Keele Law Review, Volume 6 (2026), 79-104
ISSN 2732-5679

Is Ecological Democracy Possible in France?

Ornella Seigneury*

Abstract

The Anthropocene is forcing a rethinking of human rights by exposing the limits of representative democracy in addressing ecological crises. This article asks whether an ecological democracy is possible in France by focusing on constitutional justice and the enforceability of environmental rights. The 2005 Environmental Charter holds significant normative potential, but its effective impact has been limited by the reluctance of judges, the executive, and parliamentary majorities to treat it as an imperative source of fundamental rights. The French Constitutional Council has compounded this democratic deficit, not only through cautious reasoning, but also because its institutional design remains closer to a political body than to a constitutional court like the German *Bundesverfassungsgericht* — even though it has acknowledged the right to a healthy environment, along with rights to information and participation, as justiciable fundamental rights. Parliamentary hesitation and academic scepticism reinforce this inertia, leaving little space for present and future generations or for the constitutional consideration of ecosystems. By contrast, climate litigation abroad suggests that more ambitious approaches are viable. Ecological democracy—linking rights, intergenerational justice and an ecological rule of law—offers a framework to move beyond these limits. The article argues that making the right to a healthy environment genuinely enforceable is essential to any serious attempt at building ecological democracy in France.

I. Introduction

Since the 1970s, the idea of a human right to a healthy environment has unfolded in two broad waves. The first, from the 1970s through the early 1990s, was shaped by the 1972 Stockholm Conference,[1] which not only highlighted the intrinsic link between human rights and environmental protection but also led to the creation of dedicated ministries in many Western countries. Early national laws, such as France's Law No. 76629 of 10 July 1976 on nature protection, recognis-629 of 10 July 1976 on nature protection, recognized environmental protection as serving the public interest and imposed a "duty on everyone to safeguard natural heritage," but without creating new individual rights. In its wake, more than ninety states incorporated environmental rights into their constitutions. Yet, as Joshua Gellers and others have noted, the resulting instruments often reflected pragmatic responses to international

* Postdoctoral Research Fellow, Sciences Po Toulouse, France, CNRS UTOPI (Unit for Transitions, Organizations, Politics, Inequalities; Associate Member, Aix-Marseille University – ILF-GERJC (Louis Favoreu Institute – Group for the Study and Research on Constitutional Justice) and DICE (International, Comparative, and European Law).

[1] Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), UN Doc A/CONF.48/14/Rev.1 (16 June 1972).

expectations rather than strong domestic ecological commitments, producing legal norms that were formally local but inspired by global agendas.[2] The second wave emerged with the 1992 Rio Summit, building on the 1982 World Charter for Nature, whose Articles 16 and 23 first introduced the idea of public participation and of "all persons" being able to engage in environmental decision-making. Rio, in the context of post-Cold War political transformations, fully opened the era of environmental democracy,[3] with sustainable development gradually replacing mere environmental protection as a central political objective. Principle 10 of the Rio Declaration affirmed that "the best way to address environmental issues is to ensure the participation of all concerned citizens at the appropriate level." This period marked the birth of concrete environmental rights – to information, participation, and access to justice – later codified as fundamental human rights in the 1998 Aarhus Convention and ultimately constitutionalised in France with the 2004 Environmental Charter.

Nonetheless, these rights have remained fundamentally anthropocentric: the law protects the environment primarily for human benefit, rarely for nature itself. Constitutional provisions set a minimal standard rather than a robust and enforceable right, exposing a tension between normative intention and institutional reality. France exemplifies this ambiguity: the 2005 Environmental Charter,[4] incorporated into the "*bloc de constitutionnalité*",[5] elevates environmental protection to the same rank as the 1789 Declaration of the Rights of Man and of the Citizen[6] and the 1946 Preamble to the Constitution.[7] Yet, in practice, the Charter's concrete impact remains limited. The year 2025, marking twenty years since the Environmental Charter became legally binding, is an appropriate time to assess to what extent this recognition has shaped the French constitutional order and contributed to the emergence

---

[2] Joshua C Gellers, *The Global Emergence of Constitutional Environmental Rights* (Routledge 2017).

[3] Jean-Michel Fourniau, 'Introduction: Écologie et démocratie en débat' in Jean-Michel Fourniau, Loïc Blondiaux, Dominique Bourg & Marie-Anne Cohendet (eds), *La démocratie écologique, une pensée indisciplinée*, actes du colloque de Cerisy 2019 (Herman 2022) pp. 11. See also, Ornella Seigneury, *Du droit à l'environnement au droit au développement durable. Contribution à l'étude du renouveau des droits fondamentaux* (PhD thesis, Aix-Marseille Université 2024, forthcoming L'Harmattan 2026). Environmental democracy generally refers to a governance framework grounded in the three "access rights" articulated at Aarhus – access to information, public participation, and access to justice – thereby extending classical democratic guarantees into the environmental domain. By contrast, ecological democracy goes further: it seeks to reconfigure democratic decision-making in light of ecological limits, long-term sustainability, and intergenerational responsibilities. Rather than merely expanding participatory rights, it introduces a broader normative shift in which the interests of non-human entities, future generations, and ecological systems are taken into account within democratic and constitutional reasoning.

[4] Charte de l'environnement 2004 (France), Journal officiel de la République française, 1 March 2005.

[5] The expression *bloc de constitutionnalité* is of French doctrinal origin, referring to the set of texts and principles—constitutional, preconstitutional, and fundamental legislative norms—considered by the French Constitutional Council when reviewing the constitutionality of laws.

[6] French Declaration of the Rights of Man and of the Citizen 1789.

[7] Preamble to the French Constitution 1946.

of an ecological democracy.[8] This reflection requires not only considering the formal insertion of environmental rights into the constitutional framework but also examining how these rights are interpreted and enforced in practice.[9]

For a long time, the lack of justiciability was perceived as a refusal of a solidarity-based right, raising fundamental questions for the development of ecological democracy. It highlights the need to improve access to equitable environmental justice and to reform the legal and institutional framework to strengthen environmental protection.[10] As Jean-Sébastien Boda notes, the effectiveness of a norm is measured by its capacity to assert itself within a given legal order, independently of "the willingness of the individuals concerned to comply with it."[11] In the context of fundamental rights, such justiciability must be situated at a high level—constitutional and international—to achieve several effects: constraining the legislature, generating new norms, reinforcing existing ones, enriching all branches of law, and reconciling competing norms. France exemplifies this structural tension: the Constitutional Council interprets the Charter as a set of guiding principles, granting few directly enforceable rights.[12] Moreover, it should be recalled that environmental case law remains marginal, with only a little over a hundred environmental priority preliminary rulings (QPCs) in total since 2011, compared with nearly a thousand in administrative law and around five hundred in social law.[13] Even this limited, anthropocentric interpretation exposes the structural fragility of the law, which alone is unable to address the ecological crises of the Anthropocene.[14] This fragility becomes even clearer when one examines the constitutional environmental litigation in practice. Another indicator of the challenges lies in the very limited number of decisions in which the Constitutional Council has relied directly on the Charter of the Environment. Decisions declaring a law entirely unconstitutional under

[8] See also Colloque anniversaire des 20 ans de la Charte, Charte de l'environnement: nouvel âge? nouveaux horizons?, organised by Rémy Dufal et al., Université Jean Moulin Lyon 3, Institut du droit de l'environnement, Centre de droit constitutionnel, 26 February 2025.

[9] See also Ornella Seigneury, *Du droit à l'environnement au droit au développement durable : contribution à l'étude du renouveau des droits fondamentaux*, PhD thesis, L'Harmattan, in press.

[10] See also David Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (UBC Press 2012)

[11] Jean-Sébastien Boda, 'L'effectivité problématique des normes constitutionnelles : l'exemple de la charte de l'environnement' in Danièle Lochak and Véronique Champeil-Desplats (eds), *À la recherche de l'effectivité des droits de l'homme* (PUPN 2008) 102.

[12] Seigneury, *Du droit à l'environnement* (n 9) 103.

[13] *See* Constitutional Council of France, *Statistical Overview of QPCs by Area* (2025) https://www.conseil-constitutionnel.fr accessed 25 September 2025.

[14] This paradigm shift reflects what scientists from the International Union for Conservation of Nature (IUCN) describe as the transition from the Holocene to the Anthropocene. This new geological epoch is commonly dated to the late eighteenth century, with the Industrial Revolution — symbolized by the invention of the steam engine by Scottish engineer James Watt in 1784. The Anthropocene is thus defined as an era in which human activity has caused global environmental disruptions on a scale unprecedented in history. See Ornella Seigneury, 'Anthropocene' in Sumudu Atapattu and al. (eds), *Essential Concepts of Human Rights and the Environment* (Routledge, Human Rights & Environment series, forthcoming 2026).

the *a priori* review[15] remain extremely rare. Similarly, QPCs challenging a law as incompatible with Article 1 of the Charter are exceptional, and even in the few cases where the Council has annulled legislation based on the right to environmental information and participation (Article 7), the annulment has often been subject to deferred effects. This pattern underscores not only the cautious, technical approach of the Council but also the broader difficulty of translating constitutional recognition into concrete, enforceable rights.

The Council has nonetheless had multiple opportunities to rule on the Preamble and most of the Charter's articles establishing principles, environmental rights and freedoms. Regarding the Preamble, it has recognised certain provisions as objectives of constitutional value (*objectifs à valeur constitutionnelle*, OVC[16]): the protection of the environment as a common heritage of humanity (paragraph 3),[17] as well as the protection of biodiversity, the fulfilment of the individual, and societal progress.[18] Paragraph 6, concerning environmental protection as a fundamental interest of the Nation, has been associated with a constitutional principle.[19] For paragraph 7, which addresses sustainable development and future generations, the Council has required the legislature to balance present and future needs, without explicitly designating this paragraph as an OCV.[20] Several other paragraphs remain largely unexplored, including those on human–nature interdependence and responsibility in the Anthropocene (paragraphs 1, 2, and 4), and no link has been established between climate change mitigation and the protection of future generations, unlike in the German Constitutional Court.[21] Beyond the Preamble, the Charter sets out a series of principles and duties, which the Constitutional Council has only partially acknowledged: the duty of

[15] *A priori* review: a preventive constitutional review procedure in France (*contrôle de constitutionnalité a priori*), which allows certain authorities—namely the President of the Republic, the Prime Minister, the presidents of the two parliamentary chambers, or at least 60 deputies or 60 senators—to challenge a bill before its promulgation. This is distinct from *a posteriori* review (e.g., the *Question Prioritaire de Constitutionnalité*), which is conducted after a law has entered into force. The *a priori* procedure aims to ensure that legislation complies with constitutional norms before becoming binding, and the Constitutional Council may declare all or part of a bill unconstitutional, preventing its enactment.

[16] OCV – Objective of Constitutional Value: In French constitutional law, an *objectif à valeur constitutionnelle* (OVC) is a normative goal that the legislature must take into account and respect, but which does not, by itself, create a directly enforceable right for private individuals. OVCs enable judges to require the legislature and the administration to act consistently with the Constitution, but they cannot be invoked by a litigant to obtain a direct sanction.

[17] Constitutional Council (France), Decision No 2019-823 QPC of 31 January 2020, *Union des industries de la protection des plantes* [Prohibition of the production, storage and circulation of certain phytopharmaceutical products].

[18] CC, Decision No 2021-821 DC of 29 July 2021, *Loi relative à la bioéthique ;* CC, Decision No 2019-823 QPC of 31 January 2020.

[19] CC, Decision No 2011-192 QPC of 10 November 2011, *Mme Ekaterina B., épouse D., et autres* [State secret].

[20] CC, Decision No 2022-843 DC of 12 August 2022, Loi portant mesures d'urgence pour la protection du pouvoir d'achat.

[21] See Bundesverfassungsgericht [Federal Constitutional Court of Germany], 24 March 2021, Bundes-Klimaschutzgesetz 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20.

responsibility (Article 2),[22] the principle of prevention (Article 3),[23] the duty to remedy environmental harm (Article 4),[24] the precautionary principle (Article

[22] CC, Decision No 2022-990 QPC of 22 April 2022, *Fédération nationale des collectivités de compostage et autres* [Restrictions on the development of mechanical-biological waste sorting facilities]; Decision No 2021-971 QPC of 18 February 2022, *Association France Nature Environnement* [Automatic extension of certain mining concessions]; Decision No 2021-964 QPC of 20 January 2022, *Société civile immobilière et agricole du Mesnil* [Financial liability of the hunting rights holder in case of unregulated species causing damage]; Decision No 2020-881 QPC of 5 February 2021, *Association Réseau sortir du nucléaire et autres* [Definition of reparable ecological damage]; Decision No 2020-809 DC of 10 December 2020, *Loi relative aux conditions de mise sur le marché de certains produits phytopharmaceutiques* [In case of sanitary danger for sugar beets]; Decision No 2019-781 DC of 16 May 2019, *Loi relative à la croissance et la transformation des entreprises*; Decision No 2018-772 DC of 15 November 2018, *Loi portant évolution du logement, de l'aménagement et du numérique*; Decision No 2017-672 QPC of 10 November 2017, *Association Entre Seine et Brotonne et autre* [Action for the demolition of a structure built in accordance with a building permit]; Decision No 2014-394 QPC of 7 May 2014, *Société Casuca* [Plantations at the boundary of private properties]; Decision No 2011-116 QPC of 8 April 2011, *M. Michel Z. et autre* [Neighbourhood disturbances and environmental issues]; Decision No 2009-599 DC of 29 December 2009, *Loi de finances pour 2010*.

[23] CC, Decision No 2021-971 QPC of 18 February 2022, *Association France Nature Environnement* [Automatic extension of certain mining concessions]; Decision No 2021-946 QPC of 19 November 2021, *Société Pétroles de la côte basque* [Share of biofuels considered in the diesel sector for the calculation of the general tax on polluting activities]; Decision No 2020-881 QPC of 5 February 2021, *Association Réseau sortir du nucléaire et autres* [Definition of reparable ecological damage]; Decision No 2020-809 DC of 10 December 2020, *Loi relative aux conditions de mise sur le marché de certains produits phytopharmaceutiques* [In case of sanitary danger for sugar beets]; Decision No 2020-807 DC of 3 December 2020, *Loi d'accélération et de simplification de l'action publique*; Decision No 2019-781 DC of 16 May 2019, *Loi relative à la croissance et la transformation des entreprises*; Decision No 2015-718 DC of 13 August 2015, *Loi relative à la transition énergétique pour la croissance verte*; Decision No 2014-416 QPC of 26 September 2014, *Association France Nature Environnement* [Criminal settlement of public action in environmental matters]; Decision No 2014-394 QPC of 7 May 2014, *Société Casuca* [Plantations at the boundary of private properties]; Decision No 2012-282 QPC of 23 November 2012, *Association France Nature Environnement et autre* [Authorization for installation of advertising panels and other advertising devices]; Decision No 2011-116 QPC of 8 April 2011, *M. Michel Z. et autre* [Neighbourhood disturbances and environmental issues]; Decision No 2009-599 DC of 29 December 2009, *Loi de finances pour 2010*.

[24] CC, Decision No 2021-946 QPC of 19 November 2021, *Société Pétroles de la côte basque* [Share of biofuels considered in the diesel sector for the calculation of the general tax on polluting activities]; CC dismissed the grievance under Article 4: Decision No 2020-881 QPC of 5 February 2021, *Association Réseau sortir du nucléaire et autres* [Definition of reparable ecological damage]; Decision No 2017-672 QPC of 10 November 2017, *Association Entre Seine et Brotonne et autre* [Action for the demolition of a structure built in accordance with a building permit]; Decision No 2014-416 QPC of 26 September 2014, *Association France Nature Environnement* [Criminal settlement of public action in environmental matters]; Decision No 2014-394 QPC of 7 May 2014, *Société Casuca* [Plantations at the boundary of private properties]; Decision No 2011-116 QPC of 8 April 2011, *M. Michel Z. et autre* [Neighbourhood disturbances and environmental issues]; Decision No 2009-599 DC of 29 December 2009, *Loi de finances pour 2010*; Decision No 2024-1102 QPC of 12 September 2024, *Société Aéroports de la Côte d'Azur et autres* [Tax on the operation of long-distance transport infrastructures].

5),[25] the duty to promote sustainable development (Article 6),[26] and the duty to preserve and enhance the environment in research and innovation (Article 9).[27] Other principles, such as the principle of non-regression or the duty of vigilance, are recognised but without explicit constitutional status.

This situation highlights the need for a contemporary rule of law that fully integrates an ecological dimension. Democracy, far from being reducible to mere electoral formalism, depends on the autonomy of citizens and their capacity to scrutinise legislation through the lens of environmental rights. From this perspective, autonomy does not refer to an abstract ideal but to a practical capacity: citizens must be sufficiently informed to evaluate how legislation affects collective well-being, including in relation to environmental degradation and long-term risks. When representative democracy is "captured" — for example, when environmental advocates are marginalised in political decision-making — the enforcement of fundamental rights through administrative or constitutional litigation can allow citizens to circumvent these limitations. In this sense, autonomy does not mean making one's own laws (*autonomia*, the norm itself), but rather the capacity to compel governments and parliaments, via judicial intervention, to reconsider policies that threaten environmental well-being. This capacity is particularly crucial in

[25] CC, Decision No 2021-821 DC of 29 July 2021, *Loi relative à la bioéthique*; Decision No 2020-809 DC of 10 December 2020, *Loi relative aux conditions de mise sur le marché de certains produits phytopharmaceutiques* [In case of sanitary danger for sugar beets]; Decision No 2019-781 DC of 16 May 2019, *Loi relative à la croissance et la transformation des entreprises*; Decision No 2018-772 DC of 15 November 2018, *Loi portant évolution du logement, de l'aménagement et du numérique*; Decision No 2016-737 DC of 4 August 2016, *Loi pour la reconquête de la biodiversité, de la nature et des paysages*; Decision No 2014-694 DC of 28 May 2014, *Loi relative à l'interdiction de la mise en culture des variétés de maïs génétiquement modifié*; Decision No 2013-346 QPC of 11 October 2013, *Société Schuepbach Energy LLC* [Ban on hydraulic fracturing for hydrocarbon exploration and exploitation – Abrogation of exploration permits]; Decision No 2008-564 DC of 19 June 2008, *Loi relative aux organismes génétiquement modifiés*.

[26] CC, Decision No 2020-809 DC of 10 December 2020, *Loi relative aux conditions de mise sur le marché de certains produits phytopharmaceutiques* [In case of sanitary danger for sugar beets]; the principle of sustainable development as a principle of reconciliation: Decision No 2019-781 DC of 16 May 2019, *Loi relative à la croissance et la transformation des entreprises*; Decision No 2015-718 DC of 13 August 2015, *Loi relative à la transition énergétique pour la croissance verte*; principle of reconciliation non-justiciable and non-invocable under the procedure of Article 61-1 of the Constitution: Decision No 2014-394 QPC of 7 May 2014, *Société Casuca* [Plantations at the boundary of private properties]; Decision No 2013-346 QPC of 11 October 2013, *Société Schuepbach Energy LLC* [Ban on hydraulic fracturing for hydrocarbon exploration and exploitation – Abrogation of exploration permits]; Decision No 2013-666 DC of 11 April 2013, *Loi visant à préparer la transition vers un système énergétique sobre et portant diverses dispositions sur la tarification de l'eau et sur les éoliennes*; Decision No 2012-283 QPC of 23 November 2012, *M. Antoine de M.* [Classification and declassification of sites]; Decision No 2005-516 DC of 7 July 2005, *Loi de programme fixant les orientations de la politique énergétique*; Decision No 2005-514 DC of 28 April 2005, *Loi relative à la création du registre international français*; Decision No 2005-31 REF of 24 March 2005, *Décision sur des requêtes présentées par M. Stéphane Hauchemaille et par M. Alain Meyet*.

[27] CC, Decision No 2018-768 DC of 26 July 2018, Loi relative à la protection du secret des affaires.

contexts where citizens are exposed to climate disinformation[28] propagated by politicians, heads of state, ministers, or continuous news channels. Without legal mechanisms to challenge misleading narratives and hold authorities accountable, naïveté or misinformation can undermine the practical ability of citizens to exercise informed judgment, weakening both autonomy and the substantive functioning of democracy. This autonomy is crucial because the very existence of democracy depends on the conditions that allow citizens to exercise judgment meaningfully. If environmental degradation undermines access to clean air, safe water, or stable ecosystems, the material basis for political participation is compromised: citizens cannot deliberate, debate, or hold decision-makers accountable when their capacity to live healthy, secure lives is threatened. Environmental rights, therefore, are not peripheral but constitutive of a functioning democracy. They provide a mechanism through which citizens can enforce collective norms, demand accountability, and ensure that public decision-making respects long-term and intergenerational interests. In this way, the protection of environmental rights strengthens democracy itself, making citizen autonomy effective rather than purely theoretical. This autonomy, in turn, relies on environmental education: training children, while also raising awareness among leaders and institutional actors, helps bridge the gap between constitutional prescriptions and actual behaviour.

The figure of Greta Thunberg exemplifies this dynamic: through her speech at the United Nations at just fifteen, she reminded the world that current political decisions directly affect the rights of future generations to a healthy environment, exposing the structural tension between policymakers influenced by economic interests and citizens seeking genuine protection of their environmental rights.[29] The right to a healthy environment cannot be reduced to a mere extension of other fundamental rights. Treating it as simply derivative of, for instance, the rights to life, health, or property risks obscuring the specific and collective dimensions of environmental harm. Environmental degradation often affects large populations, ecosystems, and future generations in ways that individual rights cannot fully capture.

This limitation is clearly illustrated by the track record of climate litigation before the European Court of Human Rights (ECHR), which demonstrates why a standalone environmental right and mechanisms for collective action are necessary. A number of climate-related applications have been declared inadmissible because the applicants lack the required victim status under Article 34 of the Convention: they do not show the kind of collective legal interest or sufficiently direct personal harm that the Court status under Article 34 of the Convention: they do not show the kind of collective legal interest or sufficiently direct personal harm that the Court demands-status

[28] See CE, 6 November 2025, No. 497471, *Société Sesi*. The dissemination of conspiracy-driven claims against scientists affirming anthropogenic climate change, without critical contextualization, was held to constitute a breach. The Conseil d'État upheld ARCOM's decision sanctioning CNews on this basis.

[29] Greta Thunberg, 'Speech at the United Nations Climate Change Conference (COP24)' (Katowice, 12 December 2018).

under Article 34 of the Convention: they do not show the kind of collective legal interest or sufficiently direct personal harm that the Court demands[30] For example, in *Duarte Agostinho and Others v. Portugal and 32 other States,*[31] six young Portuguese applicants complained of climate-change–related harms, including heatwaves, forest fires, and projected temperature rises, but the Court unanimously declared their application inadmissible. This case shows that even when there is a serious collective risk, individuals without a legal or organisational structure (such as an association) struggle to satisfy the victimstatusstatus -status requirement.

By contrast, in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,*[32] the Court accepted the complaint of the Swiss association *KlimaSeniorinnen* (an organisation of elderly women) but rejected the complaints of the four individual members because they did not sufficiently demonstrate a "particular and direct" exposure to climate risk. The Court explicitly recognised that climate change is a "common concern of humankind" and allowed an association to act on behalf of collective interests, given its statutory mission to protect both its members and the public interest (including future generations). This jurisprudence reveals a structural problem: without a distinct environmental right enabling collective standing more broadly, climate victims are often left without effective judicial remedies. The Court's approach underscores the inadequacy of reducing environmental harm to purely individual rights like life or health: such a reduction fails to address the systemic, intergenerational, and collective nature of climate harms. Recognising an autonomous right to a healthy environment would provide a clearer normative basis and procedural access (especially for associations) to challenge states' insufficient climate action, overcoming the hurdles that have so far impeded many applicants. To be truly autonomous, it must be directly enforceable, possess its own normative purpose, and structure dispute resolution independently of rights to life, health, or well-being.[33] This normative autonomy grants environmental law a specific status within the hierarchy of norms, justifying the involvement of the constitutional judge and the use of instruments such as *amici curiae*[34] to strengthen the rationality and legitimacy of judicial decisions.

Yet structural obstacles remain. The generational dimension reveals a gap between institutions and citizens' expectations. Gerontocracy—here understood as institutional dominance by older members deemed "wise" by virtue of age—can slow the effective implementation of environmental rights, not due to intellectual incapacity, but because accumulated experience may be

[30] E.g. ECtHR, 28 October 2025, No. 34068/21, *Greenpeace Nordic and others v. Norway*.
[31] ECtHR, 9 April 2024, No. 39371/20, *Duarte Agostinho et al. v. Portugal and 32 other States*.
[32] ECtHR, 9 April 2024, No. 53600/20, *Association Verein KlimaSeniorinnen Schweiz v. Switzerland*.
[33] See also James R. May, 'Petition to the Inter-American Commission on Human Rights on behalf youth plaintiffs in *Juliana v. United States*' (23 Sept 2025) Our Children's Trust / Dignity Rights Advocates, requesting precautionary measures for climate rights violations.
[34] Traditionally a civil law concept, referring to parties who assist judicial decision-making without being formal experts or bound by strict rules. By extension, here it denotes actors "behind the scenes" of constitutional decisions.

misaligned with contemporary challenges of the Anthropocene. The election of a younger president, embodying symbolic and energetic renewal, highlights the sociopolitical sensitivity to intergenerational balance. Strengthening ecological democracy, therefore requires ensuring not only the normative autonomy of environmental rights but also access to justice, transparency, and legitimacy in judicial decision-making. It calls for an ecological rule of law in which the enforceability of fundamental rights and the protection of future generations are guaranteed, while recognising that implementation depends on ongoing environmental education, responsive institutions, and active participation by citizens and judges. These considerations lead directly to the central question of this study: how can the current constitutional treatment of environmental rights in France, and the broader institutional framework of the State, evolve to secure the justiciability and effectiveness of this fundamental right? This question sets the stage for the discussion of necessary reforms addressed in the third part of this study.

II. Constitutional Treatment of Environmental Rights in France

The French example illustrates the dual influence of domestic and international law on the recognition of environmental rights. Like many other states, France responded to international trends—particularly the widespread ecological concerns following the 1972 Stockholm Conference—by constitutionally enshrining environmental principles and rights. Yet, as in other jurisdictions, the anthropocentric orientation of human rights law has shaped how these rights are formulated and applied. Moreover, constitutional recognition alone does not automatically translate into rights that are directly enforceable in the courts, highlighting the structural limitations of national legal systems in fully protecting environmental interests. By codifying environmental principles, France has signalled a normative commitment; however, the practical implementation of these rights remains uneven. Constitutional provisions often provide aspirational guidance rather than concrete, enforceable claims, leaving significant gaps between legal recognition and judicial effect.[35] This structural tension underlines the need for a more robust justiciability framework, capable of transforming symbolic constitutional guarantees into tangible protections for both current and future generations, thereby forming a cornerstone for an emerging ecological democracy.[36]

Beyond legal recognition, the effective protection of the right to a healthy environment also depends on the safety and acknowledgment of those who defend it. Whistleblowers and environmental advocates play a crucial role in

[35] See also Danièle Lochak, Véronique Champeil-Desplats & al., (n 11) 3.

[36] *Cf*. Jean-Michel Fourniau, Loïc Blondiaux, Dominique Bourg & Marie-Anne Cohendet (eds), (n 3) 436 pp – the authors do not mention justiciability, which, however, is a fundamental component of ecological democracy, because it ensures that environmental rights are enforceable, allowing citizens and civil society to hold governments and institutions accountable for protecting the environment.

exposing violations and mobilising public opinion.[37] Yet their work is often met with threats, intimidation, or even lethal violence. The international vulnerability of environmental defenders is tragically illustrated by several emblematic cases. For example, the Honduran activist Berta Cáceres, awarded the Goldman Environmental Prize in 2015, was included by the Inter-American Commission on Human Rights on its list of individuals under threat, and was assassinated just a year later. Similarly, the Kenyan environmentalist Wangari Maathai, Nobel Peace Prize laureate in 2004 for her commitment to sustainable development, exemplifies the tensions between environmental activism and political repression. As the first African woman to receive the Nobel Peace Prize, she faced police violence under the authoritarian presidency of Daniel Arap Moi, which forced her into exile in Tanzania before she could return under the more liberal Mwai Kibaki, who appointed her Minister of Environment in 2002. Her engagement—at the intersection of ecological, democratic, and social struggles—demonstrates a broader phenomenon: the inseparability of environmental justice and fundamental principles of the rule of law. In a 2004 statement to a Belgian newspaper,[38] Maathai emphasized the need to reconceptualize peace to include the protection of natural resources and human dignity. This perspective situates environmental rights as a systemic component of fundamental rights in democracy: the environment is not peripheral but structurally integral to political, economic, and social balances. Recognition of a fundamental right to the environment is therefore not merely an ethical imperative; it is essential for safeguarding other rights and protecting those who defend them. While it is true that existing rights – such as the right to life or freedom of expression – have not always prevented state authorities from persecuting or even executing activists, both international jurisprudence and expert reports stress that a specific legal status for environmental defenders is necessary. United Nations Special Rapporteurs, including Michel Forst and Elisa Morgera, consistently emphasize that defenders face heightened vulnerabilities that require tailored protections.[39] International bodies have codified this approach: the Inter-American Court of Human Rights in *Digna Ochoa* (2021) highlighted how corruption, gender bias, and inadequate police investigations were linked to the failure to recognize the

[37] See, for the importance of protecting environmental defenders, the police treatment and degrading conditions faced in February–March 2024 by the "squirrels," peaceful activists occupying trees on a high-value ecological site slated for the A69 Toulouse–Castres highway, whose construction authorization process contained multiple environmental and human rights irregularities; see also Michel Forst, UN Special Rapporteur on Environmental Defenders, Visit to Tarn, France, 22–23 February 2024, End-of-Mission Statement. On 27 February 2025, the Toulouse Administrative Court annulled the environmental permits for the A69 and the A680 expansion, including derogations affecting protected species and habitats, finding that the economic justifications did not constitute an overriding public interest (TA Toulouse, 27 Feb. 2025, Nos. 2303544, 2304976, 2305322, Associations France Nature Environnement Midi-Pyrénées, Agir pour l'environnement, Amis de la Terre, et al. v Prefects of Haute-Garonne and Tarn).

[38] Wangari Maathai, 'Il faut traiter le mal à ses racines', interview with Olivier Mouton, *Le Libre* (8 December 2014).

[39] See Seigneury, *Du droit à l'environnement*, (n 9).

victim's specific status as an environmental defender,[40] while the Inter-American Commission on Human Rights (July 2025) and the Escazú Agreement similarly affirm that defenders merit distinct rights and procedural guarantees. Constitutional recognition of environmental rights and the status of defenders does not automatically change all state behaviour, but it renders violations far more visible internationally and enables expedited procedures, protective measures, and legal recourse that may literally save lives. Environmental justice cannot be reduced to a technical regulation of economic externalities or sectoral protection of ecosystems: it also requires legal guarantees for activists, preventing their criminalization and shielding them from repressive strategies designed to deter action or escalate tensions. The credibility of the rule of law itself is at stake: a legal system cannot claim to be democratic if it tolerates intimidation, violence, or persecution against environmental defenders. Nationally, the case of Rémi Fraisse in France starkly illustrates this point.[41] The young biology student died in 2014 during protests against the Sivens dam, when a grenade randomly thrown by law enforcement landed in his hood. The incident prompted the European Court of Human Rights to find France in violation of the right to life. Yet, the link between the rule of law and environmental protection is not self-evident and remains contingent on both institutional accountability and the active protection of those who champion ecological causes. Some critics may argue that the recognition of a constitutional right to a healthy environment would not have changed police behaviour or prevented state persecution, noting that unjustified violence occurs despite the existence of other legal rights. While this observation is valid, it overlooks the practical and normative functions of constitutional recognition. To date, there is no empirical evidence demonstrating that constitutionalisation of any right – including a right to the environment – is ineffective, or that it worsens the situation. Claims that such recognition would fail to prevent police violence or state persecution are speculative rather than evidence-based. On the contrary, legal recognition can create procedural tools and mechanisms for enforcement, provide a legal basis for remedies, and strengthen environmental protection, which may indirectly limit certain state-related injustices or abuses. Explicit environmental rights establish specific procedural and normative channels that ordinary rights do

[40] *IACtHR, Digna Ochoa v. Mexico, C n° 447, 25 November 2021.* The Inter-American Court of Human Rights found Mexico responsible for serious human rights violations against Digna Ochoa, an environmental lawyer defending peasants and activists opposing industrial projects. After years of threats and abductions, Ochoa was found dead in Mexico City in 2001; authorities initially ruled it a suicide despite three gunshot wounds and a threatening letter. The Court emphasized that sexist biases – focusing on her personal life, reproductive history, and "conversion hysteria" – replaced factual investigation, violating her rights to life, personal integrity, and access to justice (Articles 4, 5, 8, and 25 of the American Convention on Human Rights). Mexico was ordered to reopen the investigation, train police and prosecutors on gender dimensions, adopt a protocol for investigating human rights defenders, and hold a national tribute. The case exemplifies the structural violence faced by women environmental defenders, who are often subject to moral denigration. Cases such as Digna Ochoa illustrate why ecological democracy must go beyond formal recognition of environmental rights, embedding specific protections for defenders and intergenerational accountability into democratic and constitutional structures.

[41] ECtHR, 27 Feb. 2025, Nos. 22525/21 and 47626/21, *Rémi Fraisse et al. v France.*

not: they set clear legal standards against which state actions can be evaluated, facilitate expedited judicial review, and enable national and international bodies to monitor and respond to violations more effectively. In practice, this means that even if police misconduct cannot be fully prevented in every case, the rights of environmental defenders are more visible, actionable, and legally protected – reducing the likelihood of impunity and accelerating remedial procedures. Decades of scholarship and comparative constitutional practice[42] demonstrate that environmental rights cannot be adequately protected through general rights alone: only their explicit constitutional recognition ensures clear legal standards, procedural mechanisms, and visibility. It is now widely consensual among french constitutionalists and human rights experts that constitutionalization is not a theoretical debate, but a practical necessity.

The French experience thus reflects both the advances and the limitations of environmental constitutionalism. It underscores the need to examine not only the formal inclusion of environmental rights in constitutional texts but also the interpretative practices of courts, the effectiveness of judicial enforcement, and the broader institutional mechanisms required to make these rights meaningful. This analysis lays the groundwork for conceiving ecological democracy as a framework capable of addressing these structural deficits. The push for recognition of a fundamental right to a healthy environment signals a deeper normative shift. Within the French constitutional tradition, however, this shift remains caught between the rigidity of legal formalism and the flexibility of evolving principles. The Charter of the Environment granted legal recognition to environmental rights, but from an anthropocentric perspective. In the Anthropocene, such an approach is no longer sufficient. A transformative step involves recognising ecosystems as co-subjects of rights and future generations as constitutional actors. This requires a form of constitutionalism grounded in the commons, based not on ownership but on relational interdependence.[43] From this perspective, ecological democracy is not merely an ethical add-on to liberal democracy; it is a transformative project that redefines legitimacy, justice, and participation. The symbolic status of environmental rights must be translated into normative enforceability. The recognition of the interests of ecosystems and future generations constitutes a moral, pragmatic, cultural, and constitutional necessity. As Edith Brown Weiss has emphasized, future generations have a right to the environment because decisions made today irreversibly shape the conditions in which they will live; protecting them is therefore not only a moral obligation but an imperative to ensure intergenerational justice.[44]

Similarly, David Boyd demonstrates that recognizing rights of nature is not only conceptually legitimate but also essential for safeguarding ecosystems in the context of a global ecological crisis.[45] According to these authors, such

[42] See Seigneury, *Du droit à l'environnement*, (n 9).
[43] See Seigneury, *Du droit à l'environnement*, (n 9).
[44] Edith Brown Weiss, 'In Fairness to Future Generations and Sustainable Development' (1992) 8 *American University Journal of International Law and Policy* 19.
[45] David Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press.

recognition is not a mere philosophical abstraction: it is a practical and moral necessity, and a political urgency, because the Overton window for integrating these ideas into law and governance may be open now, but could close tomorrow.

This perspective is further reinforced by jurisprudence from courts around the world. The Montana Supreme Court has recognized rights of future generations in a climate case,[46] while the Constitutional Court of South Korea, in the *Woodpecker case*, affirmed the protection of future generations' interests against environmentally harmful policies. Likewise, in 2021, the German Federal Constitutional Court ruled that interference with the rights of future generations was unconstitutional, requiring the legislature to strengthen protections to preserve their future.[47] These decisions demonstrate that legal and constitutional recognition of the interests of future generations and nature is not only conceptually defensible but already practiced by leading jurisdictions. Although conceptual and normative challenges remain – such as defining standing, enforcement mechanisms, or the scope of obligations – these difficulties do not undermine the legitimacy or urgency of recognizing environmental and intergenerational interests as central components of constitutional governance and ecological democracy. Yet a central paradox remains: how can humanity, as the primary agent of ecological harm, claim a right to the environment without reproducing the very logic that caused the crisis?

This paradox underpins critiques of the human rights framework, often deemed insufficient to meet ecological imperatives. The slow recognition of environmental rights in France illustrates a broader democratic malaise. The belated acknowledgment by French judges of the environment as a fundamental right might almost suggest that the ecological crisis itself is being deferred indefinitely, leaving future generations to address the environmental harms created by previous ones. A striking example is the référé-libertés, an emergency administrative procedure introduced in 2000 to protect fundamental freedoms, which was extended to environmental protection only in 2022.[48] This delay is particularly stark when compared to other rights covered by the same mechanism: the right to practise a sport (2020),[49] the right to protect personal data (2020),[50] the right to move freely using an authorised mode of transport (2020),[51] the freedom to practise as an automotive expert (2005),[52] the right to marry (2003),[53] and even property rights[54] and the

[46] Montana District Court (United States), 14 August 2023, No. CDV-2020-307, *Held v. State of Montana*.
[47] Federal Constitutional Court, Karlsruhe (Germany), 24 March 2021, *Bundes-Klimaschutzgesetz*. See also : Supreme Court of the Netherlands, 20 December 2019, No. C/09/456689/HA ZA 19/00135.C, *Urgenda v. Netherlands*.
[48] Conseil d'État [French Council of State], 20 Sept. 2022, No. 451129.
[49] CE, 16 Oct. 2020, No. 445102, Freedom to practise a sport.
[50] CE, 18 May 2020, No. 440442, Right to personal data protection.
[51] CE, 30 Apr. 2020, No. 440179, Right to travel using an authorized means of transport.
[52] CE, 15 Dec. 2005, No. 288024, Freedom to practise as an automotive expert.
[53] CE, 13 Jan. 2003, No. 253216, Right to marry.
[54] CE, 31 May 2001, No. 234226, Right of property.

freedom to engage in commerce and industry (2001).[55] Given the urgency of the ecological crisis, the slow pace of recognition raises a fundamental question: why was the protection of the environment not prioritised earlier? The reasons are largely structural and historical: the conservatism of jurists, the traditionally rigid training of magistrates, the limited international dialogue, and the absence of exchanges among students in the final years of study before entering senior civil service, as well as a very close relationship with the Presidency. In the history of the Fifth Republic, strongly marked by the hyper-presidentialism that emerged from the failures of the Fourth Republic, presidents—often largely insensitive to scientific and academic knowledge—have maintained a distant relationship with local elected officials, indigenous communities, environmental parliamentarians, and citizens mobilized for environmental rights. This concentration of executive power, oriented toward unconstrained economic liberalism and prioritization of development, has delayed the constitutional recognition of environmental rights, despite their importance in providing a genuine institutional and legislative counterweight. Even today, some actors continue to oppose any intergenerational and ecocentric interpretation of the State's obligations. Yet, in 2023, the Constitutional Council[56] opened for the first time a window of opportunity by recognizing the possibility of an intergenerational interpretation of the State's environmental obligations, thus providing a potential foundation for strengthening the constitutional protection of environmental rights from a perspective that is both sustainable and ecologically integrated.

The expansion of fundamental rights has also sparked a debate over "normative inflation."[57] Some argue that the multiplication of rights risks undermining the coherence of legal systems, highlighting a tension between inherited institutional structures and the demands of ecological justice. Others maintain that recognising the environment as a fundamental right, while necessary, is insufficient: it must be accompanied by a profound rethinking of the very categories of justice, liberty, and democracy. Doctrinal critiques of the constitutional reception of environmental rights have been abundant. Guy Carcassonne[58] and Marc Guillaume mocked the preamble of the Charter,[59] deeming it incoherent for placing biological diversity, human flourishing, and societal progress on the same plane. Their ironic commentary—evoking long-extinct mammoths and pterodactyls—highlights the contrast between a cynical reading of the text and the seriousness of contemporary ecological challenges.

---

[55] CE, 12 Nov. 2011, No. 239840, Freedom to conduct business, commercial freedom, and contractual freedom.

[56] See CC, Decision No. 2023-1066 QPC, 27 October 2023, *Association Meuse Nature Environnement and others* [Deep Geological Storage of Radioactive Waste].

[57] Jacques Krynen, *Le théâtre juridique: Une histoire de la construction du droit* (Gallimard 2018) 5.

[58] Guy Carcassonne, a public law professor, praised for his work with the Constitutional Council and known for close personal ties with its members and key officials, was considered part of the "family" of the Council.

[59] Guy Carcassonne and Marc Guillaume, *La Constitution: Introduite et commentée* (14th edn, Points 2017) 464.

Yet reducing the Charter to awkward rhetoric obscures its symbolic and normative significance, especially amid climate crises, biodiversity loss, and the rise of solastalgia—a neologism officially recognized in the Journal officiel on 7 August 2022, describing anxiety linked to real or anticipated environmental changes, including climate and biodiversity shifts. This psychological distress, particularly acute among younger generations, has led some, like Noé Gauchard of Youth for Climate France, to refer to it as "ecological trauma", a new malady of our time. Recognising the right to a healthy environment thus goes beyond symbolic or political acknowledgment: it embodies an ethical and public health imperative, aiming to protect mental well-being,[60] especially of children under the Convention on the Rights of the Child. By instituting intergenerational responsibility, the Charter addresses the legitimate concern of generations struggling to envision a secure future, connecting environmental protection directly to human dignity and the safeguarding of fundamental rights.

Within this framework, the Constitutional Council cannot hide behind formalism or a certain laconic approach to decision-making. An examination of the Preamble shows that some provisions, such as the protection of the environment and biodiversity, constitute constitutional objectives (*objectifs à valeur constitutionnelle*, OVC), while others, such as sustainable development and the rights of future generations, remain unresolved. The Court has identified principles and duties—responsibility, prevention, precaution, sustainable development, and preservation in research—but most substantive rights remain weakly protected. The Council's practice reveals a gap between normative recognition and legal enforceability: the right to a healthy and balanced environment is scarcely justiciable, unlike procedural rights to information and participation. This pattern is confirmed in recent case law. Decision no. 2020-809 DC on neonicotinoids for the sugar beet sector illustrates the influence of economic interests and lobbying, where environmental protection is subordinated to sectoral concerns. Similarly, the 2023 validation of the nuclear revival underscores a cautious judicial approach that sidesteps full protection of future generations. More recently, in August 2025, the Constitutional Council reviewed the so-called Duplomb law, which sought to relax certain environmental regulations to support agriculture, notably by permitting the reintroduction of acetamiprid, a neonicotinoid pesticide banned in France since 2018. In its decision,[61] the French Constitutional Council struck down Article 2 of the so-called "Loi Duplomb," which provided for a new exemption allowing the use of pesticides containing neonicotinoids. The Council found that this provision violated Article 1 of the 2005 Environmental Charter, which guarantees the right of everyone to live in a balanced and healthy environment. This ruling marks a significant development in French environmental jurisprudence, demonstrating that,

[60] Ornella Seigneury, 'Does Environmental Protection Contribute to Happiness?' *Temps qui restent* no 4 (January 2025) https://hal.archives-ouvertes.fr/hal-04973975/document accessed 6 February 2026.

[61] CC, Decision n° 2025-891 DC, 7 August 2025, Loi visant à lever les contraintes à l'exercice du métier d'agriculteur (partial non-conformity – with reservation).

when pressed, the Council can prioritise ecological protection over narrow sectoral economic interests. While this decision signals a shift toward a stricter interpretation of the Charter and greater attention to contemporary ecological challenges, it also highlights the ongoing tension between economic considerations and the effective enforcement of environmental rights.

Doctrinal scepticism, the lingering influence of gerontocracy, and the historically cautious approach of the Council have contributed to the limited justiciability and partial enforceability of environmental rights. However, recent rulings, such as the Duplomb law decision, suggest that the Council is increasingly willing to assert the primacy of ecological protection over narrow sectoral interests. This evolving jurisprudence indicates that while structural and institutional challenges persist, there is potential for a gradual strengthening of environmental rights in France. The critique is therefore not merely symbolic but highlights both the remaining obstacles and the emerging possibilities for reforming constitutional review and environmental justice mechanisms.

III. Judicial and Institutional Reforms for an Ecological Rule of Law

French constitutional justice, while retaining a central role, remains insufficiently equipped to address contemporary challenges related to the enforceability of environmental rights. Dominique Rousseau notably highlights the current limitations of the Constitutional Council, observing that "of course, the decisions of the Council are not always commensurate with its role as guardian of rights and liberties under Article 61 of the Constitution"[62] and that "of course, the method of appointment of its members does not match the judicial quality it claims."[63] In this context, the concept of an "ecological rule of law" must be clearly defined to avoid ambiguity. In the French context, it refers to a legal and institutional framework in which environmental protection is structurally integrated into the national legal order: juridical bodies, administrative authorities, and public powers must systematically consider ecological principles, environmental rights, and the interests of future generations in their decisions and policymaking. It encompasses not only the recognition of environmental rights but also procedural mechanisms, accountability measures, and safeguards that ensure these rights are enforceable, monitored, and respected, thereby embedding ecological considerations into the very functioning of democratic governance. Yet Rousseau advocates measured prudence, rejecting any radical overhaul of constitutional review and cautioning that it would be futile to abandon such an essential institution merely to correct its imperfections. Far from proposing its elimination, he calls for reforms that would strengthen the Council, enabling it to function as a genuine actor in constitutionalism. Constitutional justice must modernise to assert its fundamental role within an ecological rule of law, in full alignment with the rights and obligations enshrined in the Constitutional

[62] Dominique Rousseau, 'Chronique de jurisprudence constitutionnelle (2022)' (2023) 1 Revue de droit public 219.
[63] Rousseau, 'Chronique' (n 62) 219.

Charter on the Environment. The proper functioning of the Constitutional Council and other constitutional courts is thus crucial to the effective protection of environmental rights. It is imperative that these institutions can render impartial decisions grounded in the Constitution and its fundamental principles, as well as the Environmental Charter, rather than being influenced by partisan considerations or legal justifications that might undermine their legitimacy. Access to constitutional justice is equally crucial. Recourse to the Constitutional Council must be available to all citizens, without financial or procedural barriers that would exclude portions of the population. It is therefore necessary to simplify and expedite judicial procedures so that environmental rights can fully take their place within constitutional adjudication.

Streamlining executive power and strengthening the judicial role of the Constitutional Council are essential avenues for enhancing the enforceability of environmental rights. Constitutional justice, in line with Hans Kelsen's vision, is a cornerstone of the rule of law, ensuring that executive acts and parliamentary legislation comply with constitutional principles. Within the framework of an ecological rule of law, this function must evolve: the constitutional judge should no longer merely support the executive but act as a genuine guarantor of fundamental rights, particularly environmental ones. This requires a rethinking of the judge's role, strengthening judicial independence, and fostering closer interactions between national and international courts and administrative institutions. It also calls for expanding the dialogue to include other key actors, such as the Economic, Social and Environmental Council,[64] the French Bar Council—which published a report[65] on 12 September 2025 on the democratisation of environmental justice—as well as environmental partners, notably NGOs, citizen collectives, and whistleblowers. Judicial dialogue constitutes a key lever for improving decision-making quality. It allows magistrates to draw on practices and reasoning adopted elsewhere, nationally or internationally, and to benefit from innovative legal and technical interpretive tools. In France, the dialogue between the Constitutional Council, administrative courts, and ordinary courts remains limited. Constitutional jurisprudence exerts little influence on ordinary courts, except via the priority preliminary ruling on constitutionality (QPC). The Court of Cassation tends to prioritise European human rights jurisprudence, while the Council of State shows greater sensitivity to constitutional jurisprudence. Strengthening dialogue between these jurisdictions is necessary to ensure the coherent and effective application of constitutional principles, particularly regarding environmental rights.

The Constitutional Council could also enrich its jurisprudence by integrating soft law issued by independent administrative authorities, such as the Defender of Rights. However, this soft law remains fragmented and largely opaque, and the Defender of Rights addresses ecological issues only marginally. The

[64] See also Economic, Social and Environmental Council, *Public Participation in Environmental Decision-Making* (Opinion, 10 September 2025) 234.
[65] Working Group on Environmental Law of the National Bar Council, *The Lawyer's Role in Preserving and Enhancing the Environment* (12 September 2025) 80.

creation of a Deputy Defender for Environmental and Climate Rights, endowed with sufficient resources, would help fill this gap and effectively monitor the implementation of the right to a healthy environment and sustainable development. A renewed dialogue between the Constitutional Court and other branches of power is therefore essential. An ambitious reform could include the establishment of an independent National Climate Committee, integrated within Parliament and interacting with the Constitutional Council. This committee would aim to promote long-term policies that reconcile environmental, social, cultural, and economic dimensions, while addressing intergenerational challenges and the specific needs of vulnerable groups. Several reforms appear decisive in this regard.

The first concerns strengthening the independence of Constitutional Council members from the President of the Republic and the Council President. While the Council has gradually established itself as a key actor in judicial review, its role in environmental matters remains marginal. The current ecological and democratic crisis, exacerbated by the slow implementation of the Environmental Charter, highlights not a legitimacy crisis but a deficit of independence from the executive branch and broader political influence. It would be advisable to revisit Ordinance No. 58-1067 of 7 November 1958, which requires members to swear allegiance to the President of the Republic, replacing this provision with an oath of loyalty to the French people. This symbolic change would reinforce the Council's autonomy while affirming its mission to protect fundamental rights, including environmental rights. The second necessary reform concerns placing ecological issues at the heart of constitutional priorities. In 2022, the President of the Constitutional Council emphasised[66] the need for institutions to remain faithful to their mission of protecting fundamental rights, even in times of crisis. Yet, while issues such as security or bioethics were addressed, environmental concerns remained absent. This indifference reveals a worrying gap between institutional discourse and contemporary challenges. Laurent Fabius's vision of a perfected rule of law loses force if sustainability is not integrated as a fundamental paradigm. Can a constitutional future be envisaged without sustainable development? Democracy and sustainability are inseparable: their articulation requires a re-evaluation of institutions in light of their current neglect of environmental challenges. Finally, a third reform involves diversifying the profiles within the Constitutional Council to strengthen its impartiality and credibility. Its current composition, largely dominated by political figures with limited or no legal expertise, undermines its ability to embody genuine constitutional justice in environmental matters. Critiques submitted to the UN Aarhus Committee, notably by Greenpeace, La Sphinx, and France Nature Environnement, highlight a systemic violation of the right to impartial justice, due to decisions rendered by former ministers who had contributed to the drafting of the contested laws. Broadening the Council's composition to include members with academic and legal backgrounds would improve its capacity to

[66] Laurent Fabius, 'Vœux du Conseil constitutionnel au Président de la République' (6 January 2022) https://www.conseil-constitutionnel.fr/actualites/voeux-du-conseil-constitutionnel-au-president-de-la-republique-0 accessed 6 February 2026.

address complex constitutional and environmental issues. This reform must be accompanied by a substantial increase in human and material resources available to the Council. The U.S. case *Held v. Montana,*[67] in which judges had to process tens of thousands of documents in a climate litigation, illustrates the urgency of equipping courts with the resources necessary to handle increasingly complex environmental cases. Dominique Schnapper's observations[68] are particularly illuminating: she notes that French Council members have minimal support compared with their foreign counterparts, each of whom benefits from a team of highly qualified legal assistants. The contrast with the U.S. Supreme Court or the German Constitutional Court is striking, where each judge has extensive legal support. Strengthening the Constitutional Council's human and technical capacities is therefore essential to respond effectively to the climate emergency and to modernise French constitutional justice.

The creation of an independent Climate Committee, along with parliamentary training in long-term environmental policy, also appears necessary. Such models exist elsewhere: in Pakistan, an independent committee engages with public authorities and monitors the implementation of international obligations; in Germany, a parliamentary-elected ecological council with a nine-year mandate can issue suspensive vetoes against environmentally harmful decisions. Establishing a similar institution in France could reduce the systematic recourse to the Constitutional Council by opposition parties seeking a priori review of environmentally detrimental laws—a procedure that has never resulted in a declaration of non-compliance. Twenty years after the adoption of the Environmental Charter (2005–2025), the record remains limited: apart from the Duplomb ruling — the only instance of a declaration of non-compliance in this field through a priori review — the Council has otherwise refrained from striking down legislation. However, the proliferation of environment-specific institutions must remain measured. Otherwise, it risks creating a form of institutional greenwashing, giving the appearance of an ecological rule of law without delivering substantive means. Moreover, younger generations, who are highly active in climate litigation, rarely engage with these advisory bodies, preferring binding judicial mechanisms over consultative organs. The Defender of Rights, often perceived as remote and ineffective, has not gained sufficient legitimacy to serve as a popular defender of environmental rights, especially in the wake of democratic crises linked to the Yellow Vests, the Covid-19 pandemic, and recent social movements. Warnings issued to the executive remain largely ineffective, reflecting the structural weakness of this institution in addressing environmental and climate challenges.

---

[67] Montana District Court, *Held v State of Montana*, CDV-2020-307 (14 August 2023).

[68] Dominique Schnapper, *Une sociologue au Conseil constitutionnel* (Gallimard 2010) 43, 46, 159–60, 175. This independence also requires adequate human and financial resources. As former Constitutional Council member Dominique Schnapper—herself a sociologist—has observed, some members of the Council have experienced a sense of "austerity," "indignity," or even "material mediocrity" regarding the institution's means when compared with those of senators or of other constitutional courts.

Another lever for renewal lies in facilitating procedural access to the judge for the protection of fundamental liberties. The judicialization of law—a central phenomenon in contemporary democracies—reflects a growing demand for justice and an increase in citizens' recourses in a context of representational crises. While the term is sometimes used pejoratively to denote procedural querulousness or the abusive use of courts for minor disputes,[69] it nonetheless signals an aspiration to equality before the law. In the environmental context, judicialisation undeniably contributes to the recognition and enforcement of fundamental rights. The key issue now is whether environmental rights can effectively channel and structure this increasing demand for justice. This requires, on the one hand, genuine access to the courts and environmental justice mechanisms, and on the other, intelligible, transparent decisions based on reasoned, adversarial deliberation among judges. The existence of sophisticated procedural principles, ensuring true equality of arms, remains a critical marker of democratic vitality.

Another axis of reform concerns the intelligibility of judicial decisions for citizens. In a democracy, public understanding of the reasoning and foundations behind judicial rulings is essential to limit arbitrariness and enhance institutional legitimacy. This is especially true for constitutional justice, whose decisions directly shape the protection of fundamental rights. The introduction of dissenting opinions could play a pivotal role in this regard. By allowing minority judges to publicly express their disagreements, such opinions would enhance transparency, stimulate legal debate, and restore trust among citizens—and economic actors—in constitutional justice. They would provide an alternative to the often terse and abstract nature of Council decisions, while bringing the Constitutional Council closer to Kelsenian models, where judicial pluralism serves as a guarantee of rigour. However, some scholars emphasise that this innovation, as useful as it may be, cannot obscure the more fundamental issue of structural reform of the Constitutional Council itself. Its composition, largely determined by political choices, does not always ensure the technical competence and professional diversity required to address complex issues such as the environment. Critiques of the "myth" surrounding the Council call for institutional self-reflexivity: without this critical capacity, the institution risks remaining rigid and incapable of responding to contemporary challenges.

At a deeper level, however, the debate also raises questions that resonate with Rousseau's political philosophy. In the *Discourse on the Origin of Inequality* and *Émile*, Rousseau[70] distinguishes between *amour de soi*, a natural instinct of self-preservation, and *amour-propre*, a socially constructed passion that arises from comparison with others, fuelling vanity, competition, and the quest for recognition. For Rousseau, *amour-propre* is a source of alienation: it makes human beings dependent on the approval of others rather than their own flourishing. In the state of nature, Rousseau describes human life as a condition of freedom and harmony with oneself and with nature. Yet with the advent of

[69] It illustrates the classical maxim *de minimis non curat praetor* ("the judge does not concern himself with trifles").
[70] Céline Spector, *Rousseau : les paradoxes de l'autonomie démocratique* (Michalon 2015).

society and private property, *amour-propre* develops, corrupting man, enslaving him to artificial desires, and rupturing his bond with nature. This alienation leads to inequality, domination, and the loss of liberty, as nature becomes not a source of sustenance and happiness but an object to be exploited and dominated. Placed in this light, the under-resourcing of the French Constitutional Council is not merely a technical obstacle; it symbolically reflects the same tension Rousseau identified between authentic self-preservation (*amour de soi*) and the distortions of *amour-propre*. Without adequate institutional means to protect environmental rights effectively, constitutional justice risks reinforcing precisely the alienation Rousseau feared: a society where short-term economic interests prevail over the deeper imperative of living in balance with nature. Equipping the Council with the necessary intellectual and material resources is thus not only a matter of efficiency but also of restoring coherence between constitutional guarantees and the philosophical foundations of human freedom and environmental rights.

IV. Environmental Rights in Pre-Ecological Democracies: A Comparative Perspective

According to Wanda Mastor and Louis Favoreu, the constitutional judge fulfills a triple function: safeguarding the rights of the opposition or parliamentary minorities, protecting sociological or political minorities insufficiently represented to counter "the domination and monopolisation of political debate by the major parties [and the media]," and finally, rationalising the legislative process by "correcting the flaws resulting from the capture of political decision-making by the major parties. Undoubtedly, the constitutional judge shapes political life, whether by pacifying or inflaming it."[71] In sum, the constitutional judge performs the role of rationalising representative democracy, which, as Dominique Rousseau notes, has failed to overcome the power of the market under economic neoliberalism. He observes, for instance, that "governments are less accountable to their Parliaments and their citizens than to the markets, and political systems have become pluto-democracies managed by a new 'state nobility,' to borrow Bourdieu's expression.[72] Improving access to the judiciary is a crucial issue in assessing the feasibility of an ecological democracy. Comparative experiences from other national contexts provide valuable insights. In Pakistan, for example, former President Farooq Leghari significantly expanded citizen access to the courts during the 1990s. This development led to landmark jurisprudence,[73] frequently cited, including by Corinne Lepage in the *Carême v France*[74] case before the European Court of

[71] Wanda Mastor and Louis Favoreu, *Les cours constitutionnelles* (2nd edn, Dalloz 2016) 159.
[72] Dominique Rousseau, *Radicaliser la démocratie: Propositions pour une refondation* (Seuil 2015) 10.
[73] Lahore Court, Pakistan, *Leghari v Federation of Pakistan*, W.P. No. 25501/2015, 4 & 14 September 2015.
[74] ECtHR, *Carême v France*, App. No. 7189/21, 9 April 2024 (inadmissible for lack of proof of a link between the applicant and the municipality of Grande-Synthe, invoking Articles 2 & 8 ECHR).

Human Rights. Unlike the French system, where the Constitutional Council remains largely inaccessible to individual litigants, Pakistan established a specific procedural framework designed to safeguard human rights and procedural guarantees.

This comparison highlights a paradox in France: a constitutional court internationally recognised for its commitment to climate obligations and human rights, yet structurally constrained in its openness to citizens. The gap between formal recognition of environmental rights and their actual enforceability underscores the limits of a pre-ecological democratic framework. It also illustrates the importance of institutional design: ensuring that constitutional adjudication is not only technically rigorous but also genuinely accessible and responsive to societal demands is essential for nurturing a functional ecological democracy.

In this context, the role of the judge aligns with a democratic imperative: to deliver justice for the people. Brazil exemplifies the failure of ambitious legislation rendered ineffective: despite an extensive normative framework, under Jair Bolsonaro deforestation in the Amazon surged (+278% in July 2019 compared with 2018), Indigenous rights were massively violated, and political interference undermined protective mechanisms. As Alexandre Saraiva, former director of the Amazonas Federal Police, highlighted, corruption and political meddling rendered environmental norms largely meaningless.[75] Sustainable development must therefore be understood as a substantive requirement, demanding that judges adopt a more forward-looking perspective attentive to future generations and vulnerable populations. In France, constitutional judges must internalise this responsibility: formal access alone is insufficient if decisions remain opaque, misunderstood, or socially disconnected. Clarity and popular comprehension constitute essential democratic conditions. Access to constitutional justice must encompass understanding, legitimacy, and trust. Judges should remain independent of populist pressures while becoming genuinely "popular," rooted in social and democratic realities. This entails intelligible communication that reaches unconventional audiences, including future generations. In this light, fundamental rights function as tools to reconfigure political institutions themselves, compelling a reassessment of the balance of powers. The growing prominence of politically resonant judicial decisions, particularly in environmental matters, reflects citizen demands in response to parliamentary representation gaps. It is also important to distinguish participatory democracy from populism, a distinction crucial for understanding the litigation strategies of environmental activists. Far from seeking a demagogic effect, these actors mobilise the judiciary as a democratic relay to amplify minority or marginalised voices. The French executive in 2023 provides a striking illustration of this tension. Gérald Darmanin, then Minister of the Interior and later of Justice, labelled environmental demonstrations as "intellectual terrorism by the far-left," even describing some activists as "eco-terrorists" and announcing the dissolution of the association *Les Soulèvements de la Terre*. These statements,

[75] Albert Knechtel, *Amazonia – It's the Forest Being Killed* (Documentary, Arte 2020).

reinforced by media surveillance narratives and alleged police monitoring, prompted concern from the Council of Europe, the Defender of Rights, and the United Nations. French Police violence observed during protests against the megabassines at Sainte-Soline, mass arrests for "participation in a group with intent to commit violence," and the criminalising rhetoric of social movements illustrate a semantic inversion highlighted by the UN Special Rapporteur on environmental defenders, Michel Forst.[76] He reminded France of its obligations under the Aarhus Convention and the necessity to protect human and environmental rights defenders, rather than silence them through unfounded accusations.

Ecological democracy cannot emerge from this conflation of citizen protest with terrorist threat. It must instead rely on the recognition of the judicial sphere as a guarantor of a broad and inclusive democratic voice. The UN Declaration emphasizes, for example, access to funding for human rights organizations and the collection and exchange of information on human rights standards and violations.[77] In this light, the use of drones to monitor environmental management or policing during protests is not only a fundamental right but also a civic duty: the obligation to expose violations of human rights. This example demonstrates that the right to a healthy environment in France is not merely a fundamental entitlement—understood as a claim or solidarity right—but also a public liberty, threatened by state repression of environmental defenders, perceived as political opposition to President Emmanuel Macron's second term. According to Stéphanie Hennette-Vauchez and Serge Slama, this decision embodies a deliberate attempt to "discipline political dissent"[78] through the use of an exceptional legal tool. Serge Slama highlights the punitive and targeted nature of the decree: although the version published in the *Journal officiel* was anonymized, the original version included the names of two spokespersons and one lawyer from the movement, suggesting that the dissolution aimed less at prohibiting the association itself than at personally sanctioning its representatives. This practice effectively uses administrative procedure as a shortcut to bypass ordinary judicial safeguards, exposing these activists to potential criminal liability for reconstituting a dissolved group. The use of the "groupement de fait" status, historically applied against fascist leagues in the 1930s and reactivated under the 2021 law on separatism, is significant. As Stéphanie Hennette-Vauchez notes, Jean Castex, former Prime Minister of France, had presented this legislation by asserting that "the enemy is radical Islam." Less than three years later, this legal arsenal, originally designed to confront what was portrayed as a grave internal threat, is being applied to ecological protest movements. The transposition of

[76] Interview with Michel Forst, *Le Monde*, 30 Mar. 2023, conducted by Stéphane Foucart and Stéphane Mandard ; see also Michel Forst, *State Repression of Environmental Protest and Civil Disobedience: A Major Threat to Human Rights and Democracy* (Report, Feb. 2024). *Cf*. Sophie Chapelle and Rachel Knaebel, "Who Are the Real Environmental Terrorists?" *Basta!*, 11 Apr. 2023.

[77] UN General Assembly, *Declaration on Human Rights Defenders* (Resolution A/RES/53/144, 8 March 1999).

[78] Juliette Delage, 'Soulèvements de la Terre: "We cannot compare fascist violence or terrorism with the violence involved in civil disobedience"', *Libération* (Paris, 22 June 2023).

instruments intended to counter extremist or violent ideologies to forms of environmental activism—often non-violent and rooted in democratic contestation—marks a troubling shift. It suggests a blurring of boundaries between genuine security concerns and the suppression of dissenting voices that challenge the productivist model and denounce climate inaction. These measures resemble so-called "SLAPP" (Strategic Lawsuit Against Public Participation) procedures frequently used in the United States to intimidate environmental defenders. Their aim is less to win a trial than to discourage, financially exhaust, and deter future opposition. Beneath the rhetoric of public order lies the construction of an enemy, cultivating public aversion toward ecological activists and delegitimizing criticism of environmental policies. As a Spanish lawyer observed regarding a security law, "the greatest success of the SLAPP law was to make people believe that certain things were prohibited when they were not really. Because there is no better policing than the one we have in our minds."[79] Such abuses contribute to the neutralization of dissent through fear internalization and self-censorship. Jean-Marc Lavieille describes this as "stifling wills,"[80] conditioning the collective imagination by presenting the ecological crisis as inevitable and portraying opponents as troublemakers.

In this context, state productivism appears self-destructive: it reduces people, communities, and humanity itself to mere instruments—domesticated consumers, expropriated producers, dispossessed citizens—serving short-term economic ends. Yet the Conseil d'État, seized under a *référé-libertés* procedure, suspended and then annulled the decree of 21 June 2023, finding that the dissolution was disproportionate to the alleged incitements to violence attributed to the collective.[81] By reaffirming the fundamental value of freedom of association, the administrative judge demonstrated that the rule of law retains a critical limiting function against authoritarian drift. However, this judicial victory also underscores the fragility of ecological democracy in France: it depends on the constant vigilance of judges against the instrumentalization of law and the ability of institutions to resist the temptation to criminalize citizen mobilization and environmental defenders.

Beyond the French case, an international comparison highlights potential avenues for institutional reform. The experience of the Philippines, for instance, illustrates a possible model to strengthen the justiciability of environmental rights.[82] The *writ of Kalikasan*, or "writ of nature," established in 2010, is an innovative judicial procedure designed to respond effectively to serious violations of the right to a healthy environment. Created by the Supreme Court itself, it draws inspiration from the Latin American *amparo*

---

[79] Héloïse Nez, 'La loi bâillon en Espagne: "It's as if we took three steps back and now one step forward"' *Mouvements* (7 February 2023).

[80] Jean-Marc Lavieille, 'From a Self-Destructive Productivist International System… to a Viable Global Human Community' in *Mélanges en l'honneur de Michel Prieur – Pour un droit commun de l'environnement* (Dalloz 2007) 236.

[81] CE, 11 August 2023, n° 476385 – Suspension of the decree dissolving the association *Les Soulèvements de la Terre* & CE, 9 November 2023, n° 476384 – Annulment of the decree dissolving the association *Les Soulèvements de la Terre*.

[82] See Hilario Davide Jr., 'The Environment as Life Sources and the Writ of Kalikasan in the Philippines' (2012) 29 *Pace Envtl. L. Rev.* 594.

remedy while adapting it to ecological concerns. The Philippines was the first country in the world to explicitly constitutionalize the right to a balanced and healthy environment "in harmony with Nature." This country therefore possesses substantial judicial experience that can inform potential reforms to address gaps in the French system. This remedy is distinguished by its speed and simplicity. Completely free of charge, it allows a judge to issue an order within three days in cases of major environmental harm, followed by an investigation limited to sixty days. The procedure has been used in a variety of contexts: halting an oil pipeline after a leak, enforcing climate laws, protecting coral reefs damaged by foreign ships, suspending genetically modified eggplant crops, and taking action against poaching and corruption threatening coastal areas due to illegal installations. These examples demonstrate the concrete impact of an accessible remedy specifically dedicated to environmental protection. In France, the *QPC* provides a rapid channel, but it remains indirect: citizens cannot address the Constitutional Council directly. This situation reflects what Hannah Arendt criticized as a form of legal hypocrisy—the reduction of procedural rights to "legislative charity" rather than a genuine right of access to justice. While the administrative judge can be seized in cases of environmental rights violations, he or she remains particularly reluctant in urgent matters, and the *Conseil d'État* has rarely issued rulings favorable to claimants. Introducing a mechanism analogous to the *writ of Kalikasan* in France would require adapting the current system of concentrated constitutional review. An initial step could be to entrust such a remedy to an independent authority—such as a "Defender of Nature," or failing that, the *Défenseur des droits*. This authority could eventually function as a support institution for the Constitutional Council, tasked with ensuring impartial decisions and combating complacency—or even corruption—on the part of private actors responsible for serious environmental harm. The adoption of such a procedure would represent a paradigmatic shift: recognizing environmental rights not merely as statements of intent, but as true fundamental rights, directly enforceable in court. By placing the community of life at the center of the legal order, the Philippine model invites France to rethink its conception of rights and to envision ecological democracy as a democracy of the Anthropocene, built on harmonious coexistence with Nature.

V. Conclusion

This paper has examined the comparative landscape of environmental rights in pre-ecological democracies, revealing a dual trend: on the one hand, legal and institutional innovations emerge to integrate environmental protection into constitutional systems; on the other hand, institutional inertia and anthropocentrism persist, limiting the enforceability of these rights. In Europe and beyond, the right to a healthy environment has often been conceived as an indirect human right, primarily aimed at protecting humans rather than nature itself. The jurisprudence of the European Court of Human Rights illustrates this approach: a "healthy and protected" or "balanced and health-respecting" environment constitutes a human-centred requirement, excluding recognition of an autonomous right of nature. Crucially, the European Convention on Human Rights does not explicitly recognize a substantive right to a healthy

environment; such a right remains absent from the text itself and from the Court's case law. A draft additional protocol is currently under negotiation within the Council of Europe, which, if adopted, would enshrine this right explicitly. Such a development could significantly deepen French ecological democracy by reinforcing domestic constitutional standards with a binding European norm of broader legal scope.

This anthropocentric paradigm has long prevailed, yet ethical currents since the 20th century have begun to shift perspectives. Hans Jonas, for example, argues for the creation of obligations toward future generations and all living beings, without immediate reciprocity and independently of direct human interest. His proposal challenges the classical principles of liberal democracy: political representation, limited to living human citizens, proves insufficient to address the long-term stakes of the Anthropocene. Jonas warns of the risk of a democratic power unable to protect nature except through symbolic or *ad hoc* measures, emphasizing the need to renew both the conception of citizenship and the framework of the rule of law. In the absence of a robust ecological democracy, some states have drifted toward what we might call an "environmental democrature." (fake one). This neologism describes regimes that combine the institutional forms of representative democracy with demagogic or authoritarian practices: arbitrary ecological measures, restrictions on freedom of expression and assembly for civic movements, and the instrumentalization of environmental rights to legitimize unilateral decisions. In this context, institutions and law appear to protect nature, but in reality serve to obscure a democratic imbalance between the proclaimed general interest and actual governance. Hans Jonas refers to a "benevolent tyranny",[83] a notion we prefer to reformulate to highlight the impasse created by suspending the rule of law in the name of ecology and suspending ecological democracy in the name of market imperatives.

The implications of ecological democracy may also extend beyond constitutional law into the sphere of economic governance. Recent legislative debates in France illustrate this evolution: a proposal introduced in the National Assembly in March 2026[84] suggests integrating environmental representation within corporate governance by allowing designated actors to represent the interests of nature in the boards of large companies, alongside strengthened workplace participation mechanisms. Such initiatives indicate that the renewal of democracy in the Anthropocene may ultimately require not only the constitutionalization of environmental rights, but also the democratization of economic decision-making itself.

[83] Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (Flammarion 2013) 280.
[84] National Assembly of France, *Bill No. 2568 on Representing Nature in Companies*, 3 March 2026, *JO*.