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## **The Environment and its Protection as Fundamental Principle of the Italian Constitution: A Constitutional Innovation that Looks to Future Generations?**

**1. Constitutional reform on environmental protection: An important factor of constitutional innovation as part of a broader strategy in terms of sustainability?**

The Italian Parliament approved the amendment to art. 9 of the Constitution declaring that “The Republic promotes the development of culture and scientific/technical research, protects environment, biodiversity and ecosystems in the interests of future generations; the laws of the State will regulate the forms of the protection of animals.”

Article 41, concerning the freedom of economic initiative, was also modified as follows: “Private economic initiative is free. It cannot take place in conflict with social utility or when damaging safety, freedom, human dignity, health, or the environment”. The law provides appropriate programs and controls, so that public and private economic activities can be directed and coordinated for social and environmental purposes.

Therefore, constitutional law no. 1/2022 adds an express reference to the protection of the environment and animals by amending art. 9 and art. 41 of the Italian Constitution. With the reform, for the first time, the fundamental principles recognized by the Constitution are amended.

By amending art. 9, the law introduces the protection of the environment, biodiversity, and ecosystems, as well as animal protection into the fundamental principles of the Italian Constitution. Particularly relevant is the reference to the interests of future generations.

The reform also amends art. 41 of the Constitution, stating that economic initiative may not be carried out “in such a way as to damage health or the environment”, adding these two limits to those already in force of “security, freedom, and human dignity”.

Additionally, the law shall determine the programs and appropriate application methods so that public and private economic activity may be directed and coordinated for environmental purposes.

Amended art. 41 is particularly innovative because it explicitly relates to conducting economic activities to protect the environment and to fight against climate change.

These Constitutional amendments are statements of fundamental principles that will have important consequences and present a very strong rate of constitutional innovation for different reasons.

Firstly, the constitutionalizing of the principle of environmental protection, raising the level of intervention by the state legislator (the use of the source of constitutional rank), rebalances the relationship with the intervention of the constitutional judge. At the same time, the reform adopted also places a sort of counter-limit to the intervention of international and supranational law through the many directives on environmental law in the state system.

Prior to the reform, constitutional environmental protection was in fact developed in the case law of the Constitutional Court. The case law emphasises the notion of landscape protection enshrined in the original text of art. 9 to recognize the environment as a primary and systemic value of the Constitution.

Secondly, the constitutional reform adopted allows a constitutional parameter to evaluate legislation concerning both administrative organization and that relating to activity.

Thirdly, it can be argued that the constitutional amendment of art. 9 and art. 41 is a turning point in constitutional dogma and that a change is also introduced in the form of the State, which can potentially produce effects on public policies.

Thus, the issue of sustainability, for some years a real constitutional key concept, focused specifically on the environment (but not only!), entered through the Constitution, after growing attention of constitutional doctrine, constitutional jurisprudence, and the remarks of the President of the Republic, underlining the importance of the environment precisely in the perspective of future generations.

From a comparative perspective, the reform aligns the text of the Italian Constitution with two other fundamental texts in Europe that were amended over the last three decades. In Germany, the 1994 reform to the Fundamental Law introduced art. 20a, which both specifically obliges the State to protect “the natural foundations of life and animals by legislation and by executive and judicial action”, but also recalls the State’s responsibility toward future generations. Similarly, in France, the 2004 *Charte de l’environnement* clearly states in its preamble that “the environment is the common heritage of mankind”. Notably, art. 6 mandates that all public policies must promote sustainable development while reconciling the protection of the environment, economic development, and social progress.

Overall, the Italian Constitutional reform will enhance the relevance of the environment and health relative to other constitutionally recognized interests.

**2. Brief notes on the method of constitutional reforms in Italy: Only specific reforms or systematically relevant reforms to radically change the paradigm?**

After some considerations about the evolution of the constituent power in Italy, it could be said that the recent reforms represent a further stage in the Italian process of constitutional revision.

Despite the difficulties by repeated attempts at organic reforms, the constitutional reform process in Italy is proceeding with specific and punctual changes, that confirms, over the decades, the enduring capacity of the 1948 Constitution to be the essential core of an order in continuous and profound transformation, representing a text with multiple potentiality.

The cost law of 11 February 2022, no. 1, (which included environmental protection among the fundamental principles of the Constitution), is the third law amending the Constitution approved during the XVIII Legislature.

To reflect on the method by which, in recent legislatures, the issue of constitutional reforms has been approached, the question to be answered is this: considering the end of the season of constitutional macro-reforms, has an apparently simpler phase of precise constitutional reforms begun according to the logic of constitutional micro-reforms?

There is a curious trend that highlights, on the one hand, the inability to carry out organic reforms (precisely constitutional macro-reforms), for contingent needs of parties or coalitions, as was the case in the recent rejection by referendum of the so-called Renzi-Boschi reform in 2016; while, on the other hand, there is the ability to complete, and all by a very large majority, several punctual constitutional revisions.

Over the decades there have been various directions in which so many punctual constitutional revisions have moved, starting from the 1960s: a) from overcoming the different terms of the two parliamentary chambers to their composition; b) to answering questions of the moralization of political life; c) attempting to answer federalist questions and, to some more limited intervention (such as the effects of the XIII trans. disp.).

This intense constitutional revision activity resulted in no less systemic consequences both in the part dedicated to the powers – the relations between the Judiciary and Parliament after the amendment of art. 68 of the Constitution – and in that which disciplines, as will be seen, the Fundamental Principles.

The opinion of those who consider the implementation of constitutional reforms to always be a crucial factor can be shared, whether it is achieved through extensive and organic changes or through specific constitutional amendments.

In fact, there is no completely aseptic constitutional reform, almost *in vitro*, as demonstrated by the constitutional reform that reduced the number of parliamentarians, with respect to which one could rather speak of cluster interventions. Consequently, there are a series of corrections to the reform in question that are indispensable on a constitutional plan such as the equalization of the active and passive electorate for the two chambers (constitutional law 18 October 2021, no. 1 which, by intervening in art. 58, par. 1, of the Constitution, lowers the age to elect the members of the Senate of the Republic); overcoming the regional basis for the election of the Senate (on May 10, 2022, the Chamber approved bill A.C. 2238-A, which provides for the Senate to

be elected on circumscription rather than a regional basis) and the reduction of one-third of the regional delegates for the election of the President of the Republic in joint session.

The modification of art. 9 and art. 41 of the Constitution seems to be only the first part of a strategy that can prepare new institutional and procedural mechanisms to guide decisions toward the future.

These are the so-called implementation strategies that are aimed at identifying new, special advisory bodies endowed with particular conditions of independence from government institutions, and also on a financial level.

This is a challenge that mainly involves national parliaments, which also includes Italy, around the concepts of sustainability and future generations, that the constitutional reform of art. 9 and art. 41 recalls, the aim could be to insert, through these new consultative bodies, a moment of future-oriented reflection in the legislative process, or to recover among the parliamentary functions historically described by Walter Ba-gheot that “pedagogical function” regarding future generations.

## Literature

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## Summary

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### **The Environment and its Protection as Fundamental Principle of the Italian Constitution: A Constitutional Innovation that Looks to Future Generations?**

This article deals with two innovative aspects of Italian Constitutional Law. Firstly, the revision made by constitutional law no. 1/2022 that introduced (in art. 9 and 41 of the Italian Constitution) the principle according to which the Republic protects the environment, biodiversity, and ecosystems in the interest of future generations. Secondly, this article points out a recent

trend in the constitutional reform process in Italy, particularly in the XVIII Legislature, that constitutional reforms are increasingly being implemented through specific/sectoral amendments. Apart from characterizing the indicated innovations, I also draw attention to their minor systemic consequences.

**Keywords:** environment; future generations; sustainability; constitutional reform; innovation.

## Streszczenie

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### Środowisko i jego ochrona jako podstawowa zasada włoskiej Konstytucji: konstytucyjna innowacja, która ma na uwadze przyszłe pokolenia?

Artykuł dotyczy dwóch innowacyjnych aspektów włoskiego prawa konstytucyjnego. Po pierwsze, rewizja dokonana przez ustawę konstytucyjną nr 1/2022 wprowadziła (w art. 9 i 41 Konstytucji Włoch) zasadę, zgodnie z którą Republika chroni środowisko, różnorodność biologiczną i ekosystemy w interesie przyszłych pokoleń. Po drugie, w artykule zwrócono uwagę na najnowszą tendencję w procesie reform konstytucyjnych we Włoszech, zwłaszcza w XVIII Legislaturze, polegającą na tym, że reformy konstytucyjne są coraz częściej wprowadzane poprzez nowelizacje o szczegółowym/sektorowym charakterze. Ponadto, oprócz przedstawienia charakterystyki powyższych innowacji, w artykule zwrócono również uwagę na ich konsekwencje ustrojowe.

**Słowa kluczowe:** środowisko; przyszłe pokolenia; zrównoważony rozwój; reforma konstytucyjna; innowacje.