

# **Sustainability and environmental protection in private law**

lecture by

*Ferdinand Kerschner,*

JKU Linz and Charles University Prague

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# I. The need for effective sustainable environmental private law

- Austrian state of the environment, especially climate protection is frightening
- Major reason is the **failure of environmental administrative law**
  - keywords: Bound by instructive, political interventions,  
official experts

# **I. The need for effective sustainable environmental private law**

- Private environmental law has „considerable steering instruments“: true costs internalisation of external costs
- market-based instruments and mechanisms
- Supreme Court and all other courts are obliged to act in the sense of sustainability

# **II. Mandats for action and potential de lege lata**

## **A. Constitutional Mandates**

- Constitution obliges to protect the environment an the climate!**
  - We have to decide **in favour of environmental and climate protection** (“in dubio pro natura”)
  - it is a justiciable legal norm like Article 20 a German basic law

# **B. Important legal areas of private environmental law**

## **1. neighbourhood law**

## **2. liability law including public liability**

- links of private law with public law private enforcement**
- „quasi negatoria“**

# **B. Important legal areas of private environmental law**

## **3. Contract law**

- „ecological functionality“

## **4. Industrial property protection**

- „eco-tricks and sustainability fraud“
- Cost advantages through breaking environmental law

# **B. Important legal areas of private environmental law**

## **5. Right of servitude**

- Environmentally friendly servitudes are sustainable

## **6. Mediation agreements**

- relieve the authority
- speed up the procedure

## **7. Public procurement law**

- „strong greening“

# III. Relevant gaps

## 1. Liability law/Neighbourhood

- Enormous scientific and technical changes require adaptations
  - new civil environmental liability law (also ecological damage)

## 2. State of the art

- Best available technology:  
Precaution - oriented



# III. Relevant gaps

## 3. Public procurement law

- Stronger greening
- ECJ concedes a wide scope

## 4. Climate change litigation

- In Austria now little chance of success
- A climate liability directive is needed! (*E. Wagner*)

# IV. Demand and potential de lege ferenda

- current projects in the EU

## **1. Supply chain liability**

- violations of human rights and the environment

## **2. Environmental management**

- **mandatory basics** for certain companies
- civil liability for **personal injury**

# **IV. Demand and potential de lege ferenda**

## **3. Climate liability law**

– still written in the stars!

**One thing is certain:**

**Private environmental law will  
in any case gain in importance  
and hopefully also in effectiveness!!!**