

The “Constitutionalisation” of French Environmental Law under the 2004 Environmental Charter

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Promised by President Chirac during the 2002 campaign for the Presidential elections, the Environmental Charter has become the third branch of the French 1958 Constitution. It has been incorporated alongside the 1789 Declaration of the Rights of Man and of the Citizen and the Declaration of Economic and Social Rights in the Preamble of the 1946 Constitution.

France is bound at international and European levels by a number of conventions and treaties in favour of sustainable development and French environmental law is well developed. Yet, at that time, there was still a common perception that the establishment of superior constitutional fundamental principles was lacking.

The Environmental Charter was primarily adopted in order to:

- respond to and address the concerns of the French civil society;
- bring French law in line with foreign models of ‘constitutionalisation’ of environmental protection;
- address the insufficiencies of French environmental law, notably with regard to the place held by environmental principles in the hierarchy of French legal norms; and
- give constitutional force to environmental protection as a human right.

Since its adoption by both Houses of Parliament, everyone living in France “...has the right to live in an environment which is balanced and respectful of health” (Article 1). Such right is not a statutory right but a right that has been attached to the 1958 Constitution. It has thus been given equal status and force to the set of rights contained in the 1789 Declaration of the Rights of Man and of the Citizen and in the Preamble to the 1946 Constitution. These were incorporated into the so-called “*bloc de constitutionnalité*” (the block of constitutional provisions) by the Constitutional Court in the early 1970s.¹

The Charter provisions are protected, interpreted and enforced by the Constitutional Court as well as the administrative and ordinary courts. It applies to all persons, natural and legal, private and public, and can be used as an instrument for interpretation of all international environmental treaties and conventions signed by France.

This chapter examines the process of the ‘constitutionalisation’ of the Charter and discusses its content.

¹ See Decision 70-39 of 19 June 1970 and Decision 71-44 of 16 July 1971; see Dadomo & Farran, *French Substantive Law. Key Elements* (Sweet & Maxwell London 1997) at 151-153

1. Content of the Charter

1.1 The preamble

The preamble has seven paragraphs, or *considérants*, which constitute a series of general statements.

The first two paragraphs make a general statement on the interdependence of mankind and its natural environment. They also mention the indissoluble link between the environment and the current existence and future of the human race. The third one recalls the universal dimension of environmental protection and that the environment is the common heritage of all human beings.² In the fourth paragraph, it is acknowledged that humans increasingly influence living conditions and their own evolution. This paragraph constitutes the basis for the principle of environmental liability laid down in Article 4 of the Charter.

The fifth one refers to the effects on the environment of consumption and production patterns and the excessive exploitation of natural resources. The sixth one states that environmental protection is to be granted the same importance as other national fundamental interests such as France's independence and security, the protection of its population, etc. It is therefore up to public authorities to take into account the environment when defining new national policies. Yet, as suggested by the wording of this paragraph, environmental protection takes no precedence over other national interests. It therefore falls on the legislator to find the right balance between all fundamental national interests.

Finally, the concept of sustainable development is given constitutional force in the seventh paragraph. It is defined as "the choices aimed at addressing today's needs without compromising the capacity of future generations and other peoples to satisfy their own needs". The emphasis is on the concept of solidarity between current and future generations and peoples. The Charter is thus designed to establish a balance between economic development, social progress and environmental protection. And indeed, a careful reading of the whole preamble shows that the principle of sustainability underlies each paragraph, thus giving the Charter its overall coherence.

1.2 The Charter provisions

The Charter consists of ten provisions. While Article 1 creates a right for everyone to an environment which is balanced and respectful of health, Article 2 imposes on every person an obligation to take part in its protection and improvement. Both provisions are of general character and, as such, are the foundation of the Charter. Their application and effectiveness depend on the subsequent provisions: Articles 3 (duty of prevention), 4 (duty to remedy), 5 (precautionary principle) and 7 (participation and access to information) to provide the necessary means to ensure effective environmental protection and justice.

² As opposed to common heritage of mankind, the international law concept applicable to Antarctica and extra-atmospheric space and which carries legal effects. Here, the concept of heritage is more of an intellectual rather than of a legal nature. This concept must be regarded as having universal value only and not one to which the courts would give legal force.

The right to live in a balanced environment, respectful of health

The scope of Article 1 is rather broad as it covers two concepts: a “balanced environment” and an “environment respectful of health”. The first one is understood as covering not only balances of ecosystems (conservation of biodiversity, low levels of pollution, etc.) but also the balance between urban and rural areas. The second concept of “environment, respectful of health” is to be understood as an unpolluted and undamaged environment.

This wording seems to be more neutral than that of “healthy environment” or that of “environment favourable to one’s health”, which was the terminology used in the draft Charter of 27 June 2003. Although the latter wording was more precise and specific than that used in the Charter, it was not adopted mainly on the ground that it would be unreasonable to expect the environment to play a pro-active role in human health. In addition, if a damaged environment can have adverse effects on human health and living conditions, a balanced one does not necessarily have a noticeable favourable effect on health. For that reason, the concept of an environment which is respectful of health was preferred and adopted in the final draft.

As a counterpart to the rights created under Article 1, Article 2 imposes on every person a duty to take part in the protection and the improvement of the environment.

The duty to protect and improve the environment

This duty is to be understood primarily as a moral rather than a legal obligation imposed on all natural and legal persons. However, this moral obligation has constitutional value which cannot be ignored in subsequent legislation. Each individual has a responsibility to ensure the sustainable use of natural resources and the improvement of environmental conditions. The expression “take part in” implies that this can only be exercised within one’s individual limits. What matters is that everyone is aware that environmental protection is a shared responsibility, and a matter of concern for all. This moral obligation is further re-enforced by a strict legal obligation of prevention.

The duty of prevention

Under Article 3, natural, legal, public or private persons have an obligation, within limits laid down by the law, to prevent any damage that they are likely to cause to the environment or, failing that, to limit the consequences of such damage. The prevention principle is already recognised and well established under Article L 110-1-II(2) of the Environmental Code, which provides that environmental damage must be redressed primarily at its source.³ In the Code, the prevention principle is based on three components: the distinction between preventive action and the redressing of the

³ “Principle of preventive action and of the redressing, primarily at its source, of environmental damage, including the best available techniques at an economically viable cost.” It is to be noted that in the French version of this provision, the word “*correction*” (best rendered by “redressing” or “correcting”) is used instead of the term “*réparation*” (best rendered by “remedying”).

damage at its source, the use of the best available techniques, and the acceptable economic cost.

In the Charter, preventive action can only be defined in broad terms because of the general character of constitutional provisions and could not be laid down as an absolute principle as it is in the Code. The primary role of the Charter is indeed to guarantee a general obligation of prevention whose conditions of application are to be defined further in statutory law as Article 3 provides. Furthermore, as the Charter's rights and principles must comply with other constitutional principles and values and have no precedence over them, if given an absolute character, preventive action could come up against other constitutional principles such as entrepreneurial freedom.

The principle is also defined in broad terms with regard to its objective. The environmental damage need not be certain for the prevention principle to apply as the expression "...likely to cause ..." suggests. The scope of application of the prevention obligation extends beyond that of major pollution accidents or industrial pollution, and includes risks whose existence is scientifically established and whose probability can be objectively assessed by statistical analysis or by logical reasoning (calculation of probabilities).

Defined broadly as to its object, conditions of application and its addressees, the obligation of prevention was also given a realistic objective. Article 3 imposes an obligation to prevent any damage to the environment or, failing this, to limit the consequences of the damage. This provision may give the impression that a potential polluter has a choice between preventing damage and limiting its effects. This could be seen as a step backwards in comparison to the generally accepted definition of the prevention principle. . Most economic activities are capable of causing, directly or indirectly, some damage to the environment. To address this, , the duty of prevention as set out in the Charter encourages methods of production and consumption with limited impact on natural resources and of producing limited waste. Article 3 of the Charter therefore seems to offer a realistic definition of the duty of prevention, which, as such, cannot be deemed to be in contradiction with the principle of preventive action as laid down in Article L. 110-II(2) of the Code. The latter provision does not guarantee the prevention of environmental damage in absolute terms either. Further, Article 3 does not prevent the Parliament from passing legislation imposing an absolute duty of prevention in certain cases.

Going hand in hand with the obligation to prevent environmental damage, the duty to remedy it is specified under Article 4.

The duty to remedy environmental damage

Article 4 provides that "(w)ithin conditions laid down by statute, anyone must contribute to the remedying of any damage that they have caused to the environment." While the principle of civil liability, laid down in Article 1240 of the Civil Code ("anyone's act whatsoever which causes harm to another, creates an obligation by whose fault it was caused to compensate it") and which applies to environmental

damage, had already been given constitutional force by the Constitutional Court, there was no specific regime applicable to environmental damage⁴.

Despite its connection with this duty to remedy environmental damage, the “polluter-pays” principle is defined in Article L 110-1-II(3) of the Environmental Code as a principle whereby “the costs of prevention of, reduction of, and fight against pollution must be borne by the polluter” and is therefore viewed more as an obligation to prevent and reduce pollution rather than as an obligation to remedy any damage caused. The actual inclusion of the “polluter-pays” principle in the Charter was open to fierce debate. While this principle was viewed by many as too ambiguous and interpretable as a right to pollute to be included in the Charter, others thought that it would have been a setback to exclude it from the provisions of the Environmental Code.

The first position prevailed for three reasons. Firstly, although the “polluter-pays” principle is one of efficiency, it can be perceived as having little impact. The fact that the financial burden is born primarily by the polluter does not prevent the victims of pollution from bearing the costs too, either as indirect victims or as taxpayers. As a principle of financial liability, it is not economically efficient. Secondly, the principle does not necessarily provide a remedy for all environmental damage, notably for damage to natural habitats. Thirdly, Article 5 of Charter integrates this principle in a wider dual dimension of prevention and remedying without contradicting the Environmental Code provision.

Although Article 4 establishes no specific regime of environmental liability, such task being left to Parliament, it gives the principle of environmental liability constitutional force.

The precautionary principle

Unlike the principle of prevention which is of general application, the precautionary principle can only be triggered in exceptional cases as defined under Article 5. The Charter provides that “(w)hen the occurrence of damage, despite being uncertain in the light of scientific knowledge, could affect the environment in a serious and irreversible manner, public authorities must ensure, under the precautionary principle and within their competences, that risk assessment procedures are set out and that provisional and proportionate measures are adopted in order to avert the occurrence of damage.”

Article 5 is the only provision in the Charter to refer expressly to a principle. Indeed, it provides a clear and rigorous constitutional definition of the principle, based on rationality and efficiency. It strictly defines its scope of application and the procedural rules for its implementation. Precautionary measures can only be triggered if three conditions are simultaneously met.

First, there must be a threat of damage to the environment. Since the precautionary principle as established in the Charter has constitutional force only in the field of

⁴ With the exception of cases of dangerous activities where specific regimes of strict liability apply as a result of international obligations, such as nuclear accidents (Acts of 1968 and 1990) and maritime transport of petroleum products (Article L. 218-1 of the Environmental Code).

environment and does not extend to other areas, notably health. -Article 5 cannot thus be read in conjunction with Article 1 of the Charter which refers to “an environment, respectful of health”. This is because the Charter is not one that is focused particularly on public health, and the two areas remain separate and distinct. Yet Article 5 applies to all threats of damage to the environment having effects on health and its scope of application cannot be restricted by an Act of Parliament when applied to the environment.

Lack of scientific certainty regarding the damage is the second condition. This allows the line to be drawn between the scope of application of the precautionary principle and that of prevention. While the latter applies to a known or even potential threat, the former is a “principle of methodological action, the activation of which is dependent on a legitimate doubt about the existence of a threat.”⁵

Finally, the threat of damage must have serious and irreversible consequences. While generally considered alternatively in international conventions,⁶ those two criteria are cumulative in the Charter. This was viewed as essential to effectively assess the threat of damage in the context of scientific uncertainty.

Article 5 of the Charter lays down strict procedural rules for the application of the principle. While Article L.110-1-II of the Environmental Code does not specify to whom, private or public bodies, the principle applies, Article 5 makes it clear that it is up to “public authorities (to) ensure, [...] that risk assessment procedures are set up, and that provisional and proportionate measures are adopted [...]”. In this respect, unlike Articles 2 to 4 of the Charter, Article 5 does not impose obligations on private individuals, yet they would have to comply with administrative or legislative measures implementing the precautionary principle.

The issue as to whether the principle should be applied by central government authorities only or by all public authorities⁷ was central to the debate prior to the adoption of the Charter. The second option prevailed in order to better reflect the territorial dimension of environmental protection and to maintain some coherence with the decentralised powers in the domain of environmental protection exercised by local authorities. To avoid the occurrence of damage, public authorities have a dual obligation under Article 5: setting up risk assessment procedures and adopting precautionary measures.

Following an adequate risk assessment based on research programmes aimed at reducing scientific uncertainty, dissemination of information regarding the means of preventing damage, the setting up of environmental control procedures and, above all, scientific expertise, public authorities can then adopt provisional and proportionate precautionary measures. Their provisional nature is viewed as inherent to the principle

⁵ Prof. G. Martin as quoted in ‘*Historique du Principe de Précaution*’ in Annex 1 to Ph. Kourilsky & G. Viney, ‘*Le Principe de Précaution. Rapport au Premier Ministre*’ (La Documentation Française, 2000) in fn 224 at 65.

⁶ See Principle 15 of the Rio Declaration and Article 3(3) of the UN Framework Convention on Climate Change.

⁷ The term “public authorities” can be interpreted in the same way as in Article 7 of the Charter on the right of information and participation in reference to the 1998 Aarhus Convention.

of precaution since, unlike preventive measures, which are usually definitive, precautionary measures must be regularly reviewed, amended or reversed in the light of new scientific knowledge and information available. They must also be proportionate to the seriousness of the threat of damage and to the duration of the research on that threat.

Although Article 5 does not refer specifically to “an economically acceptable cost”, it is implied that the proportionality of the precautionary measures must also be measured in those terms. To verify that the cost of precautionary measures does not exceed their expected benefit, courts will have to analyse the costs and benefits, or “*bilan coûts-avantages*”, which is widely used by French administrative courts and the European Court of Justice. However, its use is made even more difficult by the uncertain nature of the threat of damage and, therefore, of the expected advantage derived from the precautionary measures, in the short and long term, as the purpose of the precautionary principle is to protect future generations.

Article 5 can thus be seen as having created a set of obligations and requirements turning the precautionary principle into a solid bastion of legal certainty in areas where safety is the condition for action.

This is not the case of Article 6 which is designed to define a line of conduct to promote sustainable development without imposing imperative requirements on policy-makers.

Promoting sustainable development and integration

Article 6 provides that sustainable development must be promoted by public policies, which “shall reconcile environmental protection and improvement, economic development and social progress”. Far from being innovative, this provision merely lays down two principles that are widely recognised in international, European and French legislation.

It requires that environmental protection and improvement, economic development and social progress, the three pillars of sustainable development, are equitably taken into account in public policies.⁸

In order to ensure that the objective of sustainable development has the widest possible impact, Article 6 also provides that it shall be integrated not only in policies on territories and the environment, but also in all public policies as defined in statutory laws and regulations. It therefore extends the scope of application of the principle of integration beyond the limits laid down in Article L. 110-1 of the Environmental Code and provides a constitutional foundation to existing laws which incorporate the integration principle (e.g. Article L. 123-1 of the Urban Planning Code, Art. 14 of the new Public Procurement Code or even Article L. 225-102-1 of the Commercial Code).

This provision imposes on Parliament a constitutional obligation to assess more carefully, give more consideration to the impact that any public policy may have on the environment, and find the right balance between all three components of

⁸ The original version of Article 6 provided that public policies “shall take into consideration environmental protection and improvement and reconcile them with economic and social development”.

sustainable development. Consequently, any newly adopted legislation which fails to meet those conditions can be reviewed or declared unconstitutional by the Constitutional Court on the ground of ‘*erreur manifeste d’appréciation*’ or ‘manifest error of assessment (of facts)’.⁹

The right to information and participation

Subject to conditions and restrictions as defined by law, Article 7 gives “(e)very person (...), the right to access information relating to the environment held by public authorities and to participate in the drawing up of public decisions which have an effect on the environment.” It gives additional constitutional status to two rights already fully guaranteed under Articles L 110-1(4) and (5)¹⁰ and L.124-1 of the Environmental Code, the 1998 Aarhus Convention and the two European Directives of 2003 on Public Access to Environmental Information and on Public Participation in respect of the Drawing up of certain Plans and Programmes relating to the Environment.

Unlike Article 1 which creates a right to a balanced environment for the benefit of individuals only (“*chacun*”), Article 7 is the only provision of the Charter that extends the benefit of a right to “every person” (“*toute personne*”). Like in Articles 2 to 4, this expression has to be understood as including all natural and legal public and private persons. In doing so, the provision of Article 7 recognises the well-established case-law of the Constitutional Court and administrative courts extending the benefit of constitutional fundamental rights to legal private and public persons.

In the Environmental Code, the two principles of access to information and of participation were not sufficiently and clearly distinguished. Article 7 remedies this undesirable situation and defines them more neatly. In line with Articles 4 and 5 of the Aarhus Convention, the right of access to information applies to “information relating to the environment held by public authorities”. The interpretation of the concept of “environmental information” which has been traditionally based on the concept of access to administrative documents and, consequently, that of public service, had to be broadened to comply with Directive 2003/4 on Public Access to Environmental Information.

With respect to the right of participation in the drawing up of public environmental decisions, Article 7 simply creates a procedural right for the public to be appropriately consulted during the decision-making process itself as the final decision being taken by the public authority. Here, the wording of Article 7 was significantly different

⁹ This concept is widely used in judicial review by the French Constitutional Court and the *Conseil d’Etat* (the highest administrative court) and also by the Court of Justice of the European Union (see, for instance, Case C-427/12 *Commission v European Parliament and Council* EU:C:2014:170, para. 40), the EFTA (European Free Trade Association) Court (eg, Case E-15/10 *Posten Norge AS v EFTA Surveillance Authority* [2012] EFTA Ct. Rep. 246, paras 95-102). It can be broadly equated to the English law *Wednesbury* principle of unreasonableness. The court does not substitute its own assessment for that of the public authority (not reviewable) but checks that the assessment by the public authority is based on accurate, consistent and complete evidence (reviewable).

¹⁰ As amended by the recent Act 2012-1460 of 27 December 2012 on the application of the principle of public participation as defined in Article 7 of the Environmental Charter (Official Journal nr 302 of 28 December 2012).

from that of former Article L.110-1(4) of the Environmental Code: every person can participate in the drawing up of public decisions. This is in contrast to the provision for “the drawing up process of projects.” Moreover, the effect of such decisions need no longer be “important”.¹¹ The formulation of new Article L.110-1(5) has now been aligned on Article 7 of the Charter by the 2012 Act.

In order to give this right more substance and clarity, some of the detailed provisions contained in Article 6 and 8 of the Aarhus Convention could have been inserted in Article 7. Unfortunately, the French legislator did not deem it necessary to do so. The reasons behind this are two-fold: 1) for stylistic purposes, and 2) a basic assumption that further legislation implementing Article 7, such as the 2012 Act on the application of the principle of public participation as defined in Article 7 of the Environmental Charter, would have to be Convention-compliant anyway.

Article 3(3) of the Aarhus Convention on the promotion of environmental education and environmental awareness among the public was another provision that had not been given effect in French law.

The role of education and training in environmental protection

By providing that “education and training must contribute to the exercise of the rights and duties provided for in the Charter”, Article 8 now fills this legal gap by establishing a direct link between education and the rights and obligations that every person has under this Charter. While it does not impose a strict obligation to change the content of the school curriculum, it provides a general objective to include environmental education into school and university programmes as well as in continuing education.

Research and innovation

Like the 1972 Stockholm Declaration, Article 9 of the Charter takes into account research and innovation by providing that they “...must contribute to the protection and improvement of the environment”. By moving research and innovation in environmental matters into the constitutional sphere, Article 9 reinforces the role of existing legislation, which already encourages research aimed at improving the environment¹². The objective of Article 9 is not to restrict all research to environmental research programmes but its wording seems to emphasize the pervasive nature of environmental research which too often suffers from a sectoral approach unsuitable for dealing with environmental problems in an effective and global way.

¹¹ Originally the principle of participation was strangely defined under the 1995 Barnier Act as a right “...whereby every person has access to information relating to the environment...” The 2002 Act on *Démocratie de proximité* (bringing democracy closer to the citizens) amended this provision by adding the right of the “...public (to be) involved in the drawing up process of projects which have an important effect on the environment or town and country planning”.

¹² See in particular Article L.321-1 of the Environmental Code which provides that policies for the protection of the coastal line shall include research and innovation into its resources and distinctive features. Equally, Article L.331-14 states that national parks authorities must participate in research programmes aimed at the economic, social and cultural development of the parks.

The European and international policy of France

Article 10 provides that “the present Charter shall inspire the European and international action of France”. This primarily stresses the fact that environmental protection is meaningless without international action and that France must play a leading role at international and European levels.

2. The constitutionalisation of the Charter

2.1 The process of ‘constitutionalisation’

Once adopted in 2004, the Charter had to be incorporated into the constitution by means of a *loi constitutionnelle* (Constitutional Act). This is an Act of constitutional amendment which must be adopted according to a special procedure under Article 89 of the Constitution. Article 89 provides that the amending Act must be approved in identical terms by both houses of Parliament. It must then be approved and adopted by referendum, or, as in this case – because the proposed Act originated from the Government – by a majority of three fifth of the votes cast in both houses of Parliament convened in a Congress.

The Constitutional Act on the environmental Charter was adopted by the Congress on 1 March 2005. It consists of three provisions, the second of which is the Charter itself. The first Article inserts into the Preamble to the Constitution a reference to “...the rights and duties as defined in the 2004 environmental Charter”. Under Article 3, protection of the environment is added to the legislative competence and powers of Parliament as defined in Article 34 of the Constitution.

2.2 Legal force and effect of the Charter

The Charter automatically acquires constitutional force and value by reason of its adoption in a Constitutional Act, and because of the reference to it in the Preamble to the Constitution. This was confirmed by the Constitutional Court in its GMO (Genetically Modified Organisms) law decision (DC 2008-564, 19 June 2008, JurisData 2008-010652) and by the *Conseil d’Etat*¹³ in *Commune d’Annecy* ruling (CE Ass, 3 October 2008, JurisData 2008-074233): “the rights and obligations as defined in the environmental Charter, and like all provisions of the preamble of the Constitution, have constitutional value”.

Yet a more important issue is that of the direct effect of the Charter provisions i.e. the extent to which they can be relied upon by individuals in French ordinary and administrative courts. This can be done either in private proceedings or against public authorities and, since 1 March 2010, in the Constitutional Court by way of the *question prioritaire de constitutionnalité* or *QPC* procedure (*a posteriori* control of constitutionality of legislation)¹⁴ under Articles 61(1) and 62 of the French Constitution.

¹³ The *Conseil d’Etat* is the highest French administrative court and has the ultimate authority on administrative law cases.

¹⁴ The QPC is a French Constitutional Law procedure allowing persons involved in a pending case to ask the Constitutional Council to assess the constitutionality of the laws relating to the case at hand.

According to the case-law of the Constitutional Court, a constitutional provision will have direct effect provided it satisfies three criteria: it is a legal norm; it is sufficiently precise and it is unconditional. This means that it does not require further legislative intervention.

Applying those criteria, the Charter provisions can be divided into five categories:

- The Preamble: as it contains general statements only, the Preamble can be deemed to be of a declaratory nature. Apart from the last 2 paragraphs, it is rather philosophical and scientifically verbose, with little legal value. However, it is always possible for the Constitutional Court to infer some constitutional principles from its interpretation¹⁵;
- Provisions with limited direct effect: because the effectiveness and applicability of Articles 1 and 2 depend on the application of the other Charter provisions, those can be relied upon in the Constitutional Court, but not directly in ordinary or administrative courts. In its decision of 8 April 2011 (*Michel Z*, QPC 2001-116, JurisData 2001-015527) under the *QPC* procedure, the Constitutional Court interpreted Articles 1 and 2 jointly so as to create a new general duty to protect the environment;
- Provisions with full direct effect: the only provision is Article 5, which clearly and precisely defines the conditions of application of the precautionary principle without the requirement for further legislation. However, while it is not an absolute condition for the application of the principle, further legislation might be desirable and necessary to define in more detail certain aspects of its application such as the risk assessment procedures, the status of the experts, and general principles regarding the reviewability, reversibility and proportionality of precautionary measures to be taken by the public authorities;
- Provisions without direct effect: Articles 3, 4 and 7 refer to, and require further legislation (“subject to conditions as defined by law”) and, as such, cannot have direct effect¹⁶;
- Provisions imposing a line of conduct rather than an obligation: Article 6 defines a line of conduct to promote sustainable development, to be followed by public policy-makers, and does not impose any imperative requirement upon them. Equally, Article 9 does not require that research and innovation contribute to environmental protection and improvement. The same applies to Article 8 on education. Finally, Article 10 merely mentions that the Charter is supposed to be a source of inspiration for the French government at international and European levels. The legal force of those provisions is therefore questionable.

At the time of its adoption, the Environmental Charter was presented as an instrument to drive the protection and enhancement of the environment in French law. Has the Charter lived up to these expectations? Compared to international or European environmental law, the Charter adds nothing to the definition of the main principles of

¹⁵ The Constitutional Court did so for instance with the principle of safeguard of the dignity of individuals which it inferred from the Preamble to the 1946 Constitution in its decision no 94-343 & 344 of 27 July 1994.

¹⁶ Article 7 not only mentions “conditions” but also “restrictions as defined by law”.

environmental law, notably the precautionary principle, sustainable development, and access to information and participation. The most innovative aspect of the Charter rests rather in the new constitutional requirements it imposes on the French Parliament when legislating in the domain of environmental law. As such, Parliament can only pass new legislation which complies with the new constitutional principles laid down in the Charter. As such, the Charter provides greater coherence to French environmental law and reduces the risks of conflicts, albeit limited, between domestic and international, and notably, European laws. The Charter has also been instrumental in the evolution and development of French environmental law which had to gradually find its place in French law in general, and at the top of the hierarchy of French legal norms in particular.

However, like any new constitutional norm, the Charter had to be recognised as a legal norm capable of interpretation and application. Fortunately, it did not experience the same fate as the 1789 Declaration of the Rights of Man and of the Citizen which became prominent in the jurisprudence of the Constitutional Court only since the 1970s. Although one can state that the main provisions of the Charter are interpreted and applied by all French courts, and notably the Constitutional Court and the *Conseil d'Etat*, it is clear that some have greater legal force and are more effective than others.

The full effectiveness of the Charter very much lies in the way the new *QPC* procedure is used and whether it is able to develop in the future from a mere control of constitutionality of environmental legislation into a proper instrument of enforcement of constitutional environmental rights. It will also depend on whether or not the written procedure in the Constitutional Court is able to adapt to the very technical nature of environmental law. As a result, the Constitutional Court might need to adopt a new method of interpretation and reading of the Charter in order to deal with new fundamental issues arising at the crossroad of environmental protection and the development of a new economy.