



RESEARCH ARTICLE

AN ENVIRONMENTAL APPROACH TO FASHION LAW

Antonios Maniatis\*

University of West Attica

ARTICLE INFO

Received 13th June, 2019  
Received in revised form 11th July, 2019  
Accepted 8th August, 2019  
Published online 28th September, 2019

Keywords:

Circular economy (cycling), Climate Law,  
Environmental Law, Fashion Law, 4G rights,  
Tax Law.

ABSTRACT

States, such as the UK, and cities, such as Los Angeles and San Francisco, have passed laws banishing mink coats and coyote-trimmed jackets from sale whilst high-end designers have increasingly abandoned fur as a fashion symbol. Besides, the Fashion Charter for the Environment, adopted in 2016 in the occasion of the United Nations Climate Change Conference COP22, includes 8 points, such as the following: “*Conceive as much as possible clothes to last and to be reborn*”. In 2018, a similar, more detailed Charter was adopted by the fashion community, in combination to COP24. Circular economy consists, especially in the fashion sector, in cycling number 2 (ecological cycling), besides cycling number 1 (design component cycling). In a similar way, Tax Law has promoted Fashion Law through the taxation on lightweight plastic carrier bags whilst ecotaxes are proposed specifically for the consumption of clothing, in the UK.

Copyright © 2019 Antonios Maniatis., This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

INTRODUCTION

*Fashion, A Phenomenon Subject To Various Forms of Rules*

Fashion, in the way that humanity knows it nowadays, results from a set of phenomena marking the mid-nineteenth century<sup>1</sup>. It can be regarded to have acquired its own branch of law<sup>2</sup>, particularly as it has been promoted in the USA<sup>3</sup>. It is about a typical case of emergence of a new branch, regulating an already traditional scope in social practice, whilst the inverse phenomenon is rather rare, as it is the case of the branch of anti-money laundering law, which has been consecrated by EU since 1991. The mainstreaming normativity of Fashion Law is relevant to intellectual property rights, such as the authors' rights, even if the legal protection is subject not only to the condition of the creative character but also of the artistic value of the fashion product, as it happens in the Italian legal order<sup>4</sup>. This branch is also relevant to another set of Private Law, the industrial property rights, such as trademarks and

above all industrial designs and models, to which fashion is associated in an immediate and spontaneous way<sup>5</sup>.

It is still doubtful whether, in the closed community of fashion, law is the main device regulating the relevant relationships or not<sup>6</sup>. There are other mechanisms, such as contracting, which may introduce the rules of the game in this market, marked by strong competition. We believe that as long as States abstain from their typical role of legislator and keep considering the fashion market as a rather marginal one, social substitutes of the state normativity will continue to enact a role of major importance.

The current analysis is going to take an ecological approach to Fashion Law. More precisely, it focuses on fashion, as shaped by Environmental Law. This hardcore approach will be complemented by focusing on the influence of Tax Law on the fashion sector.

<sup>1</sup> Bertrand, A., *La mode et la loi* (CEDAT 1998) 10.

<sup>2</sup> Pozzo, B., *Da New York a Como e a Milano... e poi a Mantova e Firenze... A mo' di introduzione*, Barbara Pozzo, Valentina Jacometti (cur.), *Fashion Law Le problematiche della filiera della moda* (2016) Giuffrè Editore, IX.

<sup>3</sup> Blaise-Engel, C., «L'Europe s'empare du droit de la mode», *Le Monde du Droit*, 12 octobre 2018, <https://www.lemondeduldroit.fr/decryptages/60272-fashion-law-europe-empare-droit-mode.html>.

<sup>4</sup> Varese, E., Barabino, S., *La tutela della forma delle creazioni di moda; problematiche e prospettive*, Barbara Pozzo, Valentina Jacometti (cur.), *Fashion Law Le problematiche della filiera della moda*, (2016) Giuffrè Editore, 93.

<sup>5</sup> Giudici, S., *Moda e diritti della proprietà industriale ed intellettuale*, Barbara Pozzo, Valentina Jacometti (cur.), *Fashion Law Le problematiche della filiera della moda* (2016) Giuffrè Editore, 15.

<sup>6</sup> Noto La Diega, G., «Can the law fix the problems of fashion? An empirical study on social norms and power imbalance in the fashion industry», (2018) *Journal of Intellectual Property Law and Practice*, 18-24, [https://www.researchgate.net/profile/Guido\\_Noto\\_La\\_Diega/publication/326191870\\_Can\\_The\\_Law\\_Fix\\_the\\_Problems\\_of\\_Fashion\\_An\\_Empirical\\_Study\\_on\\_Social\\_Norms\\_and\\_Power\\_Imbalance\\_in\\_the\\_Fashion\\_Industry/links/5bd6f247299bf1124faaac4f/Can-the-Law-Fix-the-Problems-of-Fashion-An-Empirical-Study-on-Social-Norms-and-Power-Imbalance-in-the-Fashion-Industry.pdf](https://www.researchgate.net/profile/Guido_Noto_La_Diega/publication/326191870_Can_The_Law_Fix_the_Problems_of_Fashion_An_Empirical_Study_on_Social_Norms_and_Power_Imbalance_in_the_Fashion_Industry/links/5bd6f247299bf1124faaac4f/Can-the-Law-Fix-the-Problems-of-Fashion-An-Empirical-Study-on-Social-Norms-and-Power-Imbalance-in-the-Fashion-Industry.pdf).

## **Fashion And Environmental Law**

### **Environmental Law and the Prohibition of Fur Trade**

First of all, it is to clarify that not only Fashion Law is the new emerging branch but also there are other branches which have made their appearance the last decades, as it is the case of Environmental Law. This particularly dynamic field of law dates from 1970s, resulting from the United Nations Conference on the Human Environment, held in June 1972 in Stockholm. That year could be the point of beginning of the third generation of fundamental rights, which ended up in 1992, through the emergence of 4G rights, such as the similar right to Containing Climate Change (CCC).

European Economic Community inaugurated its environmental policy shortly afterwards, in 1973. Environmental Law is an important branch, marked by the feature of polymorphic expansion. Indeed, the fact that it is on the move is not lost on scholars who, using diverse discourses of transplantation, spread, transmission, diffusion, cross-fertilisation, dissemination, and even impregnation, document multiple manifestations of a similar idea – Environmental Law ideas travel<sup>7</sup>. For instance, New Zealand's recognition of the legal personhood to the Whanganui River has been considered as a transferable event<sup>8</sup>.

It is notable that the frequent phenomenon of expansion of Environmental Law is not based uniquely on the concept of transferability in comparative law but also on the principle of integration in EU law. According to this legal tool, EU policies in various sectors of economy, such as industry and commerce, must be eco-friendly. For instance, the use of chemical substances is subject to Regulation (EC) 1907/2006, known as REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals)<sup>9</sup>. So, this act is related inter alia to clothing market, which is based on agricultural process<sup>10</sup>. In 2000, a research conducted in the USA revealed that 84.000.000 pounds of cancer-producing toxic chemicals are put to cotton, which constitutes raw material for the construction of clothes. 10% of these chemicals are absorbed by cotton, whilst the rest of the amount is absorbed by the air, water and soil. Synthetic clothes made of polyester and nylon, release toxic gases to the environment. 97% of clothes contain fibers that could be recycled. The purchase of second-hand and vintage clothes and the investment in handmade creations constitute alternative proposals, which may be helpful for local communities in economic terms but also may be conducive to the formation of an ecological culture of society.

New York City in March 2019 would ban the sale of fur under new legislation introduced in the city council. The city, home to the biggest market for fur in the USA, would join other places, such as Los Angeles and San Francisco, as cities that have passed laws banishing mink coats and coyote-trimmed jackets from sale whilst high-end designers have increasingly

abandoned fur as a fashion symbol. It is about an international movement gaining territory as consumers, businesses, and nations alike recognize that faux fur fabrics are better for the environment and spare animals a miserable life and a bloody, painful death. Faux fur, also called fake fur, is known as pile fabric, engineered to have the appearance and warmth of animal fur. It is endowed with increasing popularity due to its promotion by animal rights and animal welfare organizations. The rights relevant to the world of animals constitute one of the typical 4G fundamental rights. As far as the national measures of prohibition of fur trade are concerned, the UK was the first country to ban fur farming, in 2000, due to the overwhelming public support for ending the cruel practice of breeding and killing animals for their fur. It is to clarify that the prohibition on the matter was in vigor only in England and Wales, but Scotland and Northern Ireland joined in 2002. It results that the new right to protect animals from killing for fur is a typical 4G right.

However, criticism was recently raised against the faux-fur substitutes, given that fake fur is made of plastic, which is extremely harmful to the world's wildlife<sup>11</sup>. According to the Ocean Conservancy, plastic has been found inside the bodies of more than 60 percent of seabirds and 100 percent of sea turtle species who think it is food. As Forbes pointed out, there is growing evidence that shows plastics may have a role in rising extinction rates of various animal species. Besides, plastic doesn't usually biodegrade, it can last for hundreds of years without breaking down, even if it is labeled as "biodegradable".

### **Charters of Engagement in the Fashion Sector**

The 2016 Charter of Engagement "Fashion Charter for the Environment" constitutes a private, not legally binding text, conceived by the organization "Universal Love" and adopted in the occasion of the United Nations Climate Change Conference COP22 in Marrakech. It includes 8 points, among them the first two are the following:

***"Conceive as much as possible clothes to last and to be reborn"***.

It is about sustainability and its ecological application consisting in recycling. Nevertheless, it is not just an application of this principle, which is typical of the branch of Environmental Law, it has also an anticonventional content in the field of fashion. Indeed, fashion industry has some very particular features, which are regarded as intrinsic to it. For instance, clothing is traditionally considered as ephemeral, which is subject to extremely brief life circles, let alone the fact that, as a general rule, it has a seasonal character. These products were initially deprived of the protection of the branch of intellectual (namely artistic) property law, with the pretext that they could not be compared to the creations of major arts, for which this branch was born<sup>12</sup>. Thus, nowadays, clothing should be in conformity not to artistic standards but to ecological ones. However, the target to conceive as much as possible clothes to last,

<sup>7</sup> Affolder, N., *Contagious Environmental Lawmaking* (2019) *Journal of Environmental Law*, 31, 188.

<sup>8</sup> Boyd, D., *The Rights of Nature: A Legal Revolution That Could Save the World* (2017) ECW Press.

<sup>9</sup> Jacometti, V., *Diritto e moda sostenibile tra iniziative legislative e iniziative volontarie*, Barbara Pozzo, Valentina Jacometti (cur.), *Fashion Law Le problematiche della filiera della moda* (2016) Giuffrè Editore Milano, 344.

<sup>10</sup> Anonymous, «When fashion meets ecology and fair trade» (2017) Hellenic Land (in Greek), <https://hellenic-land.com/fashion-meets-ecology-fair-trade/>.

<sup>11</sup> Brucculieri, J., «Faux Fur Is Made Of Plastic, And It's Not Helping The Environment» (2018) HuffPost, [https://www.huffpost.com/entry/faux-fur-vs-real-fur\\_n\\_5bc0b3c3e4b0bd9ed5599f76](https://www.huffpost.com/entry/faux-fur-vs-real-fur_n_5bc0b3c3e4b0bd9ed5599f76).

<sup>12</sup> Donaud, F., « Les droits de propriété intellectuelle sont-ils « à la mode? ». (2017) *Juris art etc.*

independently to their seasonal nature, is essentially a target going against the dynamic of designers' mission. To date, fashion industry not only has an ephemeral character by nature but also is facilitated to operate in that way. For instance, the key element of originality of the work, for the recognition of intellectual property rights to the designer, is not required in absolute terms. It may result from the combination or the concentration of preexistent elements, given that the fashion sector is circular. The originality is not assessed per each component of any product, as those elements have been already known, let alone banal. The doctrine<sup>13</sup> also signalizes that priority is given to subjective innovation over the objective one, which demands that the design must be entirely new, in comparison to any known design in the world. As this is impossible in fashion design, it is widely accepted the subjective innovation that demands the design to be new and different from all designs already known from the fashion designer involved.

*“Make maximum use of local raw materials with low consumption of water and pesticides to respect health, resources and biodiversity”.*

It is impressive that France, which officially promoted this initiative, omitted in its Charter for the Environment, having a constitutional vigor, to make an explicit reference to the fundamental right to water, which is however implied in this point.

Besides, following the initial discussions with the group of fashion sector experts at COP22, the Climate Change Secretariat decided to explore with a wider group of stakeholders if UN Climate Change could facilitate a more focused approach to climate action in the fashion sector. It has resulted, in December 2018, in Katowice, at COP24, the Fashion Industry Charter for Climate Action, being in response to the 2015 Paris Agreement. It is notable that this text was born from the recognition that the fashion industry was not meeting the present climate change agenda based on its current trajectory. The signatories have adopted 16 targets, among them the following:

*“10. Support the movement towards circular business models and acknowledge the positive impact this will have towards reducing GHG emissions within the fashion sector;”*

A circular economy or circularity is a system aimed at minimizing waste and making the most of resources. In contradiction to the linear system, the circular one is based on long-lasting design, maintenance, repair, reuse, remanufacturing, refurbishing and recycling. If target 10 confirms the content of point 1 of the 2016 Chapter, target 6 does the same thing against point 2.

It is to underline that this text contains, as explicitly remarked by the United Nations, the vision to achieve net-zero emissions of Greenhouse Gas (GHG) by 2050 whilst actually the apparel and footwear industry accounts for an estimated 8% of the world's GHG emissions. More precisely, in the Charter the fashion industry refers to its contribution to the goals of the Paris Agreement. The ultimate goal consists in limiting the global average temperature increase to 1.5 °C above pre-

industrial levels, which means climate neutrality by 2050. To achieve this goal, the charter also refers to the decarbonization pathway drawing on science-based targets methodology.

Last but not least, there are also various soft law texts at national level, which are endowed with ecological sensitivity, such as the Manifesto of Sustainability for Italian Fashion, promoted by the National Chamber of Italian Fashion<sup>14</sup>.

### **Fashion and Tax Law**

In virtue of directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags, national governments are committed to ensure that at the end of 2019 no more than 90 lightweight plastic carrier bags are consumed per person<sup>15</sup>. To the end of 2025, this number should be reduced to 40 per capita. To achieve these objectives, various measures may be applicable, such as charge for them, pay taxes or fix national reduction targets. So, this directive is associated to the aforementioned circular economy.

Greece adopted the common ministerial decision 180036/952/10.8.2017, modified by law 4496/2017, for the transposition of the new directive. In virtue of this law, an environmental tax is applicable, having the price of 4 cents, from 1 January 2018 and on, and of 7 cents, from 1 January 2019 and on, over the plastic bags.

EU believes that these environmental taxes can contribute to enhance the health of the planet and of persons, besides promoting a more responsible behavior in the citizens<sup>16</sup>. Furthermore, they are conducive to the creation of employment and to the development. Civil society organizations are able to accomplish an important function in the success of any environmental tax<sup>17</sup>.

Anyway, Greece has proved to be the “paradise” of plastic bags, constituting one of the EU member states with higher per capita index of consumption of disposable plastic bags. These objects are listed among the principal components of the waste found in the semi-enclosed gulfs of the country<sup>18</sup>. Another trigger for the Greek Project LIFE DEBAG were the aforementioned European norms, adopted in 2015. Under the auspices of the Ministry of Environment and Energy, the agents of the Project organized a set of consultations at national level with all parties involved – plastic manufacturers as well as supermarkets included – in order to agree policies relevant to disposable plastic bags. Afterwards, they presented the resulted recommendations to the

<sup>14</sup> Romana Rinaldi, F., Testa, S., *L'impresa moda responsabile. Integrare etica ed estetica nella filiera* (2013) Egea, 19 f., [http://www.cameramoda.it/media/pdf/manifesto\\_sostenibilita\\_it.pdf](http://www.cameramoda.it/media/pdf/manifesto_sostenibilita_it.pdf).

<sup>15</sup> Anonymous, «Corregir malos hábitos» (2017) Revista Medio Ambiente para los Europeos, N. 64, 3. [https://ec.europa.eu/environment/efe/sites/efe/files/env-15-015-efe-magazine-64\\_es-web.pdf](https://ec.europa.eu/environment/efe/sites/efe/files/env-15-015-efe-magazine-64_es-web.pdf).

<sup>16</sup> Anonymous, «Colaborar para lograr un sistema fiscal más ecológico», (2017) Revista Medio Ambiente para los Europeos, [https://ec.europa.eu/environment/efe/themes/environmental-law/joining-forces-green-tax-system\\_es](https://ec.europa.eu/environment/efe/themes/environmental-law/joining-forces-green-tax-system_es).

<sup>17</sup> According to a 2019 study, commissioned by the Directorate-General for Environment of the European Commission.

<sup>18</sup> Anonymous, «Hacia un mar Egeo libre de plásticos» (2018) Revista Medio Ambiente para los Europeos [https://ec.europa.eu/environment/efe/themes/water-marine-and-coast-funding-and-life-waste/towards-plastic-free-aegean-sea\\_es](https://ec.europa.eu/environment/efe/themes/water-marine-and-coast-funding-and-life-waste/towards-plastic-free-aegean-sea_es).

<sup>13</sup> As it is the case of Ergysa Ikonomi.

Permanent Specific Commission on Environmental Protection of the Greek Parliament, to contribute to its legislative production in the matter of lightweight plastic carrier bags.

Many recommendations have been incorporated in law 4496/2017. From the beginning of the application of this act and on, a reduction by at least 50% has been achieved in the disposable plastic bags in the entire country. Obviously, the perspectives are better, mainly because of the important increase of the tax. It is also notable that many campaigns have been inaugurated, for the reduction in the use of plastic bags in the whole Aegean. In view of the popularity of this sea in the entire European continent, the fight in this region is likely to inspire other campaigns for the fight against maritime waste.

Besides, the question of eventual eco-taxes specifically on fashion industry is a new trend in Tax Law. For instance in the UK, where this branch of industry constitutes a bigger source of carbon emissions than aviation and shipping combined, a penny on every shirt, skirt and stocking could fund better recycling and repairing in this industry, according to a parliamentary report, emitted in February 2019, that recommended new taxes to end the throwaway consumer culture<sup>19</sup>. The cross-party environmental audit committee also proposed tax incentives for companies offering repair services for clothes and urges schools to introduce darning and mending classes. The report called on the government to force all retailers with a turnover of more than £36.000.000 to take responsibility for the waste they created.

## CONCLUSION: FASHION LAW PROMOTED BY ENVIRONMENTAL LAW

The current analysis has highlighted the ecological dimension of the content of Fashion Law, which becomes more and more intense, nowadays, obviously due to the dramatic environmental developments. It goes without saying that the degradation of the environment and particularly the cutting edge of the climate change have not only promoted Environmental Law but have also highlighted Climate Change Law as a new branch, being separated from the general branch of Environmental Law. Climate change developments have led to new International Law rules on the matter, such as the Paris Agreement, and new rules of soft law, which have been adopted as a complementary set of rules. The soft law on the matter has been adopted in two phases, initially in 2016 in combination to COP22, and mainly in 2018, with a reference to COP24.

It is impressive the first point of the 2016 declaration, consisting in the target to conceive as much as possible clothes to last and to be reborn. This standard, being successful in both material and formal terms, is not literally repeated in the 2018 declaration but has been incorporated to it. The target consisting in cycling (and not only in recycling) is a modern, ecological objective for an industry which has traditionally made use of cycling in another sense. The classic concept of cycling is relevant to the development of new aesthetic creations on the basis of components (ideas) already used by

designers in previous fashion products. So, circular economy consists, especially in the fashion sector, cycling number 2 (ecological cycling), besides cycling number 1 (design component cycling).

It is also notable that the wording of the 2018 Charter is somewhat repetitive, not to speak about fundamental rights, such as the right to water, which could be explicitly recognized.

Anyway, Fashion Law has been efficiently promoted by Environmental Law in its wide sense, soft law included. So, if Fashion Law consists to an extent in non-legislative rules, such as contract clauses, it fits in with non-legally binding rules of Climate Law, exemplified by the Charters on the matter. Nevertheless, the significance and the perspective of current Climate Law are not reduced to soft law. Over a period of four months in late 2018 and early 2019, the world witnessed two landmark judicial decisions (*Urgenda v. Kingdom of the Netherlands*, and *Gloucester Resources Limited v. Minister for Planning*) that have the possibility to remake the legal landscape with respect to climate change litigation<sup>20</sup>.

Besides, Environmental Law is promoted in the area of the traditional branch of Tax Law, through the modern legal tool of integration. Environmental taxation constitutes a fundamental economic tool of environmental policies<sup>21</sup>.

Given that Tax Law has been by nature available for non-financial purposes of public interest, it is particularly conducive to success of ecological policies. This is the case of the new trend to reduce the use of lightweight plastic carrier bags. So, taxation is conducive to important and immediate reduction in client demand, not for the commodities to carry but just for the carrier bags. It results that the environment is protected with no negative impact on trade, as it is the case of Greece which opted for this tax measure without being obliged to make use of it, by EU law. Perhaps, even further tax laws on fashion trade for environmental reasons would be positive, as proposed in the UK legal order.

Last but not least, Environmental Law and mainly Tax Law have enriched the content of Fashion Law by adding Public Law rules and institutions, against the classical nucleus of this branch, which consists in Private Law<sup>22</sup>, as already signaled. Anyway, Fashion Law includes Constitutional Law rules, such as those having to do with the fundamental right to get dressed<sup>23</sup>, and is indirectly related to the right to water as the fashion sector constitutes one of sectors with the highest water consumption<sup>24</sup>. Fashion is a complicated sector needing global regulations...

<sup>19</sup> Watts, J., «MPs call for 1p clothing tax and darning classes in schools to cut waste» (2019) *The Guardian International Edition* <https://www.theguardian.com/fashion/2019/feb/19/1p-clothing-tax-darning-classes-schools-cut-waste-mps-call>.

<sup>20</sup> Don C Smith, *Landmark climate change-related judicial decisions handed down in the Netherlands and Australia: a preview of what's to come?* (2019) *Journal of Energy and Natural Resources Law*, Vol.37, 2, 145.

<sup>21</sup> Pilotin, J., *Vers des avancées de la fiscalité environnementale* (2019) *RDP*, 1, 235.

<sup>22</sup> Maniatis, A., «An approach to French Intellectual Property Law with emphasis on fashion» (2019) *Nomiko Vima*, 1155-1163 (in Greek).

<sup>23</sup> R., Abbigliamento, P., *diritto e marginalia*, Barbara Pozzo, Valentina Jacometti (cur.), *Fashion Law Le problematiche della filiera della moda* (2016) Giuffrè Editore, 280.

<sup>24</sup> Jacometti, V., *Diritto e moda sostenibile tra iniziative legislative e iniziative volontarie*, Barbara Pozzo, Valentina Jacometti (cur.), *Fashion Law Le problematiche della filiera della moda* (2016) Giuffrè Editore, 341.