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Human Rights and Environmental Protection:

The Pressure of the Charter for the Environment on the French Administrative Courts

*by David Marrani**

Introduction

The French National Assembly adopted the Charter for the Environment ("Charter") in 2004 and integrated it into the Constitution of the French Fifth Republic by the amendment of March 1, 2005. On June 19, 2008, the French constitutional council, *Conseil constitutionnel*, in a landmark decision on the constitutionality of the statute on Genetically Modified Organisms ("law on genetically modified organisms"), reaffirmed the constitutional value of every right and duty defined in the 2004 Charter for the Environment.[1] On October 3, 2008, the *Conseil d'Etat* ("French Administrative Supreme Court"), for the first time quashed a government regulation on the grounds that it did not respect the Charter for the Environment. While constitutional control based on the Charter is typical, judicial review on the grounds of the Constitution is exceptional. In fact, the French Administrative Supreme Court has always been opposed to considering the Constitution, treating it almost as taboo. However, this position is evolving. On the one hand, the Constitution has changed to incorporate declarations of rights, and on the other the French Administrative Supreme Court has always been enthusiastic about environmental protection. Therefore, the French Administrative Supreme Court looked to the terms of the Charter, even though it had been incorporated into the Constitution. The main problem in the reasoning of the French Administrative Supreme Court, even in cases involving the issue of environmental protection, is that the *Conseil d'Etat* articulated a "classic" judicial review of administrative acts. For instance, the French Administrative Supreme Court applied judicial review to central and local government regulations, but never to constitutional control. The 2008 French Administrative Supreme Court ruling is therefore a major step towards constitutional control and should be analyzed.

Since it is only recently that the Constitution has developed as a corpus of "higher" norms that consider directly or indirectly environmental protection,[2] it is interesting to look at how the operation of the French Administrative Supreme Court has changed and will, for environmental reasons, go against the taboo of touching the Constitution. In this paper, I will start by looking at the link between human rights and the environment before considering the move from "transnational" and "international" rights to domestic ones through "constitutionalisation." I will then present the recent evolution of the jurisprudence of the French Administrative Supreme Court and consider a recent 2008 case.

Human Rights and the Environment, a "transnational" and "international" affair

This section will analyze the relationships between human rights and the environment. In attempting to classify human rights,[3] first generation rights refer to traditional civil and political liberties of the western liberal democracies. Expressed in constitutional texts,[4] or in separate declarations,[5] first generation rights aim to protect rights such as the freedom of speech, of religion, and of expression. Those rights presuppose a duty of non-interference on the part of governments towards the individuals. Second generation rights have generally been considered as "collective rights," in that they influence the whole society. Second generation rights require affirmative government action for their realization: the right to education, to work, to social security, to food, to self-determination, and to an adequate standard of living.[6] Third generation or "solidarity" rights are the most recently recognized category of human rights and include the right to health, to peace, and to a healthy environment, among others. The right to health, which also falls under the right to an adequate standard of living, is now linked with maintaining environmental quality.

Until recently, the instruments of international human rights have typically accorded minimal attention to environmental issues. The Universal Declaration of Human Rights[7] mentions in article 25 (1), "the right to a standard of living adequate for the health and well-being of himself and of his family," while the International Covenant on Civil and Political Rights mentions "public health."[8] The International Covenant on Economic, Social and Cultural Rights[9] recognizes in article 12, "[t]he improvement of all aspects of environmental and industrial hygiene" in relation to "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." In fact, the three primary general international human rights instruments barely mention the relationship between environment and human rights.

The 1972 Stockholm Declaration acted as one of the first major international law instruments to link human rights and environmental protection objectives. Specifically, Principle 1 states that:

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and

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he bears solemn responsibility to protect and improve the environment, for present and future generations.[10]

This proto-declaration of environmental rights stated every idea that is now topical in environmental law. But the Declaration does not stop there. In fact, Principle 15 refers more specifically to environmental protection, while indirectly referring to the precautionary principle:

> In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. *Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*[11]

The 1994 Draft Principles on Human Rights and the Environment expressly links human rights and the environment, particularly Principle 7, which states that "[a]ll persons have the right to the highest attainable standard of health free from environmental harm."[12] Furthermore, Article 12 of the International Union for Conservation of Nature Draft International Covenant on Environment and Development also articulates states' responsibility as facilitating agents by asserting that, "[p]arties undertake to achieve progressively the full realization of the right of everyone to an environment and a level of development adequate for their health, well-being and dignity."[13]

Until recently, the instruments of international human rights have typically accorded minimal attention to environmental issues.

The third generation rights, as exemplified by the Charter for the Environment, are those rights primarily connected to the environment. Naturally, the first two categories of rights sometimes ensure the protection of third generation rights, as highlighted by state practice. In Europe, the precautionary principle could be added to this trend, as part of the wave of new developments to protect the environment.[14] Article 6 of the Treaty on European Union expresses the necessity for the EU to respect the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECPHRFF" or "Convention").[15] Within the rights protected by the Convention, the European Court for Human Rights ("ECHR") has considered environmental protection, as well as threats that may impact people's right to life (*Guerra & Others v. Italy*),[16] property (*Chasagnou & Others v. France*),[17] privacy (*Guerra & Others v. Italy*),[18] access to court (*Athannossoplan & Others v. Switzerland*),[19] and freedom of expression (*Guerra & Others v. Italy*).[20] The concerns for health and the welfare of the environment are human rights that require protection and evaluation.

Even though there is no direct reference to the environment in the ECPHRFF, the Court aims to protect human rights and fundamental liberties based on recent developments. The Convention became a charter of rights in Europe, with human dignity at its heart.[21] In 1976 the commission in *X v. Iceland*[22] held that Article 8 of the Convention did not extend so far as to protect an individual's relationship with his immediate surroundings so long as the relationship did not involve human relationships. The Court of Strasbourg reminded us that no general right to protection of the environment exists in the Convention (*Kyrtatos v. Greece*).[23] However, in today's society there has always been the necessity for a certain level of protection (*Fredin v. Sweden [No. 1]*).[24] The Court of Strasbourg has often considered questions pertaining to environmental protection and highlighted their importance (as seen in *Taşkın and Others v. Turkey*;[25] *Moreno Gómez v. Spain*;[26] *Fadeïeva v. Russia*;[27] *Giacomelli v. Italy*).[28] Protection of the environment is therefore:

> . . . a value, the defence of which arouses a constant and steady interest of public opinion, and as a consequence public authorities. Economic imperatives and even some fundamental rights, like the right of property, should not been granted primacy ahead of considerations relating to environmental protection, in particular when the state has legislated on the subject.[29]

In the light of the case law of the Court of Strasbourg, anything may be used in order to counter solutions that may not bring about the right objectives (*Chassagnou and Others v. France*).[30] In fact, in areas like environmental protection, the Court respects the assessment of the national legislator, except when the result is manifestly unreasonable (*Immobiliare Saffi v. Italy*).[31] The confrontation between state law and the law of the acephalous society[32] shows how under the guidance of human rights, the levels of law have evolved over time.

"Consitutionalisation" of Environmental Human Rights as a Domestic Solution

In this respect, the case of the Constitution of the French Fifth Republic is extremely interesting. As mentioned, the French National Assembly incorporated the 2004 Charter for the Environment into the declaration of rights. The Charter can be classified as a third generation declaration of rights. The National Assembly's procedure included amending the first line of the Preamble of the Constitution of the French Fifth Republic.[33] The Preamble of the Constitution refers to the first and second generation of rights, through the Declaration of the Rights of Man and Citizens of 1789 (the first generation of rights) and the Preamble of the Constitution of the French Fourth Republic (the second generation of rights). In 2005, the National Assembly updated the Constitution and inserted a reference to the third generation

of rights by applying the Charter. In the comment made during the preparation of the Charter, legislators made clear that third generation rights were a continuation of the earlier generations.[34] The first and second generations of rights created a veil of protection for the environment prior to the enshrinement of third generation rights into law.[35] Thus, the constitutionalisation of rights has become an important process.

The "constitutionalisation" of environmental protection through the "constitutionalisation" of human rights saw an exponential increase since the 1972 Stockholm conference,[36] and environmental protection is now a component of many constitutions in Western Europe.[37] Then again, the environment itself is characterized by an absence of limit and it seems logical to think about international rules rather than a patchwork of domestic solutions. However, "constitutionalisation" could be perceived as a more efficient way of protecting the environment. "Constitutionalisation" replaces international law in Rodolfo Sacco's terms the law of the "grande Société acephalique,"[38] and is supposed to make the protection effective. After 1972, more nation-states "constitutionalised" environmental law, initially by enshrining it more or less explicitly within their constitutions.[39] This enshrinement came via second generation rights such as the right to a healthy environment, which derived more or less from the right to health and the duty of the state, and sometimes the citizen, to protect the environment, and natural resources.[40] The right to a healthy environment, considered here as a general human right of environmental protection, established the idea of environmental protection based on human rights that evolve around the protection of the human both now and in the future. The Charter, as a sort of pure third generation declaration, went further in defining the link between human rights and the environment.

In 1958, the Constitution of the French Fifth Republic created the French Constitutional Council to control the constitutionality of statutes.[41] As a consequence, France assumed that the French Administrative Supreme Court would not operate any kind of constitutional control. In this respect, the French Administrative Supreme Court considers a statute as a specific set of norms operating as a "screen" between the Constitution and the administrative acts of central and local governments that the administrative courts examine. Therefore, the administrative judges reviewing an administrative act's conformity to a statute that manifestly did not conform to the Constitution would always refuse to declare the administrative act void, because the judges would not want to consider the non-constitutionality of the statute. One could argue that because of the way that constitutional control and judicial review operate under the imperium of the Constitution of the French Fifth Republic, declarations of rights are the basis for constitutional control rather than for judicial review. It is important to note that the Constitution of the French Fifth Republic never intended to incorporate any declarations of rights. The 1958 Constitution conformed to French tradition by creating a formal constitution composed only of an institutional architecture and very few substantive rules. Due to the rulings of the constitutional council, the legislators built a formal constitution around the core of the formal one. Thus, this movement to enlarge the notion of the Constitution included the 2004 Charter for the Environment. As such, this movement acknowledged certain changes. Specifically, the movement acknowledged that human rights are recognized as part of the most authoritative norm on French territory. At the same time, however, the rationale behind the 1958 novelty of having one institution for constitutional justice and one for administrative justice, made it fairly certain that the Charter, like the other declarations of rights, would remain a text presenting rights to be protected by the French Constitutional Council rather than the French Administrative Supreme Court. Thus, only under the specific procedure of constitutional control would the extended Constitution be used to protect human rights. The use of the text of the Charter by French courts and particularly by administrative justice shocked many observers.

The 2004 Charter for the Environment and the French *Conseil d'Etat*

The issue becomes more complex when considering how the French Administrative Supreme Court applies the Charter. Major developments highlight the environmental protection at different levels, from the "simple" action of declaring rights, to more complex and more operational system of protection of these declared rights.

The French Administrative Supreme Court was not a novice in terms of environmental protection. It has shown an openness towards environmental protection in various judgements, such as quashing the authorization for a high-voltage power line to cross the Verdon park in the south of France;[42] stopping the construction of a dam because it would endanger species;[43] ordering the dismantling of a nuclear power plant by *Electricité de France* because of a failure to respect the public right to information;[44] or in the matter of exporting the aircraft carrier *Clemenceau* to be dismantled in India because of risks to environmental protection and public health.[45] The work of the French Administrative Supreme Court on environmental protection seems to have been steady. More specifically, the precautionary principle in its legislative version has long been a reference point for operating judicial review. Since the transposition of the principle into French law, the administrative courts have enforced the respect of the precautionary principle in central and local governments' decision-making.[46] The precautionary principle acted as an embryo of environmental protection, until the administrative courts extended the scope of control to general environmental protection and public health. Following the "constitutionalisation" of the Charter, and particularly the precautionary principle, an administrative court may now analyze the nature of the uncertainty of risk to health as a fundamental ground for the court's ruling. The recognition of environmental protection as a human right, therefore, developed and went even further than expected. The Charter became a usable document so that the "layman-citizen" reified the declaration of rights and used it as an instrument of protection.

During the first years of the Charter (2005-06), the lower courts' rulings were clearly going in that direction. However, at that time, a discrepancy existed in the appreciation of the Charter's value within the administrative courts and between local lower courts and the French Administrative Supreme Court. On the one hand, local administrative courts ruled using the basis of the Charter, establishing it as containing fundamental freedoms considered to be of constitutional value.[47] On the other, the French Administrative Supreme Court's reticence to change showed in the way it applied the Charter, as demonstrated in two 2006 rulings.[48] That said, the French Administrative Supreme Court merely respected its function of control of legality and avoided operating a control of constitutionality. In December 2006, the *Conseil d'Etat* rejected the Charter's legal authority because it believed it would be too vague to solely mention the breach of the Charter.[49]

In 2007 and 2008, a series of cases referred to the Charter in various ways. In each case, the parties, mainly environmental associations, acted consistently in considering the Charter as one of their legal bases for seeking judicial review. In January, the French Administrative Supreme Court considered the Charter together with the Kyoto Protocol and the political context of an area in northeast of France as the legal basis for its decision. In this case, however, the French Administrative Supreme Court rejected the review of a decision to build the A 52 motorway.[50] In February, the French Administrative Supreme Court referred to the Charter, and particularly to the precautionary principle, to reject the review of a regulation concerning the closing dates of hunting on the application of four environmental associations.[51] In May and June, the French Administrative Supreme Court used similar reasoning to that used in the December 2006 case, considering that it was too vague to solely mention the breach of the Charter.[52] In three cases from June and October 2007, the French Administrative Supreme Court cited the Charter as a legal basis (the highest one), but did not consider it in its ruling.[53] In October 2007, in the case *M. F, M. E, M. C, M et Mme B., M. et Mme A*, the French Administrative Supreme Court developed an interesting point of view.[54] The French Administrative Supreme Court argued that when the French Parliament acted to apply the principles enshrined in article 7 of the Charter (the right to information and public participation), the legality of regulations would be considered in light of the statutes.[55] The judges went on to explain that statutes enacted prior to the Charter should respect the Charter.[56] Consequently, the French Administrative Supreme Court followed tradition and the judges ruled on the basis of the French Environmental Code and not on the Charter.[57] This decision marked progress on the path towards the 2008 landmark case analyzed in the next section. However, the French Administrative Supreme Court did not confirm this position and, in two separate cases on the same day, acted according to its previous position of December 2006,[58] as it did in cases in December 2007 and August 2008.[59] Though the Charter became valued as a legal instrument and is now taken into account by claimants in the administrative courts, the way the courts have considered and used this instrument remains variable. This is perhaps because of the lack of clarity in the preparation of the Charter in defining the real aims of the text. The administrative judges have mentioned in many instances, such as in the December 2006 case, that the use of the Charter as a legal basis is not legitimate because of its lack of precision. In fact, the changes affecting the administrative judges may be seen as an evolution and passage from one phase of modernity to another from "the land does not lie" to "human rights do not lie."

A radical change? The 2008 Case

In the 2008 case, *Commune d'Annecy*, the French Administrative Supreme Court went a step further. The *Commissaire du gouvernement* Aguila, charged with presenting a final report to the French Administrative Supreme Court before the decision of its plenary assembly, concluded in eight points. These eight points will be examined here as an introduction to this section. First, Aguila considered that the context needed clarification, for the following three reasons: the case law of the French Administrative Supreme Court in the matter was not yet clearly fixed; the work of the committee reviewing the fundamental rights that contributed to a general reflection on the necessity for clarifying the value of the principles enshrined in the Preamble of the Constitution of the French Fifth Republic (together with the principles included in the Charter);[61] and the constitutional amendment of July 2008, introducing the possibility to bring a statute before the constitutional council after its promulgation. In the second point the *Commissaire* noted that the Charter served as an autonomous constitutional text, unique in the world although the unfinished preparatory work created uncertainty making judicial use difficult.[62] The third point served as a reminder that administrative justice has always been involved in the development and the application of environmental law.[63] The fourth and fifth points concern the case itself, and will be developed later. The *Commissaire* created point six in the form of a question: is the Charter for the Environment a text that may be invoked before an administrative court directly by the parties concerned and does it have "full" constitutional value?[64] Point seven concerned the increase of parliamentary power over environmental issues as a result of the charter.[65] On this last point, Aguila concluded by listing the expected results of the case thereby quashing the government regulation on the grounds of a violation of the charter; reinforcing the role of Parliament in the area of environmental law, as sought by the authors of the Charter; and renewing the traditional mission of the administrative judge to look after the respect of the common good, and the fundamental rights of citizens.[66] The report of Aguila reflected the materialization of deep change.

The 2008 case relates to the specific protection of large mountain lakes (larger than 1,000 hectares).[67] These lakes are currently protected by both the "mountain law"[68] and the "littoral law."[69] Some towns and cities are very happy about this double protection, while other towns and cities tried to relax the laws to allow for new developments (principally real estate projects). The case concerns article 187 of the statute of February 23, 2005.[70] This covers the development of rural territories,[71]

which introduced a new paragraph to article L. 145-1 of the town planning code:

> However, concerning mountain lakes having an area greater than 1,000 hectares, a government regulation after advice of the *Conseil d'Etat* delimits the sector within which the measures specific to littoral (as stated in Chapter VI of the present title) apply solely, having taken into account the topology of the area and the advice of waterside municipalities. This sector cannot reduce the littoral strip of 100 metres defined by article L. 164-4, part III. In other areas of waterside municipalities, and located within the areas of mountains mentioned in the first paragraph, the dispositions specific to mountains of the present chapter apply solely.[72]

The *Commune d'Annecy* contested the government regulation of August 1, 2006,[73] adopted as part of the application of the new article of the town planning code, to complete and introduce new measures into the "regulations" section of the code.[74] In the local authority's opinion, the new measures would reduce the protection of mountain lakes, by reducing the perimeter of application of the littoral law around mountain lakes. According to the government regulation, the perimeter should be delimited by local authorities' decisions, made on a case-by-case basis for each lake. The 2006 decree introduced a series of regulations, codified under articles R. 145-11 to -14, which outline a detailed decision-making process. Article R. 145-11 stated that either the state or the waterside municipalities (town or city) had the authority to delimit the perimeter around mountain lakes of more than a 1,000 hectares. Article R. 145-12 stated in section I that when the responsibility for delimiting the perimeter falls to the state, then the prefect (representing the state in the *département*[75]) should forward a file to the waterside municipalities comprising: a) a map of the perimeter; and b) a note presenting the rationale behind the limits of the perimeter (considering places, built or unbuilt; visibility from the lake; waterside preservation of economic and ecologic equilibrium; and sites and landscape quality). The municipalities had two months from the transmission of the file to the local mayors to decide on the project before their approval was assumed. Section II stated that when the municipalities were responsible for the process, they should send a similar file to the prefect with each administrative decision (i.e. namely a *déliberation* from each local council). Article R. 145-13 stated that the file had to be sent with the advice or proposal from each municipality to be submitted to a public inquiry by the prefect (as stated by articles R. 123-7 to -23 of the Environmental code). The prefect had to communicate the file and the results of the inquiry to the government minister in charge of town planning. Finally, article R. 145-14 stated that the central government had to approve the perimeter by decree upon receiving advice of the French Administrative Supreme Court, which the *Journal Officiel de la République Française* published.[76]

The *Commune d'Annecy* criticized the government regulation specifically because it would breach the right to information and participation of the public in the decision making process which would impact the environment. The government regulation did not allow for public consultation before the decisions required by the public inquiry of article R. 145-13 and -14 and therefore violated article 7 of the Charter. Aguila's sixth point concerned this issue: can the Charter for the Environment be invoked before an administrative court directly by the parties concerned? Or in other words, can human rights influence the way administrative courts operate?

The Constitution of the French Fifth Republic introduced a mini revolution in 1958. The French Parliament is not free to enact everything it desires but can only act on the matters listed, which became the "domain of statute law," as stipulated in article 34 of the Constitution. The responsibility of the 2005 constitutional amendment that constitutionalised the Charter for the Environment and also added to article 34's list that the expression of the fundamental principles on the preservation of the environment fell to Parliament. In consequence, only a statute could be adopted to determine those principles, not a regulation.[77] In the 2008 case, the administrative judges of the French Administrative Supreme Court considered that the scope of action of the French parliament had been altered by the 2005 amendment. Furthermore, the judges declared in article 7 of the Charter that, "[e]veryone has a right, within the conditions and limits of Law, to access information relating to the environment in the possession of public authorities and to participate in the public decision making process which have an incidence on the environment."[78] The collection of rights and duties defined in the Charter (indeed, all rights and duties that proceed from the Preamble of the 1958 Constitution), therefore had constitutional value.[79] These rights and duties are imposed on public powers and administrative authorities in their respective domains of responsibility.

For some, and France in particular, environmental protection is best accomplished by declaring it a constitutionally protected human right

In addition, the French Administrative Supreme Court considered that under the constitutional amendment of March 1, 2005, the French Parliament had sole legislative competence for fixing conditions and limiting the exercise of the right to information relative to the environment. This competence included the right to access all information held by public authorities and to participate in the elaboration of public decisions that

may have an effect on the environment. As a consequence, the government had no general competence in this area, although it could exceptionally make complementary legislation. Therefore, since 2005, a regulation could be taken as a complement to a statute, within the scope of article 7 of the Charter, posterior or anterior to 2005, so long as the regulation conformed with the substantive rights included in the Charter.

The French Administrative Supreme Court went on to comment on the importance of article L. 110-1 of the Environmental code. The French Administrative Supreme Court decided that the article should proclaim principles and not determine the conditions and limits required by article 7 of the Charter. Furthermore, as explained above, according to article L. 145-1 of the town planning code, which protects mountain lakes of an area greater than 1,000 hectares, a decree following the advice of the French Administrative Supreme Court should not determine the conditions and limits of the right to information and participation of the public or competence of the French parliament. Since no statute has been enacted to determine these conditions or limits, the French Administrative Supreme Court properly used the 2004 Charter as a reference. In consequence, the 2006 governmental regulation became illegal because it fixed measures that were within the scope of article 7 of the 2004 Charter for the Environment. This is a great evolution for many reasons, but especially because human rights and environmental considerations finally came together in the same legal culture.

Conclusion

This paper described the links between human rights and environmental protection, and the modification in the operation of French administrative courts under the pressure of the constitutionalisation of environmental human rights. The paper noted the evolution from the adoption of the Charter for the Environment and its incorporation into the (material) Constitution of the French Fifth Republic. The Charter represents a domestic development in terms of human rights, as it expresses the third generation of human rights. The weight and pressure of environmental issues forced the French Administrative Supreme Court to modify its way of operating. This is a profound modification, as the French Administrative Supreme Court is not separated from the administration of the Republic. Indeed, the French Administrative Supreme Court is not only the highest administrative court; it is also a government advisor and the organ in charge of preparing the bills and regulations for both the French parliament and the government. We now see the increased consideration for human rights and their dissemination in the legal culture to such an extent that we may have entered a new spatio-temporal dimension. Mankind fears the reality of its mortality, and has realized that its area of "play" must be protected. For some, and France in particular, environmental protection is best accomplished by declaring it a constitutionally protected human right. The Charter is aligned with this new trend. The evolution of the jurisprudence of the highest French administrative court is a witness of the changes as is illustrated in the recent case law of the French Administrative Supreme Court.

Endnotes: Human Rights and Environmental Protection: The Pressure of the Charter for the Environment on the French Administrative Courts

[1] CC decision no. 2008-564DC, June 19, 2008, J.O. 8 *available at* http://www.conseil-constitutionnel.fr/conseilconstitutionnel/root/bank_mm/anglais/2008_564dc.pdf ("These provisions, like all the other rights and duties set out in the Charter for the Environment, have constitutional status.").

[2] 1958 Const. The Constitution of the Fourth Republic incorporated in its Preamble a socio-economic rights declaration that has now been added to the Constitution of the Fifth Republic and has implicit reference to the environment in paragraphs 10 and 12. *Id.* The next step was, of course, the adoption of the 2004 Charter.

[3] *See* Antonio Cassese, I Diritti Umani Oggi, 9-27 (2007) (developing classifications of human rights).

[4] *See*, *e.g.*, Ir. Const., 1937, arts. 40-4, *available at* http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2006/Publications_for_2002/Bunreacht_na_hÉireann_-_Constitution_of_Ireland.html.

[5] Declaration of the Rights of Man and of the Citizen of August 26, 1789, Duv. & Boc. (Fr.).

[6] Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

[7] *Id.* at art. 25(1).

[8] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (Mar. 23, 1976), *available at* http://www2.ohchr.org/english/law/pdf/ccpr.pdf.

[9] International Covenant on Economic, Social, and Cultural Rights, art. 12, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), *available at* http://www1.umn.edu/humanrts/instree/b2esc.htm (last visited Nov. 7, 2009).

[10] Declaration of the United Nations Conference on the Human Environment, Stockholm, June 16, 1972, 11 Int'l Leg. Mat. 1416 (1972).

[11] Rio Declaration on Environment and Development, June 14, 1992, U.N. Doc. A/CONF.151/26 (Vol. I); 31 ILM 874 (1992) (emphasis added).

[12] 1994 Draft Principles on Human Rights and the Environment, art. 7, E/CN.4/Sub.2/1994/9, Annex I (1994), *available at* http://www1.umn.edu/humanrts/instree/1994-dec.htm.

[13] International Union for Conservation of Nature Commission on Environmental Law, Draft International Covenant on Environment and Development, Third Edition: Updated Text (2004), *available at* http://data.iucn.org/dbtw-wpd/edocs/EPLP-031_rev2.pdf.

[14] Committee of the Regions, 10 Oct. 2003, 2003 JO C 244; CDR-02/DEVE; BOCKLET, at 26–30.

[15] Treaty of the European Union, art. 6, Feb. 2, 1992, 1992 O.J. (C340) 3.

[16] Guerra & Others v. Italy, App. No. 14967/89, 26 Eur. H.R. Rep. 357 (1998).

[17] Chassagnou & Others v. France, App. nos. 25088/94, 28331/95, & 28443/95, 1999-III Eur. Ct. H.R. 112.

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Endnotes: Human Rights and Environmental Protection: The Pressure of the Charter for the Environment on the French Administrative Courts *continued from page 57*

[18] Guerra & Others v. Italy, Feb. 1, 1998, Reports 1998-I.
[19] Athannossoglou & Others v. Switzerland, App. No. 27644/95, 2001 Eur. Ct. H.R.
[20] *See* Jans & Vedder, European Environmental Law 23 (3d ed. 2008) ("Where scientific opinion differs from one country to another, countries should apply the precautionary principle").
[21] Cassese, *supra* note 3, at 54.
[22] X v. Iceland, App. No. 6825/74, 5 Eur. Comm'n H.R. Dec. & Rep. 87 (1976).
[23] Kyrtatos v. Greece, App. No. 41666/98, 2003-VI Eur. Ct. H.R. 52.
[24] Fredin v. Sweden (No. 1), App. No. 12033/86, 13 Eur. H.R. Rep. 784 (1991).
[25] Taskin & Others v. Turkey, App. No. 46117/99, 2004-X Eur. Ct. H.R. 621.
[26] Moreno Gomez v. Spain, App. No. 4143/02, 2004-X Eur. Ct. H.R.
[27] Fadeïeva v. Russia, App. No. 55723/00, 2005-IV Eur. Ct. H.R.
[28] Giacomelli v. Italy, App. No. 59909/00, 2006-XII Eur. Ct. H.R.
[29] Köktepe v. Turkey, App. No. 35785/03, 2007 Eur. Ct. H.R.
[30] Chassagnou, *supra* note 17.
[31] Immobiliare Saffi v. Italy, App. No. 22774/93, 1999-V Eur. Ct. H.R. 65.
[32] Rodolfo Sacco, Anthropologie Juridique: Apport a une Macro-Histoire du Droit 86 (2008).
[33] 1958 Const. Preamble, *available at* http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_oct2009.pdf ("The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004.").
[34] *See* Declaration of the Rights of Man, *supra* note 5 (exemplifying 1st generation human rights); 1946 Const. Preamble (exemplifying 2nd generation human rights); 1958 Const. Charter for the Environment *available at* http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_oct2009.pdf (exemplifying 3rd generation human rights).
[35] *See generally* Sacco, *supra* note 32, at 86.
[36] Les débats et documents du Sénat, Ministre de l'écologie et du développement durable Feb. 13, 2003, Réponse à la question écrite No. 05714, J.O. 2468, July 31, 2003 (from a question posed by Jacques Ouidin of the group Union pour une Mouvement Populaire).
[37] Vanessa Barbé, Le Droit de l'environnement en droit constitutionnel comparé: contribution à l'étude des effets de la constitutionnalisation, (Sept. 25-27, 2008), *available at* http://www.droitconstitutionnel.org/congresParis/comC8/BarbeTXT.pdf.
[38] *See* Sacco, *supra* note 32.
[39] *E.g.* C.E.; *available at* http://www.congreso.es/portal/page/portal/Congreso/Congreso/Informacion/Normas/const_espa_texto_ingles_0.pdf (translating Spain's Constitution into English); Cost., *available at* http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf (translating the Republic of Italy's Constitution into English).
[40] *Id.*
[41] A bill may be referred to the *Conseil constitutionnel* by the following: the Head of State; the Prime minister; the President of both chambers of Parliament; and because of the Constitutional amendment of 1974, by 60 members of either parliament chambers.
[42] CE, July 10, 2006, Association interdépartementale et intercommunale pour la protection du lac de Ste Croix, des lacs et sites du Verdon et autres, No. 288108.
[43] CE, Oct., 2003, Association SOS-rivières et environnement et autres, No. 231953.
[44] CE, June 6, 2007, Association Le réseau sortir du nucléaire, No. 292386, *available at* http://www.conseil-etat.fr/cde/node.php?articleid=227.
[45] CE, Feb. 15, 2006, Association Ban Asbestos France et autres, No. 288801, *available at* http://www.conseil-etat.fr/cde/node.php?articleid=229; *see generally* Tim Finan & Jasper Copping, *Asbestos-Laden Warship to Set Sail for Britain*, Daily Telegraph (Jan. 31, 2009), *available at* http://www.telegraph.co.uk/news/worldnews/europe/france/4409964/Asbestos-laden-warship-to-set-sail-for-Britain.html#.
[46] CE, Jan. 4, 1995, Ministere de l'Interieur c/Rossi, No. 94967.
[47] TA Châlons-sur-Marne, Apr. 29, 2005, AJDA 2005, 978.
[48] CE, Apr. 6, 2006, Ligue pour la protection des oiseaux (LPO), No. 283103; CE, June 19, 2006, Association Eau et Rivières de Bretagne, No. 282456.
[49] CE, Dec. 29, 2006, M.A, unpublished, No. 289548.
[50] CE, Jan. 24, 2007, Association du Toulois pour la Preservation du Cadre de Vie, unpublished, No. 287248.
[51] CE, Feb. 2, 2007, Association Convention vie et Nature Pour Une Ecologie Radicale, Ligue Pour La Protection des Oiseaux, Ligue pour la Preservation de la Faune Sauvage et la Defense des Non-Chasseurs, Association France Nature Environnement, unpublished, No. 289758.
[52] CE, May 7, 2007, ANPER-TOS, Association OABA, No. 286103; CE June 6, 2007, Commune de Groslay, Association Ville et Aéroport, No. 292942.
[53] CE, June 6, 2007, Association Sortir Du Nucleaire, n.292386; CE, 27 June 2007, ANPER-TOS, No. 297531; CE, référés, Oct. 2007, Association Ornithologique et Mammalogique de Saone et Loire, unpublished, No. 309286; CE, Mar. 19 2008, Association General des Producteurs de Mais, SCEA de Malaprade et s., Monsanto et s., Pioneer Genetique et s., SEPROMA, SA Caussade Semences, SA Limagrain Verneuil, SA Maisadour Semences, SA RAGT Semences, SAS Euralise Semences et s., unpublished, No. 313547. CE, Aug. 26, 2008, Association SOS Grand Bleu, unpublished, No. 320025.
[54] *See* Ligue, *supra* note 48.
[55] *Id.*
[56] *Id.*
[57] CE, Oct. 26, 2007, M. F, M. E, M. C, M et Mme B., M. et Mme A, unpublished, No. 299883; *see also* CE, May 7, 2008, Association Ornithologique et Mammalogique de Saone et Loire, unpublished, No. 309285.
[58] CE, Oct. 26, 2007, ADVOCNAR, No. 297301 (discussing Charter articles 1 and 5); CE, Oct. 26, 2007, CIRENA, unpublished, No. 298490 (discussing Charter articles 1, 3, and 6).
[59] CE, Dec. 21, 2007, Ministre de l'Economie, Des Finances et de l'Industrie, No. 300041; CE, Aug. 7, 2008, Collectif Inter-Associatif du Refus des Nuisances Dans le Nord-Ouest, M. A, *Departement du Val d'Oise, Commune de Groslay, et s., Association de Defense contre les Nuisances Aeriennes et la Commune de Gonesse*, unpublished, No. 306109.
[60] Ulrich Beck, Pouvoir et Contre-Pouvoir 536 (2005).
[61] Décret de President No. 2008-328 Apr. 9, 2008, Journal Officiel de la République [J.O.] [Official Gazette of France], Apr. 9, 2008 (creating the Comité de réflexion sur le préambule de la Constitution to study the possibility or necessity of including fundamental rights in the Constitution's Preamble).
[62] CE, Oct. 3, 2008, Commune d'Annecy, No. 297931.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] Law No. 85-30 of Jan. 9, 1985, Journal Officiel de la République [J.O.] [Official Gazette of France], Jan. 10, 1985, p. 320 (establishing mountain law).
[69] Law No. 86-2 of Jan. 3, 1986, Journal Officiel de la République [J.O.] [Official Gazette of France], Jan. 4, 1986, p. 200 (establishing littoral law).
[70] Commune d'Annecy, *supra* note 62.
[71] Law No. 2005-157, Feb. 23, 2005, Journal Officiel de la République [J.O.] [Official Gazette of France], Feb. 24, 2005, p. 3073 (introducing a new paragraph to art. L. 145-1 of the town planning code).
[72] *Id.*
[73] Décret No. 2006-993, Aug. 1, 2006, Journal Officiel de la République [J.O.] [Official Gazette of France], Aug. 5, 2006 p. 11719.
[74] Law No. 2005-157, *supra* note 71.
[75] The d*épartement* is similar to county-level government in the United Kingdom.
[76] Law No. 2005-157, *supra* note 71.
[77] French statutes are promulgated by the legislative branch, while regulations are issued by the Prime Minister, certain government ministers, or local authorities.
[78] Commune d'Annecy, *supra* note 62.
[79] Law No. 2005-205, Mar. 1, 2005, Journal Officiel de la République [J.O.] [Official Gazette of France], Mar. 2, 2005, *available at* http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000790249&dateTexte=#LEGIARTI000006276527 (determining that the rights and duties defined in the Charter had constitutional value).