

# THE FRENCH CONSTITUTIONAL CHARTER FOR THE ENVIRONMENT

:

A HISTORIC IMPLEMENTATION OF  
JURIDICAL HUMANISM PROTECTING  
FUTURE GENERATIONS ?

# INTRODUCTION

- 1991: Professor R-J. DUPUY « L'Humanité dans l'imaginaire des Nations », College of France, 1991.
- Today => new juridicial era :
  - ⇒juridical protection for humanity
  - ⇒Preserving the environmental and genetic patrimony

**We have moved into a new era of responsibility for the future, where humanity's future condition needs to be thought**

**about by humanity,**

**with humanity**

**and as intimately linked to the natural world.**

## INTRODUCTION

A vast process of intellectual conversion is now at work across frontiers in order to put a trans-generational democracy in place

Our world has changed: we live in a globalised world, where the notion of a people is no longer confined in a single state => Thus any modification of any national constitution is at once a message sent to other peoples of the world.

Our vision of the world and our relationships to our milieu have also changed => Man is trying to rejoin the milieu and at the same time has ceased to respect the food chain.

## INTRODUCTION

- At the Johannesburg Earth Summit in 2002, President Jacques Chirac spoke of the importance of taking the interests of future generations into account:

*« Our house is burning and we look away. Nature is mutilated, over exploited and cannot manage to reconstitute herself any more, and we refuse to admit it. Humanity is suffering (.....)The earth and humanity are imperilled and we are all responsible for this (...) We cannot say that we did not know! Let us beware lest the XXIst century becomes, for future generations, that of a crime against life »*

(J.CHIRAC, speech at the Earth Summit in Johannesburg, 2002).

## INTRODUCTION

Two historic speeches in Orléans in 2001 and in Avranches in 2002, when Psdt J. CHIRAC solemnly announced that he would take the political measures needed to open another constitutional cycle.

*“France must be ambitious and invent a new alliance between man and nature, so as to contribute to designing and bringing to life a humanitarian and controlled globalisation”.<sup>5</sup>*

The President wished to put into effect a *“humanist ecology, which will seal the alliance between the environment, science and economic progress ‘...)’”*.

*“It is urgent (he insisted) that another logic be imposed, a logic of solidarity with the future, of the collective interest, a logic borne along by real political will, that of sustainable development”.<sup>6</sup>*

## INTRODUCTION

- adoption in 2005 of the Charter for the Environment marks France's entry into this new alliance between the rights of man and the environment
  - From that time the right of a healthy environment has been propelled to constitutional rank.
  - Similarly the Charter for the Environment initiated a revolutionary process => the incorporation into law of environmental rights is an affirmation of the “*rights of future generations*” (*rapporteur of the Draft*).
- => So it cannot be too highly stressed that concern over safeguarding the interests of future generations was one of the principal motives resulting in the Charter for the Environment.

## INTRODUCTION

- 2 ways :

=> examine the formal and substantial composition of the text. How is it presented ? What is written there ? What does it proclaim ?

=> underline its normative power. How this Charter has been applied by the French Highest Courts? We'll also see that the French Charter's normative force is destined to grow stronger ever since the incorporation in 2008 of a *“Priority Preliminary rulings on the issue of constitutionality”*.

Finally, I shall not hesitate to propose a reading of this Charter through the lens of the concept of “future generations”.

# I - THE FRENCH CHARTER FOR THE ENVIRONMENT : AN OVERVIEW

The Charter for the Environment is part of French constitutional norms.

It was “grafted onto” the Constitution of October 4<sup>th</sup> 1958 which is the foundational text of the Fifth Republic.

This Constitution consists of a Preamble and 89 Articles.

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The Preamble of the Constitution of October 4<sup>th</sup> 1958 consists of two paragraphs. We shall focus on the first

« *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* ».

- This Preamble relates back to three historic texts, which form the basis of our fundamental rights.

## A. Analysis of the spirit of the Charter: considerations of the Preamble

The Preamble to the Charter consists of 7 « Considérants »

It starts by stating that there is urgency, that we must become aware of our responsibilities about life in general and the future condition of humanity:

*“The French people,  
Having considered that Natural resources and equilibria  
have conditioned the emergence of mankind:  
The future and very existence of mankind are inextricably  
linked with its natural environment; this environment is the  
common heritage of all human beings”:*

## A . ANALYSIS OF THE SPIRIT OF THE CHARTER

*« Man exerts an ever-increasing influence over the conditions for life and over his own evolution;*

*Biological diversity, the fulfilment of the individual and the progress of human societies are affected by certain types of consumption or production and by excessive exploitation of natural resources »*

Here, in clauses 4 and 5, there is renewed affirmation of the unsustainable ecological pressure resulting from our consumerist lifestyles. It matters that we take up our responsibilities towards all living things but also towards future humanity.

## A . ANALYSIS OF THE SPIRIT OF THE CHARTER

These various statements having been made and reiterated, one can move on to announce a plan for society, which the Charter of the Environment aims at defending:

*“The safeguarding of the environment is a goal to be pursued in the same way as the other fundamental interests of the Nation*

*In order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardise the ability of future generations and other peoples to meet their own needs,  
Hereby proclaim:”*

## B. ANALYSIS OF THE BODY OF THE CHARTER FOR THE ENVIRONMENT :

proclamation of ten articles

### 1- The rights proclaimed

*“Art 1 - Everybody has the right to live in a balanced environment which shows due respect for health.”*

This provision marks the official inclusion of the right to a healthy environment in the corpus of fundamental legal rights

*“Art 7 - Everybody has the right, in the conditions and to the extent provided for by law, to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment”.*

## B. ANALYSIS OF THE BODY OF THE CHARTER

### 2- The duties proclaimed

#### i) Duties incumbent on everybody:

- *“Art 2 - Each person has a duty to participate in preserving and enhancing the environment*
- *Art 3 - Each person shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequence of such damage.*
- *Art 4 - Each person shall be required, in the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment”.*

## B - ANALYSIS OF THE BODY OF THE CHARTER

### ii) Duties incumbent on public authorities :

*Art 6 - Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress”*

This article reaffirms the goal of sustainable development and echoes the 7<sup>th</sup> basic principle of the Charter’s Preamble, which mentions future generations.

Then articles 8 and 9 stress the decisive importance of teaching, research and innovation in plans to preserve the environment and the rights and duties proclaimed by the Charter.

## B - ANALYSIS OF THE BODY OF THE CHARTER

*“Art. 5 - When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the precautionary principle and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to deal with the occurrence of such damage”.*



## II. THE FRENCH CHARTER FOR THE ENVIRONMENT : OUTLOOK

French constitutional law for the environment has achieved noble status from now on ...

Criticisms

A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

B. B. TOWARDS A TRANSGENERATIONAL READING OF THE RIGHTS PROCLAIMED IN THE CHARTER FOR THE ENVIRONMENT ?

## A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

French constitutional law has surely entered into a historical phase of consolidation. This is due to two concomitant developments

1. **The interpretative dynamic of the Charter: vector for a renewed constitutional law for the environment.**

- Historic decision in 2008, the Constitutional Council clearly affirmed that *“all provisions/clauses of the Charter have full constitutional validity”* decision 2008-564 DC of June 19<sup>th</sup>2008, 18<sup>th</sup> ground).

## A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

### 1. The interpretative dynamic of the Charter

Following, the Conseil d'Etat affirmed in its turn by an important decision (CE Oct. 3<sup>rd</sup> 2008, n°297931), that *“all rights and duties defined in the Charter of the Environment, and similarly all those deriving from the Preamble to the Constitution, have constitutional validity”*.

The Cour de cassation (highest Court for civil torts): the precautionary principle could not be invoked as the basis of a state of necessity legitimising wilful destruction of areas of ground planted with genetically modified crops.

## A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

### 1. The interpretative dynamic of the Charter

- Application of the Charter for the Environment within the framework of urgent litigation :

urgent litigation in cases of a risk of infringement of a fundamental freedom (article L.521-2 of the Code of administrative justice)

decision of April 29<sup>th</sup> 2005 (T.A. Châlons-en-Champagne), it stated: *“that in adding a Charter for the Environment to the Constitution (...) the legislator necessarily intended to promote environmental rights to the status of a “fundamental liberty” with constitutional validity”*.

## A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

### 1. The interpretative dynamic of the Charter

**Conseil constitutionnel, Décision n° 2009-599 DC du December 29th 2009, Loi de Finance pour 2010 :**

Has removed special provisions regarding to the carbon contribution in regard to articles 2,3 and 4 of the Charter for the Environment (break of equality of treatment).

**2. Priority Preliminary rulings on the issue of constitutionality: vector of a strengthened constitutional law for the environment.**

The application for a priority preliminary ruling on the issue of constitutionality was introduced under the constitutional reform of July 23rd 2008 => new article 61-1 into the Constitution

## A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

### 2. Priority Preliminary rulings on the issue of constitutionality

is the right for any person who is involved in legal proceedings before a court to argue that a statutory provision infringes rights and freedoms guaranteed by the Constitution.

□Prior to this reform, it was impossible to challenge the constitutionality of a statute which had come into force. From now on, persons involved in legal proceedings will be vested with this new right under Article 61-1 of the Constitution

It cannot be removed from office by the judge and therefore the question put to him cannot be reformulated by the latter

It may be put at any stage of a case: it may be put for the first time on appeal or even on appeal to the highest court

## A. CONSOLIDATION OF THE ENVIRONMENT'S CONSTITUTIONAL LAW

### 2. Priority Preliminary rulings on the issue of constitutionality

- Conseil d'Etat :

2 QPC (Question prioritaire de constitutionnalité ) per months about the French Charter since July 2010

=> until now: no Priority Preliminary ruling on the issue of constitutionality has been transmitted to the Conseil constitutionnel by the Conseil d'Etat.

- Cour de cassation:

there is a QPC which has been transmitted to the Conseil constitutionnel in order to verify whether some provisions of the code de la construction et de l'habitation were not infringing rights and duties proclaimed in article 1 to article 4 of the Charter for the environment.

## B. TOWARDS A TRANSGENERATIONAL READING OF THE RIGHTS PROCLAIMED IN THE CHARTER FOR THE ENVIRONMENT ?

- the right to a healthy environment is a very specific human right having unprecedented dimensions closely connected to the aim of protecting future generations

It is possible to say that the human right to an environment is at the same time:

- \* an individual right and a collective right
- \* a human right and a right of humanity
- \* a right of today's and tomorrow's humanity
- \* a right of man and a right of nature and for nature to be preserved.



## B. TOWARDS A TRANSGENERATIONAL READING OF THE RIGHTS PROCLAIMED IN THE CHARTER FOR THE ENVIRONMENT ?

towards a trans-generational formulation of the rights of man including the right to a healthy environment ?

- the right to a healthy environment surely merits different legal treatment according to the context of knowledge.

This theoretical distinction originated in work done by the philosopher D.Birnbacher => transposition into the field of law (thesis).

An infraction against the right to a healthy environment should be subject to different legal logic and procedures according to whether a breach occurs in a context of certainties or uncertainties

# CONCLUSION

Definitively, the adoption of the French Charter for the environment clearly marks the entry into a new juridical era.

There is a strong aim at defending future generations' interests which has been expressed before proclaiming the French Charter for the Environment.

In march 2011, Professor Mireille DELMAS-MARTY will teach a specific course on how to protect future generations as part of a renewed juridical humanism for this century.

The Charter for the environment may become the cornerstone of new ways of interpreting human rights in a transgenerational way. The question can be now formulated.

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