Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, London; International Convention for the Prevention of Pollution from Ships - MARPOL, 1973; Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of UNESCO on 16 November 1972, United Nations Convention on the Law of the Sea - UNCLOS, 1982, Montego Bay, Jamaica).[64] The second international instrument, after the Stockholm

[60]COLACINO N., *L'informazione ambientale nel diritto internazionale*, in ALIBERTI C., COLACINO N., FALLETTA P., a cura di RECCHIA G., *Informazione ambientale e diritto di accesso*, CEDAM, Padova, 2007, p. 17.

[61]*Recommendation 97:* "1. *It is recommended* that the Secretary-General make arrangements: *(a)* To establish an information programme designed to create the awareness which individuals should have of environmental issues and to associate the public with environmental management and control. This programme will use traditional and contemporary mass media of communication, taking distinctive national conditions into account. In addition, the programme must provide means of stimulating active participation by the citizens, and of eliciting interest and contributions from non-governmental organizations for the preservation and development of the environment; *(b)* To institute the observance of a World Environment Day; *(c)* For the preparatory documents and official documents of the Conference to be translated into the widest possible range of languages and circulated as widely as possible; *(d)* To integrate relevant information on the environment in all its various aspects into the activities of the information organs of the United Nations system; *(e)* To develop technical co-operation, particularly through and between the United Nations regional economic commissions and the United Nations Economic and Social Office in Beirut. *2. It is also recommended* that the Secretary-General and the development agencies make arrangements to use and adapt certain international development programmes - provided that this can be done without delaying their execution - so as to improve the dissemination of information and to strengthen community action on environment problems, especially among the oppressed and underprivileged peoples of the earth.".

[62] UNITED NATIONS GENERAL ASSEMBLY, *Institutional and financial arrangements for international environmental cooperation*, 15 December 1972, Resolution 2997 (XXVII). https://www.un.org/documents/ga/res/27/ares27.htm

[63]UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP). http://www.unep.org/about.asp .

[64]CHASEK P. S., *Earth Negotiations: Analizing Thirty Years of Environmental Diplomacy*, UNU Press, Tokyo, 2001.

Conference, to establish a correlation between human rights and environmental protection is the World Charter for Nature, approved by the General Assembly of the United Nations on 28 October 1982.[65] It is a non-binding act, which states that respect for nature is a basic rule of environmental protection and that it identifies the individual person as the holder of specific rights (right to information, to participation and access to repair means), aimed at protecting the environment. For our purposes we must point out the following principles:

- "16. *All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation*.";
- "21. *States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall: (a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations; ...*;
- "23. *All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation*.";
- "24. *Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met*.".

The final blow to the conception of economic development through the unlimited exploitation of natural resources was given by the energy crisis of 1973. The "oil shock" was caused by the sudden increase in the price of oil and the decrease in its production following the Arab-Israeli war. People's way of thinking began to change and the concept of energy saving entered the common language. The governments of western countries responded with a new interest in atomic energy and resumed the construction of nuclear power plants.[66]

Other events that concurred to aliment the raise of the environmental question in the Western World are the following. In Italy in Seveso on 10 July 1976 in a chemical factory there was an accident that poured a cloud into the territory that contains dioxin, a very toxic substance that causes serious damage to people's health.[67]

[65] UNITED NATIONS GENERAL ASSEMBLY, *World Charter for Nature*, A/RES/37/7, 48th plenary meeting, 28 October 1982. https://www.un.org/documents/ga/res/37/a37r007.htm

[66] IPPOLITO F., SIMEN F., *La questione energetica: Dieci anni perduti 1963/1973*, Feltrinelli, Milano, 1974; ECKBO P. L., *The Future of World Oil*, Ballinger, Cambridge (MA), 1976; HNYILICZA E., PINDYCK R. S., *Pricing Policies for a Two-Part Exhaustible Resource Cartel: the Case of OPEC*, European Economic Review, Vol. 8 (August 1976), pp. 139-54; LUCIANI G., *L'OPEC nella economia internazionale*, Einaudi, Torino, 1976; MAGINI M., *L'Italia e il petrolio tra storia e cronologia*, Mondadori, Milano, 1976; HAMMES D., WILLIS D., *Black Gold: The End of Bretton Woods and the Oil-Price Shocks of the 1970s*, in The Independent Review, Vol. IX (2005); LABBATE S., *Il governo dell'energia. L'Italia dal petrolio al nucleare (1945-1975)*, Mondadori, Milano, 2010; CASTRONOVO V., *Storia economica d'Italia dall'Ottocento ai giorni nostri*, Einaudi, Torino, 2013.

[67] EUROPEAN COMMUNITIES, Council Directive of 24 June 1982 on the major-accident hazards of certain industrial activities (82/501/EEC) c.d. "direttiva Seveso", https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31982L0501&from=IT;

In the United States at Three Mile Island on March 28, 1979, an accident occurred in the nuclear power plant with the release of radiation into the environment.

The mobilization for peace and against nuclear and in defense of the environment that followed, first in Germany in 1980 and then also in Italy, led to the birth of Green political parties.[68]

In the 1980s, the concepts of sustainability, individual and social well-being, quality of life, greater dissemination of information and environmental consultations brought out the centrality of the environmental issue in civil society.[69]

The fight against climate change and the idea of sustainable development

To the World Charter for Nature followed in 1987 the report "Brundtland" (Our Common Future) compiled by the World Commission on Environment and Development (WCED), chaired by the Prime Minister of Norway Gro Harlem Brundtland.[70] The commission was entrusted by the General Assembly of the United Nations (cf. resolution 38/161 of 19 December 1983) to "Propose long-term environmental strategies for achieving sustainable development to the year 2000 and beyond".[71]

During the work of the Commission two very serious environmental disasters occurred, in 1984 the leak at the pesticide's factory at Bhopal, India, and in 1986 the nuclear accident at Chernobyl, USSR.

In the preface, President Brundtland assigns the relationship to the peoples of the world, to governments, to private companies and above all to people, whose well-being must be the goal of a sustainable development path that promotes the fundamental right of our children to a healthy environment and an improvement in living conditions. It appeals to groups of citizens, non-governmental organizations, educational institutions and the scientific community to develop a climate suited to the social changes necessary for the creation of a new development model. The "Sustainable development is a development that meets the needs of the future."

The report is divided into three parts. The first, called Common Concerns, examines the following topics: the future put in danger; the goal of sustainable development; the international economy. The second, called Common Challenges, addresses the following topics: population and human resources; food safety; species

EUROPEAN COMMUNITIES, Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances c.d. "direttiva Seveso II"; EUROPEAN UNION, Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC c.d. "direttiva Sveso III".

68 BIORCIO R., LODI G. (a cura di), *La sfida verde. Il movimento ecologista in Italia*, Liviana, Padova, 1988.

69 BRESSO M., *Pensiero economico e ambiente*, Loescher, Torino, 1982; PASSMORE J., *La nostra responsabilità per la natura*, Feltrinelli, Milano, 1986; BARTOLOMMEI S., *Etica e Ambiente*, Guerini e Associati, Milano, 1989; MARTINEZ-ALIER J., *Economia ecologica. Energia, ambiente e società*, Garzanti, Milano, 1991; BARBIERI G., CANIGIANI F., CASSI L., *Il mondo attuale e i suoi problem*, UTET, Torino, 1991; GARAGUSO G., *Da Stoccolma a Rio (ed oltre)*, in GARAGUSO G., MARCHIISO S. (a cura di), *Rio 1992: Vertice per la Terra*, Franco Angeli, Milano, 1993; LANZA A., *Lo sviluppo sostenibile*, Il Mulino, Bologna, 1997; DALY H. E., *Oltre la crescita. L'economia dello sviluppo sostenibile*, Ed. di Comunità, Torino, 2001.

70 WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Report of the World Commission on Environment and Development: Our Common Future*, doc. A/42/427, 1987 (also known as the Brundtland Report), http://www.un-documents.net/our-common-future.pdf

71 UNITED NATIONS GENERAL ASSEMBLY, *Process of preparation of the Environmental. Perspective to the Year 2000 and Beyond*, A/RES/38/161, 19 December 1983, Meeting no. 102, par. 8 a), https://www.un.org/documents/ga/res/38/a38r161.htm

and ecosystems; environmentally friendly energy; industry: producing more with less; the urban challenge. The third, called Common Endeavors, deals with the following topics: joint efforts; peace, security, development and the environment; proposals for institutional and legal changes.

The Principle 1 “Fundamental Human Right” of the Annexe 1: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law states: “All human beings have the fundamental right to an environment adequate for their health and well being. ". All the other 21 principles begin with the same expression "States (or States of origin) shall ..." and, in particular, Principle 6 "Prior Notification, Access, and Due Process" states that the "States shall inform in a timely manner all persons likely to have been significantly affected by a planned activity to grant equal access and two processes in administrative and judicial proceedings". The legal principles encompassed in the aforementioned Annexe 1 were not binding, but the references to the substantive right to a healthy environment and to the right to participation had a significant influence at world level, linked above all to the environmental risks with which man should have reckoned.

The report calls on the General Assembly to convert the document into a UN program on sustainable development and to convene an international conference on the subject.[72]

The General Assembly on December 20, 1988, with the resolution 43/196, 348/5000assigns the task to the Secretary General, assisted by the UNEP Executive Director, to acquire opinions on the scope to be given and on how to proceed with the organization of this event by submitting its analyzes, through the Economic and Social Council, to the Assembly itself in the next session.[73] On December 22, 1989 the resolution 44/228 established that the United Nations Conference on Environment and Development (UNCED) would be held in Rio de Janeiro from June 5, 1992.[74]

In 1988 it was created by the World Meteorological Organization (WMO)[75] and by UNEP the Intergovernmental panel on climate change (IPCC).[76] The aim of the IPCC is to provide governments, for the preparation of targeted environmental and climate policies, periodic studies on the scientific basis of climate change, its impacts and future risks and to indicate possible solutions for adaptation and mitigation. The reports of the IPCC represent key impulses in international climate change negotiations. The IPCC is a body of member governments of the United Nations or WMO, is based in Geneva and currently includes 195 countries.

[72] WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future*, op. cit.An Overview by the World Commission on Environment and Development. “106. To achieve the needed changes, we believe that an active follow-up of this report is imperative. It is with this in mind that we call for the UN General Assembly, upon due consideration, to transform this report into a UN Programme on Sustainable Development. Special follow-up conferences could be initiated at the regional level. Within an appropriate period after the presentation of this report to the General Assembly, an international conference could be convened to review progress made, and to promote follow up arrangements that will be needed to set benchmarks and to maintain human progress.”.

[73] UNITED NATIONS GENERAL ASSEMBLY, A/RES/43/196, 20 December 1988, https://www.un.org/documents/ga/res/43/a43r196.htm

[74] UNITED NATIONS GENERAL ASSEMBLY, A/RES/44/228, 22 December 1989, https://www.un.org/documents/ga/res/44/ares44-228.htm

[75] https://public.wmo.int/en

[76] https://www.ipcc.ch/

In the first report of 1990 in relation to the link between human activity and climate change, on page 52 reads: "These increases will enhance the greenhouse effect, resulting in an average of an additional warming of the Earth's surface. The main greenhouse gas, water vapor, will increase in response to global warming and further enhance it.".[77]

The IPCC reports have always represented significant moments, for example the first contributed to creating the United Nations Framework Convention on Climate Change (UNFCCC) and the second in 1995 to the drafting of the Kyoto protocol in 1997.[78] In 2007 the Nobel Peace Prize was jointly awarded to IPCC and Al Gore "for their efforts to build up and disseminate greater knowledge about man-made climate change, and to lay the foundations for the measures that are needed to counteract such change.".[79]

The Rio Conference or the Earth Summit constituted a historic moment in the process of advancing the sustainable development model: human activity and environmental, ecological or climate issues are closely related and solutions must be found that take into account all aspects. 172 is the number of participating Governments, 108 at level of heads of State or Government; some 2,400 representatives of non-governmental organizations (NGOs); and 17,000 people attended the parallel NGO Forum.

The conference produced some official documents, including two previously negotiated conventions, which are open for signature, the United Nations Framework Convention on Climate Change[80] (UNFCCC) and the United Nations Convention on Biological Diversity[81] and three not binding instruments: Agenda 21,[82] the Rio Declaration on Environment and Development[83] and the Statement of Forest Principles.[84]

The premises of the Rio Declaration report the main purpose of the conference, namely to establish: "a new and equitable global partnership through the creation of new levels of cooperation among states, key sectors of society and people, working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system".

The Rio Declaration is a fundamental act in the evolution of international environmental law, in particular for the fact of deepening and clarifying the ambit of environmental rights which, later, will be included in many international conventions and treaties on environmental matters. The Principle 10,[85] above all, tends to give a

77 https://www.ipcc.ch/report/climate-change-the-ipcc-1990-and-1992-assessments/
78 https://www.ipcc.ch/report/ipcc-second-assessment-full-report/
79 https://www.nobelprize.org/prizes/peace/2007/summary/
80 UNITED NATIONS, *United Nations Framework Convention on Climate Change (UNFCCC)*, 1992, entrata in vigore il 21 marzo 1994. https://unfccc.int/resource/docs/convkp/conveng.pdf
81 UNITED NATIONS, *Convention on Biological Diversity*, 1992, entrata in vigore il 29 dicembre 1993. https://www.cbd.int/doc/legal/cbd-en.pdf
82 UNITED NATIONS SUSTAINABLE DEVELOPMENT, *United Nations Conference on Environment & Development Rio de Janerio*, Brazil, 3 to 14 June 1992, AGENDA 21. https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf
83 UNITED NATIONS GENERAL ASSEMBLY, A/CONF.151/26 (Vol. I), *Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Annex I Rio Declaration on Environment and Development*, 12 August 1992. https://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm
84 UNITED NATIONS GENERAL ASSEMBLY, A/CONF.151/26 (Vol. III), *Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Annex III Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests*, 14 August 1992. https://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm
85 "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including

great weight to access to information on environmental matters, to guarantee adequate citizen participation in decision-making processes and to ensure real access to administrative and/or judicial review procedures. Should also be remembered the Principle 17 concerning the obligation of the environmental impact assessment for the realization of projects that can have considerable effects on the environment.[86]

Agenda 21 is an action plan divided into 4 sections (I. Social and economic dimensions, II. Conservation and management of resources for development, III. Strengthening the role of major groups, IV. Means of implementation) and in 40 chapters aimed at all sectors in which it was thought useful to use the sustainable and ecologically compatible development model. The text specifies the strategies and programs to mitigate the impact on the environment of human activities and that of climate change on the world population. It emphasizes the value of education and awareness of citizens in environmental matters and the importance of their participation in the decision-making process.[87] The real participation of citizens and organizations is realized with the guarantee of the right of access to environmental information held by the authorities. Principle 10 of the Rio Declaration is reaffirmed by Agenda 21. In particular, a dialogue between the various stakeholders is envisaged. Public administrations will provide the requested information and encourage companies, environmental organizations and citizens to disseminate them.[88] Furthermore, access to justice in environmental matters is promoted through the establishment of judicial and administrative procedures.

The UNFCCC is an international environmental treaty which currently has 197 countries, which are referred to as Parties to the Convention. In Article 2 the ultimate objective is described: "to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved in a sustainable manner."

Negotiations between developing and industrialized countries have had to overcome various problems caused by conflicting demands. The industrialized countries that pollute the most, therefore, have taken on a greater economic burden to reduce greenhouse gas emissions and have led the way in the start of the measures.

information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

[86] "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."

[87] cfr. 23.1. "Critical to the effective implementation of the objectives, policies and mechanisms agreed to by Governments in all programme areas of Agenda 21 will be the commitment and genuine involvement of all social groups." and 23.2. "One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work. Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures.". Infine, il capitolo 36 prevede il riorientamento dell'istruzione verso uno sviluppo sostenibileper modificare l'atteggiamento delle persone verso l'ambiente e per garantire un'efficace partecipazione pubblica al processo decisionale.

[88] Please refer to chapts. 8 Integrating environment and development in decision-making, 23 Preamble (Section III. Strengthening the role of major groups) e 40. Information for decision-making.

Some studies, published in the early nineties of the last century, linked economic growth and quality of the environment.[89] The model is based on the observation that the quality of the environment worsens in the initial phases of economic development and then increases in the subsequent periods of growth and is called Environmental Kuznets Curve or EKC due to the similarity with the ratio between inequality and per capita income analyzed by Kuznets.[90]

Since the entry into force of the Convention, the signatory parties have met annually in the "Conference of the Parties (COP)". The COP was convened for the first time in Berlin in 1995 and from that moment it met annually to verify the real compliance with the obligations taken by the signatory countries of the Convention. The COPs to be reported for our purposes were those of Kyoto, Copenhagen, Paris and Katowice. During the third COP in Kyoto (Japan) in 1997 was adopted the cd. Kyoto Protocol which came into force on February 16, 2005.[91] The Kyoto Protocol is an international agreement that binds the signatory parties, at the time 192, to reduce greenhouse gas emissions. From November 30 to December 12, 2015, COP21 was held in Paris, with the aim of reaching the signing of an agreement to regulate the post-2020 period. The long-term objective of limiting the temperature increase to 2 ° C above pre-industrial levels was confirmed and furthermore it was agreed to continue efforts to limit the temperature increase by 1.5 ° C. The Paris agreement entered into force on 4 November 2016. COP24 was held in Katowice from 2 to 14 December 2018. A Rulebook has been adopted to make the Paris agreement operational.[92]

Finally, due to its relevance, the Sustainable Development Agenda and the Sustainable Development Goals (SDGs) deserves a mention, to be achieved by 2030. On September 25, 2015, in New York, the 193 UN member countries unanimously adopted the Resolution 70/1 entitled "Transforming our world: the 2030 Agenda for Sustainable Development". The Agenda came into force on 1 January 2016 and includes 17 SDGs divided into 169 targets. The interconnected and indivisible objectives balance the three dimensions of sustainable development: economic growth, social inclusion, environmental protection.

[89] SHAFIK N. and BANDYOPADHYAY S., *Economic Growth and Environmental Quality: Time-Series and Cross-Country Evidence*, World Bank Policy Research Working Paper, No. 904, Washington, D.C., June 1992; PANAYOTOU T., *Empirical Tests and Policy Analysis of Environmental Degradation at Different Stages of Economic Development*, ILO Technology and Employment Programme Working Paper, WP238, Geneva, 1993; GROSSMAN G. and KREUGER A., *Environmental impacts of a North American free trade agreement*, The U.S.-Mexico Free Trade Agreement, The MIT Press, Cambridge, MA, 1993; SELDEN T. and SONG D., *Environmental quality and development: is there a Kuznets curve for air pollution emissions?*, Journal of Environmental Economics and Management, Vol. 27, Issue 2, September 1994, pp. 147-162.

[90] KUZNETS S. S., *Economic Growth and Income Inequality*, in "The American Economic Review", Vol. 45, No. 1 (Mar., 1955), pp. 1-28.

[91] UNITED NATIONS, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 1998, https://unfccc.int/resource/docs/convkp/kpeng.pdf

[92] UNITED NATIONS, *Katowice Climate Package*, Proposal by the President Informal compilation of L-documents, Version 15/12/2018 19:27, https://unfccc.int/sites/default/files/resource/Informal%20Compilation_proposal%20by%20the%20President_rev.pdf; SENATO DELLA REPUBBLICA CAMERA DEI DEPUTATI XVIII Legislatura, *Conferenza delle Nazioni Unite sui cambiamenti climatici COP24 di Katowice, 3-14 dicembre 2018*, Documentazione e ricerche.

International environmental law

The international environmental law is composed by, as indicated in art. 38, par. 1, of the Statute of the International Court of Justice,[93] conventions, customary laws and general principles of law.[94]

The environmental treaties constitute the main source both from a quantitative point of view that from the rights and duties that the States assumes on environmental protection and sustainable development. If we compare those conventions, we can observe that there are some common points.[95] Those conventions are the result of the pressures exercised from the world scientific community on governments to adopt urgent preventive measures to avoid the intensification of environmental damage.

Conventions, in most of the cases, limits themselves to impose cooperation obligations to the States without imposing specific codes of conduct. Other agreements contain just results obligations for the States who therefore has a wide discretionality in how reach the goal internationally agreed. Many environmental treaties create institutional structures ad hoc, established by conferences of the Parties, secretariats and commissions who are invested of functions concerning the elaboration of norms and the control of their implementation.

The perspective of a "world organization for the environmental protection" is far, so there is a fragmentation of sources in this matter. There is so a technical-functional specialization of environmental diplomacy, that in many cases gives to those institutional structures the power to adopt banding decisions for the states based on a majority vote.[96]

Those decisions are made necessary by the fact that the environmental conventions are umbrella treaties progressively integrated by protocols and other derivatives act.[97] This because the must guarantee to be changed in a short period of time due to the technical progress and the change of knowledge.

Consequently, the principle of revision is replaced by a new agreement with periodic revisions through simplified amendments. If the States disagree, the withdrawal from the protocol is the only alternative to not accept the changes. Another procedure often used consists in the tacit consent or opting-out that allows the adoption of the norms unless most of States oppose it. To present some special features are global

[93] Article 38.1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. https://www.icj-cij.org/en/statute

[94] ALAM S., HOSSAIN BHUIVAN J., CHOWDHURY T. M. R., TECHERA E. J. (edited by), *Routledge Handbook of International Environmental Law*, Routledge Taylor & Francis Group, Abingdon, 2013; KLABBERS J., *International Law*, Cambridge University Press, Cambridge, 2013; DUPUY P-M., VINUALES J. E., *International Environmental Law*, Cambridge University Press, Cambridge, 2015; JESSUP B., RUBENSTEIN K. (edited by), *Environmental Discourses in Public and International Law*, Cambridge University Press, Cambridge, 2012; POSTIGLIONE A., *Diritto internazionale dell'ambiente*, Aracne Editrice, Roma, 2013; SANDS P., PEEL J., *Principles of International Environmental Law*, Cambridge University Press, Cambridge, 2012; FITZMAURICE M., ONG D. M., MERKOURIS P. (edited by), *Research Handbook on International Environmental Law*, Edward Elgar Pub, Cheltenham, 2011.

[95] SANDS P., GALIZZI P. (eds.), *Documents in International Environmental Law*, Cambridge University Press, Cambridge, 2004.

[96] CARROLL J. E. (edited by), *International Environmental Diplomacy*, Cambridge University Press, Cambridge, 1988 and BROADHEAD L. A., *International Environmental Politics. The Limits of Green Diplomacy*, Lynne Rienner, London, 2002.

[97] HANDL G., *Environmental Security and Global Change: the Challenge to International Law*, in LANG W., NEUHOLD H., ZEMANEK K. (edited by), *Environmental Protection and International Law*, Graham & Trotman, London-Dordrecht-Boston, 1991, pp. 59-63.

environmental treaties, which tend to be universal in scope, and to which global objectives are assigned.[98] These treaties find a wide participation of States, they present a content that concerns matters of general interest for the international community and they also favor the affirmation in the customary international law of limits to the exploitation of natural resources of which the States are owners.

The global treaties refer to the environmental policy principles of sustainable development codified by the Rio Declaration of 1992:

- the principle of sustainable development. Principle 4 states: "*In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*". The environment becomes an integral part of the development process as technological innovation and any other element of progress must take into account environmental protection;[99]
- the principle of precaution.[100] Measures against pollutants must be taken before reaching a high degree of pollution and even without safe scientific evidence;
- the principle of common but differentiated responsibility. Principle 7 states that: "*... In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.*";
- the principle of evaluation of environmental impact (Principle 15);
- the principle "polluter pays".[101] Prescribes to include the environmental costs of prevention and repair of the damage in the process of production and sale of goods and services, making sustain those costs to the one responsible;
- the principle of prevention.[102] It establishes to ascertain the risks that can cause damage to the environment before starting any activity, instead of taking action after the failures have been produced.

Finally, it should be remembered the principle of due diligence, that is a behavior that is careful to prevent forms of pollution, not considering its effects in terms of responsibility.[103]

98 KISS A. C., SHELTON D., *International Environmental Law*, Trasnational Publishers, New York, 1991, pp. 144-154.

99 BOYLE A., FREESTONE D., *International Law and Sustainable Development – Past Achievements and Future Challenges*, Oxford University Press, Oxford, 1999; BOSSELMANN K., *The Principle of Sustainability. Transforming Law and Governance*, Ashgate, Farnham, 2008; GOTTLIEB R. S. (edited by), *The Ecological Community – Environmental Challenges for Philosophy. Politics and Morality*, Routledge, New York, 1997; GILLESPIE A., *International Environmental Law, Policy and Ethics*, Clarendon Press, Oxford, 1997.

100 Principle 15 In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

101 Principle 16 National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

102 Cf. Footnote 86.

103 GIUFFRIDA R., AMABILI F. (a cura di), *La tutela dell'ambiente nel diritto internazionale ed europeo*, op. cit., p. 9.

Another property of global environmental treaties, as they are based on the legal principle of common but differentiated responsibility, is that of regulating the subjective legal situations of States Parties asymmetrically. As an example: the balance of the rights and obligations of the Parties; the differentiation of the obligations of developing States over those of developed countries; the modulation of the times according to differentiated calendars; and selective incentives.

There are also Joint Implementation tools that are essential for achieving a fair distribution of the benefits deriving from the use of the resources covered by the Treaty or the graduation of the commitments of the various countries towards a common goal. These tools are recalled, to avoid inconsistencies, also for the implementation of environmental treaties in similar subjects. In fact, according to the UNEP recommendations, the treaties that show greater mutual relations can be traced back to some great clusters to better coordinate their implementation and to support the cooperation between the respective contracting States and the related bodies.[104]

Global environmental conventions are fundamental tools for achieving the goals of the UN and are aimed at protecting the collective interests of the international community. However, such special and differentiated features with respect to the system to which they belong are not recognized in international environmental law. In environmental conventions some principles are repeated so often that they can be considered proof of the existence of general rules and, if accompanied by the presence of other competing elements, allow the formation and the strength of general rules to be established.[105]

It is therefore possible to argue that international environmental law is a special sector of international law, in the same way as other more classical sectors, such as the law of the sea and the law of extra-atmospheric space.[106]

International liability for environmental damage is consequently governed by the same general rules that are adopted in the international responsibility of States for illicit acts.[107] The International Law Commission has adopted on August 3, 2001, the "Draft Articles on Responsibility of States for Internationally Wrongful Acts",[108] that indicates the most important principles that can be used in this field. It establishes that the violation of constraints set by international law implies the obligation to repair the offense in the appropriate forms, including the cessation of illegal activities and compensation for damage.[109]

In this context, must be remembered the attempts to qualify some violations of obligations regarding environmental protection as international crimes of the States. The Statute of the International Criminal

[104] MARCHISIO S., *Il diritto internazionale dell'ambiente*, in CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, G. Giappichelli editore, Torino, 2017, p. 43.

[105] CORDINI G., POSTIGLIONE A. (a cura di), *La governance globale dell'ambiente. Incontro scientifico a Roma presso la sede della Società Italiana per l'Organizzazione Internazionale (SIOI)*, Aracne Editrice, Canterano (RM), 2018.

[106] SANDS P., *International Law in the Field of Sustainable Development: Emerging Legal Principles*, in LANG W. (edited by), *Sustainable Development and Internation Law*, Graham & Trotman, London-Dordrecht-Boston, 1995, pp. 53-55.

[107] FRANCIONI F., SCOVAZZI T., *International Responsibility for Environmental Harm*, Graham & Trotman, London, 1991.

[108] UNITED NATIONS, INTERNATIONAL LAW COMMISSION, *Responsibility of States for Internationally Wrongful Acts*, 2001.

[109] WETTERSTEIN P. (edited by), *Harm to Environment: the Right to Compensation and the Assessment of Damages*, Clarendon Press, Oxford, 1997.

Court,[110] adopted in Rome in 1998, defines as an international crime of individuals some behaviors identified among the war crimes defined by the art. 8.2 (b) of the Statute, as the launch of attacks in the almost certainty that they will produce huge damage to the natural environment and disproportionate to the set of military advantages provided. The relationship with the military advantage obtained through the productive behavior of environmental damage is thus introduced.[111]

States usually establish, due to agreements, secondary rules on international responsibility that will work together with the application of the treaties by setting special liability regimes.

There are also many conventions whose purpose is to standardize the regime of civil liability for environmental damage in the internal legal systems of the member states.[112] An attempt is made to achieve uniform legal status to allow states to more effectively counteract the effects of accidents that could have consequences beyond the borders of the state in which they occur and to give operators a uniform regulatory framework.[113] Some of these conventions establish forms of cooperation between participating States in dealing with the necessary financial burdens to compensate for the damage caused by any environmental accidents. Finally, agreements are drawn up that provide for general rules on civil liability for damage resulting from unspecified activities that are harmful to the environment.

Environmental conventions adopt processes of information, monitoring and verification of the conduct of the States, also by means of periodic evaluations of the Conferences of the Parties. These proceedings are more aimed at preventing the breach of the conventional obligations than at sanctioning the violations.

Finally, it is necessary to study deeply the issue of prevention and the solution of environmental disputes.[114] The basic principle applied is that the systems for the solution of disputes come into play only when disagreements, tensions or conflicts could not be avoided at the beginning of their manifestation. Preventive diplomacy plays a fundamental role as a driving force in the formulation of hypotheses which are elaborated in proposals and which, in part, are adopted in environmental treaties.

The analysis of the environmental treaties in force clarifies that the two phases (prevention and solution) are closely correlated and that, therefore, it is possible to hypothesize a single process of management of environmental disputes. Chapter 39 "International legal instruments and mechanisms" of Agenda 21 confirms this interpretation and invites states to use methodologies to improve the techniques used, based on the experience gained by international institutions and the application of the treaties.[115] Environmental disputes

[110] INTERNATIONAL CRIMINAL COURT, *Rome Statute of the International Criminal Court*, 2011. https://www.icc-cpi.int/nr/rdonlyres/add16852-aee9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf

[111] FREELAND S., *Addressing the Intentional Destruction of the Environment during Warfare under the Rome Statue of the International Criminal Court*, Intersentia, Cambridge, 2015.

[112] BERGKAMP L., *Liability and Environment Private and Public Law. Aspects of Civil Liability for Environmental Harm in An International Context*, Cambridge University Press, Cambridge, 2001.

[113] WILDE M., *Civil Liability for Environmental Damage. A Comparative Analysis of Law and Policy in Europe and the United States*, Kluver, The Hague-London-New York, 2002; BOWMAN M., BOYLE A., *Environmental Damage in International and Comparative Law. Problems of Definition and Evaluation*, Oxford University Press, Oxford, 2002 and JONES B., PARPWORTH N., *Environmental Liabilities*, Shaw & Sons, Crayford, 2004.

[114] ROMANO C., *Peaceful Settlement of International Environmental Disputes. A Pragmatic Approach*, Kluver, The Hague-London-New York, 2000.

[115] Cf. Footnote 82.

present particular problems and special characteristics, for example on the one hand the involvement of private subjects in addition to those of the States and on the other situations in which knowledge of the facts is scarce and risk assessment is very difficult. These difficulties inherent in the environmental matter determine the principle of free choice of the parties with regard to the means of solution. The customary rules of international law that relate to the peaceful settlement of disputes, also applicable to environmental disputes, are also used. As ratified by Principle 26 of Rio Declaration, "*States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.*". The obligation to resolve environmental disputes peacefully involves two consequences. The first is that states must renounce during the dispute any action that may worsen the situation, deteriorate the environment and hinder or prevent the peaceful settlement of the dispute. The second consists of the principle of prevention of disputes, even though many States are wary of the preventive mechanisms, frequently linked to external interference in environmental issues that are internal. It can therefore be stated that international environmental disputes can be resolved by an agreement between the parties involved or by the pronouncement of an international judge to which the parties have submitted the dispute. The parties can be assisted by diplomatic tools such as mediation, good offices, inquiry, conciliation and assistance from international organizations.

The concept of environmental controversy can be analyzed in three aspects: a. when a dispute can be identified as environmental; b. when an environmental issue arises as a controversy; c. when an environmental dispute is international.

International environmental law often flexibly qualifies environmental disputes, such as any disagreement between states regarding changes to the natural environmental system caused by man.[116] For example, the word conflict is used in the Report of the Governing Council of 30 June 1991 to identify disputes.[117]

These definitions are too general, while it is of fundamental importance to be able to identify environmental controversies on the one hand and disagreements and conflicts of interest in the environmental field on the other. The presence of a dispute is the prerequisite for being able to apply the conventional rules governing the settlement procedures. Environmental disputes are international when the interested parties are the States, while those that involve subjects other than the States are not international. Most international environmental conventions provide for a single dispute resolution system for all conventional regulations. A typical regulation clause generally presents two ways of managing the dispute: a) the phase of diplomacy which allows the parties to reach an agreement and is normally mandatory; b) the intervention phase of a judge who is instead optional. In the mediation phase, the inquiry and the fact-finding can be used as part of the solution procedures and with the help of bodies set up at the request of the parties by international organizations such as UNEP. Some of these mechanisms are used not only to help states involved in ongoing disputes, but also to prevent

[116] MARCHISIO S., *Il diritto internazionale dell'ambiente*, in CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, op. cit., p. 53.

[117] UNEP, Report of the Governing Council,16th of the Governing Council of the United Nations Environment Programme (UNEP) was held at UNEP headquarters, Nairobi, 23 to 31 May 1991.
http://wedocs.unep.org/bitstream/handle/20.500.11822/17274/91_GC16_proceedings_K9101200.pdf?sequence=18&isAllowed=y

disputes from arising. Consultation, fact-finding and other similar procedures can be used as prevention tools only if a dispute has not yet been born. The second phase is the judicial regulation. In other conventions then, the clauses for the judicial solution or for arbitration do not require the parties to unilaterally initiate the procedures of the International Court of Justice or arbitration proceedings. For example, the opting-in clause, used in many environmental conventions, including the Aarhus Convention,[118] it is an attempted solution by negotiation or by any other means of composition acceptable to the parties. We must also remember the concept of opting-out (waiver or derogation), based on the obligation to use arbitration or the jurisdiction of the International Court of Justice, with the condition of being able to exercise a reserve, if the State had chosen for the exclusion of mandatory judicial regulation.[119]

Environmental disputes can be submitted to the International Court of Justice or Arbitration even with a compromise and with arbitration or judicial settlement treaties, on condition that they do not include reservations relating to environmental matters.

The jurisdiction of the International Court of Justice is decided in two ways: a) special agreement, through which the parties submit a dispute to the Court, or through jurisdictional clauses contained in conventions and treaties (opting-in clause); b) by a declaration pursuant to art. 36, par. 2, of the Statute of the Court.[120]

Unfortunately, the birth of an international environmental court still remains a medium-long term objective.

Finally, again for the purpose of resolving environmental disputes, it is necessary to point out the mixed commissions of the complaints that deal with the cross-border environmental effects that acts or omissions in a State generate or can generate in another country. It is a mechanism that is valid above all between neighboring States and usable more than anything else on a conventional bilateral basis. States and international actors therefore have various ways to resolve environmental disputes. The proliferation of diplomatic or judicial bodies, however, does not automatically imply the achievement of that degree of adequacy envisaged by principle 26 of the Rio Declaration. Fragmentation can also cause cases of different application of international standards. As far as international organizations are concerned, it is important to note that in relation to the UN, several specialized organizations have been established (cf. art. 57 Charter of the United Nations). They have been set up for specific sectors, including the environmental sector. These institutions have scientific, technical and operational skills and are related to the UN through agreements. The

[118] Aarhus Convention. Article 16 SETTLEMENT OF DISPUTES 1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute. 2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation: (a) Submission of the dispute to the International Court of Justice; (b) Arbitration in accordance with the procedure set out in annex II.

[119] MARCHISIO S., *Il diritto internazionale dell'ambiente*, in CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, op. cit., p. 55.

[120] Article 36.2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation.

UN has a power of coordination and control over them and is not hierarchically superior. The first one we mention is the Food and Agriculture Organization of the United Nations (FAO), established in 1945 and based in Rome.[121] FAO follows agriculture and food and elaborates principles related to both health and the environment. The second is the World Health Organization (WHO), established in 1946 in Geneva (ratified by Italy in 1947)[122]. Its Purpose is to guarantee health through health protection and the psychophysical well-being of people. The WHO is an international instrument that ensures the protection of health, and that is the fundamental element that our constitution considers as the central point of environmental protection.

The third is the United Nations Educational, Scientific and Cultural Organization (UNESCO), established in 1945 in London (ratified by Italy in 1946).[123] The purpose of UNESCO is that of cultural, scientific and artistic protection through the elevation to the status of "world heritage" of particular archaeological, artistic or landscape assets. UNESCO is a guarantee of conservation for the future and for humanity.

The environmental law of the European Union

The environmental law of the European Union is not only important for the role it plays, but also for the profound influence it has in the internal legal systems of the member countries. In fact, the environmental law of the countries belonging to the Union presents a remarkable uniformity. This result has been achieved thanks to the emanation of many environmental directives on the approximation of legislation, the principles that have gradually conditioned the national systems and the sentences adopted by the Court of Justice of the European Union.[124]

The rules of European law are "directly applicable" since the law of the Union is an autonomous legal order that prevails over domestic laws and derives from a limitation of the sovereign power of individual States.[125]

121 http://www.fao.org/home/en/

122 https://www.who.int/

123 https://en.unesco.org/

124 ALBERTON M., MONTINI M., *Le novità introdotte dal Trattato di Lisbona per la tutela dell'ambiente*, in Riv. Giur. Ambiente, 2008, pp. 505 ss.; COSTATO L., MANSERVISI S., *Profili di diritto ambientale nell'Unione europea*, CEDAM, Padova, *2012; DEJANT*–PONS M., PALLEMAERTS M., *Human Rights and the environment*, Council of Europe, Strasbourg, 2002; FOIS P., *Applicazione differenziata e flessibilità nel diritto dell'Unione europea*, in *Studi sull'integrazione europea*, N. 1, Anno VI, Cacucci, Bari, 2011, pp. 25 ss.; FERRARA R. (a cura di), *La tutela dell'ambiente* (vol. XIII del *Trattato di diritto privato dell'Unione europea*), G. Giappichelli editore, Torino, 2006; FONDERICO F., *Sesto Programma di azione UE per l'ambiente e "strategie tematiche"*, in Riv. giur. Ambiente, 2007, pp. 695 ss.; GAJA G., *Introduzione al diritto comunitario*, Laterza, Bari, 2007; GIUFFRIDA R. (a cura di), *Diritto europeo dell'ambiente*, G. Giappichelli editore, Torino, 2012; GIUFFRIDA R., AMABILI F. (a cura di), *La tutela dell'ambiente nel diritto internazionale ed europeo*, op. cit.; HARRIS P. G. (ed.), *Europe and Global Climate Change*, Edward Elgar Publishing, Cheltenham e Northampton, 2007; KRAMER L., *Manuale di diritto comunitario per l'ambiente*, Giuffrè, Milano, 2000; MONTINI M., *Unione europea e ambiente*, in NESPOR S., DE CESARIS A. L. (a cura di), *Codice dell'ambiente*, Giuffrè, Milano, 2009, pp. 45 ss.; PEPE V., *Lo sviluppo sostenibile tra governo dell'economia e principi costituzionali*, in FERRARA R., VIPIANA P. M. (a cura di), *"I nuovi diritti" nello stato sociale in trasformazione. I. La tutela dell'ambiente tra diritto interno e diritto comunitario*, CEDAM, Padova, 2002, pp. 267 ss.; NASCIMBENE B., GAROFALO L., *Studi su ambiente e diritto. Il diritto dell'Unione europea*, Cacucci, Bari, 2012; PILLITU P. A., *Profili costituzionali della tutela ambientale dell'ordinamento comunitario europeo*, Galeno, Perugia, 1992; PITEA C., *Protezione dell'ambiente e tutela dei diritti umani*, in FODELLA A., PINESCHI L. (a cura di), *La protezione dell'ambiente nel diritto internazionale*, G. Giappichelli editore, Torino, 2009, pp. 148 ss.; SCHÜTZE R., *European Union Law*, Cambridge University Press, Cambridge, 2015; VILLANI U., *Istituzioni di diritto dell'Unione europea*, Cacucci, Bari, 2013.

125 CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE, Sentenza 9 marzo 1978 (*Simmenthal*), causa 106777, in *Raccolta*, 1978, pp. 629 ss.

First of all we recall the 1957 Treaty of Rome which established the EEC with reference to energy, coal and steel, but does not mention the environment.[126] The birth of the community environmental policy, on the other hand, can be made to coincide with the 1972 Paris Summit and the First Environmental Action Program of 1973.[127] The reason that had exercised the greatest push towards a community environmental policy was to prevent competition in the common market from being biased by differences in national environmental protection systems. Environmental issues from that moment on are increasingly dealt with in Community acts and judgments of the Court of Justice.

Since 1973, the Commission has issued multiannual Environment Action Programmes (EAPs) that establishes the future normative proposals and the goals of the environmental policy of UE. In 2013, the Council and Parliament adopted the 7th EAP for the period up to 2020, under the title "Living well, within the limits of our planet".[128]

After 1973 some acts contributed to the definition of the community environmental policy:

1) a series of directives whose aim is to improve the functioning of the internal market, but which also encompass rules with specific obligations on environmental matters for the States;
2) Council Directive 79/409 / EEC of 2 April 1979 on the conservation of wild birds;[129]
3) Council Directive 85/337 / EEC of 27 June 1985, concerning the assessment of the environmental impact of specific projects;[130]
4) Council Directive 75/442 / EEC of 15 July 1975, concerning waste, which obliges the "*Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment*".[131]

In 1986, with the Single European Act, the community environmental policy was regulated for the first time at the level of the founding Treaties and was founded on a legal basis, which established the most important principles and objectives of the EU's environmental action.[132]

It is also established that environmental protection becomes a component of other Community policies. Before then the Community acts were based on the art. 100 (now art. 115 TFEU) and on art. 235 (now art. 352 TFEU) of the EC Treaty. The first rule was used when it was necessary to issue directives to approximate the

126 EUROPEAN ECONOMIC COMMUNITY, Treaty Establishing the European Economic Community (EEC), Rome, 25 March 1957, http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf.

127 EUROPEAN UNION, Summaries of EU Legislation, *Environment*, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:a15000&from=IT

128 EUROPEAN UNION, DECISION No 1386/2013/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D1386&from=EN

129 EUROPEAN COMMUNITIES, COUNCIL DIRECTIVE of 2 April 1979 on the conservation of wild birds (79/409/EEC). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31979L0409&from=EN

130 EUROPEAN COMMUNITIES, COUNCIL DIRECTIVE of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985L0337&from=EN

131 EUROPEAN COMMUNITIES, COUNCIL DIRECTIVE of 15 July 1975 on waste (75/442/EEC). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31975L0442&from=IT

132 EUROPEAN COMMUNITIES, Single European Act, Luxembourg, 17 February 1986, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=celex:11986u/txt:en:not.

legislative, regulatory and administrative provisions, while the second was recalled if a community action was needed to reach a Community objective (the so-called flexibility clause).

The Treaty of Maastricht of February 7, 1992, gives birth to the EU by expanding its competences and updating the environmental policy with the changes made to Title XVI of the EC Treaty: guaranteeing a high level of environmental protection; providing a principle of "precaution" distinct from that of "prevention"; recognizing the need to encourage measures aimed at solving environmental problems at the international level.[133]

The subsequent Amsterdam Treaties in 1997,[134] of Nice in 2001[135] and of Lisbon in 2007[136] have fully defined the objectives, principles and tools of the EU environmental action. The Lisbon Treaty, which entered into force on 1 December 2009, provided for the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Article 1, par, 2 of the TFEU establishes that TFEU and TEU constitute the treaties on which the EU is founded and that have the same legal value.

The principle according to which the EU strives for sustainable development is based on "a high level of protection and improvement of the quality of the environment" (Art. 3 TEU),[137] and is detailed in the Title XX Environment in articles 191, 192 and 193 of the TFEU (ex Articles 174-175-176 TEC).

However, also in the Part One of the TFEU titled Principles there are articles containing references to the environment. Article. 4.2 (e) of the TFEU provides that in matters of the environment the EU has concurrent competence with that of the acceding States. Article. 6, par. 1 of the TFEU provides that the EU has competence in the protection and improvement of human health. In the art. 9 there is another call for training and protection of human health. Finally, the art. 11 will be mentioned shortly. Article. 191, par. 1 of the TFEU identifies the objectives of the Union's environmental policy to be pursued in safeguarding, protecting and improving the quality of the environment, in protecting human health, in the prudent and rational utilization of natural resources, in the promotion on an international level of measures to address regional or global environmental problems and, in particular, to combat climate change.[138]

133 EUROPEAN UNION, Treaty of Maastricht, 7 February 1992, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=celex:11992m/txt:en:not.

134 EUROPEAN UNION, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Amsterdam, 2 October 1997, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=celex:11997d/txt:en:not.

135 EUROPEAN UNION, Treaty of Nice Amending the Treaty on European Union, the Treaties Establishinig the European Communities, and Certain Related Acts (2001/C 80/01), http://eur-lex.europa.eu/en/treaties/dat/12001C/pdf/12001C_EN.pdf.

136 EUROPEAN UNION, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Lisbon, 13 December 2007, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=celex:12007l/txt:en:not.

137 Article 3 (ex Article 2 TEU) … 3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. https://eur-lex.europa.eu/legal-content/it/TXT/?uri=CELEX%3A12012M%2FTXT

138 Article 191 (ex Article 174 TEC) 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.
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN

The principle of sustainable development that permeates the strategies of the EU is not included in the art. 191 of the TFEU and also in art. 3 of the TEU is barely mentioned.[139]

Explicitly referred to by Article 191,[140] par. 2 of the TFEU instead are the following principles:[141]

- The principle "polluters pays",[142] was inserted last in art. 191, par. 2, but it is the first that has been developed in the field of environmental law; within the EU it was already stated in the First EAP;[143]
- the principle of correcting the damage caused to the environment, as a priority at the source, has already been made explicit with the Single European Act;
- the principle of prevention,[144] it was supported already in the First EAP;
- the precautionary principle,[145] it was included in the Maastricht Treaty even before it was included in the Rio Declaration.[146]

A last principle, present in the art. 11 of the TFEU, is that of integration, on the basis of which, in the definition of other community policies, environmental protection must be considered.[147]

In Article. 191, par. 3 of the TFEU are then listed the evaluation criteria to be taken into consideration in the preparation of the EU environmental policy: scientific and technical data, environmental conditions in the various regions of the Union, advantages and burdens that can derive from the action or from the lack of action, socio-economic development of the Union as a whole and balanced development of its individual regions.[148]

The question of the EU's competences in environmental matters is an aspect of the broader problem of the division of competences between the EU and the adhering countries.

139 PILLITU P. A., *Il principio dello sviluppo sostenibile nel diritto ambientale dell'Unione europea*, in FOIS P. (a cura di), *Il principio dello sviluppo sostenibile nel diritto internazionale ed europeo dell'ambiente*, Editoriale Scientidica, Napoli, 2007, pp. 219 ss.; JUSTE RUIZ J., *El principio del desarrollo sostenibile en el derecho internacional y europeo del ambiente: algunas reflexiones conclusivas*, *ivi*, pp. 335 ss.

140 Article 191 (ex Article 174 TEC) 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.

141 CASSESE S. (a cura di), *Diritto ambientale comunitario*, Giuffrè, Milano, 1995.

142 MELI M., *Le origini del principio "chi inquina paga" e il suo accoglimento da parte della Comunità europea*, in Riv. Giur. ambiente, 1989, pp. 224 ss.

143 MARGIOTTA S., *Manuale di tutela dell'ambiente*, Il Sole 24 Ore, Milano, 2002; CALABRÒ A., *I principi che presiedono alla tutela ambientale in ambito nazionale e comunitario*, in www.diritto.it, 17 marzo 2017; CUCCI T.M., CODISPOTI S., *Il principio di "chi inquina paga" alla luce delle recenti pronunce della Corte di Giustizia dell'Unione Europea*, in www.ratioiuris.it, diritto comunitario, settembre 2016.

144 POZZO B., *La direttiva 2004/35 e il suo recepimento in Italia*, in Riv. Giur. Ambiente, 2010, pp. 1 ss.; ROSSI G. (a cura di), *Diritto dell'ambiente*, G. Giappichelli editore, Torino, 2017, pp. 201 ss.

145 SESSA E., *Profili evolutivi del principio di precauzione alla luce della prassi giudiziaria della Corte di giustizia delle Comunità europee*, in Riv. giur. ambiente, 2005, pp. 635 ss.

146 La data di firma del Trattato di Maastricht (7 febbraio 1992) è precedente la Rio Declaration (giugno 1992).

147 Article 11 (ex Article 6 TEC) Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

148 Article 191 (ex Article 174 TEC) 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.

The environmental protection procedures and measures adopted pursuant to art. 192[149] of the TFEU do not affect the possibility for Member States to maintain or provide for stricter national measures (cf. art. 193 TFEU).[150]

European legislation is more important than the national one and therefore among the sources of law it is necessary to insert the European regulations and directives. The regulations are directives applicable in all Member States. Some Directives are called self-executing in that they are directly applicable, without having to wait for the national legislator to incorporate them into their legal system. The other directives commit the member States only with regard to the objective to be achieved, leaving to the national States themselves the decision on how to achieve these results.[151]

The acts adopted in the context of European environmental policy are classified in the various spatial areas or as general and horizontal acts.

A type of measure that cannot be classified in a specific spatial context is that relating to information in the environmental field. In 1990 the two most relevant rules on the subject were adopted:

- Regulation 1210/90[152] of May 7, 1990 established the European Environment Agency (EEA),[153] with the aim of: a. to assist the Community and member countries in making decisions based on

[149] Article 192 (ex Article 175 TEC)
1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.
2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt: (a) provisions primarily of a fiscal nature; (b) measures affecting: — town and country planning, — quantitative management of water resources or affecting, directly or indirectly, the availability of those resources, — land use, with the exception of waste management; (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.
3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.
4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.
5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of: — temporary derogations, and/or — financial support from the Cohesion Fund set up pursuant to Article 177.

[150] Article 193 (ex Article 176 TEC) The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.

[151] ADAM R., TIZZANO A., *Lineamenti di diritto dell'Unione europea*, G. Giappichelli editore, Torino, 2016; CARAVITA B., CASSETTI L., MORRONE A. (a cura di), *Diritto dell'ambiente*, op. cit.; STROZZI G., MASTROIANNI R., *Diritto dell'Unione europea. Parte istituzionale*, G. Giappichelli editore, Torino, 2016; STROZZI G. (a cura di), *Diritto dell'Unione europea. Parte speciale*, G. Giappichelli editore, Torino, 2017; TESAURO G., *Diritto dell'Unione europea*, CEDAM, Padova, 2012; TESAURO G., DE PASQUALE P. (a cura di), FERRARO F. (a cura di), *Manuale di Diritto dell'Unione europea*, Editorile Scientifica, Napoli, 2018.

[152] EUROPEAN COMMUNITIES, COUNCIL REGULATION (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European environment information and observation network, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31990R1210&from=IT

[153] https://www.eea.europa.eu/; EUROPEAN ENVIRONMENT AGENCY, *Trends and projections in Europe 2018. Tracking progress towards Europe's climate and energy targets*, European Union, Luxembourg, 2018.

environmental protection, including environmental assessments in growth policies and promoting sustainability; b. to create and to coordinate the European information and analysis network on environmental matters (Eionet). The regulation entered into force at the end of 1993. The EEA currently has 33 member countries and six cooperating countries and it is headquartered is in Copenhagen;

- • Directive 90/313 of 7 June 1990, on freedom of access to information on the environment, gave all citizens the right of access to environmental information held by the public administration (cf. Chap. 3).[154]

Furthermore, it should be remembered that the EU and all its Member States are part of the Aarhus Convention. The development of EU environmental law has been strongly conditioned by the jurisprudence of the Court of Justice and the Court. The Court of Justice, whose rulings are directly applicable in the Member States, pursuant to art. 220 of the TEU guarantees the correct application of the Treaties and the related legislative acts. On 20 February 1979 the Court of Justice pronounced what may be considered the first decision on environmental protection, even in the absence of an explicit reference: the Cassis de Dijon ruling.[155]

A few years later, based on the considerations expressed by the Commission in its Communication on the consequences of the Cassis de Dijon judgment,[156] the Court, in the ruling (waste oil) of February 7, 1985,[157] and Danish bottles of September 20, 1988,[158] admits that constraints on the free circulation of goods in the community can be legitimized by the need for environmental protection. The Court in the Danish bottles judgment also states that a national provision for this purpose may be justified "*as being necessary in order to satisfy mandatory requirements recognized by Community law. Such rules must also be proportionate to the aim in view. If a Member State has a choice between various measures for achieving the same aim, it should choose the means which least restricts the free movement of goods.*".

The subject of the right to the European environment is, in the juridical debate, less present than international and national law.[159] The most plausible explanation is that the EU environmental policy has always been a tool to foster the growth of the economy and to improve the living conditions of Europeans, but not designed to give individuals an individual right.

154 EUROPEAN COMMUNITIES, COUNCIL DIRECTIVE of 7 June 1990 on the freedom of access to information on the environment (90/31 3/EEC-), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31990L0313&from=IT

155 COURT OF JUSTICE, JUDGMENT OF 20. 2. 1979 — CASE 120/78, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61978CJ0120&from=IT

156 EUROPEAN COMMUNITIES, Communication from the Commission concerning the consequences of the judgment given by the Court of Justice on 20 February 1979 in Case 120/78 ('Cassis de Dijon'). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31980Y1003(01)&from=IT

157 COURT OF JUSTICE, JUDGMENT OF *7. 2.* 1985 — CASE 240/83, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61983CJ0240&from=IT

158 COURT OF JUSTICE, COMMISSION v DENMARK JUDGMENT OF THE COURT 20 September 1988, https://eur-lex.europa.eu/resource.html?uri=cellar:672ac3d2-ebcc-4078-8282-8e14e241c073.0002.03/DOC_1&format=PDF

159 FOIS P., *Il diritto ambientale dell'Unione europea*, in CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, op. cit., p. 103.

In conclusion, it can be affirmed that environmental law is a fundamental part of the EU legal system and has a considerable contribution to the success of the principle of subsidiarity which favors the regulation of relations between the EU and the Member States and of the principle of integration that allows to overcome the rigid division between the competences of the EU and those of the member States.[160]

Comparative Environmental law

Comparative environmental law scholars have found that since the 1970s, many nations have introduced environmental provisions into their Constitutions.[161] The inclusion in the constitutional texts of the right to environmental protection directs environmental policy decisions and seeks to hinder the indiscriminate use of natural heritage. The environment seen as "common good" also leads to examine the development from the point of view of the person and the quality of life and political and social rights.

The protection of the environment takes on a global character and must involve all citizens, regardless of the country they belong to and the related constitutional requirements. In the legal systems of "civil law" environmental protection is manifested through the action of both individuals and community formations that arise between the state and the citizen. In common law systems, however, the accentuated individualism assigns to the ordinary legislation the definition of environmental policies, with respect to the enunciation in the Constitution of abstract environmental principles.[162]

It is important to note that the protection of the environment often sees in contrast, both as regards the direction to take and the rules to be used, the industrialized nations, the emerging states and the third world countries. The European Union, integrating environmental rights into the construction of the supranational legal order, has assumed the principle that development is positive only if it is sustainable from an environmental point of view. The structure that has been reached is based on territorial autonomy and seeks to promote, through local communities and associations, the participation of citizens in the management of common goods.[163] An

[160] ANTONIOLI M., *Sostenibilità dello svuluppo e governance ambientale*, G. Giappichelli editore, Torino, 2017.

[161] CORDINI G., *Il diritto ambientale nella comparazione degli ordinamenti giuridici*, in CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, op. cit., p. 109; POZZO B., *La tutela dell'ambiente nelle Costituzioni: profili di diritto comparato alla luce dei nuovi principi introdotti dalla Carta di Nizza*, in POZZO B., RENNA M. (a cura di), *L'ambiente nel nuovo Titolo V della Costituzione*, Giuffrè, Milano, 2004; AMIRANTE D. (a cura di), *Diritto ambientale e Costituzione. Esperienze europee*, Franco Angeli, Milano, 2000; AMIRANTE D., *Ambiente e principi costituzionali nel diritto comparato*, in AMIRANTE D. (a cura di), *Diritto ambientale e Costituzione. Esperienze europee*, op. cit., pp. 11 ss.; SARTORETTI C., *La tutela dell'ambiente nel ditirro comparato: modelli costituzionali a confronto*, in FERRARA R., SANDULLI M. A. (a cura di), *Trattato di diritto dell'ambiente*, Giuffrè, Milano, 2014, pp. 337 ss.; DELL'ANNO P., *Principi del diritto ambientale europeo e nazionale*, Giuffrè, Milano, 2004; GRASSI S., *Costituzioni e tutela dell'ambiente*, in SCAMUZZI S. (a cura di), *Costituzioni, razionalità e ambiente*, Bollati Boringhieri, Torino, 1994, pp. 389 ss.; DE VERGOTTINI G., *Le transizioni costituzionali*, Il Mulino, Bologna, 1998; FRACCHIA F., *Environmental Law Principles, definitions and protection models*, Editoriale Scientifica, Napoli, 2015; ROSENFELD M., SAIO' A. (edited by), The *Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, Oxford, 2012.

[162] MEINERS R. E., MORRIS A. P., *The Common Law and the Environment: Rethinking the Statutory Basis for Modern Environmental Law*, Rowman & Littlefield, Lanham, 2000; ROBINSON N., LIN HENG L., BURLESON E. (eds.), *Comparative Environmental Law and Regulations*, Thomson Reuter/West, 2012; BELL S., McGILLIVRAY D., PEDERSEN O., *Environmental Law*, Oxford University Press, Oxford, 2013; VAN CAENEGEM, R. C., *An Historical Introduction to Western Constitutional law*, Cambridge University Press, Cambridge, 2000.

[163] SETTIS S., *Azione popolare. Cittadini per il bene comune*, op. cit.

essential role is assigned to environmental information both for access to documents and because it allows citizens to make an active contribution through a dialogue with the institutions that facilitates the search for effective and shared solutions.[164]

A widely used classification criterion is to divide the Constitutions in environmental matters according to a chronological order. The first group is composed of nations with constitutional texts that have integrated environmental protection into constitutional principles, in particular Greece, Portugal and Spain. In 1975, Greece was among the first European countries to incorporate a provision on environmental protection into the Constitution.[165] The second is formed by the Constitutions revised subsequently that introduced the principles of environmental protection and sustainable development, among other countries Belgium, Finland, the Netherlands, Switzerland, Germany. In 1994, Germany revised the Basic Law and introduced an article on environmental protection.[166] The third is constituted by the Constitutions that do not have a direct reference to the environment, but provisions concerning the protection of human life, the protection of health, the landscape, the use of natural resources, a good living environment and individual well-being , such as states like France, Sweden, Japan and the United States.

In Italy the Constitution, which came into force in 1948 when environmental issues were not yet widespread, lacks direct references to the environmental principles of protection and sustainable development. For a more widespread discussion of the principles and indications present, with regard to environmental protection, in the Italian constitutional order see the following chapter 4, paragraph Environmental law in Italy. Here we will examine the concept of landscape contained in art. 9 of our Constitution and we will compare it with that of the Member States of the EU (including Switzerland).[167] The notion of landscape provided in our Constitution includes both nature and its beauties and the result of the relationship of man with nature. The action of human society shapes and models the landscape and transforms it into a cultural fact.[168]

The comparison makes it possible to outline a subdivision into three types of European Constitutions. The first group concerns three countries Denmark, Cyprus and Iceland and includes the Constitutions that do not mention the landscape and the environment. The second type consists of the legal systems of Germany,

[164] BRUTTI N., *Il diritto all'informazione ambientale. Profili comparatistici*, G. Giappichelli editore, Torino, 2005.

[165] Article 24 1975 (rev. 2008): "1. The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development. Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy. 2. The master plan of the country, and the arrangement, development, urbanisation and expansion of towns and residential areas in general, shall be under the regulatory authority and the control of the State, in the aim of serving the functionality and the development of settlements and of securing the best possible living conditions.". https://www.constituteproject.org/constitution/Greece_2008.pdf?lang=en

[166] Article 20a (Protection of the natural foundations of life and animals) 1994 (rev. 2014): "Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.". https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html

[167] FERONI G. C., *Il paesaggio nel costituzionalismo contemporaneo. Profili comparati eruropei*, in www.federalismi.it, 8/2019.

[168] FALCON G., *I principi costituzionali del paesaggio (e il riparto di competenze tra Stato e Regioni)*, in *Riv. giur. urb.*, 2009, 84 ss.; SEVERINI G., *La tutela costituzionale del paesaggio*, in BATTINI S., CASINI L., VESPERINI G., VITALE C. (a cura di), *Codice di edilizia e urbanistica*, Torino, 2013, 33.

Switzerland, Portugal and Malta that deal with both the landscape and the environment. Malta uses a concept of landscape similar to the Italian one.[169] The third category, where attention is paid to environmental protection and sustainable development, is the most numerous: Belgium, Austria, Finland, Norway, Sweden, Ireland, the Netherlands, Bulgaria, Estonia, Latvia, Romania, Poland, Hungary. The Constitutions of Norway[170] and Slovakia[171] give space to access to environmental information with the prospect of making citizens' participation in environmental protection real.[172] France, Spain and Great Britain recall the landscape as a primary source, but not in the Constitutions where they mention only the environment.

Below we will briefly analyze the cases of Germany, France and the United Kingdom.

The Basic Law of the Federal Republic of Germany states at Art. 74 [Matters under concurrent legislative powers], paragraph 1, point 29 "protection of nature and landscape management" and in art. 72 [Concurrent legislative powers], paragraph 3 “If the Federation has made use of its power to legislation, the Länder may enact laws at variance with this legislation with respect to:", point 2 "except for the general principles governing the protection of nature, the law on protection of plant and animal species or the law on protection of marine life”. The landscape theme is then analytically regulated by the law of 20 December 1976 on the protection of nature and the landscape.[173]

The French Constitution does not mention the landscape that is instead treated by some laws and by the urban planning and environmental codes.[174] The landscape and the environment are not identified as the landscape is a component of the environment subjected to a continuous process of social and cultural change that makes it a distinct entity. However, the relationship between landscape and environment is so close that environmental protection also guarantees the preservation of the landscape.[175]

The law of the United Kingdom, on the other hand, does not provide for a unified treatment of the landscape, but specific rules on individual aspects: national parks, areas relevant to nature conservation, areas of national panoramic importance, cultural heritage and trees.[176]

[169] Article 9. 1964 (rev. 2019): (1) The State shall safeguard the landscape and the historical and artistic patrimony of the Nation. http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566

[170] Article 112. Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well. In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out. The authorities of the state shall take measures for the implementation of these principles.https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf

[171] Article 45. Everyone shall have the right to full and timely information about the environmental situation and about the reasons and consequences thereof. https://www.prezident.sk/upload-files/46422.pdf

[172] FERONI G. C., *Il paesaggio nel costituzionalismo contemporaneo. Profili comparati eruropei*, op. cit., p.5.

[173] https://germanlawarchive.iuscomp.org/?p=319

[174] Legge 3 gennaio 1977, legge 9 gennaio 1985 (paesaggio litorale), legge 3 gennaio 1986 (paesaggio montano), legge 8 gennaio 1993 (Loy Paysage) e legge 2 febbraio 1995 (Loy Barnier).

[175] LAMARQUE J., *Droit de la protection de la nature et de l’environnement, Avant-propos*, Paris, Libraire générale de droit et jurisprudence, 1973, p. XI-XV.

[176] LEYLAND P., *The Constitution of the United Kingdom. A Contextual Analysis*, Hart Publishing, Oxford and Portland, Oregon, 2012.

At European level it is very difficult to make a comparison between the different countries. A useful comparison tool is the European Landscape Convention of the Council of Europe adopted on 19 July 2000.[177] Article. 1, lett. a), defines landscape as "an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors". The following letters of art. 1 defines "Landscape policy", "Landscape quality objective", "Landscape protection", "Landscape management" and "Landscape planning" in order to plan landscape protection and enhancement actions. Article. 2 offers safeguard "to the entire territory of the Parties and covers natural, rural, urban and peri-urban areas. It includes land, inland water and marine areas. It concerns landscapes that might be considered outstanding as well as every day or degraded landscapes.". A final aspect to note is that constituted by the art. 1, lett. a) and by art. 6, lett. A), "Awareness-raising. Each Party undertakes to increase awareness among the civil society, private organisations, and public authorities of the value of landscapes, their role and changes to them.", that is the point of view of the citizens and their awareness.

In conclusion, we can affirm that the Italian and German landscape models constitute two good systems of environmental protection and enhancement, even if more complicated than the environmental protection system implemented by other European countries.[178]

The constitutional comparison highlights the environmental issue as a fundamental theme. The awareness of the environmental sensitivity of the Earth and the possible consequences on man of pollution and climate change have caused, in almost all countries, the modification of the institutional structures and the adoption of a wide environmental legislation, also on the push given by the transposition of international and community laws.[179] The protection of the environment implies a widespread legal responsibility concerning the international community, the States, the territories and the individual legal entities.[180] Respect for nature therefore becomes a collective duty that comes before individual interests and must be promoted through environmental education, access to environmental information, public participation in environmental decision-making and access to justice.

177 www.convenzioneeuropeapaesaggio.beniculturali.it

178 FERONI G. C., *Il paesaggio nel costituzionalismo contemporaneo. Profili comparati eruropei*, op. cit., pp. 24-25.

179 SEIDL HOHENVELDERN I., *The role of comparative law in the international protection of environment*, in *Comparative Law Yearbook*, 1977, I, pp. 195 ss.; MEZZETTI L., *Comparazione e armonizzazione internazionale nel campo del diritto dell'ambiente*, in *Diritto e Società*, 1987, pp. 375 ss.; ANTONUCCI C., *La tutela dell'ambiente: situazioni e prospettive attuali in Italia, Francia e Germania*, in *Il Politico*, Vol. 57, No. 1 (161) (Gennaio-Marzo 1992), Rubbettino Editore, Soveria Mannelli, 1992, pp. 147 ss.

180 KISS A. C., *La notion de patrimoine commun de l'humanité*, in *Recueil de Cours de l'Academie de droit international de La Haye*, 1982, II, pp. 109 ss.; MADDALENA P., *L'evoluzione del diritto e della politica per l'ambiente nell'Unione europea. Il problema dei diritti fondamentali*, in *Diritto e gestione dell'ambiente*, 2002, 1, pp. 29 ss.

Chap. 2 – Right to access to information

Introduction

The right to access to information is, as already argued, a fundamental human right recognized in international law. In the world there are many countries that have decided to codify this right at constitutional or legislative level. After explaining how the right to access to information has developed, and why the access to information in environmental matters has a special status, I explained why the protection of the environment is strictly linked with other fundamental human rights. I have decided to explain the law in force in the United States and the convention signed by the European Union, probably the most representative examples of this kind. In the United States the law that regulates it, is the Freedom of Information Act (FOIA), a cornerstone of access to information in all sectors regulated by the public administration and consequently also in the environmental sector. The European Union, on the other hand, for what concerns the right to environmental information, has adopted an international treaty, the Aarhus Convention, drawn up under the aegis of the United Nations, aimed at guaranteeing to the public opinion and the citizens the right of transparency and of participation in the decision-making processes of local, national and cross-border government concerning the environment.[181]

Right's guarantee of access to information in environmental matter

In the previous chapters I illustrated how the environmental issue in the international field was born and how it developed over the last decades from the point of view of European law and international law. I also provided a brief summary of how environmental protection has been incorporated into the constitutions of many countries. At the same time, I also mentioned what were the main environmental protection policies in Europe that have been developed in most cases following the international conferences held by the United Nations. The Aarhus Convention has internationalized what many countries have been doing for a long time, which is to give a special status to information that contains data on environmental protection. It is important, in order to fully understand why it is essential to give a special status to this type of information, an expression of the

[181] The European Union decided to ratify the Aarhus Convention to apply the convention also to the European Institutions, as it declared a the moment of signing it: "The European Community wishes to express its great satisfaction with the present Convention as an essential step forward in further encouraging and supporting public awareness in the field of environment and better implementation of environmental legislation in the UN/ECE region, in accordance with the principle of sustainable development. Fully supporting the objectives pursued by the Convention and considering that the European Community itself is being actively involved in the protection of the environment through a comprehensive and evolving set of legislation, it was felt important not only to sign up to the Convention at Community level but also to cover its own institutions, alongside national public authorities. Within the institutional and legal context of the Community and given also the provisions of the Treaty of Amsterdam with respect to future legislation on transparency, the Community also declares that the Community institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of Community law in the field covered by the Convention. The Community will consider whether any further declarations will be necessary when ratifying the Convention for the purpose of its application to Community institutions.".
https://treaties.un.org/Pages/Declarations.aspx?index=European%20Union&chapter=27&treaty=535

need to protect the environment at the highest level,[182] have an overview of constitutional guarantees behind the right to information, including FOIA.

Since the 1990s, the world has witnessed a veritable explosion of constitutions, laws and sentences of courts of justice of various levels that protected the right to information. This right has allowed citizens to have the power to control the work of their institutional structure and, consequently, to make the systems that govern them more effective and perfect. Most democratic countries have adopted the right to access information, but there have also been countries based on hybrid and non-democratic systems.[183] The right to information, that only the citizens of certain privileged countries could previously enjoy, has expanded to become "globalized" and recognized as a human right by international law.

First it is important to understand what is meant by access to information. According to Riegner,[184] the definition consists of four elements: a) a subjective right for each individual, b) a right that does not provide for particular interests to obtain information, c) the ability to request the publication of any information held by public authorities, d) the fact that this right is limited only by certain exceptions provided for by the law and subject to independent verification. In short, a right to information that is individual, positive, unconditional and subject to the control of the judiciary. The adoption of the right to information has a very specific meaning: all the documents held by the public administration are public unless there are exceptions that exclude them and above all those who request information must not justify the reason why they need it.[185] We then moved from a "need to know" to a "right to know".[186] Everyone can request access, not just those involved in administrative procedures, journalists or members of the parliament. Moreover, in many cases, it is not only citizens or residents who can apply, but everyone, and consequently this right could potentially be considered a cosmopolitan right.[187] So far as 2017, more than 100 countries have adopted this type of measure.[188] It must be remembered, however, that having adopted this right does not always correspond to its actual practical application.[189] The reasons why we have seen a staggering increase in the number of countries that provide the right to access information since the 1990s can be attributed to three main causes: the political liberalization, the growth of state administrations and the information society.[190] The growth in global access to information coincided with the third wave of democratization, which primarily affected Latin America and

182 FEOLA M., *Ambiente e democrazia. Il ruolo dei cittadini nella governance ambientale*, op. cit.

183 PELED R. AND RABIN Y., *The Constitutional Right to Information*, Columbia Human Rights Law Review, 2011, http://www.corteidh.or.cr/tablas/r26394.pdf

184 RIEGNER M., *Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective*, 2017, https://www.nomos-elibrary.de/10.5771/0506-7286-2017-4-332/access-to-information-as-a-human-right-and-constitutional-guarantee-a-comparative-perspective-jahrgang-50-2017-heft-4

185 RILEY T., *Freedom of information acts: a comparative perspective*, Government Publications Review, Vol. 10, pp. 81-87, Pergamon Press Ltd, USA, 1983.

186 RIEGNER M., *Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective*, op.cit.

187 RIEGNER M., *Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective*, op.cit.

188 ESQUIVEL L., *One hundred ATI law in the world, now what*?, Open Government Partnership Blog, World Bank, 2014, https://www.opengovpartnership.org/stories/one-hundred-ati-laws-world-now-what

189 MENDEL T., *Designing Right to Information Laws for Effective Implementation*, World Bank, 2015, http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/8787489-1344020463266/8788935-1399321576201/Law_and_Implement_FINAL.pdf

190 RIEGNER M., *Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective*, op.cit.

secondly the countries of the Soviet bloc. Another reason to which the increase in the recognition of this right can be attributed is the exponential growth of the bureaucratic apparatus that occurred in the last decades. Finally, the last reason that will be explored later in this chapter, was the arrival of the information society which made the dissemination of information easier.

Since the 1990s, the right of access to information has increasingly been recognized as a fundamental right by the constitutional orders of many countries. Some scholars argue that the right of access to information at the national level should always be supported at the constitutional level, this for the unique role that these fundamental texts have in protecting democracy.[191] This right can be recognized both by a Constitutional Court ruling that can derive it from another right, and from the addition of a specific article.[192] At the moment there are more than 60 constitutions in the world that provide for this right.[193] Constitutional guarantees have three different effects: they allow the adoption of legislation that enables access to information by ensuring that this right is exercised effectively, limit the restrictions that this legislation can impose on individual access and allow the constitutional court to control existing laws allowing access to information in the absence of a specific legislation.[194] There are four major justifications that claim that the right of access to information should enter in the constitution. Those are:[195] political-democratic justification, instrumental justification, proprietary justification and oversight justification.

The political-democratic justification is closely connected with the proper functioning of a democratic regime. This element in fact represents an initial condition for the participation of citizens in the democratic life of a country. According to a widespread view, the right to information represents a precondition for the exercise of political rights such as freedom of expression. In fact, anyone who wants to participate actively in political debates expressing his opinion must be able to access information on the topics discussed.

The instrumental justification holds that all the fundamental conditions for the effective exercise of fundamental rights represent themselves fundamental rights. Consequently, in order for people to be able to protect themselves independently, thus avoiding being passive towards the state, it is necessary to guarantee citizens the possession of the information necessary to do so.

The justification of ownership instead maintains that all the information possessed by the state belongs to its citizens who have the right to be able to access it.

Oversight or transparency justification maintains that constitutions must include mechanisms to control the work of public administrations. By accepting transparency as a fundamental principle for citizens to control the state, it is also accepted that the right to access to information must be written in the constitution.

191 PELED R. AND RABIN Y., *The Constitutional Right to Information*, op. cit.

192 As was the case with the new democracies that have included the right to access to information in their Constitution in opposition of the veteran democracy where numerous constitutional courts have reinterpreted old guarantees as the right of expression to include the right to access information.

193 COMAROFF J., *Theory from the South*, London, 2018.

194 RIEGNER M., *Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective*, op.cit.

195 PELED R. AND RABIN Y., *The Constitutional Right to Information*, op. cit.

However, most states have not incorporated this fundamental right which in most cases is recognized only in the form of secondary legislation. The best-known example of a law of this type is certainly the FOIA, which I will discuss later, and which represents a real model in this field. The laws on access to information have instead a double function: on the one hand they allow access to the documents, while on the other they establish which are the exceptions.

The right of access to information, in addition to being recognized at national level, has had an increasingly important consideration from an international point of view. The United Nations since their foundation have been interested in asserting this right by convening a conference on freedom of information that was held in 1948 in Geneva.[196] The conference adopted numerous provisions, the most important being the draft articles on freedom of information which will then be included without substantial changes in the Universal Declaration of Human Rights in 1949. Article 19 of the Declaration states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[197]

At first the right of access to information was therefore considered a secondary right with respect to the right to freedom of expression. However, this interpretation began to change when, in the 1990s, the various organs of the United Nations began to derive this right from the right to health and the right to food.[198]

This evolution of international law has gone hand in hand with developments that have occurred at regional level. In a comparative international law perspective, the Inter-American system, since 1985 has been a pioneer in this if compared to the European one. The Inter-American Court of Human Rights has interpreted the Art. 13 of the American Convention on Human Rights in a manner that puts freedom of expression on the same level as the right to access information. In this sense, the way in which Art. 10 of the European Convention on Human Rights was interpreted by the European Court of Human Rights is less stringent. In fact, it protects freedom to receive information but not to look for it. Numerous differences remain between the regional systems that hopefully will be filled in the coming years. In this sense, it should be mentioned the recommendation of the OECD of 2017 on Open Government that recalled how the right to information is fundamental to have a functioning democracy.[199] Among the major criticisms that have been made to the right of access to information it is important to mention that of Critical legal studies.[200] This theory holds that this right is too individualistic and too indeterminate to make significant social changes for disadvantaged groups.

196 UNITED NATIONS GENERAL ASSEMBLY, Res. 59(I), *Calling of an International Conference on Freedom of Information*, 1946

197 UNITED NATIONS GENERAL ASSEMBLY, *Universal Declaration of Human Rights*, op. cit.

198 COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS, General Comment No. 14, *The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, 2000.

199 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *Recommendation of the Council on Open Government*, Public Governance Committee, 2017, https://www.oecd.org/gov/Recommendation-Open-Government-Approved-Council-141217.pdf

200 The Critical Legal Studies is a school of Critical theory that emerged in the United States as a movement in the 70s. This theory can be identified with an antagonist position towards the dominant thinking, liberal and neoliberal ideas. The goals of the movement were 3: to demonstrate the ambiguity and the possible instrumental use of apparently impartial laws, to illustrate the historical, social, economical and psychological dimension of the law, to demystify the analysis and the legal culture with the aim of enhance transparency of legal process.

The criticism that is made to the right to access to information is that the right of transparency gives no power to those who most need information, but benefits those forces that oppose change and promote a neoliberal agenda.[201]

Simultaneously with the explosion of the recognition of the right to information, has been developing the necessity to reserve a special role to environmental information. Over the years, in fact, the environmental problems caused by the damage made by man have become more and more at the center of the attention, and the environmental policies launched by the various countries, of which the most known is the aforementioned NEPA, have obtained an increasingly broader consensus. Environmental access is a unique phenomenon today.[202] This peculiar role was created above all following the 1972 Stockholm Conference, which placed the environment, health and human rights in direct connection.[203] Starting from this moment, the principles enumerated in the declaration have been elaborated in different ways under international law.[204] It was used a rights-based approach with three different nuances.[205] The first approach was to perceive environmental protection as a precondition for the application of the right to life and health. The second approach sees some human rights as essential elements to achieve environmental protection. Finally, the third approach puts the right to live in a safe and healthy environment as an independent human right.

The second approach is the one that has proved to be most effective and has been used more widely internationally. This way of dealing with the problem arises after the Stockholm Declaration, and argues that different human rights must be guaranteed to achieve real protection of the environment. In fact, numerous measures were taken to ensure that the public was well informed about environmental risks, including the risk to health posed by some specific activities. In addition to the right to information, the public is given a broad right to participate in decision-making processes and access to justice against environmental damage. The right to information, participation and access to justice in environmental matters encourages the integration of democratic values and the promotion of the law, promoting the principle of transparency in government actions.[206] Furthermore, experience shows that greater involvement in decision-making processes and implementation of decisions leads to greater legitimacy of the measures adopted. Governments that operate openly and allow public participation are more inclined to promote environmental justice, balance short-term decisions with long-term ones and implement environmental standards.[207]

[201] BIRCHALL C., *Radical Transparency?*, Cultural Studies, Critical Methodologies 14, 2014.
[202] FEOLA M., *Ambiente e democrazia. Il ruolo dei cittadini nella governance ambientale*, op. cit.
[203] See note 57, and UNITED NATIONS, *Report of the United Nations Conference on the Human Environment*, op. cit.
[204] KALKBRENNER A., *Environmental Rights In Alberta: a Right to a Healty Environment*, Environmental law Center, July 2017, http://elc.ab.ca/wp-content/uploads/2017/07/EBR-Module-4-Access-of-Environmental-Information-July-19-2017.pdf
[205] SHELTON D., *Human Rights, Health and Environmental Protection: linkages in law and practice*, WHO, 2002, https://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf
[206] KALKBRENNER A., *Environmental Rights In Alberta: a Right to a Healty Environment*, op. cit.
[207] BIRNIE P. W., BOYLE A., REDGWELL C., *International Law and the Environment*, op. cit.

This link can be seen from principle 19 of the Rio Declaration,[208] which emphasizes how information, public participation and access to justice must be guaranteed in environmental matters, as greater involvement of citizens makes it possible to face problems better. And from principle 10 which says that at the national level every individual must have the opportunity to participate in the decision-making process and appropriate access to environmental information. These principles were then adopted and fully clarified by the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

Freedom of Information Act

In the United States of America there are several laws that regulates the right to access information both at a state level and at a federal level.[209] Those laws are normally called "Sunshine Law". The first element to consider before starting to search for some information, it is to identify which governmental organ has the desired information. Every institution, in fact, has its own legislation that regulate the access to its documents. At a Federal level there are mainly 4 laws: Freedom Of Information Act, that regulates the disclosure of documents of the federal governmental administration; Access to Federal Agency Meetings that regulate the disclosure of documents produced in the meeting of the agencies at a federal level; Presidential Records Act that regulates the disclosure of presidential and congress documents; and the judicial proceedings.

The Freedom of Information Act (FOIA) was originally issued in the United States on July 4, 1966 by President Lyndon B. Johnson. It was enacted during the Cold War, going against the tendency to secrecy of the time, and it guarantees the right of any citizen to access the documents of the federal government in order to have a better understanding of how the government operates and become aware of the mechanism and the conditions behind every political manoeuvre. It comprises the total or partial access to classified documents and not.[210]

All the federal agencies have the duty to divulgate the documents requested to them by a legal person through a written request, excluding the one protected because pertaining to the 9 categories that excludes their disclosure.[211] Those categories are: Information that is classified to protect national security; Information related solely to the internal personnel rules and practices of an agency; Information that is prohibited from disclosure by another federal law; Trade secrets or commercial or financial information that is confidential or privileged; Privileged communications within or between agencies; Information that, if disclosed, would

[208] UNITED NATIONS GENERAL ASSEMBLY, A/CONF.151/26 (Vol. I), *Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Annex I Rio Declaration on Environment and Development*, op. cit.

[209] SCHUDSON M. (edited by), *The Rise of the Right to Know. Politics and the Culture of Transparency, 1945–1975*, Harvard University Press, Harvard, 2015; MARCHETTI A., *Il Freedom of Information Act statunitense: l'equilibrio 'instabile' di un modello virtuoso di pubblicità e trasparenza amministrativa*, in CALIFANO L, COLAPIETRO C. (a cura di), *Le nuove frontiere della trasparenza nella dimensione costituzionale*, Editoriale Scientifica, Napoli, 2014, p. 69.

[210] KLOSEK J., *The right to know: your guide to using and defending freedom of information law in the United States*, Praeger Publishers, Santa Barbara, Calif., 2009.

[211] SHERICK L. G, *How to use the Freedom of information act (FOIA)*, Arco, New York, 1978.

invade another individual's personal privacy; Information compiled for law enforcement purposes; Information that concerns the supervision of financial institutions; and Geological information on wells.

The request can be done by: a citizen of the United States, a citizen of another state, an organization, a company, a corporation, a local government, an association or a university.[212]

Who can't make a request are: the federal agencies, the fugitive criminals, the governments of a foreign state, the body government of an international organization and their respective representatives. The law gives the possibility to appeal at an administrative and judicial level in the case it is denied to the requester the possibility to consult the material demanded. The Freedom of Information Act has open to journalist and scholars the access of the federal archives, to many documents reserved and covered by state secret, historical or new.

The Federal Government of The United States of America answers to about 22 million requests every year, the majority forwarded by war veterans and old citizens that are searching information regarding their state of service and their indemnity.

The United States were the third countries to issue a law of this kind, after Sweden (Act on the freedom of Press 1766) and Finland (1919), but the American one is the most famous FOIA of the world, and the most used as a model and source of inspiration by the other 80 countries that have a FOIA in force today. The main promoter of the Freedom Of Information Act was the member of Congress John Moss, that with the support of the press and of the editorial lobby, since 1955 guided a Special Sub-committee on the Governmental Information, of which researches and parliamentarian hearings documented and denounced the excessive secrecy of the American government.[213] The FOIA brought an important innovation to the previous methods of obtaining government information. Before its promulgation those who wanted to get information from the government were forced to do so in total autonomy, without any support from the public authorities. The introduction of the FOIA therefore sanctioned the passage from the doctrine of the "need to know" to that of the "right to know", thus imposing on the government the burden of justifying the secrecy attributed to the administrative material.

The FOIA was drafted in 1966, only after eleven years of congressional debates regarding the need for the promulgation of the law. At the time of signing, President Lyndon Johnson emphasized the event in a highly lyrical language: "It is with a profound movement of pride that I affirm that the United States is an open society, in which the right to know people is guaranteed and protected ". The FOIA subsequently entered into force on 5 July 1967. Over the years this law has been amended several times according to the political tendencies of the various presidential administrations, even though attempts to hide errors and misdeeds have always been made by those in power regardless of their political orientation.

[212] MCDERMOTT P., *Who needs to know? The state of public access to federal government information*, Bernan Press, Lanham, Md, 2007.

[213] FOERSTELH. N., *Freedom of information and the right to know: the origins and applications of the Freedom of Information Act*, Greenwood Press, 1999.

The first impression was that the law was almost totally ineffective. Only in 1974, in the wake of the Watergate scandal and the court's decisions on the case, the public opinion and the Congress worked to reform the law.[214] The future goal was to induce state agencies to collaborate more closely with citizens. Despite the failure of negotiations between Congress and the Ford administration, Congress approved amendments to the FOIA: President Ford vetoed these amendments but Congress promptly voted to overcome the veto.

Also in 1974, the Privacy Act was approved, within a legislative framework aimed at reconciling the right to news and information with that of privacy. The Privacy Act is closely connected with FOIA and authorizes certain categories of individuals to have access to documents pertaining to their own person owned by federal agencies. In 1976 the exception 3 of the act, which takes into account the information exempts from disclosure due to what was established by another law, was modified in the context of the creation of the Government in the Sunshine Act.

In the following years the renewed pressures from the community of historians, and the new climate linked to the end of the Cold War, pushed Congress to approve a new law to facilitate access to documents, Public Law 102-138 of 28 October 1991.

President Clinton took action to ensure greater readability of government documents. In April 1995, President Clinton issued Executive Order 12958, which aimed to further incentivize the declassification of documents by various federal agencies. According to the new law, in fact, unless a document belongs to one of the nine specifically listed categories, each government entity is required to automatically declassify, by April 2000, all of its documentation, twenty-five or more years old.

Furthermore, each year each government department or agency is required to declassify a specific portion of documents that are still classified. There are also many exceptions to this opening, starting with the CIA. In fact, in 1984 the CIA obtained that its operating files were protected by the application of the law on freedom of information.[215] This has resulted and continues to entail that, also due to the vagueness of the definition of what an operational file is, a huge share of the material in the espionage agency's possession is in fact exempt from the law. FOIA was significantly modified in 1996 with the issuing of the Electronic Freedom of Information Act (E-FOIA). With this act the government agencies were obliged to adapt to the new information technologies and to make electronically available some types of documents created by the same agencies after November 1, 1996. In 2003, following the September 11th attacks, the FOIA was revised by the “Intelligence Authorization Act”. This act is intended to prevent foreign governments or international governmental organizations from requesting documents belonging to American intelligence agencies.

On December 31, 2007, George W. Bush signed the Open Government Act which modifies the Freedom of Information Act in some significant aspects. The main changes were: to provide an updated definition of media representative; to arrange for legal fees to be paid by the agencies themselves and not through judicial funds; to prevent agencies from being paid by applicants if they fail to meet FOIA deadlines; to impose on the

[214] Ibidem.

[215] MACKENZIE A., *Secrets: The CIA's War at Home*, University of California Press, 1997.

agencies the creation of a FOIA Public Liaison with the task of assisting the citizens; to establish a Government Information Office within the National Archives and Records Administration to monitor agency compliance with FOIA. Also President Obama improved the Freedom of Information Act. [216] The bill, called the FOIA Improvement Act, codified a presumption of disclosure that Obama re-instituted at the outset of his presidency, but which requesters say has done little to make recalcitrant agencies fork over information. That presumption has given requesters a stronger hand in court, although it's unclear how much stronger since similar court-authored precedents are already on the books. The bill also made it harder for government to withhold certain kinds of information that's more than 25 years old, although the impact of that provision was narrowed as the legislation pinged back and forth between the House and Senate. The FOIA is closely linked to the Privacy Act of 1974 also in the practice.[217] The main feature of both laws is that they make federal bodies the direct managers of information disclosure practices and procedures. Although neither act guarantees an absolute right to examine government documents, both establish the right to request documents and to receive a reply regarding this request; in the event of failure to issue a document, adequate justification must be provided and the possibility to appeal against the decision taken may be granted. The two acts have put an end to a way of controlling arbitrary and unverifiable government information, and have instead promoted a policy of transparency and accessibility of government material. On the contrary, those who are looking for information not only related to their person, but more far-reaching, must simply submit an instance of FOIA type. The Congress has understood these two laws as linked in the research process, and the agencies themselves often have a single office that deals with processing the requests concerning the two acts. FOIA can be applied to documents held by agencies of the Executive Branch of the Federal Government. There are documents that are already available to the public without the need to resort to FOIA.[218] Each agency is obliged to have a Government Information Locator Service (GILS), which is an automated online catalogue of information sheets freely accessible to the public. FOIA establishes that the applicant must request documents and not information. Agencies are therefore not required to answer questions or interrogations, analyze or interpret documents on behalf of the applicant, provide documents that are already available to the public through other sources, or create new documents.

The agency is also exempt from collecting information not in its possession, and from searching and analyzing data on behalf of the applicant, but one of its employees is authorized to fill in a new document when this may be more useful in order to provide a satisfactory answer to the applicant.

The request must be in writing and must be as precise as possible. In addition, each request must, as far as possible, provide a description of the documents to be searched, in order to make the research work carried out by the agency employees easier in the archives.

[216] GERSTEIN J., *Obama signs FOIA reforms bill*, Politico, Washington D.C., June 2016.

[217] U.S. DEPARTMENTOF JUSTICE, Office of Information and Privacy, *Freedom of Information Act guide*, Washington, D.C., March 2007.

[218] FROST A., SKIES L., *The United States Freedom of Information Act: lessons learned from thirty years of experience with the law, Public Citizen's Freedom of Information*, Clearinghouse, 1997.

Each agency has the duty to resolve within 20 days if it is possible to comply with a FOIA request for material and must provide adequate notice to the applicant. This deadline can be moved forward ten days in some exceptional circumstances. However, the agencies that receives the most requests have many problems in dealing with it. But, nevertheless the protest from many activists and also politician, the problem has not have been tackled seriously.[219] It would require probably to increase in the most critical agencies the number of employees that answers to the requests and to clear once for all which are the competences of every agency that in many cases tend to consults other agencies because they are not sure of who holds the responsibility.[220]

The Aarhus Convention

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters known as the Aarhus Convention of the United Nations Economic Commission for Europe (UNECE) was adopted on June 25, 1998 in the Danish city of Aarhus.[221]

The Aarhus Convention entered into force the 30 October of 2001. It is the first environmental treaty, legally binding, to give a central function and with the aim to enhance the involvement of the civil society in the decision-making when dealing with environmental issues.[222] It symbolized a deep push forward in the

[219] https://nsarchive.gwu.edu/foia-audit/foia/2019-03-08/25-year-old-foia-request-confirms-foia-delays-continue-unabated

[220] JONES N., *The Long, Ugly Journey of a FOIA Request through the Referral Black Hole*, June 2016. https://unredacted.com/2016/06/03/the-long-ugly-journey-of-a-foia-request-through-the-referral-black-hole.

[221] UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE), *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention*, United Nations, Geneva, December 2015, https://www.unece.org/environmental-policy/conventions/public-participation/publications/public-participation/2015/maastricht-recommendations-on-public-participation-in-decision-making/docs.html; UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE), *Protecting your environment: The power is in your hands - Quick guide to the Aarhus Convention*, United Nations, Geneva, April 2014, https://www.unece.org/env/pp/publications/the_power_is_in_your_hands.html; UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE), *The Aarhus Convention: An Implementation Guide (second edition)*, United Nations, Geneva, June 2014, https://www.unece.org/env/pp/implementation_guide.html; UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE), *Guide to the Aarhus Convention Compliance Committee*, Second edition, United Nations, Geneva, May 2019.

[222] LEE M., ABBOTT C., *The Usual Suspects? Public Participation Under the Aarhus Convention* in *Modern Law Review*, 1-2003, pag. 80 -108; JEFFERY M.I. QC: Environmental Governance: a Comparative Analysis of Public Participation and Access to Justice, in Journal of South Pacific Law, 9-2005; ANGELETTI A. (a cura di), *Partecipazione, accesso e giustizia nel diritto ambientale*, Edizioni Scientifiche Italiane, Napoli, 2011; MACCHIA M., *Legality: The Aarhus Convention and the Compliance Committee*, in CASSESE S., CAROTTI B., CASINI L., CAVALIERI E., MACDONALD E. (edited by), *Global administrative law: the Casebook*, 3rd Edition, Istituto di Ricerche sulla Pubblica Amministrazione, Roma, Institute for International Law and Justice, New York, 2012; JANS J.H., VEDDER H.B., *European Environmental Law. After Lisbon*, IV ed., Groningen, 2012, *spec.* p. 368 ss.; PEPE G., *Dibattito pubblico ed infrastrutture in una prospettiva comparata*, in www.federalismi.it, n. 5/2019; CERUTI M., *L'accesso alle informazioni ambientali in tre recenti pronunce dei Giudici europei in materia di prodotti fitosanitari, quote di emissioni di gas serra e valutazione di incidenza ambientale*, in Riv. giur. ambiente, Giuffrè, Milano, 2011, v. 26, n. 3–4; STANCIC L., *Aarhus Convention: a Model for Participatory Environmental Governance*, in *Ambiente,* 2004, 4, p. 41; MONTI L., *I diritti umani ambientali nella Convenzione di Aarhus,* in ROZO ACUNA E. (a cura di), *Profili di diritto ambientale da Rio a Johannesburg. Saggi di diritto internazionale, pubblico comparato, penale e amministrativo*, Torino, 2004, p. 71-97; MAGLIA S., *Corso di legislazione ambientale*, II, Ipsoa; CUTILLO FAGIOLI M., *Il diritto di accesso alle informazioni e la partecipazione del pubblico ai processi decisionali in materia ambientale nel diritto internazionale,* in *Rivista giuridica dell'ambiente,* 1996, p. 535 ss.; PRIEUR M., *Le droit à l'information en matière d'environnement dans les pays de l'Union européenne,* Limoges, 1997; MAURER LIBORI B., *Il diritto all'informazione ambientale in Europa,* in *Diritto e gestione dell'ambiente,* n. 3/2001, pp. 215-232; PRIEUR M., *La Convention d'Aarhus, instrument universel de la democratie environmentale,* in *Revue Juridique de l'environement,* 1999, 9; BRADY K., *New Convention on Access to Information and Public Participation in Environmental Matters,* in *Environmental Policy and Law*, n.2/1998, pp. 69-75; HARRISON J., *Legislazione ambientale europea e libertà d'informazione: la Convenzione di Aarhus,* in *Rivista giuridica dell'ambiente,* 2000, pp. 27-45; MARCHISIO S., *L'informazione ambientale nel diritto internazionale dello sviluppo sostenibile,* in CAMMELLI A., FAMELI E., *Informatica Diritto Ambiente, Tecnologie dell'informazione e diritto*

promotion of a fairer environmental justice and most of all, it increased the awareness of public bodies for the access to environmental information.[223] Although it is a convention that can be inserted in a regional framework, it was inspired by the EU (then Community) legislation. There are two directives, in fact, that can be considered forerunners of the convention, in particular the Directive 90/313/CEE, on freedom of access on environmental information and the Directive 85/337/CEE on the evaluation on environmental impact. However, even if it emerged with a limited scope, its influence can be regarded as widespread all over the world.

Kofi Annan, former Secretary-General of the United Nations stated at the time of the signature: "Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens' participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of "environmental democracy" so far undertaken under the auspices of the United Nations".[224] As a proof of the broad way in which the convention was designed there is the article 19.3 that allows the accession to the convention even to states that are not members of the UNECE. Another article that shows this propension to overcome the continental boundaries is the number 3, it expressly provides that the parties shall promote the principles of the convention in the international decision-making process in environmental matters and in the international organizations when dealing with environmental questions. It is not difficult, therefore, understand that the convention has been devised, from the beginning, as an instrument intended to influence and diffuse its principles at an international level.[225] The convention has been signed until now by 48 parties: 47 states and the European Union.[226]

The Aarhus convention is divided in three pillars that set the minimum standards that the participating states must reach. However, it leaves a large flexibility in the way in which the states need to enforce the provisions of the treaty. The states so are entitled to apply or introduce norms that enables a wider access to information, a wider participation in the decision-making process and a wider access to justice in environmental matters.[227] The convention is structured in 3 macro-area that are: freedom of access to information, right of the public to participate in the decision-making and it provides the judicial mechanism to protects those rights. Since the convention has a wider scope than being just a document valid between the parties that have signed it, the

dell'ambiente, Napoli, 1997, pp. 49-64; ZICCARDI CAPALDO G., *The Pillars of Global Law*, Ashgate Publishing, Aldershot, 2008; MUNARI F., SCHIANO DI PEPE L., *Diritto Internazionale dell'Ambiente e Ruolo dei 'Non-State Actors': Alcuni Recenti Sviluppi*, in *La Comunità Internazionale*, Napoli, n. 3, 2006, pp. 483 ss.

[223] CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, G. Giappichelli editore, Torino, 2017.

[224] ANNAN K., *Statement of the Secretary General* at the celebration of the entry into force of the Aarhus Convention in the Palais des Nations, October 2001, Geneva.

[225] ROSSI G. (a cura di), *Diritto dell'ambiente*, op cit.

[226] The Convention has been signed by all the member states of the European Union, the EU itself and 19 other countries from Europe and Central Asia.

[227] Art. 3, par. 5 Aarhus Convention.

point set out don't constitutes just the objectives of the treaty, but have to be considered as a fundamental right that every human has to live in a healthy environment.[228]

The first pillar concerns the access to environmental information that the public authorities must provide when are required to do so by the public. The major innovation that has been brought by the convention, in comparison with the precedent laws, is that who request the information does not necessitate to attest or corroborate a specific interest to request that information, because as it regards the environment, it ought to be at the at the service of the entire society.

The definitions of what is an environmental information is really wide and it can be divided in 3 macro-areas: the shape of the features that compose the environment; actions, procedures and factors covering, or that can affect, the economic evaluations, the expectations and the elements of the environment and that are taken in consideration for the environmental decision-making; and the effect that a specific provision may have on the human well-being, the conditions of people's life, cultural sites and the rules that allow the construction of structures. The Convention does not place limitation of any kind in the way in which the information present itself. In fact, it can be of every nature: written, visual documents, electronical or audio.[229] After the public has submitted the request, the information must be supplied in the quickest possible period of time, and at least within one month after the request have been submitted. For supplying the information, public authorities can charge a reasonable amount. Public authorities can withhold information only in certain specific situations: in the event there is a not compliant or too generic request concerning a document or when the disclosure would adversely affect the confidentiality of proceeding of public authorities, commercial confidentiality, national defence, public security and personal data. The exemptions that can be used to deny the access to information must be interpreted in strictly way. In the event that the demand for information is rejected the public authorities have to notify to the requester the refuse within a month. It is tolerated a maximum of two months in case the object of the request is exceptionally complex. The article 5 of the Convention regulates the way in which the public authorities have to collect and divulgate the information. The administrative authorities will have to provide all the environmental information needed to satisfy the obligation. Furthermore, they will have to introduce a procedure that will allow to constantly update an archive of the activities that have an impact on the environment.[230] Every subject involved is requested to apply the maximus transparency when it divulgates the information and in the way in which it let accede to his information. The choices of the governmental bodies of a state are not only legitimized by the information and participation provided, but are pushed to be more respectful of the environment. [231]

The second pillar guarantee the right that the public has in participating in the decision-making of law and decisions that have or could have an impact on the environment; elaborations of environmental plans, programs and policy; adoption of normative and regulatory acts; and authorization's procedure for the release

[228]CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, op. cit.
[229] Art. 2, par. 3 Aarhus Convention.
[230] Art. 5 Aarhus Convention.
[231] Preamble of the Aarhus Convention.

of products that contains OGM. The convention invites in this way the parties to support and facilitate the participation of the public in the policy making of norms and legislations that can have a relevant impact on the environment. The interested subjects, including NGOs,[232] can have a relevant impact on the environment thanks to the opportunity of giving their opinion, that the authorities must take into account, on legislations.

The third pillar deals with the conditions to the access to justice in environmental matters. It has to ensure that the public has the means to resort to an administrative and judicial review in the case that there has been a violation of the rights of access to information in environmental matters, and in the case that there has been a violation of the environmental norms from the authorities or private subjects providing public services. Through the access to justice citizens can protect their rights.[233] If a request of information it is ignored, wrongly denied, treated insufficiently or not treated respecting the provisions of the convention, it is possible to resort to the tribunal or any other independent organ of justice. The subject interested has the right to a quick procedure with the possibility of a re-examination of the question from an independent and impartial body. The treaty formulates a new definition of public authorities that are identified as governmental bodies at all levels. This wide definition includes bodies that under national law are accomplishing public administrative functions and bodies that are providing public services that are related to the environment.[234]

Citizen science technologies and access information and political participation

In recent years, in particular under the pressure of the Aarhus Convention, numerous instruments have been tested for direct participation by companies, citizens and associations to make decisions and the term direct or participatory democracy has entered into common language.[235] By participatory democracy we mean a relationship of society with institutions that implies an intervention of manifestations of the former in the processes of the latter.[236]

232 RUINA S., *La legittimazione attiva delle associazioni ambientaliste nel diritto comunitario*, in Giornale di diritto amministrativo, n. 8, 2008, p. 825; RUINA S., *La disciplina comunitaria dei diritti di partecipazione ai procedimenti ambientali*, Giuffrè, Milano, 2008; FEOLA M., *Ambiente e democrazia. Il ruolo dei cittadini nella governance ambientale*, op. cit.

233 CORDINI G., FOIS P., MARCHISIO S., *Diritto ambientale. Profili internazionali europei e comparati*, op. cit.

234 Aarhus Convention.

235 MANDATO M., *La partecipazione politica attraverso internet: recenti riflessioni sulla democrazia elettronica. A proposito dei volumi di* G. Gometz, *Democrazia elettronica: teorie e tecniche*, Pisa, Edizioni Ets, 2017, e G. Fioriglio, *Democrazia elettronica: presupposti e strumenti*, CEDAM, Padova, 2017, Nomos 1-2018; VACIRCA M., *Il diritto d'accesso come presupposto essenziale della libertà d'espressione*, in Giornale di diritto amministrativo, n. 6, 2017, pp. 755 ss.; COLASANTI C., *Tecnologia e partecipazione si incontrano: il caso di Roma capitale*, in Astrid Rassegna, n. 2/2019.

236 ALLEGRETTI U., *Verso una nuova forma di democrazia: la democrazia partecipativa*, in Democrazia e diritto, n. 3/2006, pp. 7-13; ID., *Basi giuridiche della democrazia partecipativa*, n. 3/2006, pp. 151-166; ALLEGRETTI, U., *L'amministrazione dall'attuazione costituzionale alla democrazia partecipativa*, Milano, Giuffré, 2009; LANCHESTER, F., *Lo Stato sovrano dopo l'affermarsi del modello democratico*, in *Federalismi.it*, n. 21/2012, p. 2; ZAMPETTI, P. L., *Partecipazione e democrazia. La nuova vera via*, Soveria Mannelli, Rubbettino, 2002; PELLIZZONI, L., *Cosa significa partecipare*, in *Rassegna italiana di sociologia*, n. 3/2005, pp. 484 ss.; ARENA G., *Valori e condizioni della democrazia partecipativa*, in ALLEGRETTI, U. (a cura di), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze, University press, 2010, p. 86; ANTONELLI, V., *Cittadini si diventa: la formazione alla democrazia partecipativa*, in DE MARTIN, G.C., BOLOGNINO, D., (a cura di), *Democrazia partecipativa e nuove prospettive della cittadinanza*, Padova, Cedam, 2010, pp. 94 ss.; LAZZARINI, A., *Cittadinanze in movimento. La costruzione della cittadinanza nell'epoca globale*, in *Ricerche di storia politica*, n. 1/2017, pp. 57-58; MORO, G., *Cittadinanza attiva e qualità della democrazia*, Roma, Carocci, 2013; ALLEGRETTI, U., *Il cammino incidentato di un principio costituzionale:*

A distinction must then be made between the concept of participatory democracy and that of deliberative democracy, since, although they are sometimes used as synonyms, they have a different meaning and origin. The term "participatory democracy" comes from Latin America and identifies direct relations between institutions and citizens.[237] The "deliberative democracy" originates, instead, in the Anglo-Germanic culture and rises on philosophical bases. It is based on the hypothesis that democracy does not consist of counting votes between different positions: decisions are taken democratically if they arise from free discussion between the bearers of opposing interests. Deliberative democracy is therefore a typology of participatory democracy that is more "democratic", as it does not allow institutions to be pressed by the movements of citizens and demands debate and confrontation between all interests in the field.[238]

Participation for citizens basically serves to acquire skills and knowledge, to understand the interests put into play on the most varied themes and, above all, to become aware of being able to be influential. For the decision maker it is a tool for acquiring information, news, points of view and for the development of consensus.

The concept of participatory democracy is also present at European level in the art. 11 of the TEU (cf. Chap. 3 EU Primary Law) and in art. 24 of the TFEU which states that "The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come. Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227. Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.".[239]

Participation is generally very useful for administrative activities, while in environmental policies it is certainly necessary, otherwise they can result inefficient and ineffective. Environmental protection tools can only be implemented satisfactorily with the cooperation and consent of the users. Interaction with recipients is essential to create the conditions for social acceptance of decisions. 389/5000

The complexity of environmental issues can make the active role of citizens difficult and encourage an intermediary participation by environmental associations. The citizen's environmental participation must therefore be linked to information: through the development of environmental knowledge, participation and responsibility on the part of citizens are increased.

quaranta anni di pratiche partecipative in Italia, in *Rivista Aic*, n. 1/2011, p 3; ALLEGRETTI, U., *La democrazia partecipativa in Italia e in Europa*, in *Rivista Aic*, n. 1/2011, p. 2; SEN, A., *La democrazia degli altri*, Milano, Mondadori, 2005.

[237] ALLEGRETTI G., *Bilancio partecipativo e gestione urbana: l'esperienza brasiliana di Porto Alegre*, in CARLI M. (a cura di), *Il ruolo delle Assemblee elettive*, Giappichelli Editore, Torino, 2001, vol. I, pp. 551- 579.

[238] BIFULCO R., *Democrazia deliberativa e principio di realtà*, in www.federalismi.it, numero speciale n. 1/2017; SUNSTEIN C. R., *The World According to Star Wars*, Dey Street Books, London, UK, 2016.

[239] MORELLI M., *La democrazia partecipativa nella governance dell'Unione europea*, Milano, Giuffrè, 2011; SICLARI D., *La democrazia partecipativa nell'ordinamento comunitario: sviluppi attuali e prospettive*, in www.amministrazioneincammino.luiss.it, pp. 2 ss.; RODEAN N., *Iniziativa partecipativa in Europa: un passo verso la democrazia costituzionale*, in *Politica del diritto*, n. 3/2014, pp. 473 ss.

Unfortunately, there is still a profound difference between legislation, both community and national, to protect environmental information and to implement the guarantees provided by the legislator. New technologies could reduce this gap and make environmental information easily accessible to all citizens to enable them to participate fully through virtuous behavior and informed awareness.[240]

In 2017, with the European Parliament resolution of 16 March 2017 on e-democracy in the European Union: potential and challenges (2016/2008 (INI)) and with the Tallinn Declaration on eGovernment at the ministerial meeting during the Estonian Presidency of the Council of the EU on 6 October 2017, the European Union has strengthened the will to follow the path of the digital revolution to change the relationship with civil society, that is "trade unions and employers' organisations ('social partners'); nongovernmental organisations; professional associations; charities; grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities.".[241]

The terrain of environmental policies presents civil society with the possibility of political participation and co-responsibility of citizens with the Public Administration who can bring out a real participation, a shared civic spirit and a renewed civil culture.

Recent e-democracy techniques: a. they allow a reinforcement of the traditional instruments of direct democracy through digital interaction that favors the promotion of referendums, petitions and bills of popular initiative; b. encourage new configurations of interactive participation between a digitalised PA and citizens, for example the submission of requests and instances by citizens and their intervention in the administrative procedure. Participation thus contributes to consolidating the control function of users of public services.[242]

[240] EKINS P., GUPTA J., BOILEAU P. (edited by), *Global Environment Outlook – GEO-6: Healthy Planet, Healthy People*, UN Environment, Cambridge University Press, Nairobi, 2019, https://wedocs.unep.org/bitstream/handle/20.500.11822/27539/GEO6_2019.pdf?sequence=1&isAllowed=y

[241] PREVIATO A., *Dalla Relazione sull'E-Democracy alla Dichiarazione di Tallinn sull'E-Government: l'auspicio ad una rivoluzione digitale europea come risposta al deficit democratico*, 20 novembre 2018, http://www.forumcostituzionale.it/wordpress/?p=11696; EUROPEAN COMMUNITIES, Commission European Governance — A white paper COM(2001) 428 final (2001/C 287/01), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0428&from=IT; EUROPEAN PARLIAMENT resolution of 16 March 2017 on e-democracy in the European Union: potential and challenges (2016/2008(INI)), http://www.europarl.europa.eu/doceo/document/TA-8-2017-0095_EN.pdf; https://ec.europa.eu/digital-single-market/en/news/ministerial-declaration-egovernment-tallinn-declaration

[242] GOMETZ G., *Democrazia elettronica: teorie e tecniche*, Edizioni Ets, Pisa, 2017; HOFFE, O., *La democrazia nell'era della globalizzazione*, Bologna, Il Mulino, 2007; ROSANVALLON, P., *La contro-democrazia. La democrazia nell'era della diffidenza*, in *Ricerche di storia politica*, n. 3/2006; ID., *La politica nell'era della sfiducia*, Enna, Città aperta edizioni, 2009, trad. it. a cura di Alessandro Bresolin; LEVY, P., *Verso la cyberdemocrazia*, in TURSI, A., DE KERCKHOVE, D., (a cura di), *Dopo la democrazia? Il potere e la sfera pubblica nell'epoca delle reti*, Milano, Apogeo, 2006, pp. 3 ss.; DE KERCKHOVE, D., *Dalla democrazia alla cyberdemocrazia*, *ivi*, p. 63; COSTANZO, P., *La democrazia elettronica (note minime sulla cd. e-democracy)*, in *Il diritto dell'informazione e dell'informatica*, n. 3/2003, pp. 465 ss.; DI GIOVINE, A., *Democrazia elettronica: alcune riflessioni*, in *Dir. e soc.*, 1995, p. 403; STORNI, V., *Internet, partecipazione e associazionismo*, in MARCELLI, F., MARSOCCI, P., PIETRANGELO, M., (a cura di), *La rete internet come spazio di partecipazione politica. Una prospettiva giuridica*, Napoli, Esi, 2015, p. 176; TURSI, A., *Proliferazione della discussione, necessità della decisione*, in TURSI, A., DE KERCKHOVE, D., (a cura di), *Op. cit.*, p. 143; RODOTA, S., *Il mondo nella rete. Quali i diritti, quali i vincoli*, Roma-Bari, Laterza, 2014; MUSELLA, F., *Legge, diritti e tecnologie. Approcci a confronto*, in *Politica del diritto*, n. 3/2010, pp. 441 ss.; COSTANZO, P., *Il fattore tecnologico e le sue conseguenze*, in *Rassegna parlamentare*, n. 4/2012, p. 818; TOCCI, G., *Governance urbana e democrazia elettronica*, Soveria Mannelli, Rubbettino, 2006; LEVY, P., *Cyberdemocrazia*, Milano, Mimesis, 2008; CORCHIA, L., *La democrazia nell'era di internet*, Firenze, Le lettere editrice, 2011; RODOTÀ, S., *Tecnopolitica*, Roma-Bari, Laterza, 2004; PROSPERO, M., *La solitudine del cittadino virtuale*, in TURSI, A., DE KERCKHOVE, D., (a cura di), *Op. ult. cit.*, pp. 180; CECCARINI, L., *Cittadini e politica online: fra vecchie e nuove forme di partecipazione*, in MOSCA, L., VACCARI, C., (a cura di), *Nuovi media, nuova politica?*, *Op. cit.*, pp. 91 ss.; ID., *La cittadinanza online*, Bologna, Il Mulino, 2015, pp. 174 ss.; VALASTRO, A., *Internet e strumenti partecipativi nel rapporto fra privati e amministrazioni*, in NISTICÒ, M., PASSAGLIA, P., (a cura di), *Internet e Costituzion. Atti del Convegno*,

Electronic democracy presents various risks and criticalities, such as the uncertainty of information devices security, privacy, control of the network exercised by the predominant groups and the manipulation of what is published on the web, but constitutes an additional participation platform that increases the possibilities for the citizens to make their voices heard.[243] However, to be digital citizens and to move at ease in cyberspace, high computer literacy and concrete expertise in the use of technology are needed; therefore it is necessary to eliminate the so called digital divide, that are the different conditions with which the network is accessed.[244]

Another important tool to note is the e-government, a digitalised management system of the PA used to enhance the provision of public services to users. We speak of the e-government since the Ministerial Declaration on eGovernment approved in Malmö on 18 November 2009 and most recently in the EU eGovernment Action Plan 2016-2020. Accelerating the digital transformation of government.[245] In the Introduction to the Action Plan it is written: "eGovernment supports administrative processes, improves the quality of the services and increases internal public sector efficiency. Digital public services reduce administrative burden on businesses and citizens by making their interactions with public administrations faster and efficient, more convenient and transparent, and less costly. In addition, using digital technologies as an integrated part of governments' modernisation strategies can unlock further economic and social benefits for society as a whole. The digital transformation of government is a key element to the success of the Single Market.".

The principles that must be respected in implementing the plan are: "Digital by Default: public administrations should deliver services digitally … as the preferred option …; Once only principle: public administrations should ensure that citizens and businesses supply the same information only once to a public administration…; Inclusiveness and accessibility: public administrations should design digital public services that are inclusive by default and cater for different needs such as those of the elderly and people with disabilities; Openness & transparency: public administrations should share information and data between themselves and enable citizens and businesses to access control and correct their own data; enable users to monitor administrative processes that involve them; engage with and open up to stakeholders … in the design and delivery of services; Cross-border by default: public administrations should make relevant digital public services available across borders and prevent further fragmentation to arise, thereby facilitating mobility within the Single Market; Interoperability by default: public services should be designed to work seamlessly across the Single Market

Pisa, 21 e 22 novembre 2013, Torino, Giappichelli, 2014, pp. 246 ss.; SADUN BORDONI, G., *Il sovrano nella rete. La democrazia nella società informazionale*, in *Riv. int. fil. dir.*, n. 2/2004, pp. 234 ss.; BOLOGNINI, M., *Democrazia elettronica: metodo Delphi e politiche pubbliche*, Roma, Carocci, 2001.

[243] FIORIGLIO G., *Democrazia elettronica: presupposti e strumenti*, CEDAM, Padova, 2017.

[244] MARCHETTI R., MULAS R., *Cyber security. Hacker, terroristi, spie e le nuove minacce del web*, Luiss University Press, Roma, 2017; ZICCARDI G., *Tecnologie per il potere. Come usare i social network in politica*, Raffaello Cortina Editore, Milano, 2019; AA. VV., *La rete a stelle e strisce*, LIMES 10/2018, L'espresso (Gruppo Editoriale), Roma, 2018.

[245] Ministerial Declaration on eGovernment approved unanimously in Malmö, Sweden, on 18 November 2009; EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Eu eGovernment Action Plan 2016-2020 Accelerating the digital transformation of government, COM(2016) 179 final, https://ec.europa.eu/digital-single-market/en/news/communication-eu-egovernment-action-plan-2016-2020-accelerating-digital-transformation

and across organisational silos, relying on the free movement of data and digital services in the European Union; Trustworthiness & Security: All initiatives should go beyond the mere compliance with the legal framework on personal data protection and privacy, and IT security, by integrating those elements in the design phase...".

The e-democracy and e-government systems make it possible to connect the European institutions and the citizens of the Member States, to establish a true dialogue and to involve civil society in administrative and political choices. Active participation by the citizens of the Member States through the new technological tools could strengthen the legitimacy of the European governance system, in particular the environment.

The role of citizens in environmental governance is favored by new forms of regulation that integrate the PA and civil society and reconcile the public interest with the private one in the name of safeguarding the environment.[246] Environmental democracy therefore means informing citizens, making them participate, examining their requests and encouraging them to improve their knowledge in the fields of environment and innovation.[247] Citizen participation is a good indicator of a state's democracy: if the administrative action is guaranteed, the outcome of the procedure will almost certainly reflect their will.[248]

The coordination of environmental policies would therefore pass from a hierarchical model to an interaction between people based on the concept of shared responsibility, guaranteeing a real collaboration between private individuals and public administrations at all levels, from the conception of policies to their implementation. Environmental protection tools will have to allow the Public Administration and the *stakeholders* a wide discretion to achieve the established goals. Environmental governance must therefore seek to achieve two objectives, allow for coordinated management of public policies and related implementation tools and support, through consultation, a bottom-up decision-making process in which both public and private subjects participate. This new vision of governance is based on usable and available environmental information that encourages participatory behavior and the sharing of public decisions and leads to greater control of administrative activity. The environment is an area in which the specialty of the law allows for the realization of participatory democracy experiences, in which citizens and public administrations collaborate through procedures based on strong organizational innovation and are both legitimized.

Finally it remains to examine the scenario constituted by the use of the most innovative ICTs in the public administration, that is to say whether the use, in the public sector, of artificial intelligence (AI), of Big Data, of Blockchain and Distributed Ledger Technology and of the Internet of Things (IoT) can reduce barriers to access to services offered by the PA and contribute to sustainable development and the well-being of

[246] FEOLA M., *Ambiente e democrazia. Il ruolo dei cittadini nella governance ambientale*, op. cit.

[247] MANFREDI G., NESPOR S., *Ambiente e democrazia: un dibattito*, in *Riv. Giur. Ambiente*, Giuffrè, Milano, 2010, p, 293 ss.; PITEA C., *Diritto internazionale e democrazia ambientale*, Edizioni Scientifiche Italiane, Napoli, 2013; SICLARI D., *La democrazia ambientale nel quadro dei diritti partecipativi e dell'accesso all'informazione ambientale*, in FERRARA R., SANDULLI M. A. (diretto da), *Trattato di diritto dell'ambiente*, vol. II, Giuffrè, Milano, 2014, p. 471; UNGARO D., *Democrazia ecologica. L'ambiente e la crisi delle istituzioni liberali*, Laterza, Bari, 2006.

[248] PELLINGRA CONTINO M., *Partecipazione ai processi decisionali ed accesso alla giustizia in materia ambientale: riflessioni a partire dalla recente giurisprudenza della Corte di Giustizia*, DPCE on line, 2017/1.

citizens.[249] AI systems use the internet, techniques and algorithms, almost unlimited ability to process and analyze colossal amounts of data to process information and make decisions.[250] For Galetta and Corvalan, the AI will favor the change from a digitizing bureaucracy to a bureaucracy that will promote and facilitate human interactions and activities.[251] For Kissinger, the AI will produce extraordinary benefits in many fields, including those of the supply of clean energy and environmental problems, even if it invites us to reflect on the power of machines.[252] Distributed Ledger Technologies will determine the increase in e-government services, shorter administrative times and burdens, greater transparency and easier access to information for citizens.[253]

Rapid technological change can be a response to the growing perception of a democratic deficit, strengthening communication between institutions and citizens and ensuring their involvement.[254] On 6 June 2018, the European Commission presented the proposal for a regulation establishing the Digital Europe program for the period 2021-2027. The new program is aimed at increasing and maximizing the benefits of digital transformation for all European citizens, businesses and PAs.[255]

[249] UNITED NATIONS, Resolution adopted by the General Assembly on 20 December 2017[on the report of the Second Committee (A/72/422/Add.2)], http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/228; ICOM ISTITUTO PER LA COMPETITIVITA', *RAPPORTO OSSERVATORIO INNOV-E 2019. Il rebus della transizione. L'innovazione energetica, chiave dello sviluppo*, giugno 2019, https://www.i-com.it/2019/06/25/il-rebus-della-transizione-l-innovazione-energetica-chiave-dello-sviluppo/; EIT CLIMATE-KIC, *Distributed Ledger Technology for Climate Action Assessment*, November 2018, https://www.climate-kic.org/wp-content/uploads/2018/11/DLT-for-Climate-Action-Assessment-Nov-2018.pdf; ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *Financing Climate Futures: Rethinking Infrastructure*. *Blockchain Technologies as a Digital Enabler for Sustainable Infrastructure. Case study*, OECD Environment policy paper no. 16, 2019; WORLD ECONOMIC FORUM, *Building Block(chain)s for a Better Planet*, Cologny/Geneva, September 2018; https://www.climatechaincoalition.io/

[250] KAPLAN J., *Intelligenza artificiale. Guida al futuro prossimo*, Luiss University Press, Roma, 2017; SERVOZ M., *AI. The future of work? Work of the future! On how artificial intelligence, robotics and automation are transforming jobs and the economy in Europe*, European Commission, 3 May 2019, https://ec.europa.eu/digital-single-market/en/news/future-work-work-future; EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. Coordinated Plan on Artificial Intelligence, COM(2018) 795 final, Brussels, 7.12.2018, https://eur-lex.europa.eu/resource.html?uri=cellar:22ee84bb-fa04-11e8-a96d-01aa75ed71a1.0002.02/DOC_1&format=PDF

[251] GALETTA D. U., CORVALAN J. G., *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Potenzialità, rischi e sfide della rivoluzione tecnologica in atto*, in www.federalismi.it, 3/2019.

[252] KISSINGER H. A., *How the Enlightenment Ends. Philosophically, intellectually—in every way—human society is unprepared for the rise of artificial intelligence*, The Atlantic., June 2018, https://www.theatlantic.com/magazine/archive/2018/06/henry-kissinger-ai-could-mean-the-end-of-human-history/559124/.

[253] Southern European Countries Ministerial Declaration on Distributed Ledger Technologies, Brussels, 4 December 2018.

[254] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *The European Union: A People-Centred Agenda - An International Perspective*, May 2019.

[255] EUROPEAN COMMISSION, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Digital Europe programme for the period 2021-2027, COM(2018) 434 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A434%3AFIN

Chap. 3 – European regulation on the right of access to information on environmental matters

EU Primary Law

The right of access to information in the European Union was established for the first time in the Declaration on the right of access to information attached to the Treaty of Maastricht: "The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than in 1993 a report on measures designed to improve public access to the information available to the institutions.".[256] During the implementation of the declaration on the right of access to information annexed to the final act of the Treaty of Maastricht, the Council and the Commission have adopted a Code of conduct concerning public access to Council and Commission documents.[257]

The Treaty of Amsterdam has later introduced Art. 255 (191a) "1. Any citizen of the Union, and any natural or legal person residing or having their registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3. 2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 189b within two years of the entry into force of the Treaty of Amsterdam. 3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.".[258]

The right of access to information is further strengthened by the Lisbon Treaty with art. 15 of the TFEU which replaces the art. 255 TEC.[259] Furthermore, Article 6 of the TEU, as amended by the Lisbon Treaty, establishes:

[256] EUROPEAN UNION, Treaty of Maastricht, 7 February 1992, 17. Declaration on the right of access to information http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=celex:11992m/txt:en:not.

[257] EUROPEAN COMMUNITIES, Council Code of conduct concerning public access to Council and Commission documents (93/730/EC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993X0730&from=IT; ODDENINO A., *Osservazioni in tema di effettività dell'accesso ai documenti delle istituzioni comunitarie, in Diritto pubblico comparato ed europeo*, 2000, pp. 1653 ss.

[258] Divenuto art. 15 TFEU; MIGLIAZZA M., *Brevi riflessioni sugli sviluppi della trasparenza nell'Unione Europea*, in *Diritto pubblico comparato ed europeo*, 2003, pp. 1355 ss.

[259] *Article 15*(ex Article 255 TEC) 1. In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible. 2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act. 3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure. Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph. The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks. The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

the recognition by the Union of the rights, freedoms and principles enshrined in the Charter, which acquires the same legal value as the Treaties; EU adherence to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**.** Particularly, Art. 42 of the ECHR states: "Right of access to documents" of the Charter of fundamental rights of the European Union establishes that "*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.*". [260]

Other relevant provisions can be found in art. 9 and 11 of TEU: "Article 9. In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. …". and "Article 11. 1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. 2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. 3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent. …".[261]

Since the 1970s the EU has adopted numerous provisions for guaranteeing the right of access to information to protect the environment in order to allow a control of the policies and actions taken in the environmental field and the subjective protection of the individual. Decisions need to be remembered: Council Decision of 18 March 1975 adopting an initial three-year Community plan of action in the field of scientific and technical information and documentation (75/200/EEC);[262] Council Decision of 24 June 1975 establishing a common procedure for the exchange of information between the surveillance and monitoring networks based on data relating to atmospheric pollution caused by certain compounds and suspended particulates (75/441/EEC);[263] Council Decision of 8 December 1975 establishing a common procedure for the setting up and constant updating of an inventory of sources of information on the environment in the Community (76/161/EEC);[264] Council Decision of 27 June 1985 on the adoption of the Commission work programme concerning an

[260] EUROPEAN UNION, Charter of fundamental rights of the European Union (2012/C 326/02); CHALMERS D., DAVIES G., MONTI G. (edited by), *European Union Law. Text and Materials*, Cambridge University Press, Cambridge, 2014, pp. 412-422; SALVADORI M., *Il diritto di accesso all'informazione nell'ordinamento dell'Unione Europea*, in «www.evpsi.org»; SAVINO M., *La nuova disciplina della trasparenza amministrativa. Decreto legislativo 14 marzo 2013, n. 33*, in Giornale di diritto amministrativo, n. 8–9, 2013, pp. 795-805.

[261] MENDES J., *Transparency and Participation in EU Rulemaking*, 13 July 2018, LUISS Summer School "PARLIAMENTARY DEMOCRACY IN EUROPE" Seventh Edition 9-10 JULY 2018.

[262] EUROPEAN COMMUNITIES, Council Decision of 18 March 1975 adopting an initial three-year Community plan of action in the field of scientific and technical information and documentation (75/200/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31975D0200&from=FR

[263] EUROPEAN COMMUNITIES, Council Decision of 24 June 1975 establishing a common procedure for the exchange of information between the surveillance and monitoring networks based on data relating to atmospheric pollution caused by certain compounds and suspended particulates (75/441/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31975D0441&from=IT

[264] EUROPEAN COMMUNITIES, Council Decision of 8 December 1975 establishing a common procedure for the setting up and constant updating of an inventory of sources of information on the environment in the Community (76/161/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31976D0161&from=EN

experimental project for gathering, coordinating and ensuring the consistency of information on the state of the environment and natural resources in the Community (85/338/EEC).[265]

The most important directives are: Council Directive of 24 June 1982 on the major-accident hazards of certain industrial activities (82/501/EEC), that in Art. 8.1 provides that "Member States shall ensure that persons liable to be affected by a major accident originating in a notified industrial activity within the meaning of Article 5 are informed in an appropriate manner of the safety measures and of the correct behaviour to adopt in the event of an accident.";[266] Council Directive of 28 June 1984 on the combating of air pollution from industrial plants (84/360/EEC), that in Art. 9.1 states that "Member States shall take the necessary measures to ensure that applications for authorization and the decisions of the competent authorities are made available to the public concerned in accordance with procedures provided for in the national law.";[267] Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), which recognizes the involvement of citizens in the procedures for approving projects with impacts on the environment.[268]

In 1990, as anticipated in chapter 1, The environmental law of the European Union, the first EU legislation on environmental information was adopted: Directive 90/313 on freedom of access to information on the environment on 7 June 1990.

The Council Directive 90/313/EEC of 7 June 1990

The Council Directive 90/313/EEC of 7 June 1990 has been the first directive of the European Union (then community) regarding the Freedom of Information in Environmental matters.[269] It was focused on the information on the environment held by the public authorities and how and under which circumstances these information could be diffused. It was promulgated to enhance the awareness and the involvement of the citizens in the environmental sphere. It provides a set of rights and it sets the conditions and the basic terms

[265] EUROPEAN COMMUNITIES, Council Decision of 27 June 1985 on the adoption of the Commission work programme concerning an experimental project for gathering, coordinating and ensuring the consistency of information on the state of the environment and natural resources in the Community (85/338/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985D0338&from=IT

[266] EUROPEAN COMMUNITIES, Council Directive of 24 June 1982 on the major-accident hazards of certain industrial activities (82/501/EEC).

[267] EUROPEAN COMMUNITIES, Council directive of 28 June 1984 on the combating of air pollution from industrial plants (84/360/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31984L0360&from=IT

[268] EUROPEAN COMMUNITIES, Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985L0337&from=IT; CIAMMOLA M., *Il diritto di accesso alle informazioni ambientali tra disciplina sovranazionale e disciplina nazionale*, pp. 195-263 in ROTA R. (a cura di), *Lezioni di diritto dell'ambiente*, Aracne Editrice, Canterano (RM), 2018.

[269] EUROPEAN COMMUNITIES, Council Directive of 7 June 1990 on the freedom of access to information on the environment (90/313/EEC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31990L0313&from=IT; ANTONUCCI M., *Il diritto di accesso alle informazioni in materia ambientale nell'Unione europea (nota a Corte giust. Comunità europee, 26 giugno 203, n. 233/00, Commissione Ce c. Gov. Francia),* in *Cons. Stato,* 2003, II, p. 1092; BORGONOVO RE D., *Il diritto all'informazione in materia ambientale in Francia, negli Stati Uniti, in Italia,* in ARENA G. (a cura di) *L'accesso ai documenti amministrativi,* Bologna, 1991, p. 265; FONDERICO F., *La Giurisprudenza della Corte di Giustizia in materia di ambiente,* in CASSESE S. (a cura di), *Diritto ambientale comunitario,* Milano, 1995.

that regulate it. Being a Council Directive it couldn't be directly applicable, so it had to be transformed into the national legal system of the member states. Every kind of information is meant for information in environmental matters, including documents, videos and sounds. All the branches of the public administration from the national government to the regional and local are considered a public authority from the directive. There are some exceptions to the disclosure of information: public security, the preservation of commercial and industrial secretes, and all the material that if released can damage the environment. The directive does not provide any precise practical way for providing the information to the citizens, and it was a duty of the states to develop a way to release it.

The directive is composed only by ten articles. Art. 1 states: "The object of this Directive is to ensure freedom of access to, and dissemination of, information on the environment held by public authorities and to set out the basic terms and conditions on which such information should be made available.".[270] Art. 2 sets the meaning of "information relating to the environment" and of "'public authorities", in particular any available information, concept subsequently extended by the Court of Justice to include preparatory administrative activities and administrative actions aimed at safeguarding the environment.[271] The 47 point of the Judgment of the Court (Sixth Chamber) 26 June 2003 - Case C-233/00 Commission v France states: "It follows that Directive 90/313 applies to any measure, of whatever kind, which is likely to affect or protect the state of one of the sectors of the environment covered by that directive, so that, in contrast to what the French Government puts forward as its principal argument, 'information relating to the environment' within the meaning of that directive must be understood to include documents which are not related to carrying out a public service.". Art. 3.1 provides that "Save as provided in this Article, Member States shall ensure that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest.".

The Regulation (EC) No 1049/2001 of the European Parliament and of the Council of May 30, 2001

The Regulation (CE) n. 1049/2001 of the European Parliament and the Council, of May 30, 2001, concerns the public access to the documents of the European Parliament, the Council and the Commission.[272] This

[270] DE ABREU FERREIRA S., "*Passive Access to Environmental Information in the EU – An Analysis of Recent Developments*", in *EEELR*, 2008.; CHALMERS D., DAVIES G., MONTI G. (edited by), *European Union Law. Text and Materials*, Cambridge University Press, Cambridge, 2014, pp. 412-422.

[271] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Sixth Chamber) of 26 June 2003 — European Communities v French Republic (C-233/00), http://curia.europa.eu/juris/showPdf.jsf?text=&docid=48452&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=9036658.

[272] EUROPEAN COMMUNITIES, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN; BALDUCCI ROMANO F., *Diritto di accesso ai documenti delle Istituzioni europee ed atti processuali: la Corte di giustizia alla ricerca di un equilibrio tra i principi di trasparenza e buon andamento della giustizia*, in www.federalismi.it, Focus Human Rights n. 3/2017; DONATI F., *L'accesso ai documenti nel diritto dell'Unione Europea*, 2010, www.astrid-online.it; BARTOLUCCI L., DEL VECCHIO I., FRADELLA F., LORENZINI L., PANCI F., *L'Unione Europea, in «Osservatorio sulle fonti»*, 2, 2014, pp. 344-420; VOSA G., *La codecisione nel diritto parlamentare*

regulation it is not specifically on the environment, but it deals with the transparency concept in general, stated in Art.1 of TEU. This policy of transparency is used to reinforce the Article 6 of the Treaty of the European Union and the Charter of fundamental rights of the European Union that describe the principles of democracy and respect of human's fundamental rights. The Art. 15(3) of the TFEU (ex Art. 255 of TEC), cited before, states that any legal person that resided or has its offices in the territory of a Member State, can request to access to the information held by the European institutions.[273] Regulation 1049/2001/EC, apply and codify in concrete this general provision. It wants in fact make possible to let adopt the political decisions in the most transparent and closer way to the interests of the citizens. The aim of the regulation is to guarantee an effective participation of the citizen to the decision-making process, enhancing in this way the legitimation and the responsibility of the European institutions. The right of access to documents is held by the European Union citizens and any natural or legal person residing or having its registered office in a Member State. Furthermore, ownership of the right is not subject to proof of an interest, since access to the administration's documents is not intended to protect one's own legal position, but meets the general principle of transparency, as a means of democratic control on the work of the administration.

The purposes of the Regulation are stated in Art. 1 and are: " (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Institutions documents provided for in Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents, (b) to establish rules ensuring the easiest possible exercise of this right, and (c) to promote good administrative practice on access to documents".[274] The notion of information used by the Regulation is broad, it includes every document and content, regardless from its format that can be a paper or electronic text, a sound, a visual or an audiovisual recording, that concerns aspects related to politics, initiatives and decisions of the European Institutions.[275] Furthermore, the access must be guaranteed not only to the documents it has produced, but to all the documents in its possession, meaning also the ones that it has received, with the exception that who transmitted the information has explicitly requested requirements of confidentiality.[276] In the case that the documents have been produced by a Member State, the confidentiality will be particularly protected. In fact, in this case, the Institution that have the document will ask to the Member State the consent to disclose it.

europeo, Amministrazione in Cammino, Roma, 2009; MENDES J., *Executive rule-making: procedures in between constitutional principles and institutional entrenchment*, in HARLOW C., LEINO P., DELLA CANANEA G. (edited by), Research handbook on EU administrative law, Edward Elgar Publishing, Cheltenham, UK, Northampton, MA, USA, 2017.

[273] TOMKINS A., *Transparency and the Emergence of a European Administrative law*, *Yearbook of European Law*, Volume 19, Issue 1, 1999, Pages 217–256, https://doi.org/10.1093/yel/19.1.217

[274] GALETTA D. U., *Trasparenza e governance amministrativa nel diritto europeo*, in *Rivista Italiana di diritto pubblico comunitario*, 2006, pp. 265 ss.; D'ORIANO F., *Il diritto di accesso ai documenti comunitari*, *Diritto pubblico comparato ed europeo*, 2003, pp. 1990 ss.

[275] CARLONI E., *Nuove prospettive della Trasparenza amministrativa: dall'accesso ai documenti alla disponibilità delle informazioni*, in *Diritto pubblico*, 2005, pp. 573 ss.

[276] The Code of Conduct, in fact, provided for two types of exceptions: the first, aimed at protecting the public interest, privacy and commercial interests, were mandatory, since the institution, invoking them, was entitled to deny access to the documents without having to make any assessment of the interest in disclosure; the latter, aimed at protecting the institution's interest in the secrecy of its resolutions, were instead optional, since their application was subject to the balancing of the interests at stake, verifiable in the jurisdictional context.

These provisions represent an innovation compared to the rules of the author, elaborated in force of the Code of conduct of 1993, related to the public access to documents, according to which the institutions must consent the access only to documents produced by them. The requests must be written and enough precise to allow to the institutions to identify the documents that contain the information. In the case the application it is not clear, the institutions cannot say that a document doesn't exist, but they have to ask to the applicant to clarify its request.[277] At the same time, the institution may confer with the applicant to find a solution, instead of reply with a negative answer, if the applicant has requested a large number of documents.

The access to documents can be denied for several reasons: to protect the public interest in security, defense and military matters, in international relations, in the financial, monetary or economic policy of the Community or of a Member State on the one hand and, on the other, the protection of privacy and integrity of the individual, in accordance with EU legislation on the protection of personal data, as well as to protect the commercial interests of a natural or legal person, including intellectual property, jurisdictional procedures and legal advice, the objectives of inspection activities, of investigation and audit. Those exceptions, as ruled by the Court, should be interpreted in a strict way.[278]

The existence of a public interest that prevails to the diffusion must be verified in relation to the internal acts, namely the documents elaborated or received from an institution during the decision-making process, that are different from the final decision. The internal acts can be subtracted to access until the decisional process it is not concluded, while the acts that contains reflections for internal use, can be not published if their disclosure would prejudice seriously the decisional process of the institution. In a similar way the documents that are considered "sensitive" are processed. As to say all the documents that comes from qualified subjects: institutions, Member States, international organizations and other states.[279] Those documents are protected by the exceptions.

The regulations provide for the guarantee to an inclusive access to the files when the institutions are acting in a legislative way, even if according to delegated competences, in order to maintain the proficiency of the decision-making process. Therefore, all the European Union's document should be directly accessible to the citizens. In fact, all the European institutions are required to have an electronic register and to update it continuously. Every year the institutions receive approximately 6000 requests, mostly from people strongly engaged with the Brussels policy-making.[280]

[277] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 26 January 2010 — Internationaler Hilfsfonds eV v European Commission (C-362/08 P), http://curia.europa.eu/juris/document/document_print.jsf?docid=72505&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9612052.

[278] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (First Chamber) of 21 July 2011— Kingdom of Sweden v European Commission and MyTravel Group plc (C-506/08P), http://curia.europa.eu/juris/document/document_print.jsf?docid=107935&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9612444.

[279] BARGIOTTI L., *Unione Europea e segreto di stato: un quadro normativo ancora in piena evoluzione*, 2010, in http://slsg.wordpress.com/2010/07/30/unione-europea-e-segreto-di-stato-un-quadro-normativo-ancora-in-pienaevoluzione.

[280] EUROPEAN COMMISSION, *Report from the Commission on the application in 2012 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents*, COM(2013) 515, https://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-515-EN-F1-1.Pdf

The Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003

The following Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003,[281] on public access to environmental information repeals Directive 90/313 starting from February 14, 2005 and adapts the Community legislation to the commitments arising from the participation to the Aarhus Convention.[282]

Directive 2003/4 originates from the belief that facilitating public access to environmental information and its dissemination, contribute to protect the environment and that Directive 90/313 has set a course for changing the method on which the PA treats transparency, that must be improved. The new directive, therefore, represents, on the one hand, the consequence of the transposition of international conventions and agreements, on the other, the start of a process to more concretely implement the right to transparency also through new legal instruments and to allow citizens to have timely and understandable information on the conditions of the environment. The directive in question is based on the three pillars of the Aarhus Convention (see chap. 2 paragraph Aarhus Convention) that constitute the three principles from which to begin to develop a system of environmental democracy, in which the role of the associations and the participation of the citizens must become an indispensable factor for a valid environmental *governance*.

The purpose of Directive 2003/4 is to extend access to environmental information with respect to that established with Directive 90/313. The Directive intends: 1) ensure that public authorities make available to the public and disseminate environmental information to the maximum extent possible, in particular by using information and communication technologies; 2) clarify the definition of environmental information "so as to encompass information in any form on the state of the environment, on factors, measures or activities affecting or likely to affect the environment or designed to protect it, on cost-benefit and economic analyses used within the framework of such measures or activities and also information on the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are, or may be, affected by any of those matters"; 3) extend the definition of public authority; 4) make the disclosure of environmental information a *general principle*. "The right to information means that

[281] EUROPEAN UNION, Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0004&from=EN; PELOSI E., *Rafforzamento dell'accesso all'informazione ambientale alla luce della direttiva 2003/4/CE,* in *Riv. giur. ambiente*, 2004; CARINGELLA F., *Manuale di diritto amministrativo*, ed. Giuffrè - Percorsi, 2008; ALIBERTI C., *Diritto di accesso e divulgazione dell'informazione ambientale nell'ordinamento comunitario, in* ALIBERTI C., COLACINO N., FALLETTA P., a cura di RECCHIA G., *Informazione ambientale e diritto di accesso*, CEDAM, Padova, 2007; DELFINO E., *Per un diritto procedimentale dell'ambiente, in Scritti in onore di Alberto Predieri*, I, Milano, 1996; FROSINI T. E., *Sul "nuovo" diritto all'informazione ambientale,* in *Giur. cost.*, 1992, III pp. 4465 ss.; TABACCHINI M., *Diritto per la natura*, Torino, Giappichelli, 1996, pp. 346-347; GRASSI S., *Considerazioni introduttive su libertà di informazione e tutela dell'ambiente,* in AA.VV., *Nuove dimensioni nei diritti di libertà*, scritti in onore di Paolo Barile, Padova, CEDAM, 1990, p. 307.

[282] Convention attached to the EUROPEAN UNION, Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (2005/370/EC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005D0370&from=GA

the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. The reasons for a refusal should be provided to the applicant within the time limit laid down in this Directive.".

The thirteen articles of Directive 2003/4 regulate the right of access to environmental information by imposing certain positive obligations on the public administration. The right to environmental information can be exercised by any person, without the applicant having to declare his interest (Art. 3.1). In the new directive consequently, we speak of *declaration* of interest, and not of *demonstration* of interest, as in Directive 90/313, taking a significant step forward. In Art. 3.2 it is envisaged that the environmental information will be made available to the applicant within established terms.

The request for environmental information can be rejected in the cases listed in art. 4 Exceptions, the reasons for refusal are interpreted restrictively taking into account in the specific case the public interest protected by the disclosure. In any specific case the public interest protected by disclosure is weighted with the interest protected by the refusal. A request cannot be rejected if it concerns information on emissions into the environment. The reference (art. 4.2, penultimate period) to the need to examine the interest protected by the refusal always weighing it with the public interest inherent in the disclosure of information represents a novelty of special importance in that it introduces a general criterion for interpreting and deciding on uncertain cases. The refusal of access is notified to the applicant in writing or electronically, if it is a written request or if the applicant so wishes, and must inform the applicant of the decision review procedure (Article 4.5). Access and examination of the information are free, public authorities may apply a fee for the provision of environmental information, but must not exceed a reasonable amount and the tariff must be public (art. 5).

Also with regard to the aspect of the protection of the art. 6 of Directive 2003/4 makes great progress, the applicant, when he considers that his request for information has been ignored or unfoundedly rejected, has not received an adequate response or has not been treated in accordance with the provisions of the Directive, can initiate a procedure by which the acts or omissions of the interested PA are re-examined by the same or by another PA or by administrative means by an independent and impartial body established by law. In both cases the procedures are quick and free or not expensive. The applicant may also appeal, to request a review of the acts or omissions of the PA, before a jurisdictional body or another independent and impartial body established by law whose decisions may become final. The final decisions adopted are binding for the PA that holds the information. At least in cases where access to information is refused pursuant to art. 6, the reasons for refusal are specified in writing.

Directive 2003/4 reserves the art. 7 to the dissemination of environmental information to the public by establishing that it be structured for the purposes of an active and systematic dissemination work and the art. 8 to the quality of environmental information so that all information collected by the PA must be updated,

accurate and comparable. Directive 2003/4 implements the first pillar of the Aarhus Convention, while the subsequent Directive 2003/35 / EC concretizes the second pillar.

The Directive 2003/35/CE of the European Parliament and the Council, of May 26, 2003 was created with the intention of modifying the directives of the Council 85/337/CEE and 96/61/CE concerning the participation of the public to the decision-making and the access to justice to make everything conform to the Aarhus Convention.[283] At the time of the emanation of this Directive the European Union still hadn't entered in the convention, but the institution felt necessary to update the legislation with it. The directive regulates the participation of the public when policies and programs are created in the environmental field. The European legislation encloses dispositions under which the public authorities can adopt decisions that can have a significative impact on the environment. This directive was emanated to try to limit and control in a proper way any damage to the environment. In fact, it is thought that if there is an effective participation of the public, and in this way citizens can express their opinions and concerns, every important decision will be taken in a more transparent and responsible way. Furthermore, in this way the awareness of the public will increase together with the support to the policies.

Article 2.1 of the Directive regulates public participation in the plans and programs specifically indicated in the Att. I (relating to waste, batteries and accumulators containing dangerous substances, protection of water from pollution caused by nitrates from agricultural sources, hazardous waste, packaging and packaging waste, in terms of quality assessment and management of the air in the environment), providing that the Member States guarantee timely and effective opportunities for the participation of the "public", meaning for "public" one or more natural or legal persons and, in accordance with national legislation or practice, associations, organizations or groups of such people. Article 2.2 provides that Member States shall ensure that: a) the public is informed, by means of public notices or in another appropriate form, which means of electronic communication, if available, of any proposal relating to such plans or programs or to their modification or review, and information on such proposals is made available to the public, including, inter alia, information on the right to participate in the decision-making process and on the competent authority to which observations or questions may be submitted; b) the public can express comments and opinions when all options are open before decisions are made on plans and programs; c) in taking such decisions, due account is taken of the results of public participation; d) after an examination of the comments and opinions of the public, the competent authority makes reasonable efforts to inform the public about the decisions taken. Article 2.3 provides that Member States define the public eligible for participation, including interested non-governmental

[283] EUROPEAN UNION, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, https://eur-lex.europa.eu/resource.html?uri=cellar:4a80a6c9-cdb3-4e27-a721-d5df1a0535bc.0004.02/DOC_1&format=PDF; RECCHIA D., *Accesso alla giustizia in materia ambientale: progressi verso l'attuazione della Convenzione di Aarhus*, in Riv. giur. ambiente, 2004, p. 787; SCORAZZI T., *La partecipazione del pubblico alle decisioni sui progetti che incidono sull'ambiente*, in Riv. giur. ambiente, 1989, p. 485.

organizations that meet the requirements imposed by national legislation, such as those that promote environmental protection.

Finally, we must remember the approval of the amendment to the Aarhus Convention concerning public participation in decision-making on genetically modified organisms with the Council Decision 2006/957/EC.[284]

The Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006

The Regulation (CE) N. 1367/2006 of the European Parliament and the Council of September 6, 2006 concerns the application to the European institution and organs of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (the so-called "Aarhus Regulation").[285] The Aarhus Convention in fact had been signed by the European Union (then community) in February 17, 2005. Even if some aspects of the convention with the previous legislation had been adopted by the European institutions, in particular with the Directive 2003/35/EC. After the signature every aspect of the convention had to be transformed into European Legislation, because even if the objectives had been reached, the Convention was still not directly applicable to the Community organs. In this way, the definition of «public authority» was transferred to the European institutions.

Art. 1 of the Aarhus Regulation states: "1. The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, hereinafter referred to as 'the Aarhus Convention', by laying down rules to apply the provisions of the Convention to Community institutions and bodies, in particular by: (a) guaranteeing the right of public access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms and conditions of, and practical arrangements for, the exercise of that right; (b) ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. To that end, the use, in particular, of computer

[284] EUROPEAN UNION, Council Decision of 18 December 2006 on the conclusion, on behalf of the European Community, of an amendment to the Convention on access to information, public participation in decision-making and access to justice in environmental matters (2006/957/EC), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006D0957&from=EN

[285] EUROPEAN UNION, Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1367&from=EN; RODENHOFF V., *The Aarhus Convention and its implications for the Institutions of the European Community*, in *Review of European Community and International Environmental Law*, 2002, pp. 343 ss.; KREMLIS G., *The Aarhus Convention and its implementation in the European community*, *Seventh international conference on Environmental compliance and Enforcement*, Conference Proceedings, 2005, Vol. 1, pp.141 ss.; LIGUGNANA G., *Poteri giustiziali dell'amministrazione europea e decisioni in materia ambientale*, in www.federalismi.it, n. 5/2017.

telecommunication and/or electronic technology, where available, shall be promoted; (c) providing for public participation concerning plans and programmes relating to the environment; (d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.".

All institutions, agencies or bodies created by the European treaties, except when acting according to their legislative capacity or under a judicial proceeding are affected by the Aarhus regulation. For reasons of consistency with regulation no. 1049/2001 concerning public access to European Parliament, Council and Commission documents, the Arhus regulation is exceptionally applicable to the institution even when acting in a legislative manner, and its rules, including the exclusion clauses, are extended to information of all types, at least when they concern environmental information. The notion of public authorities is broadly defined so as to meet the requirements of the convention, and the public can submit comments regarding the preparation, modification or review of plans and policies within 8 weeks. Very interesting is the issue of NGOs that can appeal to the European Court of Justice to participate in an internal administrative act or alleged omissions, provided that have existed for at least two years.

There are many similarities between the Transparency Regulation 1049/2001 and the Aarhus Regulation 1367/2006 of the European Union. Regulation 1049/2001 contains the obligations regarding the conservation of public documents held by the European institutions. This regulation is very similar to the Aarhus regulation, which was explained before, and which was adopted to apply the Aarhus agreement to the European institutions. However, the two laws have two different public interests, as can be seen from case T-264/04, *WWF-EPO v. Council of the European Union*.[286] An NGO had denounced the European Council because it had refused to provide information on a meeting which had discussed what the EU's position would be before the World Trade Organization (WTO). The Court, while confirming the refusal to publish the documents, remarked that the refusal to public access to information must be an exception and not the rule and that consequently the provisions that allow an appeal to be refused must be applied. In fact, the risk of prejudice the public interest must be serious and not hypothetical. However, the Court held that in a case such as this, which belonged to the category of exclusion concerning documents relating to agreements with other international organizations, it was right to refuse to publish the documents. This with the Aarhus Regulation would not have happened, since when it comes to documents that concern the environment, the principle of transparency and environmental protection is stronger than that relating to the protection of other interests.

Access to justice in EU environmental law

On 28 April 2017, the European Commission adopted a Notice on access to justice in environmental matters to explain in detail what the European Court of Justice has had to say about how national judges should handle

[286] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court of First Instance (Fourth Chamber) of 25 April 2007 — WWF European Policy Programme v Council of the European Union (C-T-264/04), http://curia.europa.eu/juris/document/document_print.jsf?docid=61308&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9894093.

legal challenges brought by members of the public against decisions, acts or omissions of public authorities of the Member States that affect the environment.[287]

In particular, in points 3 to 10 of the Introduction of the Communication 2017/C 275/01, are explained the motivations underlying the Communication. The Commission states, in paragraph 3, that EU law recognizes that, in the area of the environment, access to justice must reflect the public interests involved. It points out, in points 4 and 5, that the Aarhus Convention establishes that, in certain cases, natural or legal persons (such as NGOs) may appeal to a court or other impartial body in order to allow the review of acts or omissions of public or private bodies and that ensuring that individuals and NGOs have access to justice under the Aarhus Convention not only respects an international commitment but is also an important means of improving the implementation by Member States of European environmental law without the Commission having to intervene. In point 6, the Commission, cites the Aarhus regulation which applies the Aarhus Convention to EU institutions and bodies and points out that, with regard to Member States, some EU secondary legislation contains explicit provisions on access to justice mirroring those of the convention. In point 7 it is mentioned that outside the scope of application of secondary Union harmonization law, the legislative provisions in force in the Member States on access to justice in environmental matters vary considerably.

Furthermore, the Commission recalls that the Court of Justice of the European Union has issued important judgments that clarify the requirements of the Union on access to justice in environmental matters, both in the context of the secondary harmonization law that outside it. It stresses also that the result is a conspicuous and precious jurisprudential corpus that covers all aspects of the subject.

The Commission identifies, in point 8, various problems concerning access to justice in environmental matters:

1. individuals and NGOs are affected by the presence of obstacles that prevent access to national jurisdictional bodies;
2. public administrations and national courts are burdened with disputes related to issues concerning the access to justice;
3. companies are affected by delays in the administrative decision-making process deriving from the continuation of the dispute due to the lack of clarity of the rules concerning access to justice. For SMEs, which cannot afford unnecessarily long authorization procedures and uncertainties about the risks and scope of any litigation, it is particularly important that there are clear terms and a clear legal framework. Businesses can also be affected when the ineffectiveness of access

[287] EUROPEAN UNION, *Notices from European Union Institutions, bodies, offices and agencies. Commission Notice on access to justice in environmental matters (2017/C 275/01)*, Official Journal of the European Union, 18 August 2017; EUROPEAN COMMISSION, C*itizen's guide to access to justice in environmental matters*, European Union, Luxembourg, 2018; CLIENTEARTH AND JUSTICE & ENVIRONMENT with the support of the EUROPEAN COMMISSION LIFE PROGRAMME, *Access to Justice in European Union Law. A Legal guide on Access to Justice in environmental matters, 2019;* DE DOMINICIS N., *Un'occasione per riprendere il dibattito sull'accesso alla giustizia ambientale nel diritto dell'Unione Europea*, in «www.apertacontrada.it», 2, 2011; DE DOMINICIS N., *L'accesso alla giustizia in materia ambientale. Profili di diritto europeo*, CEDAM, Padova, 2016; TANZI A., FASOLI E., IAPICHINO L. (a cura di), *La Convenzione di Aarhus e l'accesso alla giustizia in materia ambientale*, CEDAM, Padova, 2011; CERUTI M., *L'accesso alla giustizia amministrativa in materia ambientale in una recente sentenza della Corte di giustizia e la lunga strada per il recepimento della convenzione di Aarhus da parte dell'Italia*, in Riv. giur. ambiente, 2010, pp. 113 ss.

to justice contributes to the failure to obtain the clean environment from which many of them depend or lack of investment by the government in favor of the green economy.

The Commission, after examining various options, concluded that the most appropriate and effective instrument to tackle the problem was an interpretative communication on access to justice in environmental matters which, bringing together all the substantial jurisprudence of the Court and drawing cautious conclusions from it, provides clarity and a reference source for national administrations (which must guarantee the correct application of EU environmental law), national courts (which guarantee compliance with EU law and are competent to refer questions to the Court on validity and interpretation of Union law), the public (in particular natural persons and environmental NGOs, which exercise a role of supporting the public interest) and economic operators (who have a common interest in the foreseeable application of law). The legislative option of a special legal instrument on access to justice was not continued, given the experience with a 2003 Commission proposal that remained stranded at the Council for over ten years without an agreement having been reached or envisaged.

Council Decision (EU) 2018/881 of 18 June 2018 and new developments

On June 18, 2018, the Council requested to the Commission to provide a study, by September 30, 2019, on the Aarhus Convention.[288] The requested study is the result of the outcome of the Aarhus Convention's compliance monitoring committee following the alleged failure by the EU to comply with the provisions of the convention on access to justice. The study will have to present options to improve public and NGO access to environmental justice, including a proposal of revision, by September 30, 2020, to modify the EU regulation n. 1367/2006. As explained before, the European Union, has incorporated in his legislation the Convention through the regulation n. 1367/2006, that allows NGO to start judicial actions towards the decisions of the institutions and of the organs of the European Union. The NGO ClientEarth, on December 1, 2008, wrote to the Aarhus Convention Compliance Monitoring Committee accusing it of a lack of respect by the EU of the obligations established by the convention.

[288] EUROPEAN UNION, Council Decision (EU) 2018/881 of 18 June 2018 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D0881&from=GA;
COUNCIL OF THE EUROPEAN UNION, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) Twenty-third meeting of the Working Group of the Parties (WGP 23) (Geneva, 26-28 June 2019) - Revised compilation of statements by the EU and its Member States, ST 10866 2019 REV 1, 05-07-2019, https://data.consilium.europa.eu/doc/document/ST-10866-2019-REV-1/en/pdf; COUNCIL OF THE EUROPEAN UNION, Aarhus Convention: Outcomes of WGP23 (Geneva, Switzerland, 26-28 June 2019) - Information from the Presidency, ST 11063 2019 INIT, 10-07-2019, https://data.consilium.europa.eu/doc/document/ST-11063-2019-INIT/en/pdf.

The NGO argued that the EU legislation and the jurisprudence of European courts have hampered the access of natural persons and NGOs to environmental justice.[289]

The European Union, according to the Aarhus Convention Compliance Monitoring Committee, didn't respect the convention in total. In fact, the provisions of the convention on access to justice are not implemented or complied neither by the Aarhus regulation nor by the jurisprudence of the EU Court of Justice. The Committee recommended that all EU institutions must ensure full compliance with the obligations taken under the Aarhus Convention and in case they are not complying with it take measures to address these shortcomings.[290]

Among the most important new developments of 2019 on the topic, it must be remembered the Judgment of the European Court of Justice that annulled the decisions of the European Food Safety Authority (EFSA) which denied the studies on toxicity and carcinogenicity on glyphosate.[291] This case has been an important victory because it clarified that the interest of the public to access information in the environmental field it is not only to know what will be released in the environment, but also to comprehend how the environment will be damaged by them. The glyphosate is a chemical product used in pesticides, in particular it is present in the herbicide Roundup produced by the American multinational Monsanto. It was inscribed in the list of active substance for a period that was going from July 1, 2002, to June 20, 2012. It received then a temporary extension until December 31, 2015. To renew the authorization, Germany presented a report for the revalidation, that was published from EFSA on March 12, 2014. A man presented to EFSA the demand to access to the documents containing two key studies used to determine the quantity of glyphosate that can be used daily. The request was presented in force of the Transparency regulation and of the Aarhus regulation. In another case, some Members of the European Parliament presented to EFSA the demand to access to documents of the studies on carcinogenicity not published. In both cases, EFSA refused to disclose the documents requested because with that disclosure it would had create a damage to the commercial interest of the company that were using that substance. Furthermore, the Agency didn't consider that the documents in question were environmental information. The two parties appealed the decision of EFSA and won the ruling, because the court retained that the documents represented a prevailing public interest.

289 CLIENTEARTH, *Communication to the Aarhus Convention's Compliance Committee*, Communication ACCC/C/2008/30, 1.12.2008, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2008-32/communication/Communication.pdf

290 UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE), FINDINGS AND RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE WITH REGARD TO COMMUNICATION ACCC/C/2008/32 (PART II) CONCERNING COMPLIANCE BY THE EUROPEAN UNION, Adopted by the Compliance Committee on 17 March 2017, ACCC/C/2008/32 (EU), Part II, https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2008/32/Findings/C32_EU_Findings_as_adopted_advance_unedited_version.pdf

291 COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Eighth Chamber) of 7 March 2019 — Antony C. Tweedale v European Food Safety Authority (C-T-716/14), http://curia.europa.eu/juris/document/document_print.jsf?docid=211427&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9874710; COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Eighth Chamber) of 7 March 2019 — Heidi Hautala and Others v European Food Safety Authority (C- T-329/17), http://curia.europa.eu/juris/document/document_print.jsf?docid=211426&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9878009.

This new case together with the Council Decision (EU) 2018/881 represent a disruptive news, that can lead to an increased role of the NGO and to a reform of regulation n. 1367/2006.

Chap. 4 – National regulation on the right of access to information on environmental matters

Environmental law in Italy

As anticipated in the first chapter, only with the reform established by the constitutional law October 18, 2001, n. 3, the word environment was introduced into the Italian Constitution.[292] In the new wording of Article 117 it is argued that the State has exclusive competence in the field of "*protection of the environment, the ecosystem and cultural heritage*", without giving a legal definition of the concept.[293] In fact, before 2001, the Constitution clearly did not provide for environmental protection, but in art. 9 stared that the Republic "*It shall safeguard natural landscape and the historical and artistic heritage of the Nation*".[294]

The Constitutional Court, in many judgments, assessed the environment as a constitutionally protected value and aimed at providing a unitary vision of the environmental good including both natural and cultural resources. This concept includes conservation, rational management and improvement of natural conditions (air, water, soil and territory in all its components), the existence and preservation of terrestrial and marine genetic heritage, of all animal and plant species in it they live in the natural state and ultimately the human person in all his manifestations (Judgment n. 210 of 28-5-1987).[295]

Furthermore, the Constitutional Court, with Judgment n. 641 of 30-12-1987 stated that the environment is a unitary intangible asset although it consists of various components, each of them can be separately protected.[296]

[292] CARAVITA B., *La Costituzione dopo la riforma del Titolo V* , G. Giappichelli editore, Torino, 2002; CECCHETTI M., *Riforma del Titolo V della Costituzione e sistema delle fonti: problemi e prospettive nella materia "tutela dell'ambiente e dell'ecosistema"*, in *www.federalismi.it*; CHIEPPA R., *L'ambiente nel nuovo ordinamento costituzionale*, in *Urbanistica e appalti*, 2002, pp. 1245 ss.; CORPACI A., *Revisione del titolo V della parte seconda della Costituzione e sistema amministrativo*, in *Le Regioni*, 2001; DE LEONARDIS F., *L'ambiente tra i principi fondamentali della Costituzione*, in *www.federalismi.it*, n. 3/2004; FERRARA R., *La "materia ambiente" nel testo di riforma del Titolo V*, in AA.VV., *Problemi del federalismo*, Giuffrè, Milano, 2001, pp. 106 ss.; MADDALENA P., *L'interpretazione dell'art. 117 e dell'art. 118 della Costituzione secondo la recente giurisprudenza costituente in tema di tutela e fruizione dell'ambiente*, in *Riv. giur. ambiente*, 2011, pp. 735 ss.; MASERA R., *Il valore costituzionale dell'ambiente nella nuova formulazione dell'art. 117 della Costituzione. Commento a sent. Corte Costituzionale 28 marzo 2003, n. 96*, in *Urbanistica e appalti*, 2003, pp. 642 ss.

[293] SENATO DELLA REPUBBLICA, *Constitution of the Italian Republic*, 2018. https://www.senato.it/3801

[294] AMIRANTE D. (a cura di), *Diritto ambientale e Costituzione. Esperienze europee*, op. cit.; CASETTA E., *La tutela del paesaggio nei rapporti tra Stato, Regioni e autonomie locali*, in *Le Regioni*, 1984, pp. 1182 ss.; DE LEONARDIS P. (a cura di), *Valori costituzionali nell'ambiente-paesaggio*, G. Giappichelli editore, Torino, 1997; DE SANTIS E., *Strumenti giuridici per la tutela dell'ambiente. Dai profili comunitari alla legge finanziaria 2008: class action*, ESI, Napoli, 2008; GRASSI S., *Costituzioni e tutela dell'ambiente*, in SCAMUZZI S. (a cura di), *Costituzioni, razionalità e ambiente*, op. cit.; GRASSI S., *Principi costituzionali e comunitari per la tutela dell'ambiente*, in AA.VV., *Scritti in onore di Alberto Predieri*, vol. I, Giuffrè, Milano, 1996, pp. 907 ss.; GRECO N., *La Costituzione dell'ambiente*, Il Mulino, Bologna, 2000; MERUSI F., *Art. 9*, in BRANCA G. (a cura di), *Commentario alla Costituzione*, Zanichelli, Bologna-Roma, 1975; MOSTACCI E., *L'ambiente e il suo diritto nell'ordito costituzionale*, in FERRARA R., SANDULLI M. A. (a cura di), *Trattato di diritto dell'ambiente*, op. cit., pp. 271 ss.; PREDIERI A., *Significato della norma costituzionale sulla tutela del paesaggio*, in PREDIERI A. (a cura di), *Urbanistica, tutela del paesaggio, espropriazione*, Giuffrè, Milano, 1969, pp. 3 ss.; SANDULLI M. A., *La tutela del paesaggio nella Costituzione*, in *Riv. giur. edilizia*, 1967, pp. 72 ss.

[295] CORTE COSTITUZIONALE, Sentenza n. 210/1987. "*la conservazione, la razionale gestione ed il miglioramento delle condizioni naturali (aria, acque, suolo e territorio in tutte le sue componenti), la esistenza e la preservazione dei patrimoni genetici terrestri e marini, di tutte le specie animali e vegetali che in esso vivono allo stato naturale ed in definitiva la persona umana in tutte le sue estrinsecazioni.*" http://www.giurcost.org/decisioni/1987/0210s-87.html

[296] CORTE COSTITUZIONALE, Sentenza n. 641/1987. "*bene immateriale unitario sebbene a varie componenti, ciascuna delle quali può anche costituire, isolatamente e separatamente, oggetto di cura e di tutela; ma tutte, nell'insieme, sono riconducibili ad*

The fact that the environment can be used in various forms and different ways, as well as being subject to various rules that ensure the protection of its various areas, does not detract it from its nature as a unitary good that the legal system takes into consideration . The environment is protected as an element which determines the quality of life. Its protection expresses the need for a natural habitat in which man lives and acts and which it is necessary for the community and citizens, according to widely felt values. Its safeguard is imposed first of all by constitutional precepts (articles 9 and 32 of the Constitution), for which it rises to a primary and absolute value. Then there are the ordinary norms which, in implementation of the Constitution, regulate the collective and individual enjoyment of the environmental good by imposing specific obligations of supervision and intervention on those who are caring for it. Penal, civil and administrative sanctions make the protection concrete and efficient. The environment is, therefore, a legal asset as recognized and protected by regulations. It cannot be the subject of an appropriative subjective situation, but belonging to the category of c.d. free goods, can be used by the community and individuals. The various forms of enjoyment are accorded a civil protection which, however, finds further support in the constitutional precept that circumscribes the private economic initiative (Article 41 of the Constitution) and in that which recognizes the right to property, but with the limits of the utility and social function (Article 42 of the Constitution).This ruling acknowledged that in our legal system the protection of the environment is imposed by constitutional precepts, in particular by articles 2, 9, 32 of the Constitution and, therefore, must be considered a primary and absolute value. The Court has reached this conclusion through an extensive interpretation of the articles 9 and 32 of the Constitution:

• Art. 9 becomes the normative foundation to make the concept of landscape coincide with the more extended meaning of the term environment;

• Art. 32 is interpreted as the source of the anti-pollution legislation according to the protection of the healthiness of the environment and, therefore, of the health of the individual or of an inviolable right of the individual recognized and guaranteed by art. 2 Cost.

Article. 2 Const. states: "*The Republic shall recognise and protect the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.*". This provision prescribes the personalist principle on the basis of which at the top of the values identified by the juridical order the human

unità. Il fatto che l'ambiente possa essere fruibile in varie forme e differenti modi, così come possa essere oggetto di varie norme che assicurano la tutela dei vari profili in cui si estrinseca, non fa venir meno e non intacca la sua natura e la sua sostanza di bene unitario che l'ordinamento prende in considerazione. L'ambiente è protetto come elemento determinativo della qualità della vita. La sua protezione non persegue astratte finalità naturalistiche o estetizzanti, ma esprime l'esigenza di un habitat naturale nel quale l'uomo vive ed agisce e che è necessario alla collettività e, per essa, ai cittadini, secondo valori largamente sentiti; è imposta anzitutto da precetti costituzionali (artt. 9 e 32 Cost.), per cui esso assurge a valore primario ed assoluto. Vi sono, poi, le norme ordinarie che, in attuazione di detti precetti, disciplinano ed assicurano il godimento collettivo ed individuale del bene ai consociati; ne assicurano la tutela imponendo a coloro che lo hanno in cura, specifici obblighi di vigilanza e di interventi. Sanzioni penali, civili ed amministrative rendono la tutela concreta ed efficiente. L'ambiente è, quindi, un bene giuridico in quanto riconosciuto e tutelato da norme. Non è certamente possibile oggetto di una situazione soggettiva di tipo appropriativo: ma, appartenendo alla categoria dei c.d. beni liberi, è fruibile dalla collettività e dai singoli. Alle varie forme di godimento è accordata una tutela civilistica la quale, peraltro, trova ulteriore supporto nel precetto costituzionale che circoscrive l'iniziativa economica privata (art. 41 Cost.) ed in quello che riconosce il diritto di proprietà, ma con i limiti della utilità e della funzione sociale (art. 42 Cost.).". https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=1987&numero=641

person is placed, both in his individual and in his social dimension. From the joint reading of it with the text of the art. 32 of the Constitution which protects the right to health, the jurisprudence has obtained a right to the healthiness of the environment to be interpreted as protection of the conditions useful to human health and to the free expression of his personality.[297] It is also necessary to point out the pluralistic principle which, on the basis of the provision of paragraph 2, 137/5000 of art. 3 of the Constitution, gives the Republic the task of removing obstacles that limit the freedom and equality of citizens.[298] The artt. 3 and 97 of the Constitution are at the base of the principle of transparency and openness of the activity of the public administration and so of the right to environmental information.[299]

Another orientation related to environmental protection appears in the articles related to the economic initiative (art. 41 Const.)[300] and to the private property (artt. 42[301] and 44 Const.[302]). The interpretation of the cited articles is that natural resources are limited and, consequently, constraints and limits must be placed on their exploitation taking into account the aims and social functions that economic development must contemplate.[303] For a long time, Italian legislation on the environment has remained almost at zero and even when it finally started, under the pressure of the EU and the aggravation of environmental damage, there has not been an organic and coherent national policy. The judges were therefore given the task of resolving difficult emergencies with the extensive use of the rules of the Civil and Criminal Code.

The Legislative Decree n. 152 of 2006 – The environmental code

The increasingly felt need to guarantee a valid protection to a sector in continuous evolution motivated the conferral to the Government, with L. n. 308/2004, of the delegation for the reorganization, coordination and integration of environmental legislation.[304] From the principles listed in the delegated act, the legislator's

[297]Article 32 Cost. "The Republic shall safeguard health as a fundamental right of the individual and as a collective interest, and shall ensure free medical care to the indigent. No-one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person.".

[298]Article 3, comma 2 Cost. "It shall be the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.".

[299] FEOLA M., *Ambiente e democrazia. Il ruolo dei cittadini nella governance ambientale*, op. cit., p. 126.

[300]Article 41 Cost. "Private economic enterprise shall be free. It may not be carried out against the common good or in such a manner that could damage safety, liberty and human dignity. The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes.".

[301]Article 42 Cost. "Property shall be public or private. Economic assets may belong to the State, to public bodies or to private persons. Private property shall be recognised and protected by the law, which shall determine how it can be acquired, enjoyed and restrained so as to ensure its social function and render it accessible to all. In the cases provided for by the law and with provisions for compensation, private property may be expropriated for reasons of general interest. The law shall regulate and limit legitimate and testamentary inheritance and the rights of the State in matters of inheritance.".

[302]Article 44 Cost. "For the purpose of ensuring a rational use of land and equitable social relationships, the law shall impose obligations and constraints on private land ownership; set limitations to the size of property according to the region and the agricultural area; encourage and impose land reclamation, the conversion of large estates and the reorganisation of farm units; and assist small and medium-sized properties. The law shall make provisions for mountain areas.".

[303] CROSETTI A., FERRARA R., FRACCHIA F., OLIVETTI RASON N., *Introduzione al diritto dell'ambiente*, Editori Laterza, Bari, 2018.

[304]Legge 15 dicembre 2004, n. 308, *Delega al Governo per il riordino, il coordinamento e l'integrazione della legislazione in materia ambientale e misure di diretta applicazione*, pubblicata nella Gazzetta Ufficiale, serie generale, 27 dicembre 2004, n. 302, S.O. n. 187.

intention to update the matter substantially arose and, therefore, the delegation was implemented with Legislative Decree 3 April 2006, n. 152 (cd. Environmental Code) composed of 318 articles and divided into six parts:[305] Part One Common provisions and general principles; Second part Procedures for the Strategic Environmental Assessment (SEA), for the Environmental Impact Assessment (EIA) and for the Integrated Environmental Authorization (IPPC); Part Three Rules on soil protection and the fight against desertification, on protecting water from pollution and managing water resources; Part Four Rules on waste management and remediation of polluted sites; Part Five Rules on air protection and reduction of emissions into the atmosphere; Part Six Rules on the subject of compensation for damage to the environment.[306]

The reform introduced by Legislative Decree 4/2008 has introduced in the first part of the Environmental Code the articles from 3bis to 3sexies which constitute the general principles regarding environmental protection.[307] These principles are adopted in implementation of the constitutional provisions (articles 2, 3, 9, 32, 41, 42, 44, 117) and in compliance with international obligations and Community law and constitute general rules of the environmental matter which must be adapted for produce legislation, guidelines and coordination (Article 3bis)[308].

Those are:[309]

- Principle of environmental action (art. 3ter).[310] All public and private subjects and natural persons must inform their actions to the principles of precaution, of preventive action, of the correction to the source of damage caused to the environment and of the "polluter pays" sanctioned by the art. 191 TFEU.
- Principle of sustainable development (art. 3quater).[311] The national legislator, taking the principle of sustainable development expressed in international treaties, states that any juridically relevant human

[305]Decreto legislativo 3 aprile 2006, n. 152, *Norme in materia ambientale*, pubblicato nella Gazzetta Ufficiale, serie generale,14 aprile 2006, n. 88, S.O. n. 96.

[306] POLICE A., *Il giudice amministrativo e l'ambiente*, in DE CAROLIS D., FERRARI E., POLICE A. (a cura di), *Ambiente, attività amministrativa e codificazione*, Giuffrè, Milano, 2006.

[307]Decreto legislativo 16 gennaio 2008, n. 4, *Ulteriori disposizioni correttive ed integrative del decreto legislativo 3 aprile 2006, n. 152, recante norme in materia ambientale*, pubblicato nella Gazzetta Ufficiale, serie generale, 29 gennaio 2008, n. 24, S.O. n. 24.

[308]"Art. 3-bis Codice dell'ambiente (Principi sulla produzione del diritto ambientale)

1. I principi posti dalla presente Parte prima e dagli articoli seguenti costituiscono i principi generali in tema di tutela dell'ambiente, adottati in attuazione degli articoli 2, 3, 9, 32, 41, 42, 44, 117, commi 1 e 3 della Costituzione e nel rispetto degli obblighi internazionali e del diritto comunitario.

2. I principi previsti dalla presente Parte Prima costituiscono regole generali della materia ambientale nell'adozione degli atti normativi, di indirizzo e di coordinamento e nell'emanazione dei provvedimenti di natura contingibile ed urgente.

3. Le norme di cui al presente decreto possono essere derogate, modificate o abrogate solo per dichiarazione espressa da successive leggi della Repubblica, purché sia comunque sempre garantito il rispetto del diritto europeo, degli obblighi internazionali e delle competenze delle Regioni e degli Enti locali.".

[309] SALANITRO U., *I principi generali nel Codice dell'ambiente*, in Giornale di diritto amministrativo, n. 1, 2009, pp. 103 ss.

[310] "Art. 3-ter Codice dell'ambiente (Principio dell'azione ambientale)

1. La tutela dell'ambiente e degli ecosistemi naturali e del patrimonio culturale deve essere garantita da tutti gli enti pubblici e privati e dalle persone fisiche e giuridiche pubbliche o private, mediante una adeguata azione che sia informata ai principi della precauzione, dell'azione preventiva, della correzione, in via prioritaria alla fonte, dei danni causati all'ambiente, nonché al principio "chi inquina paga" che, ai sensi dell'articolo 174, comma 2, del Trattato delle unioni europee, regolano la politica della comunità in materia ambientale.".

[311]"Art. 3-quater Codice dell'ambiente (Principio dello sviluppo sostenibile)

1. Ogni attività umana giuridicamente rilevante ai sensi del presente codice deve conformarsi al principio dello sviluppo sostenibile, al fine di garantire che il soddisfacimento dei bisogni delle generazioni attuali non possa compromettere la qualità della vita e le possibilità delle generazioni future.

activity under the Environmental Code must guarantee the satisfaction of the needs of current generations cannot compromise the quality of life and the possibilities of future generations.

- Principle of subsidiarity and loyal cooperation (art. 3quinquies).[312] The principles contained in the Environmental Code represent the minimum and essential conditions of environmental protection in the Italian legal system. The Regions and the Autonomous Provinces can issue more restrictive protection regulations to deal with situations that are peculiar to their territory, provided that they do not constitute arbitrary discrimination, even through unjustified procedural burdens. The State intervenes in environmental issues, by virtue of the principle of subsidiarity, in all situations that, due to their vastness and / or complexity, cannot find a solution in the territory.
- Right of access to environmental information and participation for collaborative purposes (art. 3sexies.)[313] Anyone, even without demonstrating a legally relevant interest, can access information

2. Anche l'attività della pubblica amministrazione deve essere finalizzata a consentire la migliore attuazione possibile del principio dello sviluppo sostenibile, per cui nell'ambito della scelta comparativa di interessi pubblici e privati connotata da discrezionalità gli interessi alla tutela dell'ambiente e del patrimonio culturale devono essere oggetto di prioritaria considerazione.
3. Data la complessità delle relazioni e delle interferenze tra natura e attività umane, il principio dello sviluppo sostenibile deve consentire di individuare un equilibrato rapporto, nell'ambito delle risorse ereditate, tra quelle da risparmiare e quelle da trasmettere, affinché nell'ambito delle dinamiche della produzione e del consumo si inserisca altresì il principio di solidarietà per salvaguardare e per migliorare la qualità dell'ambiente anche futuro.
4. La risoluzione delle questioni che involgono aspetti ambientali deve essere cercata e trovata nella prospettiva di garanzia dello sviluppo sostenibile, in modo da salvaguardare il corretto funzionamento e l'evoluzione degli ecosistemi naturali dalle modificazioni negative che possono essere prodotte dalle attività umane.".

[312] "Art. 3-quinquies Codice dell'ambiente (Principi di sussidiarietà e di leale collaborazione)
1. I principi contenuti nel presente decreto legislativo costituiscono le condizioni minime ed essenziali per assicurare la tutela dell'ambiente su tutto il territorio nazionale.
2. Le regioni e le province autonome di Trento e di Bolzano possono adottare forme di tutela giuridica dell'ambiente più restrittive, qualora lo richiedano situazioni particolari del loro territorio, purché ciò non comporti un'arbitraria discriminazione, anche attraverso ingiustificati aggravi procedimentali.
3. Lo Stato interviene in questioni involgenti interessi ambientali ove gli obiettivi dell'azione prevista, in considerazione delle dimensioni di essa e dell'entità dei relativi effetti, non possano essere sufficientemente realizzati dai livelli territoriali inferiori di governo o non siano stati comunque effettivamente realizzati.
4. Il principio di sussidiarietà di cui al comma 3 opera anche nei rapporti tra regioni ed enti locali minori. Qualora sussistano i presupposti per l'esercizio del potere sostitutivo del Governo nei confronti di un ente locale, nelle materie di propria competenza la Regione può esercitare il suo potere sostitutivo.".

[313] Art. 3-sexies Codice dell'ambiente (Diritto di accesso alle informazioni ambientali e di partecipazione a scopo collaborativo)
1. In attuazione della legge 7 agosto 1990, n. 241, e successive modificazioni, e delle previsioni della Convenzione di Aarhus, ratificata dall'Italia con la legge 16 marzo 2001, n. 108, e ai sensi del decreto legislativo 19 agosto 2005, n. 195, chiunque, senza essere tenuto a dimostrare la sussistenza di un interesse giuridicamente rilevante, può accedere alle informazioni relative allo stato dell'ambiente e del paesaggio nel territorio nazionale.
1-bis. Nel caso di piani o programmi da elaborare a norma delle disposizioni di cui all'allegato 1 alla direttiva 2003/35/CE del Parlamento europeo e del Consiglio, del 26 maggio 2003, qualora agli stessi non si applichi l'articolo 6, comma 2, del presente decreto, l'autorità competente all'elaborazione e all'approvazione dei predetti piani o programmi assicura la partecipazione del pubblico nel procedimento di elaborazione, di modifica e di riesame delle proposte degli stessi piani o programmi prima che vengano adottate decisioni sui medesimi piani o programmi.
1-ter. Delle proposte dei piani e programmi di cui al comma 1-bis l'autorità procedente dà avviso mediante pubblicazione nel proprio sito web. La pubblicazione deve contenere l'indicazione del titolo del piano o del programma, dell'autorità competente, delle sedi ove può essere presa visione del piano o programma e delle modalità dettagliate per la loro consultazione. (20)
1-quater. L'autorità competente mette altresì a disposizione del pubblico il piano o programma mediante il deposito presso i propri uffici e la pubblicazione nel proprio sito web.
1-quinquies. Entro il termine di sessanta giorni dalla data di pubblicazione dell'avviso di cui al comma 1-ter, chiunque può prendere visione del piano o programma ed estrarne copia, anche in formato digitale, e presentare all'autorità competente proprie osservazioni o pareri in forma scritta.
1-sexies. L'autorità procedente tiene adeguatamente conto delle osservazioni del pubblico presentate nei termini di cui al comma 1-quinquies nell'adozione del piano o programma.

relating to the state of the environment and landscape in the national territory, in implementation of the access forecasts established in the law of 7 August 1990, n. 241,[314] in the D.Lgs. 19 August 2005, n. 195,[315] of implementation of Directive 2003/4 / EC and in the 1998 Aarhus Convention ratified by Italy with the law 16 March 2001, n. 108.[316]

Environmental information

At the same time, information sharing is a means of applying the democratic principle and an end to involving citizens in the political choices that constitute the prerequisites of our Constitutional Charter. The regulation concerning environmental information can be found, in the internal system, starting from the Law 8 July 1986, n. 349 (established by the Ministry of the Environment), which in art. 1, paragraph 3, provides that the Ministry adopts, with the media, the appropriate initiatives to raise public awareness of the needs and problems of the environment.[317] It is a rule of a general and programmatic nature, which allows the Ministry to place environmental information at the center of its activities and to use the most diverse information channels to create a widespread environmental culture. The same art. 1, paragraph 6, establishes the fundamental instrument of information and that is that the Minister presents to the Parliament every two years a report on the state of the environment.

Article 1 is closely linked to art. 14. Paragraph 1 of the art. 14 states that the Minister of the Environment shall ensure the widest possible dissemination of information on the state of the environment. Paragraph 2 of the same art. 14 fixes that the acts adopted by the National Council for the environment they must be motivated and, when their knowledge concerns the generality of citizens and responds to information needs of a widespread nature, be made public.[318] Finally, paragraph 3 is the first provision to establish that any citizen has the right of access to information on the state of the environment available at the offices of the public administration.

It should be stressed that the provision concerns all citizens regardless of the interest inherent in the request. This rule has become really effective when with the art. 22 of law 241/1990 the right of access to administrative documents was regulated.[319] Access to administrative documents in the light of this article is the general

1-septies. Il piano o programma, dopo che è stato adottato, è pubblicato nel sito web dell'autorità competente unitamente ad una dichiarazione di sintesi nella quale l'autorità stessa dà conto delle considerazioni che sono state alla base della decisione. La dichiarazione contiene altresì informazioni sulla partecipazione del pubblico.

[314] Legge 7 agosto 1990, n. 241, *Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi*, pubblicata nella Gazzetta Ufficiale, serie generale, 18 agosto 1990, n. 192.

[315] Decreto legislativo 19 agosto 2005, n. 195, *Attuazione della direttiva 2003/4/CE sull'accesso del pubblico all'informazione ambientale*, pubblicato nella Gazzetta Ufficiale, serie generale, 23 settembre 2005, n. 222.

[316] Legge 16 marzo 2001, n. 108, *Ratifica ed esecuzione della Convenzione sull'accesso alle informazioni, la partecipazione del pubblico ai processi decisionali e l'accesso alla giustizia in materia ambientale, con due allegati, fatta ad Aarhus il 25 giugno 1998*, pubblicata nella Gazzetta Ufficiale, serie generale, 11 aprile 2001, n. 85, S.O. n. 80.

[317] Legge 8 luglio 1986, n. 349, *Istituzione del Ministero dell'ambiente e norme in materia di danno ambientale*, pubblicata nella Gazzetta Ufficiale, serie generale, 15 luglio 1986, n. 162, S.O. n. 59.

[318] Established from art. 12 of L. 349/1986.

[319] BASSANINI F., PAPARO S., TIBERI G., *Qualità della regolazione. Una risorsa per competere*, in Astrid Rassegna, n. 11/2005; BASSANINI F. e CASTELLI L. (a cura di), *Semplificare l'Italia*, Passigli, Firenze, 2008; BATTINI S., *La legge di semplificazione 1999*, in Giornale dir. amm., 2001, pp. 451 ss.; CARTABIA M., *Semplificazione amministrativa, riordino normativo e*

principle of administrative activity in order to favor participation and ensure its impartiality and transparency.[320] This article also qualifies the right of access as the right of the interested parties to view and extract copies of administrative documents. The law 241 of 1990 has constituted a revolution in Italian administrative law focusing on the principles of publicity, participation, responsibility, effectiveness and cost-effectiveness and trying to abandon a way of operating based on the little trust placed in the citizens and on the fact of not having to answer to anyone than done.[321]

Law 241/1990 with respect to Law 349/1986, extends the subject of the right of access to all administrative matters, establishing also the obligation of the public administration to guarantee the diffusion of knowledge of the provisions, while reducing the exercise of the right that is attributed only to private subjects, including

delegificazione nella "legge annuale di semplificazione, in Dir. pubbl., 2000, pp. 385 ss.; DIPACE R., *La resistenza degli interessi sensibili nella nuova disciplina della conferenza dei servizi*, in www.federalismi.it, n. 16/2016; OCCHIENA M., *Accesso agli atti amministrativi*, in *Dizionario di diritto pubblico* (diretto da CASSESE S.), vol. I, 2006, p. 57; OCCHIENA M., *La necessaria riforma del diritto di accesso: diffusione e accesso telematico alle informazioni amministrative*, in «Il diritto dell'economia», 1, 2008, p. 179; PATRONI GRIFFI F., *Codificazione, delegificazione, semplificazione: il programma del governo*, in Giornale dir. amm., 2000, pp. 101 ss.; PETRICONE F., *Semplificazione amministrativa e legislativa nella legge Bassanini quater n. 50 dell'8 marzo 1999*, in Riv. trim. dir. pubbl., 1999, pp. 663 ss.; ROMANO TASSONE A., *A chi serve il diritto d'accesso? Riflessioni su legittimazione e modalità d'esercizio del diritto d'accesso nella legge n. 241/1990*, in Diritto amministrativo, 3, 1995, p. 317; SANDULLI M. A., *Accesso alle notizie e ai documenti amministrativi*, in *Enciclopedia del diritto*, vol. IV, 2000, pp. 1 ss.; SANDULLI M. A., *Il procedimento*, in CASSESE S. (a cura di), *Trattato di diritto amministrativo. Diritto amministrativo generale*, Secondo tomo, Seconda edizione, Giuffrè, Milano, 2003, p. 1035; SANDULLI M. A., *L'accesso ai documenti amministrativi*, in Giornale di diritto amministrativo, n. 5, 2005, p. 494; SANDULLI M. A. (a cura di), *Le nuove regole della semplificazione amministrativa. La legge n. 241/1990 nei decreti attuativi della riforma Madia. Trasparenza e anticorruzione. Poteri sostitutivi. Silenzio assenso tra PP. AA. Conferenza di servizi. S.c.i.a.*, Giuffrè, Milano, 2017; SARCONE V., *Le novità in materia di accesso ai documenti amministrativi nel processo di riforma della l. n. 241/1990 ed i relativi riflessi sulle autonomie territoriali*, Rassegna sulla attuazione della riforma delle autonomie, Supplemento a Le Province, a cura del Centro V. Bachelet – Università LUISS, Roma, 2005; SCOTTI E., *La nuova disciplina della conferenza di servizi tra semplificazione e pluralismo*, in www.federalismi.it, n. 16/2016; VANDELLI L. e GARDINI G. (a cura di), *La semplificazione amministrativa*, Maggioli, Rimini, 1999.

[320] CARBONARA L., *Il principio di partecipazione nel procedimento ambientale*, in Giustizia Amministrativa, Rivista Diritto Pubblico, 16 ottobre 2012; MONTANARO R., *La partecipazione ai procedimenti in materia ambientale*, in VIPIANA M. P. (a cura di), *Il diritto all'ambiente salubre*, CEDAM, Padova, 2005, pp. 192 ss.; NICOTINA A., *Partecipazione e tutela dell'ambiente: il modello della enquête publique environnementale francese*, Diritto e giurisprudenza agraria, alimentare e dell'ambiente, Numero 5, Sett. – Ott. 2018, http://www.rivistadga.it/wp-content/uploads/sites/34/2018/10/Nic%C3%B2tina-Partecipazione-tutela-dellambiente.pdf; OCCHIENA M., *Partecipazione e tutela del terzo nel procedimento di valutazione di impatto ambientale*, in FERRARA R. (a cura di), *La valutazione di impatto ambientale*, CEDAM, Padova, 2000; PELLINGRA CONTINO M., *Partecipazione ai processi decisionali ed accesso alla giustizia in materia ambientale: riflessioni a partire dalla recente giurisprudenza della Corte di Giustizia*, DPCE Online, v. 29, n. 1, apr. 2017. http://www.dpceonline.it/index.php/dpceonline/article/view/361; SGUEO G., *La partecipazione dei privati al procedimento. Profili comparati*, 2007, Diritto.it.; ARENA G., *Trasparenza amministrativa*, in *Enc. giur. Treccani*, vol. XXXI, 1995; ARENA G., *Trasparenza amministrativa*, in CASSESE S. (a cura di) *Dizionario di diritto pubblico*, Milano, 2006, vol. VI, p. 5945; ARENA G., *Le diverse finalità della trasparenza amministrativa*, in MERLONI F. (a cura di), *La trasparenza amministrativa*, Giuffrè, Milano, 2008, p. 33; BELISARIO E., ROMEO G. (a cura di)**,** *Silenzi di Stato. Storie di trasparenza negata e di cittadini che non si arrendono*, Chiarelettere, Milano, 2016; BONOMO A., *Il Codice della trasparenza e il nuovo regime di conoscibilità dei dati pubblici*, in «Istituzioni del Federalismo», 3–4, 2013, p. 733; CALIFANO L., COLAPIETRO C. (a cura di), *Le nuove frontiere della trasparenza nella dimensione costituzionale*, Editoriale Scientifica, Napoli, 2014; COLAPIETRO C. (a cura di), *La "terza generazione" della trasparenza amministrativa. Dall'accesso documentale all'accesso generalizzato, passando per l'accesso civico*, Editoriale Scientifica, Napoli, 2016; COLAPIETRO C., IANNUZZI A., *Il cammino della trasparenza in Italia: una prospettiva di partecipazione e di legittimazione*, in CALIFANO L, COLAPIETRO C. (a cura di), *Le nuove frontiere della trasparenza nella dimensione costituzionale*, Editoriale Scientifica, Napoli, 2014, pp. 117 ss.; CORRADO A., *Conoscere per partecipare: la strada tracciata dalla trasparenza amministrativa*, Edizioni Scientifiche Italiane, Napoli, 2018; GARDINI G., *Il Codice della trasparenza: un primo passo verso il diritto all'informazione amministrativa?*, in Giornale di diritto amministrativo, n. 8-9, 2014, p. 875; NATALINI A, VESPERINI G. (a cura di), *Il big bang della trasparenza*, Editoriale Scientifica, Napoli, 2015; SPASIANO M. R., *Trasparenza e qualità dell'azione amministrativa*, in CHITI M. P., PALMA G. (a cura di*), I principi generali dell'azione amministrativa*, Jovene, Napoli, 2006; SPASIANO M. R., *I principi di pubblicità, trasparenza e imparzialità*, in SANDULLI M. A. (a cura di), *Codice dell'azione amministrativa*, Giuffrè, Milano, 2017.

[321]CIAMMOLA M., *Il diritto di accesso alle informazioni ambientali tra disciplina sovranazionale e disciplina nazionale*, op. cit., pp. 195-263.

those with public or widespread interests, who have a direct, concrete and current interest, corresponding to a legally protected situation and connected to the document to which access is requested.

Article. 13 of Law 349/1986 provided for the identification, by decree of the Minister of the Environment after consulting the National Environment Council, of environmental protection associations in possession of specific requirements, namely: national character, presence in at least five regions, programmatic purposes and internal democratic ordering required by the statute, continuity of the action and its external relevance.

The following art. 18, paragraph 5, provides that the associations identified on the basis of the aforementioned art. 13 can intervene in judgments for environmental damage and have recourse in the administrative jurisdiction for the annulment of illegal acts.

Article. 309 of the Environmental Code (Part VI Rules on the subject of compensation for damage to the environment) provides in paragraph 1 that the regions, autonomous provinces and local authorities, also associated, as well as the natural or legal persons who are or who could be affected by environmental damage or who have a legitimate interest in taking part in the procedure relating to the adoption of precautionary, preventive or recovery measures may submit to the Minister of the Environment complaints and observations concerning any case of environmental damage or threat imminent damage to the environment and to request state intervention to protect the environment. Paragraph 2 specifies that non-governmental organizations that promote environmental protection, pursuant to art. 13 of Law 349/1986, are recognized as holders of this interest.

Article. 310 establishes that the aforementioned subjects are entitled to act for the annulment of the acts and provisions adopted in violation of the provisions of Part VI of Legislative Decree 152/2006, for the compensation of the damage suffered due to the delay in the activation by the Minister of the Environment of precautionary measures, prevention or containment of environmental damage and against the silent default of the Minister himself.

It is necessary to mention for completeness two successive norms: the law 108/2001 of ratification of the Aarhus Convention (treated in the second chapter) and the legislative decree 7 March 2005, n. 82,[322] bearing the Digital Administration Code. The purpose of the Code is that, in the most appropriate way to satisfy the interests of users, the public administration ensures the availability, management, access and usability of the information in digital mode and is organized for this purpose using the most appropriate information and communication technologies.

[322]Decreto legislativo 7 marzo 2005, n. 82, *Codice dell'amministrazione digitale*, pubblicato nella Gazzetta Ufficiale, serie generale,16 maggio 2005, n. 112, S.O. n. 93.

Access to environmental information in the Legislative Decree n. 195 of 2005

The special regulation on access to environmental information has been increased with Legislative Decree 39/1997[323], of transposition of Directive 1990/313 / EEC, and then with Legislative Decree 195/2005 on public access to environmental information that repealed the previous provision.[324]

The Legislative Decree 195/2005, in particular, it is aimed at guaranteeing the right of access to environmental information by establishing the terms, conditions and methods of exercise, and to ensure, for the purposes of broader transparency, that the information itself is made available to the public and also disseminated using technological channels.

In the art. 2 defines environmental information, that is any information available in written, visual, sound, electronic or in any other material form concerning, in a broad sense, the environment.

Article. 3, unlike the provisions of Law 241/1990, regarding access upon request, does not presuppose the existence of the interest, since it provides that the public authority is required to make the information held available to anyone who requests it, without his declaring his interest.

In fact, it must make the environmental information available to the applicant as soon as possible and, in any case, within 30 days from the date of receipt of the request or within 60 days from the same date in the event that the extent and complexity of the request are such as not to satisfy it within 30 days. In the latter case, the public authority promptly informs the applicant of the extension and the reasons justifying it within 30 days.

The cases of exclusion of the right of access to environmental information, which is denied, based on art. 5, in cases where: the information requested is not held by the public authority to which the request for access is addressed; the request is manifestly unreasonable: the request is expressed in excessively generic terms; the request concerns materials, documents or data that are incomplete or being completed; the request concerns internal communications, in any case, taking into account the public interest protected by the right of access. Access is also denied when disclosure of the information is prejudicial.

Articles 8 and 9, also, govern the dissemination and quality of environmental information.

The text then deals with both the aspect of passive information (the right of environmental access) and that of active information (the dissemination of environmental information).

Paragraph 4 of the art. 10, finally, establishes that the report on the state of the environment, established by art. 1, paragraph 6, of Law 349/1986, is published by the Ministry of the Environment and the protection of the territory with methods designed to guarantee effective availability to the public.

323 Decreto legislativo 24 febbraio 1997, n. 39, *Attuazione della direttiva 90/313/CEE, concernente la libertà di accesso alle informazioni in materia di ambiente*, pubblicato nella Gazzetta Ufficiale, serie generale, 6 marzo 1997, n. 54, S.O.

324 VATTANI V., *Il decreto legislativo 19 agosto 2005 n. 195 – Attuazione della direttiva 2003/4/CE sull'accesso del pubblico all'informazione ambientale*, in www.dirittoambiente.net, 2005.

Comparison between access to document in general and access to environmental information

We can now mention the differences between the right of access to documents in administrative procedures established in Law 241/1990 and the right of access to environmental information governed by Legislative Decree 195/2005.

The right of access to administrative documents, as we have already reported, is attributed only to those who hold a relevant legal situation, has as their object documents and not information and is limited by a large list of cases of exclusion. The request for access must be justified as the interested party must demonstrate his individual interest.

Law 241/1990 does not require citizens to take on roles of verification of the conduct of the public administration, as the person concerned can only request access to existing administrative documents and not oblige the administration to elaborate and produce new ones, even in compliance with the law of 11 February 2005, n. 15.[325]

The right of access to environmental information regulates, instead, the possibility of accessing information and citizen participation in decision-making processes.[326] With the exception of a first discipline dictated by Law 349/1986, the origin of the right of access to environmental information is at first international and then Community legislation. The regulation of the European Union establishes a set of rules to protect the environment based on the environmental education of citizens who are granted access to information and

[325] CIAMMOLA M., *Il diritto di accesso ai documenti dopo la legge n. 15 del 2005: natura, soggetti legittimati e ambito applicativo*, Amministrazione in Cammino, Roma, 2006; LAMBERTI L., *Il diritto di accesso ai documenti amministrativi dopo la l. n. 15 del 2005*, in «www.giustamm.it»; LIPARI M., *Il processo in materia di accesso ai documenti (dopo la l. 11 febbraio 2005 n. 15*), in «www.giustamm.it»; RODRIQUEZ S., *Il diritto di accesso*, in CARANTA R., FERRARIS L., RODRIQUEZ S., *La partecipazione al procedimento amministrativo*, II edizione, aggiornata alle L. 11 febbraio 2005 n. 15 e L. 14 maggio 2005, n. 80, Giuffrè, Milano, 2005, p. 202.

[326] AALBANESE F., *Il diritto di accesso agli atti e alle informazioni ambientali*, LEXAMBIENTE.IT, www.lexambiente.com, 2 ottobre 2015; BORGONOVO RE D., *Informazione ambientale e diritto di accesso*, in NESPOR S., DE CESARIS A. L. (a cura di), *Codice dell'ambiente*, Giuffrè, Milano, 2009, pp. 1461 ss.; CALABRO' M., *Potere amministrativo e partecipazione procedimentale. Il caso ambiente*, Editoriale Scientifica, Napoli, 2004; CARIDA' R., *Considerazioni in tema di accesso alle informazioni ambientali***,** in www.federalismi.it, n. 6/2009; CASERTANO L., *Il diritto di accesso all'informazione ambientale*, in *Speciale 20 anni*, Quad. riv. giur. ambiente, Giuffrè, Milano, n. 18, 2006, pp. 377 ss.; CIAMMOLA M., *Il diritto di accesso all'informazione ambientale. Dalla legge istitutiva del Ministero dell'ambiente al decreto legislativo n. 195 del 2005*, in Foro amm., 2007, pp. 657 ss.; DE CESARIS A. L. (a cura di), *Informazione ambientale tra diritto all'accesso ai documenti amministrativi e segreto industriale*, Istituto per l'Ambiente, Milano, 1997; DIGIANNATALE B., *Informazione e tutela dell'ambiente nel mondo globalizzato*, in «Nuova rassegna», 8, 2004, p. 931; FONDERICO F., *Il diritto di accesso all'informazione ambientale*, in Giornale di diritto amministrativo, n. 6, 2006, p. 676; GARZIA G., *Il diritto all'informazione ambientale. Tra situazioni soggettive e interessi pubblici*, Maggioli, Rimini, 1998; GRASSI S, *Libertà di informazione e tutela dell'ambiente*, in MURGIA C. (a cura di), *L'ambiente e la sua protezione*, Giuffrè, Milano, 1991; LIBERTINI M., *Il diritto all'informazione in materia ambientale*, in *Riv. critica dir. priv.*, 1989, pp. 625 ss.; MARI C., *L'accesso alle informazioni ambientali: specialità o autonomia?*, «Giustizia amm.», 1, 2010, p. 12; PIEROBON A., *Il diritto di accesso e di informazione ambientale*, in A. PIEROBON (a cura di), *Nuovo manuale di diritto e gestione dell'ambiente*, Maggioli, Rimini, 2012, pp. 103 ss.; PIZZANELLI G., *La partecipazione dei privati alle decisioni pubbliche: politiche ambientali e realizzazione delle grandi opere infrastrutturali*, Giuffrè, Milano, 2010; PRESTA M., *Il diritto di accesso all'informazione ambientale*, LEXAMBIENTE.IT, www.lexambiente.com, 30 novembre 1999; RALLO A., *Funzione di tutela ambientale e procedimento amministrativo*, Editoriale Scientifica, Napoli, 2000; RECCHIA G. (a cura di), *Informazione ambientale e diritto di accesso*, CEDAM, Padova, 2007; ROSSI V., *Ambiente e diritti umani: il diritto all'informazione ambientale*, in www.scienzaefilosofia.it; SARCONE V., *La specialità del diritto all'informazione ambientale*, in «Foro amm. – TAR», 2004, p. 78; TORTORA A., *Informazione ambientale e diritto di accesso: normativa in ambito nazionale e comunitario*, 25 giugno 2007, Filodiritto.com.

participation in decision-making processes. Also on the judicial side, both the European Court of Justice and Italian jurisprudence have favored this trend by extending the scope of the legislation and by limiting the exceptions that hindered the right to transparency.

The Aarhus Convention, the directives 90/313/CEE and 2003/4/CE and the D.Lgs. 39/1997 and 195/2005 are instruments aimed at ensuring the maximum possible transparency on the state of the environment and allowing a control by the citizens on the quality of the environment in which they live.[327] The environmental access, unlike the documentary one, therefore benefits from a *non-subjective legitimation or diffused*, concerning all citizens, as it is not necessary to certify or express one's interest.[328]

The right of access to environmental information can be configured as a subjective "autonomous" position, for all legal entities (persons, associations, organizations) and without considering the organic or ancillary connection to further legal situations, while the right of access to administrative documents are characterized by the instrumentality of access.

The very concept of environmental information is very widespread and has come to include, even with the support of EU and national jurisprudence, any element, activity or parameter that could influence one of the environmental sectors regulated by the different standards. The public administration is therefore encouraged to research, collect and systematize the data in its possession to make it available to citizens easily. Even the informal data, information and elements must be made public, so as to give the concrete possibility of being able to exercise a general control over the administrative activity.[329] The right of access to environmental information guarantees a broader protection than that ensured by the right of access to administrative documents. Article. 22 of Law 241/1990 limits access only to administrative documents held by the public administration, while in the matter of environmental access, not only is not necessary the timely indication of the requested acts, but a generic request for information on the conditions of a specific environmental context (which must, of course, be specified) to constitute for the administration an obligation to acquire all the information relating to the state of conservation and healthiness of the places concerned by the instance, to elaborate them and communicate them to the applicant.[330]

The jurisprudence holds that Legislative Decree 195/2005 creates a form of publicity for environmental information that is broader than the general discipline of Law 241/1990 on access to administrative documents: in particular, notwithstanding the latter law, the Community legislation allows access to information to anyone who requests it, without having to declare their interest, not to mention that the concept of "environmental

[327] DELFINO B., *Il diritto di accesso alle informazioni ambientali secondo il d.lgs. 24 febbraio 1997 n. 39. Confronto con la l. 7 agosto 1990 n. 241*, in «Cons. Stato», 1999, n. 1, II, 143.

[328] CIAMMOLA M., *Il diritto di accesso alle informazioni ambientali tra disciplina sovranazionale e disciplina nazionale*, op. cit., p. 222; COSMAI P., *Il diritto di accesso agli atti in materia ambientale*, Ambiente & Sviluppo, n. 5/2013, p. 435-446; TAR CAMPANIA, Salerno Sez. I, 7 dicembre 2004, n. 2912.

[329] BATTAGLIA A., *Accesso all'informazione o tutela dell'ambiente?*, in «*Giornale di diritto amministrativo*», 7, 2007, pp. 715 ss. «*D'altra parte, i due istituti sono anche retti da principi costituzionali differenti. Il diritto di accesso ai documenti amministrativi è diretta applicazione dei principi contenuti nell'art. 97; il diritto all'informazione ambientale trova il suo fondamento anche nelle norme che accordano rilievo alla tutela ambientale, tra le quali quelle degli artt. 9 e 32 Cost.*», p. 720.

[330] CONSIGLIO DI STATO Sez. IV, 7 settembre 2004 (Ud. 8 luglio 2004), Sentenza n. 5795, punto 9.2, https://www.ambientediritto.it/sentenze/2004/CdS/lug-dic/Cds%202004%20n.5795.htm

information" must be understood in a broad sense, not limited only to specific administrative documents already formed, with the consequent necessity, for the Administration, of a possible activity of elaboration of news in its own possession.[331]

The interpretation of the jurisprudence, due to the importance of the interests to be protected through environmental access, is therefore characterized by a favorable attitude towards the right to transparency, while with regard to the access provided by Law 241/1990 must be reported choices of closing.[332]

Also with regard to the quality of environmental information it must be emphasized that it must be complete and up-to-date and therefore easily legible and understandable and for this reason rules are introduced that oblige the public administration to guarantee a good quality of the information itself and to carry out assessments carefully between the superior public interest in access and the need for confidentiality.[333]

In conclusion, the Community principle of broad access to environmental information has been implemented in the internal legal framework, as their knowledge allows them to achieve public interests such as environmental protection and the health of citizens.[334]

Access to environmental information in the Legislative Decree n. 152 of 2006

The topic of access to environmental information is present, as we have seen, also in Legislative Decree 152/2006, and refers to it, first of all, the first part of the decree that inserts the right of access to environmental information between the general principles regarding environmental protection (Article 3sexies, paragraph 1). The cognitive activity is also referred to by the individual parts of the decree that govern the various sectors: in fact, it is diversified precisely in consideration of the context in which it is inserted.

Paragraph 5bis of the art. 16 of the Legislative Decree 91/2014 adds six new paragraphs to the aforementioned article 3sexies of Legislative Decree 152/2006 and extends public participation in certain environmental procedures. In particular: 1) paragraph 1bis requires the competent authority to draw up plans or programs, specified in Annex I (relating to waste, batteries and accumulators containing dangerous substances, to the protection of water from pollution caused by nitrates from agricultural sources, hazardous waste, packaging

[331] TAR LOMBARDIA, Milano sez. IV, 20 novembre 2007, n. 6380.

[332] CONSIGLIO DI STATO Sez. IV, 20 maggio 2014, Sentenza n. 2557, secondo cui la disciplina dell'accesso alle informazioni in materia ambientale "*prevede un regime di pubblicità tendenzialmente integrale dell'informativa ambientale, sia per ciò che concerne la legittimazione attiva, ampliando notevolmente il novero dei soggetti legittimati all'accesso in materia ambientale, sia per quello che riguarda il profilo oggettivo, prevedendosi un'area di accessibilità alle informazioni ambientali svincolata dai più restrittivi presupposti di cui agli artt. 22 e segg., l. 7 agosto 1990 n. 241*". E poi precisa che "*le informazioni cui fa riferimento la succitata normativa concernono esclusivamente lo stato dell'ambiente (aria, sottosuolo, siti naturali etc.) ed i fattori che possono incidere sull'ambiente (sostanze, energie, rumore, radiazioni, emissioni), sulla salute e sulla sicurezza umana, con esclusione quindi di tutti i fatti ed i documenti che non abbiano un rilievo ambientale*"; PARISIO V., *La tutela dei diritti di accesso ai documenti amministrativi e alle informazioni nella prospettiva giurisdizionale*, in www.federalismi.it, 11/2018.

[333] Vedi anche Codice della trasparenza (D.Lgs. n. 33/2013).

[334] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Third Chamber) of 28 July 2011— Office of Communications v Information Commissioner (C-71/10), http://curia.europa.eu/juris/document/document_print.jsf?docid=108326&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9045062; COURT OF JUSTICE OF THE EUROPEAN UNION, *Public access to environmental information*, Fact sheet, Research and documentation Directorate, December 2017, p. 9.

and packaging waste, regarding the assessment and management of ambient air quality) of Directive 2003/35 / EC, to which the environmental assessment procedure does not apply in cases indicated by the art. 6, paragraph 2, of Legislative Decree 152/2006, ensures public participation in the process of preparing, modifying and reviewing the aforementioned plans or programs; 2) paragraph 1ter provides, in the cases regulated by paragraph 1-bis, the notice by publication on its website by the competent authority, containing the indication of the title of the plan or program, the competent authority and the locations where the plan or program can be viewed; 3) paragraph 1quater provides that the competent authority shall also make the plan or program available to the public by depositing it at its offices and publishing it on its website; 3) paragraph 1quinquies establishes that, within 60 days from the publication of the notice referred to in paragraph 1-ter, anyone can view the plan or program and present their observations or opinions in writing; 4) paragraph 1sexies provides that the competent authority adequately takes into account the public's observations when adopting the plan or program; 5) paragraph 1septies provides that the plan or program adopted is published on the website of the competent authority together with a summary statement in which account is taken of the considerations underlying the decision. This declaration also contains information on public participation.

Legislative Decree n. 33 of 2013 – The so-called "Transparency code"

With regard to environmental information, Legislative Decree 14 March 2013, n. 33 (so-called Transparency code) has reorganized the regulations concerning the obligations of publicity, transparency and the dissemination of information by public administrations.[335]

The main innovations are given by the articles 1 and 5. To the art. 1 sets out the general principle of transparency which places publication obligations at the center to promote widespread forms of control over the pursuit of institutional functions and the use of public resources. Transparency helps to implement the democratic principle, it is a condition for guaranteeing individual and collective freedoms, as well as civil, political and social rights, and contributes to the creation of an open administration, at the service of the citizen. In Article. 5 is the recognition of the right of access to anyone. However, the approach remains dirigiste as it is the norm to establish what citizens can know and, compared to other Western nations, access is not configured as a fundamental right.[336]

Article. 6 introduces a significant novelty with respect to Law 241/1990, providing that public administrations guarantee the quality of information reported on institutional sites, ensuring their integrity, constant updating, completeness, timeliness, simplicity of consultation, comprehensibility, homogeneity, easy accessibility, as well as compliance with original documents, indication of their origin and reusability.

[335]Decreto legislativo 14 marzo 2013, n. 33, *Riordino della disciplina riguardante il diritto di accesso civico e gli obblighi di pubblicità, trasparenza e diffusione di informazioni da parte delle pubbliche amministrazioni*, pubblicato nella Gazzetta Ufficiale, serie generale, 5 aprile 2013, n. 80.

[336]SAVINO M., *La nuova disciplina della trasparenza amministrativa. Decreto legislativo 14 marzo 2013, n. 33*, op. cit.

The provision in question, in art. 40, without prejudice to the provisions of greater protection envisaged by art. 3sexies of the Environmental Code, under Law 108/2001 and Legislative Decree 195/2005, deals with publication and access to environmental information. The article provides for the obligation for public administrations to publish environmental information on their institutional sites, which they hold for the purposes of their institutional activities, giving specific emphasis within a specific section called "Environmental Information". The cases of exclusion of the right of access to environmental information pursuant to art. 5 of Legislative Decree 195/2005.

Finally, mention is made of the art. 11 of Law 28 December 2015, n. 221,[337] according to which environmental data collected and processed by public entities and private companies are issued to local authorities, at their request, in an open format for their re-use aimed at initiatives for the efficient use of environmental resources or digital applications to support of the green economy, in line with the contents of the Italian digital agenda.[338]

Legislative Decree n. 97 of 2016 and the introduction of FOIA in the national law

The delegation law of 7 August 2015, n. 124 (cd. Madia Reform) provides in art. 7 the revision and simplification of the provisions on the prevention of corruption, publicity and transparency.[339] In the letter h, in particular, the recognition of freedom of information is provided through the right of access of anyone, regardless of the ownership of legally relevant situations, to the data and documents held by the public administrations, except in cases of secrecy or prohibition of disclosure required by law and in compliance with the limits relating to the protection of public and private interests.

It is worth noting for its criticality the art. 3 entitled “tacit consent” between public administrations and between public administrations and managers of public goods or services which, pursuant to Law 241/1990, inserts art. 17bis which provides for the extension of the regime of silent assent to proceedings between public administrations even if they deal with environmental protection.[340]

The product of this delegation is represented by the legislative decree 25 May 2016, n. 97,[341] which amends Legislative Decree 33/2013. The legislator finally introduced into our system general civic access inspired by the principles of the US Freedom Of Information Act (FOIA) in which the rule is the full disclosure of every

[337]Legge 28 dicembre 2015, n. 221, *Disposizioni in materia ambientale per promuovere misure di green economy e per il contenimento dell'uso eccessivo di risorse naturali*, pubblicata nella Gazzetta Ufficiale, serie generale, 18 gennaio 2016, n. 13.

[338]Art. 47 del Decreto Legge 9 febbraio 2012, n. 5, *Disposizioni urgenti in materia di semplificazione e di sviluppo*, pubblicato nella Gazzetta Ufficiale, serie generale, 9 febbraio 2012, n. 33, S.O. n. 27.

[339]Legge 7 agosto 2015, n. 124, *Deleghe al Governo in materia di riorganizzazione delle amministrazioni pubbliche*, pubblicata nella Gazzetta Ufficiale, serie generale, 13 agosto 2015, n. 187.

[340]DE LEONARDIS F., *Il silenzio assenso in materia ambientale: considerazioni critiche sull’art.17-bis introdotto dalla cd. Riforma Madia*, in www.federalismi.it, n. 20/2015.

[341]Decreto legislativo 25 maggio 2016, n. 97, *Revisione e semplificazione delle disposizioni in materia di prevenzione della corruzione, pubblicità e trasparenza, correttivo della legge 6 novembre 2012, n. 190 e del decreto legislativo 14 marzo 2013, n. 33, ai sensi dell'articolo 7 della legge 7 agosto 2015, n. 124, in materia di riorganizzazione delle amministrazioni pubbliche*, pubblicato nella Gazzetta Ufficiale, serie generale, 8 giugno 2016, n. 132.

public act.[342] The salient elements taken from the FOIA are: the publication obligations borne by the public administration and the requests for civic access by citizens; accessibility, in principle, total to public administration documents; recognition of access also to those who do not express a specific interest in the acts. It should be remembered that the legal-institutional architectures of the Anglo-Saxon systems are very different from those of our legal system. The reform derives from the citizens' dissatisfaction with the transparency implemented by Legislative Decree 33/2013 and ensures the right of anyone to acquire all the data in his possession from the public administration through individual civic access.[343] The principle of transparency used in general access to environmental matters also becomes the heritage of civic access.[344]

Article. 6 of Legislative Decree 97/2016 introduced a new paragraph 2 to art. 5 of Legislative Decree 33/2013, which establishes that in order to promote widespread control over the pursuit of institutional functions and the use of public resources and to promote participation in public debate, anyone has the right to access to data and documents held by public administrations.[345]

Therefore, Italian law establishes three different forms of access to administrative information: access to administrative documents established by articles 22 and following of Law 241/1990, the civic access regulated by paragraph 1 of the art. 5 of Legislative Decree 33/2013 and the general civil access provided for by paragraph 2 of art. 5 of Legislative Decree 33/2013 introduced by Legislative Decree 97/2016.[346]

Finally, the legislative decree 13 December 2017, n. 217, art. 17 of the Digital Administration Code establishes a single office of the digital Ombudsman at the Agency for Digital: anyone can present to the digital Ombudsman, reports related to alleged violations related to all existing rules on digitization and innovation of public administration.[347] Upon receipt of the report, the ombudsman, if he considers it founded, invites the

[342] GALETTA D. U., *Accesso civico e trasparenza della Pubblica Amministrazione alla luce delle (previste) modifiche alle disposizioni del d.lgs. n. 33/2013*, in www.federalismi.it, 5/2016; FALLETTA P., *Il freedom of information act italiano e i rischi della trasparenza digitale*, in www.federalismi.it, n. 23/2016; BASSOLI E., *IL FREEDOM OF INFORMATION ACT (FOIA)*, Sicurezza e Giustizia, Anno VI – Numero IV, Roma, 2016, https://www.sicurezzaegiustizia.com/il-freedom-of-information-act-foia/; CANAPARO P. (a cura di), *La trasparenza della pubblica amministrazione dopo la Riforma Madia: Decreto legislativo 25 maggio 2016, n. 97*, Dike, Roma 2016; PONTI B. (a cura di), *Nuova trasparenza amministrativa e libertà di accesso alle informazioni. Commento sistematico al D. Lgs. 33/2013 dopo le modifiche apportate dal D. Lgs. 25 maggio 2016, n. 97. Il regime Foia: l'accesso generalizzato e i suoi limiti. La pubblicità sostitutiva mediante banche dati centralizzate. La trasparenza sull'uso delle risorse. L'accesso ai dati statistici elementari. Con indicazioni operative su utilizzo, accessibilità e design dei siti web delle P.A*, Maggioli Editore, Santarcangelo di Romagna, 2016; SAVINO M., *Il FOIA italiano. La fine della trasparenza di Bertoldo. Decreto legislativo 25 maggio 2016, n. 97*, in Giornale di diritto amministrativo, n. 5/2016, pp. 593 ss.; MARENA G. (a cura di), *La trasparenza amministrativa alla luce del D.lgs. 97/2016*, Key, Vicalvi (FR), 2017; GALETTA D. U., *Accesso (civico) generalizzato ed esigenze di tutela dei dati personali ad un anno dall'entrata in vigore del Decreto FOIA: la trasparenza de "le vite degli altri"?*, in www.federalismi.it, 10/2018; GRASSI V. (a cura di), *La società del Noi. Comunità responsabili nell'era della globalizzazione*, capitolo: "Le istanze FOIA della società civile italiana", Franco Angeli, Milano, 2018; TOMMASI C., *Le prospettive del nuovo diritto di accesso civico generalizzato*, federalism.it, 28 febbraio 2018.

[343] GARDINI G., *Il paradosso della trasparenza in Italia: dell'arte di rendere oscure le cose semplici*, in www.federalismi.it, 1/2017.

[344] NICOTRA I. A., *Dall'accesso generalizzato in materia ambientale al Freedom of Information act*, in www.federalismi.it, 12/2018.

[345] PORPORATO A., *Il "nuovo" accesso civico "generalizzato" introdotto dal d.lgs. 25 maggio 2016, n. 97 attuativo della riforma Madia e i modelli di riferimento*, in www.federalismi.it, n. 12/2017.

[346] VILLAMENA S., *Il c.d. FOIA (o accesso civico 2016) ed il suo coordinamento con istituti consimili*, in www.federalismi.it, n. 23/2016.

[347] Decreto legislativo 13 dicembre 2017, n. 217, *Disposizioni integrative e correttive al decreto legislativo 26 agosto 2016, n. 179, concernente modifiche ed integrazioni al Codice dell'amministrazione digitale, di cui al decreto legislativo 7 marzo 2005, n. 82, ai sensi dell'articolo 1 della legge 7 agosto 2015, n. 124, in materia di riorganizzazione delle amministrazioni pubbliche*, pubblicato nella Gazzetta Ufficiale, serie generale, 12 gennaio 2018, n. 9.

public administration responsible for the violation to remedy it promptly and in any case not later than thirty days. The ombudsman's decisions are published on the institutional website.

For the first time, a subject (third, impartial and autonomous) is introduced into the legal system, to which citizens and businesses will be able to address, in a simple way, to signal administrations that resist the digital transformation of the country.

The ombudsman will also have to deal very much with digital civic education: explaining the rights of digital citizenship to citizens and businesses, regardless of the rules, and how to exercise them.

It is necessary that citizens and businesses become custodians of digital citizenship and report what does not work so that the administration can make practically so many rights not exercised today. Norms are not enough to make revolutions, but by introducing more and more instruments of participatory democracy in the order, they enable the processes of transformation for the necessary cultural change also in the legislators themselves and in the entire public administration.

The Italian FOIA unfortunately still does not correspond, especially in the results, to the US and Northern European models as it is more a right to know than a real instrument of participatory administrative action.[348]

The evolution of the institution of the right of access to administrative information when compared with the right of access to environmental information indicates that Italian culture is refractory to transparency and hostile to rebalancing power in favor of the citizen.[349]

Monitoring and implementing the right to access to environmental information

The right to know and transparency, present today in the organization by FOIA, must be extended and made known. The legislation currently in force could be improved in some areas: protection of privacy for those requesting access to documents, reduction of subjective exclusions, extension also to the community as well as to individuals, increasing penalties.[350]

There are many reasons why generalized civic access does not seem to have worked: the ambiguous nature (fundamental right of the person or anti-corruption tool), privacy, excessive legislative fragmentation (1. articles 22 and following Law 241/1990, 2. paragraph 1 of article 5 of Legislative Decree 33/2013 and 3. paragraph 2 of article 5 of Legislative Decree 33/2013), the substantial number of subjects involved in the matter, the lack of knowledge of the tool is by citizens and public administration.[351]

[348]CIAMMOLA M., *Il diritto di accesso alle informazioni ambientali tra disciplina sovranazionale e disciplina nazionale*, op. cit., pp. 256-263.

[349]CARLONI E., *Se questo è un FOIA. Il diritto a conoscere tra modelli e tradimenti*, in ASTRID Rassegna – N. 4/2016.

[350]RIPARTE IL FUTURO, LIBERA, TRANSPARENCY INTERNATIONAL ITALIA, CITTADINIREATTIVI, OPENPOLIS, CITTADINANZATTIVA e ACTION AID, *Due anni di FOIA, un diritto dei cittadini per vigilare sulle autorità pubbliche. Come è stato usato e cosa resta da fare*, 23 dicembre 2018. https://www.riparteilfuturo.it/blog/articoli/due-anni-di-freedom-of-information-act-usiamolo-tutti-per-controllare-la-pubblica-amministrazione

[351]GARDINI G., *La nuova trasparenza amministrativa: un bilancio a due anni dal "FOIA Italia"*, in www.federalismi.it, 19/2018.

For what concerns the right of access to environmental information, it is necessary to point out the important role played by the National Environmental Protection System (SNPA) established with the Law of June 28, 2016, n. 132.[352] The SNPA is the whole of the Higher Institute for Environmental Protection and Research (ISPRA), the Regional Agencies (ARPA) and the Autonomous Provinces (APPA) of environmental protection. The SNPA is a system that unites national environmental protection policies with direct knowledge of the environmental problems of the territory and that directs users to the offer of environmental information and public consultation processes.[353]

The growing environmental awareness of citizens and the promotion of information tools thanks to the use of new communication technologies has led in recent years to an increase in the demand for environmental information to the public administration by the subjects involved (stakeholders).[354]

The public administration is one of the fundamental factors and must be made more democratic by promoting an organizational model that enhances participative needs.At the origin of the poor progress made in implementing environmental policies, the COM(2016) 316 final identifies as main underlying reason the "*insufficient capacity in administrative bodies responsible for enforcing the legislation, including insufficient capacity in the organisations responsible for environmental regulation and enforcement, followed by insufficient data, evidence and information, and a lack of skills at the local level. Not least, inappropriate sanctions and a level of fines for those that breach the law that does not constitute a deterrent were mentioned*."[355]

Based on the aforementioned Communication, the Draft Law n. 783, presented last September, intervenes in the Legislative Decree 195/2005 extending to private companies the publicity obligations of environmental information already in force for the public administration and fixing certain, immediate, proportionate and dissuasive sanctions for those who deny the public or unjustifiably delays the access to environmental information itself.[356]

[352]Legge 28 giugno 2016, n. 132, *Istituzione del Sistema nazionale a rete per la protezione dell'ambiente e disciplina dell'Istituto superiore per la protezione e la ricerca ambientale*, pubblicata nella Gazzetta Ufficiale, serie generale, 18 luglio 2016, n. 166.

[353] MINISTRY FOR THE ENVIRONMENT LAND AND SEA, *Fourth update of the National Report of Italy on the implementation of the Aarhus Convention 2017*, 20 January 2017.

[354] CROCI E., MOLTENI T., ROSSI V., VASSILLO C. (a cura di), *Benchmarking degli strumenti adottati a livello regionale in Italia per la disciplina dell'accesso alle informazioni ambientali e ai documenti amministrativi*, Research Report n. 18, IEFE – The Center for Research on Energy and Environmental Economics and Policy at Bocconi University, Milano, Luglio 2015.

[355] EUROPEAN COMMISSION, *Delivering the benefits of EU environmental policies through a regular Environmental Implementation Review*, in: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2016) 316 final, Brussels, 27.5.2016.

[356]SENATO DELLA REPUBBLICA XVIII Legislatura, Disegno di Legge n. 783 d'iniziativa delle senatrici MORONESE e NUGNES, Comunicato alla Presidenza il 10 settembre 2018, *Modifiche al decreto legislativo 19 agosto 2005, n. 195, in materia di accesso alle informazioni ambientali detenute dalle imprese*.

Chap. 5 – Cases

In this chapter I will illustrate three cases that concerns in a direct or a more indirect way freedom of information in environmental matters. The first case is directly related with the topic. It is a Case that was brought in front of the European Court of Justice by an NGO to ask the disclosure of information. The second case represents the result of what can happen if information are not disclosed and citizen are not made aware of the conditions of the environment where they live. The third case is the example of what citizens, if empowered can do. Information are one of the keys to change the world, improving democracy and giving people the possibility to challenge the decisions of their governments.

Case C-57/16 P ClientEarth v European Commission

The first case that I decided to analyze is the Case C-57/16 P ClientEarth v European Commission. It is a recent case, that has found its end with the final ruling of the European Court of justice on September 4, 2019. It concerns the freedom of information in environmental matters and in particular it reversed the decision of the Commission to deny the disclosure of some documents during the consultation process in the first steps of the decision-making's process of the institution. The case is the last of many that during the years have created the jurisprudence clarifying the laws on access to information in environmental matters.

Previous judgments

To translate in European law the Aarhus convention, several regulations, decisions and directives were emanated by the European Commission, the European Council and the European Parliament to enforce it. In order to clarify those laws the European Court of Justice pronounced itself many times.[357] The cases can be divided in six different categories: the Aarhus convention and the European law, the notion of "information related to the environment", the notion of "public authority" that has to allow the access to environmental information, grounds for refusal of public access to environmental information, the amount of the charge imposed for access to information in environmental matters, and the right to access to environmental information held by the European Institutions.

The first category concerns the application of the Aarhus convention and how it is applicable in EU law. The case that has made clear this point is the Case of December 19, 2013 (Grand Chamber), Fish Legal e Shirley v Information Commissioner.[358] Two private companies that were providing a public service in the water sector, rejected a request of environmental information. The Upper Tribunal of the United Kingdom submitted it to the European Court of Justice. It was asked to the Court which was the definition of "public authority".

[357] COURT OF JUSTICE OF THE EUROPEAN UNION, *Public access to environmental information*, Fact sheet, op. cit.
[358] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 19 December 2013 — Fish Legal e Shirley v Information Commissioner (C-279/12), http://curia.europa.eu/juris/document/document_print.jsf?docid=145904&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9033992.

They need to clear in fact, if a private company that deals with public services falls within that definition. The response of the court was affirmative, having become part of the Aarhus Convention, the European Commission was committed to ensure that any natural or legal person enjoy his right to have access to information in environmental matters.

The second category concerns the notion of "information related to the environment" This group is composed by five cases that have made clear what is the concept of environmental information. The first judgment of this type dates back to June 17, 1998 and is the Mecklenburg v Kreis Pinneberg case.[359] The Schleswig-Holsteinisches Oberverwaltungsgericht (German Court) brought to the attention of the European Court the case. A German municipality refused to send to a private citizen a copy of the position adopted by the administrative authority that was responsible for the landscape conservation. The reason for the deny was that the authorities didn't consider the documents concerning information relating to the environment. The Court ruled that the Community legislation intends to give to the notion of information relating to the environment a broad meaning, consequently, to configure this definition it is sufficient, for a statement by an administrative authority, to constitute an act that affects the status of one of the environmental sectors. The second judgment is of June 26, 2003 Commission v France.[360] The French Republic was brought by the European Commission in front of the Court since in its opinion it had not transposed: Article 2, letter a), and Article 3, paragraphs 2, 3, and 4, of Directive 90/313 / EEC and of Article 189, third paragraph, of the EC Treaty (now Article 288, third paragraph, TFEU). France replied that it had already ensured the transposition of the Community legislation into national law with some previous laws. The problem was that the documents held by a public authority, acting in a private capacity, still constitute "information relating to the environment", and the French law didn't cover that case. The Court ruled in favour of the Commission and established that the documents should be issued regarding all information on the state of the environment. The third judgment is the Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden, of December 16, 2010.[361] The College van Beroep voor het bedrijfsleven of the Netherlands asked to the Euroepan Court of Justice to rule on this case. The study behind a ministerial regulation was refused to disclose by the Dutch Government. The reason was to protect some trade secrets. However, the court ruled that the concept of environmental information contained in this provision must be interpreted in a way that includes information produced in the context of a national authorization procedure. The fourth judgment is that of

[359] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Sixth Chamber) of 17 June 1998 — Wilhelm Mecklenburg v Kreis Pinneberg (C-321/96), http://curia.europa.eu/juris/showPdf.jsf?text=&docid=43940&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=9035263.

[360] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Sixth Chamber) of 26 June 2003 — European Communities v French Republic (C-233/00), http://curia.europa.eu/juris/showPdf.jsf?text=&docid=48452&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=9036658.

[361] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fourth Chamber) of 16 December 2010 — Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden (C-266/09), http://curia.europa.eu/juris/document/document_print.jsf?docid=79382&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9037725.

December 22, 2010, entitled Ville de Lyon v Caisse des dépôts et consignations.[362] The Tribunal Administratif de Paris (France) submitted this case to the European Court of Justice. The Caisse des dépôts et consignations (CDC) refused to communicate certain environmental information to the municipality of Lyon. In fact, the institution considered that the release of these documents should be governed by one of the exceptions provided for in Article 4 of Directive 2003/4 / EC or by the provisions of Directive 2003/87 / EC and Regulation (EC) n. 2216/2004, issued in application of the directive. The court ruled that the information must be provided, because there is a specific and exhaustive regime of confidentiality concerning that information. The fifth judgment is that of November 23, 2016, Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden.[363] A request for a preliminary ruling concerning in particular the interpretation of the concept of "information related to the environment" was submitted to the European Court of Justice by the College van Beroep voor het bedrijfsleven (Netherlands). An association had requested the Dutch government to disclose documents concerning modifications of certain authorizations for the marketing of plant protection products. The Court, placing a limit to the defense of industrial secrets, said that the information relating to the nature, composition, quantity, date and place of emissions into the environment fall within the notion of information on emissions into the environment. Consequently, only data referring to emissions into the environment are included in the aforementioned notion. The third group concerns the notion of "public authority" required to allow the access to environmental information. The first judgment was that of July 18, 2013, entitled Deutsche Umwelthilfe eV v Bundesrepublik Deutschland.[364] The Verwaltungsgericht Berlin, a German court, was called to decide on an annulment appeal brought against a refusal to release some information, and asked to the European Court to clarify the matter. The case concerned the refusal by the Bundesministerium für Wirtschaft und Technologie (Federal Ministry of Economics and Technology) to publish the information contained in the correspondence between that ministry and some representatives of the German automotive industry. The Court established that the release of information concerned also the ministries when they elaborate and adopt normative provisions having lower rank than a law. However, this provision cannot be interpreted as extending its effects beyond what is necessary to ensure the protection of the interests which it seeks to guarantee. The second judgment, that is also used to clarify the first group, is that of December 19, 2013 Fish Legal and Shirley. (C-279/12, EU: C:

[362] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fourth Chamber) of 22 December 2010 — Ville de Lyon v Caisse des dépôts et consignations (C-524/09), http://curia.europa.eu/juris/document/document_print.jsf?docid=83446&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9039149.

[363] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fifth Chamber) of 23 November 2016 — Bayer CropScience SA-NV and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biocidenbiociden (C-442/14), http://curia.europa.eu/juris/document/document_print.jsf?docid=185542&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9040357.

[364] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Second Chamber) of 18 July 2013 — Deutsche Umwelthilfe eV v Bundesrepublik Deutschland (C-515/11), http://curia.europa.eu/juris/document/document_print.jsf?docid=139762&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9041724.

2013: 853).[365] In this case the Court of Justice considered, regarding Article 2, point 2, of Directive 2003/4/EC, that companies such as water service management companies, that provide public services related to the environment, should be qualified as public authorities. Consequently, Article 2 (2) (b) of Directive 2003/4/EC must be interpreted as meaning that a person covered by this provision constitutes a public authority for what concerns all the environmental information that it held.

The fourth group concerns the grounds for refusal of public access to environmental information. The first case of this group, also belonging to the second group, is the judgment of December 16, 2010, Stichting Natuur en Milieu and Others.[366] On this occasion, the College van Beroep voor het bedrijfsleven of the Netherlands had submitted to the Court of Justice the question whether the weighting of the interests provided for, in Article 4 of Directive 2003/4/EC was imposed in each individual case or whether it could be carried out once and for all through a legislative measure. According to the court, Article 4 of Directive 2003/4/EC must be interpreted as meaning that the weighting prescribed by the public interest protected from the disclosure of environmental information and the specific interest protected by the refusal to disclose must be carried out in each particular case submitted to the competent authorities. The second case is the judgment of 28 July 2011, entitled Office of Communications v Information Commissioner.[367] The Supreme Court of the United Kingdom has submitted to the Court of Justice a request for a preliminary ruling in order to know which weighting of the interests in question required Directive 2003/4/EC in the event that a disclosure of information could cause prejudice to different interests . The case arose after the Office of Communications, on an Internet site in order to provide the information to the public, had refused to communicate certain information about the location of the radio stations for security reasons. The court upheld the public authority. According to the Court, Article 4 (2) of Directive 2003/4/EC must be interpreted as meaning that a public authority, if it holds environmental information or such information is held on its behalf, can, in weighing up public interests protected from disclosure with the interests protected from the refusal of disclosure, take into account cumulatively different reasons for the refusal.

The third case of particular relevance is that of January 15, 2013, Jozef Križan and Others v Slovenská inšpekcia životného prostredia.[368] The case arose from a refusal to release information from the Slovak body

[365] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 19 December 2013 — Fish Legal e Shirley v Information Commissioner (C-279/12), http://curia.europa.eu/juris/document/document_print.jsf?docid=145904&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9033992.

[366] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fourth Chamber) of 16 December 2010 — Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden (C-266/09), http://curia.europa.eu/juris/document/document_print.jsf?docid=79382&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9037725.

[367] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Third Chamber) of 28 July 2011— Office of Communications v Information Commissioner (C-71/10), http://curia.europa.eu/juris/document/document_print.jsf?docid=108326&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9045062.

[368] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 15 January 2013— Jozef Križan and Others v Slovenská inšpekcia životného prostredia (C-416/10), http://curia.europa.eu/juris/document/document_print.jsf?docid=132341&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9047114.

for environmental control to some citizens. The Najvyšší súd Slovenskej republiky has referred several questions to the Court of Justice, concerning, in particular, the interpretation of Directive 96/61/EC, as amended by Regulation (EC) No. 166/2006. The Court stated that Directive 96/61/EC, concerning integrated pollution prevention and control, should be interpreted as if it does not allow the competent national authorities to refuse the public concerned any access, even partial, to a decision by means of which a public authority authorizes an urban change that could have an environmental impact. The fourth case, already cited in the second group is the Bayer CropScience and Stichting De Bijenstichting.[369] The College van Beroep voor het bedrijfsleven (Netherlands) referred the matter to the Court of Justice, in the context of the interpretation of the concept of "information on emissions into the environment". The Court ruled that the second subparagraph of Article 4 (2) of Directive 2003/4 / EC must be interpreted as, in the event of request for access to information on emissions into the environment whose disclosure would be prejudicial to one of the interests covered by article 4, paragraph 2, first subparagraph, letters a), d), and f) of this directive, only the relevant data that can be extracted from the source of information regarding the information must be disclosed. If it is possible to dissociate such data from the other information contained in the aforementioned source is a circumstance that it is for the national judge to verify.

The fifth group of judgments is the one that concerns the amount of charge imposed to access to environmental information. The case that clarify this aspect is of October 6, 2015, and is the East Sussex County Council v Information Commissioner and Others.[370] Submitted to the court by the First-tier Tribunal of the United Kingdom, the case developed from a request for environmental information to the East Sussex County Council by a real estate company, to which he had been ordered to pay different fees in application of a tariff standard. According to the Court, Article 5 (2) of Directive 2003/4/EC must be interpreted as meaning that the charges imposed for the provision of a particular type of environmental information cannot include any part of the expenses caused by the maintenance of a database used for this purpose by the public authority, but may include general expenses attributable to the time that the staff of that authority has dedicated to respond, provided that the total amount of the said fee does not exceed a reasonable amount.

The sixth group concerns the right of access to environmental information held by European institutions. This is the point that the judgment C-57/16 P ClientEarth v Commission[371] will further clarify. The first case is that

[369] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fifth Chamber) of 23 November 2016 — Bayer CropScience SA-NV and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biocidenbiociden (C-442/14), http://curia.europa.eu/juris/document/document_print.jsf?docid=185542&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9040357.

[370] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fifth Chamber) of 6 October 2015— East Sussex County Council v Information Commissioner and Others (C-71/14), http://curia.europa.eu/juris/document/document_print.jsf?docid=169183&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9054046.

[371] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677.

of November 14, 2013, Liga para a Protecção da Natureza and Finland v Commission.[372] The LPN and the Republic of Finland had challenged the Court's ruling in front of the European Court of Justice. In 2003 they had filed a complaint with the European Commission alleging that a dam construction project damaged the environment. In 2007, the LPN had asked the Commission to have access to information relating to the treatment of its complaint and to consult certain documents. The Commission rejected the request, and LPN decided to appeal the decision. The Court was thus called upon to rule on the existence of a general presumption that the disclosure of documents relating to infringement proceedings could undermine the protection of the objectives of an investigation. The Court concluded that it is legitimate to consider Article 6 (1) of Regulation (EC) No. 1367/2006 since it has no impact on the analysis to be carried out by the Commission pursuant to Regulation (EC) n. 1049/2001. The second case is that of November 23, 2016, and is called Commission v Stichting Greenpeace Nederland and PAN Europe.[373] Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) had asked the Commission, referring to Regulation (EC) n. 1049/2001 with regard to regulation (EC) no. 1367/2006, to access to a series of documents concerning the first authorization for the marketing of glyphosate as an active substance, issued in application of Council Directive 91/414 / EEC of 15 July 1991 concerning the entry into plant protection of some trade products. Only a part was granted and the court condemned the Commission that made the documents public. Following the acceptance by the Court of the annulment appeal filed by Greenpeace Nederland and PAN Europe against this decision, with the motivation, in particular, that the information requested concerned emissions into the environment pursuant to Article 6, paragraph 1, first period, of the regulation (EC) n. 1367/200619, the European Commission challenged the Court's ruling in front of the Court of Justice. In its judgment, which annulled the contested judgment, the Court stated that the notion of "information concerning emissions into the environment" pursuant to Article 6, paragraph 1, first sentence, of Regulation (EC) no. 1367/2006 can be interpreted strictly. Indeed, Regulation (EC) n. 1049/2001 aims, as emerges from its recital 4 and from its article 1, to confer to the public a right of access to the documents of the institutions which is as wide as possible. However, the Court found, for the purposes of annulment, that this concept cannot, however, include any information that contains any link, even if direct, with the emissions into the environment. Such an interpretation would therefore deprive the institutions of any useful effect of denying the disclosure of environmental information to protect commercial interests. The third judgment is of July 13, 2017 and is called Saint-Gobain Glass Deutschland v Commission.[374] Saint-Gobain, a French company, had asked the

[372] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fifth Chamber) of 14 November 2013— Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission (Joined Cases C-514/11 P and C-605/11 P), http://curia.europa.eu/juris/document/document_print.jsf?docid=144492&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9055665.

[373] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court of 23 November 2016— Commission v Stichting Greenpeace Nederland and PAN Europe (C-673/13 P)
http://curia.europa.eu/juris/document/document_print.jsf?docid=185545&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9057071.

[374] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Fifth Chamber) of 13 July 2017— Saint-Gobain Glass Deutschland GmbH v European Commission (C-60/15 P)

Commission, based on regulation (EC) n.1049/2001 and regulation (EC) n.1367/2006, to have access to a document containing information concerning some of its facilities located in German territory. Following the rejection by the Court of the annulment action brought by Saint-Gobain against that decision, that company therefore challenged the Court's ruling in front of the Court of Justice. In its judgment, the Court annulled the judgment of the Court of First Instance, as well as the contested decision of the Commission, after finding that the Court had erred in law by failing to interpret narrowly the first subparagraph of Article 4 (3) of the regulation (CE) n. 1049/2001. In this regard, the Court held more particularly that the concept of "decision-making" contained in this provision must be interpreted as referring to the adoption of the decision, without including the entire administrative procedure.

The case C-57/16 P ClientEarth / Commission

To the long list of cases that I have introduced before a new case was added last year. The new case will be added to the sixth group of judgments, that is composed by the cases that clarify which are the information held by the EU institutions. The case is the C-57/16 P ClientEarth v Commission and it has set a precedent that will have strong repercussions in the years to come for what concerns the freedom of information in environmental matters. [375] As illustrated in the previous chapters, the Commission has the duty to disclose the documents in case of request. After this ruling, it would have the duty to do so also during the consultation process that precedes each legislative initiative. In this field there were just few cases and judicial precedents. The effects are particularly important for the application of the Regulation 1049/2001 treating citizens' access to the documents of the European Parliament, Council and Commission that was illustrated before. The case, which has been developed over a period of more than 4 years and arose from the negative opinion of the commission to provide information to an NGO called ClientEarth, ended with the final ruling on 4 September, 2018, when the European Court of Justice annulled the Commission's decision. The result is that there is no presumption of confidentiality of documents drawn up in the context of the preparatory work for a legislative initiative.

The arising of the case

ClientEarth is an NGO based in London but operating in all the European Union, that deals with environmental law. This organization is unique across the European landscape and uses law to defend environmental issues of any kind.[376] In 2014, the European Commission was working on two environmental regulatory projects. In

http://curia.europa.eu/juris/document/document_print.jsf?docid=192693&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9058223.

[375] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P)
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677.

[376] KANTER, J., *Lawyer Finds Europe Going Astray* in The New York Times 03/01/2010 https://www.nytimes.com/2010/03/01/business/energy-environment/01green.html?mtrref.

the early months of that year, ClientEarth, aware of the preliminary studies to decide which kind of regulations adopt, requested the Commission to access to the documents relating to the two projects: the EU-wide rules on access to justice at state level and the EU rules on environmental inspections. It specifically requested access to: an impact assessment report on a binding instrument project that defines the strategic framework for inspection and surveillance procedures focused on risks and related to environmental legislation; to an opinion of the impact assessment committee; a draft report on the impact assessment related to access to justice in environmental matters at Member State level in the field of EU environmental policy; and an opinion of the Impact Assessment Committee. ClientEarth wondered why the studies that the European Commission had conducted on the environmental impact of the projects had not been published. The only explanation the NGO could think of was that the Commission was trying to hide the results of the studies to the public. If their assumption was right, why did the European Commission wanted to hide the results of the preliminary studies from its citizens?[377] The goal of the two initiatives that the European Union had undertaken was to significantly strengthen environmental protection in Europe. Apparently, there should have been no hesitation in publishing the documents that showed what the results of the new regulation would have been. The precedents, so the attempt, in 2003, to get a Directive approved on access to justice in environmental matters that had never come to light, showed that the governments of the Members States wanted to hinder the implementation of those kinds of projects.[378] The reason of the organization's request was to avoid the influence of the member states on the projects. Therefore, it must be framed in the perspective of greater and effective participation in the decision-making process of the Commission and in the implementation of more stringent rules at European level on environmental matters.

The Commission, to reject ClientEarth's request, invoked Article 4 (3) first subparagraph ("the ongoing decision-making process exception") of regulation 1049/2001. The case developed from this denial that according to the NGO was the product of an error of law. The decision was motivated by the Commission asserting that the impact assessments, in the context of discussions and negotiations with the possibility of adopting legislative initiatives still in progress, would seriously undermine the decision-making processes, by restricting the institution's room for maneuver. This would have affected his role as an independent organ and his ability to carry on the general interest (invoking article 17 (1) and (3) TEU in the process).[379] The Commission's second reason was that there was no overriding public interest justifying the disclosure of the requested documents, given that in 2013 a public consultation had been organized and the interested parties contributed to the definition of the broad lines of the proposal. In order to continue the decision-making

[377] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677.

[378] ANKERSMIT, L., *Case C-57/16P ClientEarth v Commission: Citizen's participation in EU decision-making and the Commission's right of initiative*, The European Law Blog, 22 October 2018, https://europeanlawblog.eu/2018/10/22/case-c-57-16p-clientearth-v-commission-citizens-participation-in-eu-decision-making-and-the-commissions-right-of-initiative/

[379] Art. 17.3 of TEU: "In carrying out its responsibilities, the Commission shall be completely independent."

processes without any external pressure, therefore, the Commission would not have had to disclose the documents, thus avoiding prejudging the decision-making processes and allowing to reach the best possible compromise. Furthermore, several documents were already available online and all the others would have been published at the time of adoption of the legislative proposals. According to ClientEarth none of these reasons were valid. In fact, for the organization, leaving these impact assessments classified, the Commission was implicitly demonstrating that it had not acted independently, so in the best interests of the citizens, but had been guided by the will of the Member States. To do that the Commission had mistakenly interpreted and applied the exceptions to access to documents and omitted to justify the reasons why the general presumptions were applicable, why the disclosure would endanger the decision process, and why there wasn't a public interest in publishing the documents.[380]

The judgment of the General Court

ClientEarth decided to take the Commission to Court. It deposited the application to the General Court (Second Chamber) of the European Union on June 11, 2014 starting so the Case T424/14.[381] In the litigation that followed, the General Court had been on the commission's side in all circumstances. When in November 13, 2015 the verdict was read, it was in favour of the Commission. During the trial, the General Court applied the general presumption of confidentiality to the documents conceived within the legislative process, which represented a further extension of the case-law on general presumptions. It must be remembered that when an institution decides to refuse access to a document, it has to explain in principle how access to such a document could prejudice the protected interest. The institution concerned may base its denial on general presumptions which apply, as said before, to certain categories of documents.[382]

Before deciding whether to apply a general presumption of confidentiality, the Court looks at the content and context in which the documents have been requested. The context is of primary importance because to the documents prepared by the Commission, when it acts according to the legislative procedure, must be guaranteed the widest possible access. This right is guaranteed by Regulation 1049/2001 that reflects central constitutional values (Art. 1 and 10 (3) TEU, Art. 15 (1) TFEU) regulating the disclosure of documents. This should allow an open decision-making that is as close as possible to citizens. It is a duty to guarantee to citizens the widest right of access to European Union documents. There are some exceptions to this right that can be

[380] ANKERSMIT, L., 2018, op cit.

[381] COURT OF JUSTICE OF THE EUROPEAN UNION, Application to the Court of 11 June 2014 — ClientEarth v Commission (T-424/14), http://curia.europa.eu/juris/document/document_print.jsf?docid=157459&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=9077498; COURT OF JUSTICE OF THE EUROPEAN UNION, Application to the Court of 11 June 2014 — ClientEarth v Commission (T-425/14), http://curia.europa.eu/juris/document/document_print.jsf?docid=157460&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=10012151.

[382] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Second Chamber) of 13 November 2015 — ClientEarth v Commission (T-424/14), Par. 59; 63-66; 67. http://curia.europa.eu/juris/document/document_print.jsf?docid=180213&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=9077498

applied if it is shown that access to the document drawn up for internal use effectively and substantially prejudices the decision-making process.[383]

Those exceptions are contained within Article 4 of the Regulation 1049/2001 and must be interpreted and followed literally. Over the years, thanks to the various case-laws on the subject, the institutions have broadened the areas in which they can appeal to general presumptions of confidentiality for certain categories of documents. Currently, the Commission has the right to apply this general presumption to almost all of its key powers.[384] These 5 categories are: documents relating to state aid procedures; the lodged submissions in pending proceedings before the EU courts; the documents drawn up during the merger procedures; the documents relating to proceedings under Article 101 TFEU; and the documents relating to an infringement procedure during its pre-litigation stage, including pilot procedures.

The General Court reminded that when the Commission prepares and elaborates policy proposals, it acts independently so that its proposals are exclusively elaborated for the general interest. Consequently, the disclosure of such documentation outside the public consultation organized by the Commission means that third parties can influence the choice. Thus, the general presumption can be applied until the commission makes a decision regarding a possible political proposal.[385] Furthermore the General Court decided that the documents requested didn't constitute an overriding public interest.[386]

The NGO, believing that the judgment was due to an error of law, decided to appeal the sentence. If another presumption of confidentiality had been approved for documents drafted in the context of the legislative initiative, the right of citizens to have access to information would have been drastically reduced. The key question was whether the Commission had acted in a legislative capacity when it claimed to do so. It must also be considered that these were not simply documents, but environmental information and consequently subject to Regulation 1367/2006 on the application to the institutions and the Community bodies of the provisions of the Aarhus Convention on access to information, public participation to decision-making processes and access to justice in environmental matters.

[383] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Second Chamber) of 13 November 2015 — ClientEarth v Commission (T-424/14), Par. 60.
http://curia.europa.eu/juris/document/document_print.jsf?docid=180213&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=9077498

[384] KINGSTON S., HEYVAERT V., ČAVOŠKI A. *European Environmental law*, Cambridge (UK), Cambridge University Press, 2017.

[385] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Second Chamber) of 13 November 2015 — ClientEarth v Commission (T-424/14), Par. 83-85; 96-97; 99-100.
http://curia.europa.eu/juris/document/document_print.jsf?docid=180213&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=9077498

[386] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Second Chamber) of 13 November 2015 — ClientEarth v Commission (T-424/14), Par. 150-151.
http://curia.europa.eu/juris/document/document_print.jsf?docid=180213&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=9077498

The opinion and the appeal to the European Court of Justice

After the ruling of the General Court, the impartial Opinion on the case by the Advocate General Yves Bot was asked.[387] It was delivered in November 28, 2017. According to the Advocate General the problem was that after this ruling, the strategic choices contained in a legislative initiative would have been compared to the content of an impact assessment. Bot explained why the judgment of the General Court of Justice was due to an error of law, and to do that he enumerated five reasons.

The first reason is that the court had not taken into account the specific nature of the documents to which it should have granted the widest possible access. In fact, the documents are an integral part of the legislative process and more precisely of the decision to submit a legislative proposal.[388] When the Commission acts in a legislative manner it must be guarantee a broad access to information. Furthermore these documents do not fall under any of the 5 general presumptions of confidentiality.[389]

The second reason is related to the application of the jurisprudence of the court. If the Commission applies the presumptions of confidentiality, it means that it is acting as a law enforcement body.[390] For the General Court, 3 criteria must be applied for the application of a general presumption of confidentiality: the documents must belong to the same category, the access to the documents would hinder the proper conduct of the procedure, there is a legislative text that specifically governs how to access the requested documents.[391] This statement doesn't take into consideration the fact that the court has limited the use of general presumptions of confidentiality to cases in which the documents are part of an ongoing administrative or judicial procedure, as stated in the Case 612/13P ClientEarth v Commission.[392]

[387] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P). http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[388] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 45. http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[389] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 57. http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[390] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 83. http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[391] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 87. http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[392] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 89. http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197; COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Second Chamber) of 16 July 2015— ClientEarth v Commission (C-612/13 P), http://curia.europa.eu/juris/document/document_print.jsf?docid=165903&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9912494.

The third reason is related to an error of law due to the fact that the court held that Article 17 par. 1 to 3 of the TEU constitute a legal basis to establish a general presumption of confidentiality for the benefit of the disputed documents. The General Court of Justice stated that the Commission had to be able to act in full independence and in the service of the general interest when preparing policy proposals. This is correct, however it is up to the Commission to demonstrate that there is a reasonably foreseeable concrete risk of prejudice to the decision-making process.[393] Consequently in the point 97 of the ruling of the General Court of Justice when it says that "the Commission is entitled to presume that the disclosure damages seriously the decision-making process without proceeding to a concrete and individual examination of each document", it is wrong.[394]

The fourth reason is that the General Court of the European Union did not verify the existence of a specific damage. The General Court of Justice made an error when it said that the Commission could be based on considerations of a general nature.[395] The presumption of confidentiality allows the institution to make use of it to justify the denial of access to documents by invoking the prejudice that such disclosure would cause.[396]

The fifth reason was the fact that the recognition by the General Court of Justice of a general presumption of confidentiality for the benefit of the disputed documents, since the fact that they were at an early stage, would ultimately made this presumption absolute.[397]

Although the opinion of the Advocate General it is not binding it is taken in high consideration by the Court of Justice.[398]

The case finally arrived in front of the European Court of Justice, which issued the verdict on September 4, 2018.[399] The judges of the court looked at the context and the content of the documents during the proceedings. They started the judgment remembering that in case the European Commission is acting on its legislative capacity it should be guaranteed the widest possible access to the documents. Indeed, the "possibility for

[393] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 106.
http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[394] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 108.
http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[395] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the General Court (Second Chamber) of 13 November 2015 — ClientEarth v Commission (T-424/14), Par. 96.
http://curia.europa.eu/juris/document/document_print.jsf?docid=180213&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=0&cid=9077498

[396] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 115.
http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[397] COURT OF JUSTICE OF THE EUROPEAN UNION, Opinion of advocate general Bot delivered on 28 November 2017— ClientEarth v Commission (C-57/16 P), par. 119-123.
http://curia.europa.eu/juris/document/document_print.jsf?docid=197181&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9083197

[398] SCHÜTZE R., *European Union Law*, op.cit.

[399] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P).
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

citizens to scrutinize and be informed of information on the basis of EU legislative action is a precondition for the effective exercise of their democratic rights" as recognized, in particular, in Article 10 (3) TEU. According to Article 12 (2) of Regulation No. 1049/2001 - it must be classified as «legislative documents» and consequently be made directly accessible, not only the act adopted by the EU legislator, but all the documents formed or received in the context of procedures intended for adoption of legally binding acts in the Member States or against them.[400] Similar assessments are, according to the guidelines concerning the impact assessment, key tools that allow for the initiatives of the institution itself and the legislation of the Union to be developed starting from transparent, complete and balanced information. It is on the basis of this information that the Commission can evaluate the opportunity, the necessity, the nature and the content of these initiatives.[401] Consequently, the Court held that the impact assessment reports and related opinions on the Impact Assessment Board formed the basis for a legislative initiative of the European Union. The disclosure of these documents would have increased the transparency and openness of the legislative process as a whole.[402] In addition, the documents in question were not only drafted in the context of a legislative procedure but were also considered "environmental information" within the meaning of the Aarhus Regulation.[403] The Court has therefore come to the conclusion that the exceptions to the disclosure of documents by the Commission must be interpreted and applied more narrowly in the light of their context and their content.[404] The application of the exceptions to Regulation 1049/2001 must be interpreted more strictly. The Court has thus rejected the argument that the Commission, given its specific role conferred on it by Article 17 of the TEU (to act independently and exclusively in the general interest), can rely on the presumptions of confidentiality. The contents and context of the documents did not preclude their publication. In conclusion, the Court has ruled that the Commission can decide which policies to adopt and which potential proposals to submit, however, it cannot interpret the regulation in a way that does not make the documents public.[405] In

[400] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 85.
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

[401] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 90-94.
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

[402] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 92-104.
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

[403] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 99-100.
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

[404] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 101.
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

[405] COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 109.

other words, the special role of the Commission under Article 17 TEU does not guarantee it any additional privileges with respect to Regulation 1049/2001 to apply a general presumption of confidentiality to documents drawn up in the context of the legislative initiative. It certainly cannot be excluded that, in the event of disclosure before the Commission has taken a decision on a possible proposal, third parties will try to exert an influence. However, the law of the Union does not, in principle, require that institution to engage in constant dialogue with interested parties in individual cases. It follows that, if the Commission must certainly be able to benefit from a space for reflection in order to be able to decide on political choices, it cannot be said that the protection of the Commission's power of initiative requires, that the documents formed in the context of an evaluation of impact may, remain confidential until the aforementioned institution has taken such a decision.[406]

Conclusions and further developments

The Court has in this way reversed completely the judgment of the General Court. Following the Opinion of the Advocate General it has reached the opposite conclusion to that of the Commission, establishing that its special powers require it to be even more open. As it turned out when the studies were published, they showed that the projects the Commission was planning were urgently needed. Consequently, the only reason to not publish it was to not show the influence of member states. The disclosure of the documents would have demonstrated the urgency of those new regulations, both for what concerns access to justice in environmental matters and for what concerns environmental inspections. However, the Commission going against the public interest, and under pressure from the member states, has adopted the projects in 2017 and 2018 respectively, in the form of simple guidance documents, instead of binding legislation at European level. The ruling of the Grand Chamber of the Court will become a significant aid in the coming years in clarifying citizens' rights to access to European Commission documents. Furthermore, the Court stopped extending the presumption of confidentiality for documents drawn up in the context of the right of initiative. As established by the Aarhus Regulation, the importance of citizen participation in the legislative process of the European Union must be emphasized also in the early stages of the proposals. It is to be hoped that after this ruling the Commission will have greater openness towards the public. This case can be inserted in a wider picture. It has not only expanded and further clarified the right to access to environmental information held by the European Institutions, that now can be obtained even during the preparation of a legislative proposal, but it has made clear that the Aarhus convention it is more needed and important than ever. The Article 4 of the Regulation 1049/2001 will be followed literally and it won’t be used anymore for other unclear scopes. In conclusion we

http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

406 COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Grand Chamber) of 4 September 2018 — ClientEarth v European Commission (C-57/16 P), par. 103-104; 106-109.
http://curia.europa.eu/juris/document/document_print.jsf?docid=205322&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=9073677

can affirm that the rights of the European citizens will be better protected and will be increased thanks to the jurisprudence of this case.

Case ILVA

Introduction

Every government that has succeeded in leading Italy in recent years has had to deal with the case of the ILVA steelworks in Taranto. The complexity of the case has made it very difficult to solve and only the last sentences, now reaching the final levels of judgment, seem to represent a starting point from where one can begin to normalize the situation. The ILVA, now part of the ArcelorMittal group, is Europe's largest steel plant. It is active in the production and transformation of steel, has 15 production units and has a capacity of 8 million tons a year compared to a turnover that in 2016 was 2.2 billion euros. There is a production cycle called "integral cycle", which starts from raw materials such as iron and coal and ends with the creation of steel.[407] The environmental disaster that has arisen is due to a series of factors that have not been taken into consideration over the years. The first is that the plant, despite being close to the city of Taranto, has grown out of proportion, becoming fundamental for the city's economy and representing an important if not fundamental part of the province's revenues. However, attention to the surrounding environment and continuous innovation of technologies and investments that should have prevented the pollution of the area from reaching catastrophic proportions did not correspond to this growth. In recent years, in fact, it has been evident that damage to human health has been incalculable, with a dizzying increase in tumors related to dust, pollution of groundwater and other types of pollution related to industrial activity. The various courts, of all grades, both national and international, have found themselves judging the balance between the principle of the right to health and living in a healthy environment and that of the right to work. On the one hand the citizens found themselves, tired of dying due to the pollution of the steel plant and on the other the Italian government, which intervened to defend an industry of national interest that represents the only big company in the city. Although the right to environmental information has not been used in any of the processes that followed, after having briefly traced the judicial history of the story, I will dwell on the possible use of art. 10 of the European Convention on Human Rights, where the European Court of Human Rights identified the application of the Aarhus Convention, in the Cordella case.[408]

[407] https://italia.arcelormittal.com/it/who-we-are/our-operations/taranto

[408] EUROPEAN COURT OF HUMAN RIGHTS, Première Section, Affaire Cordella et autres c. Italie, *(Requêtes nos* 54414/13 *et* 54264/15*)*, arrêt, Strasbourg, 24 janvier 2019, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-189421%22]}.

The origins of ILVA

The history of ILVA is closely connected with the economic boom and the need to increase production for the industrialization of Italy in the last century.[409] ILVA was born from the merger of the main companies operating in the Italian steel industry of the early 1900s that led to the creation of the company. The new steelworks came to cover all domestic production of cast iron and 58% of that of steel. Following the crisis of '29 the company, after various passages, ended up, in 1934, under IRI management. In 1937, IRI set up the Finsider Iron and Steel Finance Company, which managed its economic assets until the 1960s. In the post-war period, IRI undertook to reconvert the production of steel according to the new needs of the population and the constantly growing market. To make up for the shortage of material for the automotive industry, thus limiting imports, it was decided to build the steel center of Taranto.[410]

The ILVA plant in Taranto was built in 1960 at the expense of the state and was then inaugurated in 1964.[411] It was at the time of the fourth Italian steel pole, equipped with 5 blast furnaces over 40 meters high and with a diameter of 10-15 meters. The choice to build the plant in Taranto was due to various reasons. The first reason is that it was thought that the construction of the plant would benefit the city's economy by promoting investments that would have enriched the economy. The second is that being located near the sea and being equipped with a full-cycle production capacity that would have made it possible to replace imports with national production, it would have been easy to transport both the material destined for processing and the finished product throughout the Italian territory. The third was the convergence between skilled labor and the economy of the locality. For these reasons it was so decided not to respect the rule that already from 1934 imposed the construction of industrial plants outside of inhabited areas.[412] Originally the group called Italsider, was able to produce 3 million tons a year of steel, then passed to 4.5 million in 1970 to reach 11.5 million in 1975 with a number of employees equal to 43,000 in 1981 In the space of 10 years the plant thus quadrupled its production capacity with an evident increase in pollution in the surrounding area. However, the expansion of the plant was not accompanied by any strategic development plan for the surrounding area that remained totally dependent on the steel industry. In 1995, as part of the privatization of state economic assets, the Italian government decided to privatize the company by selling it to the Riva Group, which controlled and managed the plant until 2015.[413] The Government, following the seizure orders of the Court of Taranto then commissioned the plant, putting it on sale with an international call for tenders. On June 5, 2017, the Ministry of Economic Development (MiSE) signed the decree for the award of the ILVA to the AM Investco Italy

[409] BIANCHI R., *Il Caso ILVA: breve storia della vicenda giudiziaria*, Altalex, 2018.
[410] FIDH (Fédération Internationale des Droits de l'Homme), Unione forense per la tutela dei diritti umani (UFTDU), Peacelink, Human Rights International Corner (HRIC), *The Environmental Disaster and Human Rights Violations of the ILVA steel plant in Italy*, April 2018 / n° 711a, https://www.fidh.org/IMG/pdf/industrieitaly711aweb-1.pdf.
[411] http://senato.archivioluce.it/senato-luce/scheda/video/IL5000050036/2/Italia-Il-presidente-del-Consiglio-Moro-inaugura-a-Taranto-lacciaieria-del-quarto-centro-siderurgico-dellItalsider.html
[412] Art. 216 del Decreto Regio n. 1265/1934 of the Consolidated law on healthcare.
[413] AFFINITO M., DE CECCO M., DRINGOLI A., *Le privatizzazioni dell'industria manifatturiera italiana*, Roma, 2000.

group consisting of Arcelor Mittal Italy Holding (51%), Arcelor Mittal SA (31%) and Marcegaglia Carbon Steel Spa (15%).[414]

The start of the legal proceedings

The difficult environmental situation linked to the industrial activities of the ILVA of Taranto has long been known.[415] The Italian government declared the province of Taranto as an area with a high risk of environmental crisis already in 1990. Over the years, the emissions of ILVA have already been the subject of actions before the judicial authority. There are numerous reports that scientifically highlighted the strong impact that plants had on the health of the population. The first was a 2002 document from the European Center for the Environment and the Health of the World Health Organization (WHO), which highlighted the link between ILVA emissions and the high mortality rate found in the area near Taranto.[416] The start of the complex legal case that still continues today is the result of the ruling of the European Union Court of March 30, 2011, which condemned Italy for breaking EU law.[417]

Italy according to the European Court of Justice did not comply with Directive 2008/1 / EC on the prevention and integrated reduction of pollution that requires the obligation on the part of industrial activities with high polluting potential to have an Integrated Environmental Authorization (IEA),[418] of Directive 89/391/EC,[419] safety and health of workers at work, and of Directive 2004/35/CE on environmental responsibility.[420] Furthermore, according to the Court of the European Union, the Member States should have issued the IEA and provided an updated census of all the plants at risk by 30 October 2007, while Italy did so only at the end of October 2009, and with the D .Lgs. N. 155/2010 postponed the entry into force of the emission limit values to 2012.[421] The Ministry of the Environment, worsening the situation, reported to the Commission that it did not have the data on the authorizations granted on the national territory for the delay of the Regions on updating of the data, where the competence for the release of the IEA belongs only to the Ministry.[422]

414https://www.mise.gov.it/index.php/it/194-comunicati-stampa/2036649-calenda-firma-il-decreto-di-aggiudicazione-del-complesso-industriale-del-gruppo-ilva-ad-am-investco-italy

415 BIANCHI R., *Il Caso ILVA: breve storia della vicenda giudiziaria*, op cit.

416 WORLD HEALTH ORGANIZATION (WHO), *The World Health Report 2002: reducing risks, promoting healthy life*, Geneva, 2002.

417 COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Seventh Chamber) of 31 March 2011— Commission v Italy (C-50/10), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62010CJ0050&from=EN.

418 EUROPEAN COMMUNITIES, Council Directive 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 January 2008 concerning integrated pollution prevention and control. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0001&from=EN

419EUROPEAN COMMUNITIES, Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31989L0391&from=EN

420 EUROPEAN COMMUNITIES, Council Directive 2004/35/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0035&from=IT

421 Decreto legislativo 13 agosto 2010, n.155, *Attuazione della direttiva 2008/50/CE relativa alla qualità dell'aria ambiente e per un'aria più pulita in Europa*, in Gazzetta Ufficiale n. 216 of 15 settembre 2010 - Suppl. Ordinario n. 217.

422 COURT OF JUSTICE OF THE EUROPEAN UNION, Judgment of the Court (Seventh Chamber) of 31 March 2011— Commission v Italy (C-50/10).

In 2012 the Prosecutor of Taranto ordered the arrest of some members of the leadership of the company and of the political leaders on the charge of having deliberately produced a pollution that had compromised the environment and the health of the citizens of Taranto. Also in 2012, the GIP of Taranto, Todisco, ordered the seizure without the right to use the ILVA hot plants because "those who managed and managed the ILVA continued in this disturbing activity with conscience and will for the logic of profit trampling the most basic security logics.".[423] Furthermore, the costs necessary for the reclamation are quantified in 8 billion euros.[424] Following this provision, the Italian government adopted several urgent so-called "Salva ILVA" legislative measures with which it arranged for the continuous production activity despite the provisions of the judiciary and despite the proven harmful impact of the plant on the population and on the surrounding environment.[425] The first provision was Law Decree n. 207 of 2012 which established that the Minister of the Environment has the power to authorize the release of the IEA to continue the production activity of a plant of national strategic interest for a period not exceeding 36 months despite the fact that there is a seizure order in act by the judiciary.[426] This provision was challenged by the Criminal Judge at the Constitutional Court, which however declared the inadmissibility of the question with sentence 85/2013.[427] This is because the legislation does not provide for the simple continuation of the activity, but imposes new conditions, the observance of which must always be controlled. As a result, we try to balance the two principles of health and employment.[428] The plants were thus reopened thanks to the receivership by Decree Law no. 61 of 2013, which established that the responsibility for managing the various measures envisaged by the integrated environmental authorizations was assigned to an extraordinary commissioner. [429] Furthermore, with the Decree Law n. 136 of 2013, the extraordinary commissioner was given the power to exclude 20% of improvement interventions, at his choice, from the total prescriptions of the integrated environmental authorization to be respected by 2016. [430] At the same time, with the Decree Law n. 1 of 2015, the extraordinary commissioner and his appointees received the criminal and administrative immunity for what was adopted to implement the environmental plan required by the integrated environmental authorization.[431]

[423] https://www.camera.it/_dati/leg16/lavori/documentiparlamentari/indiceetesti/023/012/d020.htm
[424] TRIBUNAL OF TARANTO, Office of the Preliminary Investigation Judge, Preventive Seizure Decree, 22 May 2013, following the recourse n. R.G.N.R. 938/2010.
[425] FERRONI M. V., *I profili pubblicistici dell'amministrazione straordinaria delle grandi imprese in stato di insolvenza ed il caso ILVA*, federalismi.it, Roma, 2019.
[426] Decreto Legge 3 dicembre 2012, n.207, *Disposizioni urgenti a tutela della salute, dell'ambiente e dei livelli di occupazione, in caso di crisi di stabilimenti industriali di interesse strategico nazionale*, in Gazzetta Ufficiale n. 2 of 3 gennaio 2013.
[427] CORTE COSTITUZIONALE, Judgment of 9 April 2013, *Giudizio di Legittimità Costituzionale in via Incidentale*, Sentenza 85/2013 (ECLI:IT:COST:2013:85), https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=85.
[428] GUARNIER T., *Della ponderazione di un "valore primario". Il caso ILVA sotto la lente della corte costituzionale,* in Diritto e Società, Edizione Scientifica, Napoli, 2018.
[429] Decreto Legge 4 giugno 2013, n. 61, *Nuove disposizioni urgenti a tutela dell'ambiente, della salute e del lavoro nell'esercizio di imprese di interesse strategico nazionale,* in Gazzetta Ufficiale n. 129 del 4 giugno 2013 – Serie Generale.
[430] Decreto Legge 10 dicembre 2013, n. 136, *Disposizioni urgenti dirette a fronteggiare emergenze ambientali e industriali ed a favorire lo sviluppo delle aree interessate*, in Gazzetta Ufficiale n. 32 of 8 febbraio 2014.
[431] Decreto Legge 5 gennaio 2015, n. 1, *Disposizioni urgenti per l'esercizio di imprese di interesse strategico nazionale in crisi e per lo sviluppo della città e dell'area di Taranto*, in Gazzetta Ufficiale n. 53 of 5 marzo 2015.

Subsequently, new complaints were made by citizens and NGOs, who complained that the polluting exhalations from the steelworks were continuing to damage their health. The Commission sent Italy a notice of default, inviting it to adapt to the new Directive 2010/75 / EU on industrial emissions and large combustion plants.[432] The laboratory tests showed the very high level of pollution caused by the plants and the absence of controls and interventions by the Italian authorities on their correct functioning. In the meantime, ILVA was already failing because it did not have sufficient funds to make the necessary adjustments and could no longer benefit from other aid, on 21 January 2015 it was placed in extraordinary administration and an international contract was announced for the award of the business. While with the Decree Law n. 98 of 2016, the deadline for the implementation of the environmental plan and the immunity for conducts carried out during the implementation of the plan were extended by a further 18 months, including to purchasers or tenants and their delegates. [433]

The notice was won by the AM Investco Italy group. This sale was criticized for forecasting an investment of only 1.25 billion euros for the implementation of the Environmental Plan.[434] The plan has been criticized by ARPA Puglia, as it provides for the expansion of environmental recovery measures moved up to 2023 and the lack of substantial technological innovations in the proposed modifications to the plants that could lead, according to the agency, to an infringement of the Community standards.[435] Finally, it was also proposed to reignite the blast furnace n. 5, considered the most polluting. The Puglia region and the municipality of Taranto have in fact decided to challenge the Decree of the President of the Council of Ministers on 29 September 2017 which extended the integrated environmental authorization until 2023.[436] The government has called for a negotiating table entirely dedicated to the ILVA of Taranto which is still in progress.[437]

The judgment of the Constitutional Court

The legal proceedings have come to be judged by the Constitutional Court which has ruled on the delicate matter between balancing the right to health and the healthy environment and the right to economic freedoms.[438] The question of interests and rights is a relevant issue in the field of constitutional law and jurisprudence. And the court has always operated to allow the existence of a system of confrontation that

[432] EUROPEAN UNION, Council Directive 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control). https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010L0075&from=EN

[433] Decreto Legge 9 giugno 2016, n. 98, *Disposizioni urgenti per il completamento della procedura di cessione dei complessi aziendali del Gruppo ILVA,* in Gazzetta Ufficiale n. 98 of 5 agosto 2016.

[434] BIANCHI R., *Il Caso ILVA: breve storia della vicenda giudiziaria*, op cit.

[435] https://www.mise.gov.it/index.php/it/194-comunicati-stampa/2036649-calenda-firma-il-decreto-di-aggiudicazione-del-complesso-industriale-del-gruppo-ilva-ad-am-investco-italy, op. cit.

[436] Decreto del Presidente del Consiglio dei Ministri, 29 settembre 2017, *Approvazione delle modifiche al Piano delle misure e delle attività di tutela ambientale e sanitaria*, in Gazzetta Ufficiale n.229 of 30 September 2017.

[437] https://www.mise.gov.it/index.php/it/198-notizie-stampa/2037471-ilva-convocato-il-tavolo-istituzionale-dedicato-a-taranto

[438] VERDOLINI E., *Il caso ILVA Taranto e il fil rouge degli interessi costituzionali: commento alla sentenza 182 del 2017 della Corte Costituzionale*, Bologna, 2018.

allows for mutual coexistence.[439] After the adoption of the aforementioned DL 207/2012 the doubt of unconstitutionality alleged for violation of articles 32 and 41 of the Constitution was raised. The Court ruled with judgment of 9 April 2013, n. 85, in its judgment the Court has carried out a "strategic" balancing, and has transformed the work, also thanks to the topic of the "occupational emergency", in instrument of defense of the production.[440] The Council has considered that all the fundamental rights protected by the Constitution are in a relationship of reciprocal integration and it is therefore not possible to identify one of them that has absolute prevalence over the others because, otherwise the unlimited expansion of one of the rights would occur and would become a "tyrant" against other constitutionally recognized and protected legal situations. The Court also does not adhere to the thesis of the referring judge according to which the content of the art. 32 of the Constitution, would reveal a pre-eminent character of the right to health with respect to all the rights of the person.[441] In July 2015 doubts were raised again about unconstitutionality on another DL so-called "salva ILVA".[442] The Constitutional Court ruled on the issue with sentence n. 58 of March 28, 2018, declaring the illegality of the art. 3 of Law Decree n. 92 of 2015,[443] expressing itself in favor of health and safety at work with respect to the continuation of ILVA's industrial activity.[444]

The Cordella Case

On May 17, 2017, the trial against Italy for crimes against humanity supported by citizens and workers began at the Strasbourg court.[445] The cases in question were the case *Cordella e a. c. Italia* e *Ambrogi Melle e a. c. Italia* nn. 54414/13 e 54264/15 then merged.[446] A part of the citizens of Taranto turned to the Court accusing as many tumors were contracted because of the emissions of the steel plant. According to the head of indictment, not only the ILVA leaders would have been guilty, but also the national authorities that would have prepared, through the numerous “Salva ILVA” decrees, a regulatory and administrative framework that

439 PAMELIN D., *Il difficile bilanciamento tra diritto alla salute e libertà economiche: i casi ILVA e TEXACO-CHEVRON*, Mediazione politica e compromesso parlamentare, Costituzionalismo.it, 2017.
440 CORTE COSTITUZIONALE, Judgment of 9 April 2013, *Giudizio di Legittimità Costituzionale in via Incidentale*, Sentenza 85/2013 (ECLI:IT:COST:2013:85), op. cit.
441 The Constitutional Court thus denied part of the doctrine that had raised the question whether the Constitution does not already indicate, in its own text, a nucleus of principles endowed with an unassailable solidity, precisely because they are linked to the objective and premise of our constitutional order: the full development of the human person (Article 3, paragraph 2 of the Constitution). The rights to health, to the healthy environment, to work and, in general, all the rights of the person in the social state, which in their opinion would stand out as pillars of our order and should therefore leave room for an "unequal balance" which determines their prevalence if they are in conflict, for example, with economic rights.
442 Ordinanza del 14 luglio 2015 (r. o. n. 67 del 2017), il Giudice per le indagini preliminari del Tribunale ordinario di Taranto ha sollevato questioni di legittimità costituzionale dell'art. 3 del DL 4 luglio 2015, n. 92, https://www.gazzettaufficiale.it/eli/id/2018/03/28/T-180058/s1
443 Decreto Legge 4 luglio 2015, n. 92, *Misure urgenti in materia di rifiuti e di autorizzazione integrata ambientale, nonché l’esercizio dell’attività di impresa di stabilimenti industriali di interesse strategico nazionale*, in Gazzetta Ufficiale n. 153 of 4 July 2015.
444 CORTE COSTITUZIONALE, Judgment of 7 February 2018, *Giudizio di Legittimità Costituzionale in via Incidentale*, Sentenza 58/2018 (ECLI:IT:COST:2018:58), https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2018&numero=58;
445 BIANCHI R., *Il Caso ILVA: breve storia della vicenda giudiziaria*, op cit.
446 EUROPEAN COURT OF HUMAN RIGHTS, Première Section, Affaire Cordella et autres c. Italie, *(Requêtes nos* 54414/13 *et* 54264/15*)*, arrêt, Strasbourg, 24 janvier 2019, op. cit.

is not suitable to prevent and neutralize the lethal effects of pollution industrial of incalculable size.[447] As a result, the Italian state would not have protected the life and health of 182 citizens of Taranto and its province from the negative effects of Ilva emissions. The Strasbourg Court considered the submitted evidence to be sufficiently solid, by opening the proceedings against the Italian State. Ignoring the high level of pollution produced, the Italian State would have made choices aimed at safeguarding the continuation of productive activities which, as such, would have allowed the plant to continue to produce highly harmful emissions. The appeal was based on the violation of the right to life pursuant *ex* art. 2, and on the violation of the right to respect for private and family life pursuant *ex* art. 8, as well as on the violation of the art. 13, in order to the inexistence of an effective internal remedy, therefore the protesters did not object to the possible violation of the art. 10, which instead could be correctly invoked in the case in question.[448] The Court decided not to condemn Italy under Article 2 of the Convention since it would have been more appropriate to do so according to art. 8. Secondly, he decided that not all citizens who had appealed could be qualified as victims. This is because, as already stated in the Kyrtatos judgment v. Greece, the convention does not ensure environmental protection in general, but must actually damage the lives of those concerned. [449] In this way he established that only 161 people could be qualified as victims.

On 24 January 2019, the Strasbourg court ruled that the persistent pollution caused by ILVA emissions endangered the health of the entire population living in the area at risk.[450] Measures to ensure the protection of health and the environment must be implemented as quickly as possible. The appeal lodged by 182 Taranto citizens was therefore accepted for the damage they claim to have suffered as a result of ILVA emissions. The Court has declared the violation of the artt. 8 and 13.[451]

As for the merit of the dispute, the European Court of Human Rights has decided to pass judgment on art. 8 and art. 13 ECHR separately. The Court recalled how, to be a violation of the art. 8, environmental damage must significantly reduce the individual's ability to be comfortable in his or her home. At the same time, the state must guarantee the protection of individuals by adopting all appropriate measures. For what concerns the art. 13 of the ECHR on the right to an effective remedy, the Court ruled that Italy should guarantee the means to plead their cause nationally. In fact, the art. 13 must not be understood only as the right of citizens to access the courts, on the contrary it must be understood as the substantive right to put into practice the rights and freedoms guaranteed by the convention. As the court found Italy guilty of failing to comply with these two articles, the court sentenced her to pay compensation of 5,000 euros for each applicant. Government remedies have not been effective. The “Salva ILVA” decrees, which guaranteed criminal immunity and still guarantee

[447] LONGO A., *Cordella et al. v. Italy: Industrial Emissions and Italian Omissions Under Scrutiny*, European Papers, 2019.
[448] EUROPEAN COURT OF HUMAN RIGHTS, Première Section, Affaire Cordella et autres c. Italie, *(Requêtes nos* 54414/13 *et* 54264/15*)*, arrêt, Strasbourg, 24 janvier 2019, op. cit.
[449] EUROPEAN COURT OF HUMAN RIGHTS, First Section, Kyrtatos v. Greece no. 41666/98, judgment, Strasbourg, 22 May 2003. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61099%22]}
[450] EUROPEAN COURT OF HUMAN RIGHTS, Première Section, Affaire Cordella et autres c. Italie, *(Requêtes nos* 54414/13 *et* 54264/15*)*, arrêt, Strasbourg, 24 janvier 2019, op. cit.
[451] LONGO A., *Cordella et al. v. Italy: Industrial Emissions and Italian Omissions Under Scrutiny*, op cit.

it to ArcelorMittal, were censored and the measures to ensure environmental protection must be implemented as quickly as possible and no longer in 2023.[452]

The possible use of Art. 10 of the European Convention of Human Rights in the Cordella case

The ECHR does not recognize a real human right to live in a healthy environment. However, over the years, it has developed a jurisprudence that sees the protection of the environment as a means of ensuring compliance with the other inviolable rights recognized by the Convention.[453] The conduct of dangerous industrial activities can cause violations of the right to life, recognizing the existence of positive obligations of protection and prevention even where the industrial activity is conducted by private subjects. In particular, the public authorities have failed to fulfill the positive prevention obligations, but through the continuous so-called "Salva ILVA" decrees guaranteeing the continuation of the iron and steel activities in spite of the environmental safeguard, the government has hindered the repeated interventions of the magistracy aimed at putting an end to the widespread illegal situation.[454]

As already said the evolution of international environmental law has made it possible to recognize over time a right to environmental information that is functional both to protecting the environment and to other human rights. In this last part we will retrace the history of ECtHR sentences to understand the conditions that allow the application of the art. 10 ECHR as a right to environmental information. The European Court of Human Rights has on several occasions cited the Aarhus Convention to support its decisions. Article 10 of the ECHR which in principle protected only freedom of expression, thanks to jurisprudence has been extended to protect the right to access information.[455] This right includes freedom of opinion and the freedom to receive or communicate information or ideas without there being interference by public authorities and no border limits. From the law it emerges how the right to protected information is recognized by the Convention both on the active side, understood as freedom to inform, and on the passive side understood as the right to receive information. In order to understand if there is the possibility of interpreting the right to information of the art. 10 from an environmental point of view, it is appropriate to analyze the previous rulings of the Court of Strasbourg that have occurred over the years. They expressed their opinion on the possibility of assessing the admissibility of the right to environmental information, as it is functional not only to safeguard the environment, but also to protect other human rights. The most significant case is the case of Guerra and others v. Italy,[456] the case concerns the appeal of some citizens of the municipality of Manfredonia, who complained

[452] Ibid.
[453] ROMEO C., *Il caso ILVA e il diritto ad un ambiente salubre nella CEDU*, Diritto Dell'Ambiente, Torino, 2016.
[454] Ibid.
[455] SCAGLIOSO P., *Informazione ambientale e art. 10 CEDU: quali prospettive di applicazione nel caso ILVA di Taranto?*, Osservatorio l'Italia e la CEDU N. 5/2016, ISSN 2284-3531 Ordine internazionale e diritti umani, pp. 959-969, http://www.rivistaoidu.net/sites/default/files/1_paragrafo_1_ITA%20e%20CEDU_5_2016.pdf
[456] EUROPEAN COURT OF HUMAN RIGHTS, First Section, Case of Guerra and others v. Italy no. 116/1996/735/932, Judgment, Strasbourg, 19 February 1998. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58135%22]}

about the violation of their rights due to the fact that a chemical factory located near the municipality had released huge quantities of toxic substances into the air. The applicants had reported the violation of the art. 10 since they had not been informed of the fact. This interpretation was accepted by the Commission which thus acknowledged the admissibility of environmental protection, including in a preventive key, recognizing in the art. 10 of the ECHR the possibility of receiving from the authorities all the information of an environmental nature designed to avoid the possible damage deriving from exposure to the risk. The Commission had formulated the decision in such a way as to establish that the relevant information that a State should disseminate is: correct information about the danger deriving from exposure to pollutants, the security measures adopted by the State concerned and the emergency plans organized for avoid the worsening of the risk and the methods of execution of the same.

Later, however, the European Court of Human Rights reformulated the Commission's decision, arguing only that the freedom to receive information essentially prohibits the government from preventing someone from receiving information to which others aspire. The case remained significant because for the first time the possibility of applying the art. 10 to grant victims the right to receive environmental information.

The subsequent jurisprudence of the ECtHR adopted an intermediate position between that of the Commission and that of the Court.

In the case L.C.B. c. United Kingdom, with a ruling dated 9 June 1998, the Court ruled that the exercise of the right to environmental information requires states to establish a simplified procedure that allows all citizens to have access to information on which fundamental rights protection depends.[457] Thus setting the defense of this right on both the active and the passive side.

The Tatar Case c. Romania originates from the appeal of two Romanian citizens who at the time of the events resided in an area of a city next to a mining plant.[458] The applicants produced technical documents which showed that the permitted limits had been exceeded and complained that adequate information was not being disseminated by the Romanian state to inform citizens of pollution levels, thus allowing them to change domicile. The court held that the Romanian authorities had failed to comply with their obligation to assess the risks of the activity in question in a satisfactory manner, having failed to take adequate measures to guarantee the protection of those affected by the risks of the agents' exposure pollutants. Even in this case, however, the court affirmed the existence of a right to environmental information while avoiding bringing it back to art. 10.

In the Cordella case, the applicants did not report the violation of the art. 10 which, as already stated, provides for the right to information. The Court recognized a right to environmental information deriving from the art. 8 since States must implement all necessary measures to protect the health of citizens and ensure the enjoyment of a healthy and protected environment. Moreover, the Court in the various judgments, and in application of

457 EUROPEAN COURT OF HUMAN RIGHTS, First Section, Case of L.C.B. v. the United Kingdom, no. 212/23413/94, Judgment, Strasbourg, 9 June 1998.

458 EUROPEAN COURT OF HUMAN RIGHTS, First Shamber, Tătar v. Romania no. 67021/01, Judgment, Strasbourg, 27 February 2009. https://hudoc.echr.coe.int/eng#{%22dmdocnumber%22:[%22846165%22],%22itemid%22:[%22001-90909%22]}

the Aarhus Convention, recognized the existence of the right to environmental information, arguing that states have the duty to carry out adequate investigations and studies.

In the case of the ILVA of Taranto, we can hypothesize how the Italian State has not adopted all the information measures that would have allowed resident citizens to consciously decide whether or not to continue to live in the areas surrounding the plants. The Italian State should have informed the population of the risks that would have involved staying in the area surrounding the industrial area. However, he failed to carry out a correct information campaign, for this reason, Italy could have been brought before the court for not having applied the art. 10. A recognition of the right to environmental information would allow the development of European human rights law, guaranteeing a serious step forward in protecting the environment and imposing greater attention on environmental issues for states.

Conclusions

The story of the ILVA is so complex that in analyzing this case I have only partially touched the various passages that have distinguished it. However, it is clear how a possible application of the art. 10 of the ECHR and consequently of the Aarhus Convention, by the European Court of Human Rights would allow to substantially increase the rights of citizens. The right to environmental information, therefore, would have been essential to provide the inhabitants of the neighboring areas of the steel plant with the information necessary to understand whether continuing to live in their homes would have been appropriate or not. The Italian State has been guilty of a violation of human rights also because it has done nothing to warn them despite the numerous studies that had recognized the extent of environmental damage caused by industrial plants. If it is true that the right to health and to live in a healthy environment is not superior to economic rights, it is equally true that we must always inform our citizens about the state of pollution of the territory where they live, helping them to make informed choices.

L'Affaire du Siècle

France in the last year has been shaken by various movements that have filled the political life of the country and have attracted the attention of the media all over the world. The movement most discussed was that of the Gilets jaunes, which filled the pages of newspapers and blocked the tranquility of the Paris weekends for months.[459] However, the most interesting movement and that could really lead to substantial changes in French political life is the Affaire du Siècle. This movement started at the initiative of 4 environmental associations: the Fondation pour la Nature et l'Homme (FNH),[460] Greenpeace France,[461] Notre Affaire à Tous[462] and Oxfam

[459] LICHFIELD J., *Just who are the gilets jaunes?*, The Guardian, 2019, https://www.theguardian.com/world/2019/feb/09/who-really-are-the-gilets-jaunes

[460] https://www.actu-environnement.com/ae/dictionnaire_environnement/definition/fondation_nicolas_hulot_fnh.php4

[461] https://www.greenpeace.fr/

[462] TOUSSAINT M., *Pour faire de la France le pays leader du climat, Libration, 2019,* https://notreaffaireatous.org/

France.[463] These associations have decided to bring the state to court for failing to deal with climate change with sufficient resolution and for failing to comply with international, European and French obligations in this area. To do this, they have collected 2 million signatures to give strength to their petition. The movement was born after we saw a similar victory in the Netherlands: The Urgenda case.[464] In 2015, the Urgenda foundation, an organization for the protection of the environment and 886 Dutch citizens, gave the judges the mandate to prosecute the Netherlands for negligence, forcing them to meet the targets for reducing greenhouse gases. On June 9, 2018, the Foundation won with a court ruling based on the Convention on Human Rights.

At the same time, an initiative complementary to that of the Affaire du Siecle by Damien Carême, mayor of Grande-Synthe, had started.[465] This means that the complaint started both from civil society and from a local branch of the state.

According to the associations, the French government has always postponed the courageous decisions that would make it possible to avoid the catastrophe, as foreseen in the aforementioned IPCC Report. The first act of the appeal was launched on December 17, 2018. The lawyers of the 4 associations referred to the French Constitution, the European Convention on Human Rights and other numerous commitments made by France both nationally and internationally. In their opinion, all these treaties recognize a general principle of law that obliges the fight against climate change. The Constitution explicitly establishes that the State has the duty to safeguard people's lives and health. The European Convention on Human Rights, as already mentioned, in articles 2 and 8 safeguards the right to life and the right to respect for private and family life.[466] From the combination of these two articles the European Court of Human Rights has drawn a positive combination from the States, that is to take reasonable and adequate measures to protect the rights of citizens.

Therefore, the associations have asked for moral compensation for their members and for the ecological damage suffered by the environment. In France, administrative judges have already recognized the links between public health issues and deficiencies by the state. The lawyers accuse France of having had serious delays in transposition and in compliance with European directives, moreover the State Council has recognized the lack of the State in setting up a suitable legislative and regulatory body. There are numerous obligations violated in the fight against climate change by the French government: regarding the reduction of global gas emissions due to the greenhouse effect, France has surpassed the limits set by decree in 2015; France has not complied with the measures of the first 2015-2018 coal budget; France has not complied with the renewable energy and energy efficiency indexes; and France will not respect the 2018 objectives of the EPP nor the 2020 objectives to comply with the European directive 2012/27/EU. Regarding the mitigation of climate change, the lack of the State is characterized by the differences in the objectives announced and the measures that have

[463] https://www.oxfamfrance.org/

[464] THE HAGUE COURT OF APPEAL, Urgenda Foundation v. The Netherlands [2015] HAZA C/09/00456689 Oct. 9, 2018. https://elaw.org/system/files/attachments/publicresource/Urgenda_2018_Appeal_Decision_Eng.pdf

[465] JOLLY P., *Damien Carême, chantre de l'écologie comme remède aux crises*, Le Monde, 2019. https://www.lemonde.fr/planete/article/2019/04/27/dans-le-nord-l-ecologie-comme-remede-a-la-crise_5455619_3244.html

[466] https://www.echr.coe.int/Documents/Convention_ENG.pdf

been taken. The Institute for Climate Economics (I4CE), who had been given a study by the Agence de l'environnement et de la maîtrise de l'énergie (Ademe) and the Ministère de la Transition écologique et solidaire, indicated that 10 to 30 billion euros of annual investments are still missing to achieve the goals that had been set.[467] This delay will be more and more difficult to fill and will get worse over time.

The associations require that all necessary measures be taken immediately to ensure that the objectives set with regard to the environment are respected. In March 2019 the appeal was filed before the Administrative Court of Paris.[468] Judgment is expected between the end of 2020 and the spring of 2021.

This is a clear example of awareness on the part of citizens, who, conscious of their rights, have decided to defend them completely. Although in this case there is no lack of information, this is a demonstration of how citizens, once received those information, can use it to make the government comply with the commitments it has made. Thanks to new technologies, in fact, citizens can access the necessary documentation to understand how their government is acting and decide autonomously and easily how to make the right choices to better protect the environment in which they live. If the citizens of all countries had access to correct information as was the case for French citizens, there would be many more lawsuits against states to enforce their rights as citizens. In fact, almost all the countries in the world have made commitments to reduce their pollution levels, but only a few states have fully respected them. If the right of access to information were universal in every country, the efforts of governments to pollute less and less would increase more and more, allowing us to live in a better world.

[467] https://www.i4ce.org/download/edition-2018-du-panorama-des-financements-climat/
[468] https://laffairedusiecle.net

Conclusion

The Aarhus Convention and, in particular, the right to environmental information, as can be seen from the research we conducted, constitute the basis on which "environmental democracy" must be built and are the essential tools for achieving the goal of contributing to protection of the right of the individual, both current and future generations, to satisfy their needs and to live in a healthy environment.

Climate change is destroying the ecosystems of the entire planet and will endanger the lives of millions of people, and it is precisely for this reason that we need the involvement of all citizens.

In this regard, the preamble to the Aarhus Convention states the important role that individuals, non-governmental organizations and the private sector can play in protecting the environment.

Something is finally moving in Europe. In 2020, new legislation on the right of initiative of European citizens will come into force precisely to make citizens participate more closely in the European democratic process.[469] The new directive on the promotion of the use of energy from renewable sources (2018/2001/EC) requires an exchange of information between the Public Administration and citizen and considers its decisive involvement.[470] In April 2019, the Commission published the Environmental Implementation Review initiative to strengthen the implementation of legislation and environmental policies,[471] and, new rules were adopted by the Council in June to simplify the reporting obligations in environmental legislation to promote simplification and transparency,[472] and by the Parliament and by the Council, a Regulation that harmonises the reporting obligations in environmental legislation.[473] Finally, on September 23, in the context of the Regulation concerning the establishment of a framework that promotes sustainable investments, it was given mandate for negotiations with the European Parliament,[474] and in the coming weeks, as already discussed, a study should be produced on the Union's options for addressing the findings and the draft amendments to Regulation 1367/2006.

469 https://ec.europa.eu/citizens-initiative/public/welcome; EUROPEAN UNION, Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0788&from=IT

470 EUROPEAN UNION, Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001&from=it

471 EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Environmental Implementation Review 2019: A Europe that protects its citizens and enhances their quality of life, COM(2019) 149 final, Brussels, 4.4.2019, https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-149-F1-EN-MAIN-PART-1.PDF

472 EUROPEAN UNION, Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1024&from=EN

473 EUROPEAN UNION, Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1010&from=EN

474 COUNCIL OF THE EUROPEAN UNION, Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, Mandate for negotiations with the European Parliament, COM (2018) 353 final, Brussels, 23 September 2019.

In the last year the European Court of Justice has extensively interpreted the environmental information right foreseen by the Aarhus Convention, establishing with the judgment on the Case C-57/16 P an historical precedent in this matter, which sets a limit to the possibility by the Commission of preventing the publication of environmental information. This important victory at European level is the beginning of a real application of the Aarhus Convention in its original conception. The right to environmental information was therefore once again recognized as a fundamental element for the protection of citizens, necessary to allow every choice made by the government to take place in the best possible interest for the society. The aforementioned ruling on Case T-716/14 and Case T-329/17 also goes in this direction. Furthermore, the judgment of the European Court of Human Rights on the Affaire Cordella et autres c. Italie (no. 54414/13 and no. 54264/15) clearly demonstrated what the consequences are when information are omitted. Italy has been condemned for failing to protect the health of the inhabitants of Taranto and for not guaranteeing citizens access to environmental justice. Finally, the Case Di Caprio and Others v. Italy (no. 39742/14),[475] must be reported. The case concerned the denunciation by some citizens and local NGOs against the Italian State responsible for having let Camorra burn waste illegally in some areas near Naples, polluting the inhabitated areas. The applicants have asked to condemn Italy for failing to comply with Articles 2, 3, 8, 10 (right to information) and 13 of the European Convention on Human Rights. ClientEarth called by the Court to write a comment on the case, recalled among other things, how Italy would have had the duty to release the information that warned citizens of the very high level of pollution in those areas.[476] The release of environmental information would help ensure that both citizens live in good health and are aware of the provisions and laws that serve to protect the environment. Suffice it to think, in the Affaire du Siecle case, of what the French citizens managed to do with the information they had received on their country's environmental progress, denouncing their government for immobility.

Unfortunately, the climate crisis is getting worse much faster than expected and will have catastrophic consequences. The aforementioned October 2018 Report of the IPCC emphasized that it is necessary to drastically reduce emissions in the shortest possible time, putting a maximum limit on the temperature increase to 1.5°C.[477] The aforementioned 2018 Emission Gap Report (UNEP) highlighted how the gap between the level of polluting emissions expected in 2030 and the level of emissions compatible with the objectives of the Paris agreement in 2015 is increasing. The emissions level and objectives climatic conditions seem increasingly distant. In 10 years we will have to be able to reduce emissions by 25-55% compared to those issued in 2017 to put our planet back on track and reach the long-term climate goals we have set for ourselves. While, with the current pollution reduction commitments, we will move towards global warming of around 3°C in 2100. If the gap between current and forecast emissions will not be closed by 2030, the objective of

[475] EUROPEAN COURT OF HUMAN RIGHTS, Première Section, DI CAPRIO ET AUTRES c. ITALIE, *(Requêtes nos* 39742/14), Communiquée, 5 février 2019, http://hudoc.echr.coe.int/eng?i=001-191781

[476] THORNTON J., Clientearth's written comments to DI CAPRIO AND OTHERS v. ITALY, 2 September 2019, Bruxelles.

[477] Cf. IPCC, *The Ocean and Cryosphere in a Changing Climate*, Special Report, Intergovernmental Panel on Climate Change. Switzerland, 24th September 2019. "Regions with mostly smaller glaciers (e.g., Central Europe…), are projected to lose more than 80% of their current ice mass by 2100."

containing overheating below 2°C will remain out of reach. The World Economic Forum (WEF) opened its latest forum in Davos with a report that highlighted the global uncertainties about the economy. The Global Risks Report 2019, presented the results of the survey carried out last fall on almost 1,000 public and private stakeholders.[478] They are precisely environmental issues that are considered among the greatest risks for the future of our planet. What worries most are extreme weather events, the failure of policies to combat climate change, natural disasters, environmental disasters caused by human activities and the loss of biodiversity. We will face a climate catastrophe if we do not reduce polluting emissions quickly and drastically. In this regard we can mention the Israeli historian Y. N. Harari who claims that man has created a society so complicated that it is no longer able to make sense of what is happening.[479] Economic risks are becoming increasingly scaring, not least a study has arrived that shows how global warming is responsible for the increase in economic inequalities on a global level and it will be more and more.[480]

On this front, signs of hope are emerging in the world these days. The United Nations Climate Action Summit 2019 was held in New York on September 23rd in which many governments presented themselves with concrete and realistic plans to increase their national contributions to 2020, in line with the goal of reducing by 45% greenhouse gas emissions in the next decade and to reach zero net emissions by 2050.[481] The conference was preceded on Saturday 21 September by the UN Youth Climate Summit, the youth climate summit, at the presence of Swedish activist Greta Thunberg, who is leading the climate protests of young people around the world.[482] The next COP will be held in Santiago from 2 to 13 December 2019 and should see a renewed commitment to the fight against climate change. Italy, for the 2020 edition of the COP in which the climate objectives will be reviewed, will present a joint candidacy together with Great Britain.[483]

As evidence of how much the environment is at the center of attention of the scientific community in all sectors, we can remember the Nobel Prize for Economics that this year went to the two American economists P. Romer and W. D. Nordhaus for their studies on the green economy and innovation.[484] While the former was awarded for explaining the correlation between growth and innovation, the latter was awarded the prize for having studied and researched the green economy throughout his academic career. Nordhaus introduced the concept of "green accounting" in 1972, to reconcile the empirical economic wealth and consumption of nature. The US economist has created some models that allow us to evaluate the costs and benefits of taking measures

[478] WORLD ECONOMIC FORUM, *The Global Risks Report 2019. 14th Edition*, Cologny/Geneva, 2019.
[479] HARARI Y. N., *21 Lessons for the 21st Century*, Jonathan Cape, London, 2018.
[480] DIFFENBAUGH N. S. and BURKE M., *Global warming has increased global economic inequality*, www.pnas.org/cgi/doi/10.1073/pnas.1816020116
[481] Il Premier Italiano Giuseppe Conte, parlando con i giornalisti a margine dei lavori dell'Assemblea dell'Onu, ha annunciato che, oltre alle misure previste dal governo, avrà come priorità quella di inserire in Costituzione la tutela dell'ambiente, della biodiversità e dello sviluppo sostenibile.
[482] UN YOUTH CLIMATE SUMMIT, https://www.un.org/en/climatechange/youth-summit.shtml
[483] PELOSI G., *Conte: "Con la svolta verde anche vantaggi economici"*, Il Sole 24 Ore, 24 settembre 2019.
[484] GOLDSTEIN A., *Il Nobel a Romer e Nordhaus una sfida su clima e innovazione*, Il Sole 24 Ore, 9 ottobre 2018.

to slow down global warming.[485] Without his studies it would not have been possible to have a quantitative idea of the costs of the Kyoto protocol or the Paris agreements.

The possible new measures will be favored by the new European Commission, led by Ursula von der Leyen, who has decided to give a central role to the environment. Frans Timmermans will in fact be appointed Executive Vice President of the Commission for the European Green Deal, as well as Climate Action Commissioner, and the very young Virginijus Sinkevičius will be appointed Commissioner for Environment and Oceans.[486] The two assignments in environmental matters will focus on the issue of climate change. In particular, Timmermans will be responsible for putting European legislation into force more quickly than in the past, as openly as possible to stakeholders, and closer to the citizens. The main task in his role as Executive Vice President will be to implement the European Green Deal. The Aarhus Convention will play an important role in this area, given that at the center of the program there is the participation of citizens in decisions concerning environmental issues. Much is expected of the future Commission including more effective laws regarding the release of environmental information.

One of the problems for which we are so late in implementing laws that can mitigate and try to stem the consequences of human pollution is the fact that the world of journalism and the media in general has failed to tell climate change at the public. By the end of the 1980s, it seemed that we would finally begin to solve the problem of global pollution. Politicians and scientists seemed to agree that temperatures were rising and that the main cause was human activities. However, this was not compounded by the contribution of the media that would have been necessary to correctly report global warming and explain the possible measures to address it. Consequently, one of the reasons why we found ourselves running for cover in trying to resolve the climate crisis is due to the crisis of communication.[487]

A positive example of how journalism correctly addressed the problem presented itself this summer. Between July and September this year fires devastated the world. From Siberia to Alaska, not a day has passed without the virgin forests burning.[488] The most serious situation occurred in Brazil where thousands of fires mostly set by man burned the Amazon forest, destroying the flora and fauna of the largest forest in the world.[489] When the crisis has become so severe that it has attracted the attention of media all over the world, provoking protests in many countries, the president of Brazil Jair Bolsonaro has accused the federal agency of the environment

[485] NORDHAUS W. D., *Managing the Global Commons. The Economics of Climate Change*, Massachusetts Institute of Technology, Boston, 1994; GALEOTTI M., LANZA A., *Il maestro che ha spiegato l'economia verde*, Il Sole 24 ore, 9 ottobre 2018. The DICE (Dynamic Integrated Climate-Economy model) and the following RICE (Regional Integrated Climate-Economy model).

[486] VON DER LEYEN U., President-elect of the European Commission, Mission letter, Frans Timmermans, Executive Vice-President-designate for the European Green Deal, Brussels, 10 September 2019; VON DER LEYEN U., President-elect of the European Commission, Mission letter, Virginijus Sinkevičius, Commissioner-designate for Environment and Oceans, Brussels, 10 September 2019.

[487] PELLETIER D., PROBST M., *The seven deadly sins of journalism*, Wespennest, Austria, 18 June 2019.

[488] COCKBURN H., *Huge swathes of the Arctic on fire, 'unprecedented' satellite images show*, The Independent, London, 2019, https://www.independent.co.uk/environment/arctic-circle-wildfires-climate-change-greenland-alaska-siberia-photographs-a9015851.html

[489] THE VISUAL AND DATA JOURNALISM TEAM, *The Amazon in Brazil is on fire - how bad is it?*, BBC News, 30 August 2019, https://www.bbc.com/news/world-latin-america-49433767

of manipulating data.[490] This is a clear example in which the information published by government agencies goes against the work of the government. The figures are clear and show that under the leadership of Bolsonaro the increase in the deforested area has increased by 223% between August 2018 and August 2019. In fact, while last year to burn were 526 square km this year to burn were 1,700 square km. To detect these official data was the INPE, the Brazilian space agency, with precise satellite images, and putting an end to what had been called a war of numbers.[491] Bolsonaro was forced after several weeks in which he had accused the NGOs of manipulating the data to admit that there were fires but blamed the governors of the region who would be responsible for not having prevented them and turned them off.[492] The forest is devastated mainly to produce soy, which is then sold for a good part to European countries. The aforementioned story demonstrates once again the usefulness of the laws protecting the right to the particularly environmental information that showed the real data of what was happening.

In conclusion, it is important that the right to information be extended and above all it is vital that there is a much broader protection of the right of public access to environmental information than the normal right of access to administrative documents. However, all this is not enough, but it is necessary that the right to environmental information be associated with a more incisive right to justice in environmental matters, legislation favorable to environmental protection and citizen participation and, above all, a change of paradigm on the part of citizens themselves and institutions in their approach to environmental sustainability.

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Summary of the Paper

The report of the Intergovernmental Panel on Climate Change (IPCC) of October 2018 highlights the need for a drastic and rapid reduction in emissions, with an unprecedented commitment in history to convert the current energy and industrial system, if we do not want to face serious effects on Planet Earth as we know it. The report calls for a maximum temperature increase of 1.5°C which could go hand in hand with the conquest of a more just and equitable society, through a path that passes through sustainable development, the elimination of poverty and the reduction of inequalities. However, states are not taking the necessary steps to contain global warming and its devastating consequences. Co2 emissions are growing steadily and 2018 was worse than 2017. Well-being and sustainability can be achieved by building a balanced ecosystem that ensures a good quality of life for all human beings. The Global Agenda for Sustainable Development reveals a drastic judgment on the unsustainability of today's development model, it replaces the idea that sustainability is only an environmental issue with an integrated vision of the different dimensions of development (environmental, social, economic, etc.). Economic accounting must be accompanied by ecological accounting. The value of natural capital must influence political and economic decision-making processes so as to make possible a new approach to our economies. One of the assumptions underlying this paradigm is the strong investment that must be made on human capital, culture and education, including technical. The impacts on human beings resulting from climate upheavals become increasingly visible, each year a greater number of disasters specifically affects the less well-off sections of society. People consequently begin to understand the urgency of the threat. Ordinary people can do many things both in terms of personal behavior and trying to introduce these topics to the political table and to the attention of leaders at every administrative level. At the origin of the delays in responding to climate change that are making global warming worse, there is also misinformation at all levels on environmental issues, a lack of knowledge of public policies for implementing green economy measures and a lack of understanding of the technologies that can be used to face the climate crisis. A new road to sustainable development could be based on policies that focus on the latest technologies, territories and social participation. The goal of politics should no longer be the acceptability of the territories, but changing the paradigm will require that the demands of the territories themselves can produce a mobilization from below to win the environmental and climate challenges. One of the biggest novelties of the *Public governance*, in the pursuit of the public interest, is represented by the attribution of great importance to the protection and enhancement of the legal good environment. The need to combine global economic growth with the defence of the environment entails the creation of new legal *green institute*. Environmental policy certainly implies initial economic costs but offers irrefutable socio-economic benefits in the medium and long term. The person who undertakes this journey must behave constructively and proactively: inform himself in order to consciously protect the quality of the living environment. Access to environmental information, public participation in environmental decisions and access to justice, the three principles enshrined in the Aarhus Convention thus become the basis for the new growth model.

Ours is now a digital society and the technologies that constitute its base can have a profound impact on the same forms of political participation and offer decisive support to enable the launching of innovative and informed participation of citizens in public decisions. Many governments are still absent from the challenge against global warming, we are therefore simple citizens that we must defend our right to live in a healthy environment and that we can save the planet. We must use our rights to ask the rulers to propose and implement rules that support the technological and economic growth of the countries so as not to negatively alter the environment.

The legal notion of the environment has required multiple efforts to be fully defined, both from a theoretical and a practical point of view, and to become the common heritage of governments and citizens on which to build rules and principles to protect the environment itself. Environmental law is a fundamental human right and health can be correlated with another fundamental right: rights relating to access to information, public participation in decision-making processes and access to justice in environmental matters for years they have been considered fundamental given that they assign individuals, within the legal systems, some subjective situations that are indispensable for the possibility of enjoying a healthy environment. On the other hand, the complexity of the concept of environment allows in any case to configure both individual and collective interests and, consequently, a multiplicity of subjects can take legal actions to protect the possible use of a single part of the same environment. In Italy, probably, no discussion on the notion of environment disregards Giannini's known tripartition, based on which it is necessary to distinguish between naturalistic, sanitary and urban planning. To this approach Predieri has contrasted a bipartition between the naturalistic notion and that constituted by the binomial health-territory. This thesis had the merit of truncating with the vision of nature distinct from man and of allowing us to study the relationship and mutual influences between nature and man.

The protection of the environment is a discipline regulated by international law in an organic way only in the last few years. The relevant regulatory sources are based on principles formulated as guidelines during various international conferences and then accepted and included in various agreements and treaties of a universal and regional nature. These principles have taken on a fundamental value by contributing to the construction of general rules in the environmental field and have been recognized as real legally binding rules.

The history of the environmental question began in the 60s of the last century, while economic development in western countries was very strong, consumption became mass and there began to be talk of an economy boom, due to pollution and disasters rising environmental problems, the most important modern environmental movements were born. The paradigm of limitless growth collided with the serious environmental repercussions caused and with the effect that pollution had on the health of the population.

Today's international environmental law was also born in those years; in civil society and in the scientific world the perception of environmental degradation caused by industrialization was affirmed, in addition to nuclear and chemical pollution, in March 1967 there was the sinking of the oil tanker *Torrey Canyon*, the first environmental catastrophe caused by the leakage of huge amounts of oil. In 1969 the International Convention on Civil Liability for Oil Pollution Damage (CLC) was adopted to impose compensation to ship owners.

In the wake of these events, in 1969, the American Congress felt the need to increase the environmental protection system and, therefore, approved the National Environmental Policy Act (NEPA), a law that represents a fundamental step in American environmental law and that will be a model for the legislation of many other nations and for the EU. The standard establishes a national environmental policy and, in particular, that a preventive study must be carried out on the possible consequences of environmental policies and plans. In 1970, the Environmental Protection Agency (EPA) was founded, the federal agency specializing in environmental protection. The EPA is the implementing body of the NEPA and manages the Environmental Impact Assessment (EIA) procedure for the main works, through the Environmental Impact assessment Statement (EIS). The EIA procedure will be gradually adopted in a large part of the world with almost similar characteristics. Each legislative proposal must include a detailed report on the expected environmental impact, on any negative effects that cannot be avoided if the proposal is implemented, on the alternatives to the proposed action, on the relationship between the local short-term uses of the environment and the long-term productivity improvement, and on any irreversible and unrecoverable commitments of resources that would be used in the proposed action.

In 1972 a study was published by some researchers of the Massachusetts Institute of Technology carried out for the Club of Rome. The conclusions reached by the research can be summarized as follows: if the planet's population continues at the current rate of growth and industrial production and pollution will increase, then the availability of water and food will be limited, health will deteriorate, the raw materials will be scarce and a global catastrophe will be very likely. The book revealed, in a nutshell, that the economic model of development followed was unsustainable.

The book came out when the discussion on the environmental future of the Earth and the possibility of a common international environmental strategy was very intense and shortly before the launch in Stockholm of the United Nations Conference on the Human Environment of 1972.

Until the early 1970s, international environmental law consisted of a complex system of industry regulations, almost devoid of mandatory and sanctioning implementation procedures and without coordination by the relevant global institutions.

There are therefore numerous reasons that give the Stockholm Conference a special importance: the decisive contribution to the affirmation of a strict relationship between the environment and human rights; the creation of new laws to protect the world environment; the impulse given in environmental cooperation to the creation of specific international institutions. The relationship between the environment and human rights and, specifically, the notion of environmental law and the environmental aspect of human rights did not appear in any legal science text up until then. The Stockholm Conference was the first occasion in which the international community signaled the values of environmental education and information as fundamental means to protect and enhance the human environment. The environmental issue and the exploitation of natural resources become goals of international cooperation and issues that begin to involve citizens and businesses as well as public institutions.

The most important action decided by the Conference is the Declaration on the Human Environment. The Stockholm Declaration has established a relationship between the right to the environment and human rights since the first two paragraphs of the Preamble. In the Declaration the healthy environment becomes a prerequisite for the effectiveness of the right to health and therefore the individual right to environmental protection is considered a fundamental human right (Principle 1). The subject of environmental information is deepened in principles 19 and 20. The dissemination of information through mass media, research and scientific innovation, the transfer of scientific information and the provision of environmental technologies to countries in development path are essential tools to involve citizens in choices regarding environmental policies. The following years at the Stockholm Conference, therefore, saw a significant increase in international environmental treaties.

The second international instrument, after the Stockholm Conference, to establish a correlation between human rights and environmental protection is the World Charter for Nature (1982). The final blow to the concept of economic development through the unlimited exploitation of natural resources was given by the energy crisis of 1973. People's way of thinking began to change and the concept of energy saving entered the common language. In the 1980s the concepts of sustainability, individual and social well-being, quality of life, greater dissemination of information on the environment brought out the centrality of the environmental theme in civil society.

The World Nature Charter was followed in 1987 by the "Brundtland" (Our Common Future) report drawn up by the World Commission on Environment and Development (WCED). In the preface, President Brundtland assigns the relationship to the peoples of the world, to governments, to private companies and above all to people, whose well-being must be the goal of a sustainable development path that promotes the fundamental right of our children to a healthy environment and an improvement in living conditions. The legal principles embodied in the report were not binding, but the references to the substantive right to a healthy environment and to the right to participation had a significant influence at world level, linked above all to the environmental risks with which man would have had to deal.

In 1988 it was created by the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP) the IPCC. The aim of the IPCC is to provide governments, for the preparation of targeted environmental and climate policies, periodic studies on the scientific basis of climate change, its impacts and future risks and to indicate possible solutions for adaptation and mitigation. The IPCC reports have always represented significant moments, for example the first contributed to giving birth to the United Nations Framework Convention on Climate Change (UNFCCC) and the second in 1995 to the drafting of the Kyoto protocol in 1997. The Rio Conference (1992) constituted an historic moment in the process of advancing the sustainable development model: human activity and environmental, ecological or climate issues are closely related and solutions must be found that take into account all aspects. The conference produced some official documents, including two conventions: the UNFCCC and the United Nations Convention on Biological

Diversity and three non-binding instruments: Agenda 21, the Rio Declaration on Environment and Development and the Statement of Forest Principles.

The Rio Declaration is a fundamental act in the evolution of international environmental law, in particular for the fact of deepening and clarifying the ambit of environmental rights which, later, will be included in many international conventions and treaties on environmental matters. Principle 10, above all, tends to give great importance to access to information on environmental matters, to guarantee adequate citizen participation in decision-making processes and to ensure real access to administrative and judicial review procedures.

Since the entry into force of the UNFCCC Convention, the signatory parties have met annually in the "Conference of the Parties" (COP). During the third COP in Kyoto in 1997 the Kyoto Protocol was adopted. It was an international agreement that commits the signatory parties to reduce greenhouse gas emissions. In 2015, COP21 was held in Paris, with the aim of reaching the signing of an agreement to regulate the post-2020 period. The long-term goal of limiting the temperature increase to 2°C above pre-industrial levels was confirmed and furthermore it was agreed to continue efforts to limit the temperature increase of 1.5°C. COP24 was held in Katowice in 2018 and a rulebook has been adopted to implement the Paris agreement.

As stated in Article 8(1) of the Statute of the International Court of Justice, international environmental law is composed of conventions, customary law and general principles of law. Environmental treaties are the main source, both from a quantitative point of view and from the point of view of the rights and duties of states in terms of environmental protection and sustainable development. Comparing the conventions, we can see that there are some points that unite them. They are in fact the result of pressures exerted by the world scientific community on governments to take urgent preventive measures to prevent the intensification of environmental damage. The agreements, in most cases, are limited to impose cooperation obligations on states without impose specific codes of conduct. Other agreements contain only result obligations for States that therefore have a wide discretion on how to reach the internationally agreed goal. Many environmental treaties establish ad hoc institutional structures, consisting of conferences of the parties, secretariats and commissions invested with functions relating to the development of standards and the control of their implementation. The prospect of a "world organization for environmental protection" is far away, and there is a fragmentation of the sources on the subject. There is therefore a technical-functional specialization of environmental diplomacy, which in many cases gives these institutional structures the power to adopt binding decisions for states based on majority voting. These decisions are made necessary by the fact that environmental conventions are dealt with umbrella progressively integrated by protocols and other derivative acts. This is because the warranty must be changed in a short period of time due to technical progress and knowledge change. In environmental conventions some principles are repeated so often that they can be considered proof of the existence of general rules and, if accompanied by the presence of other competing elements, allow the formation and the strength of general rules to be established. It is therefore possible to argue that international environmental law is a special sector of international law.

Unlike international environmental law, the environmental law of the European Union is not only important for the role it plays, but also for the profound influence it has in the internal legal systems of the member countries. In fact, the environmental law of the countries belonging to the Union presents a remarkable uniformity. This result has been achieved thanks to the emanation of many environmental directives on the approximation of legislation, the principles that have gradually conditioned the national systems and the sentences adopted by the Court of Justice of the European Union. The rules of European law are "directly applicable" since the law of the Union is an autonomous legal order that prevails over internal systems and derives from a limitation of the sovereign power of individual states. The principle by which the EU strives for sustainable development is based on "a high level of protection and improvement of the quality of the environment." (Art. 3 TEU), and is detailed in the Title XX Environment in articles: 191, 192 and 193 of the TFEU (ex Articles 174-175-176 TEC). However, even in the Part One of the TFEU there are articles containing references to the environment.

In 1990, the two most relevant rules on environmental information were adopted:

- Regulation 1210/90 established the European Environment Agency (EEA);
- Directive 90/313, on freedom of access to information on the environment, has given all citizens the right of access to environmental information held by the PA.

Furthermore, it should be remembered that the EU and all its Member States are part of the Aarhus Convention. The development of EU environmental law has been strongly conditioned by the jurisprudence of the Court of Justice and the Court. The subject of the right to the European environment is, in the juridical debate, less present than international and national law. The most plausible explanation is that the EU environmental policy has always been a tool to foster the growth of the economy and to improve the living conditions of Europeans, but not designed to give individuals an individual right. In conclusion, it can be affirmed that environmental law is a fundamental part of the EU legal order and has a considerable contribution to the success of the principle of subsidiarity which favors the regulation of relations between the EU and the Member States and of the principle of integration that allows to overcome the rigid division between the competences of the EU and those of the member States. Comparative environmental law scholars have found that since the 1970s, many nations have introduced environmental regulations into their Constitutions. The inclusion in the constitutional texts of the right to environmental protection directs environmental policy decisions and seeks to hinder the indiscriminate use of natural heritage. The environment seen as a "common good" also leads to examining development from the point of view of the person and of political and social rights. The protection of the environment takes on a global character and must involve all citizens, regardless of the country they belong to and the related constitutional requirements. In the legal systems of "civil law" environmental protection is manifested through the action of both individuals and community formations that arise between the state and the citizen. In common law systems, on the other hand, the accentuated individualism assigns the definition of environmental policies to ordinary legislation, with respect to the enunciation in the Constitution of abstract environmental principles.

It is important to note that the protection of the environment often sees in contrast, both as regards the direction to take and the rules to be used, the industrialized nations, the emerging states and the third world countries.
The European Union, by integrating environmental rights into the construction of the supranational legal order, has assumed the principle that development is positive only if it is sustainable from an environmental point of view. The structure that has been reached is based on territorial autonomy and seeks to encourage, through local communities and associations, the participation of citizens in the management of common goods. An essential role is assigned to environmental information both for access to documents and because it allows citizens to make an active contribution through a dialogue with the institutions that facilitates the search for effective and shared solutions. The constitutional comparison highlights the environmental issue as a fundamental theme. The awareness of the environmental sensitivity of the Earth and the possible consequences on man of pollution and climate change have caused, in almost all countries, the modification of the institutional structures and the adoption of a wide environmental legislation, also on the push given by the transposition of international and community laws. The protection of the environment implies a widespread legal responsibility concerning the international community, the States, the territories and the individual legal entities. Respect for nature thus becomes a collective duty that comes before individual interests and must be promoted through environmental education and access to environmental information.
Over the years, many states have decided to give special status information that contains data on environmental protection. In fact, we witnessed an explosion of constitutions, laws and judgments of the court of justice of various levels that protected the right to information.
At first the right of access to information was considered a secondary right with respect to the right to freedom of expression. Later, however, it began to be considered necessary to have a functioning democracy. This right is characterized by its individuality, positivity, unconditionality and subjection to the control of the judicial authority. Above all, over the years we have moved from a "need to know" to a "right to know", where everyone can request access to information, without having a specific need. As an example of a law that protects the right to information, I decided to describe the Freedom of Information Act (FOIA). Issued in 1966, it allows an effective legal right of access to information to the documents of the US government and federal agencies. This law embodies all the features that a law on the right to information should have, and it is certainly the most well-known on a global level. After seeing the right to general information, we have deepened the right to information on environmental matters. To represent *un unicum* is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters known as the Aarhus Convention of the United Nations Economic Commission for Europe (UNECE) was adopted on June 25, 1998 in the Danish city of Aarhus. The Aarhus Convention is the first environmental treaty, with legal value, to have given a central function to civil society, increasing its involvement when decisions are made on environmental issues. The convention is structured in 3 macro-areas that are: freedom of access to information, right of the public to participate in the decision-making and it provides the judicial mechanism to protects those rights. It is important to remember that although it can be inserted in a bigger

context than the European one, it has been inspired by European Union legislation. This convention has been able to increase the sensitivity of public bodies towards access to environmental information and has led to numerous laws in all signatory countries and in the European Union that regulate its application.

In recent years, under the pressure of the Aarhus Convention, numerous instruments have been tested for direct participation by companies, citizens and associations to make decisions and the term direct, or participatory democracy has entered into common language.

Participation is generally very useful for administrative activity, while in environmental policies it is certainly necessary, otherwise the ineffectiveness of the same. Environmental protection tools can only be implemented satisfactorily with the cooperation and consent of the users. Interaction with recipients is essential to create the conditions for social acceptance of decisions.

Unfortunately, there is still a profound difference between the legislation, both community and national, for the protection of environmental information and the implementation of the guarantees provided by the legislator. New technologies could reduce this gap and make environmental information easily accessible to all citizens to enable them to participate fully through virtuous behavior and conscious knowledge.

The e-democracy and e-government systems make it possible to connect the European institutions and the citizens of the Member States, to establish a true dialogue and to involve civil society in administrative and political choices. Active participation by the citizens of the Member States through the new technological tools could strengthen the legitimacy of the European governance system, in particular the environment.

The coordination of environmental policies would therefore pass from a hierarchical model to an interaction between people based on the concept of shared responsibility, guaranteeing a real collaboration between private individuals and public administrations at all levels, from the conception of policies to their implementation. This new vision of governance is based on usable and available environmental information that encourages participatory behavior and the sharing of public decisions and leads to greater control of administrative activity.

The environment is an area in which the specialty of the law allows for the realization of participatory democracy experiences, in which citizens and public administrations collaborate through procedures based on strong organizational innovation and are both legitimized.

Also, the use of the most innovative ICTs in the public sector (artificial intelligence (AI), Big Data, Blockchain and Distributed Ledger Technology and the Internet of Things (IoT)) can reduce barriers to access to services offered by the PA and contribute to sustainable development and the well-being of citizens.

The right of access to information in the EU is for the first time stated in the declaration on the right of access to information annexed to the Maastricht Treaty. The Amsterdam Treaty then introduced the art. 255 (191a). The right of access to information is further strengthened by the Lisbon Treaty with art. 15 of the TFEU which replaces the art. 255 TCE. Furthermore, Article 6 of the TEU, as amended by the Lisbon Treaty, establishes: the recognition by the Union of the rights, freedoms and principles enshrined in the Charter of fundamental European Union, which acquires the same legal value as the Treaties and EU adherence to the Convention for

the Protection of Human Rights and Fundamental Freedoms (ECHR). The Directive 2003/4/EC, on public access to environmental information replies Directive 90/313 starting from February 14, 2005, and the Community legislation on commitments arising from the participation to the Aarhus Convention. Directive 2003/4 originates from the belief that facilitating public access to environmental information and its dissemination, contribute to protect the environment and that Directive 90/313 has set a course for changing the method on which the PA treats transparency, that must be improved. The new directive, therefore, represents, on the one hand, the consequence of the transposition of international conventions and agreements, on the other, the start of a process to more concretely implement the right to transparency also through new legal instruments and to allow citizens to have timely and understandable information on the conditions of the environment. The directive in question is based on the three pillars of the Aarhus Convention that constitute the three principles from which to begin to develop a system of environmental democracy, in which the role of the associations and the participation of the citizens must become an indispensable factor for a valid environmental *governance*. The Regulation (CE) N. 1367/2006 concerns the application to the European institution and organs of the Aarhus Convention. Art. 1 of the Aarhus Regulation states: "rules to apply the provisions of the Convention to Community institutions and bodies, in particular by: (a) guaranteeing the right of public access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms and conditions of, and practical arrangements for, the exercise of that right; (b) ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination; (c) providing for public participation concerning plans and programmes relating to the environment; (d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.". There are many similarities between the Transparency Regulation 1049/2001 and the Aarhus Regulation 1367/2006 of the European Union. Regulation 1049/2001 contains the obligations regarding the conservation of public documents held by the European institutions. On June 18, 2018, the Council requested to the Commission to provide a study, by September 30, 2019, on the Aarhus Convention. The requested study is the result of the outcome of the Aarhus Convention's compliance monitoring committee following the alleged failure by the EU to comply with the provisions of the convention on access to justice. The study will have to present options to improve public and NGO access to environmental justice, including a proposal of revision, by September 30, 2020, to modify the EU regulation n. 1367/2006.

In our system only with the reform established by the Constitutional law n. 3, in October 18, 2001, the word environment was introduced into the Constitution. In fact, before 2001, the Constitution clearly did not provide for environmental protection. The Constitutional Court, in many judgments, assessed the environment as a constitutionally protected value and aimed at a unitary vision of the environmental good including both natural and cultural resources. This concept includes the conservation, rational management and improvement of natural conditions, the existence and preservation of terrestrial and marine genetic heritage, of all the animal and plant species that live in its natural state and ultimately the human person in all its manifestations.

Furthermore, he stated that the environment is a unitary intangible asset although it consists of various components, each of which can be separately protected. The fact that the environment can be used in various forms and different ways, as well as being subject to various rules that ensure the protection of its various areas, does not detract from its nature as a unitary good that the legal system takes into consideration. The environment is protected as an element that determines the quality of life. Its protection expresses the need for a natural habitat in which man lives and acts and which is necessary for the community and citizens, according to widely felt values. Its safeguard is imposed first of all by constitutional precepts (articles 9 and 32 of the Constitution), for which it rises to a primary and absolute value. At the same time, information sharing is a means of applying the democratic principle and an end to involving citizens in the political choices that constitute the prerequisites of our Constitutional Charter. The regulations concerning environmental information can be found, in the internal system, starting from L. 349/1986, which in art. 1, co. 3, provides that the Ministry of the environment adopts, with the media, the appropriate initiatives to raise public awareness of the needs and problems of the environment. The co. 3 of the art. 14 is the first provision to establish that any citizen has the right of access to information on the state of the environment available at the offices of the public administration. It should be stressed that the provision concerns all citizens regardless of the interest inherent in the request. This rule has become really effective when with the art. 22 of Law 241/1990 the right of access to administrative documents was regulated. Law 241/1990 constituted a revolution in Italian administrative law focusing on the principles of publicity, participation, responsibility, effectiveness and cost-effectiveness and trying to abandon a way of working based on the lack of trust placed in citizens and the fact of not having to answer to none of it done. The special regulation on access to environmental information has been increased with Legislative Decree 39/1997, transposing Directive 90/313, and subsequently with Legislative Decree 195/2005 on public access to environmental information that repealed the previous provision. The Legislative Decree 195/2005, in particular, is aimed at guaranteeing the right of access to environmental information by establishing the terms, conditions and methods of exercise, and to ensure, for the purposes of broader transparency, that the information itself is made available to the public. The right of access to administrative documents is attributed only to those who hold a relevant legal situation, that have as their object documents and not information and are limited by a large list of cases of exclusion. The request for access must be justified as the interested party must demonstrate his individual interest. Law 241/1990 does not require citizens to take on roles of verification of the conduct of the public administration, as the person concerned can only request access to existing administrative documents and not oblige the administration to elaborate and produce new ones. The right of access to environmental information regulates, instead, the possibility of accessing information and citizen participation in decision-making processes. The EU framework sets a set of environmental protection rules based on the environmental education of citizens who are granted access to information and participation in decision-making processes. Also, on the judicial side, both the European Court of Justice and Italian jurisprudence have favored this trend by extending the scope of the legislation and by limiting the exceptions that hindered the right to transparency. The Aarhus

Convention, the directives 90/313/CEE and 2003/4/CE and the D.Lgs. 39/1997 and 195/2005 are instruments aimed at ensuring the maximum possible transparency on the state of the environment and allowing a control by of citizens on the quality of the environment in which they live. The right of access to environmental information can be configured as a subjective "autonomous" position, for all legal entities and without considering the organic or ancillary connection to additional legal situations, while the right of access to administrative documents is characterized by the instrumentality access. Legislative Decree 97/2016 finally introduces generalized civic access into our legal system inspired by the principles of US FOIA in which the rule is the full disclosure of every public act. The Italian FOIA unfortunately still does not correspond, especially in the results, to the US model as it is more a right to know than a real instrument of participatory administrative action. The growing environmental awareness of citizens and the promotion of information tools thanks to the use of new communication technologies has led in recent years to an increase in the demand for environmental information to the public administration by the subjects involved (stakeholders). The PA is one of the fundamental factors and must be made more democratic by promoting an organizational model that enhances participatory demands. The Draft Law n. 783, presented in September 2018, intervenes on Legislative Decree 195/2005 extending to the companies the obligations to publicize the environmental information already in force for the public administration and fixing certain, immediate, proportionate and dissuasive sanctions for those who deny the public or delays unjustifiably access to environmental information itself.

We then come to the cases, which concern respectively: the last case on the right to environmental information in the European Union, the case of the ILVA of Taranto and the Affaire du Siécle.

The first case I decided to analyze is Case C-57/16 P ClientEarth v European Commission. This case was important because it finally clarified the powers of the Commission regarding regulation 1049/2001. The ruling placed limits on the Commission's power to decide with discretion whether to publish documents or not, in particular, the Commission had prevented the publication of some documents during the process of consultation of the institutions. First of all, I summarized the main cases in the field of environmental information in six different categories. I decided to add the case in question to the sixth category, or the right to access to environmental information by the European Institutions.

The case began with a request from ClientEarth, a NGO, the EU-wide rules on environmental control and the EU rules on environmental inspections. The Commission has refused to publish the documents invoking Article 4 (3) first subparagraph ("the ongoing decision-making process exception") of regulation 1049/2001. However, the NGO, not believing that this refusal was legally right, decided to take the Commission to court. In the litigation that followed, the General Court was on the commission's side in all circumstances. However, ClientEarth decided to continue with the process and to appeal the decision of the General Court.

The Advocate General in his opinion wrote that the problem is that after this decision, the strategic choice contained in the legislative initiative could be compared to the content of an impact assessment. The appeal ruling overturned the previous decision, thus giving reason to the NGO. In fact, similar assessments are,

according to the impact assessment guidelines, key tools that allow for initiatives to set up institutions of the Union to be developed starting from transparent, complete and balanced information. The publication of these documents would increase the transparency and openness of the entire legislative process. In conclusion, the Court established that the Commission can decide which policy to adopt and which potential proposal to submit, however, it cannot interpret the regulation in a way that does not make documents public. The ruling of the Grand Chamber of the Court will become a significant aid in the coming years in clarifying citizens' rights to access to European Commission documents. The case is the C-57/16 P ClientEarth v Commission It is to be hoped that after this ruling the Commission will have greater openness towards the public and it has set a precedent that will have strong repercussions in the years to come for what concerns the freedom of information in environmental matters.

The second case I have decided to describe concerns Italy, which in recent years has found itself having to face the legal vicissitudes of the ILVA steelworks in Taranto. The complexity of the case has made it very difficult to resolve, and only the last sentences, now reaching the last grade of judgment, seem to represent a starting point from where to start normalizing the situation. The ILVA steelworks in Taranto is a fundamental part of the city's economy. The various courts, of all grades, both national and international, have found themselves judging the balance between the principle of the right to health and living in a healthy environment and that of the right to work. There are numerous reports that scientifically highlighted the strong impact that plants had on the health of the population. In 2012 the Prosecutor of Taranto ordered the arrest of some members of the leadership of the company and of the political leaders on the charge of having deliberately produced a pollution that had compromised the environment and the health of the citizens of Taranto. Industrial activity continued to produce polluting exhalations that were continuing to damage their health. And the question has come up to be judged by the Constitutional Court which has ruled on the delicate matter by balancing the right to health and the environment and the right to economic freedoms. Some citizens of Taranto turned to the European Court of Human Rights accusing as many tumors were contracted because of the emissions of the steel plant. Italy was condemned for the violation of the right to life pursuant *ex* art. 2, and on the violation of the right to respect for private and family life pursuant *ex* art. 8, as well as on the violation of the art. 13, because of the inexistence of an effective internal remedy. In the case of the ILVA of Taranto, we can hypothesize also a possible condemn for the violation of art. 10. of the European Convention on Human Rights that deals with the right to information, even if the complainant didn’t decide to challenge the government for the violation of this article. The Italian State has not adopted all the information measures that would have allowed resident citizens to consciously decide whether to continue to live in the areas surrounding the plants. The Italian State should have informed the population of the risks that would have involved staying in the area surrounding the industrial area. However, it failed to carry out a correct information campaign and for this reason Italy could have been brought before the court for not having applied the art. 10.

The third case concerns France that in the last year saw the birth of the protest movie called Affaire du siècle. This movement started on the initiative of four environmental associations: the Fondation pour la Nature et

l'Homme (FNH), Greenpeace France, Notre Affaire à Tous and Oxfam France. The French citizens have denounced the State for not having done enough in environmental matters. In fact, the French State has not complied with various international and European commitments it had made and is also late in applying its national environmental plans. The associations require that all necessary measures must be taken immediately to ensure that the objectives set regarding the environment are respected. This is a clear example of awareness on the part of citizens, who, conscious of their rights, have decided to defend them completely. Although in this case there is no lack of information, this is a demonstration of how citizens, once received that information, can use it to make the government comply with the commitments it has made.

The Aarhus Convention is the basis on which the "environmental democracy" is to be built and is one of the essential tools to achieve the objective of contributing to the protection of the right of the individual. In Europe the last few events suggest that things will improve. The new European Commission, led by Ursula von der Leyen, has decided to give a central role to the environment. However, the climate crisis is getting worse much faster than expected and will have catastrophic consequences. The United Nations Climate Action Summit 2019 was held in New York on September 23rd in which many governments presented themselves with concrete and realistic plans to increase their national contributions to 2020, in line with the goal of reducing by 45% greenhouse gas emissions in the next decade and to reach zero net emissions by 2050. The conference was preceded by the UN Youth Climate Summit, the youth climate summit, on Saturday 21 September, in the presence of the Swedish activist Greta Thunberg, who is driving the climate protests of young people around the world. In conclusion, it is important that the right to information will be extended and above all it is vital that there will be a much broader protection of the right of public access to environmental information than the normal right of access to administrative documents.