

Human Rights & Environmental Law UK Reflections

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European Convention on Human Rights



- ECHR 1950 – a product of WWII and Universal Declaration of Human Rights by General Assembly of UN 1948.
- ECHR now “incorporated” into UK law by Human Rights Act 1998 (from 2000). Duty not to act incompatibly unless required by primary legislation
- Access to European Court of Human Rights in Strasbourg after exhausting remedies in UK courts.
- No Brexit from ECHR - only European Union.

ECHR “environmental” human rights?

- ECHR not natural source of “environmental” human rights.
- Many rights are qualified rather than absolute.
- But ECHR a “living instrument” (Tyrer v UK). Interpretation evolves with cultural change (eg gender Goodwin v UK).
- Increased extension through substantive and procedural rights (eg right to life). Important for environmental law in right to access environmental information.
- Main rights invoked in environmental law:
 - Article 2 Right to Life
 - Article 6 Right to a fair trial
 - Article 8 Right to respect for private and family life
 - Article 1 of First Protocol Protection of Property.

Approach of the Courts

- the limited effect.



- **Article 2** – absolute right, but for most serious cases eg Taskin v Turkey (2004) cyanide leachate from goldmine extraction; Oneryildiz v Turkey (2005) methane gas explosion causing landslide on shanty town.
- **Article 6** – right to fair trial of civil rights (such as compulsory purchase) but addressed by Judicial Review: Alconbury HL.
- **Article 8** – widest scope, but qualified right where proportionate interference can be justified. Examples where Art 8 engaged: Heathrow noise Powell and Rayner v UK and Hatton v UK; industrial pollution Lopez Ostra v Spain, Giacomelli v Italy Fadeyeva v Russia (2005) Cordella v Italy (2019); right to information on hazardous substances/health effects Guerra v Italy and McGinley and Egan v UK.
- **Article 1 of First Protocol** – qualified right eg Lough v SSCLG.

Recent UK examples

- Hardy and Maile v UK (2012) – Art 8 challenge to permission for LNG harbor at Milford Haven rejected.
- R(Clientearth) v DEFRA (2011-18) – series of successful challenges on UK failure to comply with EU Air Quality Directive - no human rights.
- R(Spurrier / Plan B) v SST – the Heathrow 3rd Runway case. Challenge to national policy statement upheld in Court of Appeal based on failure to take account of Paris agreement on climate change. Human rights challenges rejected given qualified rights of Art 8 / Art 1 of First Protocol, as in recent Carbon Target JR. SC hearing in 2020.
- R(Granger-Taylor) v HS2 Ltd [2020] EWHC 1442 (Admin) – challenge to tunnel design of High Speed 2 on Art 8 / A1P1 grounds rejected.
- R(ClientEarth) v Sec of State [2020] EWHC 1303 (Admin) – challenge to grant of DCO for gas-powered generating station rejected – no human rights grounds pursued.

Reasons for Limited Effect?

- No direct “environmental” human rights.
- Other specific direct regulation eg EIA / Habitats protection under EU law or Environmental Permitting.
- Absent Art. 2 direct serious threat to life, other human rights qualified and proportionate interference can be justified - competing public interest in development.
- Cf global environmental effects / national targets v project specific impacts which may not directly breach targets – eg net zero GHG emissions. Achieving targets may not preclude, and may sometimes require, individual emitting projects: see eg R(Clientearth) v Sec of State [2020].

The Future?



- Special Rapporteur on Human Rights and Environment - Thematic Report on Safe Climate and role of human rights catalyzing action on climate change - a cultural shift?
- Political pressure to create climate-change driven environmental human right to decarbonization?
- Proactive judicial system interpreting rights to include protection against climate change?