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Energy and sustainability between ecology of law, green law and nature rights

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Abstract

The Planet is facing an unprecedented ecological crisis. Renewable energy and energy efficiency are key ingredients to face the challenge of reducing CO_2 production, which is considered a fundamental action to tackle climate disruption. Establishing frameworks of Green economy and Green Law is needed to enable the conversion towards an ecologically sustainable society. The European Union has set up a policy that pushes member states to increase the use of renewable sources and reduce fossil fuels, especially oil and gas. In Italy, with the PNIEC, the national targets for 2030 on energy efficiency, targets of use renewable sources and the reduction of CO_2 emissions are established, as well as the targets for energy security. However, the Italian government needs to design more extensive policies, particularly regarding the subject of eco-adaptation.

Keywords: Energy - Emissions - Green - Economy - Law - Ecology - Sustainability - Nature.

Summary: Introduction. – 1. Green Law in Italy, EU, and the world. – 2. Future perspectives and open problems for a Green Italian legal framework. – Conclusions.

Introduction.

Pollution and climate change are pushing the planet one step away from global ecological disruption. Data emerged from the UN Scientific Committee's Climate Gas Emission Report [1] [1] within the United Nations Environment Program (UNEP) have shown that the temperatures reached an average increase in temperatures just below 1 degree Celsius and that the average increase in temperature would be of 3.2 degrees by the end of the century, even considering the commitments made by different countries up to that moment. This launched the call to multiply efforts and investments to achieve the objectives of the 2015 Paris Agreement [2] [2]. This rise in the global average temperature beyond the recommended threshold would increase the intensity and frequency of the environmental disasters recorded to date (heat waves, drought, famines, floods, melting ice, and so on) as alerted by the Intergovernmental Panel on Climate Change[3]. As recommended by many, therefore, it is necessary to bet on the Green Economy and on the development of a Green Law system that establishes renewable energy solutions and energy efficiency as key ingredients to face the challenge of reducing CO_2.

Green Law in Italy, EU, and the world.

Certain Italian legal doctrine, which for some time has been denouncing the serious

[1] Presented in Geneva on August 8, 2019.
[2] See Climate Action / Paris Agreement on www.ec.europa.eu.
[3] See Special Report "Climate Change and Land" on www.ipcc.ch.

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ecological crisis facing Italy, proposes an ecological conversion of the main institutions of the Italian legal system[4], now obsolete in the face of the dramatic environmental situation in our country. For example, these authors formulate an "ecological" analysis of contract law and propose the establishment of a new contractual instrument, called the "ecological contract", implementing a different way of satisfying needs. This new contractual tool is inspired by the need of a more sustainable economy[5]. All accompanied by a necessary "ecological literacy"[6] of individuals to help them reflect on new ownership forms and on the change in the relationship between the sovereign state sphere and the shared global one. In the field of energy and sustainability, virtuous examples of this reflection are some countries of Latin America, where Nature[7] is elevated as a legal subject[8] and protected at the constitutional level. Nine Latin American Countries—Chile, Peru, Ecuador, Costa Rica, Honduras, Guatemala, Haiti, the Dominican Republic and Colombia— have set a new collective energy target for 2030 which consists in the use, at that date, of 70% of renewable energy [REF] through targeted government plans involving use of clean energy sources, smart grids and increased sanctions for fossil fuel emissions.

The European Union has set up a policy that pushes member states to increase the use of renewable sources and reduce fossil fuels[9], especially oil and gas. EU legislation on the promotion of renewable energies has evolved significantly in recent years and the future political framework for the post 2030 period is under discussion[10].

In Italy, the energy regulatory framework has so far been fragmented between different standards and, especially in the field of renewable energies, growth has been slow and not at all competitive[11]. However, on January 21 2020, the Italian Ministry of Economic Development published the Integrated National Plan for Energy and Climate (*Piano Nazionale Integrato Energia e Clima*, PNIEC), which incorporates the changes contained in the Decree Law on Climate[12] as well as those on investments for the Green New Deal envisaged in the Budget Law 2020. The Green New Deal is a government plan to promote urban regeneration, energy conversion towards a widespread use of renewable energies, the protection of biodiversity and seas, the fight against climate change. This name refers to the New Deal, the set of social and economic reforms launched by the President F.D. Roosevelt in the 1930s to lift the United States from the Great Depression. The underlying idea is that this bundle of green policies is born as a response to the current great crisis, the climatic one.

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[4] For an overview on the point see F Capra, U Mattei, Ecology of law. Science, politics, common goods, (Aboca Edizioni, 2016); U Mattei, A Fourth, Turning point, (Aboca Edizioni, 2018).

[5] M Pennasilico, 'Sustainable development and "ecological contract": another way of satisfying needs'(2016) 4 RDC 1291,1323.

[6] See F Capra, defending the Earth, our common home, beyond the differences of ethnicity, culture or class.

[7] M Carducci, 'Nature (rights of)' [2017] DPD 486, 52.

[8] MC Gaeta, 'Il problema della tutela giuridica della natura: un'analisi comparata tra Italia e stati dell'America latina (2020) 4 Nuova Diritto Civile, 305 ss.; MC Gaeta, 'Principio di solidarietà e tutela di nuovi "soggetti" deboli. La Foresta Amazzonica quale soggetto di diritto (analisi della sentenza n. 4360/2018 della Corte Suprema di Giustizia della Colombia' (2019) Familia, Observatory section of private international law and comparative law, online page of 29 August 2019, Pisa; S Baldin, 'The rights of nature in the constitutions of Ecuador and Bolivia' (2014) 10 Latin-American visions of the Study Center for Latin America 25, 39.

[9] C Benanti, 'Energy labeling as a market regulation tool'[2018] 6 CNLC 1364,1386.

[10] For a detailed reconstruction of the regulatory framework on the topic of renewable energy which was mentioned in the text, cf. www.europarl.europa.eu.

[11] From Law 239/2004 on the reorganization of the energy system to Law 99/2009 on the security of the energy sector to Legislative Decree 387/2003 and Legislative Decree 28/2011 which are accompanied by Legislative Decree 192/2005 and subsequent amendments on energy performance in construction and Legislative Decree 104/2014 on energy efficiency.

[12] DL October 14, 2019, n. 111 converted into Law 12 December 2019, n. 141 on G.U. 292 of 13 December 2019.

In particular, the PNIEC establishes the national targets for 2030 on energy efficiency, renewable sources and the reduction of CO2 emissions, as well as the objectives regarding energy security, the single energy market and competitiveness, development and sustainable mobility. For each of the aforementioned, the PNIEC describes measures that will be implemented to ensure their achievement.

Future perspectives and open problems for a Green Italian legal framework.

In this perspective we offered a reasoned overview of the current challenges regarding climate emergency, energy conversion, and sustainability and presented how Italian policy makers concretely acknowledged this issues with establishing the PNIEC. The hope is that the Italian legislator will now put in place all the necessary and adequate legislative and economic provisions that can pursue the common objectives established at European level.

The Italian legislator should consider five actions to take:

- the recognition of a juridical subjectivity to Nature as a "common good";
- the introduction in the Italian legal system the concept of energy as a common good, instead of a commodity;
- a full and expedite transposition of Directive 2018/2001/ EU on the development of renewable sources, which sets the target of 32% electricity from renewable sources by 2030, indicates the share of RES in transport at 14%, plans to eliminate the use of palm oil, sets the reduction of CO2 emissions to 40%, and includes sustainability criteria for solid biomass;
- to introduce the model of "energy communities", already present in other European countries (Denmark, Holland and Germany), where electricity, strictly generated from renewable sources, is used, sold and shared in smart grids;
- to introduce specific rules in the context of civil liability, and frame them in the context of intergenerational responsibility.

Focusing on the last proposal, Governments should create compulsory civic-environmental education courses in schools that can raise and promote awareness of these issues from an early age. These would consist of training projects aimed at spreading the knowledge and correct use of renewable energies among primary and secondary school children, with the support of cartoons, multimedia films, artistic workshops, poems, etc. A further goal would be to spread the knowledge of good daily practices for an ecologically sustainable lifestyle.

Conclusions.

Reading projects from the European Commission on the development of a Green economy it emerges, that the main focus is always on the decarbonisation of the country (carbon neutrality, an area where multiple investments have been announced and committed by the Italian government), but nothing or little is available in terms of eco-adaptation, that is the response to challenges posed by climate change. Italy in particular is exposed to drought in the South of the country, floods and landslides in the alpine area, heat waves and impacts of rising sea, even more so than other European countries. Therefore, investments are needed to build new infrastructures, to create in each region adequate air conditioning in extreme heat and cold. Eco-adaptation can thus reduce the country's vulnerability to earthquakes, hydrogeological phenomena, and disastrous consequences for the environment, agriculture, etc. Moreover, drawing up a map of possible environmental eco-impacts is of great importance for the Green economy and a practical prerequisite for the formulation of a Green Law system, as described in this contribution. The Italian government needs to deliver concrete and targeted interventions in the matter of eco-adaptation, or the Green

New Deal will risk to become only a list of good intentions.