

Jan H. Jans

Individual 'Environmental' Rights in EC Primary Law and the Basic Rights Charter

1. The notion of 'individual rights' is confusing and the use of it should be avoided.
2. I do acknowledge the importance of the environmental principles (Articles 2, 3, 6, 174 EC) for the interpretation of secondary law, but will leave this issue aside.
3. The key issue for me is: which provisions of EC (primary) law can be relied upon by individuals in a Court of law? In other words: which 'environmental' provisions are directly effective? And against whom? Member States or the Community?
4. Nor the 'sustainable development' principle, nor the 'high level of protection' principle in Article 2 ECT, nor Art. 3 par. 1 sub k contain directly effective obligations for the Member States. See *per analogiam* ECJ in *Echirrolles* 3 October 2000, case C-9/99. *A fortiori* the 'sustainable development' principle of Article 2 EU Treaty does not have direct effect.
5. Article 6 of the EC Treaty has no direct legal consequences for the Member States, outside directives/regulations enacted by the Council. *A fortiori* Article 37 of the Charter cannot be relied upon.
6. The objectives and principles of Article 174 EC cannot be relied upon to challenge Member State legislation/actions, outside directives/regulations enacted by the Council. *Duddridge*.
7. The objectives and principles of Article 174 can be relied upon to challenge Community legislation/action. *Betatti*. We should not expect too much of the Court of Justice in this respect. My impression is that the Court is very reluctant to interfere in policy-making of the Council. Perhaps the Court has less problems to review more intense executive powers by the Commission (competition law, state aid, etc.). However, it is very difficult to see who has standing before the ECJ/CFI in the light of the *Greenpeace* case law.
8. *Ergo conclusio*: there is no such thing as an 'environmental guarantee' in the Treaty!
9. There is however an 'internal market guarantee' in the Treaty: the core rules of free movement of goods, persons, services and capital. Environmental protection is, in essence, still being regarded by Community law as an 'exception' to those freedoms. Despite all important improvements in the Treaty I still maintain the view that the constitutional position of 'environmental protection' is sub-ordinate (or at least not equivalent to) the functioning of the internal market.
10. The next ICG should result in a new provision to be inserted in the EC Treaty: 'The Community and the Member States shall secure a high level of environmental protection within the Community; 'All activities which significantly affect a high level of environmental protection shall be prohibited.' Such a provision will create a more level playing-field for the continuing clash between 'internal market' and 'environmental' considerations.