



Environmental Rights: Convention and Charter

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30 June 2016



Introduction

- Theory
- Convention
 - Achievements
 - Techniques
 - Cases
 - Principles
- Charter



Theory

- Individualist v systemic
- Standards
- Enforceability – private enforcers
- Changing perceptions
 - O Pedersen “facilitate environmental outcomes phrased in an individualistic way”



- Types of rights
 - Procedural
 - Substantive



Achievements

- **Karel Vasek**
 - First Generation: Civil and political
 - Second Generation: Socio-economic
 - Third Generation: Environment/natural resources



- **No substantive right** (Kyrtatos/Borysiewicz)
 - Environmental objectives better dealt with on national level
- "a regional court pushing the limits of its own jurisdiction in order to respond to the increasing environmental protection concerns of modern society" (Cenevska (2016))



- **Article 2 - life**
 - Right to life in the context of dangerous industrial activities
 - Exposure to nuclear radiation
 - Industrial emissions and health
 - Natural disasters
- **Article 5 – liberty and security**
 - Bail for oil spillage
- **Article 6 – access to the courts**
 - Challenging decisions
 - Failure to enforce judicial decisions



- **Article 10**
 - Freedom of expression
- **Article 13**
- **Article 1 of Protocol 1**



- **Article 8 – family and home**
 - Access to information
 - Industrial pollution
 - Mobile phone antennas
 - Air traffic noise pollution
 - Neighbouring noise
 - Road traffic noise
 - Wind turbines and wind energy farms
 - Industrial noise pollution



- Rail traffic
- Diesel emissions vehicles
- Urban development
- Waste collection, management, treatment and disposal, water supply contamination



Techniques

- **Positive Obligations**
- **Living Instrument**
- **Margin of Appreciation**



Techniques: Positive Obligations

- Article 1: Contracting Parties “**shall secure** to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”
- **Obligation to take action**
- **Obligation on the State to put frameworks in place to protect individuals from each other**



- **Guerra v Italy**
 - Hazards involved in major accident at a chemical factory producing fertilisers
 - Accidents in the past – 150 people with arsenic poisoning
 - Lack of practical measures/failure to inform
 - Obligations not limited to protecting from arbitrary State interference, but necessary to assess whether national authorities took steps to ensure effective protection
 - Severe environmental pollution undermines enjoyment of home
 - Failure to inform of risks created violation of Article 8



- **Vilnes v Norway**
 - Complaints by former divers that they were disabled as a result of diving in the North Sea for oil companies during the pioneer period of oil exploration
 - Failure by the State to provide adequate information enabling individuals to assess risks to their health and lives
 - Lack of scientific consensus and uncertainty
 - The State should have ensured companies observed full transparency



Techniques: Living Instrument

- **Tyrer v United Kingdom**
 - 'living instrument ... which must be interpreted **in the light of present day conditions**'



Techniques: Margin of Appreciation

- Judicial doctrine of self-restraint
- **Hatton v United Kingdom**
 - Night flights
 - Question whether the Government can be said to have struck a **fair balance** between those interests and the conflicting interests of the persons affected by noise disturbances
 - No special approach to environmental human rights



Cases: Industrial Activity

- **Taskin v Turkey**
 - Permits to operate a goldmine
 - Granting by the national authorities of a permit to operate a goldmine using the cyanidation process and related decision-making process infringed Article 8 ECHR
 - Closure ordered and ignored
 - Public access to conclusions of studies



Cases: Industrial Pollution

- **Lopez Ostra v Spain**
 - Waste treatment plant
 - Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health
 - Fair balance not struck between the interest of the town's economic well-being and that of having a waste treatment plant

Cases: Industrial Accidents

■ Öneriyıldız v Turkey

- Methane explosion
- Violation of Article 2
 - Lack of appropriate steps to prevent the accidental deaths notwithstanding report
 - Govern licensing, setting up, operation, security and supervision of the activity and make it compulsory for all concerned to take practical measures to ensure effective protection

Cases: Risk Assessment

■ Tatar v Romania

- Technological process – involving use of sodium cyanide in their gold mining activity put their lives in danger
- Previous accident and inaction
- Failure of risk assessment
- Breach of the precautionary principle

Cases: Noise Pollution

■ Powell and Rayner

- Heathrow Airport – argued that the authorised noise level unacceptable and measures pursued by the government to minimise the noise insufficient
- Fair balance had been struck – no violation



- **Dees v Hungary**
 - Noise, pollution and smell due to heavy traffic
 - Acknowledgment of the complexity of the tasks in reducing traffic
 - Measures taken by the authorities had consistently proved to be insufficient
 - Disproportionate burden on the individual



Cases: Waste

- **Brânduse v Romania**
 - Offensive smells of former refuse tips 20 metres from prison
 - Failure to carry out preliminary studies to measure effects of pollution



Cases: Water Supply

- **Dzemyuk v Ukraine**
 - Contamination of water
 - Violation of Article 8
 - Whether State took **all reasonable measures** to secure the protection of the applicant's rights under Article 8 of the Convention
 - **Reasonable and appropriate measures**
- **Dubetska v Ukraine**
 - Contamination from State coal mine



Cases: Expression

- **Steel v Morris (McLibel Case)**
 - Strong public interest in enabling groups and individuals to contribute to the public debate by disseminating information and ideas on matters of general public interest, such as health and the environment



Principles

- No environmental right
- Environmental considerations taken into account while balancing the interests of the individual against those of the community as a whole to strike a fair balance, no special status for environmental human rights
- Deference to the democratically-elected authorities
- Wide margin of appreciation
- ECtHR subsidiary role
- Proof of harm not necessary; risk assessment/studies required



Charter

- **Article 37**
 - 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.



- **Principle not a right**
 - Interpretive value when interpreting other environmental law provisions



Conclusion

- Significant achievement of Convention
- Less critical under Charter
- The future of environmental rights?
 - **Brazil:** "right to an ecologically balanced environment which is a public good for the people's use and is essential for a healthy life"



Thank you!
