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CAN EU ENVIRONMENTAL POLICY BE SUBSUMED UNDER THE SCOPE OF PROTECTION OF ARTICLE 37 OF THE EU CHARTER OF FUNDAMENTAL RIGHTS

ABSTRACT

*This article aims to determine whether European Union environmental policy can be subsumed under the protective scope of Article 37 of the Charter of Fundamental Rights of the European Union, and to assess the extent to which the Union's regulatory framework fulfills the constitutional mandate of a high level of environmental protection. Building on a doctrinal legal analysis, complemented by comparative and case-law-based approaches, the article evaluates the development, objectives, and principles of EU environmental policy as laid down in Articles 11 and 191–192 TFEU. Particular attention is paid to the principle of sustainable development and the interpretation of environmental norms in the case law of the Court of Justice of the European Union (CJEU), especially the judgment in *Janecek v Freistaat Bayern* (C-237/07). The analysis demonstrates that EU environmental policy is structured around binding goals, guiding principles such as precaution, prevention, source control, polluter-pays, and sustainability, as well as detailed procedural requirements ensuring a consistently high level of protection. Although Article 37 EU-GRC does not establish an individually enforceable right, its normative content is substantively reflected in EU environmental legislation. The article concludes that the main limitation lies not in the regulatory framework but in the uneven implementation by Member States, which undermines the full realization of the Charter's protective function.*

KEYWORDS: EU environmental policy; Article 37 EU-GRC; sustainable development; CJEU; environmental principles

INTRODUCTION

Environmental protection has become one of the central challenges of modern governance, both at European and global levels. Issues such as climate change, biodiversity loss, and pollution require coordinated responses beyond national regulatory capacities. The European Union has emerged as a leading actor in this field, establishing a comprehensive system of environmental law characterized by high regulatory ambition and sophisticated governance instruments (Krämer, 2016; Jans & Vedder, 2012).

The constitutional anchoring of EU environmental policy is particularly reflected in Article 37 of the Charter of Fundamental Rights of the European Union, which requires a high level of environmental protection and the integration of environmental considerations into Union policies. The aim of this article is to examine whether EU environmental policy can be subsumed under

the protective scope of Article 37 EU-GRC and to assess how this relationship manifests itself in primary law, secondary legislation, and judicial practice.

In addition to Treaty provisions, EU environmental policy is shaped by strategic instruments such as the 8th Environmental Action Programme (2021–2030), which reinforces long-term sustainability goals and aligns EU policy with climate neutrality objectives. This program reflects the evolving integration of environmental concerns into all policy sectors and strengthens the operational dimension of Article 37 EU-GRC.

From a scholarly perspective, environmental protection in EU law has been widely analysed, particularly regarding its principles, institutional structure, and interaction with fundamental rights (Epiney, 2013; Craig & de Búrca, 2020; Fisher, Lange & Scotford, 2019). Authors such as Krämer (2014; 2016) and Jans (2010) highlight the central role of Treaty principles, while others emphasize the growing constitutional significance of environmental protection as a value underpinning EU law (Kiss & Shelton, 2016; Barcz, 2016). However, the relationship between Article 37 EU-GRC and the operational framework of EU environmental policy requires further clarification, particularly in light of implementation challenges and judicial practice.

RESEARCH METHODS

This research employs a dogmatic-legal method, consisting of systematic interpretation of EU primary law, including the Charter, the Treaty on European Union, and the Treaty on the Functioning of the European Union. The analysis focuses on the wording, purpose, and coherence of relevant provisions.

The article is complemented by a comparative analytical approach, examining the interaction between constitutional principles and legislative instruments, as well as differences in implementation across Member States. In addition, a case-law method is applied, focusing on judgments of the CJEU, particularly *Janecek v Freistaat Bayern* (C-237/07), to assess the practical enforceability of environmental obligations.

Secondary EU legislation, Environmental Action Programmes, and academic literature (e.g. Epiney, 2016; Craig, 2018; Backes, 2017) are used to support interpretation and provide a broader analytical context.

1. LEGAL FOUNDATIONS AND OBJECTIVES OF EU ENVIRONMENTAL POLICY UNDER ARTICLES 11 AND 191 TFEU

EU environmental policy is firmly embedded in the constitutional framework of the Treaties and operates as a transversal policy field influencing most areas of Union activity. Article 11 TFEU introduces the environmental integration clause, which requires that environmental protection requirements be systematically incorporated into all EU policies and actions. This provision reflects a shift from sectoral regulation towards a holistic governance model, ensuring that environmental considerations permeate areas such as agriculture, energy, transport, and internal market regulation (Haratsch, Koenig & Pechstein, 2019). The integration requirement thus transforms environmental protection from a discrete policy goal into a structural principle shaping EU governance.

Article 191 TFEU defines the substantive core of EU environmental policy, establishing both its objectives and guiding principles. The objectives – preservation of environmental quality, protection of human health, rational resource use, and international environmental cooperation – are intentionally open-ended, enabling dynamic adaptation to emerging environmental challenges (Epiney, 2016). This flexibility is particularly important in light of rapid scientific developments concerning climate change, biodiversity, and ecosystem degradation.

A key conceptual element underpinning these objectives is the principle of sustainable development, which functions as a normative bridge between environmental protection and economic integration. Sustainable development requires balancing environmental preservation with economic growth and social cohesion, thereby ensuring intergenerational equity (Fisher, Lange & Scotford, 2019). Within EU law, this principle operates both as a guiding objective and as a legal standard influencing legislative choices and judicial review.

The principles codified in Article 191(2) TFEU – precaution, prevention, rectification at source, and the polluter-pays principle – further reinforce the proactive and risk-based nature of EU environmental law. The precautionary principle, in particular, has gained central importance by allowing regulatory intervention even in situations of scientific uncertainty (De Sadeleer, 2012).

Together, these principles ensure that environmental protection is not merely reactive but anticipatory and systemic in character.

Moreover, the classification of environmental policy as a shared competence under Article 4(2)(e) TFEU introduces an additional layer of complexity. While EU institutions establish binding frameworks, Member States retain significant discretion in implementation. This dual-level structure allows adaptation to regional conditions but also introduces risks of fragmentation and uneven application (Jans & Vedder, 2012). Nevertheless, the strong Treaty-based objectives and principles limit national discretion and ensure that a high level of environmental protection remains a binding standard across the Union.

2. ARTICLE 37 OF THE CHARTER AND THE CONSTITUTIONAL SIGNIFICANCE OF ENVIRONMENTAL PROTECTION IN EU LAW

Article 37 of the Charter of Fundamental Rights of the European Union embodies the constitutional recognition of environmental protection as a core value within the EU legal order. While its formulation as a principle rather than a subjective right limits its direct enforceability, its legal and symbolic importance is substantial. It establishes a normative obligation requiring EU institutions to ensure a high level of environmental protection and to integrate environmental considerations into all policies in accordance with the principle of sustainable development.

The classification of Article 37 as a principle reflects the broader distinction within the Charter between rights and principles, as clarified in Article 52(5) EU-GRC. Principles are primarily addressed to EU institutions and Member States when implementing EU law, guiding legislative and executive action rather than conferring individual entitlements. Nevertheless, Article 37 plays an essential role in the interpretation and validation of EU measures (Craig & de Búrca, 2020).

Its constitutional significance lies in its function as an interpretative benchmark. The provision reinforces Treaty obligations under Articles 11 and 191 TFEU and ensures coherence between environmental policy and fundamental rights

protection. In judicial review, it supports a teleological interpretation of EU law, promoting outcomes aligned with environmental sustainability (Backes, 2017).

The principle of sustainable development, explicitly referenced in Article 37, further enhances its normative scope. It links environmental protection to social and economic objectives, reflecting the integrated nature of modern governance. This linkage underscores the evolving understanding of fundamental rights, which increasingly includes environmental dimensions as essential components of human well-being and quality of life (Kiss & Shelton, 2016).

Furthermore, Article 37 contributes to the constitutionalization of environmental policy, elevating it beyond ordinary legislative concerns. It legitimizes ambitious regulatory measures and supports the balancing of competing interests, including economic freedoms. This is particularly relevant in cases where environmental measures impose significant costs or restrictions, as the Charter provides a constitutional justification for prioritizing long-term ecological sustainability (Barcz, 2016; Šmejkal, 2023).

In this sense, Article 37 functions not merely as a declaratory provision but as a structural principle reinforcing the coherence, legitimacy, and ambition of EU environmental law.

3. CJEU CASE LAW AND PRACTICAL RELEVANCE: THE JANECEK JUDGMENT

The practical impact of EU environmental policy and its relationship to fundamental rights is most clearly illustrated through the case law of the Court of Justice of the European Union. Among the most significant judgments in this context is *Janecek v Freistaat Bayern* (C-237/07), which demonstrates how environmental directives can generate enforceable obligations at the national level.

In *Janecek*, the Court held that individuals directly affected by excessive air pollution have the right to require competent authorities to adopt action plans where limit values are exceeded. Although the case was formally based on Directive 96/62/EC (later replaced), its broader significance lies in the recognition of individual standing and enforceability in environmental matters. The ruling confirms that EU environmental law can confer concrete procedural rights, enabling individuals to challenge administrative inaction.

Importantly, while Article 37 EU-GRC was not explicitly invoked, the judgment reflects its underlying normative logic. The CJEU emphasized the effectiveness (*effet utile*) of EU environmental law, ensuring that legal provisions are not rendered ineffective by weak implementation (Jans & Vedder, 2012). This approach aligns with the Charter's objective of maintaining a high level of environmental protection.

The *Janecek* judgment also highlights the indirect relationship between environmental protection and fundamental rights, particularly the protection of human health. Environmental harm, especially air pollution, directly affects individuals' living conditions, thereby linking environmental law with broader rights-related concerns (Bárány, 2015).

Subsequent case law has continued to reinforce this trend, confirming that individuals and environmental organizations may rely on EU environmental provisions to challenge inadequate implementation. This evolving jurisprudence demonstrates a gradual strengthening of the justiciability of environmental norms, even in the absence of explicit individual rights under Article 37.

Overall, CJEU case law plays a crucial role in bridging the gap between abstract principles and practical enforcement. It ensures that environmental obligations are not merely declaratory but capable of producing tangible legal effects, thereby enhancing the effective realization of EU environmental policy.

4. IMPLEMENTATION, ENFORCEMENT, AND GOVERNANCE CHALLENGES IN EU ENVIRONMENTAL LAW

Despite its advanced regulatory framework, EU environmental policy faces persistent challenges in implementation and enforcement. The decentralized nature of EU governance, combined with the classification of environmental policy as a shared competence, results in significant variability among Member States (Průcha, 2020).

One of the main structural issues is the reliance on directives as the primary legislative instrument. While directives allow flexibility and adaptation to national conditions, they also create risks of incomplete or inconsistent transposition (Krämer, 2016). Differences in administrative capacity, political priorities, and economic development further exacerbate these disparities.

The European Commission plays a central role in monitoring compliance, particularly through infringement proceedings. However, these procedures are often lengthy and reactive, limiting their effectiveness as enforcement tools (Jans & Vedder, 2012). Financial sanctions imposed by the CJEU may not provide sufficient deterrence, especially in cases involving systemic implementation failures.

In response to these challenges, the EU has increasingly emphasized preventive and cooperative governance mechanisms, including reporting obligations, data monitoring systems, and technical assistance. The use of digital tools and big data analytics has also been identified as a potential means to improve regulatory effectiveness (Miskolczi-Bodnár, 2019).

Transparency, public participation, and access to environmental information are equally important. These mechanisms enhance accountability and enable civil society to play an active role in enforcement. They also reflect broader principles of good governance and democratic legitimacy (Craig, 2018).

Within this context, Article 37 EU-GRC serves as a bridging principle, linking constitutional commitments with practical implementation. Although it does not create enforceable rights, it reinforces the obligation of both EU institutions and Member States to treat environmental protection as a fundamental and enduring priority. Persistent implementation gaps therefore highlight not a failure of the legal framework itself, but the need for more effective governance strategies and stronger institutional coordination (Backes, 2017).

CONCLUSION

The analysis undertaken in this article confirms that EU environmental policy can be subsumed under the protective scope of Article 37 EU-GRC in a normative and constitutional sense. The Union has developed a comprehensive legal framework grounded in Treaty provisions, environmental principles, and policy instruments that collectively ensure a high level of environmental protection.

The principle of sustainable development plays a central role in this framework, linking environmental objectives with economic and social considerations. Together with the precautionary and preventive principles, it reflects contemporary scientific understanding of environmental risks and supports

forward-looking regulatory approaches (De Sadeleer, 2012; Fisher, Lange & Scotford, 2019).

However, the effectiveness of EU environmental policy is constrained by implementation deficits and governance challenges. As demonstrated, the gap between legal norms and practical enforcement remains the primary obstacle to realizing the full protective potential of Article 37. Addressing this gap requires enhanced administrative capacity, improved coordination among Member States, and more effective enforcement mechanisms (Mathis & Tor, 2019; Peeters, 2019).

Future developments should focus on integrating scientific expertise, data-driven regulation, and interdisciplinary research, ensuring that legal frameworks remain responsive to evolving environmental challenges (Vedder & Heintschel von Heinegg, 2012; Zaręba, 2010). Greater harmonization and clearer legal standards may also contribute to reducing fragmentation and improving consistency.

In conclusion, while Article 37 EU-GRC does not establish a directly enforceable subjective right, it plays a crucial constitutional role in shaping EU environmental policy. The Union's regulatory framework largely fulfills its normative expectations; however, its long-term effectiveness depends on bridging the gap between legal ambition and practical implementation.

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