THE INCORPORATION OF HUMAN/FUNDAMENTAL RIGHTS IN THE ENVIRONMENTAL POLICY OF THE EU

Is there or should there be a "right" to a clean environment?

Florian Ermacora

INTRODUCTION

The Convention on the Future of the European Union contemplates inter alia on the creation of a Constitution for the European Union. As the guarantee of human rights and fundamental freedoms is considered to be an indispensable element of constitutions of western democracies – within the frame of the said Convention – an own working group (working group II Charter/ECHR) has been set up, to discuss both the incorporation of the Charter of Fundamental Rights of the European Union (the Charter), proclaimed by the European Parliament, the Council and the Commission in 2000[1], and the accession of the EU to the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).

Article 37 of the Charter stipulates that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. While this Article recognizes the importance of environmental protection as part of EC policies, it does obviously not constitute a right to a clean environment. The ongoing discussions on the adoption of a constitution for the European Union, which would most probably include a legally binding catalogue of human rights and fundamental freedoms, provide another opportunity to focus on the necessity of a (human) right to a clean environment. The present analysis aims at contributing to this discussion.

The formulation of a (constitutional) right to a clean environment needs to be coherent with existing approaches to such right in Community law. Thus, the present contribution focuses on whether and to what extent existing Community law provides for a right to a clean environment or certain facets of such right. Subsequent to this analysis the advantages of establishing an explicit right to a clean environment in the EU constitution (or the EC-Treaties) are discussed. Some requirements as regards the formulation of a right to the environment derived from existing facets of such right in Community law and the presentation of advantages of establishing such right conclude the present contribution.

---

[1] OJ 2000, C 364/01; see on the legal status of the Charter, *Beutler* in *Beutler/Bieber/Pipkorn/Streil*, Die Europäische Union – Rechtsordnung und Politik, 353 et seq.

THE RIGHT TO A CLEAN ENVIRONMENT IN EC-LEGISLATION

Introduction

To a certain extent both EC primary and secondary legislation contain rights to a clean environment. As a preliminary remark it needs to be pointed out that a right to a clean environment has to consist of two elements: On the one hand a provision needs to lay down the substance of the granted right for the individual. This substantive right is, however, of limited value only if the "privileged" individual has no possibility to invoke this right before a court. Consequently, the substantive right needs to be complemented by a procedural right granted to the privileged individual in order to enforce his environmental right.[2] To constitute a (complete) Community right, it suffices that the locus standi is granted before a national court. It is worth noting in this context that the European Court of Justice (ECJ) recognizes access to the courts as one of the essential elements of a Community based on the rule of law and that the Treaty established a complete system of legal remedies.[3]

THE RIGHT TO A CLEAN ENVIRONMENT IN EC PRIMARY LEGISLATION

Introduction

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles, which are common to the Member States, as Article 6 para 1 of the Treaty on European Union stipulates. Furthermore, the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (the Convention) and as they result from the constitutional traditions common to the Member States, as general principles of Community law (Article 6 para 2 EU-Treaty). The said provisions of the Treaty on European Union manifest the respect of human rights and fundamental freedoms at EU level and try to bridge the gap caused by the absence of a binding[4] catalogue of fundamental rights in EU law. The provision of Article 6 confirms the jurisprudence of the ECJ, which established a protection of fundamental rights based on the general

---

[2] Along these lines German and Austrian legal literature defines as "subjective right" a right which establishes a legal claim (see *Felix Ermacora*, Grundriß der Menschenrechte in Österreich, 5).

[3] Case C-294/83 Les Verts v European Parliament [1986] ECR 1339.

[4] The Charter of fundamental rights of the European Union is not binding on the Member States, see *Bruno De Witte*, The Legal Status of the Charter: Vital Question or Non-issue? MJ 2001, page 81 et seq.

principles of law as applied in the Member States and as derived from the Convention.[5]

Consequently, the general principles of law as applied in the Member States and as derived from the Convention need to be assessed in order to establish whether or not a right to a clean environment is already part of EC law. As a detailed research on the existence of a right to a clean environment in national constitutions or the jurisprudence of the national constitutional courts would be beyond the scope of the present analysis, the latter is confined to an assessment of the Convention and the jurisprudence of the European Court of Human Rights (ECHR).

The substantive right to a clean environment in EC primary legislation[6]

The Convention does not contain a right to a clean environment. In various cases the ECHR had, however, to assess, whether and to what extent environmental pollution might violate other rights enshrined in the Convention.

In the case López Ostra v. Spain[7] a family in the Spanish town Lorca suffered from gas fumes, pestilential smells and similar nuisances emanating from a plant, located in a distance of only twelve metres (!) to the house of the family. The Court established that the nuisances in question were not seriously endangering the health of the complainants, thus Article 3 of the Convention ("*No one shall be subjected to torture or to inhuman or degrading treatment or punishment")* was not violated. Conversely, the Court found[8] that "*naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely"*. The Spanish authorities did not take measures necessary to cease the operation of the plant and were thus responsible for a violation of the right of everyone "*to respect for his private and family life, his home and his correspondence*" (Article 8).

In the case Guerra and others v. Italy[9] the ECHR found a violation of Article 8 of the Convention with regard to residents of houses located in approximately one km distance from a plant releasing inflammable gas. The Court stated that the

---

5 Case C-4/73 *Nold*, [1974] ECR, 491 et seq. Along these lines Article 52 para 3 of the Charter foresees that in so far as the Charter contains rights which correspond to rights guaranteed by the Convention, the meaning and scope of those rights shall be the same as those laid down by the Convention.

6 See also A*ndreas Kley-Struller*, Schutz der Umwelt durch die EMRK, EuGRZ 1995, 507 et seq.; *Richard Desgagné*, Integrating environmental values into the ECHR, AJIL 1995, 263 et seq.

7 Judgment 41/1991/436/515 of 9 December 1994.

8 Note 51 of the judgment.

9 Judgment 116/1996/735/932 of 19 February 1998.

direct effect of the toxic emissions on the applicants' right to respect for their private and family life meant that Article 8 was applicable. Both the applicants and the Commission for Human Rights argued that Italy did not only infringe Article 8 but also Article 10 of the Convention, according to which "*everyone has the right to freedom of expression. This right shall include freedom ... to receive ... information...*". In their view this Article had to be construed as conferring an actual right to receive information, in particular from the relevant authorities, on members of local populations who had been or might be affected by an industrial or other activity representing a threat to the environment.[10] The Court did, however, not follow this argument.

Against this background and earlier jurisprudence regarding noise disturbances by planes[11] it is settled case law of the ECHR that the right to a healthy environment is included in the concept of the right to respect for private and family life.

The procedural right to a clean environment in EC primary legislation

It should be reiterated firstly that the substantive rights to a clean environment described in the precedent imply – according to the Convention – the possibility of enforcement within the Member States of the Council of Europe. Hence, also in EU-Member States the enforcement of these rights does not depend on whether or not EC primary law provides for a respective locus standi. The following explanations only relate to the locus standi of individuals who are interested in challenging acts of Community institutions:

Access to justice explicitly granted by EC primary law is extremely restricted. Article 230 para 4 EC Treaty limits the access to justice as regards acts of Community institutions to those who are directly and individually concerned by the respective acts. The criterion of individual concern had so far been understood by the ECJ in such a restrictive way[12] that the actual existence of a right for an individual played a minor role regarding the access qualification.[13] This situation will fundamentally change if the ECJ follows the line of the Court of First Instance as expressed in case T-177/01, according to which the criterion of individual concern will be easier fulfilled ("a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his

---

[10] Note 52 of the judgment 116/1996/735/932.

[11] See, for example, the judgment of 21 February *Powell* and *Rayner* against the United Kingdom.

[12] ECJ, C-52/62, *Plaumann,* [1963] ECR 95.

[13] Also in case ECJ, C-321/95 P, *Stichting Greenpeace,* [1998] ECR I-1651, the lacking individual concern of the complainants led the ECJ to dismiss the appeal of private individuals against the order of the Court of First Instance (T-585/93, [1995] ECR II-2205) declaring their application against a Commission decision to grant financial support to the construction of energy generation plants in Spain inadmissible.

legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him. The number and position of other persons who are likewise affected by the measure, or who may be so, are of no relevance in that regard"). In the case the ECJ shares the view of the Court of first instance, in future more importance will be attached to the question, whether an individual is actually concerned by a given measure of an EC institution – a question hardly addressed by the Court so far.

THE RIGHT TO A CLEAN ENVIRONMENT IN EC SECONDARY LEGISLATION

The substantive right to a clean environment in EC secondary legislation

Introduction

A general and explicit right of individuals to a clean environment has not been incorporated into EC secondary legislation so far. Certain provisions of EC secondary environmental legislation provide, however, for explicit rights of individuals at least to certain aspects of a clean environment. Other provisions are construed by the ECJ as providing such rights of individual.

Examples for explicit stipulations of rights of individuals

The most obvious example for a right of individuals within EC environmental legislation to – at least one aspect of a clean environment – is the right to environmental information as set out in Directive 90/313/EEC on the freedom of access to information on the environment.[14] Comparably explicit is the right of the public, provided by Article 6 para 2 of 85/337/EEC on the assessment of the effects of certain public and private projects on the environment,[15] to receive any request for a development consent and any information on the project gathered under Article 5 of the said Directive. Another example for Community environmental legislation granting explicit rights to individuals is the upcoming Directive on Waste Electrical and Electronic equipment, which will grant the holders of electrical or electronic waste from private households explicitly the right to return such waste free of charge.[16]

ECJ jurisprudence on rights of individuals to a clean environment

The ECJ searched for rights of individuals in provisions of EC (environmental) Directives both in the context of the requirement of Member States to

---

[14] OJ 1990, L 158/56.

[15] Directive 85/337/EEC as amended by Directive 97/11/EC, OCJ 1997, L 73/5. See also General Advocate Elmer, C-72/95, *Kraaijeveld,* [1996] ECR I-5431, note 70, on the individual right set out in this Article.

[16] Article 7 para 1 of the Proposal for a Directive on Waste Electrical and Electronic Equipment (COM2000/347 final), OJ 2000, C 365 E/184.

implement provisions of Directives into national law and (at least until a certain time) under the direct effect doctrine.

Jurisprudence on the necessity to transpose obligations of EC environmental Directives into national law

In case C-131/88 the ECJ stated that the Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances[17] seeks to protect the Community's groundwater in an effective manner by laying down specific and detailed provisions requiring the Member States to adopt a series of prohibitions, authorization schemes and monitoring procedures in order to prevent or limit discharges of certain substances. The purpose of those provisions of the Directive was – according to the ECJ – to create rights and obligations for individuals. The Court found that the fact that a practice is consistent with the protection afforded under a Directive does not justify failure to implement that Directive in the national legal order by means of provisions which are capable of creating a situation which is sufficiently precise, clear and open to permit individuals to be aware of and enforce their rights. The assumption of the Court that Directive 80/68/EEC confers enforceable rights to individuals is (at least for German and Austrian lawyers[18]) surprising as none of the stipulations of the said Directive mention individuals let alone granting them explicitly an individual right to clean groundwater.

In subsequent cases[19] the Court further motivated, why implementing national acts need to be binding, granting individuals thereby an enforceable right: Article 2 of the EC legislation at stake in this case, Directive 80/779/EEC on air quality limit values and guide values for sulphur dioxide and suspended particulates[20], was imposed "in order to protect human health in particular". Thus, the Court suggests that whenever the exceeding of the limit values could endanger human health, the persons concerned must be in a position to rely on mandatory rules in order to be able to assert their rights. From the earlier ruling in case C-131/88 it could, however, be concluded that an explicit reference to the protection of human health in water or air Directives, which set certain limit values, is not necessary to assume the provision of individual rights by such Directives.

Already from this jurisprudence it could be derived that the ECJ does not require the explicit attribution of certain rights to clearly defined individuals to consider rights for individuals as granted by Community environmental legislation. The general context of a rule is obviously sufficient to conclude that rights of individuals to aspects of a clean environment exist.

---

17 OJ 1980, L 20/43.

18 See *Winter*, Rechtsschutz gegen Behörden, die Umweltrichtlinien der EG nicht beachten, Natur + Recht 1991, 453, 455, as regards a comparison of individual rights under German law (*"Drittschutz")* and under EC law.

19 Compare C-361/88, [1991] ECR 2567, note 16.

20 OJ 1980, L 229/30.

Jurisprudence on the direct effect of EC law

In the case *Kraaijeveld*[21] the Court stated that as regards the right of an individual to invoke a Directive (and of the national court to take it into consideration) it would be incompatible with the binding effect attributed to a Directive by Article 249 EC-Treaty to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by Directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts. And further: *"Pursuant to the principle of cooperation laid down in Article 5 of the Treaty, it is for national courts to ensure the legal protection which persons derive from the direct effect of provisions of Community law."* These statements concerned essentially the obligation for Member States to make those projects, which are – by virtue inter alia of their nature, size or location – likely to exhibit significant effects on the environment, subject to an assessment with regard to their effects as set out in Article 2 para 1 Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment[22]. In the *Flughafen Bozen* case[23] the Court was more precise as to what individuals could obtain from the direct application of the said provisions: "*individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions."*

The cited jurisprudence corresponds to the general ECJ case law on the direct effect according to which – in order to potentially exhibit direct effect – the provision in question needs to confer "rights" on individuals.[24] The precedent examples of Court rulings on the direct effect illustrate that the respective "rights" cover any favourable position, any legal interest, which the legal system intends to protect or effectively does protect.

One general precondition to provisions, to which direct effect has been granted, and thus a precondition for the existence of a human right in EC environmental legislation, is their unconditional and precise character.[25] It could, however, be argued that another element of the direct effect doctrine contradicts the qualification of the respective rights as human rights: Legal literature attributes to human rights – as far as factually possible – effects between private parties

---

[21] C-72/95, [1996] ECR I-5403, note 56 et seq.

[22] OJ 1985 L 175/40.

[23] C-435/97, [1999] ECR I-5613, note 71.

[24] See *Krämer*, Focus on European Environmental Law, 86, citing the relevant ECJ jurisprudence. This requirement was, however, not upheld in the *Großkrotzenburg* case C-431/92, [1995] ECR, I-2189. See *Epiney*, Anwendbarkeit und Wirkung von Richtlinien, DVBl. 1996, 409 et seq.

[25] Compare C-236/92 *Cava* [1994] ECR I-483.

and not only against the state. If this element was a precondition to the existence of human rights, those rights of individuals in EC environmental legislation, which the ECJ jurisprudence derives from the application of the direct effect doctrine, might not be qualified as human rights, as under the direct effect doctrine provisions of Directives or the EC Treaty could not be applied against third private parties.[26]

Article 4 of the waste framework Directive 75/442/EEC

The Tribunale Adminstrativo Regionale, Lombardy, submitted in the so called *Cava* case[27] questions which touch upon the core point of the present contribution: Does Community environmental law, in particular Article 4 of Council Directive 75/422/EEC of 15 July 1975 on waste, grant to individuals 'subjective rights' ('diritti soggettivi') which the national court is required to protect? The Court abstained from a general answer to this question but limited his judgment to the provision of Article 4 of Directive 75/442/EEC on waste[28], which provides:

"*Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment, and in particular:*

- *without risk to water, air, soil and plants and animals,*
- *without causing a nuisance through noise or odours,*
- *without adversely affecting the countryside or places of special interest."*

In the context of subjective rights of individuals the Court referred to earlier judgments[29] on the direct effect of provisions of Directives and confirmed thereby implicitly the close relation between such subjective rights and rights, which could be invoked before State authorities under the direct effect doctrine. In the present case, however, the Court found that Article 4 only indicates a programme to be followed and sets out the objectives which the Member States must observe in their performance of the more specific obligations imposed on them by other stipulations of the Directive. That provision did according to the Court not lay down any particular requirement restricting the freedom of the Member States regarding the way in which they organize the supervision of the activities referred to therein but that that freedom must be exercised having due regard to the objectives mentioned in the third recital in the preamble to the directive. "*Thus, the provision at issue must be regarded as defining the framework for the action to be taken by the Member*

---

[26] C-152/84, [1986] ECR 723.

[27] C-236/92 *Cava* [1994] ECR I-483, note 8.

[28] OJ 1975, L 194/39.

[29] Such as C-8/81, *Becker*, [1982] ECR, 53.

States regarding the treatment of waste and not as requiring, in itself, the adoption of specific measures or a particular method of waste disposal. It is therefore neither unconditional nor sufficiently precise and thus is not capable of conferring rights on which individuals may rely as against the State."

The procedural right to a clean environment in EC secondary legislation

As summarized above individuals can rely on those provisions of environmental Directives, which – according to the jurisprudence of the ECJ – are of direct effect in the Member States. This concept suggests that individuals in Member States do not need to recur to national legal theories on the locus standi to enforce the respective rights granted by Community law. For the time being the direct effect provides the only Community wide harmonised possibility for individuals to invoke Community environmental legislation enshrined in Directives before national courts. The upcoming Proposal for a Directive on Access to Justice in Environmental Matters, implementing the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) should change this situation fundamentally[30]: According to the chapter "Legal Standing" of the working document further specified members of the public shall be entitled to have access to environmental proceedings. Those members include members of the public concerned, who have a sufficient interest or who maintain the infringement of a right, and qualified entities, without having to maintain the infringement of a sufficient interest or of a right under certain conditions.

THE ADDED VALUE OF A PROPER RIGHT TO A CLEAN ENVIRONMENT

The precedent chapter shows that both international law incorporated into EC law via the fundamental principles of the EC Member States and genuine EC environmental legislation contain at least facets of a right to a clean environment. While therefore the formulation of such human right in the frame of an EU-Constitution (or the Treaties) would not introduce a fundamentally new concept into Community law, it would exhibit a number of advantages. Two of these advantages could be summarized as follows:

First, from the legal technique point of view the formulation of a right to a clean environment would concentrate the various aspects of such right, which are currently rather dispersed in EC law. This would give the legislator the

---

[30] Compare "Second Working Document" Access to Justice in Environmental Matters of 22.07.2002 prepared by Unit A.3 of DG Environment of the EC Commission (http://www.europa.eu.int/comm/environment/aarhus/index.htm.

chance to take the initiative on this important issue back from the courts, where in particular the ECHR gradually develops the concept.[31]

Incorporating a human right to a clean environment into a EU constitution would most probably make individuals more sensitive as regards the protection of their right. This awareness could in particular contribute to an improved monitoring of the implementation of environmental legislation in national law (and practice) by the (privileged) individuals.

THE FORMULATION OF A HUMAN RIGHT TO A CLEAN ENVIRONMENT

Those aspects of a right to a clean environment established in existing EC legislation clearly show the link between a right to a clean environment and interests of humans: The ECHR takes the human right to respect for private and family life as point of departure for the development of its jurisprudence on a right to a clean environment. Similarly, the ECJ talks about rights granted to individuals by EC environmental legislation. This anthropocentric approach of a right to a clean environment is understandable as only humans could be subject of (human) rights.

Taking another principle of the traditional human rights protection system, only those persons should be entitled to enforce a right to a clean environment who are concerned by the violation of such right. A fundamental right to a clean environment which neglects the need of the existence of some – at least: possible – impairment of the legal sphere of individuals by the respective act of environmental pollution would hardly fit into the traditional system of human rights.[32]

This leads to the essential question how close the link between an interference with the environment and the interests of an individual needs to be, in order to consider the individual as violated in his right to a clean environment. The ECHR jurisprudence is quite restrictive on this issue: In the case López Ostra v. Spain the Court obviously required certain indications that the emissions of the plant in question did at least endanger the health of people living in the neighbourhood (distance of 12 meters) of the plant (although however a serious danger for health was not required to find a violation of a human right). Also in the case Guerra and others v. Italy the applicants affected by the emissions from the plant lived approximately one kilometre away from the concerned company. And in this case the Court explicitly pointed out that the effect of an act of environmental pollution on the fundamental rights of an individual must be direct, in order to violate these rights. It could be concluded that already an indirect effect of environmental pollution leading to an impairment of the

---

[31] Compare the separate opinion of judge Costa in the case Hatton and others v. the United Kingdom of 2 October 2001 (Application no. 36022/97).

[32] On the question of an anthropo- or ecocentric approach of environmental policy see *Epiney*, Umweltrecht in der Europäischen Union, 8, with further references.

health of individuals might not fall any more under the ambit of the respective established human right.

Against this background the added value of a genuine right to a clean environment compared to the protection of the clean environment via established human rights would be constituted by loosening the necessary link between personal individual interests and the interference with the environment. Also, the requirements to prove a link between the pollution and the actual impairment of human interests should not be too stringent. This approach would be in line with the fundamental principles of environmental policy, according to which precautionary and preventive action should be taken, environmental damage should as a priority be rectified at source and the polluter should pay.[33] These principles could rather be implemented if the individual was in the position to claim protection against acts of environmental pollution which might also indirectly lead to the impairment of other fundamental rights, such as the right to life or to respect for private and family life. The formulation of the environmental right should ensure that such right comes into play before any direct infringement of other fundamental rights takes place.[34] This formulation of a right to a clean environment should, as pointed out above, not dispense the concerned individual to prove some causal link between the pollution/degradation of the environment and the possible impairment of other fundamental rights.

Along the same lines, under the existing rights enshrined in the Convention pollution of the environment could only be judicially challenged by individuals living in the vicinity of the polluting activity. Pollutions occurring in remote areas or dispersed pollution could hardly be tackled on the basis of the established rights of the Convention. Thus a genuine right to a clean environment would have to widen the locus standi as regards legal measures against acts of pollution.

As the ECHR pointed out in Case of Guerra and others v. Italy essential instruments of environmental policy, such as the right to environmental information, could not be derived from known rights set out in the Convention, such as the freedom of expression (Article 10). It is questionable whether the interpretation of a right to a clean environment would be so broad as to consider individual rights, which are also of importance for the protection of the environment, as being part of the right to a clean environment. Such rights, which contribute to the awareness of individuals as regards the pollution of the environment and subsequent to this an impairment of their established

---

[33] Article 174 EC Treaty.

[34] Along these lines the European Commission of Human Rights argued in the case Guerra and others v. Italy (note 52) that considering Article 10 of the Convention (Freedom of expression) as granting a right to environmental information "*had a preventive function with respect to potential violations of the Convention in the event of serious damage to the environment and Article 10 came into play even before any direct infringement of other fundamental rights, such as the right to life or to respect for private and family life, occurred.*

fundamental rights, should thus be explicitly covered by a right to a clean environment.

A right to a clean environment as such would be of limited value if it was not enhanced through a right to appropriate enforcement. In this sense a right to a clean environment does not only comprise the substantive right that e.g. certain parts of the environment are not jeopardized, but also the access to justice for the individual, who complains about the infringement of this right. This would, however, not need to be explicitly stated in the course of formulating a right to a clean environment – the possibility to enforce a human right is an implicit precondition of any human right.

Other requirements to the formulation of a constitutional right to a clean environment could be derived from the ECJ jurisprudence developed under the direct effect doctrine. Accordingly, to sustain a right to the protection of the environment its content should be sufficiently precise.[35] However, it could be derived from the ECJ jurisprudence that already in existing Community law the explicit attribution of certain rights to clearly defined individuals is not required, in order to consider rights for individuals as granted by Community environmental legislation. The general context of a rule is obviously sufficient to conclude that rights of individuals to aspects of a clean environment exist.

---

[35] See *Calster; Berwin, Deketelaere, Andersen*, Amsterdam, the Intergovernmental Conference and Greening the EU Treaty, European Environmental Law Review January 1998, 24.