



**MAKING PRODUCTION AND
CONSUMPTION SUSTAINABLE:
A GLOBAL CHALLENGE FOR
LEGISLATIVE POLICIES**

**CASE LAW AND CONTRACTUAL PRACTICES.
GUIDELINES FOR CHANGING MARKETS**

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Environmental Sustainability, Energy Dimension and Human Rights*

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Summary: 1. Introduction. – 2. Environment and Energy. The ‘No One is Left Behind’ Principle. – 3. Sustainable Development and the ‘Energy Dimension’. – 4. Responsibility for Global Warming. Climate Change Litigation. – 5. The Human Right to a Clean, Healthy and Sustainable Environment Resolution of the UN General Assembly. – 6. Conclusion.

1 Introduction

A rational and functional use of natural resources is one of the most important issues for environmental sustainability and the protection of human rights.¹ The European Union action for sustainable development aims to protect people and ecosystems. It ensures that every activity applies the precautionary principle, as well as the ‘do no harm’ principle which forms the basis of the ‘European

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¹ Art 191, para 1 TFEU. The responsible use of natural resources has assumed a progressive centrality. The Maastricht Treaty included the prudent and rational use of natural resources as an objective. These purposes were subsequently confirmed by the Amsterdam and Lisbon Treaties.

Green Deal’,² in order not to exceed the so-called Planetary Boundaries, which would cause irreversible ecological changes.³

The implementation of these principles is only possible through the collaboration of all sectors on a social and economic level.

Digital transformation, technological innovation, research and the ‘energy dimension’ have all become instrumental in preserving the environment and in achieving the full development of the human being.⁴

Furthermore, the energy-environment nexus requires a balance between the ‘inherited’ resources and those to be ‘preserved’ within the complex dynamics of consumption and production so that, in line with principle of sustainable development and solidarity, the needs of present and future generations are not compromised.

2 Environment and Energy. The ‘No One is Left Behind’ Principle

The importance of a reasonable and equitable use of renewable energy sources to achieve climate neutrality and sustainable

² 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, ‘The European Green Deal’ COM(2019) 640 final, available at eur-lex.europa.eu; European Parliament and Council Regulation (EU) 2021/1119 of the 30 June 2021 establishing the framework for achieving climate neutrality [2021] OJ L 243/19.

³ On this subject see M. Pennasilico, ‘La “sostenibilità ambientale” nella dimensione civil-costituzionale: verso un diritto dello sviluppo umano ed ecologico’ *rqda.it.*, 9 (2020).

⁴ On this point see P. Perlingieri, ‘I diritti umani come base dello sviluppo sostenibile. Aspetti giuridici e sociologici’, in Id ed, *La persona e i suoi diritti. Problemi del diritto civile* (Napoli: Edizioni Scientifiche Italiane, 2005), 76-80; M. Pennasilico, ‘Ambiente e diritti umani’, in Id ed, *Manuale di diritto civile dell’ambiente* (Napoli: Edizioni Scientifiche Italiane, 2014), 45, where it is noted that the right to the environment is one of the ‘third generation’ human rights otherwise defined as ‘collective rights’ or ‘solidary rights’.

development⁵ has already been highlighted in the Our Common Future Report, or Brundtland Report.⁶

The Report points out that choosing sustainable production systems will result in environmental health and in the provision of essential services for human life. Energy access is a human need that, nevertheless, can only be met by changing production techniques. Lack of equity in energy distribution also affects the level of poverty, which is the main factor in environmental degradation and a key indicator in the evaluation of the quality of life.

The recent Directive (EU) 2018/2001 on renewable sources use provides for the obligation of each member State to adapt their national energy and climate plans to the 'human rights dimension', so that 'no one is left behind', as already stated by the Next Generation EU. This is a necessary condition to ensure the full implementation of the 2030 Agenda and the Sustainable Development Goals. The harmful consequences of poverty and environmental degradation affect all people, especially the most vulnerable ones. Applying the 'no one is left behind' principle requires the adoption of policies against poverty and environmental degradation in all their aspects and dimensions. Therefore, a change in energy behaviours, so that every choice protects both ecosystems and people, becomes one of the main goals to be achieved.

In this context, diversification of energy production cannot be considered separate from sustainable development, as it relates to a plurality of interests which all merit to be protected. Every instance of ecosystems protection finds its purpose in the interests of all

⁵ Recital 45 of Directive (EU) 2018/2001 notes that the coherence between the objectives of the European legislation and the other environmental laws should be ensured, as should be the contribution made by energy from renewable sources for achieving environmental and climate change objectives.

⁶ United Nations 1997, Report of the World Commission on Environment and Development, Our Common Future of 1997, the so-called Brundtland Report, available at <https://www.are.admin.ch/are/de/home/miiden-und-publikationen/publikationen/nachhaltige-entwicklung/brundtland-report.html>.

human beings, present and future, as also stated in the 2030 Agenda for Sustainable Development.

The environment represents a common good whose decarbonisation depends in part on the variability of energy production. Therefore, an optimal use of natural resources is instrumental in achieving a reasonable balance between human needs and a heterogeneous and globalised sustainable development.⁷

The use of energy from renewable sources in line with the principle of sustainability is always aimed at raising environmental quality and promoting the respect of human rights. However, a balanced and integrated economic, social, and environmentally sustainable development is a global challenge and not just a priority of individual States. In this context, a regulatory framework that emphasises the international relevance of a full and uniform protection of such rights becomes necessary.⁸

Self-production of energy from renewable sources becomes a specific ‘dimension’⁹ of sustainable development,¹⁰ a dimension that

⁷ European Parliament and Council Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, includes decarbonisation among the five dimensions of energy. Other dimensions cover energy security, the internal energy market, energy efficiency, research, innovation, and competitiveness.

⁸ On this point see P. Perlingieri, ‘Persona, ambiente e sviluppo’, in M. Pennasilico ed, *Contratto e ambiente. L’analisi ‘ecologica’ del diritto contrattuale* (Napoli: Edizioni Scientifiche Italiane, 2016), 322, which points out that the issues of environment and development must be approached from a unified perspective.

⁹ The key role of energy in the decarbonisation of the system was already recognised in the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Region, ‘The energy dimension of climate change’ COM(97) final of 14 May 1997, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1997:0030:FIN:EN:PDF>.

The Communication referred to the ‘energy dimension’ of climate change as an objective to ‘make the commitments to reduce emissions a cost-effective reality’.

¹⁰ Development is sustainable when it meets the needs of the present without compromising the ability of future generations to meet their own needs, as defined by the 1987 World Commission on Environment and Development in the so-called Brundtland Report. Among the pillars of sustainability, respect for

is not only economic but also necessary for the welfare of present and future generations.¹¹

3 Sustainable Development and the ‘Energy Dimension’

Green energy introduces a production system that assigns a different focus to the protection of people and contributes to the safeguarding of a plurality of interests.¹² Thus, by implementing a

human rights and nature are specifically mentioned. See United Nations General Assembly of 15 September 2005, available at www.who.int/hiv/universalaccess2010/worldsummit.pdf. The relevance of intergenerational solidarity has been outlined by some recent pronouncements of the Italian Constitutional Court, also as an ‘instrument’ for ‘determining the costs and benefits pertaining to future generations.

¹¹ On this subject see P. Perlingieri, ‘I diritti umani come base dello sviluppo sostenibile. Aspetti giuridici e sociologici’, in Id ed, n 4 above, 77-80; M. Pennasilico, ‘Il “diritto civile dell’ambiente”: premesse di metodo’, in Id ed, *Manuale di diritto civile dell’ambiente* (Napoli: Edizioni Scientifiche Italiane, 2014), 11; G. Arconzo, ‘La tutela dei beni ambientali nella prospettiva intergenerazionale: il rilievo costituzionale dello sviluppo sostenibile alla luce della riforma degli articoli 9 e 41 della Costituzione’, in P. Pantalone ed, *Doveri intergenerazionali e tutela dell’ambiente. Sviluppi, sfide e prospettive per Stati, imprese, individui, Atti di convegno* (Milano: Università degli Studi di Milano, 2021), 159; Corte costituzionale, 23 June 2020 no 115, *Gazzetta Ufficiale* no 26 of 24 June 2020.

¹² The Recital 45 of Regulation (EU) 2018/1999 recalling the Paris Agreement, specifies that actions to address energy and climate change contribute to the promotion of human rights and gender equality. The Agreement reached by COP21, which entered into force on 4 November 2016, is part of the broader framework defined by the 2030 Agenda for Sustainable Development unanimously adopted by the 193 UN Member States in September 2015. It requires each country, upon accession, to communicate its ‘Nationally Determined Contribution’ (NDC) with an obligation to pursue domestic measures for its implementation. Each subsequent national contribution (to be reported every five years) must constitute an advance on previous achievements. At the XXVIth Conference of the Parties (COP26) under the United Nations Framework Convention on Climate Change (UNFCCC), in addition to the agreements on the targets that were identified, the reference to the phase-out of coal use and the work programme to define the Global Goal on Adaptation of ‘Loss and Damage’ were included in the final text of the Glasgow Pact.

distributed energy self-production system, energy communities¹³ become a social aggregation tool for sustainable development and a way to counter economic vulnerability. In addition, they functionalise the production aspects aimed at the realisation of intergenerational well-being.

Such energy configurations allow to provide essential goods and services for health and to ensure that each person can fully express his or her own personality¹⁴ while preserving natural ecosystems.

The ‘energy dimension’ becomes a collective benefit aimed at adapting financial situations to the values of the individual and solidarity in terms of access to and enjoyment of human rights. Consequently, the link between sustainability and energy market requires both the sectoral approach and the distinction between public and private aspects to be overcome, and global cooperation to be fostered.¹⁵

The achievement of an appropriate and reasonable access to energy and its services is reflected in the protection of the environment, as a form of anticipatory protection rather than one of remedial action. The environment cannot be reduced to a mere habitat. It constitutes a healthy and functional space in which a

¹³ Energy communities were introduced by European Parliament and Council Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources [2018] OJ L 328/82 and European Parliament and Council Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity [2019] OJ L158/125; decreto legislativo 8 November 2021 no 199, *Gazzetta Ufficiale* no 285 of 30 November 2021 and decreto legislativo 8 November 2021 no 210, *Gazzetta Ufficiale* no 294 of 26 December 2021.

¹⁴ See, G. Carapezza Figlia, ‘I rapporti di utenza dei servizi pubblici tra autonomia negoziale e sussidiarietà orizzontale’, in E. Caterini, L. di Nella, A. Flamini, L. Mezzasoma and S. Polidori eds, *Scritti in onore di Vito Rizzo. Persona, mercato, contratto e rapporti di consumo* (Napoli: Edizioni Scientifiche Italiane, 2017), 441.

¹⁵ See P. Perlingieri, ‘Conclusione dei lavori’, in F. Alcaro, C. Fenga, E. Moscati, F. Pernice and R. Tomassini eds, *Valori della persona e modelli di tutela contro i rischi ambientali e genotossici* (Firenze: University Press, 2008), 253.

general duty to ‘do no harm’ arises.¹⁶ As outlined in Art 41 of the Italian Constitution, private economic enterprise may not be carried out in contrast with social utility or in a way that may harm health, security, freedom, or human dignity. Public and private economic activities must always be directed and coordinated towards social and environmental ends.

4 Responsibility for Global Warming. Climate Change Litigation

Access to energy services constitutes an essential element of social inclusion and pollution reduction.

This makes personalism and solidarity take prominence also in the energy sector, putting them in relation to environmental issues and the proper use of natural resources, so that the values and interests which are not necessarily patrimonial are respected. This calls for a particular view of property and the common good,¹⁷ aimed at pursuing utilities, which are essential for the fulfilment of fundamental rights and the well-being of both individuals and social communities.¹⁸

¹⁶ On this subject see, P. Perlingieri, *La personalità umana nell'ordinamento giuridico*, (Camerino-Napoli: Edizioni Scientifiche Italiane, 1972), 151; M. Tatarano, ‘L’uso razionale dell’energia rinnovabile tra proprietà e contratto. Il paradigma degli impianti fotovoltaici’, in M. Pennasilico ed, *Contratto e ambiente. L’analisi ‘ecologica’ del diritto contrattuale* (Napoli: Edizioni Scientifiche Italiane, 2016), 165.

¹⁷ See M. Francesca, ‘Beni comuni e razionalità discreta del diritto’, in G. Perlingieri and A. Fachechi eds, *Ragionevolezza e proporzionalità nel diritto contemporaneo* (Napoli: Edizioni Scientifiche Italiane, 2017), 477; G. Carapezza Figlia, ‘Proprietà e funzione sociale. La problematica dei beni comuni nella giurisprudenza delle Sezioni unite’ *Rassegna di diritto civile*, 542 (2012); Id, ‘Tecniche e ideologie nella disciplina delle acque. Dagli usi di pubblico generale interesse ai beni comuni’, in F. Macario, A. Addante and D. Costantino eds, *Scritti in memoria di Michele Costantino* (Napoli: Edizioni Scientifiche Italiane, 2019), 185; I. Garaci, ‘Lo statuto giuridico dei “nuovi beni” immateriali: fra proprietà privata e beni comuni. Riflessioni su recenti interventi giurisprudenziali e normativi’ *Rassegna di diritto civile*, 435 (2015).

¹⁸ See G. Perlingieri, ‘Criticità della presunta categoria dei beni c.dd. “comuni”. Per una “funzione” e una “utilità sociale” prese sul serio’ *Rassegna di diritto*

The energy transition responds to a principle of intergenerational responsibility for the use of natural resources, but it also implies that environmental interests should be pursued through eco-friendly choices, which affect contractual relationships.¹⁹

Bargaining, while being increasingly globalised, may no longer be considered an instrument for regulating individual interests of different parties. If the private transaction affects a common good such as the environment, it must automatically be ruled out that its effects are limited to the parties²⁰ and the subsidiarity introduced by Art 118 of the Italian Constitution is a proof of this.²¹ Thereby, contractual relationships become instrumental in satisfying human needs. Environmental sustainability requires considering the needs of future generations and performing activities following a logic of responsibility.²² The duty of each operator is to respect human rights in performing their production activity. Thus, also the activities of

civile, 156 (2022); F. Parente, 'I diritti umani nell'epoca della globalizzazione' *Rassegna di diritto civile*, 153 (2017).

¹⁹ See M. Pennasilico, 'L'uso responsabile delle risorse naturali e il contratto ecologico', in Id ed, *Manuale di diritto civile dell'ambiente* (Napoli: Edizioni Scientifiche Italiane, 2014), 162.

²⁰ On this point see N. Lipari, 'Introduzione', in M. Pennasilico ed, *Contratto e ambiente. L'analisi 'ecologica' del diritto contrattuale* (Napoli: Edizioni Scientifiche Italiane, 2016), 15.

²¹ See P. Perlingieri, 'Persona, ambiente e sviluppo', in M. Pennasilico ed, n 8 above, 321; M. Pennasilico, 'La sussidiarietà nel diritto privato' *Rassegna di diritto civile*, 687 (2016); P. Femia, 'Sussidiarietà nel diritto privato e principi nel diritto contrattuale europeo', in P. Perlingieri and F. Casucci eds, *Fonti e tecniche legislative per un diritto contrattuale europeo* (Napoli: Edizioni Scientifiche Italiane, 2004), 143; G. Carapezza Figlia, 'I rapporti di utenza dei servizi pubblici tra autonomia negoziale e sussidiarietà orizzontale', in E. Caterini, L. Di Nella, A. Flamini, L. Mezzasoma and S. Polidori eds, n 14 above, 441; R. Carleo, 'La sussidiarietà nel linguaggio dei giuristi', in M. Nuzzo ed, *Il principio di sussidiarietà nel diritto privato* (Torino: Giappichelli, 2014), 7; A. Lasso, 'Riflessioni su autonomia privata e persona umana', in G. Passagnoli, F. Addis, G. Capaldo, A. Rizzi and S. Orlando eds, *Liber amicorum per Giuseppe Vettori* (2022), 1827, available at www.personaemercato.it.

²² On this point see L. Ruggeri, 'Turismo sostenible y derechos humanos', in L. Mezzasoma and M.J. Reyes López eds, *Turismo y Sostenibilidad* (Cizur Menor Navarra: Editorial Aranzadi, 2018), 258.

large enterprises should be adapted to sustainability goals to guarantee respect for human rights.

For instance, the proposal for the EU Directive on Corporate Sustainability Due Diligence²³ points out that a ‘sustainable conduct of enterprises’ is key to the Union’s transition to a green and climate neutral economy. In particular, the proposed Directive points out that global processes must be implemented directly in value chains to mitigate the negative effects on human rights and environment.

To reduce such effects, businesses are thus called to a cross-cutting obligation to conduct due diligence in the performance of their activities.²⁴ This introduces a need to implement sustainable business operations that include more than just financial parameters.²⁵ Businesses are thus specifically responsible for directing their economic initiatives toward an ever more value-based production system. It is a general duty of due diligence aimed at contributing to sustainable development to adopt measures to prevent and mitigate negative impacts on human rights.²⁶ Nevertheless, such diligence measures amount to ‘obligations of means’, since it may be reasonable to ensure the prevention or mitigation of the negative

²³ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, COM(2022) 71 final, 2022/0051 (COD), available at https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

²⁴ In order to facilitate business, Art 12 of the Proposal for Directive COM(2022) 71 final also provides for the possibility for the Commission to identify ‘voluntary standard’ contractual clauses on the adoption of appropriate measures to prevent negative impacts. On business sustainability, I. Speziale, ‘Il nuovo paradigma dell’impresa sostenibile’ *Contratto e impresa*, 753 (2022).

²⁵ The Corporate Governance Code 2020, available at www.borsaitaliana.it/comitato-corporate-governance/homepage/homepage.htm, introduces the notion of ‘sustainable success’ in the performance targets aimed at promoting ‘sustainable success, including, where relevant, non-financial parameters’.

²⁶ Corporate due diligence and corporate accountability European Parliament Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), P9 TA(2021)0073 [2021] OJ C474/1.

effects on people and on the environment, but not the certainty of their non-occurrence too.

Particularly significant is the remedial system provision to which people may appeal if they ‘have a legitimate fear’, regardless of whether it is actual or merely potential, that a business activity may have a negative impact on human rights, health and environmental sustainability.²⁷ Protection is not restricted to a person’s health but extends to multiple values. Companies are required to set up specific procedures for treating complaints and repairing damages which should not prevent complainants from appealing to competent judicial authorities.²⁸

Hypotheses of global warming liability emerge for companies, given the awareness of the harmful effects resulting from their polluting emissions and the fact that the production system is still substantially based on the use of fossil energy sources. Environmental sustainability thus becomes a parameter to which all economic activity must conform.

Consequently, social utility, security and human dignity recalled by Art 41 of the Italian Constitution and environmental sustainability not only represent external limits to private economic initiative,²⁹ but they overall affect the contractual content as well.

²⁷ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (Paris: OECD Publishing, 2023), available at <https://doi.org/10.1787/81f92357-en>. The *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (the *Guidelines*) are recommendations jointly addressed by governments to multinational enterprises to enhance the business contribution to sustainable development and address adverse impacts associated with business activities on people, planet, and society.

²⁸ See, M. Libertini, ‘Doveri ambientali, sviluppo sostenibile e diritto commerciale’, in P. Pantalone ed, *Doveri intergenerazionali e tutela dell’ambiente. Sviluppi, sfide e prospettive per Stati, imprese e individui* (Milano: Università degli Studi di Milano, 2021), 96, who notes that ‘awareness of environmental problems is more widespread than in the past, but there is also disappointment as to the weakness of counteracting actions’.

²⁹ See P. Perlingieri, ‘Persona, ambiente e sviluppo’, in M. Pennasilico ed, n 8 above, 326.

In this respect it is interesting to note the growing climate litigation aimed at protecting the essential needs from environmental damages.³⁰ For instance, the Philippines Human Rights Commission acknowledged the responsibility of some businesses for the negative impact of their activities on climate and the resultant violation of human rights of the local community.³¹

The relationship between human rights and climate change was also the object of the well-known *State of the Netherlands v Urgenda Foundation* case, where the Dutch Supreme Court called on the Netherlands' government institutions to fulfil their obligations to reduce climate-damaging emissions.³²

Underlying the decision of the Court were a number of international principles, including the 'do no significant harm (DNSH)', according to which States' efforts should not cause any significant harm to the community. The common responsibility for general compliance with human rights protection obligations was also expressly recalled. Further cases followed, such as the *Affaire du*

³⁰ See, M. Meli, 'Persona, mercato e cambiamenti climatici', in G. Passagnoli, F. Addis, G. Capaldo, A. Rizzi and S. Orlando eds, *Liber amicorum per Giuseppe Vettori*, 2211-2214 (2022), available in www.personaemercato.it; M. Robles, 'La "conflittualità" ambientale fra "attributi" (negoziali) e "predicati" (rimediali)' *Rassegna di diritto civile*, 616 (2021).

³¹ National Inquiry on Climate Change, Commission of Human Rights, Republic of the Philippines, available at <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf>.

³² *State of the Netherlands v Urgenda Foundation*, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>; Supreme Court of the Netherlands, 20 December 2019, available at <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/state-of-the-netherlands-v-urgenda-foundation/567B9E3AD5B1712EC8F138195EC53995>; M. Meguro, 'State of the Netherlands v. Urgenda Foundation' 4 *American Journal of International Law*, 114, 729 (2020); A. Bang and M.L. Holle, 'Making legal History: State liability for negligence in climate change' *European Public Law*, 45 (2020); P. Cox, 'The decision of the Hague district court in the climate case Urgenda Foundation v. the State of the Netherlands' *Journal of Planning Law* (2016); C. Cournil and A.S. Tabau, 'New Perspectives for Climate Justice: District Court of The Hague, 24 June 2015, Urgenda Foundation versus the Netherlands' 12 *Journal for European Environmental & Planning Law*, 3-4, 222 (2015).

Siècle and the *Grande Synthe* case. The French State was ordered to adopt any measure needed to reduce the percentage of harmful emissions in compliance with the provisions of the *Code de l'énergie* and the European regulation on climate change.³³ Specifically, the judgment recognised the French state's responsibility for the lack of fulfilment of its obligations regarding environmental sustainability, the fight against climate change, and protection of human health.

The European Court of Human Rights goes so far as to affirm that in the presence of environmentally hazardous activities, states must be held responsible for failing to provide adequate and reasonable measures functional to the protection of the physical integrity of people in a community at risk, as a causal link may be established between the effects produced by harmful emissions and the violation of Arts 2 and 8 ECHR. These provisions, according to the European Court on Human Rights, integrate the specific obligation of every state to contribute to the prevention of climate change.³⁴

The link between the protection of human rights and the duty of environmental protection is a key aspect of climate change litigation, as in the case *López Ostra v Spain*. In this case, the Court of Human Rights stated that 'severe environmental pollution may affect individuals' well-being',³⁵ emphasising that multiple harmful effects may occur either immediately or in the future.³⁶ In the well-known

³³ European Parliament and Council Regulation (EU) 2018/842 of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 [2018] OJ L156/26.

³⁴ See K. Dzehtsiarou, *European consensus and the legitimacy of the European Court of Human right* (Cambridge: Cambridge University Press, 2015), 2.

³⁵ Eur. Court H.R., *López Ostra v Spagna*, Judgment of 9 December 1994, available at <https://hudoc.echr.coe.int/FRE?i=001-57905>.

³⁶ Eur. Court H.R., *Powell and Rayner v The United Kingdom*, Judgment of 21 February 1990, available at <https://hudoc.echr.coe.int>.

See, P. Perlingieri, 'Applicazione e controllo nell'interpretazione giuridica' *Rivista di diritto civile*, 318 (2010).

case *Ilva*, the Court of Human Rights condemned the Italian state for failing to protect people's lives and health.³⁷

A substantial obligation to comply with rules protecting fundamental human rights arises also for all businesses. In sum, activities resulting in environmental pollution harmful to peoples' health may never be justifiable.

5 The Human Right to a Clean, Healthy and Sustainable Environment Resolution of the UN General Assembly

More on the link between the person, the environment, the energy dimension, and sustainable development can be found in the recent Resolution 'The human right to a clean, healthy and sustainable environment' of the United Nations General Assembly,³⁸ in which 'the right to clean, healthy and sustainable environment as a human right' is underscored. A healthy and sustainable environment is thus internationally recognised as a human right.³⁹

The Resolution reiterates that the unsustainable use of natural resources, pollution of air, soil, water, as well as the detriment of

³⁷ Eur. Court H.R., *Cordella v Italia*, Judgment of 24 January 2019, available at <https://archivioldpc.dirittopenaleuomo.org>; M. Pennasilico, 'La sostenibilità ambientale nella dimensione civil-costituzionale: verso un diritto dello sviluppo umano ed ecologico' *rqda.eu*, 3, 44 (2020).

³⁸ Resolution adopted by General Assembly on 28 July 2022, 76/300. The human right to clean, healthy and sustainable environment. Seventy-sixth session. Agenda item 74 (b), promotion and protection of human right: human right questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms. United Nation General Assembly. A/RES/76/300. Distr.: General 1 August 2022, available at <https://www.un.org/en/ga/76/resolutions.shtml>.

³⁹ The recognition of a 'clean' environment as a human right was already included in the 1972 Stockholm Declaration, which states in its preamble that the natural and man-made elements of the environment are essential to well-being and the full enjoyment of fundamental rights. The subsequent 1998 Aarhus Convention states that adequate protection of the environment is indispensable for human well-being and the enjoyment of fundamental rights, and that everyone has the right to live in an environment that provides for health and well-being, and the everyone's duty, both individually or collectively, is to protect and improve the environment in the interest of present and future generations.

biodiversity causes direct or indirect negative implications on the effective enjoyment of all human rights. These effects are felt by communities around the world and mostly by women, people in vulnerable situations, children, the elderly, and people with disabilities.⁴⁰ Sustainability therefore takes on a different meaning with reference to the social context in which it takes place. Promoting the human right to a healthy and sustainable environment, as reaffirmed in the Resolution, requires the full implementation of international environmental agreements. For this purpose, cooperation between States needs to be strengthened. The development of sustainability requires that the right to a clean environment should be regulated not only by each individual state, but through a global uniform regulation so as to meet equally the needs of all generations. A regulation to which solidarity among States should extend.

6 Conclusion

Environmental protection referred to in Arts 9 and 41 of the Italian Constitution, following the recent constitutional reform, despite the absence of a specific provision, found relevance in the context of landscape and health protection, in accordance with Art 32 of the Italian Constitution and Art 117, para 2, letter s).⁴¹

The established approaches of the Constitutional Court and the Supreme Court define the environment as a unitary good composed of different elements.⁴² It is a common, open and liable good since it

⁴⁰ Resolution A/RES76/300, *The human right to a clean, healthy and sustainable environment*, which recognises that ‘the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and girls and those segments of the population that are already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities’.

⁴¹ Legge costituzionale 11 February 2022 no 1, *Gazzetta Ufficiale* no 44 of 22 February 2022, amendments to Arts 9 and 41 of the Constitution on the protection of the environment.

⁴² Corte costituzionale 30 October 1987 no 641, available at <https://www.cortecostituzionale.it>; Corte costituzionale 28 May 1987 no 210, *Foro italiano*, 329 (1988); Corte costituzionale 30 December 1987 no 641, *Foro*

is useful for the fulfilment of fundamental human needs.⁴³ In this respect, the need to protect the ecosystem takes on the perspective of equity and intergenerational solidarity.⁴⁴

Sustainability, in all its connotations,⁴⁵ becomes a basic principle which should underpin the development of any activity aimed at the protection of the environment.⁴⁶ In this context, a potential

italiano, 694 (1988); Corte di Cassazione 19 June 1996 no 5650, *Rivista giuridica dell'ambiente*, 679 (1997); M. Meli, 'Quando l'ambiente entra in conflitto con sé stesso: fonti energetiche rinnovabili e tutela del paesaggio' *rivistagiuridicaambientedititto.it*, 4 (2021); G. Marcatajo, 'La riforma degli articoli 9 e 41 della Costituzione e la valorizzazione dell'ambiente' *rivistagiuridicaambientedititto.it*, 5 (2021).

⁴³ Corte di Cassazione-Sezioni unite 6 October 1979 no 5172, *Foro italiano*, I, 2302 (1979); G. Marcatajo, 'La riforma degli articoli 9 e 41 della Costituzione e la valorizzazione dell'ambiente' *rivistagiuridicaambientedititto.it*, 10 (2021); E. Leccese, 'L'ambiente: dal codice di settore alla Costituzione, un percorso al contrario?' *rivistagiuridicaambientedititto.it*, 4, 3 (2020).

⁴⁴ See G. Arconzo, 'La tutela dei beni ambientali nella prospettiva intergenerazionale: il rilievo costituzionale dello sviluppo sostenibile alla luce della riforma degli articoli 9 e 41 della Costituzione', in P. Pantalone, n 11 above, 158; G. Morgese, 'Il "faticoso" percorso della solidarietà nell'Unione europea' *aisdue.eu*, 88 (2021).

⁴⁵ Resolution A/RES/76/300 also recognises that 'the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights'. On this subject see A. Boyle, 'Human rights and the environment: where next?' *European Journal of International Law*, 3, 613 (2012); N. De Sadeleer, 'Enforcing EUCHR principles and fundamental rights in environmental cases' *Nordic Journal of International Law*, 61 (2012); E. Zahradnikova, 'European Court of Human Rights: living the green light to environmental protection?' *Queen Mary Law Journal*, 15 (2017).

⁴⁶ See L. Ruggeri, *Turismo sostenibile y derechos humanos*, n 22 above, 256 who notes that the human being is no longer protected only from the point of view of the contemporaneity between the regulation and its enactment but finds protection in advance. This is precisely because the regulation takes on a content aimed at protecting the needs of persons who, although not yet born, are bearers of existential needs. On this subject see P. D'Addino Serravalle, *Questioni biotecnologiche e soluzioni normative* (Napoli: Edizioni Scientifiche Italiane, 2003), 44.

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