

# Time for an Update of the EU Charter of Fundamental Rights

---

Remo Klinger

2021-04-14T08:00:30

On 25 March 2021, the European Court of Justice ('ECJ') [dismissed](#) as inadmissible the climate action brought by 10 families from the European Union, Kenya and Fiji, for the protection of their fundamental rights threatened by the climate crisis. With their lawsuit, which has become known as the 'Peoples Climate Case', they sought to oblige the European legislator to set more ambitious climate targets for 2030, as all serious scientific surveys show that the current targets are not capable of achieving the [Paris climate protection goals](#). The Court did not even bother to address the substance of the arguments. It dismissed the case essentially on the grounds that the applicants could not invoke a right that distinguished them in a special way from other people so that they could claim individual concern ([paras. 46-50](#)). The Fiji Islands, one might want to add, may be sinking, but this affects all people in Fiji in the same way, so that an individual concern is not apparent, according to the consequence of the ECJ's decision.

Judicial restraint in politically relevant issues is a good worth protecting. The judicial denial of the necessary legal protection in the most serious challenge facing humanity, the climate crisis, is fatal. However, this set back cannot be a reason to abandon efforts to achieve climate protection that is adequate according to legal and scientific standards. Updated legal requirements are therefore needed to create appropriate legal protection. Therefore, there is an urgent need for updated legal requirements to create appropriate legal protection. In this vein, an [initiative](#) led by the German writer Ferdinand von Schirach is currently proposing some new fundamental rights for introduction into the [Charter of Fundamental Rights of the European Union](#) ('the Charter'). An expert group of German lawyers was helpful in formulating the individual fundamental rights and a [legal commentary](#).

The proposed fundamental rights are open to [vote](#) for the public. In this blogpost, I will briefly outline the fundamental rights suggested by the ["Everyone" initiative](#) and argue that their insertion into the Charter is a necessary step to guarantee effective protection of the environment.

## Current issues in the protection of the environment under the Charter

So far, from a substantive point of view, the Charter contains with [Article 37](#) only one provision related to environmental protection. It constitutes merely a general principle in the sense of [Article 52 \(5\) of the Charter](#), not a directly enforceable right. Legal actions for the enactment of environmental protection regulations are therefore excluded even if their enactment is necessary to protect the environment. Or, in other words, [Article 37](#) only has meaning where courts have long wanted to help environmental protection succeed in their decisions. In such cases, they use [Article](#)

[37](#) as a means of argumentation. Without [Article 37](#), they would come to the same conclusion.

From a procedural point of view, legal actions in environmental questions face [significant challenges](#) due to the ECJ's narrow understanding of being individually concerned according to the so-called '[Plaumann formula](#)'.

### **A new fundamental right to environmental protection with a new rights action**

With a fundamental right to environmental protection, the situation would be different. Yes, it is true that the idea of such a fundamental right is not new. [Some Member States](#) of the Union have it in their constitutional order, most do not. The arguments put forward against the introduction of such a fundamental right have even been known for many decades. It has been [argued](#) that a directly applicable subjective right would be too vague. It has also been [argued](#) that environmentally relevant impairments are included in the protection of health and property. And yet: these arguments were not original even in the past, and today they seem to stem from a bygone era. For the challenge under which our legal system must exist has changed drastically in view of the advancing climate crisis. Today, we may still be dazed by what the pandemic has brought. And yet, in the long run, the climate crisis will surpass these worries and hardships. There is a [consensus](#) in the scientific community that it depends on the resolution of these issues *how*, and perhaps even *whether*, humanity continues to exist. Therefore, it is a task with a human-historical dimension that can no longer be postponed. If the Charter of Fundamental Rights regulates the core issues of our coexistence, the fundamental questions must be expressed in it in such an appropriate way that rights are granted.

A fundamental right to environmental protection would have great significance. The forementioned [ECJ ruling](#) of 25 March 2021 shows this like a beacon. Sure, one might object that the insertion of a new fundamental right to environmental protection would still leave unchanged the ECJ's narrow understanding of *locus standi*. But this problem, too, can be remedied with the "[Everyone](#)" initiative. It is also proposed to introduce a fundamental rights action to the European courts in the case of systematic violations of the Charter of Fundamental Rights:

*"Any person may bring a fundamental rights action before the European courts for systematic violations of this Charter."*

Taken together, the substantive right to environmental protection and the procedural right would thus allow legal protection to be obtained in the case of systematic violations of environmental law by the Union. This is also an important aspect, because when it comes to a question of humanity's fate, such as climate protection, there must also be sufficient rights for the people. As the legal [commentary](#) of the suggested rights explains, this does not mean that environmental protection supersedes all other concerns, such as those for social balance and a free economy. Nor does it mean that legal disputes are the solution to all problems. However, environmental protection loses its shadowy existence as a human right and enters the legal arena with its own weight.

This is the concrete proposal put forward by the [“Everyone” initiative](#):

*“Everyone has the right to live in a healthy and protected environment. “*

### **Proposals on issues of digitalisation and globalisation**

The initiative also suggests other fundamental rights, for example on fundamental and urgent issues of digitalisation and globalisation. For these phenomena of our modern world also raise fundamental rights issues that the Charter has not yet resolved. A fundamental right to digital self-determination is therefore proposed:

*“Everyone has the right to digital self-determination.*

*Harvesting people’s personal data or manipulating people is forbidden.“*

This is supplemented by a regulation on artificial intelligence:

*„Everyone has the right to know that the algorithms imposed on them are transparent, verifiable and fair. Key decisions must be taken by a human being.“*

On globalisation issues, a fundamental right is proposed to address extreme human rights violations in the supply chain:

*“Everyone has the right to be offered only those goods and services that are produced and provided in accordance with universal human rights. “*

### **Outlook**

The European Union is currently on the way to a legal standardisation of human rights obligations in the supply chain. This regulation is important. But it can remain toothless if the associated rights are not assigned to European consumers, who are usually alone in being able to bring corresponding human rights violations before European courts. Children from the Congo or people from Pakistan do not usually call a European lawyer and sue in a court in Paris or Berlin. In very exceptional cases where non-governmental organisations support these lawsuits, this may and has worked out. But it is not the rule. In this situation, therefore, a fundamental right must be given to those who no longer want to be made unwitting accomplices to practices that violate human rights: the people of Europe.

The European Union needs such an initiative. It represents an attempt to supplement the Charter of Fundamental Rights from below. In crises like the one we are currently experiencing, there is always an opportunity for change. [We should use it.](#)

