

A human's Liberty to Protect Wild Animals: Challenging Nature Rights Dogmas and Renewing of European Environmental Legal Culture

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1 Introduction

The hypothesis that environmental law is too anthropocentric to safeguard effectively the intrinsic value of nature, while already debatable, is now contradicted by legal reality. Here, we present a recent ruling by the French Conseil d'Etat, which determined that harm to a protected bird species constitutes a violation of the human right to the environment, itself recognized as a fundamental freedom. Beyond its practical implications, this decision serves to dismantle entrenched dogmas regarding the legal protection of the environment and reflects a broader renewal of European legal culture in environmental protection, akin to the German Constitutional Court's landmark *Climate* decision.

2 An Allegedly Anthropocentric and Ineffective Environmental Law?

Environmental law has long been characterized as anthropocentric – a description that once neutrally implied that environmental protection aimed primarily at safeguarding human life conditions on Earth. Today, however, this term often carries a critical undertone.

While this perspective may be relevant to the early stages of environmental law¹, it becomes less tenable following the emergence and consolidation of nature protection legislation in the 1970s. Species protection laws and the creation of protected areas have, *a minima*, the effect, if not the explicit aim, of preserving nature's intrinsic value. Yet, this idea remains deeply ingrained in legal scholarship², and some authors argue, with little empirical substantiation³, that environmental law's alleged anthropocentrism is the root of its inefficacy⁴.

3 Beyond Dogmas, The Reality of Law: Human Rights for the Benefit of Wild Animals

This critique has also been directed at Article 1 of the French Environmental Charter, which elevates the human right to the environment to a constitutional status, in the wake of calls for the incorporation of the rights of nature into French legislation. However, such criticisms are now fundamentally at odds with legal reality, highlighting the ideological underpinnings of rights of nature discourse.

It is particularly noteworthy that wild species are increasingly being protected under the aegis of a fundamental freedom guaranteed to humans by the French Constitution. To grasp this development, a brief contextual explanation is necessary, supported by recent examples.

In 2023, the Administrative Tribunal of Toulouse held that measures by the French government to deter brown bears in the Pyrenees infringed upon the human right to the environment enshrined in the French Constitution⁵.

More recently, in October 2024, the French Conseil d'Etat ruled that authorizing the hunting of the rock ptarmigan, a bird species protected under the Birds directive, also constituted a violation of the human right to the environment⁶.

4 The Mechanism Behind These Judicial Advancements

To understand these decisions, it is crucial to delve into the 'référé liberté' procedure⁷. This summary procedure enables the public – often through environmental NGOs – to go to courts to halt infringements on a 'fundamental freedom', with a ruling mandated within 48 hours.

Historically, environmental protection was not considered a 'fundamental freedom' that could be invoked under this procedure. Early attempts before administrative tribunals following the constitutional recognition of the human right to the environment in

¹ See the Convention for the Protection of Birds Useful to Agriculture, signed at Paris on March 19, 1902 and the Convention for the Protection of Fur Seals signed at Washington on July 7, 1911; Coyle S. and Morrow K. (2004), p. 155.

² See De Lucia V. (2017).

³ The few empirical studies that have been carried out on environmental law tend to show its effectiveness (see Faure M. G. (2012); Eskander S. M. S. U. and Fankhauser S. (2020); Donald P. F. et al. (2007); Sanderson F. J. et al. (2015); Ricciardi A. and MacIsaac H. J. (2022); Glicksman R. L. and Earnhart D. (2007).

⁴ See *inter alia* Boyd D. R. (2017), p. xix; xxiii; xxv; Kotzé L. J. and French D. (2018); Carducci M. et al. (2019), p. 14; p. 121.

⁵ See Administrative Tribunal of Toulouse, July 19, 2023, *One Voice*, no. 2304194.

⁶ See Conseil d'État, October 18, 2024, *Comité écologique ariégeois*, no. 498433.

⁷ Article L. 521-2 of the French Code of Administrative Justice.

2005 were conclusive⁸, but the Conseil d'État did not confirm this status.

However, in 2022, the Conseil d'État finally ruled that the human right to the environment “constitutes a fundamental freedom within the meaning of Article L. 521-2 of the Code of Administrative Justice”⁹, in a case concerning the recalibration of a road. This ruling opened significant practical opportunities for environmental litigation, minimizing the risk that environmental damage would be irreversible by the time a case was decided on its merits.

Despite this, doubts persisted regarding the applicability of the human right to the environment in cases focused on nature conservation. The October 2024 ruling concerning the rock ptarmigan shattered these uncertainties, following the 2023 brown bear decision to confirm that harm to a wild species could indeed violate the human right to the environment.

This development fundamentally challenges the belief held by some advocates of nature rights that personifying nature is the only effective means of protecting its intrinsic value¹⁰. The argument that environmental law is inherently flawed due to anthropocentric biases is directly refuted by these judicial precedents.

Environmental Law and Rights are fit for purpose.

5 The Renewal of European Environmental Legal Culture: Shattering Dogmas

The ruling of the Conseil d'État fits within a broader context, as it is not an isolated instance in challenging established dogmas. In recent years, European courts have demonstrated that pragmatic solutions can often outpace idealistic approaches when addressing environmental challenges.

This pragmatic shift does not require the personification of nature but rather a reevaluation of the foundational principles of European political liberalism in light of unprecedented environmental challenges. While developments in other regions, such as South America, are compelling to observe¹¹, they unfold within distinct cultural and legal frameworks. Instead of seeking legal transplant, European judges are forging their own path, balancing tradition with innovation.

⁸ See Administrative Tribunal of Châlons-en-Champagne, April 29, 2005, *Ligue de protection des oiseaux*, nos. 0500828, 0500829, 0500830.

⁹ See Conseil d'État, September 20, 2022, no. 451129.

¹⁰ Bétaille J. (2019), p. 35.

¹¹ Among many examples, see for example the decision on the Atrato river (Constitutional Court of Colombia, November 10, 2016, *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, judgment T-622/16; see Villavicencio Calzadilla P. (2019), p. 49.

Of course, the *Urgenda* decision served as a genuine catalyst in climate litigation¹². More recently the *KlimaSeniorinnen* decision of the European Court of Human Rights¹³ has left a lasting impression, even if it did not fundamentally alter the interpretation of Article 8 of the European Convention on Human Rights. Contrary to some initial reactions¹⁴, its revolutionary character was probably overstated.

However, we believe that the most substantial shift in the relationship between rights and environmental protection emerged with the 2021 decision of the German Constitutional Court in the *Climate* case¹⁵. Rather than venturing into the field of legal creation, the Court relies on classics, using first-generation rights as a foundation. Courts have long accepted that property rights or the freedom of enterprise can be restricted for environmental reasons¹⁶. But the German Constitutional Court is going much further by framing fundamental rights as the basis for state obligations to protect the environment, specifically through the reduction of greenhouse gas emissions.

Significantly, the Court projected constitutional review into the future, recognizing the intertemporal nature of fundamental rights and anticipating the risk of future restrictions on freedoms. The German Climate Act was deemed unconstitutional for lacking ambition beyond the year 2030.

Above all, the Court makes fundamental rights and freedoms, in particular the right to life and the right to property, the basis of the State's obligation to protect the environment, in this case to reduce greenhouse gas emissions after 2030¹⁷.

6 Fit for Purpose

This approach echoes the foundational principles established in the 1972 Stockholm Declaration. Its first principle articulates: “*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 he bears a solemn responsibility to protect and improve the environment*”

¹² See Peeters M. (2016); Wewerinke-Singh M. and McCoach A. (2021). However, the replicas it generated in France did not profoundly change the landscape of environmental litigation (see Bétaille J. (2022)).

¹³ ECHR, Grand Chamber, April 9, 2024, no. 53600/20; *Gaz. Pal.* 5 november 2024, no 36, p. 4, comment by Joël Andriantsimbazovina.

¹⁴ See for example Blattner C.E. (2024).

¹⁵ German Federal Constitutional Court, March 24, 2021, *Climate*, no. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20; *AJDA*, 2022, p. 166; see Gaillet A. and Grimm D. (2022); Saiger A.-J. (2021); Goldmann M. (2021); Ekardt F. (2021).

¹⁶ See EUCJ, January 15, 2013, *Jozef Krizan*, C-416/10, § 113-114; ECHR, November 27, 2007, *Hamer v. Belgium*, n° 21861/03, § 79.

¹⁷ See the points 143, 171, 182-183, 243.

for present and future generations”. All the necessary elements were already in place. However, it has taken decades for courts to embrace these ideas at the highest level within domestic legal systems.

By applying established rights in innovative ways, European courts are dismantling ideological frameworks advocating for the rights of nature. While skeptics may reignite debates on anthropocentrism, recent French and German court decisions indicate a shift in how environmental protection is approached, affirming that environmental law, supported by human rights, effectively safeguards both human and ecological interests.

Environmental Law and Rights are fit for purpose.

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