

Developmental and environmental responsibilities of the "Rechtsstaat"

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Summary

The most important difficulty facing a Rechtsstaat idea when it comes to the realization of "sustainable development", lies in the structural differences between the constitutional order based on the Rechtsstaat on the one hand, and the dynamics of political and economic planning on the other. "Sustainable development" is development that links ecology and economy in such a way that ecological harm is minimized. Development should therefore be in the interest of future generations.

There is, however, not yet much legislation concerning environmental protection, because the Rechtsstaat finds itself in a position where it cannot take sides. In no circumstances can the state legalize the ecological aspect, for this will presuppose state interference in the economic system, therefore violation a principle of the Rechtsstaat. Environmental protection could thus easily be misused as the basis for allowing the state to directly manipulate the economic process.

The state has the duty to invoke which measures which could help to regulate environmental harm and to create a legal basis for future economic and technological developments which are compatible with environmental protection. The German Constitutional amendment of 1994 deliberately did not take up environmental protection in the catalogue of fundamental rights. In terms of German constitutional law, state goals bind the legislature and should be translated into legislation. Article 20a GG formulates environmental protection as a state goal.

It would be seem to be fair to suggest that the most important contribution towards getting to grips with the responsibilities of the Rechtsstaat in promoting environmental protection has been made by legislative bodies in Europe as well as in German environmental law. The legislative measures require that precautionary measures should be taken by those who cause the environmental damage or risk. Environmental protection and economic development are inseparable in state politics. While planning economic policy the state has to take into account the environmental impact of such policy in order to give effect to the precautionary principle. The precautionary principle thus has a regulatory character and a planning law dimension.

In a Rechtsstaat the state can regulate environmental protection only through the precautionary principle so as not to interfere in economic policy. Only in this manner can "sustainable development" be maintained.