

## 2. Litigation for the Advancement of Collective Rights

### AUDE BOUVERESSE

Title: *Could the EU judge be a veto-player in climate justice?*

Abstract: What is at stake is the assessment of both the limits and potential of the European Court of Justice (ECJ) to play an effective role in climate change justice at the European level. While some national courts are trying to respond to one of the greatest challenges of our time, which is requiring them to reinvent their role, the ECJ is maintaining a very formalistic approach that raises questions as of its capacity to respond to these new challenges (see e.g. Case C-61/21 of 22th December 2022). The key question is whether, although the ECJ faces both procedural and substantive limitations, it has the political standing and legal instruments available to it to overcome them.

On the one hand, the European judge would appear to be best placed to take action on such an issue, in accordance with functionalist theories of integration: a transnational problem (climate change) must be resolved at the transnational level. Notably, in the past, when the will of Member States has been defective, the ECJ could be relied upon to advance action on a Europe-wide scale. Therefore, when it comes to climate change, its authority could be undermined if it maintains a formalistic approach to such a major societal issue. On the other hand, a less formalistic approach would require the European judge to accept, more broadly, private, and even transgenerational, claimants into its courtroom, so that it can become a new space for activist dialogue. What legal bases could the ECJ rely on to open up this dialogue: duty of care? Principle of sincere cooperation, Principle of solidarity (between generations)? The Fundamental Charter? Moreover, if the obstacles can be overcome, does the ECJ have the legitimacy to impose such obligations on Member States? Should, and can it be the guardian of agonistic democracy?

### MARIA DI MAGGIO

Title: *“Whistleblowing as civic participation beyond the employment relationship” - Civic Participation and Citizens’ Activism*

Abstract: The whistleblower is represented by an individual who, in the name of the public interest, reports offenses and irregularities, informing subjects in charge of this purpose (institutions which in Italy, for example, can be identified in the ANAC) and consequently exposing themselves to possible retaliation for reporting.

Italy, and in general all European Union, have to develop a discipline about whistleblowers’ protection in light of Directive 2019/1937 of the European Parliament and of the Council.

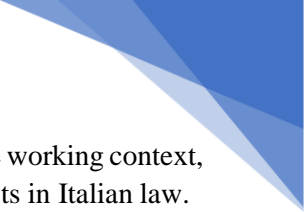
Currently Italy, to meet international obligations, has drawn up a draft legislative decree, containing the new discipline of the institute. The decree is currently being examined by the Chamber of Deputies, the Justice Commission and the Labor Commission.

The scholars who dealt with the drafting of the decree are questioning themselves about the multiple problems in the implementation of this institute. In fact, I intend to dwell on the following topics to try to give some answers.

The centrality of the institute expresses all its strength and pre-eminence in a broader area of reforms aimed at the Transparency and Reliability of individuals as Citizens, even before being considered as subjects employed, from time to time, in the public or private sector.

The work that I intend to present follows the process of approval of the new law, taking into account the contents of the Directive and the obligations of an international nature that derive from other multilateral agreements, also deepening the problems and applications of the institute in other States, in order to offer solutions to the problems that are emerging in the creation of the new discipline.

The main problem I intend to address is the need to consider a broad notion of whistleblower. This criticality emerges especially in sectors such as environmental law. In fact, the Directive includes the protection of the environment among the interests to be protected (Article 2 of the Directive).



Either way, it needs to be stressed that the definition of whistleblower is actually rooted in the working context, and the whistleblower is considered only as an employee to be protected from retaliatory acts in Italian law. Obviously, widespread control is essential to deal with the problem of pollution control and the collaboration of all citizens would be desirable.

In an ideal system, every citizen should be able to report facts that put the environment at risk, with a view to loyal collaboration and not only with the intention of formally reporting crimes to the judicial authorities, but of correcting conduct harmful to public interest.