

The Right to a Healthy Environment and
the Constitutional Protection of the
Interests of Future Generations:
Some Perspectives from EU Law and
Comparative Constitutional Law

Prof. dr. Marc Pallemmaerts

University of Amsterdam &
Université Libre de Bruxelles

EU Treaty – new Article 3 (as amended by Treaty of Lisbon)

- The Union shall (...) work for the *sustainable development of Europe* based on balanced economic growth and (...) a *high level of protection and improvement of the quality of the environment*. (...)
- It shall (...) promote social justice and protection, (...) *solidarity between generations* (...)
- In its relations with the wider world, the Union shall (...) contribute to peace, security, the *sustainable development of the Earth*, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights (...)

EU Treaty – new Article 6 (as amended by Treaty of Lisbon)

- The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. (...)
- The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. (...)
- Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

EU Charter of Fundamental Rights

Article 37 - Environmental protection

“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.***”

Explanation

The *principles* set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty. It also draws on the provisions of some national constitutions.

EU Charter of Fundamental Rights

Article 51 - Field of application

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

EU Charter of Fundamental Rights

Article 52

Scope and interpretation of rights and principles

- In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the *meaning and scope of those rights shall be the same as those laid down by the said Convention*.
- The provisions of this Charter which contain *principles* may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and *by acts of Member States when they are implementing Union law*, in the exercise of their respective powers. *They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality*.
- The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Declaration of guiding principles of sustainable development (2005)

- ***Sustainable development*** means that the needs of the present generation should be met without compromising the ability of future generations to meet their own needs. It is an ***overarching objective of the European Union*** set out in the Treaty, governing all the Union's policies and activities. (...) It ***aims at the continuous improvement of the quality of life and well-being on Earth for present and future generations.*** (...)

Belgian Constitution

Title *Ibis*

On general political objectives of federal Belgium, the
Communities and the Regions

Article *7bis*

In the exercise of their respective competences,
the Federal State, the Communities and the
Regions pursue the objectives of ***sustainable
development in its social, economic and
environmental aspects, taking into account
the solidarity between the generations.***

Title II

On Belgians and their rights

Article 23

Everyone has the right to lead a life in keeping with human dignity.

To this end, the laws, federate laws and rules referred to in Article 134 ***guarantee economic, social and cultural rights, taking into account corresponding obligations,*** and determine the conditions for exercising them.

These rights include among others:

- 1° the right to employment and to the free choice of an occupation (...);
- 2° the right to social security, to health care and to social, medical and legal aid;
- 3° the right to decent accommodation;
- 4° ***the right to the protection of a healthy environment;***
- 5° the right to cultural and social fulfilment.