SYMPOSIUM

“New Frontiers in Global Environmental Constitutionalism: Implementing Human and Environmental Rights in Global Contexts”

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10 years later

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Introduction

• President Chirac electoral promise
• The Coppens report and the draft Charter
• The incorporation of the Charter into the Constitution by the Act of 1 March 2005
Reasons for an environmental Charter

1. The awareness of the global threat to the environment
   • *need to respond to the concerns of the civil society*
   • *bringing French law in line with other foreign models of environmental protection*
Reasons for an environmental Charter

1. The awareness of the global threat to the environment

2. The necessary completion of French environmental law
   • the insufficiencies of French law
   • failed attempts to give constitutional force to environmental principles
Reasons for an environmental Charter

1. The awareness of the global threat to the environment
2. The necessary completion of French environmental law
3. The need to give constitutional force to a fundamental right
   - human rights of the third generation
   - a declaration of rights purposely incorporated into the Constitution
Content of the Charter

1. The preamble

• 7 considérants
• a series of general statements
Content of the Charter

1. The preamble

2. The Charter provisions
   • 10 provisions
   • Arts. 1 & 2: right and obligation
     “Chacun a le droit de vivre dans un environnement équilibré et respectueux de la santé”
     “Toute personne a le devoir de prendre part à la préservation et à l'amélioration de l'environnement”
Content of the Charter

1. The preamble
2. The Charter provisions
   - Art. 3, 4, 5 and 7: means of action:
     - Prevention principle
     - Environmental liability
     - Precautionary principle
     - Access to information
   - Art. 6: sustainable development
   - Art. 8, 9: education and research
   - Art. 10: France’s European and international policy
The “constitutionalisation” of the Charter

1. The process of “constitutionalisation”
   - constitutional amendment
   - the Constitutional Act of 1 March 2005
The “constitutionalisation” of the Charter

1. The process of “constitutionalisation”
2. The legal force and effect of the Charter
   - the legal force
   - legal effects
The “constitutionalisation” of the Charter

1. The process of “constitutionalisation”
2. The legal force and effect of the Charter
3. The effectiveness of the Charter
   • *the extension of parliamentary powers*
   • *more unity and clarity*
   • *more coherence of French environmental law*
The “constitutionalisation” of the Charter

• the Charter has become a directly applicable instrument enforceable in French courts
• It has the same legal constitutional force as the 1789 Declaration and the 1946 Preamble
• Const. Court in GMO law decision and Conseil d’Etat in Commune d’Annecy ruling:
  “the rights and obligations as defined in the environmental Charter, and like all provisions of the preamble of the Constitution, have constitutional value”
The “constitutionalisation” of the Charter

- The Const. Court had no qualms to grant constitutional value and force to the Charter provisions
- *Hauchemaille et Meyet* (March 2005) decision: the Treaty establishing Constitution for Europe is not incompatible with the 2004 environmental Charter
- GMO decision: principle of access to information (Art. 7 Charter) was not undermined by the GMO Act
- Under the Constitutional Preliminary Reference procedure (QPC): decision of 8 April 2011 (nuisances), the CC treated Arts 1 (right to live in a balanced environment and respectful of health) and 2 (right to live and take part in the conservation of the environment) as one single provision to establish the general concept of conservation of the environment.
The “constitutionalisation” of the Charter

A number of issues remain untouched:
- the preamble to the Charter is rather philosophico-scientific verbosity with little legal value except maybe the last 2 paragraphs

« Que la préservation de l'environnement doit être recherchée au même titre que les autres intérêts fondamentaux de la Nation » ;

« Qu'afin d'assurer un développement durable, les choix destinés à répondre aux besoins du présent ne doivent pas compromettre la capacité des générations futures et des autres peuples à satisfaire leurs propres besoins »

- The legal force of Articles 8, 9 and 10 is also questionable
Conclusions

• Former PM Raffarin: “(t)he Environmental Charter will give a new impetus to the protection and the enhancement of the environment”
• “and will make France a model Nation through her ambition towards ecology and sustainable development” (???)
• However it could have been better drafted yet and a number of principles better formulated
Conclusions

• With regard to the general principles of environmental law, the Charter is not original in itself compared to international law, EU law and the ECHR.

• However, with regard to the evolution of French environmental law, the Charter has been instrumental in ensuring that this law find its place in French law and notably at the top of the hierarchy of legal norms.

• Like any constitutional instrument, the Charter must be recognised as one that can not only be interpreted but also applied:
  - The Charter provisions do not have the same effectiveness
  - The effectiveness of the Charter depends on the status of the judge and of the procedure used (QPC mechanism)
Conclusions

• The Charter itself need not change but the reading of it does, especially as the courts will be increasingly faced with issues relating to biodiversity, energy transition, international trade and new challenges relating to preserving the integrity of our ecological patrimony and the emerging new economy

• This might become clearer in 5 or 10 years....so see you again in 2020/2025