



LIDLAW UNDERGRADUTE LEADERSHIP AND RESEARCH PROGRAMME

A RIGHT TO A HEALTHY ENVIRONMENT IN IRELAND A CONTRIBUTION BY HANNAH VILJOEN

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INTRODUCTION & THESIS

This research argues for the recognition of the right to a healthy environment in Ireland as a key constitutional mechanism for effective protection of the natural environment, as well as those who depend upon it. Comparative constitutional analysis of the South African Section 24 environmental right has revealed a model for not only the construction of the right, but the legal procedures which support its application.

SECTION 1: IRELAND

This section focused on the status of the right to a healthy environment in Ireland, by examining landmark environmental cases and procedural blockages (standing and justiciability). It determined that Ireland would benefit from increased constitutional protections for the environment due to its population's dependency on the environment, the interdependency of human and environmental rights, and the increased effects of climate change encroaching on individuals at present.

Case Spotlight: *Friends of the Irish Environment v the Government of Ireland* [2020] IESC 49. The Supreme Court decision to quash the 2017 National Mitigation Plan as ultra vires the Climate Act was significant not only for the development of the 'reasonable specificity test', but additionally for the identified hurdles which the recognition of the environmental right faces in Ireland. Clarke CJ opined: the right is either superfluous as it does not extend rights to life, or it is impermissibly vague. The Court also narrowed standing rules significantly.

SECTION 2: SOUTH AFRICA

The second section examined the South African environmental right, contained in the Constitution's Bill of Rights in Section 24. It states:

"Everyone has the right:

- A. To an environment that is not harmful to their health or well-being; and
- B. To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
 - i. Prevent pollution and ecological degradation;
 - ii. Promote conservation; and
 - iii. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

KEY FINDINGS:

Definition of Environment:

Taking an anthropocentric view, it regards the environment in its totality, encompassing interrelationships between human and nature, and the environmental rights to human rights. (*Sustaining the Wild Coast NPC v Minister for Mineral Resources and Energy*).

Balance of Positive and Negative Aspects:

Negative: right to a minimum baseline of environmental protection. This suggests the right's potential to extend rights to life through its distinctive character.

Positive: Obligations and method of achievement defined explicitly, allowing concreteness to the parameters of right.

Significant lack of qualifying 'progressive realisation' phrase.

Inclusion of Health and Well-being:

Health is interpreted as both physical and mental health, affected by the environment. Well-being is undefined, but allows for generous interpretation.

Intergenerational Equity:

The present generation are regarded as 'trustees' holding the environment on trust for future generations, reflective of the nature of climate change.

Reasonableness Review Test:

Akin to the Irish proportionality test, reasonableness review is flexible and grounded in other Constitutional clauses (Section 36). Arose from the Grootboom case, as well as Section 24's dictation on how the right is to be achieved (involvement of all three spheres of governance). Issues have risen due to unclear demarcation of separation of powers and lack of engagement by the courts with the substantive content of the right.

Approaches to Standing:

A broad approach is employed by the South African judiciary in order to fulfil the ultimate purpose of its procedure: the effective enforcement of constitutional rights. However, there are limitations in place to prevent frivolous lawsuits (doctrine of public interest, ripeness and mootness).

CONCLUSION

The South African Constitutional right to an environment can serve as a model for the Irish recognition for several reasons, namely its encompassing definition of environment which recognizes the interrelationship between the environment and humans, the balance of negative and positive duties set out explicitly, and the underlying concept of intergenerational equity which guides our usage of the environment to ensure its preservation. The broader approach to standing is additionally preferable to allow climate litigants the court's ear. Although it would be difficult to speculate, recent findings from the Irish Citizen's Assembly on Biodiversity suggest that the tide is turning in favour of the recognition of the right to a healthy environment.

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