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**The EU Enlargement to the Western
Balkans, the implementation
of “green” policies, and integration
through the law**

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Summary

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Sintesi

Gli attuali dibattiti politici e giuridici in Europa si incentrano su due questioni fondamentali: la crisi socio-ecologica derivante dai cambiamenti climatici antropogenici e dal degrado ambientale, e la volontà – o addirittura la necessità – di un processo “accelerato” di allargamento, soprattutto verso i Paesi dell’Europa sudorientale. La prima questione può essere considerata come scaturente da una sfida globale, mentre la seconda rappresenta un argomento pervasivo e prolungato all’interno dei dibattiti politici dell’UE. L’articolo muove dalle precedenti considerazioni, proponendo in primo luogo una rapida panoramica sull’allargamento dell’UE a Sud-Est, rammentando l’estensione del Green Deal e gli sforzi per l’attuazione dell’Agenda verde per i Balcani occidentali. Il terzo paragrafo spiega il concetto di “costituzionalismo ambientale”, richiamandone anche i caratteri trasformativi, le diverse valutazioni teoriche e alcuni assetti metodologici, aprendo quindi al tema del quarto paragrafo, che propone una prima analisi quantitativa dei riferimenti al concetto di “ambiente” nelle costituzioni dei Balcani occidentali, al fine di classificare i riferimenti diretti al concetto di “ambiente” in base a una tassonomia sincronica ed evidenziare, così, traiettorie per ulteriori approcci critici.

Abstract

Current political and legal debates in Europe are quite concerned about two matters: the socio-ecological crisis deriving from anthropogenic climate change and environmental degradation, and the will – or even the need – of a “fast-track” enlargement process, especially towards South-Eastern Europe’s countries. The first issue can be considered as a spin-off of a global matter, while the second one represents a more pervasive and long-lasting topic within EU political debates. The article addresses the aforementioned issues, and firstly propose a quick overview on the EU enlargement towards South-East, recalling the extension of the Green Deal and the efforts in implementing the Green Agenda for the Western Balkans. The third

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paragraph deals with the concept of ‘environmental constitutionalism’, also recalling its transformative features, different theoretical appraisals, and methodological assets. The fourth paragraph’s topic proposes a primary quantitative analyses on direct constitutional references (and mentions) to the concept “environment” within the Western Balkan constitutions. Conclusion aims at classifying Western Balkan’s environmental constitutional provisions under a synchronic taxonomy, to highlight further critical approaches.

Keywords

Western Balkans; EU Enlargement; Environmental Constitutionalism; Public Comparative Law.

Parole chiave

Balceni occidentali; Allargamento dell’UE; Costituzionalismo ambientale; Diritto pubblico comparato.

1. Introduction. South-East meets the West on the ground of the socio-ecological crisis.

Current political and legal debates in Europe are quite concerned about two matters: the socio-ecological crisis deriving from anthropogenic climate change and environmental degradation, and the will – or even the need – of a ‘fast-track’ enlargement process, especially towards South-Eastern Europe’s countries. The first issue can be considered as a spin-off of a global challenge, while the second one represents a more pervasive and long-lasting topic within EU political debates. Although they firstly seem autonomous concepts with individual trajectories, they merge on the ground of a double-sided mission that the European Union has embraced to cope with the aforementioned crisis through the implementation and the extension of the Green Deal.

‘Ecological’ missions and approaches, as well as means for a proper energy transition, are quite crucial also in the assessment for providing the status of ‘Candidate’ to the EU or even for the accession within the Union. Proper environmental policies and legislation are essential to reach the EU *acquis* and offer real opportunities for balancing EU trends and tasks with the main potential candidates’ requests. In this framework, Western Balkans are currently the main region within these two prominent topics, considering the role currently played by the two ‘frontrunners’ Serbia and Montenegro, the “most likely” candidate Bosnia and Herzegovina, and countries such as Albania and Macedonia, which are fulfilling a set of EU political and economic conditions. Thus, the need of going beyond a mere evaluation on the status of the rule of law, to further evaluate whether countries – and, by extension, legal systems – comply with environmental standards. To this end, “environmental rule of law – which describes when laws are widely understood, respected, and enforced and the benefits of environmental protection are

enjoyed by people and the planet – is key to addressing”¹ the gap between implementation and enforcement of environmental provisions.

Moving from the aforementioned issues, the article firstly propose a quick overview on the EU enlargement towards the South-East, recalling the extension of the Green Deal and the efforts in implementing the Green Agenda for the Western Balkans. The third paragraph explains the concept of ‘environmental constitutionalism’, also recalling its transformative features, different theoretical appraisals, and some methodological assets. The fourth paragraph proposes a primary quantitative analyses on direct constitutional references (and mentions) to the concept ‘environment’ within the Western Balkan constitutions. Conclusion aims at classifying Western Balkan’s environmental constitutional provisions under a synchronic taxonomy, to highlight whether the environment has been “taken seriously” within the domestic legal systems².

2. The EU Enlargement to the South-East: An overview.

On the 24th of June 2022, the General Secretariat of the European Council referred to main policies and further issues related to the EU enlargement, basically addressing events regarding Ukraine, the Republic of Moldova, Georgia and Turkey, as well as advancing the process of integration of the Western Balkans in a wider interdisciplinary framework. Currently, in reference to the EU enlargement policies, the designation of the region ‘Western Balkans’ basically refers to Albania, Bosnia and Herzegovina, Kosovo³, Montenegro, North Macedonia and Serbia. In reference to the Western Balkans, the EU reaffirmed the “unequivocal commitment” and the will of accelerating the inclusion of Western Balkans’ countries in the Union,⁴ although still detailed concerns remain regarding the rule of law (those affecting the independence of judiciary and corruption) and minority rights⁵, the accession negotiations between Bulgaria and North Macedonia, and other interests on the need of making tangible progresses to solve bilateral and regional issues, especially recalling the Belgrade-Pristina dialogues for the normalization of the political relations between Serbia and Kosovo⁶. Moreover,

¹ UNEP, *Environmental Rule of Law: First Global Report*, Nairobi, p. 1.

² This article is a first attempt in offering some temporary results of an ongoing research on Western Balkans. The basic aim of this contribution is to open new trajectories for further critical approaches. The words ‘taken seriously’ recall the prominent works by Ronald Dworkin and, in reference to the environment, by Domenico Amirante (*infra*).

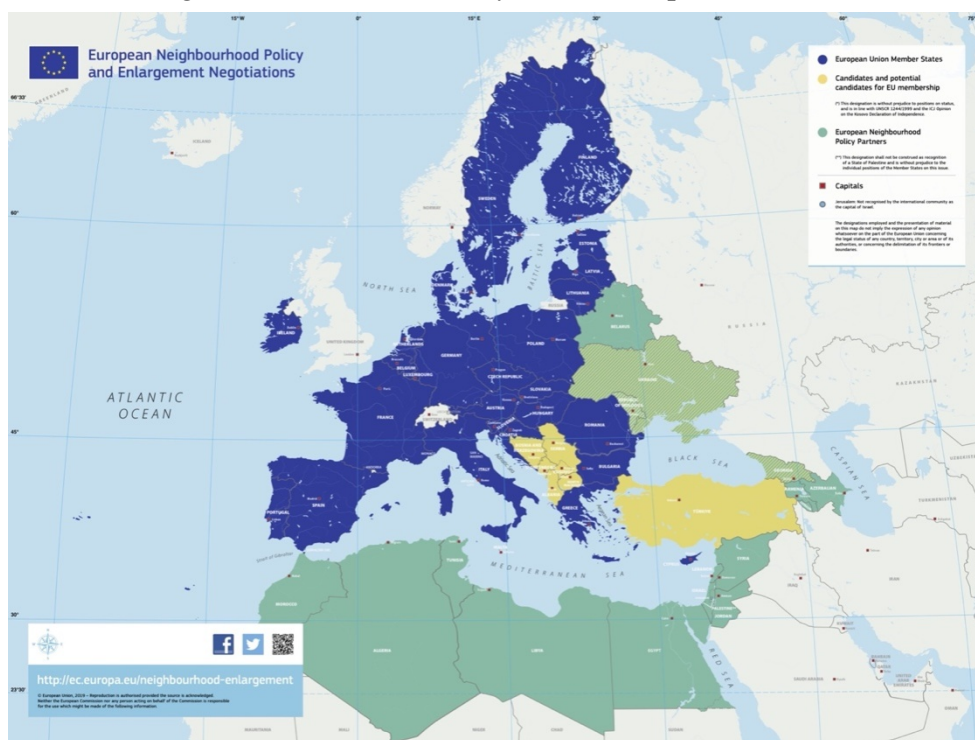
³ In line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence and the EU neighbourhood policy.

⁴ EUCO 24/22, CO EUR 21 CONCL 5, Brussels, 24 June 2022, § 15.

⁵ *Ibid.*, § 17.

⁶ *Ibid.*, § 17-19. For historical and general aspects see V. CURZON PRICE *et al.* (eds), *The Enlargement of the European Union: Issues and Strategies*, London-New York, 1999; H.A. IKONOMOU *et al.* (eds), *European Enlargement across Rounds and Beyond Borders*, London-New York, 2019; H. BERGER and T. MOUTOS (eds),

the declaration that the European Council “is ready to grant the status of candidate country to Bosnia and Herzegovina”⁷ is another really relevant aspect.



Source: <https://neighbourhood-enlargement.ec.europa.eu/>

It is worth to recall that the accession of Western Balkans’ countries follows a special process based on four key-pillars: 1) trade concessions, 2) economic and financial assistance, 3) assistance for reconstruction, development and stabilisation, 4) stabilisation and association,⁸ the latter characterised by the political stabilisation of countries, the implementation of a market economy, and regional cooperation.

In reference to the environment, chapter 27 of the *acquis communautaire* explicitly refers to EU policies regarding sustainable development and the protection of the environment for present and future generations, mentioning the basic principles of preventive action, polluter pays, fighting environmental damage at the source, shared responsibility and environmental

Managing European Union Enlargement, Boston, 2004; S. KEIL and Z. ARKA (ed.), *The EU and Member State Building: European Foreign Policy in the Western Balkans*, London-New York, 2015; F. LAURSEN, *EU Enlargement: Current Challenges and Strategic Choices*, Pieterlen and Bern, 2013. For a more critical appraisal: F. DEANA, *L’allargamento dell’Unione europea nei Balcani occidentali: una strada oscura che conduce al nulla?*, in *Eurojus*, 2, 2022, pp. 173-190; D. KOCHENOV, *EU Enlargement and the Failure of Conditionality*, Alphen aan den Rijn, 2008; T. SEKULIĆ, *The European Union and the Paradox of Enlargement: The Complex Accession of the Western Balkans*, Cham, 2020.

⁷ EUCO 24/22, CO EUR 21 CONCL 5, Brussels, 24 June 2022, § 21.

⁸ <https://neighbourhood-enlargement.ec.europa.eu/>. Last accessed December 2022.

protection⁹. Such a political background have been included in more than 200 major legal instruments within a very transdisciplinary area of law¹⁰.

According to the Directorate-General for Neighbourhood and Enlargement Negotiations' Communication of 2022, in reference to the energy sector, Montenegro's condition has been evaluated "good level of preparation", while Albania, North Macedonia and Serbia result as "moderately prepared". Differently, in reference to environmental and climate issues in general, the D-G stated that "Albania, North Macedonia, Montenegro and Serbia have some level of preparation", while Bosnia and Herzegovina is improving the general framework regarding disaster management. Furthermore, «Kosovo and Montenegro made some progress in the area of transport policy, while Albania, Bosnia and Herzegovina, North Macedonia and Serbia recorded limited progress. On energy, Kosovo and Montenegro made some progress and the rest of the Western Balkan partners made limited progress. On trans-European networks, Albania, Kosovo and Serbia have made some progress, while only limited progress was recorded in Bosnia and Herzegovina, North Macedonia and Montenegro»¹¹.

Some concerns in the assessment on achieving the *acquis* arise from the implementation of "green" and "climate" policies, thus the D-G highlighted the need of "urgent action" across the region¹².

Moreover, amongst other political and legal tools, the EU Green Deal and the Green Agenda for the Western Balkans represent two fundamental means for the achievement of the EU *acquis*. The EU Green Deal is currently the political and legal major driving force in re-thinking Union's financial paradigms, establishing a series of initiatives that would lead Europe to be the first continent with zero emissions by 2050. In other words, the Green Deal is a new political agenda expected to foster the EU towards an ecological and sustainable future¹³, basically through an action plan focusing on three crucial pillars: 1) reversal of economic

⁹ For an overall account on the principles of environmental law: N. DESADELEER, *Environmental Principles: From Political Slogans to Legal Rules*, 2nd edn, Oxford, 2020; L. KRÄMER and E. ORLANDO (eds), *Principles of Environmental Law*, Cheltenham, 2018; E. SCOTFORD, *Environmental Principles and the Evolution of Environmental Law*, Oxford, 2017; E. LEES and J.E. VIÑUALES (eds), *The Oxford Handbook of Comparative Environmental Law*, Oxford, 2019; J. VERSCHUUREN, *Principles of Environmental Law*, Baden-Baden, 2003; N.A. ROBINSON, *Fundamental Principles of Law for the Anthropocene?*, in *Environmental Policy and Law* 1-2, 2014, pp. 13-27.

¹⁰ Legal acts cover, for instance, horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms (GMOs), noise and forestry. <https://neighbourhood-enlargement.ec.europa.eu/>.

¹¹ COM(2022) 528, *2022 Communication on EU Enlargement Policy*, p. 27.

¹² Ibid.

¹³ COM (2019) 640 *Annex to the 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*. See https://ec.europa.eu/clima/policies/eu-climate-action/law_en. Last accessed December 2022.

paradigms; 2) improvement of health and quality of life; 3) environmental protection¹⁴. The Green Agenda for the Western Balkans addresses the transition towards a more sustainable system in reference to decarbonisation (climate, energy, and mobility) and depollution (of air, water, and soil), circular economy, sustainable food mechanisms, biodiversity (restoration and protection of the ecosystems)¹⁵. The implementation of the Green Deal and of the Green Agenda fosters a series of crosscutting actions that will help to fastener the process of enlargement, also considering that «the EU founding Treaties, the European Consensus on Development, international commitments, the European Green Deal and a range of policy and regulatory documents frame EU efforts to systematically mainstream environmental and climate change objectives in EU development cooperation and international partnerships»¹⁶, and, to this end, «the European Green Deal commits the European Union to ensuring a “do no harm” approach and to greening its policies, actions and budget process»¹⁷, thus underlining the need of a proper use of financial mechanism to comply with “sustainability considerations”¹⁸.

3. An introduction to environmental constitutionalism.

Assuming the constitution as the fundamental legal tool for domestic legal systems, which shapes and offers precise means for the implementation of the rule of law and for coping with significant contemporary concerns, the entry into force of environmental constitutional provisions prove the rise of an ‘ecological sense’ within political and legal discourses. As Domenico Amirante points out¹⁹, «In the intense heterogeneity and diversity that has characterized this path [the constitutionalisation of the environment], the common trait is certainly the progressive rise of environmental issues as not only sectorial or technical elements of the legal system, but as structural, structuring and, in some cases, even founding elements of the constitutional systems themselves. In other words, the constitutionalisation of the environment has been translated into an ‘ecologisation’ of the constitutions, which has also affected the fundamental principles of some legal systems, without exhausting itself in the programmatic aspects».

¹⁴ COM (2020) 80, 2020/0036 (COD). See P. VIOLA, *Hacia la Ley Europea del Clima: las evaluaciones científicas y el future papel de las respuestas jurídicas de los Estados Miembros*, in *Revista Boliviana de Derecho*, 32, 2021, pp. 758-773.

¹⁵ SWD(2020) 223, *Guidelines for the Implementation of the Green Agenda for the Western Balkans*.

¹⁶ OECD, *Integrating Environmental and Climate Action into Development Co-operation: Reporting on DAC Members’ 2020 High-Level Meeting Commitments*, 29 November 2021, p. 86.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ D. AMIRANTE, *Costituzionalismo ambientale. Atlante giuridico per l’Antropocene*, Bologna, 2022, p. 49. See also ID. (a cura di), *La forza normativa dei principi: il contributo del diritto ambientale alla teoria generale*, Padova, 2006; ID., *Diritto ambientale italiano e comparato. Principi*, Napoli, 2003.

Thus, the need of a transformative approach, as suggested by Melanie Murcott, which defined “transformative environmental constitutionalism” as an hybrid mixture of environmentalism and constitutionalism based on ecocentrism²⁰. In reference to the need of constitutional transformations, Louis Kotzé also emphasises the current loss of harmony of the Earth system, considered as “erratic, unpredictable, unstable and operating in a ‘no-analogue state’”²¹, while David Boyd highlights that the awareness of global environmental crises fostered a wave of new or amended constitutions dealing with the environment basically as state positive obligations, individual rights, and duties²². Especially in reference to the concept of “healthy environment”, the majority of the constitutional tools are enforceable, and is mostly associated to fundamental human rights (although in some cases, along with social, economic and cultural rights, it assumes less predominance than civil and political rights).

This process might be associated to the ‘ascent’ of the environment as a constitutional matter, worth to be related to social values; and different but converging provisions prove such a trend²³. Furthermore, James May and Erin Daly expose how the constitutional recognition of the environment within constitutions has a deep impact on the structures of domestic legal systems, even fostering new trends for jurisprudence²⁴.

A specific and direct reference to the environment within constitutional texts is one of the basic step towards an effective and integrated approach, and represent the evidence of a global trend²⁵. Under a quantitative analysis, currently approx. the 80% of constitutions at a global level include environmental provisions, and according to the main synchronic taxonomy, they can be grouped under three labels: 1) environmental (pristine) constitutions; 2) revised environmental constitutions; 3) silent constitutions.²⁶ Environmental (pristine) constitutions are those already having environmental provisions since their entry into force (e.g. the Constitutions of Ecuador and Bolivia), and environmental considerations permeate the debates of the constituent assembly. The label “revised constitution” refers to those text originally silent regarding environmental matters and subsequently amended to include a more precise

²⁰ M. MURCOTT, *Transformative Environmental Constitutionalism*, Leiden, 2022.

²¹ L.J. KOTZÉ, *Global Environmental Constitutionalism in the Anthropocene*, Oxford, 2016, p. 178.

²² D.R. BOYD, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, Vancouver, 2012.

²³ Ibid.

²⁴ J.R. MAY and E. DALY, *Global Environmental Constitutionalism*, Cambridge, 2014; ID. (eds), *Implementing Environmental Constitutionalism: Current Global Challenges*, Cambridge, 2018.

²⁵ See P. VIOLA, *Climate Constitutionalism Momentum: Adaptive Legal Systems*, Cham, 2022; ID., *Constitutional “Reactions” to Environmental Concerns and Anthropogenic Climate Change: Comparative Paths towards Integrated Ecologies*, in S. LANNI (a cura di), *Sostenibilità globale e culture giuridiche comparate*, Torino, 2022, pp. 171-190.

²⁶ This classification has been firstly proposed in D. AMIRANTE, *Ambiente e principi costituzionali*, in ID. (a cura di), *Diritto ambientale e Costituzione. Esperienze europee*, Milano, 2000, p. 24 and in ID., *L’ambiente «preso sul serio». Il percorso accidentato del costituzionalismo ambientale*, in *Diritto Pubblico Comparato ed Europeo*, Special Issue, 2019, pp. 1-32.

provision in reference to the environment (e.g. the Constitution of Italy). The third label refers to those constitutional texts with no direct mention of the environment (e.g. the Constitution of Iceland)²⁷. Globally, out of the total amount of written constitutions of UN state members, environmental (pristine) constitutions are the 63%, revised environmental constitution the 17%, while silent constitutions are the 20%²⁸.

4. Environmental constitutional provisions in the Western Balkans. A quantitative review.

The second paragraph highlighted the pivotal role the environment plays in the assessments regarding the EU enlargement, while the previous one stresses a global trend in recognising the environment within the most prominent legal tools. Thus, it is quite relevant to assess whether Western Balkans' constitutions reply such a trend and the patterns of recognition and/or establishment²⁹.

In order of providing quantitative data on the phenomenon of environmental constitutionalism in the Western Balkans, basically this part directly recalls the texts, establishing a first step for an appraisal that will lead to classify constitutions under the aforementioned synchronic taxonomy. In doing so, the analysis will proceed under an alphabetical order.

The Constitution of Albania³⁰ addresses environmental issues in Chapter IV “Economic, social and cultural rights and freedoms”, at art. 56: “Everyone has the right to be informed about the status of the environment and its protection”, basically recalling the right to information and, indirectly, the state positive obligation for a sound access to environmental data³¹. In Chapter V “Social objectives”, art. 59 states that

²⁷ A constitution without direct mention to the environment implies a less prominent role of the concept ‘environment’ within the constitutional space under a civil-law approach, but do not directly infer that the legal system is not equipped for coping with environmental issues, considering that there might be specific laws and rules, and that the role of courts and tribunals might lead to the implementation of environmental policies and legislation as well. See, for instance, G. PRING and C. PRING, *Environmental Courts & Tribunals*, Nairobi, 2016; L.Y. SULISTIAWATI *et al.*, *Environmental Courts and Tribunals: A Guide for Policy makers*, Nairobi, 2022; D. AMIRANTE, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, in 29 *Pace Env'tl. L. Rev.* 2, 2012, 441; C. WARNOCK, *Environmental Courts and Tribunals: Powers, Integrity and the Search for Legitimacy*, Oxford, 2020.

²⁸ D. AMIRANTE, *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, cit.

²⁹ This methodological approach needs a disclaimer. Basically, the main aim of this article is to provide a first quantitative analysis on environmental constitutional provisions, thus, it is not meant to provide a qualitative evaluation on the effectiveness and the implementation. Constitutional texts have been reported as provided by Oxford Constitutions (<http://oxcon.ouplaw.com>), the Constitute Project (<https://www.constituteproject.org/>), and official translations into English – when available – by the competent authorities.

³⁰ Albanian Constitution of 1998 (as amended till 2016).

³¹ The Aarhus Convention is currently considered as one of the main tools provided by the international environmental law regime, and «developed some principles also enshrined in the Rio Declaration [...] to guarantee a bottom-up approach, as well as a more ‘public-friendly’ regime, conveying some precise necessities: 1) the participation of citizens, especially in the decision-making processes; 2) the access to information related to the

«1. The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with:

[...]

d. a healthy and ecologically adequate environment for the present and future generations;

dh. rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development»;

thus merging economical aspects related to private initiative, the exploitation of natural resources and the principle of sustainable development³².

Differently from the Albanian experience, the Constitution of Bosnia and Herzegovina is currently one of the silent constitutions (20% of the global amount) on environmental issues³³. The Constitution of Kosovo gives to the environment a very prominent position, considering that the provisions have been placed amid Chapter I “Basic provisions” and values as per art. 7: «1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy». Furthermore, art. 52 addresses responsibilities towards the environment (“1. Nature and biodiversity, environment and national inheritance are everyone's responsibility”), rights of participation (“2. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live”) and the necessary

environment; 3) the need to facilitate and encourage public awareness; 4) an ‘effective access to judicial and administrative proceedings, including redress and remedy’». P. VIOLA, *From the Principles of International Environmental Law to Environmental Constitutionalism: Competitive or Cooperative Influences?*, in D. AMIRANTE and S. BAGNI (eds), *Environmental Constitutionalism in the Anthropocene: Values, Principles and Actions*, Routledge, London-New York, 2022, p. 133. See also M. MASON, *Environmental Democracy*, London, 1999; J. WATES, *The Aarhus Convention: A Driving Force for Environmental Democracy*, in *Journal for European Environmental & Planning Law*, 2, 2005, pp. 2-11. Regarding regional cooperation, see the Escazú Agreement, entered into force on April 2021.

³² A definition of ‘sustainable development’ has been proposed through the Brundtland Report: «trying to take into account both present and future generations, as well as global needs and limitations [and considering ...] its own multiple and complex meaning, [... sustainable development] encompasses a corollary of normative principles and descriptive approaches: 1) intergenerational equality; 2) sustainable use; 3) equitable use; 4) integration». P. VIOLA, *From the Principles of International Environmental Law to Environmental Constitutionalism: Competitive or Cooperative Influences?*, cit., p. 131. See also P. SANDS *et al.*, *Principles of International Environmental Law*, 3rd edn, Cambridge, 2018; A. BOYLE and D. FREESTONE (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges*, Oxford, 1999; M.-C. CORDONIER SEGGER and A. KHALFAN, *Sustainable Development Law: Principles, Practices, and Prospects*, Oxford, 2004; D. FRENCH, *International Law and Policy of Sustainable Development*, Manchester, 2005; S.ADELMAN, *The Sustainable Development Goals, anthropocentrism and neoliberalism*, in D. FRENCH and L.J. KOTZÉ (eds), *Sustainable Development Goals: Law, Theory and Implementation*, Cheltenham, 2018, pp. 15-40.

³³ As previously stated, the Bosnia and Herzegovina legal system addresses environmental concerns through other legal means. On this point see, for instance, M. IGNJATIC *et al.*, *Environmental Law in Bosnia & Herzegovina*, Alphen aan den Rijn, 2022.

evaluation of the impact on the environment (“3. The impact on the environment shall be considered by public institutions in their decision making processes”). Within Chapter IX, dealing with economic relations, the Kosovar Constitution merges two really relevant aspects: property and natural resources. To this end, art. 122 states that

«1. The people of the Republic of Kosovo may, in accordance with such reasonable conditions as may be established by law, enjoy the natural resources of the Republic of Kosovo, but they may not infringe on the obligations stemming from international agreements on economic cooperation.

2. Natural resources such as water, air space, mineral resources and other natural resources including land, flora and fauna, other parts of nature, immovable property and other goods of special cultural, historic, economic and ecologic importance, which have been determined by law to be of special interest to the Republic of Kosovo, shall enjoy special protection in accordance with law.

3. Limitations on owners’ rights and other exploitation rights on goods of special interest to the Republic of Kosovo and the compensation for such limitations shall be provided by law.»

The Constitution of Montenegro addresses environmental concerns since the preamble: «Stemming from:[...] The conviction that the state is responsible for the preservation of nature, sound environment, sustainable development, balanced development of all its regions and the establishment of social justice». More normative provisions have been placed in Part II, specifically within common provisions in reference to human rights and liberties, and those regarding economic, social and cultural rights. Art. 59 provides that «Freedom of entrepreneurship shall be guaranteed. Freedom of entrepreneurship may be limited only if so necessary in order to protect the health of the people, environment, natural resources, cultural heritage or security and defence of Montenegro», while art. 23 details specific rights and duties:

«Everyone shall have the right to a sound environment. Everyone shall have the right to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights. Everyone, the state in particular, shall be bound to preserve and improve the environment».

The Constitution of North Macedonia³⁴ places environmental concerns and a more ecological approach within the basic provisions of the legal system:

«The fundamental values of the constitutional order of the Republic of Macedonia are:

³⁴ Constitution of the Republic of North Macedonia 1991 with Amendments through 2011. See generally T. KARAKAMISHEVA-JOVANOVSKA, *Macedonian Constitutional Story*, in *Iustinianus Primus L. Rev.*, 1, 8, 2017, pp. 1-16. See also S. SLAVESKI and A. KOZAREV, “*Europeanization*” of the Macedonian National Identity, in *The Western Balkans Policy Review*, 2, 2012, pp. 21-38; L. ALLEZARD, *Constitutional identity, identities and constitutionalism in Europe*, in *Hungarian Journal of Legal Studies*, 63, 1, pp. 58-77.

[...]

- proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and

- respect for the generally accepted norms of international law».

Furthermore, Macedonian fundamental law specifically recalls the right to a healthy environment and a state positive obligation thereof in art. 43: «Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment». In reference to economic relations, although market economy and entrepreneurship have been guaranteed, they «can be restricted by law only for reasons of the defence of the Republic, protection of the natural and living environment or public health»³⁵. As far as power sharing is concerned, Amendment XVII equipped units of local self-government and granted to civil society (directly or through representatives) the possibility of participating in decision-making processes regarding – amongst other matters – urban and rural planning, as well as environmental protection.

The Constitution of Serbia embraces several provisions covering the main legal aspects related to the environment. In Part 2 “Human and minority rights and freedoms”, art. 74 has been devoted to the right to a healthy environment, to access and information; providing for state and autonomous provinces’ responsibilities for the protection of the environment, while the preservation and the improvement of the environment have been defined as obligations for “everyone”. As far as economic system and public finance are concerned, art. 83 defines limits to the freedom of entrepreneurship «for the purpose of protection of people’s health, environment and natural goods and security of the Republic of Serbia», while art. 88 addresses land use and planning:

«Utilization and management of agricultural land, forest land and municipal building land on private assets shall be permitted. The Law may restrict the models of utilization and management, that is stipulate terms of utilization and management, in order to eliminate the danger of causing damage to environment or prevent violation of rights and legally based interests of other persons».

Art. 97 of the Serbian Constitution defines competences of the Republic of Serbia, and amongst them there are those regarding «sustainable development; system of protection and improvement of environment; protection and improvement of flora and fauna; production, trade and transport of arms, poisonous, inflammable, explosive, radioactive and other hazardous substances», while autonomous provinces, according to art. 183, regulate «in

³⁵ Art. 55, Constitution of the Republic of North Macedonia.

accordance with the Law» those matters regarding provincial interests in urban planning and development, agriculture, water economy, forestry, hunting, fishery, environmental protection. In reference to local self-government and in accordance with the law, as per art. 190, municipalities «regulate and provide for the use of urban construction sites and business premises», and are responsible «for environmental protection, protection against natural and other disasters», as well as «protection, improvement and use of agricultural land».

5. Conclusion. Is this the “right” constitutional environment?

EU neighbourhood policy, ecological approaches, and constitutionalism are strictly merged within the field of a potential EU membership for Western Balkans’ countries. According to the aforementioned synchronic taxonomy, excluding the silent constitution of Bosnia and Herzegovina, all Western Balkan constitutional texts reflect the increasing attention towards environmental matters since their entry into force, and they can be placed amongst the environmental (pristine) constitutions (e.g. amongst the said 63%), thus overall confirming two aspects: a) they followed the trend characterising post-socialist constitutional cycles in Central, Eastern, and South-Eastern Europe; b) they adhere to the path that portrays contemporary and global phenomena of constitutionalism.

This is a further step in acknowledging environmental constitutionalism as a phenomenon and as a key-element in the present and future (along with climate concerns) legal trajectories, with an outstanding impact on legal methodology and the general theory of law³⁶. Yet, in the light of achieving and implementing the EU *acquis* and the Green Agenda, still there are critical issues to be further addressed, but the prominent position of the concept ‘environment’ within Western Balkan constitutions has to be acknowledged, both in terms of rights (e.g. Albania, Kosovo and Serbia), duties (Montenegro), principles of state policies (e.g. Kosovo), references to fundamental principles of international environmental law (e.g. Albania, Montenegro and Serbia).

³⁶ D. AMIRANTE, *Costituzionalismo ambientale. Atlante giuridico per l’Antropocene*, cit.; P. VIOLA, *Climate Constitutionalism Momentum: Adaptive Legal Systems*, cit.