

The constitutional protection of animals, the environment, biodiversity, and ecosystems. Let's change: an invitation collected

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Abstract. The global ecological crisis generated by the increasing and indiscriminate exploitation of nature, together with the impressive increase in population, is one of the most urgent problems of our time because of the inherent threat to the very survival of mankind. The attitude that human have traditionally taken towards nature and the other living species that live together reflects a culture still erroneously focused on anthropocentrism and economic assessments unable to recognize the intrinsic value of life. After years of debate and legislative inertia, Constitutional Law n. 1 of 11 February 2022, adapting to the most recent Constitutional Charters permeated with animal and environmental sensitivity, has made changes to the Italian Constitution, introducing art. 9, the protection of the environment, biodiversity, and ecosystems, with an explicit reference to the rights of future generations. This legislative innovation can be a first point of reference for an indispensable change of perspective capable of seeing the relationship between the parties and the whole and the interrelations between all the inhabitants of the natural world, without which it will be difficult if not impossible to pursue effective solutions.

Keywords: Animal Welfare, Environmental protection, Sustainable development, Animal sentience, Constitutional law

Introduction

After years of proposals, projects and debates, Constitutional Law n. 1 of 11 February 2022, entitled “Amendments to Articles 9 and 41 of the Constitution on the protection of the environment”, introduced the care of biodiversity, ecosystems, and animals among the constitutional principles (1).

Animal welfare culture, in recent decades, has repeatedly stimulated the legislator to pay attention to the problem of the protection of sentient beings other than man (2,3).

During the 19th century, greater consideration was given to animal rights, which prompted the idea of treating non-human species differently from the one

traditionally assigned to them by anthropocentric culture (4,5).

It should be noted that in this regard that much of this change of attitude is derived from the influence of the thought of Jeremy Bentham who, recalling the principles of ethical utilitarianism, no longer regarded animals as inferior to human beings because of their inability to reason, but stressed their sentience, namely their ability to experience pain and affect all life contexts on the planet, thus giving all sentient beings the right to equal consideration (6,7).

The development of ethical reflection, the increased attention to the suffering that our species can cause to others, the expansion of environmental and animal movements, as well as the contributions of

ethology, psychology, zoology, have made it possible to reach knowledge about the animal very different from the past, deeply expanding the traditional boundaries of morality to include the rights of the environment and all other living species.

These factors have led to a progressive public awareness of issues relating to environmental and animal welfare and, even more, to their placing not in the mere context of zoophilia, but in that of social ethics attentive to the problems of global health and firmly based on the principle of responsibility (8).

Gradually, over time, multiple international and national agreements, and provisions and, together, jurisprudential, and regulatory interventions have, in fact, increased the forms of guarantee, albeit in an evolution that is not always linear and not free of contradictions, towards the environment and the animals that inhabit it.

It highlights the fruitful evolution of case law developed in relation to the protection of the right to health referred to in art. 32 of the Constitution, concretized in the affirmation of the “right to a healthy environment” (Cass. SS.UU. No. 5172/1979) for all, and this in reference to the Italian Constitution or to the normative text of the highest rank at national level.

Important are the consequences that can result from these regulatory innovations which, however, take place in a very particular context, marked by a pandemic that has made (re)discover the intertwining and inseparable interconnections between human and animal health and the environment, requiring us to reflect in the context of global health (9,10).

Belonging to an interconnected world community in which the health of every element - human, environmental, animal - is strictly dependent on that of others, requires a revision of our code of ethics that considers scientific data and the correlations that the growth of power entails on the exercise of responsibility (11,12).

History

The need for a constitutional revision goes back a long way, as is shown by the many attempts at reform that preceded the constitutional law that has been mentioned.

As we all know, India was the first country that recognized the need for the protection and dignified treatment of animals as a “fundamental duty of all citizens”. In particular, the article 48 of the Indian Constitution of 1998 established, among the guiding principles of collective policy, that «The State will endeavour to organise agriculture and animal husbandry on a modern and scientific basis and will endeavour to preserve and improve breeds and prohibit the slaughter of cows, calves and other bovine animals» (13).

Operationally, this recognition has had significant practical implications. Following this regulatory provision, the High Court of Punjab and Haryana stated that (Karnail Singh and others v. State of Haryana case, 2019) all animals are to be considered as entities having legal personality and that all citizens may form themselves on *loco parentis*, or they may take legal action as guarantors of non-human animals. In Italy the first proposal (number 4690) dated 1998, the year in which the German Bundestag had rejected for the second time the inclusion of animals in the Constitution, was presented by twenty-one deputies from all sides, at first signed Annamaria Procacci (Greens party).

The proposal states: “non-human animal species have an equal right to life and an existence compatible with their biological characteristics. The Republic recognizes all animals as subjects of law. It promotes and develops services and initiatives aimed at respecting animals, protecting their dignity, and punishing any attack on their existence”. However, this proposal was not even considered by Parliament.

In the subsequent Legislature (2003), the Senate, ignoring the Bills that also included the protection and dignity of animals, entered by majority only the definition “the natural environment” among the provisions of Article 9 of the Constitution. The following year the Chamber of Deputies approved (rapporteur Giulio Schmidt) a new text that made the protection of the environment more extensive by including the provision of “promotion of respect for animals”.

The new text returned to the Senate, where in December 2005 due to the impasse between the two branches of Parliament, in addition to the imminent end of the Legislature, remained blocked for a long time.

On 1 December 2009 the “Treaty on the Functioning of the European Union” (TFEU), signed in

Lisbon on 13 December 2007 (and ratified in Italy by Law 130/2008) entered into force establishing, that: “the Union and the Member States shall take full account of the welfare needs of animals as sentient beings (...)” (see article 13) emphasizing unequivocally that animals have sensitivity.

This Union legislation requires owners and keepers of animals and the competent authorities to respect the welfare obligations of animals to “avoid causing them unnecessary pain and suffering”.

This recognition of animals as “sentient beings” introduces into the juridical language a new paradigm that assigns animals a role of their own, freed from the human feeling towards them, as bearers of their own legal situations, values that must be protected by themselves.

In Italy, it is, however, only in this last Legislature still in progress (2022), that the Senate begins the process of recognition of animals and the environment in the Constitution (Senators and senators De Petris (Leu party), Maiorino and Perilli (M5S party). The reform was approved in first deliberation by the Senate on June 9, 2021, and by the Chamber on October 12; then in second deliberation, by the Senate on November 3 and by the Chamber on February 8, 2022.

The broad consensus on the part of representatives of all political persuasions is an expression of the growing sensitivity on a subject that is now transversal and represents a clear signal from Parliament that it must be clearly visible for the policies of the present and the future. The draft law on constitutional reform then concluded its process without the need for a referendum and was published in the Official Journal after the promulgation by the President of the Republic.

The measure provides for the introduction of a new paragraph in art. 9 of the Constitution, which, unlike its original version which only mentioned the protection of the landscape and the historical and artistic heritage and included the environment in matters of exclusive state competence (art. 117 c. 2 lit. s) Italian Constitution), opens to “Protection of the environment, biodiversity and ecosystems”, also in the interest of future generations”. It also introduces a safeguard clause for the application of the principle of animal welfare, providing that private economic initiative cannot “be conducted in conflict with social utility or in a

way that harms health, the environment, safety, freedom and human dignity, and by introducing two new limits to those already in existence, namely health, and the environment, which take precedence over others, thereby giving effect to the protection of the environment as a primary value to be protected.

As expressly stated in the same dossier of the Senate (14), the logic of the reform to art. 9 consists in considering the environment not as thing, but as a primary value constitutionally protected. Moreover, with an innovative formulation in the Italian constitutional text, this protection is explicitly addressed to future generations.

The law has raised a wide doctrinal debate about the innovative character of the revision and its possible consequences within the Italian legal system (1). Certainly, a constitutional protection of the environment has never been effectively absent from our legal system thanks to a constant jurisprudential elaboration, based on the extensive and evolutionary interpretation of art. 9 and 32 of Constitution, which has led to the development of a more complex and articulated meaning of the protection of the landscape, going beyond the original protection approach having a purely aesthetic character.

The affirmation of the constitutional nature of environmental protection has also been definitively enunciated by the jurisprudence with the reform of Title V of the Italian Constitution that has introduced for the first time the reference to the atmosphere inside the allocation of competences State-Regions. Now the environment is protected, in its complexity of life and in an objective way, even more than as a utility for people holding a subjective right.

This change has an important significance, also for the purposes of hermeneutic guidance for subsequent developments by significantly strengthening the principle of sustainability, hitherto dealt with mainly only in the doctrinal and jurisprudential field and reaffirming the presence of indissoluble links between environmental protection, animal protection and health that the recent health emergency has repeatedly highlighted.

The amendment is in line with European legislation. In fact, the “Charter of Nice” (Charter of Fundamental Rights of the European Union) in art. 37

establishes that “A high level of environmental protection and the improvement of its quality must be integrated into Union policies and guaranteed in accordance with the principle of sustainable development”. In addition, art. 191 of the TFEU defines Community policy on the environment identifying the objectives to be achieved. There are, however, many European countries which have constitutional rules to protect the environment (Finland, Belgium, Greece, Portugal, Spain, Germany, the Netherlands, Norway, and France) (15).

On the Italian front, the constitutional principle of the right to the environment protected by art. 9 of the Constitution, has found timely implementation in positive law rules - among all, the cd. Single Environmental Text (Legislative Decree, 03/04/2006 n. 152) which contains the main rules governing the environmental discipline and the so-called “climate decree” (Decree-Law 14 October 2019, n. 111 containing urgent measures for compliance with the obligations laid down in Directive 2008/50/EC on air quality) - as well as in programmatic documents such as the National Integrated Energy and Climate Plan.

In the part concerning animals this reform is in line with the principles formulated at European and international level and enshrined in the constitutional jurisprudence of legitimacy and merit, filling a gap in the fundamental Charter of our system. In particular, the Treaty on the Functioning of the EU states that: ‘(...) the Union and the Member States must, since animals are sentient beings, pay full attention to the needs of animals, always respecting the administrative and legislative measures of the Member States relating to religious rites, cultural traditions and regional heritage».

The importance of this rule lies in recognizing the dignity of animals which are no longer regarded as things. On the systematic level, this recognition has been inserted in Part I of the Constitution and among those fundamental principles that the Constitutional Court has specified to be the “supreme values of the legal system” which have been removed from the power of constitutional revision, except for amendments intended to strengthen or extend the guarantees, but not to reduce them.

The implicit assumption of the subjectivity of animals, as living beings sensitive to the forms of suf-

fering (physical, psychic, mechanical, environmental, etc.), also justifies ownership, of interests deserving of protection and capable of founding a principle of their “direct” protection, different (and further) from the forms of indirect protection deriving from their relationship with man, and thus the satisfaction of the latter’s interests.

Conclusions

The constitutional force now attached to the principle of animal welfare therefore requires an important review of legislative policy. And, indeed, the criminal law n. 184 of 2004 (“Provisions concerning the prohibition of the mistreatment of animals, as well as the use of animals in clandestine fights or unauthorized competitions”) introduced stronger guarantees than the other reforms on mistreatment (such as unnecessary cruelty and intentional pain) it has some limits because it has accepted only some principles of a minimalist ethic, still firmly anchored to protect the feeling that human has towards them

Significant in this regard is the title “Crimes against feelings for animals”, of Title IX-bis of the Second Book of the Penal Code, which governs the new criminal cases introduced. While acknowledging that the mere use of the title does not constitute a decisive argument for the legislator’s desire to exclude animals from direct protection, however, it should be noted that the same process of preparatory work that at first reading in the Chamber placed this discipline in a third title dedicated to “Crimes against animals”, seems to denounce at least a difficulty of the legislator to explicitly recognize the dignity of autonomous legal good to life and animal health (16).

Animal subjectivity is, however, still critical in the Italian civil code where animals are explicitly qualified as “things”. Despite the most recent legislation (in particular the aforementioned Law n. 189/2004 and Law n. 201/2010 which ratified the “European Convention for the Protection of Pets” which states that «man has a moral obligation to respect all living creatures», stressing «the importance of pet animals because of their contribution to the quality of life and therefore their value to society»), help to overcome this anachronistic

and anthropocentric approach, the animals thus remain the beneficiaries of protection transferred from human beings and not the holders of a legal right (17).

It should also be noted the valuable contribution of the judges who, without denying the idea of animals such as thing have recognized that «The animal of affection is no longer a mere object in our order, but a subject, capable of emotions of its own and, above all, able to develop strong bonds of affection with the owner and with the family that welcomes him» (Cass. pen., 31 January 2017, n. 18167). In this context are those rulings which have introduced in the judgments of separation and divorce of owners of dogs, cats and other pet animals' criteria that consider rightly in the custody of the animal the interest of the same, so applying in fact rules like those codified for minors (Lucca Court, 24/01/2020; Sciacca Court, Civil, Decree, 19/02/2019) (18, 19).

More compromising, if not renouncing, is the legislation regarding the more delicate question of the limits to be placed on the activities of using animals.

The implicit social contract between humans and animals configured by Rollin which, in the traditional agricultural world, ensured a mutual coexistence whereby animals, even in a highly asymmetric and unequal situation, were kept in environments conforming to their nature, while ensuring the satisfaction of human needs has been completely upset.

The current evolution of science and technology allows animals to be exploited to the full by forcing them to the conditions for which they are not suitable either biologically or psychologically (20)

The introduction of mechanization and industrialization systems for livestock farming processes, together with the human population expansion and the consequent increase in demand, have led to a radical change in livestock and agricultural policy towards an economic vision with an annulment of the intrinsic value of the animal with respect to the functional one and a strong and serious impact on the environment and the health of all the inhabitants of the planet (21,22).

Worthy of attention is the encyclical "Laudato si" of Pope Francis which questions the idea of man as the master of a creation to be exploited and insists instead on that of the man guardian of creation, indicating for

the first time in a clear and systematic way the existing interconnection between environmental protection, human ecology, climate change, migration, wars, poverty, economic and financial system (23,24).

In his *Seven Lessons on Global Thought*, Edgar Morin affirms that ours is the time of a policy entirely devoured and subservient to the economy, and in particular: to the economy that speaks only of interests because of which poverty is rapidly turning into «mass misery» (25). Without a global approach capable of seeing the relationship between the parties and the whole and the interrelations between all the inhabitants of the natural world, it will be difficult if not impossible to pursue effective solutions.

Morin believes that the inability to manage complexity can lead humanity to self-destruction and that to solve Earth's problems it is essential to become aware of the «ecological devastation» that we are causing, rethinking our place in the world. What we need to understand is that we believe we can dominate the biosphere, but that «the more we dominate it, the more we degrade it and the more we degrade our living conditions». According to the French philosopher, therefore, a «reform of knowledge and thought is indispensable, to delineate a "complex" thought (...): a global, global thought», which considers the «umbilical cord» that unites us to all Nature (25).

As you can guess, the "complex thought" that Morin proposes is multidisciplinary and careful to grasp the connections between the parties and the Whole: «the word *complexus*», recalls Morin, it means «tied», «woven together» and, therefore, refers to a thought that binds, that is intertwined, both to the context, both to the very system of which it seeks the meaning (26).

We note that in Italy, after a 24-year journey since the first proposal, the ecosystem and animals have become part of the Constitution with an explicit reference to the laws of the State that will have to implement them.

We are certainly still far from a correct ethical intervention shared about the relationships that bind man with the environment and with other animals, but the legislative and constitutional innovations that have been reported represent a first point of reference and a clear sign of the change underway, based on the new

sensitivities on our ecosystem matured by the population in recent years.

To make true cultural progress on matter feasible, it is certainly not enough to say that animals have the ability to feel emotions, but it is necessary to make an additional effort to assess the complex abilities of nonhuman animals, through a careful reading of their differentiated abilities of insertion in the environment, of interaction and formation of groups, of natural and cultural evolution, of language and awareness of themselves and others, of true wisdom, and also of justice and morality.

It will not be enough to use new constructs of environmental bioethics, aimed at extending the reflection to new spheres previously neglected, relative to the environment and to non-human living beings, but it will be necessary to recognize a right of all to biodiversity, as a real duty of humanity to respect nature and the health of the environment, to allow a correct interaction between all its forms of life.

All this to enable our generation and future generations to live in an ethically acceptable way in a society regulated no longer on anthropocentric principles, but in a common house beyond any conflict of species (27).

The necessity to respond to the needs of the present without undermining the ability of future generations to respond to their needs requires a substantial change of perspective, inspired by a systemic and global approach, which recognizes the separability of every human work process from the global ecosystem and that evaluates businesses according to ecological and social criteria. Sustainability in a closed system in which resources are limited implies the need to adopt a circular economy model based on the principle that what is taken from the environment is subsequently returned.

This ecosystem approach can be all the stronger and more effective if supported by a vision that recognizes the maintenance of the Earth's biosphere and individual ecosystems as a primary ethical value and is linked to the principle of responsibility.

This change of paradigm is the background for the elaboration of moral reasons proper to a planetary Bioethics that pursues the objective of a renewed economy of well-being, capable of combining growth and development with caring for people, of animals, of the biosphere (28).

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