The Environmental Law and Property Guarantee in Portugal

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1. Introduction

Not all environmental resources can be appropriated. But for those which can really be appropriated, the environmental law imposes limits on the rights of use and fruition. In this paper we will deal with two issues: property ownership and property use.

1. Under the topic of "**ownership**" we will answer the question "who owns natural resources?" or, in other words, "are the environmental goods public or private?" We will explain:
- the national constitutional and legal regime of ownership
- the transformations of private goods into public goods, by means of expropriations.

2. Under the topic of "**use**" we will answer the question "what are the limits to the *ius utendi et fruendi* of natural resources?" or, in other words, "what can the owner or user of natural resources do?" (Considering that of course, the "ius abutendi" is out of question).

3. Finally, under the topic "**argument**" we will see how the fundamental right to property has been opposed to other constitutional rights.

Before proceeding, it is worth looking at the fundamental right to the environment such as it is shaped in the Constitution to see how it can guide decisions on conflicts between the right to environment and property rights.

> Article 66 Environment and quality of life
> 1 . Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it.
> 2. To ensure the right to environment in the context of sustainable development, the State must, through appropriate bodies and with the involvement and participation of citizens:
> a) prevent and control pollution and its effects, and all harmful forms of erosion;
> b) organize and promote spatial planning , with a view to correct location of activities, balanced socio -economic development and enhancement of the landscape;
> c) create and develop reserves and natural and recreation parks, classify and protect landscapes and sites, ensure the conservation of nature and the preservation of cultural assets of historical or artistic interest;
> d) promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability, respecting the principle of solidarity between generations;

e) promote, in collaboration with local authorities, the environmental quality of villages and urban life, particularly in what concerns architecture and the protection of historic areas;
f) promote the integration of environmental objectives in various sectors of policy;
g) promote environmental education and respect for environmental values;
h) ensure that the fiscal policy renders development, environmental protection and quality of life compatibile.

2. Ownership: who owns the natural resources?

According to article 84 of the Constitution, the following natural resources belong to public property of the State:
a) The territorial waters, including adjacent seabed, as lakes, ponds and water streams (navigable or floatable), including the water beds;
b) The atmosphere above the aerial limits of property;
c) Mineral deposits, mineral-water sources, natural underground cavities (other than rocks, common soil and other materials commonly used for construction);
The law on Public real estate property establishes that public property cannot be sold or in any way transferred and even less acquired by possession (usucapio)[1].

Other environmental goods, like forests, quarries or green areas, can also be owned by the State or other territorial authorities but are not public property. In fact, the State, the Autonomous Regions[2] and the Municipalities can be owners of private possessions submitted to a legal regime similar to the private property. These goods can be sold, rented, lent, exchanged, etc. The usual owners of these goods are the citizens (individuals, associations, corporations).
For other goods, such as animals, private property is the rule[3].
Lastly, other environmental goods (such as air, light or biodiversity) are not appropriable.

2.1. The case of water

Considering the special geographic situation of Portugal, a narrow rectangular strip of land[4] in front of the Atlantic, subject to severe coastal erosion[5], the importance of the delimitation of water property is huge.
After decades of uncertainty, in 2005 the law (Decree-law 54/2005) clarifies the ownership criteria for water.
The Public maritime domain belongs exclusively to the State and comprises[6]:
a) coastal and territorial waters;
b) The internal waters subject to tidal influence, rivers, lakes and ponds;
c) The bed of the coastal and territorial waters and internal waters subject to tidal influence;
d) The adjacent seabed of the continental shelf, covering the entire exclusive economic zone;
e) The margins of coastal waters and internal waters subject to tidal influence.

The Lake and river public domain[7] comprises:
a) Streams and beds of navigable or floatable water, as well as the respective banks belonging to public entities;
b) Lakes and beds of navigable or floatable water, as well as the respective banks belonging to public entities ;
c) Streams of non-navigable and non-floatable water (including beds and margins), as long as they are located on public lands, or which are recognized by law as usable for public purposes such as the production of electricity, irrigation, or extraction for public consumption;
d) Canals and waterways of navigable or floatable water, or built by public entities;
e) Reservoirs created for public purposes, including electricity generation or irrigation, including the beds;

[1] Article 18-20 of the Law on Public Property (Decree-Law 280/2007 of the 7th August). There are cases of actions brought against the court asking for ownership recognition after decades of good faith possession of coastal public property. The decision of the court nevertheless is undoubted refusal (Supreme Court of Justice decision of 26 February 2013 on case 41/06.4TBCSC.L1.S2).
[2] There are two autonomous regions: Madeira and Azores, and both are peripheral islands featuring the Macaronesia bio-geographic region.
[3] For an interesting decision on pigeon shooting see case 399/10 of 23 September 2010.
[4] Continental Portugal has 560km long and 220km wide. The global territorial area is around 92 200 km2, the coastal line is 1230 km long in the continent, 667 km in the Azores, and 250 km in Madeira.
[5] See annex I.
[6] Article 3 and 4 of Law 54/2005 of the 15th November, on ownership of water.
[7] *Idem,* article 5 and 6.

f) Lakes, beds and banks of navigable or floatable water, formed by nature on public lands;
g) Lakes and ponds surrounded by private property or existing within private property, whenever fed by public water;
h) Streams of non-navigable and non-floatable water emerging in private property, as long as it flows into the sea or other public waters.

The remaining public water comprises[8]:
a) Water born and existing groundwater on public land or buildings;
b) Water emerging in private property (including rainwater), after transposing the boundaries of private land, as long as it flows into the sea or into other public waters;
c) Rainwater falling on public lands or flowing into them;
e) Water from public fountains, public wells and public reservoirs, including those continually being used by the public or operated by public entities;
Considering climate change effects (storm tides and coastal erosion) two situations are becoming increasingly important: receding waters and advancement of waters.
In case of receding waters[9], the public beds that are left dry do not add to surrounding private property but rather remain integrated in the public property. Exceptionally, in cases of huge recession the water bed automatically transforms into private property of the State.
In case of advancement of waters[10], the soil covered by water becomes automatically integrated in the public property of the State and the owners of surrounding private property lose their property without any right to compensation. Exceptionally, if the waters do not cause any corrosion of the land, the respective owners retain their right of ownership, but the State can expropriate these parcels. In this case there will be compensation.

In areas threatened by the sea (whenever it is technically proven that the sea level will rise and the sea will cover private land located beyond the margins[11]), as well as in areas threatened by floods[12], the Government may declare the area in question as "adjacent area". The extension of the "adjacent area" is defined by a ministerial decree and in the case of flood the outer limit is the maximum height reached by the largest flood with a return period of 100 years or, if there are no records for flooding, the largest flood which can be remembered, or at least 100m for each side of the river. As a consequence, the adjacent areas remain on private property, but can be subject to public utility restrictions such as the prohibition of:

- cutting or destroying vegetation or changing the natural topography (except for traditional agricultural activities in farms);
- creating dumps, scrap yards or other deposits of materials;
- constructing buildings or works which might obstruct the free movement of water;
- dividing the property below the minimum areas admissible for agriculture.

Any authorization breaching the mentioned prohibitions is null and void.

Finally, a transitional regime for historical possession of land adjacent to public water was conceived to settle likely disputes caused by the legal regime adopted in 2005. It is possible to recognize the private ownership of parcels of sea margins and river banks (streams of navigable or floatable water) which, according to the legal criteria, should be public. This possibility depends on bringing an action before a court, until January 1 2014[13], for the recognition of continuous private ownership. For the purpose the individual must prove, by means of written documents, that such land was obtained legally, for private or collective use, before a royal decree on public ownership (adopted in December 31, 1864), or, in the case of steep cliffs, before the entry into force of the first civil code (22 March 1868)[14].

2.2. Expropriations

The right to private property as well as its transmission in life or after death are guaranteed by the constitution[15]. The fundamental law also declares that requisitioning of property or expropriation for public purposes is only possible in the cases prescribed in the law and upon just compensation. Is spite of this Portugal has been condemned by the European Court of Human Rights several times in cases related with property and takings: expropriation (nationalization) without

[8] *Idem,* article 7 and 8.
[9] *Idem,* article 13.
[10] *Idem,* article 14.
[11] Idem, article 22.
[12] *Idem,* article 23.
[13] *Idem, a*rticle 15.
[14] The first date corresponds to the adoption of a royal decree on public ownership and the second one is the entry into force of the first civil code.
[15] Article 62 of the Constitution.

compensation, insufficient compensation, late compensations were the claims against the Portuguese State, accepted by the European Court of Human Rights.

In the code of expropriations in force[16], a just compensation shall be granted not only in cases of expropriation of full property[17] but also in cases of expropriation of limited rights[18] like usufruct, surface right, lease[19], etc. or even for the interruption of commercial, industrial, liberal or agricultural activity[20].
The just compensation for loss of property is to be calculated on the basis of soil classification.
There are two types of soil: soil suitable for construction and soil for other purposes[21].
There are 5 alternative criteria to know if the soil is suitable for construction:

- having road access;
- being connected to water, electricity and sanitation network;
- being located in an urban area and in spite of being connected only to one of the previous networks;
- being classified as such in a land management plan;
- having a valid building permit;

Having one of the above mentioned features is enough to classify the soil as suitable for construction.
In the calculation of the compensation it is important to know that the fair compensation does not aim at "compensating the benefit achieved by the expropriating authority but rather offsetting the harm caused to the owner by the expropriation"[22]. The value to be paid corresponds to the actual and present value of the good according to its actual or possible destination considering a normal economic use, and taking into account the circumstances and conditions existing at the date of the declaration of public utility[23].
If there are no other ways to infer the value, then the value of the soil will be 15% of the value of the construction admissible plus some additional percentages (1% if it has water, 1,5 if it has waste water collection system, 1% gas, etc.).
As for soil for other purposes the value is an average of the prices for similar goods in the neighbourhood in the last 3 years, considering the parameters set out in the territorial plans applicable. Whenever it is not possible to apply this criterion, the calculation will be based on alternative criteria such as the nature of the soil and subsoil, the configuration of the terrain, the actual or possible productivity, the predominant culture and climate of the region or other objective circumstances likely to influence the calculation[24].

However, this law is about to change. A new code of expropriations is under preparation and the draft version of the law already shows some important innovations.

1. It defines the concept of "sacrifice expropriation". This concept was first identified and defined by the doctrine and later applied in the courts (also called "planning expropriations") but had no legal definition. In the future, "sacrifice expropriation" will be the result of a legal act, an administrative regulation or an administrative act which, without declaring the public utility, precludes the current use of the good or precludes any kind of use of the property, in cases where this is not being used, or annuls its economic value[25].
2. It regulates the regime for expropriation of concessions or privileges. When the concession contract is terminated by the initiative of the grantor, all the infrastructures essential to the proper functioning of the service may be expropriated.
3. It regulates the regime of public servitudes. In some cases, instead of expropriation, a public servitude may be enough to fulfill the public needs. In that case the servitude will give rise to compensation when the value or productivity of the good is actually diminished.
4. It regulates the regime of public utility restrictions. In some cases not even a public servitude is necessary and a public utility restriction may be enough to fulfill the public needs. There will be compensation in the same cases of the sacrifice expropriation (when the current use or any kind of possible use of the good

[16] Law 56/2008 of the 4th September.
[17] A very debated case in Portugal which will probably arrive at the European Court of Human Rights is the case of the demolition, for esthetic reasons, of a huge apartment block in the middle of an old city (see pictures in annex II) where 300 people are living. Urban landscape was the argument which lead to the approval of the decision to demolish. Case 775/13 of 15 May 2013.
[18] Article 32 of the code of expropriations.
[19] *Idem,* article 30.
[20] *Idem,* article 31.
[21] *Idem,* article 25.
[22] *Idem*, article 23.
[23] *Idem*, article 23.
[24] *Idem*, article 27.
[25] *Idem,* article 1/3 and article 8.

is precluded or the economic value is annulled) or of the public servitudes (the value or productivity of the good is actually diminished).

3. Use: what are the limits to the *ius utendi et fruendi* of natural resources?

As the Supreme Administrative Court said in 2009, "the right to private property is not an absolute right, and nothing prevents the law from imposing constraints on its exercise (…), provided that those restrictions do not outrage the constitution, and provided that the restrictions are limited to 'the extent necessary to safeguard other rights or interests also constitutionally protected'"[26]. In fact, environmental law imposes obligations both on the owner and on the user of natural resources, be it public or private.
Limitations on the right to use and enjoy one's property, duties to perform activities and to tolerate third parties activities are becoming more frequent. There is even the possibility of criminal sanctions against the owner in case of intentional destruction of important natural values present in the property[27].
Some examples are the prohibitions to develop agricultural activities using certain techniques like drainage of wetlands or aerial spraying of chemicals[28] (fertilizers or biocides), prohibitions to fish, hunt or cut down trees[29], constraints to the installation of radio antennas (transmitters)[30], the duty to clean the forests (remove the underwood and excess vegetation to avoid forest fires), or legal activities required for environmental purposes, such as duty to declare (waste production, substantial changes in an occupational activity), to register (GMO production), to notify (mandatory notification of plagues, like the wood nematode, hives of African bees, or infestations of palm beetles), to provide guarantees (such as insurances, securities or bank deposits for the purpose of ensuring future environmental liability), to pay administrative fees[31], to cooperate during environmental inspections and audits to the productive infrastructures, to tolerate access to the margins and water of the reservoir of a dam[32].

In some cases the limits are directly associated with the classification of the soil (in administrative regulations or plans) for nature conservation and for other socio-ecologic purposes.

It is the case of:

a) Natura 2000 sites, SPAs, or SACs, areas belonging to the national network of conservation areas (national park, natural park, natural monument, protected landscape) and
b) national ecologic reserve areas.

Both in the European and in the national classified areas, activities disturbing the species or affecting considerably the habitat are forbidden. Exceptionally, in accordance with EU law, some activities may be authorized provided that there are no alternatives and that there is a major public interest behind the activity.

The national ecologic reserve includes all the areas submitted to a special protection regime, considering their high ecological value and sensitivity as well as their intense exposition to natural risks[33].

The objectives of the national ecologic reserve are:

[26] Case 403/2008, decision of the 4th February 2009 on a partial overlap of a touristic resort and a nature conservation area, the Natural Park Sintra-Cascais.
[27] In 2013 and 2014 two separated actions (administrative and criminal) were brought against a real estate developer for the intentional destruction of vegetation in a wetland in the south of Portugal, where he intended to build a touristic resort. He was condemned in both cases and obliged to restore the vegetation.
[28] Supreme Administrative court case 370 of 10 February 2004.
[29] Supreme Administrative Court Case 371/10 of 22 November 2011 on the cutting of cork trees.
[30] Supreme Administrative Court Case 719/09 of 28 January 2010.
[31] Supreme Administrative Court Case 1600/13 of the 3 April 2014, on the payment of fees for the installation of advertising posters in private property, near the roads. The purpose of the law, by establishing the fee, is to protect the environment and the landscape.
[32] This is the case 220/05 of 30 September 2009 on an interdiction of building vertical barriers in a private property bordering with a public artificial water reservoir (dam). The vertical barriers (walls or fences) would hamper the access of tourists to the margins and to the water.
[33] Article 2 of the Decree-Law 166/2008 of the 22nd August.

- to protect natural resources like water and soil as well as to safeguard biophysical coastal and terrestrial hydrologic cycle processes, ensuring environmental services, which are essential to the development of human activities;
- to protect the recharge of aquifers, the risks of sea and river flooding, of soil erosion and mass movements, contributing to the adaptation to climate change, preserving environmental sustainability and the safety of persons and property;
- to contribute to the ecological coherence and connectivity of the Fundamental Network of Nature Conservation Areas
- to contribute to the implementation of the priorities of the EU Territorial Agenda in ecological areas and to the trans-European risk management.

The national ecologic reserve (NER) includes three kinds of areas: areas of coastal protection, areas relevant for the sustainability of the terrestrial hydrological cycle and areas of natural hazards.
For the conciliation of property rights with the protection conferred by the NER there is a decree which goes into the minimal detail to define with absolute precision[34] which activities are allowed and which are not allowed.

Some of the limitations imposed by nature conservation laws and by the ecologic reserve are so huge that are tantamount to expropriations. In that case, the rules on compensation will be applied.
Others are so weak that do not give rise to any compensation. For instance, when only certain limited activities are interdicted while several others are still admitted.

That is also the case of strong interdictions (no construction and no extractive activities are admitted) in sites whose natural features are such that it would not be normal to carry out any economic use. It is the case of sloping areas, river banks, coastal areas, or any areas having a geologic substrate or a morphology which makes them unsuitable for most uses (agriculture, construction…).

Considering that the compensation depends on the normal use of the soil, there was a big doctrinal discussion two decades ago on whether the owner's right automatically includes the right to build (*ius aedificandi*) or not. In several decisions the Supreme Administrative Court denied the recognition of *ius aedificandi* as a natural right of the owner[35].
Besides, it is important to consider the natural features of the soil: there are soils with certain characteristics ─ instable, wet, sloping, and fluid ─ which are not suited for construction. In these cases the fact that construction is not admissible does not involve any compensation rights for the owner, considering what the authors call the "situational binding of the soil"[36]. This means that it's the owner who has to bear the burden of a "bad" location.

Still, in what concerns the territorial administrative authorities (municipalities) where these areas are located, the 'ecological burden' can be compensated *via* the distribution of the income of certain taxes (mostly VAT and income tax). According to the law on local finances[37] there are financial transfers from the State to the municipalities to provide them with the financial conditions necessary to the accomplishment of their duties. This transfer is proportional to the population of the municipality but also to the municipal area consecrated to nature conservation[38].

[34] This legislative technique was the consequence of allegations of corruption in the application of the previous national ecologic reserve law, dating back to the nineties.
[35] For instance case 621/07 (decision of 04.12.08), case 390/06 (decision of 22.3.07); case 883/03 (decision of 14.12.2005); case 663/03 (decision of 18.2.2004); case 48.179 (decision of 7.3.2002), case 443/02 (decision of 9.10.2002), case 47.859 (decision of 3.12.2002); case 33 857 (decision of the 5.12.96).
[36] In the words of the Supreme Administrative Court there will only be compensation rights if there are significant constraints equivalent to an expropriation of preexisting and legally consolidated rights to use the soil (case 996/06 of 20 June 2013 case 412/10 of 28 September 2010).
[37] Article 28.
[38] Article 32 goes further into the details of the transfer: 5% equally is distributed for all cities; 65% in proportion to the population, 25% in proportion to the area weighted considering the altimetry and 5% in direct proportion of the area affected to the Natura 2000 network and other protected areas. For municipalities with more than 70% of the territory dedicated to Natura 2000 network and other protected areas, the values are 20% considering the altimetry and 10% in direct proportion of the Natura 2000 and conservation area.

4. Property as an argument

4.1. Public property use and environmental protection

According to the law on public domain[39], the administration has the duty to control and stop any abusive behaviour, non-authorized uses[40], or in general, any uses which may affect the public interest performed by the public domain and restore the previous situation. This administrative injunction can be coercively imposed, if necessary.
One of the constitutional tasks of the state is to protect and promote the cultural heritage of the Portuguese people, protect nature and the environment, conserve natural resources and ensure proper planning[41].

Nevertheless, the individuals have the right to use the public domain in two ways[42]: in common and non-exclusive use (free of charge or paying), or in private use.
In fact, the individuals may acquire rights for private use, management or operation[43] of the public domain by means of a license or concession. This right is always limited in time and requires the payment of fees.
The termination of the concession before the expiring date, for reasons attributable to the grantor, gives the operator the right to compensation for damages[44]. The compensation shall correspond to the costs incurred that are not yet amortized and the investments in goods inseparable from the public domain or in goods that will be too deteriorated after removal. These goods will be lost in favour of the grantor.
The termination of the concession after reaching the contracted deadline does not give any right to compensation.

4.2. Private property use in defence of environmental protection

Finally, we will describe the cases in which noxious property uses can be labeled as abusive and limited on grounds of neighbourhood rights.
Even some "environmental uses" of property can be restricted when impairing the neighbours' property and rights of personality. Here are some examples:
The noise and blinking shadow of windmills[45] was recognized as an offense to absolute personality rights (the rights to enjoy one's property) and property rights[46].
The right to enjoy the landscape was declared to be a personality right and not an *in rem* right. It does not integrate the content of property right. The right to enjoy the landscape is everyone's right. Every citizen, regardless of being property owner or not, has the right to enjoy the landscape[47].
Property right is not an absolute right. The right to develop an industrial activity (pig farming, for instance) in one's property is not inherent to property right. But it is not an abusive property use as well[48].
Personality rights (right to live in a quiet environment) are absolute rights which prevail over property rights and the right to develop a certain economic activity (noise to scare sparrows away from a vineyard)[49].
The use of one's property for goat breading is not a normal use of property in an urban area[50].
Depreciation of property, aesthetic damages, and health risk are arguments also raised against projects like poles of high electricity voltage[51].

[39] Article 21 of Decree-Law 280/2007 of the 7th august.
[40] Supreme Administrative Court Case 23/09 of 28 September 2010 on illegal urban construction on the public domain.
[41] Article 9 e) of the Constitution.
[42] Article 25 to 27 of the public domain law.
[43] Idem, article 30.
[44] Idem, article 29.
[45] Supreme Court of Justice decision of 30 May 2013 on case 2209/08.0TBTVD.L1.S1.
[46] The windmill was next to a bullfighter's knight farm.
[47] Supreme Court of Justice decision of 6 September 2011 on case 111/09.7TBMRA.E1.S1.
[48] Supreme Court of Justice decision of 27 March 2007 on case 07A400.
[49] Supreme Court of Justice decision of 15 March 2007 on case 07B585.
[50] Supreme Court of Justice decision of 28 June 2004 on case 04B4781.
[51] Supreme Court decision of 961/09 of 11 February 2010.

Annex I

Annex II

“Coutinho” building in Viana do Castelo.

NATIONAL REPORT – Portugal

Topic: The Environmental Law and Property Guarantee
Avosetta Annual Meeting on 30/31 May, 2014
Venue: Faculty of Law University of Maribor, Mladinska 9, 2000 Maribor

1) What are, according to your country's legal system, potential objects of "property" (real things, private law rights, public law rights, a business, a market share etc)?

All of the above.

2) To what extent is it possible to obtain property / ownership on natural resources?

Explained in the attached paper.

Has private property been used in defence of environmental protection?

Yes. See attached paper.

3) *How does your legal system construe expropriation (definition, preconditions, and legal effects)*

Explained in the attached paper.

in particular in matters relating to the environment or of environmental friendly investments (like renewable energy infrastructure)?

Similar to any other expropriation.

4) Concerning regulatory restrictions to use property: does your legal system distinguish between allowable restrictions and allowable restrictions with compensation?[52]

Yes. See attached paper.

5) What are the criteria of distinction between the two kinds (weight of public interest, proportionality, etc)?

Extent of pre-existing rights, namely construction rights.

Are these criteria sector-specific enriched, such as in nature protection from intensive agriculture, prevention of pollution from industrial installations, removal of water extraction rights, prevention of climate gas emissions etc?[53]

Not exactly.

6) What public interests are considered legitimate to impose obligations (active & passive; to do or not to do something) regarding the use of property in cases:

- *to prevent environmental damage;*

yes

- *to prevent traditional damage;*

yes

- *to improve the appearance of the property (i.e. to remove own waste; or to renovate the building façade in the towns, or to isolate buildings for energy efficiency, etc.);*

no

- *to limit activities/property due to the special protected area, like Natura 2000*

yes

- *of public health/safety reasons.*

yes

To what extent can private individual invoke these sorts of powers – eg actio popularis)?

yes

In which above cases compensation is foreseen by law?

Only for ordinary expropriations or state liability (for instance, if the authorisation was illegally granted and the operator was in good faith).

7) Is there a category of (possibly: gradual) dissolution of vested rights without requirement of compensation (example of stepping out of nuclear power)?

It is possible in theory.

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[52] *Sometimes called indirect or regulatory expropriation, or - such as in Germany - determination of property content requiring compensation.*

[53] *Could you indicate case(s) that can be later on, at the meeting, compared.*

Can for instance the economic (financial) difficulties of public finances be a reason for dissolution of compensation or vested rights (for instance, lowering or even abandoning wasted financial rights) like subsidizing green electricity)?

No because many contracts celebrated between the State and the concessionaires have penal clauses in case of unexpected change.

8) How can a property holder defend his interests (through the ordinary courts/constitutional court)?

Ordinary courts

What principles will the courts use when checking the compatibility with the property guarantee?

In conflicts with private individuals, the absolute or relative character of the right.

9) Is secondary legal protection (i.e. the right to compensation) dependent on the exhaustion of primary legal protection (i.e. a motion to annul the action)?

Not dependent but it would be strategically wise to obtain the annulment before.

10) Can one be responsible for the environmental damage only (solely) due to the fact of ownership of the property (i.e. for instance, the owner of the land where the waste is illegally deposited by the third (unknown) person)?

Yes. The waste "holder" is liable. The waste holder is any person who has a *de facto* power over the waste.

11) Does the state permit (like IPPC permit, operation permit etc) exclude the holder from the liability towards third persons (in case of damage cause by undertakings)?

The rule is solidarity liability, but the operator can obtain reimbursement from the state afterwards.

12) Are there cases (courts or administrative) that take into account Art. 8 of the ECHR (Right to private life) or Art. 1 of the first protocol of the ECHR? (For instance, where state intervention to limit the property without the compensation would be objected based on above article)?

Not that I know of.

13) How does your national legal system deal with situations where indirect or direct expropriation may be caused by EU legal acts or their implementation

Similar to any other expropriation.

14) Are there cases where national courts have referred questions to the ECJ concerning property issues in environmental law?

Not that I know of.

Two cases:

1) A factory, situated near a town, has been operating for decades. People are slowly realizing that statistically the inhabitants in the city and in the vicinity do not live average age and the cancer is more frequently present among them, also the frequent cause of the deaths. They have no direct proofs that the factory could be responsible, although it is rather clear that the soil around the factory is poisoned and that the heavy metals found in the vegetable could be linked to the factory. However, credible proofs are missing.

What could be the obligation of the state?

Hardly any. In practice, none.

Could the inhabitants rely on the public remedies procedure?

Yes…

If the state wants to revoke the operation permit, could the factory claim any sort of property guarantee?

Yes…

2) How this case would be solved in your legal system: a waste disposal site is located not far away from a place with app. 150 individual houses. Inhabitants assert that they smell bad odour and they would like to sell their property, but, of course, there are no potential buyers. Their property is worth less. The waste disposal site is equipped with the necessary permits.

EIA law has a compensation scheme for environmental and social impacts that would have imposed some collective compensation (a new school, a playground, a public park).

Still according to the EIA system the declaration can impose new mitigation or compensation measures, if in the post-assessment, any impacts are detected.

If they would go to court afterwards the "risk society theory" would probably prevail.

Are the inhabitants in the surrounding entitled to compensation (perhaps to annual revenue)? Do they have to annul the operation permit first?

Yes.