

„Sustainability and environmental protection in private law“

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at

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I. The need for effective sustainable environmental private law

- Austrian state of the environment, especially of climate protection is frightening
- Major reason is failure of environmental administrative law
 - Bound by instructions, political interventions
 - official experts
- A market economy requires market-based instruments
- Private law legislators and Supreme court and all other courts are obliged to act in the sense of environmental and climate protection

II. Mandates for action and potential de lege lata

- Federal Constitutional Law on Comprehensive Environmental Protection (1984) and on Sustainability (2013)
 - 10 theses:
 - thesis 2: mandates to act
 - thesis 6 and 7: constitutional interpretation „**in dubio pro natura**“!
 - Justiciable legal norm like Article 20 a German basic law_
 - **ECJ has ruled that private law is equivalent to public law!**
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III. Important legal areas of private environmental law

1. Neighbourhood law

- not only individual interests but also general environmental concerns

2. Liability law including public liability

- „**Private enforcement**“: „links“ of private law with public law
- preventive effect of public liability

3. Contract and law in contractual performance irregularity

- „ecological functionality“ of products

4. Industrial property protection

- „eco-tricks and sustainability fraud“
- misleading advertising
- cost advantages through breach of law
- Sustainability goals are also included in cartel law

5. Right of servitude

- extraordinarily flexible servitude
- environmentally friendly servitudes are sustainable

6. Mediation agreements

- relieve the authority
- contribution to the concretisation of the exercise of discretion
- speed up the procedure

7. Public procurement law

- strong greening of public procurement

IV. Relevant gaps

1. Liability law/neighbourhood

- **adequate** causality and burden of proof rules
- comprehensive health protection
- ecological damage
- draft of a working group on new § 1322 a – 1322 d

ABGB

2. State of the art

- decisive criterion for permits
- BAT is precaution-oriented

3. Public procurement law

„Introduction of eco-social award criteria that are binding for nationwide procurement...”

4. Climate change litigation

- in Austria civil lawsuits had only little chance of success
- But now see the European Court of Human Rights (ECHR) –

„Klima-Seniorinnen Schweiz“

content:

- fundamental issues relating to climate protection under the ECHR
- state duty to protect against the affects of the climate crises
- possibility of individual complaints to natural persons and organisations
- civil character of Art 6 ECHR → **independent courts!**
- some scopes for the memberstates

V. Demand and potential de lege ferenda – thrust through EU

1. **Supply chain liability** (EU) 2024/ 170

- Improvements in the area of sustainability
- human rights and environment
- legal certainty/level playing field
- to be **implemented by 26. 6. 2026!**

2. **Environmental management** (EMAS)

- legal compliance!
- principally voluntary, but now a mandatory basis for certain great companies
- civil liability

3. **CSR-Reporting** (EU) 2022/2464

- violation could be relevant under liability law
- „expectation of quality“ in product purchases
- Mandatory inclusion of the sustainability reporting in the (Group) management report – same level as financial reporting
- more transparency for investors, business partners and consumers
- full sustainability report from 1. 1. 2024 large corporations + public interest + 500 employers

Civil liability – greenwashing/socialwashing

- decisive role for incorrect, misleading and incomplete sustainability information
- many potentially affected parties (f. e. buyer:inside – M&A, Credit and insurance institutions)

4. EU Timber Regulation

(EU) 995/2010

5. (EU) Regulation on deforestation

-free products – „EUDR“

6. (EU) Right to repair

2024/1799

-to be implemented by 26. 6. 2026!

One thing is certain:

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

Great Challenges for Lawyers in Environmental Private Law

Private Law is the „Magna Charta“ of the personal
Freedom“

(Rudolf von Ihering)