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THE RIGHT TO A HEALTHY ENVIRONMENT: LIGHTS AND SHADOWS OF THE ANTHROPOCENTRIC LEGAL APPROACH AND THE RIGHT OF ECOLOGICAL INTEGRITY

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1. *Introduction*

The right to a healthy environment is increasingly being recognized at the international and national level in a growing number of constitutions and other legal instruments. However, as a human right, it presents some characteristics that reflect the Westernized approach to human rights law. This right in fact generally conceptualizes the environment as functional for the wellbeing of humans and does not take into consideration the intrinsic value of natural elements. This article will give an overview of the conceptualization of the right to a healthy environment in different national contexts, with a focus on south American countries. After having provided this overview, the chapter will concentrate on a case study of the right to a healthy environment in Italy, drawing some conclusions based on the level of recognition of this right in the specific national framework. It will then focus on the scholarly debate on non-anthropocentric and anthropocentric approaches in law and governance, challenging the implications of the intrinsic meaning of this dichotomy. The present article will then conclude by arguing that the right of ecological integrity would represent an opportunity to recognize the interdependence of human beings and the environment, challenging the classical debate of the dichotomy between non-anthropocentric and anthropocentric approaches in environmental and human rights law and governance.

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2. *The right to a healthy environment: global perspectives*

a) *The constitutional recognition of the right to a healthy environment*

The right to a healthy environment is a human right. In the past decades there has been growing recognition of the interlinkage between human rights and the environment at the national and international level. An important turning point was constituted by the 1972 Stockholm Declaration, which established that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".[1] Another important point was made by the former UN Special Rapporteur on Human Rights and the Environment, John Knox, via the publication of the Framework Principles in 2018.[2]

Nowadays, the right to a healthy environment has been recognized in many constitutions worldwide and in national environmental regulations. According to the Report of the Special Rapporteur on Human Rights and the Environment, this right has been incorporated in more than 100 national legal systems through constitutional recognition.[3] At the regional level, human rights agreements that have incorporated this right have been ratified by 130 countries overall. Regional courts and human rights enforcement institutions - The Inter-American Commission on Human Rights, Inter-American Court of Human Rights, the African Commission on Human and Peoples Rights, the European Court of Human Rights, and the European Committee on Social Rights - have issued rulings involving violations of this right.

At the international level there is no specific instrument that explicitly recognizes and articulates the right to a healthy environment. However, most of the actions that are aimed at protecting and enforcing this right begin at the national level, and justice is only granted at the international level when the case can be escalated. Constitutional law has grown rapidly since the 1972 Declaration, with Portugal and Spain as the first two countries that have recognized this right, in 1976 and 1978 respectively.[4]

The right to a healthy environment presupposes a direct influence from the conditions of the environment to the enjoyment of fundamental human rights, such as the right to life and to health, which are therefore been subjected to a "greening" process. This process has led to the advancement of environmental regulations aimed at ensuring a clean, healthy and sustainable environment in order to respect, promote and fulfil human rights obligations. The various instances of constitutional recognition reflect the different legal philosophies, histories and cultures of the countries in which rights relating to the relationship between human beings and the environment have been adopted. In this respect, it is possible to ascertain that in certain countries – in which laws are based on a Westernized

[1] Stockholm Declaration (Declaration of the United Nations Conference on the Human Environment), 1972, UN Doc. A/Conf.48/14/Rev.1.

[2] The 16 Framework Principles delegate an important role to States in protecting, fulfilling and respecting human rights, and clearly establish an interlinkage between human rights and the environment. They also refer to the importance of environmental information, access to information and education in order to respond to environmental challenges.

[3] UNITED NATIONS GENERAL ASSEMBLY (UNGA), Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188, 19 July 2018.

[4] Ibid.

model – the right to a healthy environment is regarded as largely focused on the well-being of humans, and not on the state of the environment per se.[5]

For example, in South Africa, the right to a healthy environment can be regarded as essentially anthropocentric. Section 24 of the South African constitution refers to the fact that "[everyone has the right] to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures […]." It seems that ecological conservation and the sustainable use of natural resources is subordinate to the individual well-being of humans, with the terms "health" and "well-being" not referring to ecosystems or natural elements.[6] This approach is different from legislation adopted by countries that are part of the Interamerican human rights system.

b) *Perspectives from the American system*

In the American context, the right to a healthy environment is protected by the Additional Protocol to the American Convention in the area of Social, Economic and Cultural Rights (also known as the San Salvador Protocol).[7] The Protocol does recognize a standalone right to a healthy environment in Article XI in a way that is quite broad.[8] In addition, the right to a healthy environment is envisaged in the 2016 American Declaration on the Rights of Indigenous Peoples. The Declaration, in Article XIX, recognizes the existence of a standalone right to a healthy environment specifically dedicated to Indigenous peoples and to their unique spiritual and territorial connection to ancestral lands and natural resources.[9]

The conceptualization of the environment in the Interamerican system, especially in Latin American and the Caribbean countries (LAC), differs in at least two instances from the traditionally Westernized one. First, the right to a healthy environment assumes a collective

[5] However, many countries recognise the right to a healthy environment even if that is not specified in their constitutions. For example, in the US, Hawaii, Illinois, Massachusetts, Montana and Pennsylvania have substantive constitutional rights to a healthy environment despite the absence of such a right in the federal constitution. See also: J. R. MAY and E. DALY, *Global Environmental Constitutionalism*, Cambridge, 2014, p. 219.

[6] The Constitution of the Republic of South Africa, 1996, was approved by the Constitutional Court (CC) in December 1996 and took effect in February 1997.

[7] The Protocol presents some implementation problems since it has been ratified by only 16 countries, and the right to a healthy environment is not subject to the jurisdiction of the Interamerican Court and Commission. Article 19(6) of the San Salvador Protocol provides for *ratione materiae* jurisdiction of the Commission and the Court over only two of the rights that it articulates: the right to unionization (Article 8(1)(a)) and the right to education (Article 13). However, the Court and the Commission have recognized the interlinkage between human rights and the environment in relevant decisions: *Yanomami* v *Brazil*, IACtHR, Case 7615, Report No. 12/85, OAS/Ser.L/V/II.66, Doc. 10 Rev. 1; IACHR, Kawas-Fernández Honduras, 3 Apr. 2009, Judgment (Ser. C No. 196), [148]. IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/ II.96 (24 April 1997), ch. 8; Inter-American Commission on Human Rights, Case of Yanomami Indians, Judgment, Case 7615 (Brazil), OEA/Ser.L/V/II.66 Doc. 10 Rev.1 (1985). See also: M. A. TIGRE, N. URZOLA, *The 2017 Inter-American Court's Advisory Opinion: changing the paradigm for international environmental law in the Anthropocene*, *Journal of Human Rights and the Environment*, Vol. 12 No. 1, 2021, pp. 24–50.

[8] The right to a healthy environment in the San Salvador protocol is qualified as "Everyone shall have the right to live in a healthy environment and to have access to basic public services" and "The States Parties shall promote the protection, preservation, and improvement of the environment".

[9] "Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being", Article XIX(2) American Declaration on the Rights of Indigenous Peoples, Organization of the American States, 2016.

dimension that is not envisaged for example in the European system – and the Italian case study presented below is one such example. Secondly, the right to a healthy environment assumes, in certain national contexts, a markedly non-anthropocentric character.

Regarding the first point, since the San Salvador Protocol is inscribed into the framework of social, economic and cultural rights, it can be understood that the rights enshrined in this instrument have a collective dimension. This includes the right to a healthy environment. Consequently, if we take into account the indivisible nature of human rights, it is evident that the protection of the environment might go beyond the limits of individual subjectivity. In fact, in LAC countries collective national groups or communities such as indigenous peoples are entitled to group rights that apply also to specific circumstances such as property rights and rights to access and utilise environmental resources.[10] The Interamerican Court and the Commission have developed, with specific regard to Indigenous peoples' rights, relevant jurisprudence and reports concerned with the respect of collective rights and the right to a healthy environment.[11] With regard to the Commission, often this has been an analysis of general situations in countries with relevant recommendations.

As regards the second point, the constitutional recognition of the right to a healthy environment has been developed with non-anthropocentric and collective values in certain LAC countries. For example, the constitution of Bolivia recognizes the collective right to a healthy environment with special regard to Indigenous peoples,[12] while Article 2 of the Law of the Rights of Mother Earth No. 71 (2010) establishes the principles of mandatory compliance. These are the principle of collective good (society's interests, within the framework of Mother Earth rights, prevail in all human activities and above any acquired right) and the principle of respect and defense of Mother Earth's Rights (the State and individuals, or collective persons, must respect, protect and guarantee the rights of Mother Earth so current and future generations can live well). Similarly, the constitution of Nicaragua at Article 60 states:

> "Nicaraguans have the right to live in a healthy environment, as well as the obligation of its preservation and conservation. The supreme and universal common good, condition for all other goods, is the mother earth; it must be loved, taken care of and regenerated. The common good of the Earth and humanity asks us to understand the Earth as alive and subject to dignity. It belongs communally to all those who inhabit it and to the ecosystems as a whole. The Earth forms a unique complex identity with humanity; it is alive and behaves as a unique self-regulated system formed by physical, chemical, biological and human components, […]."

[10] M. BATISTA, *The Interamerican Court of Human Rights and the Collective Rights: a study of the Yakye Axa Indigenous Community v. Paraguay Case*, *Revista Thesis Juris 6*, no. 2 (2017): 262-280.

[11] For example, in the case of *Mayagna Awas Tingni* v *Nicaragua* (2001), the Court recognized the collective rights of Indigenous peoples to their territories. Additionally, it developed the collective right to property and the States obligation to title their territories and to grant effective legal remedies. The Court affirmed that Article 21 of the American Convention on Human Rights, which recognizes the right to private property, also protects "the rights of the members of indigenous communities under the sphere of communal property".

[12] Article 30(ii) establishes: "In the framework of the unity of the State, and in accordance with this Constitution, the nations and rural native indigenous peoples enjoy the following rights: … (10): To live in a healthy environment, with appropriate management and exploitation of the ecosystems.", Bolivian Political Constitution (2009).

According to these principles, the right to a healthy environment creates a different connotation to that of the individual right established in Westernized law. The wellbeing of our planet and its environmental resources are seen as the main framework upon which the conceptualization of human rights should be built. However, in Westernized legal systems, the wellbeing of the environment and the ecological health of the planet are not conceptualized in the same manner as in countries where the connection between the existence of human beings and ecological integrity are so clearly defined.

3. Case study. The right to a healthy environment in the Italian system

a) *The right to a healthy environment in the Italian Constitution: the situation before the 2022 reform*

The Italian Constitution does not directly recognise the right of every individual to live in a healthy environment. Before the 2022 constitutional reform, it also did not recognise the public interest in the protection of the environment. Article 117, as amended by the 2001 constitutional reform, was the only article of the Constitution to use the term "environmental protection" (*tutela dell'ambiente*), establishing that the State is the only competent authority to enact environmental protection law. Since the 1970s, the Supreme Court of Cassation and the Constitutional Court gave constitutional value and constitutionally guaranteed protection to the environment, through an extensive and innovative interpretation of two articles of the Constitution: Article 9(2), which protects the landscape, and Article 32, which protects human health. [13]

Article 9(2) of the Constitution protects "the landscape", a value that, originally, was only protected for its aesthetical beauty and not for the correct functioning of the ecosystems, as envisaged in article 1 of the Act no. 1497/1939 (*Legge 29 giugno 1939, n. 1497*).[14] Over time, legal doctrine, jurisprudence and positive law gave the landscape environmental relevance. Among the many authors that have recently dealt with the issue, Predieri defined the landscape as "the sensitive form of the environment", stating that it was a "photograph of a territory with historical-cultural value"[15]. The Constitutional Court began to consider the landscape as the "visible environment": that is the aspects of the relationship between man and nature that are expressed in the form of the territory.[16] Article 131 of Act no. 42/2004 (*decreto legislativo 22 gennaio 2004, n. 42*), named "Code of cultural heritage and landscape" (*Codice dei beni culturali e del paesaggio*), defines the landscape as "an integral part of the territory whose characteristics are derived from nature, the history of humanity or from their reciprocal inter-relationships".[17] Therefore, the aesthetic conception of the landscape has been overcome and the landscape has gradually coincided with the concept of *habitat* of man

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[13] C. DELLA GIUSTINA, *Il diritto all'ambiente nella Costituzione italiana*, in *Rivista giuridica AmbienteDiritto.it*., 2020.
[14] The cited article defined the landscape a "natural painting" which deserves to be protected because of its beauties.
[15] A. PREDIERI, *Paesaggio*, in *Enciclopedia del diritto*, XXXI, Milano, 1981 p. 507.
[16] See Ruling no. 367, made by the Constitutional Court on 7 November 2007, at https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2007&numero=367, last accessed June 2022.
[17] Article 131 of Act no. 42/2004 sets out the definition of landscape contained in Article 1 of the European Convention on Landscape signed in Florence on 20 October 2000. This article states that "*"Landscape" means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors*".

and nature, promoting the protection of ecological interests and existing environmental balances.[18]

Article 32 of the Constitution safeguards the fundamental right to health, a protection that originally was interpreted restrictively as the right of the individual human being to life and physical or psychological safety. Over time, jurisprudence examined this protection from a different point of view, enhancing the content of Article 2 of the Constitution, which guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed, such as the domestic hearth, workplace, etc. Therefore, the Supreme Court of Cassation stated that the right to health had to be interpreted also as the right of every person to live and develop their personality in a natural or artificial context in which nothing constitutes a danger to their physical and mental health[19]. This is the right to a healthy environment, which represents the "social" side of the right to health and protects the environment as a context in which the human being lives, interweaves relations, and develops its own potential.

In light of this, Articles 9 and 32 represented respectively two "faces" of the environmental interest: the "ecocentric face" of the public interest in environmental protection, which protects the environment directly and exists even if the deterioration of the environment has not affected human health; and the "anthropocentric face" of the individual interest in living in a healthy environment, which protects the environment indirectly and can be exercised by private individuals only in cases of danger or damage to human health. Therefore, the right to a healthy environment, even though not explicitly present in the Constitution, emerged as one of the many ways through which the Italian legal system interacts with the constitutional value of the environment[20]. This is the reason why the 2019 *report of the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* stated that the Italian Constitution only gives an implicit recognition to the right to a healthy environment.[21]

b) *The right to a healthy environment in the Italian Constitution: the situation after the 2022 reform*

The Italian Constitution still doesn't directly recognise the right to a healthy environment, despite the recent reform that introduced the protection of the environment in the constitutional text. On the 8th of February 2022, the Italian Parliament approved Constitutional Act no. 1/2022, which amended Articles 9 and 41 of the Constitution.

First, a new paragraph has been added to Article 9, which provides for the protection of the environment, biodiversity and ecosystems, also in the interest of future generations. Moreover, it introduces the protection of animals, a radical novelty at the constitutional level. The amendment of Article 9 of the Constitution is of great importance for three reasons.

As to the first reason, the first twelve articles of the Constitution govern the fundamental principles of the Republic and have always been considered as unmodifiable by

[18] R. MONTALDO, *La tutela costituzionale dell'ambiente nella modifica degli artt. 9 e 41 Cost.: una riforma opportuna e necessaria?*, in *Federalismi.it*, no. 13, 2022, pp. 187-212.

[19] See ruling no. 5172 made by the *sezioni unite* ("joined chambers") of the *Suprema Corte di cassazione* on 6 October 1979, in *Foro it.*, , no. 1, 1979, p. 2302.

[20] D. AMIRANTE, *Profili di diritto costituzionale dell'ambiente*, in P. DELL'ANNO, E. PICOZZA, *Trattato di diritto dell'ambiente*, Padova, vol. I, 2012, pp. 233-283.

[21] See *Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 30 December 2019, A/HRC/43/53, at https://undocs.org/en/A/HRC/43/53, last accessed June 2022.

the Parliament. Amending Article 9, although additively, the Constitutional Act no. 1/2022, for the first time in the history of the Italian Republic, has amended an article among those governing the fundamental principles of the Republic, determining the fall of the principle of their unmodifiable status.[22] Moreover, the emergence of the environment as a fundamental value leads to a limiting effect of the existing fundamental values, such as the historical and artistic heritage of the nation or the landscape itself, which now must be balanced with the newcomer. However, Article 9(3) of the Constitution does not have an innovative content but has the same content as the judgments of the Constitutional Court which, for over fifty years and without interruption, considered the environment a fundamental value of constitutional rank.[23] Moreover, as some authors suggest, Article 9 of the Constitution is the only *sedes materiae* of the environment, since the Constitutional Court derived the environmental value from its provision.[24]

As to the second reason, in Art. 9(3), the constituent legislators used a very broad notion of environment, which also includes the ecosystem and biodiversity. Some authors argue that this reform aims at reconciling the different conceptions of the naturalistic values existing in the legal doctrine.[25] The term "environment", because of its etymological meaning, would be an expression of an anthropocentric conception of naturalistic values. The word "ecosystems" would emphasize those doctrinal orientations of an ecocentric type. Finally, the word "biodiversity" would include in the application of the constitutional provision the approach of those in legal doctrine that militate for a biocentric conception of natural values. Some other authors argue that these three terms should be interpreted according to their meaning in the language of the biological sciences, describing notions with different meanings and often interconnected. [26] In fact, the notion of "environment" includes a plurality of ecosystems, which are characterized by a certain degree of biodiversity, depending on the coexistence of the various species, the climate, and the presence of natural resources.

As to the third reason, the reference that the provision makes to the interest of future generations, enshrines in the Constitution, albeit implicitly, the principle of sustainable development.[27] Thanks to the influence of international and European law, the Italian legal system already recognised this principle, which is stated in article 3-*quater* of the Italian environmental code (legislative decree no. 152/2006).[28] The explicit reference to the interest

[22] T. E. FROSINI, *La Costituzione in senso ambientale. Una critica*, in *Federalismi.it*, 23 June 2021.

[23] Please see Ruling no. 641, made by the Constitutional Court on 30 December 1987, at https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=1987&numero=641, last accessed June 2022. In this ruling, the Constitutional Court stated that the environment is an absolute, primary and unitary value, composed of multiple aspects that are relevant to natural and human life.

[24] R. BIFULCO, *Primissime riflessioni intorno alla l. cost. 1/2022 in materia di tutela dell'ambiente*, in *Federalismi.it*, 6 April 2022.

[25] G. SANTINI, *Costituzione e ambiente: la riforma degli artt. 9 e 41 Cost.*, in *Forum di Quaderni Costituzionali*, no. 2, 2021.

[26] D. PORENA, *«Anche nell'interesse delle generazioni future». Il problema dei rapporti intergenerazionali all'indomani della revisione dell'art. 9 della Costituzione*, in *Federalismi.it*, no. 15, 2022, pp. 121-143.

[27] For an analysis of this principle in the Italian legal system see F. FRACCHIA, *Sviluppo sostenibile e diritti delle generazioni future*, in *Rivista quadrimestrale di diritto dell'ambiente*, no. 0, 2010, pp. 13-42.

[28] The principle of sustainable development has become part of international law since the Stockolm declaration and is enshrined in article 37 of the Charter of Fundamental Rights of the European Union. According to article 3-*quarter* of legislative decree no. 152/2006 (*decreto legislativo 3 aprile 2006, n. 152*), any human activity that interferes with the environment must comply with the principle of sustainable development, in order to ensure that the satisfaction of the needs of current generations cannot compromise the quality of life and the possibilities of future generations. However, some authors argue that the Italian legal and administrative system has not given the principle of sustainable development the importance it deserves in the fight against the

of future generations in the text of the Italian Constitution could extend to youth movements the right to take legal action to protect the environment, as has recently happened in Germany.[29]

Moving to Article 41, this article is composed of three paragraphs. The first paragraph states that private economic enterprise shall have the right to operate freely. The second and the third paragraphs of this article govern the limits of private economic enterprise. "Limit" is a word derived from Latin (*limes*), which can mean either "boundary" or "path". Article 41(2) indicates the "boundaries" of the private economic enterprise, which, in the original text, cannot be conducted in a way as to create damage to certain values, such as safety, liberty and human dignity. Article 41(3) indicates the "path" that the law must follow for public and private enterprise activity. The original text of the article states that the law shall determine appropriate programmes and checks to ensure that public and private economic enterprise activity is directed at and co-ordinated for social purposes. The 2022 reform amended the second and third paragraph of Article 41 of the Constitution.

Article 41(2) now contains two new values, in respect of which private economic enterprise must be carried out: health and the environment. In the text of the article these two values have been put before the existing ones. According to some authors, this choice is aimed at highlighting the alignment of Italian policies with those of the European Union and indicates a hierarchical superiority of health and the environment over the other pre-existing values.[30] In this way it the step forward beyond the jurisprudence of the Courts becomes clear. In case law the environment is considered as a constitutional value with the same importance as the other values contained in Art. 41. [31]

The new text of Article 41(3) provides that programs and checks determined by the law to direct and coordinate public and private enterprise activity must be oriented not only towards social, but also environmental purposes.

It is believed that following the constitutional reform, Article 41 of the Constitution now refers to three distinct forms of economy. [32] The first paragraph would refer to the "brown" (or "red") economy, which is based only on the principle of freedom and follows the "disposable" production model. The second paragraph would refer to the "green" economy, which imposes negative constraints on economic activity and, among these, that of respecting the environment, according to the model "produce but do not cause harm to the environment". The third paragraph would refer to the "blue" economy, which allows positive constraints to be imposed on economic activity, directing it towards the transition to a system that directs production and consumption patterns towards the pursuit of environmental protection objectives, according to the model "produce to improve the environment".

As a result of the constitutional reform, the environmental value is no more ancillary to the values of landscape or health, but it is now independent, insofar as its connection to

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"ecological recession". See M. MONTEDURO, *Le decisioni amministrative nell'era della recessione ecologica*, in *Rivista AIC*, 2018, no. 2.

[29] See the order made by the German Constitutional Court on case 2656/18 on 24 March 2021, at http://www.bverfg.de/e/rs20210324_1bvr265618en.html, last accessed June 2022.

[30] L. CASSETTI, *Salute e ambiente come limiti "prioritari" alla libertà di iniziativa economica?*, in *Federalismi.it*, 23 June 2021.

[31] R. CABAZZI, *Dalla "contrapposizione" alla "armonizzazione"? Ambiente ed iniziativa economica nella riforma (della assiologia) costituzionale*, in *Federalismi.it*, 2022, no. 7, pp. 31-63.

[32] M. CECCHETTI, *Virtù e limiti della modifica degli articoli 9 e 41 della Costituzione*, in *Corti Supreme e salute*, no. 1, pp. 127-154, 2022

the aforementioned values will be possible, but not exclusive.[33] Also, this reform does not introduce the right to a healthy environment into the constitutional text, which continues to find its constitutional source in the combined provisions of Articles 2 and 32, as interpreted by the Courts. However, the introduction, at the same time, of health and the environment between the limits of entrepreneurial activity is not accidental, but it is a sign of the connection between such values. Over the last decade, cases of health damage due to an unhealthy environment have increased and some of these have gained national importance, shocking the public opinion. The amendment to Article 41(2) was written under the influence of such cases and has allowed legislators and public administrations to ensure immediate and effective protection of both health and the environment, a task that in recent years had been delegated too greatly to the judicial authority.

c) *Characteristics and judicial protection of the Italian right to a healthy environment*

The individual right to live in a healthy environment protects any natural person from external agents that may cause harm to their health.[34] First, legal persons cannot suffer any damage to health; therefore, they cannot have a right to a healthy environment. [35] Second, as is true of all the other fundamental rights guaranteed by the Constitution, this right is absolute, untransmissible and irrevocable. Third, the right to a healthy environment is an innate right, which is acquired by birth. Last, this right has an *erga omnes* effect, meaning it is enforceable against all: individuals, legal persons, and even public authorities.

In Italy, any person who suffers an infringement of his right to live in a healthy environment may seek compensation for the damage suffered in front of a court. In order to obtain compensation for the damage suffered, the plaintiff must prove in court the existence of the following elements. First, the plaintiff must prove they have suffered damage to their health due to an unhealthy environment. Second, the plaintiff must prove that the unhealthy environment is due to the other party's wilful or negligent conduct. In the same way, any person who is endangered by polluted natural elements may ask the court to issue an order inhibiting the activity making the environment unhealthy.

National case law contains numerous cases of infringement of the right to a healthy environment, which have led to a precautionary measure or a conviction. In a domestic context, impacts of other properties exceeding natural tolerability violate the right to a healthy environment.[36] The same can be said with reference to electromagnetic waves emanating from a power line located near the house.[37] At the workplace, the low temperature of the work rooms, due to malfunction of the heating system, violates the worker's right to a healthy environment.[38]

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[33] F. FRACCHIA, *L'ambiente nell'art. 9 della Costituzione: un approccio "negativo"*, in *Il diritto dell'economia*, no. 1, pp. 15-30, 2022.
[34] V. DINI, *Il Diritto soggettivo all'ambiente salubre*, in *Ambiente*,, no. 4, 2005 pp. 344-347, 2005.
[35] See ruling no. 231 made by the first chamber of *Tribunale amministrativo regionale* ("administrative regional court") of Abruzzo on 5 April 2012, in *Foro amm. TAR*, 2012, no. 4, p. 1276.
[36] See ruling no. 566 made by *Tribunale* ("court of first instance") of Teramo on 17 April 2014, in *www.dejure.it*, last accessed June 2022; See also ruling no. 309 made by the second chamber of *Suprema Corte di cassazione* on 9 January 2013, in *www.dejure.it*, last accessed June 2022.
[37] See the ruling made by *Tribunale* of Bergamo on 08 March 2008, in *www.dejure.it*, last accessed June 2022.
[38] See the ruling no. 6631 made by *Suprema Corte di cassazione* on 1 April 2015, in *www.dejure.it*, last accessed June 2022.

The most important judicial case on a breach of the right to a healthy environment occurring in Italy is the so-called ILVA case. ILVA s.p.a., which name has recently changed in ArcelorMittal Italy s.p.a. and then in Acciaierie d'Italia s.p.a., is a company owning a steelworks near Taranto, in Puglia region, south-eastern Italy. This steelworks is the only one in Italy which furnaces are coal-fired. In the ILVA case, national courts established a causal link between environmental exposure to inhalable substances produced by the steelworks and the development of tumours and of cardio-circulatory pathologies in persons living nearby.[39]

The European Court of Human Rights (ECHR) has twice condemned Italy for allowing this steelworks plant to continue production despite being aware of the toxicity of the substances emitted by the steelworks. On 21 January 2019, the ECHR gave the judgment which decided the case *Cordella and others v. Italy*.[40] The Court examined many scientific reports that established the existence of a causal link between the industrial emissions of the steelworks' and the anomalous sanitary records of people living in the "high environmental risk" municipalities; then, it verified the existence of a number of administrative and legal acts that consolidated the dangerous *status quo*. Therefore, the Court found that the national authorities have failed to take all necessary measures to ensure the effective protection of the right of the persons concerned to respect for their private life, thus violating article 8 of the European Convention on Human Rights. The Court also found that Italy failed to provide applicants with effective and useful means to raise their complaints before national courts and challenge the dangerous and uncertain *status quo*, leaving them in the impossibility of obtaining measures to ensure the depollution of the areas affected by harmful emissions from the steelworks and thus violating article 13 of the Convention. On 5 May 2022, the ECHR issued a judgment on the case *Ardimento and others v. Italy*, condemning again Italy for the violation of Articles 8 and 13 of the European Convention on Human Rights.[41] In particular, the Court found that, despite the 2019 judgement, the Italian State allowed the steelworks to continue to operate, regardless of the health of the inhabitants of the neighboring cities. It also found that the government failed to provide accurate information on the implementation of the plan of environmental protection and health protection of the population. The next session will focus on some critical aspects connected to the scholarly debate around anthropocentric and non-anthropocentric legal perspectives.

d) *Future prospects of the right to a healthy environment in Italy*

On the basis of the discussion above, the following conclusions may be drawn. Unlike the principle of environmental protection, which has finally found its place in the Constitution, the right to a healthy environment continues to be a creation of case law. Furthermore, this right continues to be deeply linked to the right to health, which is concerned with the context

[39] The prosecution brought several instances of criminal proceedings against the management of this steelworks for serious ecological harm, the poisoning of food substances, failure to prevent accidents in the workplace, the degradation of public property, and the emission of pollutants and air pollution. In the recent court case "*ambiente svenduto*" ("sold off environment"), the Criminal Court of Taranto sentenced the management of the steelworks to over twenty years imprisonment. See the ruling made by *Corte d'assise* of Taranto on 31 May 2021, in www.dejure.it, last accessed June 2021.

[40] See ECHR, *Cordella and others v Italy*, app nos. 54414/13 and 54264/15 (21 January 2019). For a detailed analysis of this ruling, see C. ROMEO – A. V. SALAMINO, *Bilanciamento tra tutela della salute e sviluppo economico: il caso Ilva*, in *Giur. it.*, 2019, no. 10, pp. 2228-2236, and A. LONGO, *Cordella et al. v. Italy: Industrial Emissions and Italian Omissions Under Scrutiny*, in *European papers*, Vol. 4, no. 1, 2019 pp. 337-343.

[41] See ECHR, *Ardimento and others v Italy*, no. 4642/2017 (5 May 2022).

in which human beings live rather than ecological integrity. The truth is that, as is the case of many rights recognised only by case law, the real content of the right to a healthy environment is not clear. If the right to a healthy environment were to remain enshrined in the right to health, this would raise questions on the usefulness of this right, as the right to health already exists and can protect individuals against environmental-related harm. Therefore, the Parliament would have been right not to include in the Constitution the right to a healthy environment, because it would risk constituting a superfetation. If the right to a healthy environment is destined to have a broader object than the right to health, it would be able to protect the environment in a direct form, representing a non-anthropocentric right as explained below. In this case, the legislators would have to establish ways and forms of its exercise. In particular, the Italian legislators would have to clarify the positive obligations entailed in the realization of this right and establish its rules of implementation among individuals.

The next section will focus on some critical aspects connected to the scholarly debate around anthropocentric and non-anthropocentric legal perspectives.

4. Critical aspects

a) *Anthropocentrism and non-anthropocentrism in law*

From the review presented in this chapter, it is clear that a healthy environment in Italy, as well as in other Westernized legal systems, is considered essential insofar as it supports the enjoyment of many other basic human rights. From this perspective, environmental law is firmly interconnected with the protection of human rights, and it is overshadowed by the "self-interested" motives of people rather than compelling interest in protecting the environment *per se*.[42] The conception of environmental law – including at the regional and international level - has been largely developed based on this Western anthropocentric approach. In fact, theorists of wildlife law and deep ecology philosophy demonstrate that human rights-based approaches, which include the right to a healthy environment, do not attribute intrinsic value to nature and do not take into consideration the existence of rights-based approaches of nature.[43] As opposed to this type of legal philosophy, non-anthropocentric legal approaches entail not just the mere denial of the anthropocentric approach but, they also provide for a new legal account in relation to human rights and the environment.

Non-anthropocentrism does not necessarily consistitute a "centredness" theory: it does not aim at replacing the centre of legal ethics, the human, with another centre, nature.[44]

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[42] K. HULME, *International Environmental Law and Human Rights*, in S. R. SHEERAN., *Routledge Handbook of International Human Rights Law*. Routledge 2013.

[43] See generally R. F. NASH. *The Rights of Nature: History of Environmental Ethics*. University of Wisconsin Press, 1990.

[44] As a matter of fact, there is a growing number of non-anthropocentric legal theories that tend to substitute the anthropocentric approach with an earth-centred approach. The purpose of this approach is to realize a paradigmatic shift where human beings are no longer at the centre of the legal universe, and rights of nature are promoted by the recognition of legal personhood to natural elements. See also: ARAGÃO, A., & TAYLOR, P., *Shifting the Legal Paradigm: Earth-centred Law and Governance*, in P. MAGALHÃES, W. L. STEFFEN, K. BOSSELMANN, A. ARAGÃO & V. S. MARQUES, *The Safe Operating Space Treaty: a New Approach to Managing our Use*

According to Philippopoulos-Mihalopoulos, who advanced a critical environmental law framework, the debate that polarizes eco/anthropocentricity, human/nature, should be outclassed by virtue of a legal approach that considers a "middle" position as the starting point for the creation of the law and the reconfiguration of the relationship between human and nature.[45] Thus, a reconsideration of the ethical underpinnings of human rights-based approaches should not replace anthropocentrism with another centred theory, but rather it should consider the existence of human beings in an epistemological and ontological continuum where human bodies, non-human bodies and natural elements are part of a same surface which "cuts across animate and inanimate objects, bodies, discourses, and so on. This continuum is not equivalent to a flat ontology or the ecocentric unity of the world".[46]

However, at present the critical legal debate is mainly polarized between anthropocentric conceptions of law and governance, that see the necessity of protecting the environment as a means to placate human needs, and ecocentric approaches that tend to substitute the centre of the epistemological and ontological system, recreating the hierarchical order that they wish to demolish. A true critical approach to environmental human rights should then not aim at shifting the centre and creating a new pyramidal order, but to build a new circle of care in which the interconnection and interrelation between all manifestations of the existence is the epistemological foundation for legal action. Further research will need to clarify the impacts and contributions of the Italian constitutional reform to this debate, insofar as to how the two aspects – ecocentric and anthropocentric – seem to emerge in law and practice. In other words, if the goal of law and policy is to afford substantial environmental protection in light of the current crisis, which of the two approaches *actually* realizes such protection?

b) *Alternative perspectives: the right of ecological integrity*

However, I would like to point out the fact that such polarization of the different approaches – ecocentric and anthropocentric – necessarily will need to be overcome through the realization of a holistic approach to human rights and the environment. The middle position mentioned in the previous section calls for a critical reconsideration of our positioning as humans in the broader existential context of our planet. In international environmental law, and more specifically in the context of the Convention on Biological Diversity (CBD), this shift in perspective is being promoted through the adoption of an ecosystem approach, which is an integrated management of land, water and living resources that aims at integrating sustainable use of resources within the limits of ecosystems. This approach is also defined as "adaptive management", in the sense that it promotes ecosystem functioning and resilience. Another important feature of the ecosystem approach is its focus on equity and consideration of non-Westernized philosophies around the environment. It recognizes that human beings, and their cultural diversity are an integral component of certain ecosystems. The ecosystem approach as adopted in the context of the CBD, involves a decentralized and participatory social process. It underscores the need to include in

of the Earth System. Newcastle upon Tyne, UK, 2016; and D. R. BOYD, *The Rights of Nature: A Legal Revolution That Could Save the World*, Toronto, 2017.

[45] A. PHILIPPOPOULOS-MIHALOPOULOS, A., *Critical environmental law as method in the Anthropocene,* in A. PHILIPPOPOULOS-MIHALOPOULOS & PICPOET., *Law and Ecology: New Environmental Foundation,* London and New York, 2011, pp. 18-38.

[46] *Ibid.*

adaptive management the rights and interests of Indigenous peoples and local communities, with their consideration of intrinsic values attached to the environment and its natural resources.[47]

The ecosystem approach, insofar as it recognizes the interdependence of human beings and the environment and integrates sustainable management philosophies into this mutually nurturing relationship, could be translated into rights language, as long as it is a widely accepted term in Westernized legal systems. The right of ecological integrity moves from the premise of the ecological integrity model in law and governance, which considers as axiomatic that the biological integrity and functions of the human being are dependent on the integrity of the natural environment. Indeed, without the existence of a healthy environment and without the preservation of the biological functioning of our habitats, it would be impossible for us to survive.[48] In fact, scientists have demonstrated how the current environmental and ecological crisis is linked to the emergence of pandemics and other severe human health issues.[49]

In my view, this conceptualization of the close interrelationship between human needs and the environment is not necessarily problematic. This is because even if we recognize – according to the econcentric perspective - that nature and the environment have a value in themselves, such *value* would be essentially based on *our* Westernized legal notions of value – which is indeed a very Western concept. In other words, such "value" statements are paradoxically anthropocentric because they are an expression of what *we* consider valuable: "The spokespersons of ecocentrism play with the idea that an objective, unbiased observer could determine how the value of human dignity would compare with other living beings. But why assume that the typical human tendency to judge things in terms of superior and inferior would have any meaning whatsoever when seen from the standpoint of an impartial observer?".[50] So, by founding the ecocentric reasoning on the recognition of the intrinsic value of nature, we will once again be caught in the anthropocentric trap.

Yet, we live in a society where developments in medicine, engineering, science and technology make us believe that we can live without taking into account the laws of nature and that we can alter and destroy the earth's biological characteristics without meaningful consequences for our existence. We assume that we will find a way to replace or reconstitute the biological components that we have damaged.[51] This is an illusion, as science demonstrates that the Earth would probably take millions of years to recover from a sixth mass extinction due to the devastating effects of climate change and human presence. Societies must then consider their strict reliance on ecosystems and develop policies, technologies and governance accordingly. Such an approach is being increasingly recognized

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47 E. MORGERA, *The Ecosystem Approach Under the Convention on Biological Diversity: A Legal Research Agenda,* in *Scottish Centre for International Law Working Paper Series, no. 7, Edinburgh Law School Working Papers, no. 2015/17*, University of Edinburgh, School of Law, Working Papers, 2015.

48 See generally: L. WESTRA. *Ecological Integrity and Global Governance: Science, ethics and the law,* Routledge research in international environmental law. Abingdon, Oxon, UK, 2016.

49 M. DI MARCO, M. BAKER, P. DASZAK, P. DE BARRO, E. A, ESKEW, C. GODDE, T. HARWOOD, M. HERRERO-A. HOSKINS, E. JOHNSON, W.B. KARESH, C. MACHALABA, J. NAVARRO GARCIA, D. PAINI, R. PIRZL, M. STAFFORD SMITH, C. ZAMBRANA TORRELIO, S.FERRIER, *Sustainable development must account for pandemic risk*, *PNAS*, 2020.

50 A. BURMS, *Antropocentrisme en ecocentrisme,* in A. LIÉGEOIS et al, *Aspecten van een christelijke sociale ethiek, Colloquium over christelijke sociale ethiek naar aanleiding van 100 jaar 'Rerum Novarum*, Leuven: Bibliotheek van de Faculteit der Godgeleerdheid, 1991, pp. 140-144.

51 L. WESTRA, K. BOSSELMANN, C. SOSKOLNE . *Globalisation and Ecological Integrity in Science and International Law*, Cambridge, 2011

by legal scholars under various names like "ecological integrity", "ecological health" and "biological integrity", but it is far from being adopted in the highly fragmented context of international environmental governance.[52]

Human rights implications, together with the promotion in environmental governance of the intrinsic value of nature, should then be the reason why restoring the ecological integrity of the Earth is the new fight to be fought in order to return to the original conditions of life in general. It must be recognized that the industrial development, made possible at the expense of the planet and for the economic advantage of the few, has nevertheless produced some advantages for humankind, though at the expense of the many. The current situation of humans on planet Earth is often referred to by researchers as the "Easter Island syndrome". It has been theorized that the original population of the island, a closed biological system situated many thousands of kilometres away from the mainland, wiped out forests and brought animals to extinction, precipitating chaos and cannibalism until they all died. Was it not clear that the uncontrolled and unsustainable exhaustion of resources would have led to the death of the people? Still, they have not managed to find a system for survival that does not destroy the environment and themselves. Similarly, the conception of the neoliberalist economy predicts that the economy is self-regulating, and its productivity and growth should not be constrained by the environment, as human technology is believed to be able to restore the depletion of natural resources.[53]

What is needed is an ecological integrity approach to law and governance, aimed at reconciling the lost connection with nature and critically reconsidering the role and the agency of human beings in relation to planetary health. The creation of a right of ecological integrity represents a new frontier of law and governance that includes a critical reconsideration of the axioms of human-rights based approaches to environmental legislation. The right of ecological integrity would promote not a centred approach based on a dialectic division of human/nature, but a relational ontology based on the interconnectedness of human beings, animals, and non-living environmental manifestations (such as the atmosphere, rivers, seas, mountains and all the other parts of terrestrial ecosystems) as an existential continuum.

5. Concluding observations

This paper has shown how the significance of the right to a clean environment varies across different national contexts. Starting from the conceptualisation of the environment in certain LAC countries, the article then examined the case study found in the Italian legal system. In Italy, regulation concerning the right to a clean environment is not clearly stated in the constitution or in specific legislation. The right to a healthy environment – framed as an individual, anthropocentric right - has been delineated through the jurisprudence of

[52] J. R. KARR, D. R. DUDLEY, *Ecological Perspective on Water Quality Goals*, in *Environmental Management,* 5, 1981, pp. 55-681; J. A. NASH. *Loving Nature: Ecological Integrity and Christian Responsibility,* Nashville, TN, 1991; L. WESTRA. *An Environmental Proposal for Ethics: The Principle of Integrity,* Lanham, MD, 1994; R. COSTANZA, B. G. NORTON, B. D. HASKELL (eds*). Ecosystem Health: New Goals for Environmental Management*. Washington, DC, 1992; J. R. KARR, *Biological Integrity: A Long Neglected Aspect of Water Resource Management*, in *Ecological Applications,* 1991, 1, pp. 66-84.

[53] See generally: C. PONTING, *A green history of the world.* London, 1991 and A. BARTLETT, *The exponential function XI: The new flat earth society*, in *The Physics Teacher*, 1996, pp. 342-343.

Courts that have adopted a somewhat extended conception of the right to health that includes the right to live in a healthy environment.

The paper has focused on the recent reform of the Italian constitution, arguing that a more ecocentric perspective has been included in the next text, as well as the rights of future generations. In fact, the environmental value in the Italian constitution is no more ancillary to, or dependent on, conceptualization of "landscape" or human health value, but it is now an independent value which can be protected per se.

The article has therefore argued that the scholarly debate should not focus exclusively on the dichotic anthropocentric/non-anthropocentric legal approaches to the right of a healthy environment but should reflect upon the possibility of not having a centre at all. The right to ecological integrity presents an opportunity to change paradigm in conceptualizing our place as human beings in our global context. The recognition of such a right would include a radical change in our positioning in law and governance as it would consider our needs in the relational context of interdependence with the environment and its natural resources.