

§ 1 General aspects

I. A highly complex and dynamic law governing natural resources and the environment

1) A plurality of national, European and international law

- a complex and dynamic *multi-level system of law* that combines
 - German federal law (national law; dominating in most areas)
 - law of the German Länder (sub-national law; mainly complementing the federal law)
 - European Union law (supranational law; mostly European environmental, climate protection & economic law)
 - *directives* need to be transposed into domestic law by the member states who will then apply the domestic law
 - *regulations* apply directly in the member states
 - global international law (mostly international environmental, climate protection & economic law)
- usually the law at the higher geographical level sets objectives and targets that the law at the lower geographical level must achieve
- each level has its own legal policy and legal policy debate

2) A mixture of classical areas of law with a long and vibrant history and new and innovative, constantly evolving areas of law

- mining and *mining law* were already developed in the Roman Empire
- *hunting law*, esp. the right to hunt, has been a controversial issue for many centuries
- the innovative *renewable energies law* only developed in Germany from the 1990s and at EU level from the 2000s
- the trend-setting European and German *emissions trading law* only emerged in the 2000s

3) A highly fragmented body of law

- not a coherent system of a few well-coordinated comprehensive laws
 - but an intransparent, fragmented multitude of highly specialised legal sources, each with its own purpose, background and technique, barely harmonised with each other
- *no coherent discrete field of "natural resources law"*
 - but a wealth of provisions within admin., environmental, public economic and climate protection law
- no comprehensive European or German Environmental Code

4) A domain for highly specialised experts

- often legal practitioners who are closely linked to special interests (of industries, governments, environmental associations)

II. The law caught in the conflict between economic interests, responsible use of natural resources, and environmental and climate protection

1) The commitment to open market economy, globalisation and intern. trade

- the *principle of an open market economy with free competition* in the European internal market (art. 119 FEU Treaty)
 - guides all economic policy of the EU and its member states
 - requires a *strictly market-orientated economic policy*; this *limits state interventions* to few exceptions
 - even state aids (subsidies) are severely restricted (cf. art. 107 FEU Treaty)
- the complementation of this approach at global level by a firm legal and political commitment to globalisation and free international trade

2) The commitment to environmental and climate protection

- environmental and climate protection as a *European Union policy objective* [Unionsziel] (cf. art. 3(3) EU Treaty, 191 FEU Treaty)
 - a Treaty principle that substantially guides and limits all EU policies and activities
 - requires "prudent and rational utilisation of natural resources" and to "aim at a high level of protection"

- protection of natural foundations of life as a German *state policy objective* [Staatsziel] (art. 20a German Basic Law)

Art. 20a BL: Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life ... by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.

- a constitutional principle that substantially guides and limits all policies and activities of German public institutions
- includes protection of the climate
- also aims to protect future generations

3) In particular: the state's duty of adequate climate protection in good time

(under art. 20a Basic Law and fundamental rights)

- the Federal Const. Court's controversial climate protection ruling of 2021 (BVerfGE 157, 30)
 - declared *low greenhouse gas reduction targets* for next years under the Federal Climate Action Act *unconstitutional* because they shifted the burden of inevitable restrictions on freedom lopsidedly onto future generations
 - state's duty to protect citizen's life & physical integrity (art. 2(2).BL) includes duty to protect against climate change; this can include *duty to protect future generations*
 - under art. 20a BL, state *must* take climate action and aim to achieve climate neutrality
 - *fundamental rights* protect as *intertemporal guarantees of freedom* against offloading of the burden onto the future
 - the ruling is an outstanding example of judicial further development of law but leaves the platform of established constitutionalist approaches & methods
- so far, subsequent constitutional complaints for insufficient environmental & climate protection have failed

III. Natural resources, environmental and climate protection at the heart of political struggle

1) A central battleground of domestic politics

- already since the 1970s
- has strengthened the role of civil society
- has caused the emergence of a new political direction: the *Greens*

2) A center of conflict between the younger and older generations

- Generation Z accuses baby boomers of persistent neglect of climate protection
- Generation Z more critical towards cars (and motorbikes)

3) A combat area with intense dirty lobbying but also strong mobilisation of the civil society

- a constant profit-driven push by Big Business and their influential lobbies for low standards
 - destructive: climate disinformation campaigns
- a hypocritical neoliberal concept of "self-responsibility" and "voluntary self-commitment"
 - a strong ideological approach against any legally binding standards that restrict businesses
 - German and European experience has proved again and again that in the face of profit interests, appeals for voluntary self-restraint are little successful
- a powerful defense of environmental and climate protection interests by well-organised and effectively performing organisations of the civil society
 - examples: BUND, Nabu, Deutsche Umwelthilfe, Robin Wood, Klima-Allianz Deutschland
 - often with professional management, considerable resources and experience in campaigning
 - often with strong support of political, media, legal and scientific experts
- a sometimes ideological fight for higher standards and stricter rules regardless of costs in freedom and burdens caused by overregulation
 - some environmentalists cannot accept an unbiased balancing of environmental and other public interests
 - *demonisation of the car* and calls for excessive restrictions on car traffic
 - a strange willingness to work with *poorly designed and formulated, overly complicated laws* that bring little progress for the environment but cause excessive bureaucratic burden

4) A fight primarily about environmental, not legal policy issues

- usually a struggle for higher/lower standards, stricter/less strict restrictions, introducing new/lifting existing precautions for a more/less ambitious environmental & climate protection, but not about specifically legal issues
- *legal policy usually follows environmental & climate policy, not the other way around*

IV. The irrational fluctuation of public opinion between selfish-ignorant neglect and quasi-totalitarian overrating of climate protection

1) Decades of commitment in principle but relative neglect

- there has always been a response to environmental & climate challenges, but usually rather restrained and late...

2) The temporary rise of a strong climate protection movement in the civil society in the early 2020s

- from 2018 - 2024, mass climate protests, sometimes accompanied by civil disobedience
 - during the *global climate strikes (20.09.2019)* ca. 500 demonstrations throughout Germany
- protagonists: *Fridays for Future* (initiated by *GRETA THUNBERG*), *Extinction Rebellion*, *Last Generation* [Letzte Generation] (numerous spectacular actions between late 2021 and 2023)
- mainly a phenomenon among the younger generation

3) The emergence of extremist climate protection activism

- some climate activists radicalised (esp. the "Last Generation")
 - showed a totalitarian approach, trying to enforce their will on others
 - set up excessive illegal *road blockades* and even *airport blockades*
 - engaged in *other criminal activities* to create publicity for their cause
 - e.g. damaged famous artworks in museums, sprayed paint on historical buildings and airplanes
- some were prosecuted and sentenced to fines or imprisonment
- these activities have not increased but reduced public interest in climate protection

4) The sudden decline of interest in climate protection and the resurgence of unconsiderate fossil fuel policies 2024 - 2025

- climate protests subsided quickly in 2024
- climate protection not a major issue anymore in 2025 German federal election campaign
- reasons for this decline unclear:
 - geopolitical threats, economic problems, the polarisation of the population?
 - the massive disinformation campaigns, the rise of dumb authoritarianism?
 - a repulsive effect of the existing climate protection legislation?
 - or is public awareness only suspended until the next disaster?
- Since May 2025, a *radical fossil fuel lobbyist* appointed *Federal Minister for Economic Affairs and Energy*, is fighting hard for a fundamental policy shift towards...
 - returning to the old fossil fuel policies (plans to build numerous new natural gas power stations)
 - halting or at least delaying Germany's transition to a greenhouse gas-neutral energy supply (plans to end subsidies and privileges for renewable energies).