

Environmental Ethics Environmental Law

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Ethics

- Source:
 - „εθoς“ – „character“, „habit“, „usage“
 - „ηθoς“ – acting on the base of reason and judgement: individual morality
- Translation to Latin: „mos“ – moral
- Moral and morality are the content of ethics.

Ethics

- Aristoteles (384-323 BC) uses „ethics“ to analyse human acting.
- Ethics as „doctrine of the right acting“

Why are ethics important?

- Can we do this?
- Should we do this?
- Just because we have the ability to do something does not necessarily mean that doing is the right.

Ethics just a matter of opinion?

- People have very different ways of working out what is right and wrong.
- They have individual ideas about how to apply moral principles.
- The study of ethics enables us to examine these different points of view.
- So we can assess the competing claims of the different moral systems.

Frameworks for decisions

- Decisions making under great pressure
- Going with the flow and doing what feels right at the time
- Just „live and let live“?
- Do we need absolute standards that we all need to agree on?

Doing the right, because it just feels right?

- Feelings are important, but are not by themselves an adequate basis for morality.
- Morality is also a matter of reasoning issues out (deontological approach to morality).
- Often being forced to choose between principles...

Looking for a result...

- Looking at the consequences of the proposed action as another way of making decisions about what is right and wrong.
- Utilitarianism (lat. „utile“): in a given situation the right course of action is the one that would produce the greatest happiness for the greatest number of people.
- Situation ethics and ethics of responsibility

The change of stance

- The Golden Rule
- The categorical imperative of Immanuel Kant

Treat others
as you want to be treated!

*Act only on that maxim
by which you can
at the same time will
that it should become
a universal law!*

(Immanuel Kant)

Four formulations of this principle

- The Formula of the Law of Nature: "Act as if the maxim of your action were to become through your will a universal law of nature."
- The Formula of the End Itself: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."

Four formulations of this principle 2

- The Formula of Autonomy: "So act that your will can regard itself at the same time as making universal law through its maxims."
- The Formula of the Kingdom of Ends: "So act as if you were through your maxims a law-making member of a kingdom of ends."

The imperative of responsibility

Hans Jonas

- Care for the future of mankind!
- This care must obviously include care for the future of all nature on this planet as a necessary condition of man's own.
- The danger of disaster through scientific technology arises not so much from any shortcomings of its performance as from the magnitude of its success. This success is in the main of two kinds: economic and biological.

Act so that the effects
of your action are compatible
with the permanence
of genuine human life!
(Hans Jonas)

In your present choices,
include the future wholeness
of Man among the objects
of your will!
(Hans Jonas)

Environmental Law in Austria

Source: Weber K., Public Environmental Law in Austria. In: Seerden/Heldeweg (Editors), Comparative Environmental Law in Europe. Antwerpen 1996, 3-32.

- Not an independent or codified branch of law, but located in various branches of law,
- E.g. international law, criminal law, civil law and administrative law.

The Constitutional Framework

- Austria is a republic with a representative democracy and a federal constitution.
- Government: parliamentary system with presidential elements.

Fundamental principles of the constitution

- Democracy
- Republicanism
- Federalism
- Constitutional state
- Guarantee of human rights

Legislative hierarchy

- Principles of the constitution
- EG legislation
- Constitution
- Laws
- General orders
- Judgments and rulings

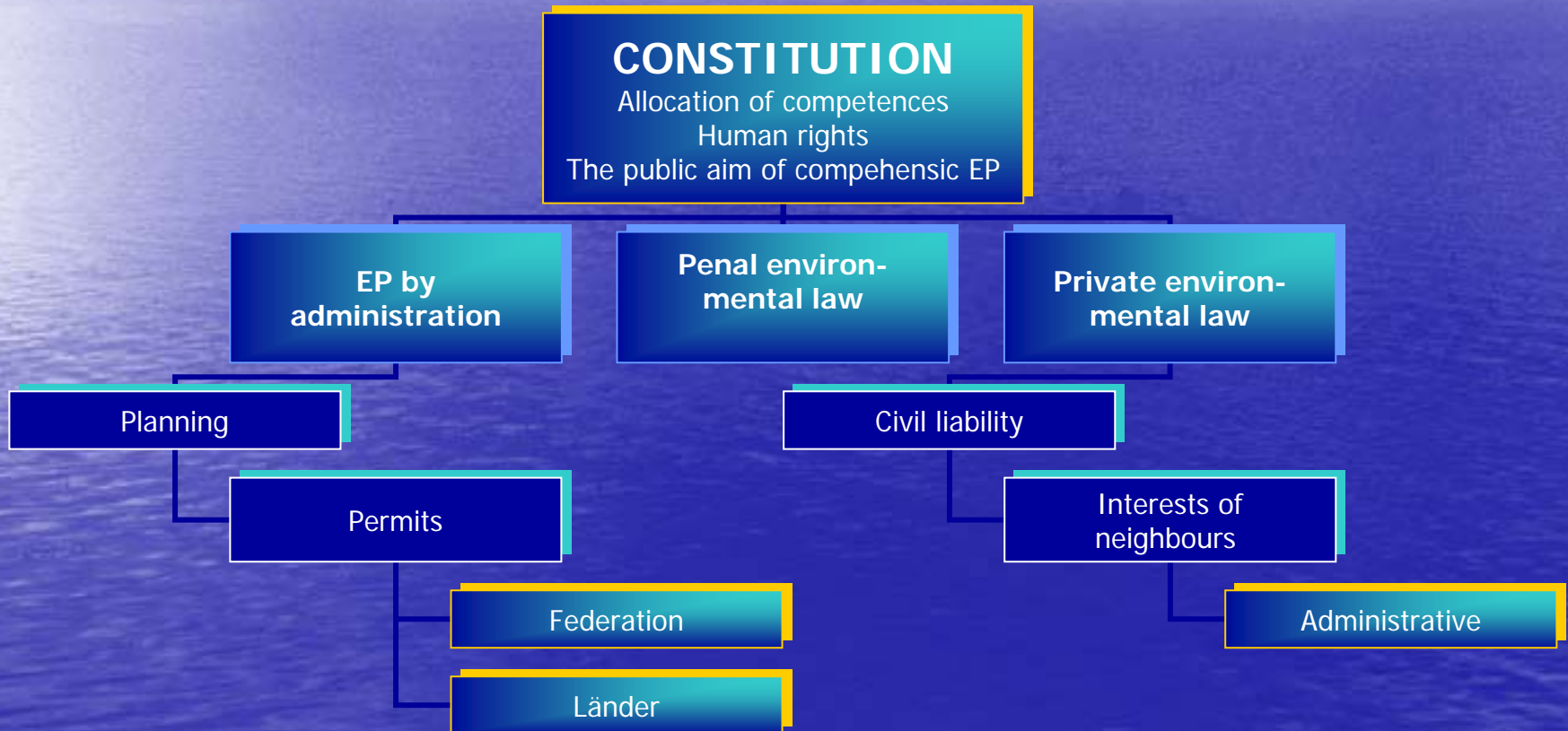
Legal Bases of environmental protection

- set down in the Federal Constitution and in the constitutions of the *Länder*.
- The Federation of the *Länder* may only exercise environmental protection measures according to their competences (Art 10-15 B-VG).
- In the B-VG (1920) environmental protection is a „cross-section-matter“.

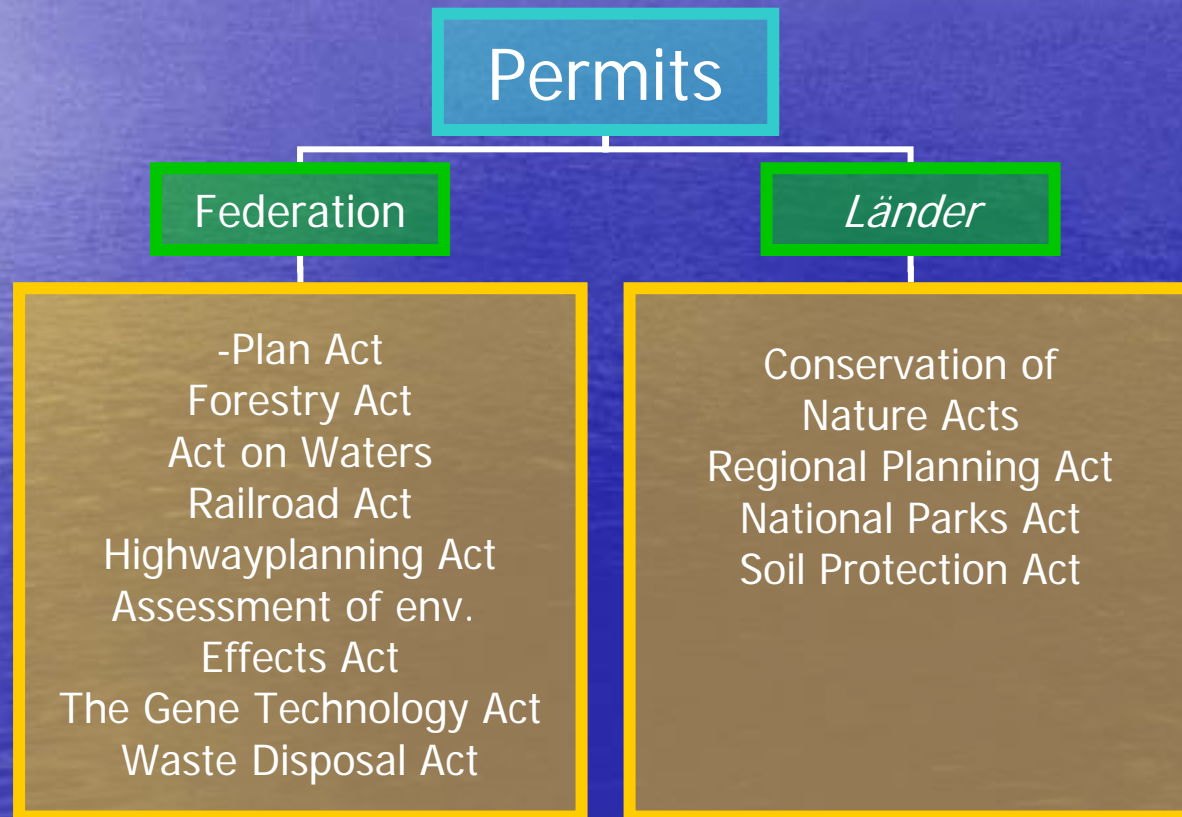
The legal problem of the allocation of competences

- Neither the Federation nor the *Länder* have a sufficient basis of competences on their own.
- The law of competences in the field of EP ist still fragmented.

The corpus of environmental law



The corpus of environmental law (part)



The public aim (Staatsziel) of comprehensive EP

- Prohibition of any great reduction in already achieved standards in EP
- Order to improve EP continuously
- Order to regard EP in planning law
- Rule of interpretation

Air pollution

- Emission Protection Law – Air (IG-L) in accordance with EC air pollution laws
- Protection of
 - ↑ human health
 - ↑ flora and fauna
 - ↑ eco-systems
- IG-L contains measures and procedures for the reduction of pollution.

Air pollution 2

- Authorities can - for example -
 - ↑ order the use of low emission engines
 - ↑ prohibit use of specific engines, procedures or techniques
 - ↑ enact traffic limits, speed reductions etc.
- Heating systems are not covered by the IG-L because of the allocation of competences!

Air pollution 3

- Industrial plants, boiler plants, waste plants and mines must be improved in conformity with IG-L.
- Other general acts, based on state laws, also contribute to clean air.

Biotechnology and chemicals

- *Gentechnikgesetz-Novelle 1998* regulating the release of genetically modified plants
- *Chemikaliengesetz* since 1997 much more EP orientated than before. This law combines self-regulation and individual responsibility with state control.

Further issues on environmental law

- Waste and water
- Eco-audit regulation
- Environmental information
- IPPC: Integrated Pollution Prevention and Control
- Energy policy (liberalizing and deregulating electricity industry adapting EC directives)

The European level in environmental policy

Source: Beyrer, Levels of Action in Environmental Policy. In: WAS – Arbeitsgemeinschaft Wirtschaft und Schule (editor), Environmental policy in the European economy, Vienna.

- The regime of European legal instruments established within the framework of the EU is an absolutely novelty at the international level.
- For the first time, a system of legal standards has been created that is valid and enforceable beyond national borders.
- This offers a real chance to get European environmental problems under control.

Instruments:

EU directives and EU regulations

- A directive specifies the targets, with a certain leeway for the individual Member States in consideration of their different national situations.
- Regulations have an immediate and direct effect to the Member States and thus also on their subjects.

Decision-making levels

MEDIA PACKAGE Transparency 2

Environmental Policy
and the European
Economy



Decision-making-Levels

EU Directive	EU Regulation	EU Decision	CONVENTIONS (Agreements) <i>(i.e. UN, Council of Europe)</i>
<i>Mandatory provisions for Member States</i>	<i>Directly applicable</i>	<i>Contains binding obligations for individual cases</i>	<i>Must be signed Are binding after ratification</i>
<i>which must amend existing laws or pass new laws in order to attain the mandatory target</i>	TAKES PRECEDENCE OVER NATIONAL LAWS	<i>i.e. a state or a company</i>	
<i>In case of violations the European Court of Justice intervenes PASSES JUDGMENT</i> ▼ IMPOSES SANCTIONS	<i>In case of violations the European Court of Justice intervenes PASSES JUDGMENT</i> ▼ IMPOSES SANCTIONS	<i>In case of violations the European Court of Justice intervenes PASSES JUDGMENT</i> ▼ IMPOSES SANCTIONS	<i>In case of violations</i> NO SANCTIONS

Source: Pröbstl, 1996

Targets and principles

The inserted Articles 130 r, s and t of the EEC-Treaty (amended to the EC-Treaty pursuant to the Maastricht Treaty) specify the targets and principles of the common environmental policy:

Targets

- The environment is to be preserved and protected and its quality is to be improved.
- Human health is to be promoted.
- Careful and rational use of natural resources is to be insured.

Principles

- Those who cause environmental damage have to pay for the repair of the damage.
- Principle of avoidance of environmental damage at the source
- Integration principle: environmental targets shall be integrated into other policies.

The European Law-making process

- The law-making process at the European level differs from the process at the national or international level.
- European legislative procedure is launched by the European Commission, which issues a proposal and thus acts as the motor of Community legislation.

The European Law-making process

- The proposal of the Commission is submitted to
 - ↑ the Council
 - ↑ the European Parliament
 - ↑ the Economic and Social Committee
- The Council issues a joint position on the basis of the proposal of the European Commission and the given opinions.

The European Law-making process

- The final decision is taken by the Council.
- Thus the accent in European legislation is set by the Council and not by the Parliament.

Ecology-minded Commission?

The European Commission, bound by the Foundation Treaties, is forced to aim at a high level of environmental protection in its proposals, and may thus be called the motor of European environmental policy.

Ecology-minded Council?

The Council is becoming more and more ecology-minded, not least because the environment-related alliance of certain Member States (Germany, Denmark and the Netherlands) was reinforced by new especially ecology-minded Member States like Austria, Sweden and Finland.

Impressions

In stead of a final quotation concerning the importance of environment protection have a look on the pictures to be followed and listen to the background music.

Become aware of the nature surrounding you and enjoy being a part of it!



















