Constitutional Protection of the Environment and Future Generations

Legislation and Practice in Certain Central European Countries

Studies of the Central European Professors' Network
ISSN 2786-2518

Description
The book series *Studies of the Central European Professors' Network* publishes the results of research by members of the Central European Professors' Network established by the Budapest-based Ferenc Mádl Institute of Comparative Law in 2021.
Since 2022, the Network is operated by the Central European Academy of the University of Miskolc, with the cooperation of the Ferenc Mádl Institute of Comparative Law. The primary aim of the series is to present and address legal issues that are strongly related to the Central European region, taking into account the particular legal traditions, culture, and approach of the countries therein. The authenticity of the books can be seen in the fact that renowned authors from the Central European region write about the legal instruments of countries of the Central European region in English. The book series aims to establish itself as a comparative legal research forum by contributing to the stronger cooperation of the countries concerned and by ensuring the "best practices" and making different legal solutions available and interpretable to all of the states in Central Europe. However, it also aims to provide insights and detailed analyses of these topics to all interested legal scholars and legal practitioners outside the region so that they might become acquainted with the legal systems of Central European countries regarding a great variety of subjects.

Constitutional Protection of the Environment and Future Generations

Legislation and Practice in Certain Central European Countries

Edited by

János Ede Szilágyi

CEA PUBLISHING

MISKOLC – BUDAPEST | 2022

STUDIES OF THE CENTRAL EUROPEAN PROFESSORS' NETWORK

Constitutional Protection of the Environment and Future Generations
Legislation and Practice in Certain Central European Countries

Published by

Central European Academic Publishing
(Miskolc, Hungary)

ISBN 978-615-6474-22-3
ISBN 978-615-6474-23-0 (eBook)

https://doi.org/10.54237/profnet.2022.jeszcpefg

The book was published in cooperation with the Budapest-based
Ferenc Mádl Institute of Comparative Law.

The address of Central European Academic Publishing: 1122 Budapest, Városmajor St. 12 (Hungary)

Contents

Notes on the Contributors

Editor and Author

János Ede Szilágyi is the Head of the Ferenc Mádl Institute of Comparative Law, and furthermore Professor and Head of the Department of Agricultural and Labour Law at the Faculty of Law of the University of Miskolc. He is a founding Professor of the Central European Professors' Network and the Central European Junior Programme, and a co-founding Professor of CEA Publishing and its numerous associated book series. He played an instrumental role in creating the Central European Academy and continues to provide strategic advice to the Academy. In addition, he holds key positions in several academic organizations, including the European Public Law Organization and the European Council for Agricultural Law. He is Editor-in-Chief of the journals 'Central European Journal of Comparative Law', 'Journal of Agricultural and Environmental Law', furthermore 'Law, Identity and Values'. He is Editor-in-Chief of the book series 'Studies of the Central European Professors' Network', 'Legal Studies on Central Europe' and 'Studies of the Ferenc Mádl Institute'.

Authors

Gyula Bándi is Doctor of Science, Professor, and the Head of the Doctoral School and Chair of Environmental and Competition Law at the Pázmány Péter Catholic University, School of Law – has also been the dean of the Faculty from 2003 to 2007 and is the Ombudsman for Future Generations (Deputy Commissioner for Fundamental Rights) elected by the Parliament for a six-year term in 2017. He has been studying and educating in the field of environmental law for more than 40 years; author of 300 publications. He is Jean Monnet Professor of EU Environmental Law and director of the Jean Monnet Centre of Excellence. He has as also been active in EU environmental law approximation in and outside Hungary. He is a member or chairman of several professional bodies, and has received several honors for his activity, such as the Officer's Cross of the Hungarian Order and an environmental lifetime award.

Károly Benke coordinates the department of assistant magistrates of the Romanian Constitutional Court (since 2022), holding the position of First Assistant

Magistrate. He began his career as an Assistant Magistrate (2002–2010) and then coordinated one of the department's sections in his capacity of Assistant Magistrate–in–Chief (2010–2022). He has been the correspondent for the Constitutional Court within the Judicial Network of the European Union since April 2017. He has been a trainer at the National Institute of Magistracy – Department of Constitutional Law since 2004 and Head of this department since 2019. He has a Ph.D. in law *(magna cum laude)* awarded by the Faculty of Law of the Alexandru Ioan Cuza University in Iași (2017) and is a graduate of the Faculty of Law (2002) and the Faculty of European Studies (2002) of Babeș-Bolyai University in Cluj-Napoca.

Miha Juhart is a Full Professor of private and commercial law at the University of Ljubljana Faculty of Law. He is author of more than 200 scientific articles and books in Slovenian and international publications. His main research areas are property, real estate, torts, commercial contracts, transferable securities, and financial instruments. He was the Dean of the Faculty of Law from 2014 to 2018 and Vice-Rector of the University of Ljubljana from 2009 to 2013. He has served as member of various public and private bodies, including the supervisory board of DARS (national highways operator) and the Council of Securities Market Agency. In 2004 and 2017, he was awarded the annual prize of best lawyer by the Slovenian Lawyers Association.

Enikő Krajnyák is a graduate of the Faculty of Law of the University of Miskolc, a former Researcher at the Ferenc Mádl Institute of Comparative Law, and a current Researcher of the Central European Academy in Budapest/Miskolc. She holds several national and international scholarships, such as the Excellence Scholarship of the Ministry of Justice, the New National Excellence Program of the Ministry of Human Capacities in the academic year 2020–2021, and the Erasmus+ Scholarship in the years 2019 and 2020. She pursued exchange studies at Jagiellonian University (Cracow, Poland) and Aristotle University (Thessaloniki, Greece). She has taken part in the Students' Scientific Research Conference several times and won second prize in International Law and Financial Law (2021) as well as the Special Award in Philosophy of Law (2019) at the national round of the Conference.

Bartosz Majchrzak is an Associate Professor at the Cardinal Stefan Wyszyński University in Warsaw (Poland), Head of the Department of Administrative Science and Environmental Protection at the Faculty of Law and Administration, Professor at the Polish Institute of Justice, and Attorney at law. He has also been acting as Polish Constitutional Tribunal Judge senior assistant for 10 years. He has also been the Deputy Dean of the Faculty of Law and Administration at the Cardinal Stefan Wyszyński University in Warsaw (2018–2020). Specializations: administrative law, with particular emphasis on administrative proceedings; construction law; environmental protection law; planning law and spatial development; relations between government bodies; and the axiology of the legal system.

Michal Maslen is a graduate of the University of Trnava, Faculty of Law (2009). Since 2009, he has been working at the Department of Administrative Law, Environmental Law, and Financial Law of the mentioned Institution. He specializes in issues of environmental protection in Slovak legislation. Other areas of his scientific activity include issues of public administration and the protection of fundamental rights and issues of administrative liability. From December 2014 to December 2017, he was a member of the Standing Working Committee of the Legislative Council of the Government of the Slovak Republic for Administrative Law. Since May 1, 2015, he has served as the head of the Department of Administrative Law, Environmental Law, and Financial Law at the University of Trnava, Faculty of Law. He is currently a member of the Appeals Commission of the National Security Authority of the Slovak Republic and of the Appeals Commission of the Ministry of Defense of the Slovak Republic.

Michal Radvan is Vice-Dean for foreign and external affairs at the Faculty of Law, Masaryk University, Czech Republic, and Associate Professor of Financial Law at the Department of Financial Law and Economics. He specializes in tax law. He is a member of the European Association of Tax Law Professors and the International Center of Public Finance and Tax Law Research. He teaches courses and gives lectures on tax law and local taxation in many countries all over the world, such as the University of Pretoria, SA, the University of Gdansk, PL, and Nirma University, IN. He is a member of the Commission for Financial Law of the Legislative Council of the Government.

Anikó Raisz is an Associate Professor and Head of the Department of Public International Law and Comparative Law at the University of Miskolc Faculty of Law. Founding Director of the Ferenc Mádl Institute of Comparative Law, based in Budapest. She was previously State Secretary for Administrative Affairs at the Ministry of Justice and State Secretary for the Environment at the Ministry of Technology and Industry, and currently is State Secretary for the Environment at the Ministry of Energy. She is a member of the editorial boards of several journals and holds positions in the European Public Law Organization and the Comité Européen de Droit Rural, and she is the co-president of the National Council for Sustainable Development of the Hungarian Parliament.

Vasilka Sancin is a Full Professor of international law, Head of the Department of International Law, and Director of the Institute for International Law and International Relations at the University of Ljubljana, Faculty of Law. Among others, she also serves as a member (2019–2022) and Vice-Chair of the United Nations Human Rights Committee, its Special Rapporteur for the Follow-up Process to Concluding Observations; a member of the United Nations Human Rights Council Advisory Committee; an ad hoc judge at the European Court of Human Rights; an arbitrator and a bureau member of the Court of Conciliation and Arbitration within OSCE; an expert of the

OSCE Moscow mechanism on human rights; a member of the UNODC Anti-Corruption Academic (ACAD) Initiative; a member of the Human Rights Council of the Human Rights Ombudsman (Slovenia); a member of the National Inter-Ministerial Commission for Human Rights and the Permanent Coordination Group for the Implementation of IHL (Slovenia). She was also a member of the Council of Europe (CoE) Working Group on the Environment and Criminal Law (CDPC-EC; 2021–2022).

Sanja Savčić is an Associate Professor who graduated from the Novi Sad Faculty of Law in 1999. She received several awards: among others, a Norwegian Embassy diploma for "Promising generation" (2000), and the WUS scholarship for prospective young university researchers in 2001/2002. After graduation, she clerked at the Commercial Court in Novi Sad. In 2001, she was chosen as an assistant for the course Introduction to Civil Law and Property. She stayed at the Max Planck Institute in Munich from October 2004 until February 2005 and from June until October 2005. In 2010, at the Belgrade Faculty of Law, she defended her doctoral dissertation which was graded with distinctions. She was chosen as an Assistant Professor in 2013 and an Associate Professor in 2018 for the course the Law of Obligations. Furthermore, she is a Deputy Member of the Ethics Committee of the Clinic for Gynecology and Obstetrics, and a Reviewer in the educational and scientific field of social sciences.

Frane Staničić is a Full Professor, who graduated from the Faculty of Law, University of Zagreb, in 2006. He earned his Ph.D. degree from the University of Zagreb, Faculty of Law, in 2011. He teaches Administrative Law; Administrative Procedural Law; Administrative Law of the Interior; and Religion, Law, and Society. He is a member of the Committee on Legislation of the Croatian Parliament (2021–present). He was a member of the Committee on the Constitution, Rules of Procedure, and the Political System of the Croatian Parliament (2018–2020). He is a member of the Scientific Committee on State Administration, Judiciary, and Rule of Law of the Croatian Academy of Sciences and Arts (2017–present) and a member of the Special Expert Committee for the Implementation of the Strategy of Education, Science, and Technology and for the Coordination of Strategies and Activities in the Field of Education and Science (2017–present). He was the special adviser regarding issues of law for the Minister of Science and Education (2017).

Reviewers

Radim BOHAČ
Dean and Professor, Charles University Prague, Czech Republic

Attila DUDÁS
Associate Professor, University of Novi Sad, Serbia

László FODOR
Professor, University of Debrecen, Hungary

Sándor FÜLÖP
Researcher, University of Public Service, Hungary

Marcin JURGLIEWICZ
Professor, Rzeszow University of Technology, Poland

Maša KOVIČ-DINE
Assistant Professor, University of Ljubljana, Slovenia

Lana OFAK
Associate Professor, University of Zagreb, Croatia

Claudiu George PUPĂZAN
Professor, Alexandru Ioan Cuza University, Iasi, Romania

Ján ŠKROBÁK
Vice Dean, Associate Professor, Comenius University, Bratislava, Slovakia

Orsolya Johanna SZIEBIG
Assistant professor, University of Szeged, Hungary

Technical Editor

Enikő KRAJNYÁK
Researcher at the Central European Academy, Budapest, Hungary; Ferenc Deák Doctoral School of Law, University of Miskolc, Hungary

Introduction

János Ede Szilágyi

Resolving environmental problems is among the greatest challenges of the 21st century; in addition to political will, adequate financial frames, and several other supporting factors, it requires appropriate legal framework, solutions, and legal institutions. The *constitutional solutions of legislation and jurisdiction* as well as the legal frameworks of certain countries are the primary topics discussed in the present book in the search for a framework for securing the interest of future generations and the protection of the environment in the Central European region. Apart from the systematization and presentation of the regulatory framework through the questionnaire below, the book has further ambitions, such as outlining the already functioning constitutional *'good practices'* of the Central European countries and the determination of new constitutional institutions and improvement of existing institutions in light of the development and changes; the latter are called *'de lege ferenda proposals'*. In addition to the analysis of the jurisdiction of the Constitutional Court, it is important to touch upon the practice of other relevant persons and institutions in the given country, for example, the activity of ombudsmen.

The above-mentioned *'challenges'* connected to environmental problems are numerous. Many of them may require some type of constitutional solution. I highlight three for consideration knowing that this selection can only be arbitrary. At the same time, I believe that these are important challenges for Central European countries. The first challenge is related to the increase in the number of human population, which population growth is associated with many environmental problems, and from which many environmental problems arise. In this regard, and thereby also strengthening self-determination, it may be important that the Central European countries, which have a specific demographic situation, take a position on the issue themselves conceptually, if appropriate in terms of the norms of their highest-level

János Ede Szilágyi (2022) Introduction. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 11–16. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_1

state organization program document, that is, of their constitution. Does the right respond to environmental problems if the population of a state consciously decreases (or is allowed to decrease), if it maintains the same level, or if it increases? Is there any direction in this regard in the constitutional rules of the examined countries? With which constitutional institutions can a country express its position on this issue? The second challenge is related to the countries and nation-states themselves, which affects the verifiability of their existence, namely, *whether states are able* to provide an adequate conceptual response to environmental challenges in their constitutions and constitutional practice or whether these state frameworks are insufficient or outdated. Do we need more, fewer, or different states to solve environmental problems? In the latter case, what constitutional-level-institutions might be able to move the processes in the direction of a comprehensive, effective solution? The third challenge arises from *internationalization* and is largely linked to the various types of power structures at the international level, in which international actors, such as multinational companies, often play a greater role in shaping the environment than many states combined. Should these new situations be dealt with in the constitutional regulation? Do the Central European constitutions provide an answer to the challenges arising from this situation?

The states have a *great deal of freedom* in the development of their constitutional regulations regarding environmental conditions, and the present work is undoubtedly a form of encouragement in this direction, that is, for the states to utilize this freedom.

As to the category of *'Central Europe'* applied in the present book, we specifically refer to the list of analyzed countries: Croatia, the Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia, and Slovenia.

In addition to the country chapters, we also considered it important to prepare certain introductory chapters in this book. In view of this, a comprehensive, *theoretical chapter* on the analysis of the concepts of sustainable development and future generations and their moral and legal application has been included among the first chapters. In my view, sustainable development can be used as a type of new *state organization (state theory) concept*, among other things, while the protection and representation of the interests of future generations is more of a *concept that hides legal theoretical attitudes (law theory)*, with the help of which we hope to somehow achieve the reform of the legal system based on dogmatic foundations of the 19th century.

The other comprehensive introductory chapter is primarily related to human rights. As previously mentioned, the individual European countries enjoy a great deal of freedom in the development of their constitutional regulations concerning environmental protection and serving the interests of future generations. At the same time, this statement is somewhat impacted by the situation of the *European regional protection of human rights*. Given that the right to a healthy environment and other human rights form an important and conceptual element of the constitutional protection of the environment in the constitutions and constitutional practices of the Central European countries, we considered it necessary to discuss the system of

European regional protection of human rights. The authors of the chapter presented this from a Central European perspective, that is, with the assessment of the practice of the European Court of Human Rights specifically in connection with the given countries' cases.

The preparation of the national chapters was carried out by the authors of the chapters based on a uniform system of *comparative criteria*. Some elements of the comparative criteria were based on the criteria of a Hungarian law professor, *László Fodor*,[1] who conducted a comparison of constitutional law on the subject of environmental protection about a decade and a half ago. Moreover, I have added additional criteria[2] to those he examined, and based on them, the most important comparison criteria and questions are outlined below.

First, a *general introduction* was presented with reference to (a) the most important acts on the environmental regulation in the given country,[3] (b) the most essential administrative frameworks for the protection of the environment in the given country,[4] (c) the most cardinal international[5] and European Union case law of the given country.

Second, the essential categories of the research's topics, that is *'environment'*, '*sustainable development*', and *'future generations'*, were interpreted. Are these categories expressis verbis regulated in the constitutions and assessed in the related constitutional jurisdictions? If the answer is affirmative, does the affected lawmaker stipulate nation-specific categories of these concepts? What types of norms and obligations are linked to these cardinal categories? A special subcategory of the analyses was *'financial sustainability'*, that is, the rules of public finances with an explicit relationship with the protection of environment or the interests of future generations.

Third, the subjects of the assessment were *national actors of the formation of constitutional law* and constitutional jurisdiction related to the protection of future generations and especially the environment. In addition to classical actors in the separation of power,[6] the constitutional court (with a special focus on whether it rules on facts or on legality in this matter), the president of the republic, and ombudsmen and their role in the execution of constitutional rules were presented. Regarding these actors, in the research, the ombudsmen were a particular point of focus. The ombudsman category included special ombudsmen, general ombudsmen, deputy commissioners, and other similar institutions set out, *expressis verbis*, in the

1 See Fodor, 2006, pp. 37–40; Fodor, 2014, pp. 103–105.
2 Their starting point: Szilágyi, 2021, pp. 130–144.
3 I.e., constitution, general law on the protection of the environment, crimes related to the environment in the criminal code, special liability in the civil code, etc. Moreover, it was important to emphasize at this point whether the general law on the protection of the environment covers the protection of the built or only the cultural heritage.
4 I.e., national, regional, or local level: whether there is a special ministry, department, or special unit in regional or local self-governments.
5 Primarily the International Court of Justice and European Court of Human Rights.
6 I.e., parliament, government, ordinary court.

Constitution, which has a primary function or task of the protection of the interest of future generations or the protection of environment. If there is such an institution, its 'constitutional rank'[7] should be presented briefly.

Fourth, *human rights foundations* were among the most important parts of the research. Regarding this basis, in addition to the 'right to a healthy environment',[8] other relevant fundamental rights (for example, political freedoms[9]) *expressis verbis* ensuring the protection of the environment in the given legal system[10] were an elementary part of the research.[11] If there is such a fundamental right, (a) whether the protection of the environment is of a declarative nature or whether there is a normative content according to the norms or by the jurisdiction of the Constitutional Court, (b) whether there is concrete normative content in the given legal system or in the jurisdiction of the Constitutional Court related to these fundamental rights that guarantees a high level of protection of the environment,[12] and (c) whether there is any detailed rule that would be relevant for the protection of the environment attached to the above mentioned fundamental rights should be explained.[13] Moreover,

7 I.e., who elects him/her (or, in case of an institution, its head), who he/she is responsible for (to whom shall this person report his/her activity), which tasks precisely does he/she have and what types of rights is he/she entitled to for carrying out these tasks, etc. These detailed rules (or part of them) are typically not set out in the Constitution but in an inferior law (act); therefore, the constitutional rank shall be explained in light of these rules as well.

8 In many constitutions, institutions that are very close in content to the right to a healthy environment have been given different names.

9 E.g., special 'green' rights to information and participation rights expressis verbis denominated in the Constitution/constitutional practice.

10 Its details are required as well, i.e., how they are interpreted, preferably based on the practice of the Constitutional Court.

11 E.g., in Hungary, the right to health stipulated in the Constitution of Hungary – among others – could be strictly related to the topic because the text of the Constitution states that the effective application of the right to health is promoted, among others, through the protection of the environment.

12 For instance, in particular, there are two of these principles in the practice of the Hungarian Constitutional Court: (a) *Non-derogation principle*: Through this, the Hungarian Constitutional Court ensures the prohibition of derogation from a previously achieved level (both in procedural and substantial norms and, beginning in 2015, in the case of legal instruments of state administration). This principle is also referred to as the non-regression principle by Gyula Bándi. See: Bándi, 2020, 19.
(b) *Precautionary principle:* This principle may be applied in two ways. First, it can be applied jointly with the non-derogation principle. In this case, the legislator shall justify that the law does not constitute derogation. Furthermore, actual deterioration of the environment is not needed to infringe upon the non-derogation principle; the mere risk of deterioration is enough to establish the violation of the non-derogation principle. Second, in cases where the non-derogation principle is formally not applicable, the lawmaker is obliged to consider the risks that might occur according to the scientific perspective before the decision-making. See Szilágyi, 2019, pp. 88–112.

13 If yes, its details are required, i.e., how they are interpreted, preferably based on the practice of the Constitutional Court. For instance, in Hungary, (a) the application of the *right to health* is facilitated by the GMO-free agriculture, (b) the application of the *right to health* is facilitated by 'access to healthy food and drinking water', (c) the issue of environmental responsibility is set out at a constitutional level in connection with right to a healthy environment, and (d) the prohibition concerning transport of pollutant waste into the territory of Hungary for the purpose of disposal is set out in relation to the right to a healthy environment.

there were other additional questions to this part of the research: If the protection of the environment does not fall under the scope of the protection of fundamental rights, does it appear as a task of the state or a constitutional task? Finally, can other fundamental rights be subject to restrictions with reference to the protection of the environment?

Fifth, the *responsibility system* stipulated in the constitution and constitutional practice was the subject of the research, specifically, (a) the appearance of the responsibility issues in the constitution and the related practices, (b) the addressees (citizens, legal persons, international actors) of the given responsibility norms, and (c) the presence of the 'polluter (or user) pays principle' among constitutional rules and practice.

Sixth, the special protection of *natural resources* was assessed in the book. In addition to the components of the category in the given constitution and constitutional practice, the specific forms of the related protection were analyzed.

Seventh, the assessment included the specific constitutional protection of *national assets* in explicit connection with the defense of the environment and interests of future generations. The issue was also connected to sustainability, that is, whether this appears as an aspect among the constitutional rules of national assets.

Eight, considering that the constitutional system of a country includes different values and that these values are not hermetically separated from each other but form a living network of components with numerous interactions, *other values relevant* to the protection of the environment and interests of future generations in the Constitution were assessed in the research.

Ninth, the research provided opportunity for the authors to present *other uniqueness, peculiarity* of the given Constitution, and constitutional regulation or constitutional jurisdiction. Here, national reporters could detail other national specialities (not mentioned above) connected to the constitution of the given country and its legal practice.

We hope that this book provides a valuable analysis of the respective constitution and constitutional practice of the given Central European countries. In addition, the authors attempted to highlight ideas worth further consideration in their writings and, in this connection, to draw attention to good practices; moreover, the authors attempted to define possible development rates.

Finally, I would like to express my gratitude to all of my colleagues, without whom this volume would not have been possible: to the president of the UMA Board of Trustees, *Judit Varga*, who embraced this topic; to the editorial staff of the book series detailed at the beginning of this publication and to the managers of the series *Réka Pusztahelyi* and *Ibolya Stefán*; to the staff of the Ferenc Mádl Institute, who played an active role in the initiation of this group; to the staff of the Central European Academy, who successfully continued the project; and to the former and current members of the Central European Professors' Network. I would also like to thank *Tímea Barzó, Katarzyna Zombory, Hajnalka Szinek Csütörtöki, Emőd Veress, Gábor Hulkó, Attila Dudás, Sofia Henn,* and *Barbara Hoffer* for their help.

Bibliography

Bándi, Gy. (2020) 'Interests of Future Generations, Environmental Protection and the Fundamental Law', *Journal of Agricultural and Environmental Law*, 15(29), pp. 7–22; https://doi.org/10.21029/JAEL.2020.29.7

Fodor, L. (2006) *Környezetvédelem az Alkotmányban [Environmental Protection in the Constitution]*. Budapest: Gondolat Kiadó – Debreceni Egyetem ÁJK.

Fodor, L. (2014) *Környezetjog [Environmental Law]*. Debrecen: Debreceni Egyetemi Kiadó.

Szilágyi, J.E. (2019) 'The precautionary principle's 'strong concept' in the case law of the constitutional court of Hungary', *Lex et Scientia*, 26(2), pp. 88–112 [Online]. Available at: http://lexetscientia.univnt.ro/download/2019_XXVI_2_7_LESIJ.pdf (Accessed: 21 August 2022).

Szilágyi, J.E. (2021) 'The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues', *Journal of Agricultural and Environmental Law*, 16(31), pp. 130–144; https://doi.org/10.21029/JAEL.2021.31.130

Chapter I

Sustainable Development, the Interests of Future Generations, and Moral and Legal Implications

Gyula Bándi

1. The evolution of the principle of sustainable development

1.1. Introductory words

According to many scholars, such as Durán and Morgera, the definition of sustainable development is primarily a construction of international law,[1] yet sustainable development is not something artificial; the above statement applies for the definition itself. The different documents and authors provide many different interpretations. As one Hungarian ecologist indicated, there are many different uses of sustainability or sustainable development, and no one claims to hold the holy grail of the perfect definition.[2]

Judge Weeremantry mentions the oldest historical examples of sustainability[3] in his separate opinion attached the Gabčikovo-Nagymaros judgment[4]: "There are some principles of traditional legal systems that can be woven into the fabric of modern environmental law. They are especially pertinent to the concept of sustainable development which was well recognized in those systems. … In the context of environmental wisdom generally, there is much to be derived from ancient civilizations and

1 Durán and Morgera, 2012, pp. 34–35.
2 Bulla, 2002, p. 105.
3 Weeremantry, 1997, pp. 94–95.
4 ICJ Judgment, 1997.

Gyula Bándi (2022) Sustainable Development, the Interests of Future Generations, and Moral and Legal Implications. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 17–71. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_2

traditional legal systems … This is a rich source which modern environmental law has left largely untapped. … The concept of reconciling the needs of development with the protection of the environment is thus not new. Millennia ago, these concerns were noted, and their twin demands well reconciled in a manner so meaningful as to carry a message to Our age." In his opinion, sustainable development is defined as the right to development limited by the need to preserve the environment.

In his famous book,[5] Dire Tladi argues that the right to sustainable development forms part of collective human rights to which all people are entitled in relation to the long-term maintenance of the environment. He also recalls that Judge Weeramantry referred to the protection of the environment as a *sine qua non* of several human rights.

Bosselmann[6] also leads us to the origins of sustainability, presenting the German engineer and forestry specialist, Hans Carl von Carlowitz,[7] as the inventor of the new definition of 'Nachhaltigkeit.' Based on his studies, in 1754, Wilhelm Gottfried Moser from Württemberg defined a new system of forestry, the first principle of which is the sustainable use of forests.

1.2. Milestones

The first milestone in the evolution of the principle of sustainable development was the Stockholm Conference on the Human Environment in 1972.[8] The Stockholm Declaration was one of the main outcomes of the conference, laying down the foundations and covering almost all of the issues that have been raised in similar upcoming UN conferences.[9] Principle 1 refers to human rights, Principle 2 to current and future generations, while the special responsibility that human beings bear for the conservation of the natural environment is set out in Principle 4 of the Declaration. More importantly, in compliance with Principle 14 of the Declaration, a balance shall be struck by the means of reasonable planning between development needs and the imperative of protecting the natural environment. This is highly reminiscent of the concept of sustainability.

The World Charter for Nature, adopted in 1982 during the 37th session of the UN General Assembly, also included the concept of sustainable development.[10] For example, under Points 7 (integration) and 8 (special care for the capacity of natural systems) of Chapter II on Functions, several elements of the upcoming sustainable development concept can be identified, even if the primary focus is on the natural environment. The UN General Assembly established the World Commission on Environment and

5 Tladi, 2007.

6 Bosselmann, 2008, pp. 17–19.

7 "In his work *Sylvicultura Oeconomica oder Anweisung zur wilden Baum-Zucht* (Sylvicultura Oeconomica or the Instructions for Wild Tree Cultivation), Carlowitz formulated ideas for the 'sustainable use' of the forest. His view that only so much wood should be cut as could be regrown through planned reforestation projects, became an important guiding principle of modern forestry."

8 Stockholm, 1972.

9 See above.

10 World Charter for Nature, 1982.

Development,[11] better known as the Brundtland Commission, which drafted the report entitled "Our Common Future."[12] In compliance with the report, "sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The definition set out in the Brundtland Report stipulates the principle of equality among generations as a cornerstone for sustainable development; that is, no generation has the right to destroy the livelihood of future generations by exploiting resources immoderately and unfairly. Accordingly, sustainable development not only requires states to take into consideration the interests of future generations but also to do their best in satisfying the legitimate needs of the less developed areas of the world. The Brundtland concept of sustainable development strikes a sensitive balance between the need for development and the objective of the preservation of the natural environment.

The legal framework of sustainable development had not been clarified in international law even by the 1990s. This is substantiated by Principle 27 of the Declaration adopted in Rio de Janeiro at the UN Conference on Environment and Development, according to which the states shall cooperate "in the further development of international law in the field of sustainable development."[13] The Rio Declaration marks considerable progress regarding the elaboration of the concept of sustainable development. Ten out of the 27 principles refer to this concept, beginning with Principle 1, which emphasizes that the concept is primarily anthropocentric: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."

The other principles affected are Principle 2 on the exploitation of resources; Principle 3 on generational equity: *"The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations"*; Principle 4 on integration; Principle 5 on eradicating poverty; Principle 8 on consumption, production patterns, and appropriate demographic policies; Principle 10 on the theoretical background of public participation; Principle 15 on the precautionary principle; Principle 25 on the correlation of all; and Principle 27, which focuses on the legislative side.

The Biodiversity Convention,[14] adopted in parallel to the Declaration, also refers to the same concept from a special angle: "'Sustainable use' means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations" (Art. 2. on terms).

In 2000, the Academies of Sciences of the world also adopted a statement on sustainability,[15] which is merely a concise summary of current trends; at the same

11 The Commission was set up by Resolution 38/161 of the UN Assembly.
12 Our Common Future, 1987.
13 Rio Declaration, 1972.
14 Convention on Biological Diversity, 1993.
15 IAP, 2000.

time, it is the most emblematic of the available definitions: "Sustainability implies meeting current human needs while preserving the environment and natural resources needed by future generations."

Rather than discussing several other international documents covering sustainable development, we focus on its legal substance. Following the UNCED in 1992, the content of sustainable development was analyzed in the framework of several forums. One such forum was the Commission on Sustainable Development, which identified the Principles of International Law for Sustainable Development.[16] In our categorization, the different constituting elements directly or indirectly connected with sustainable development may be divided into a special set of classes, answering the key dilemma regarding their contribution to improving the concept of sustainability. This categorization reflects a selection from the elements of the Report with the goal of providing a clear picture of our vision of sustainability. The Report does not put forward a homogeneous concept; rather, it is a mix of principles, instruments, special sustainable development-related aspects, and general concepts of international cooperation. It should also be noted that the Report clearly refers to the necessity of recognizing the right to a healthy environment. Point 31 states that "The right to a healthy environment provides a focus to guide the integration of environment and development. Development is sustainable where it advances or realizes the right to a healthy environment."

First, there are certain elements of the Report that exhibit a strong, direct link to sustainable development; as such, these may be considered specific legal principles and concepts of sustainable development law and, even more precisely, of environmental interests. These are (a) prevention (together with the right to individual or collective self-defense and the duty to cooperate) in a wider meaning, (b) the precautionary principle as well as the principle covering all of the major elements of the concept, that is, (c) integration with a specific additional legal element, (d) the right to environment and, in connect€, (e) the principle of equity, in this case referring to intergenerational equity, (f) the common concern of humanity, (g) the common heritage of mankind, (h) public participation and its three pillars, (i) environmental impact assessment, which has special importance, and finally, (j) rather incidentally, prior informed consent.

The second group of principles and concepts may also have an impact via the reasonable use of resources, with a stronger focus on material interests: (a) the right to development, (b) sovereignty over natural resources and responsibility not to cause damage to the environment in areas falling under the jurisdiction of other states or lying beyond the national jurisdiction, (c) the sustainable use of natural resources, (d) the equitable and reasonable use of transboundary natural resources, (e) common but differentiated responsibilities, closely connected to (f) the special treatment of developing countries, and (g) the eradication of poverty.

Finally, as a third group, there are some principles and concepts that merely exhibit a loose connection with sustainable development and belong more to the general toolbox of international law, such as cooperation, notification and consultation,

16 Expert Group, 1995.

peaceful settlement of disputes, the national implementation of international commitments, and compliance monitoring. Global partnership is also mentioned.

The International Law Association thus began to take a closer look at the interpretation of sustainable development law in 2002, adopting the New Delhi Declaration,[17] which was reinforced 10 years later in Sofia.[18] This Declaration amounts to an attempt to codify this field of law and may be considered a secondary source of international law.[19] The New Delhi Declaration of the ILA distinguishes seven principles that constitute different elements of the concept of sustainable development and that, one by one, oblige the states to act accordingly:

a) The duty of states to ensure the sustainable use of natural resources

This stems from the principle *sic utere tuo ut alienum non laedas*, known from Roman law and referred to in the *Trail Smelter* case.[20]

b) The principle of equity and the eradication of poverty

The principle of equity is a cornerstone of sustainable development. Solidarity among nations and sustainable development presuppose the enforcement of the principle of equity and the eradication of poverty. The more vulnerable groups of humanity deserve equitable support from the more affluent communities as the right to development is not limited to the peoples or countries enjoying a more beneficial situation.

c) The principle of cooperation and the principle of common but differentiated responsibilities

Principle 7 of the Rio Declaration. Common but differentiated responsibilities play a role not only in soft law but also in the relationships among the states; for example, the UN Framework Convention on Climate Change also refers to this concept.[21]

d) The principle of the precautionary approach

Principle 15 in Rio.

e) The principle of public participation and access to information and justice

See Principle 10 of the Rio Declaration and the Aarhus Convention, which may be considered the most important international convention in relation to public participation.[22]

f) The principle of good governance

The principle of good governance commits states to do the following:

a) adopt democratic and transparent decision-making procedures and ensure financial accountability

17 ILA, 2002.
18 ILA, 2012.
19 Hildering, 2004, pp. 34–35.
20 Trail Smelter, 1941.
21 See Article 3 (1) of the UN Framework Convention on Climate Change.
22 Aarhus Convention, 1998.

b) take effective measures to combat official or other corruption
c) respect the principle of due process in their procedures and observe the rule of law and human rights
d) implement a public procurement approach in line with the WTO Code on Public Procurement.

g) The principle of integration

This principle reflects the significance of the interplay and correlation of the economic, financial, environmental, and human rights aspects of relevant international legal principles and rules.

As an additional element to the New-Delhi Declaration, the ILA in Sofia also issued guidance[23] with the aim of bringing principles closer to implementation. The first and most fundamental statement is that sustainable development is "without doubt hardening of the concept itself into a principle of international law." Moreover, "treaties and rules of customary international law should, as far as possible, be interpreted in the light of principles of sustainable development."

In 2020, the ILA accepted a new resolution[24] in which they again provide a list of the major principles attached to the sustainable use of natural resources and refer to the importance of effective governance and 'sustainable peace' for the benefit of future generations, among others. The outcome is the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development.

The best way to summarize the development of international law of sustainable development is via the words of Bosselmann[25]: "The continued existence of the principle of sustainability has two important consequences. The first is that sustainable development is given meaning and direction. … The second consequence is that existing treaties, laws and legal principles need to be interpreted in the light of the principle of sustainability."

We skip the assessment of Johannesburg (2002), and based on the Rio+20 process, our only focus is on green economy, which is also not novel but, rather, a different expression of the same imprecise concept. As a short summary, "The Rio Summit recognized for the first time that a 'Green Economy' is an important tool for achieving sustainable development but did not agree on a concise definition of the term 'Green Economy.' The declaration states that a Green Economy should contribute to poverty reduction, sustained growth, social cohesion, and employment without compromising the ability of ecosystems to function." According to some, this lack of reforms indicates a crisis in global management as well as a moral crisis, endangering our well-being.[26]

23 See fn. 18.
24 ILA, 2020.
25 Bosselmann, 2008, p. 41.
26 Antypas, 2012, p. 92.

We do not enter into the discussion of the United Nations Millennium Development Goals (MDGs) the eight goals[27] that UN member states have agreed to attempt to achieve by the year 2015; rather, our next focus is only the 2015 Sustainable Development Goals (SDGs), with a much wider vision and much greater attention: "At their General Assembly end of September 2015, the UN member states have unanimously agreed on a very challenging mission: shifting our world towards a sustainable path. This change requires all nations, countries, all type of economic, social or other entities, and indeed every single person to implement a change in their lifestyle, i.e. way of operation and functioning. Basically, the UN member states have agreed on a voluntary change at the whole system's level, a global transition to a sustainable world."[28] The introduction of the UN SDG resolution 'Transforming our world: the 2030 Agenda for Sustainable Development'[29] states the following: "The 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda. They seek to build on the Millennium Development Goals and complete what they did not achieve."

27 These goals are as follows:
1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria, and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

28 Zlinszky, Hidvéginé Pulay, and Szigeti-Bonifert, 2018. pp. 141–155.
29 SDG, 2015.

The 17 goals and 169 targets comprise a very complex system covering several different areas, many of them representing seemingly contradictory or competitive issues. Consequently, different goals serve as priority objectives from the perspective of different interests. For example, the United Nations Office on Drugs and Crime (UNDOC) focuses on 10 goals from among the 17,[30] while different goals are mentioned for small businesses, and the priorities are again different for water-related interests.[31]

Perhaps the best manifestation reflecting the original starting point of sustainable development has been presented by the Stockholm Resilience Center,[32] which, while returning to the foundations of sustainable development, argued that economies and societies must be seen as embedded parts of the biosphere. The goals are all represented; however, the vital priority order is much more visible:

30 UNODC.
31 Essex & Van Leeuwen, 2020.
32 Stockholm Resilience Center, 2017.

When discussing the core constituent of sustainable development, intergenerational equity, this vision shall be taken as the basis. This means, for example, that those elements of the rights of future generations – diversity of choice, comparable quality and equitable access – which are presented in detail below, shall primarily comprise ecological problems, followed by our place in society, with material wealth coming last. This image might also be easily acceptable from a practical point of view, as is well demonstrated by a recent study on sustainable development and competition law: "While we are aware that social sustainability may also be an important subject in the context of competition law, environmental sustainability appears to be the most often discussed 'genre' of sustainability."[33]

1.3. The European integration on sustainable development

In parallel with the growing global interest toward environmental protection, the necessary policy framework for environmental action had also been developed under the auspices of the EEC/EC and officially launched during the Paris summit in October 1972[34]: "3. Economic expansion which is not an end in itself must as a priority help to attenuate the disparities in living conditions." This proved to be the beginning of the series of environmental action programs. We do not describe the details of these policy documents; rather, we only refer to major examples. From

33 Hungarian Competition Authority, 2021, p. 7.
34 Paris Summit, 1972.

among these programs, the implementation of sustainable development became the key concept of the Sixth Environmental Action Program.[35] The Program covered material and social issues, linking living standards with sustainable development.

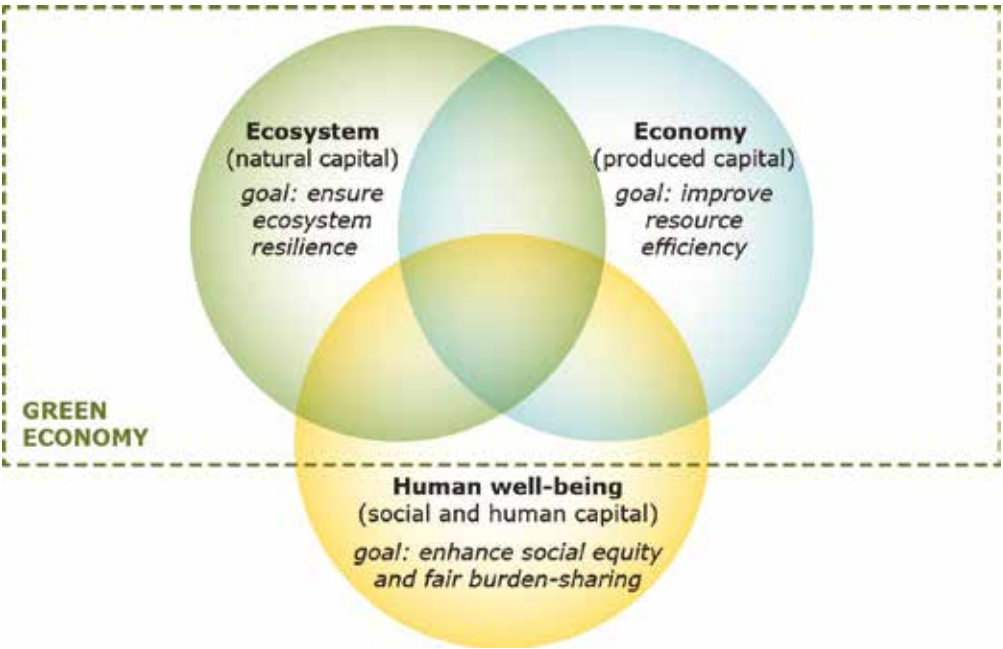
In terms of legal certainty, we refer to Article 2 on principles, through which we can conclude that sustainability and integration mark a bidirectional process: (a) environmental concerns should be integrated into all community policies – paragraph (1), and (b) environmental measures should be coherent with the material and social dimensions of sustainable development – paragraph (4).

As paragraph (4) clearly states, "… measures proposed and adopted in favour of the environment should be coherent with the objectives of the economic and social dimensions of sustainable development and vice versa."

The proposal for the new, seventh environmental action program for the period lasting until 2020 was presented at the end of 2012. Certain elements of the new program will expire in 2050 ("Living well, within the limits of our planet").[36] Again, here, we refer only to the fact that most of its elements had been mentioned before, such as (a) a smart, sustainable, and inclusive economy by 2020; (b) absolute decoupling of economic growth and environmental degradation; (c) the essential nature of environmental integration; (d) transformation of the global economy into an inclusive green economy in the context of sustainable development and the reduction of poverty.

One accompanying document from the many issued together with the proposal is particularly noteworthy. Annex 2 of the impact assessment[37] – 'Linkages of environment policy issues' – focuses on green economy as a specific response to the debate related to the general problem of weak or strong sustainability. According to Annex 2, 'green economy' means the following: "The concept of a green economy recognises that ecosystems, the economy [business] and human well-being (and the respective types of natural, produced, social and human capital) are intrinsically linked." Although this statement is evidenced to be true, the primary question remains how this link will be presented.

35 Sixth Community Environment Action Program, 2002.
36 Proposal the Seventh EAP, 2012.
37 See above – Commission Staff Working Document, 2012.



The above figure is largely based on the concept of weak sustainability, combining it with strong sustainability under the new title of '*green economy*.' Regarding weak sustainability, sustainable development is limited to the intersection of the three circles representing the three elements of sustainable development. In the above figure, however, green economy embraces most of the three elements, with only a portion of human well-being excluded.

At the same time, the EU focus on the concept of good or better governance is worth mentioning[38]; this is a complex system usually covering full respect of human rights, the rule of law, effective participation, multiparty cooperation, political pluralism, transparent processes, efficient and conscious public service, access to education and knowledge, equity, sustainability, solidarity, tolerance, etc.

Slightly earlier, though closely linked to the other documents, as a result of the economic crisis, a new concept of development had to be elaborated for the 2020 target year. First, a Commission proposal[39] was adopted, followed by the recommendation of the Council.[40] Three mutually reinforcing priorities have been listed: smart growth, sustainable growth, and inclusive growth. The wording of the Council recommendation – which also clearly demonstrates the relationship with the Lisbon strategy – departs from the previous trends, speaking of 'sustainable growth' rather

38 Better Governance, 2012.
39 EC Strategy, 2010.
40 Recommendation, 2010.

than sustainable development. This must be taken as a dangerous message suggesting that in the case of difficulties, we modify even the major messages. It also meant that the 2008 crisis did not further the issue of sustainability but, rather, reorganized its structure and priorities.

It is plausible that the principle of sustainable development is partly an objective and partly a principle – the Treaty itself does not wish to specify its exact content. Of course, traditional components of sustainable development are also present; however, no new elements or development can be discerned. The wording is not sufficiently clear for the purposes of legal clarification and does not serve as a basis for any legal obligation. There have been attempts to provide the exact meaning of the issue, and renewable energy proved to be a cornerstone of sustainability, entering into force in 2012.[41] It is worth emphasizing a real innovation of EU law under Article17, which develops the sustainability criteria for the relevant energy sources.

The elements of sustainability, which appear in primary legislation or in the different strategies, do not allow us to speak of exact legal content. The concept does not give rise to enforceable obligations toward the EU institutions, nor toward member states or any legal entities or persons. A good example is the case of Commission v Ireland,[42] in which domestic law already referred to sustainability rather than using clear legal requirements, while the Commission found that Ireland infringed on EU law by employing vague requisites. The general attitude of the Court where regards this type of transposition is clear: "46. … the fact remains that, according to equally settled case law, the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights …" Moreover, using such vague terms rather than clear requirements might not be taken as a solid legal basis: "49 It follows that neither the national case-law nor the concepts of 'proper planning' and 'sustainable development' can be invoked to remedy the failure to transpose into the Irish legal order Article 3 of Directive 85/337."

Consequently, in the future, sustainability should also be understood less as a principle of a legal nature and, instead, as a policy principle, the actual content of which is subject to change. A good example of this is the emergence of the term sustainable growth. It is likely only the result of the integration of the components of sustainable development that are feasible in practice; however, the available instruments have yet to be clarified. There is no clear legal definition of sustainable development that can be invoked in legislation or in a legal dispute. Sustainability may also be taken as a widely accepted, general concept that is broad enough to accommodate different interpretations.

41 RED Directive, 2009.
42 Case C-50/09.

The next step at the European Union level was the launch of the 'Circular economy' program in 2014, which was revised in 2015.[43] According to its summary, this "action plan will be instrumental in reaching the Sustainable Development Goals (SDGs) by 2030, in particular Goal 12 of ensuring sustainable consumption and production patterns." The idea behind the program is "to develop a sustainable, low carbon, resource efficient and competitive economy." At present, the focus of the program is economy, namely the restructuring of the European economy. The first priority area is waste management, specifically recycling and reuse, and using waste as a secondary raw material; however, there are elements connected with production and consumption as well. A restructuring of the legal system to serve these interests has already begun with waste legislation.

At the end of 2019, the EU Commission presented the European Green Deal,[44] serving sustainable development objectives as well and providing an action plan to boost the efficient use of resources by moving to a clean, circular economy, with the aim of restoring biodiversity and cutting pollution. The EU aims to be climate neutral in 2050. There are action items for all sectors of the economy, including investing in environmentally friendly technologies, supporting industry to innovate, rolling out cleaner, cheaper, and healthier forms of private and public transport, decarbonizing the energy sector, ensuring buildings are more energy-efficient, and working with international partners to improve global environmental standards.

Among the most recent examples relevant to both a circular economy and the Green Deal is 'taxonomy' regulation.[45] According to its preamble, "(9) Achieving the SDGs in the Union requires the channelling of capital flows towards sustainable investments. It is important to fully exploit the potential of the internal market to achieve those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital into sustainable investments in the internal market and to prevent new obstacles from emerging." The objective is "(11) Making available financial products which pursue environmentally sustainable objectives is an effective way of channelling private investments into sustainable activities." The whole system is now under construction, among other reasons, "(23) For the purpose of determining the environmental sustainability of a given economic activity, an exhaustive list of environmental objectives should be laid down. The six environmental objectives that this Regulation should cover are: climate change mitigation; climate change adaptation; the sustainable use and protection of water and marine resources; the transition to a circular economy; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems. … (34) For each environmental objective, uniform criteria for determining whether economic activities contribute substantially to that objective should be laid down."

43 Circular Economy, 2015.
44 European Green Deal, 2019.
45 Regulation, 2020.

In summary, a circular economy and the Green Deal are essential instruments necessary to support vital sustainability change.

Several days before the finalization of the current paper, the Eighth Environmental Action Program was adopted,[46] with the UN SDGs and the Green Deal as its most important foundations, in addition to referencing the Seventh Action Program. The 2015 Paris Climate Agreement also has a special role in the coming years. Interestingly, the Program relies on the SDG model mentioned above: "According to a model developed by the Stockholm Resilience Centre, the achievement of the environmental- and climate-related SDGs underpins the social and economic SDGs because our societies and economies depend on a healthy biosphere and because sustainable development can only take place within the safe operating space of a stable and resilient planet" (Preamble No.13). A perfect summary of the overall direction is as follows: "(16) The 8th EAP should accelerate the green transition, in a just and inclusive way, to a climate-neutral, sustainable, non-toxic, resource-efficient, renewable energy-based, resilient and competitive circular economy that gives back to the planet more than it takes. The green transition should take place in the context of a well-being economy where growth is regenerative and which enables systemic change, which recognises that the well-being and prosperity of our societies depend on a stable climate, a healthy environment and thriving ecosystems and which provides a safe operating space within planetary boundaries."

1.4. A scholarly explanation of sustainable development law

A truly encyclopedic but equally legal summary of the definition is provided by the Max Planck Encyclopedia of Public International Law: "Today, SD is broadly understood as a concept that is characterized by (1) the close linkage between the policy goals of economic and social development and environmental protection; (2) the qualification of environmental protection as an integral part of any developmental measure, and vice versa; and (3) the long-term perspective of both policy goals, that is the States' inter-generational responsibility."[47]

Based on their respective attitudes and legal background, different scholars may arrive at different conclusions. Some do not believe that sustainable development can be afforded a legal content, though this does not mean that the problem is underestimated, while others argue for its legal value. There is a wide range of perspectives, from the legally unfathomable to the individual new field or branch of law. Alexander (Sándor) Kiss, the greatest Hungarian scholar of international environmental law, elaborated the details of the concept of sustainable development to their fullest.[48] Kiss describes sustainable development as a legal concept similar to the constitutional concept of a state. The constitution of a state describes the basic

46 Environment Action Program, 2022.
47 Beyerlin, 2012, point 9.
48 See, for example, Kiss and Shelton, 2007; Kiss and Shelton, 1999.

principles related to the operation of a state, thereby ensuring the legal framework for state operation. The concept of the state set out in the constitution as such is not binding; only the principles that constitute part of the concept of the state are binding. Likewise, the concept of sustainable development is a legal concept that includes the prevailing principles of international environmental law. Without this concept, the international legal means are not available, either, which would impose legal obligations on the state in the interest of preserving the natural condition of our Earth.

The key to the enigma of the law of sustainable development is to determine how far and with what methods we wish to legally manage the subject or whether it is truly necessary to do so. This is equally important in law, public and economic/financial administration, and virtually any field of management. The potential regulatory area of sustainable development law is highly complex, its borderlines are indefinite, and if we wish to find legal clarity, then our best choice is environmental law. It is unlikely that we will obtain a clear and uniform answer to the question of what we mean when we refer to sustainable development law. European environmental law specialists aim for the recognition of the concept[49]: "Being perhaps more a guideline to political action than a normative-legal concept, the political importance of the concept 'sustainable development' cannot be underestimated…."

As evidenced by our excursions into international law and European integration, the complexity of the concept of sustainable development, including the factors of development, poverty, social security, public health, indigenous people, natural resources, environmental protection, water, etc., makes it impossible to set up a consistent system: "Sustainable development is not a static concept … hence inherently varies *ratione temporis*… The contents of sustainable development thus vary *ratione personae*. They also vary *ratione materiae*."[50] Moreover, in addition to the different factors listed above, at least two further elements must be identified, namely the variations according to geographical area (*ratione territorii*) and the variations related to the level of development (*ratione progressionis*). Regarding these two categories of variations, the understanding of developing and developed countries is usually different. Contextual changes and the variations of the extent, scope, or coverage of the problem are constant, and this can also be considered the *differentia specifica* of the subject: "As a consequence, the entire concept becomes operable: development is sustainable if it tends to preserve the integrity and continued existence of ecological systems; it is unsustainable if it tends to do otherwise." [51]

The essence of sustainable development can be summarized in a simple way (that we will use to provide a solid basis for the relevant discussion): "A synthesis of these core documents show that the meaning of 'sustainable development' can be reduced to the combination of two principles that can be seen as axiomatic to understanding

49 Jans and Vedder, 2012, p. 8.
50 Barral, 2012, p. 382.
51 Bosselmann, 2008, see first p. 62 and then p. 53.

sustainable development: intergenerational and intragenerational equity. … Development will be sustainable only when both intergenerational (environmental protection) and intragenerational (fair economic and social development) equity are granted, and this is to be achieved through their integration."[52]

The same author has a formula for the equation:

Sustainable development = (Intergenerational Equity + Intragenerational Equity) x Integration

It is critical to remember that overemphasizing the economic side (stressing rules of materialistic profit-seeking, as is the case today) leads to a dead end and can easily leave sustainability behind. A Jesuit economist from Leuven Catholic University highlighted[53] that the creator of the current business order is neither an 'invisible hand' nor the price mechanism of the market; rather, it is man. Business is not governed by blind mechanisms but by man. That is the reason why, per Muzslay, while the laws of the physical world mean absolute force, the laws of business are only relative. Consequently, the laws of business may be transformed to accommodate a more sustainable direction if the necessary motivation is available at all levels of governance.[54] One should always remember this message when defining the vector of obligations – while most of the international and constitutional duties concentrate on government activities, the pivotal role of businesses should also be considered. One good example, which we examine later, is to couple business with human rights, as is emerging, among others, within the UN programs.

Existing misunderstandings, divergent interpretations, and covert contexts – most of which are intentional or at least knowingly developed – may lead to a change of emphasis in the use of words in sustainable development: "The term 'sustainable development' was an oxymoron, which prompted a number of discursive interpretations of the weight to be attached to both 'development' and 'sustainability'. Only by exposing the assumptions, and conclusions, of these discourses could we hope to clarify the choices and trade-offs that beset environmental policy and the environmental social sciences. Today, 'sustainable development' needs to be linked to new material realities, the product of our science and technology, and associated shifts in consciousness. We have entered a world in which 'sustainability' is understood

52 Barral, 2012, p. 380.

53 Muzslay, 1995.

54 Muzslay employs the terms 'economy' and 'economic', but in the present book, we will instead use the terms 'business' and 'material' development, as these terms give rise to misunderstandings between economists and other social scientists. In modern economics, the demarcation between 'economy' and 'society' is highly problematic. In the terminology of economics, the economy is not a sphere of the social structure. Every social interaction ('economic' or 'other') can have economical aspects in which the parties make rational decisions if they see view their relationships as an exchange wherein they transfer something and receive something else in exchange. These rational exchanges do not always exhibit material, financial, or business aspects the way other branches of science would implicitly require from economics.

in terms of new material 'realities', as well as epistemological positions."[55] In a live presentation (unfortunately no longer available on the Internet) in 2010, Meadows himself suggested turning toward resilience. Does this mean that the era of sustainable development has come to an end before it could really begin? We do not believe so, and we will return to this below to present our view of this process of transformation.

We may also agree with Krämer, who is not highly optimistic regarding the realization of sustainable development within the EU, concluding that (a) there is no manageable definition of sustainable development in EU law – rather, it is used to render programs and measures 'green'; (b) any type of measure and action can be considered sustainable as there is no clear legal reference; and (c) since the beginning of the 21st century, the political goal has been growth and employment, and there have been no serious attempts to strengthen the concept of sustainable development.

According to the same author, this also means that if, in order to find a political compromise, we wish to collect all of the contradictory interests of environmental protection and economy into one sustainable development concept, as happened in Article 3 of the Treaty on European Union and Article 11 of the Treaty of the Functioning of the European Union, as it will result in a fiasco. Considering the simple fact that the content of sustainable development is designed by politicians, tailored to their current needs, there is also a chance for improvement in this matter.

1.5. Resilience

Article 16 of the Global Pact for the Environment project[56] reads, "*Resilience* – The Parties shall take necessary measures to maintain and restore the diversity and capacity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt."[57]

In its introductory paper, the Resilience Center of Stockholm University[58] states, "Resilience is the capacity of a system, be it an individual, a forest, a city or an economy, to deal with change and continue to develop. It is about how humans and nature can use shocks and disturbances like a financial crisis or climate change to spur renewal and innovative thinking. … Resilience is therefore an attempt to create a new understanding of how humans and nature interact, adapt and impact each other amid change." The original definition is thus imported from ecology.

The 'mother' of resilience in the social sciences is Nobel-prize-winning economist Elinor Ostrom, who, together with her husband, Vincent in their oeuvre,[59] focuses

55 Redclift, 2005, p. 225.
56 Global Pact for the Environment.
57 Draft Global Pact for the Environment, 2017.
58 What is resilience?, 2015.
59 This opus has been discussed by many authors, e.g., Toonen, 2010, pp. 193–202.

on sustainability of socioecological systems (SES). This science targets the integrated study of ecological, technological, social, economic, and political factors, including their interrelationship, with the objective of understanding being whether the users of resources invest sufficient time and energy into their adaptation to changing circumstances, which is generally called 'the tragedy of commons.' According to the researchers, the interaction between individuals and their environment determines whether we safeguard or exploit our natural resources. The SES system is also a manifestation of polycentricism, as the governance system is formulated as the network of government and non-governmental organs, their associations, and their companionships.

Ostrom and others wrote,[60] "What is a SES? A SES is an ecological system intricately linked to and affected by one or more social systems. … When social and ecological systems are so linked, the overall SES is a complex, adaptive system involving multiple subsystems, as well as being embedded in multiple larger systems."

An entirely new field of science is emerging in connection with the social responses to the clear signals of unsustainability. One major characteristic of these scientific reactions is polycentrism, which supports strengthening the adaptive capacity of different systems. Ostrom provides the complete picture[61]: "By polycentric, I mean a system where citizens are able to organize not just one but multiple governing authorities at differing scales (see V Ostrom et al 1961; V Ostrom 1987, 1991, 1997). … Polycentric systems are themselves complex adaptive systems without one dominating central authority."

Resilience and polycentric systems or the SES system mean somewhat similar things. For example, resilience has been defined as[62] "The ability of a system and its component parts to anticipate, absorb, accommodate, or recover from the effects of a hazardous event in a timely and efficient manner, including through ensuring the preservation, restoration, or improvement of its essential basic structures and functions."

The best and easiest way to provide a synopsis is to state in summary that the essence of resilience is the ability to adapt ourselves to different crisis situations or the ability to react in a flexible way. This general definition covers several components, such as the system approach, precaution, risk management, adaptation, flexibility, cooperation, involvement of the public, subsidiarity, integration, complexity, adaptation, adaptation, and adaptation. New concepts also feature in the notion of resilience, such as polycentrism, referring to diversity in the given context. These are all familiar terms, yet the major novelty is that they appear in a certain context and relationship, acquiring a slightly different character in the process. Resilience can be considered an implementation method or variety of sustainable development and arguably the most important among the set of instruments as its objective is something we tend to forget or disregard, namely to be prepared for the unexpected, rendering

60 Anderies, Janssen, and Ostrom, 2004.
61 Ostrom, 1999, p. 528.
62 O'Brien, Pelling, and Patwardhan, 2012, p. 563.

resilience as the science or art of managing such situations. A fine example of such situations is climate change. We can no longer avoid facing the issues of climate change; however, due to the lack of global agreement as well as the physical conditions of the atmosphere, the most viable variation today is to adjust ourselves to the actual situation and develop the ability and modality of adaptation.

There are several legal principles and instruments that may well be included in the toolbox of resilience, as the complex adaptive system requires complex institutional system as well. These instruments and principles differ little from the set of sustainable development tools as only their emphasis may be different.

We agree with van Rijswick that it is indispensable to put the emphasis of resilience on environmental legislation[63]: "Achieving a sustainable society also assumes a resilient society that can cope with new environmental problems and risks and is able to adapt to new circumstances. … 'Resilience' is concerned with the capacity of the legal system and society to adapt to changing circumstances and the way in which uncertainties are dealt with. … In turn, this requires flexibility on the part of the legal system and in standard setting. … The aim is to achieve a balance between flexibility and legal certainty in order to facilitate adaptive governance that safeguards legitimacy. Furthermore, the question arises how to cope with complexity in legal and societal issues."

2. Legal considerations

We might arrive at the conclusion that sustainable development law cannot be considered a self-evident concept, with a definite meaning and clear-cut instruments. Rather, it is a general concept, which can and should exert influence on different policy fields. Not only is it impossible to provide a clear-cut legal definition of the concept, but references to sustainable development also lack direct legal consequences. Even the wording of the concept is in flux – sustainable growth, green economy, circular economy, etc. It sometimes appears much easier to change the phrase than to clarify the obligations or achieve a meaningful effect. None of these characteristics serve legal certainty or legality, but all components have some normative nature with a diverse set of respective means and methods for enforcement.

It would be impossible to choose several equally important priorities from among the major components of sustainable development. Thus, it is best to focus on the original source of the idea of sustainability – that is, the environmental, ecological aspect – in the same way as it has been presented above, rearranging the 17 SDGs in this direction. We are convinced that there is no such thing as 'neutral' sustainability.

63 Rijswick, 2012, point 7.

We now turn to the instruments and components that are indispensable for sustainable development and, as a consequence of our previous choice of focus, that also have environmental protection as their central attribute. In the following, we present an outline of the basic components – or a strict minimum – of all sustainable development schemes. As such, these elements constitute the immanent essentials of the concept.

- The *rights of future generations* or intergenerational equity, which concept, according to current trends, does not have a special set of institutions of its own. Therefore, it would be expedient to attach to it *the right to environment* or other terms to translate this equity into the language of environmental human rights.
- This is coupled with *intragenerational equity,* that is, the rights of current generations, with a clear link to the issue of the right to the environment. At this point, it is worth introducing an important cornerstone of the international legal development of the concept of sustainable development. Attached to the judgment in the Gabčikovo-Nagymaros (*Hungary/Slovakia*) case on September 25, 1997,[64] Judge Weeramantry's opinion describes sustainable development as the right of people to the furtherance of their happiness and welfare, which, at the same time, is counterbalanced by the right to the protection and preservation of the environment. According to Judge Weeramantry, the balance between the two opposing principles is created by sustainable development.[65] The recognition of this concept is also apparent from the literature following the judgment.[66]
- *Public participation* is also fundamental, together with its three major pillars (access to information, participation in decision making, and access to justice). Stemming from the idea of environmental democracy, this principle also covers environmental justice and provides a better chance for the implementation of generational equity.[67]
- *Cooperation* or cooperative instruments play a primary role in all levels in the form of international cooperation, stakeholder cooperation, etc., constituting an additional element of public participation. Most obligations related to the achievement of sustainable development necessitate cooperation, such as the common heritage of mankind, shared natural resources, common and differentiated responsibilities, and eradicating poverty.
- *Integration* is an overarching concept and the institutionalization of sustainability, providing a simplified or accessible version of the major contents of sustainable development. Its main objective is to manage social, material, financial, and environmental interests in one system rather than viewing them

64 ICJ Judgment, 1997, pp. 7–84.
65 Weeremantry, 1997, p. 92.
66 See, for example, Birnie, Boyle, and Redgwell, 2009, p. 115.
67 See, For example, Article 1 of the Aarhus Convention, 1998.

as separate issues. In its Gabčikovo-Nagymaros judgment,[68] the ICJ emphasized the following: „140. … This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development." There are many well-known instruments serving integration, including environmental impact assessment, strategic environmental assessment, and the work of the different sustainable development councils or committees operating in most countries. *Integration and sustainable development are two sides of the same coin*. The essence of integration is to ensure the necessary representation for the environment, so that it has a chance during the reconciliation process. In terms of sustainable development, integration is a real challenge for legislation, as clearly stated in the above judgment and in related assessments.[69] Integration may be considered a practical path to implementing sustainable development.

- *Precautionary principle* covers among others prevention and risk assessment. It has substantial moral content, covering extended responsibility for different conduct. Principle 15 of the Rio Declaration[70] covers possible practical solutions and provides the principle with a global character.[71] The CJEU (ECJ) rendered several important judgments[72] to clarify the content of the principle, including introducing the concept of 'scientific uncertainty.'
- *Subsidiarity* is also essential, covering not only the effective distribution of competencies and duties but also the involvement of different institutional systems, such as state and local governments, social organs, NGOs, businesses, churches, and small communities. "In this way subsidiarity can be regarded as a principle of distribution of the diverse social functions that together make up the common good."[73]
- *Good governance*, the essence of which was presented above based on the ILA New Delhi Declaration of 2002,[74] covers appropriate democratic and transparent decision-making procedures and financial accountability, combatting corruption, due process in procedures, and observation of the rule of law and human right and special care for public procurement. Otherwise, there are no fixed requirements of good governance. For example, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

68 ICJ Judgment, 1997, p.7.

69 See, for example, Sands, who underlines that the central element of sustainable development is integration: Sands, 1994, pp. 302–303.

70 Rio Declaration, 1992.

71 "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

72 Case C-180/96, First Instance Court, T-13/99, joint cases T-74, 76, 83-85, 132, 137, & 141/00, etc.

73 Carozza, 2003, pp. 45–46.

74 ILA, 2002.

mentions eight principles[75] – 1. Participation, 2. Rule of law, 3. Transparency, 4. Responsiveness, 5. Consensus-oriented, 6. Equity and inclusiveness, 7. Effectiveness and efficiency, 8. Accountability – while the Council of Europe enumerates 12 principles in connection with local governments,[76] adding, among others, ethical conduct or innovation to the previous list.

Intergenerational equity, or the concern of future generations' rights, is the most crucial question from among the above list of the vital constituents of the concept of sustainable development – which we might extend to other similar or instrumental aspects such as resilience – and might also be viewed as the most distinct one compared with the others. Intragenerational equity, positioned at the other end of the spectrum of generational problems, is less specific and less novel. The focus on the poor, vulnerable people, and disabled persons forming part of public awareness has always been present in social history. Subsidiarity, cooperation, public participation, integration, and good governance, while equally important for sustainable development and future generations' rights, are less specific; they all might form part of other social and legal disciplines, such as local government issues and many others, and consequently are less appropriate for characterizing the entire scheme of sustainability. The precautionary principle also refers to future uncertainties and primarily to special care for likely consequences, in line with the question of how to deal with the problem of future generations. In summary, from among the list of legal components of sustainable development, which is our wider playground, intergenerational equity likely remains the greatest challenge. Therefore, we will focus on this subject at a later time. Environmental rights, or, in other words, the human right to a certain environment – the qualities and characteristics are discussed below – is strictly connected to future generations, as one should also answer the question of whose rights are in question.

3. Future generations

3.1. Moral background

The 1972 Stockholm Declaration proved to be that which mentioned most of the constituents of the subsequent UN global environmental conferences. Principle 2 reads, "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning

75 Good Governance, 2021.
76 Council of Europe 12 principles, 2008.

or management, as appropriate." Twenty years later, Principle 3 of the Rio Declaration[77] can be viewed as a clear follow-up and the most important principle in connection with the evolving concept of sustainable development: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."

Five years after Rio, a declaration on the responsibilities of the present generations towards future generations was issued[78] by UNESCO, covering several commitments presented as moral obligations to formulate behavioral guidelines for the present generations: "Convinced that there is a moral obligation to formulate behavioural guidelines for the present generations within a broad, future-oriented perspective." This declaration clearly articulated the duties of current generation as its basis, which we discuss later: "Resolved to strive to ensure that the present generations are fully aware of their responsibilities towards future generations."

The declarations in 11 articles listed what may also be taken today as the most crucial content of the duties: (a) the needs and interests of future generations, (b) freedom of choice – also referring to human rights, (c) the maintenance and perpetuation of humankind "with due respect for the dignity of the human person", (d) preservation of life on Earth, (e) protection of the environment, (f) protecting the human genome and biodiversity, (g) preservation of cultural diversity and cultural heritage, (h) the common heritage of humankind, (i) peace, (j) development and education, and (k) non-discrimination.

The ideas of the Hungarian sustainable development strategy adopted in 2012, the third progress report of which was completed at the end of 2019, should also be referenced as it aims to better clarify the above thoughts (NFFS, 2012, pp. 9): "Sustainability … means that the current generations, that want to establish their own wealth, do not deplete the conditions of individual well-being and public good, do not exhaust their resources, but preserve or even expand them for future generations in the essential quantity and quality. The interests of the unborn, consequently of those who do not have the right to vote could be secured, if the current generation sets limits of values, of constitutional and institutional character for their own freedom of movement."[79] Again, moral and legal obligations are both mentioned.

Regarding equity toward future generations, equitable behavior is undoubtedly a vital part of international policies and regulations. Understanding of the rights of future generations – as well as understanding of the other foundation of sustainable development, intragenerational equity – is a fascinating moral and legal challenge that several authors have addressed via different approaches on a scale from heartfelt support to total rejection. Edith Brown Weiss, the most prominent

77 Rio Declaration,1992.
78 UNESCO Declaration, 1997.
79 NFFS, 2012, p. 20.

author on the rights of future generations,[80] wrote, "This ethical and philosophical commitment acts as a constraint on a natural inclination to take advantage of our temporary control over the earth's resources and to use them only for our benefit without careful regard for what we leave to our children and their descendants."

We must agree with the author that "This notion conveys both rights and responsibilities. Most importantly it implies that future generations have rights too." Weiss classifies three major principles in connection with intergenerational equity, namely (a) to conserve options and the diversity of choice – "Future generations are entitled to diversity comparable to that which has been enjoyed by previous generations."; (b) to maintain the quality comparable to that which has been enjoyed by previous generations; (c) and equitable access, for example, access to potable water supplies.

Later, the same author presents four general decisive criteria underlying these principles: (a) equality among generations, which does not allow the present generations to exploit resources to the exclusion of future generations, nor does it allow the imposition of unreasonable burdens on present generations to meet indeterminate future needs; (b) we may fail to predict the values and preferences of future generations – therefore, sufficient flexibility is needed to achieve their own goals according to their own values and preferences; (c) clear expectations are needed in the application to foreseeable situations; (d) different cultural traditions and various economic and political systems should be taken into consideration.

From among the many authors who discuss this topic, only Gaba, who focuses on current morality on the basis of the current time, is mentioned here: "Ultimately, it means that the relationship between the present and the future is not derived from what the future demands of us based on their needs, but what we say to the future about our aspirations."[81] Consequently, when considering the core of the problem, it is more practicable to underline the limitations and obligations of the present.

Many sources and documents refer to the overall dilemma as an essentially moral one, similar to UNESCO in 1997. In his report, via a conceptual framework, the UN Secretary General[82] mentions the ethical dimensions as a starting point. He quoted the OECD glossary: "Intergenerational equity has been defined as the issue of sustainable development referring, in the environmental context, to fairness in the inter-temporal distribution of the endowment with natural assets or of the rights to their exploitation." He also discussed "who exactly falls into the scope of discussion", and the answer may arise from ancient ethical considerations: "For instance, the Confederation of the Six Nations of the Iroquois passed on the principle that decisions take into account the welfare and well-being of the seventh generation. Nearly all human traditions recognize that we, the living are, sojourners on earth and temporary stewards of our resources."

80 Weiss, 1992, pp. 19, 22, and 23. The major publication of the same author in this respect is Weiss, 1989.

81 Gaba, 1999, p. 288.

82 Report of the Secretary-General, 2013.

If morality is such a crucial issue, at least from a European perspective, the best approach would be to take Christianity and, within this, catholic teachings as the basis. The reason we focus more on catholic teachings is described by the difference between the hierarchy of the church as prescribed by a reckoned Hungarian protestant theological professor.[83] He says that the Roman Catholic and Orthodox churches on the one hand and the Protestant on the other have different concepts of the management of the church. While in Protestant churches, the primary and decisive body is the local congregation, which has a wide margin of liberty in defining the outline of their teaching, meaning also that there are no compulsory statements that oblige other congregations, while for the Catholic and Orthodox churches, the strict hierarchy in teaching is their distinctive feature. Finally, several messages, encyclicals, letters, and other documents have been issued on behalf of the Vatican in recent decades, focusing on sustainability and, within this, the concerns of future generations.

It is commonly accepted today that the reference to the dominion of man over nature in the Book of Genesis [1:28] should only be interpreted as trusteeship or acting as a responsible guardian. In 1979, John Paul II clearly stated,[84] "Yet it was the Creator's will that man should communicate with nature as an intelligent and noble 'master' and 'guardian', and not as a heedless 'exploiter' and 'destroyer.'" Several readings of the Bible make it clear that the creation of human beings means, in reality, the creation of mankind and, thereby, the continuity of human generations. Moreover, one can also identify the idea of the two generational visions: the succeeding generations and the list of families of mankind – and thus current generations – at the same time.

Gaudium et Spes[85] offers lucid guidance in this respect: "69. God intended the earth with everything contained in it for the use of all human beings and peoples. … In using them, therefore, man should regard the external things that he legitimately possesses not only as his own but also as common in the sense that they should be able to benefit not only him but also others." Future generations have their place in this message.

Populorum progressio, released in 1967,[86] addresses the real meaning of development: "(14) The development we speak of here cannot be restricted to economic growth alone. To be authentic, it must be well rounded; it must foster the development of each man and of the whole man." It later states, "(76) [W]e are not just promoting human well-being; we are also furthering man's spiritual and moral development, and hence we are benefiting the whole human race. Of course, there is a place for solidarity and peace, so instead of 'prosperity' I prefer the term 'well being.'"

83 Béres, 2004, p. 101.
84 Redemptor hominis, 1979.
85 Gaudium et Spes, 1965.
86 Populorum Progressio, 1967.

The Encyclical Sollicitudo rei socialis also provides a definite answer to the real values and content of progress: "(34) Nor can the moral character of development exclude respect for the beings which constitute the natural world, which the ancient Greeks – alluding precisely to the order which distinguishes it – called the 'cosmos' . . . . The dominion granted to man by the Creator is not an absolute power, nor is it a freedom to 'use and misuse', or to dispose of things as one pleases. The limitation is imposed from the beginning by the Creator himself and expressed symbolically by the prohibition not to 'eat of the fruit of the tree' (cf. Gen 2:16–17)."[87]

In his anniversary encyclical letter,[88] while suggesting that everyone re-read the Rerum Novarum[89] itself, John Paul II was entirely clear in this regard: "31. … God gave the earth to the whole human race for the sustenance of all its members, without excluding or favoring anyone. This is the foundation of the universal destination of the earth's goods." Moreover, he directly mentioned future generations: "37. Equally worrying is the ecological question which accompanies the problem of consumerism and which is closely connected to it. … Instead of carrying out his role as a co-operator with God in the work of creation, man sets himself up in place of God and thus ends up provoking a rebellion on the part of nature, which is more tyrannized than governed by him. … In this regard, humanity today must be conscious of its duties and obligations towards future generations."

The most important message of Pope Benedict XVI's encyclical letter[90] is the following: "48. Today the subject of development is also closely related to the duties arising from our relationship to the natural environment. The environment is God's gift to everyone, and in our use of it we have a responsibility to the poor, to future generations and to humanity as a whole. … Consequently, projects for integral human development cannot ignore coming generations, but need to be marked by solidarity and inter-generational justice, while taking into account a variety of contexts: ecological, juridical, economic, political and cultural." Our responsibility to future generations is even more heavily emphasized later in the same letter: "50. … At the same time we must recognize our grave duty to hand the earth on to future generations in such a condition that they too can worthily inhabit it and continue to cultivate it." Pope Benedict also did not hide his opinion regarding the selfishness of the current generation: "51. The way humanity treats the environment influences the way it treats itself, and vice versa. … Herein lies a grave contradiction in our mentality and practice today: one which demeans the person, disrupts the environment and damages society."

Environmental protection, the questions in connection with future generations, and the proper direction of development are to be taken as one common, holistic

87 Solicitudo rei Socialis, 1987.
88 Centesimus Annus, 1991.
89 Rerum Novarum, 1891.
90 Caritas in Veritate, 2009.

system. In his message for the World Day of Peace in 2010[91], 'If You Want to Cultivate Peace, Protect Creation', which was dedicated entirely to our subject matter, we can learn the following: "7. … The goods of creation belong to humanity as a whole. Yet the current pace of environmental exploitation is seriously endangering the supply of certain natural resources not only for the present generation, but above all for generations yet to come." The two types of generational equity, current and future, should be kept in mind: "8. A greater sense of intergenerational solidarity is urgently needed. Future generations cannot be saddled with the cost of our use of common environmental resources. … in addition to a fairer sense of intergenerational solidarity there is also an urgent moral need for a renewed sense of intragenerational solidarity, especially in relationships between developing countries and highly industrialized countries."

The suggestion is clear: "(11) It is becoming more and more evident that the issue of environmental degradation challenges us to examine our life-style and the prevailing models of consumption and production, which are often unsustainable from a social, environmental and even economic point of view. … We are all responsible for the protection and care of the environment."

The most recent vital document is the encyclical letter of Pope Francis[92]. This encyclical also considers current and future generations as parts of a greater system: "13. The urgent challenge to protect our common home includes a concern to bring the whole human family together to seek a sustainable and integral development, for we know that things can change…

36. … We can be silent witnesses to terrible injustices if we think that we can obtain significant benefits by making the rest of humanity, present and future, pay the extremely high costs of environmental deterioration."

The unity of rights and obligations and the idea of trusteeship are also stressed to a greater extent: "67. We are not God. The earth was here before us and it has been given to us…. This implies a relationship of mutual responsibility between human beings and nature. Each community can take from the bounty of the earth whatever it needs for subsistence, but it also has the duty to protect the earth and to ensure its fruitfulness for coming generations."

Pope Francis summarizes in one systemic approach the need for environmental protection and the renewed content of public good and common responsibility: "95. The natural environment is a collective good, the patrimony of all humanity and the responsibility of everyone. …

159. The notion of the common good also extends to future generations. … We can no longer speak of sustainable development apart from intergenerational solidarity. Once we start to think about the kind of world we are leaving to future generations, we look at things differently; we realize that the world is a gift which we have freely received and must share with others. Since the world has been given

91 World Day of Peace, 2010.
92 Laudato Si', 2015.

to us, we can no longer view reality in a purely utilitarian way, in which efficiency and productivity are entirely geared to our individual benefit. Intergenerational solidarity is not optional, but rather a basic question of justice, since the world we have received also belongs to those who will follow us. …

160…. It is no longer enough, then, simply to state that we should be concerned for future generations. We need to see that what is at stake is our own dignity."

Human dignity is strictly connected to the concept of future generations from the very beginning. A clear and short summary was offered at an earlier time by the Venice Declaration[93]: "Respect for creation stems from respect for human life and dignity. It is on the basis of our recognition that the world is created by God that we can discern an objective moral order within which to articulate a code of environmental ethics."

Our last reference in this respect is also a message for the World Day of Peace in 2020,[94] in which Pope Francis spoke of the urgent need for ecological conversion: "Indeed, natural resources, the many forms of life and the earth itself have been entrusted to us "to till and keep" (*Gen* 1:15), also for future generations, through the responsible and active participation of everyone. … The ecological conversion … must be understood in an integral way, as a transformation of how we relate to our sisters and brothers, to other living beings, to creation in all its rich variety and to the Creator who is the origin and source of all life."

The Catholic Church also places special focus on human rights, including the right to the environment, for which the starting point is human dignity and common good. In a World Day of Peace message,[95] Pope Saint John Paul II came to the conclusion that "(7) Respect for life, and above all for the dignity of the human person, is the ultimate guiding norm for any sound economic, industrial or scientific progress. . . . (9) The right to a safe environment is ever more insistently presented today as a right that must be included in an updated Charter of Human Rights."

Almost a decade after this message, in 1999, Pope Saint John Paul II devoted an entire World Day of Peace message to human rights.[96] In addition to the prohibition of all forms of discrimination and the right to self-fulfillment, solidarity, and peace, Paragraph 10 concerns responsibility for the environment: "(10) The promotion of human dignity is linked to the right to a healthy environment, since this right highlights the dynamics of the relationship between the individual and society. A body of international, regional and national norms on the environment is gradually giving legal form to this right. But legislative measures are not sufficient by themselves. …"

93 Venice Declaration, 2002.
94 World Day of Peace, 2020.
95 World Day of Peace, 1990.
96 World Day of Peace, 1999.

At the end of this survey, I intend to recommend a much more authentic and beautifully structured source than mine: the Compendium of the social doctrine of the Church,[97] especially the 10th chapter, which deals with environmental protection.

3.2. Future generations' rights taken as duties of the current generation

I must first emphasize that, similar to my understanding of the essence of sustainable development, taking ecological considerations as the groundwork, regarding intergenerational equity, I hold the same position. On the one hand, if the question of future generations is one of the core – if not the most important – elements of sustainable development, there is no question as to why the two share a destiny. On the other hand, we should somehow delineate what we focus on from among the many opportunities – healthcare, education, social security, etc.; again, the major concern regards resources, mostly natural or environmental, as the primary condition of everything else.

A shocking beginning might be that "62. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."[98] The answer may be that the "Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors."

What should be done, and why does it seem to be so difficult to find the proper answer? We face many difficulties when seeking this answer. As a legal scholar described,[99] "Democracy's neglect of future citizens has at least four sources. First, there is the natural human tendency to prefer the immediate to the distant, both in what one fears and what one desires. … The second reason for neglecting future generations appeals to the oldest and still one of the most influential justifications for the principle, namely that representatives should be responsive to their constituents … The third source of the neglect of the future stems from the fact that democracy is government pro tempore. The rulers exercise power for a limited period of time, after which they stand for reelection and reappointment, or retire from office. … They try to pass laws and policies that produce results within the limit of their time in office. … Finally, there is a tendency in most modern democracies today to favor the older age group. Because this group has more numerous members, and also because some of them exploit spurious age discrimination claims, they are privileged in law and public policy."

This scholar's suggestion is as follows: "To protect future democratic capacities, we should therefore establish some institutions that create roles that give special

97 Compendium, 2004.
98 UNHCR, 2018.
99 Thompson, 2010, pp. 17-37, A.

attention to democratic potential of individuals or groups who are otherwise not represented, or not adequately represented."

Is it indeed this difficult to give future generations a chance? Recently, I was able to participate in one more debate on this topic, in which some speakers required that we should first somehow define the content, scope of rights, and needs of future generations. However, in my view, this may be an endless story and a good excuse for doing nothing. Our ideas regarding future generations might differ from region to region, from country to country, from the perspective of living conditions, social background, religious beliefs, etc.

I prefer Bosselmann's evaluation[100] as a definite message: "For principle reasons we are unable to determine the needs of future generations. Only more or less informed guesses are possible about the options that future generations may justifiably expect. The reasonable choice, therefore, is for a duty to pass on the integrity of the planetary ecosystem as we have inherited it (ecological integrity). Uncertainty requires precaution, and there seems no better precautionary measure than assuming that future generations would like the planetary ecosystem as bountiful as we have found it."

The central concern here, as mentioned in 2013 by the UN Secretary General,[101] is that "5. Future generations are politically powerless, with the representation of their interests limited to the vicarious concern of present generations. As the UN Report of the World Commission on Environment and Development, Our Common Future (1987), states: 'We act as we do because we can get away with it: future generations do not vote, they have no political or financial power; they cannot challenge our decisions.'" We have faced these hindrances from the very beginning. Regarding a similarly difficult problem for many from the same UN paper, "19. Simply put, it is argued that future persons cannot have rights because they do not yet exist – they cannot possess anything, including rights. In legal terms, it is argued that rights go hand-in-hand with duties; legal duties cannot exist absent legal rights, so that present generations cannot have legal obligations to future generations. If the rights-holder does not exist, it is difficult to conceive of anyone being under a corresponding duty."

In my opinion, the concept of who will belong to the group of future generations is a relatively elusive question, a moving target, both timewise regarding the commencement of the future-generation category and regarding duration. Who might belong to future generations? Only the unborn or others as well? How many generations are covered? These are common questions that are discussed further when an individual wishes to develop a formal and precise answer, usually rather than considering the merits of the case. Our assignment is to provide the virtues, merits, and consequences; it is secondary to define the exact beginning and term. Unborn people will be born soon; thus, this term is in itself flexible. Why, then, do

100 Bosselmann, 2017, p. 119.
101 Report of the Secretary-General, 2013.

we not accept that some members of future generations are already living among us? Current generations consist of older and younger people, representing different generations themselves. My children represent a future generation for me, and my grandchildren a next generation for them. If we accept this practical answer, it may become much easier to postulate needs, interests, rights, and duties and obligations. Moreover, considering seven generations to come is discussed in traditional wisdom and fairy tales. The concept of a generation is generally considered to be 25 years. Therefore, the basis of calculation is not the age of life expectancy but the general age of being parents. Thus, why should we limit our perspective for 175 years only, that is, seven times 25 years? In other words, is it even possible to foresee 175 years into the future? These are inadequate problems, meaning perhaps that the current generation wants to limit its own responsibility. Therefore, it is better to turn toward the practical answer: what the basis of action should be. There are two major options to be considered in connection with the protection of future generations' rights and interests as well as several additional, more minor possibilities or points associated with the main ones:

1) One alternative might be to circumscribe the likely rights of future generations or, at a minimum, to somehow refer to these rights. As noted above, this may well lead to an endless story; however, it offers a good basis for long-lasting scholarly discussions, likely leading nowhere. Many authors and documents agree that it would be unnecessary to choose this path; nonetheless, we must consider it as an option. If one wishes to follow the delineation of rights, then I strongly recommend the suggestion of the current UN Secretary General[102] in this respect: "Implementation of the full spectrum of human rights is at the heart of our capacity to recover from the pandemic, renew the social contract and more. Civil, political, economic, social and cultural rights are mutually reinforcing, indivisible and universal, not ordinary services with a market-set price tag but essential factors in building more inclusive societies. Promoting and protecting civic space makes societies stronger and more resilient, building on the right to participate and freedom of expression, association and assembly. While upholding human rights is an obligation for all States, beyond that it is also time to treat rights as problem-solving measures and ways to address grievances, not just for individuals but for communities at large."

   Thus, it would not be useful to envisage the interests and rights of future generations, but it would be and must be necessary to expand our concern regarding the accomplishment and proper implementation of the existing complexity of human rights.

   An indication of promising progress in the field of human rights law is that on October 8, 2021,[103] the Human Rights Council adopted four resolutions: on

102 Our Common Agenda, 2021.
103 UNHCR, 2021.

the right to development, on human rights and indigenous peoples, on the human rights implications of the COVID-19 pandemic for young people, and on the human right to a safe, clean, healthy, and sustainable environment. Beginning with sustainable development and ending with the recognition of a safe, clean, healthy, and sustainable environment, several important messages in the preamble should be remembered: "*Recognizing* that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life, … *Acknowledging* the importance of a safe, clean, healthy and sustainable environment as critical to the enjoyment of all human rights…"

The potential inclusion of this new right in the body of human rights has several – mostly speculative – advantages, such as the chance to refer directly to the right, the need to further develop the constituents, and the chance to open the door for other similar rights, such as the right to water or, in the case of human rights, adjudication offering a concrete right to base certain claims upon. Although it would not mean the enclosure of a distinct right of future generations, this 'new' future right may be the appropriate umbrella.

2) The other alternative turns toward the current generations and develops duties and obligations for them, an issue that perpetually arises, continuously obliging the then existing current generations to take care of the coming ones. In the Minors Oposa case,[104] the court stated, "Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come."

In the decision 28/2017 (X.25.) AB, the Constitutional Court referred to the concepts of legal scholars – such as Edith Brown Weiss – in translating the messages into a constitutional language: "[33] On the basis of Par (1) of Art. P) of the Fundamental Law the current generation has three major responsibilities: to preserve the option of choice, to preserve the quality and to provide access. Option of choice is based upon the consideration that the living conditions of future generations might best be guaranteed if the inherited natural heritage could ensure the freedom of choice for future generations in order to solve their problems, instead of taking the decisions of the present as constraints for the coming generations. On the basis of preserving the quality, we shall take all necessary steps to leave the natural environment at least in the same condition as it had been given to us by the past generations. Access to natural resources would allow current generations access to

104 Minors Oposa, 1993.

the available resources as long as they respect the reasonable interests of future generations." It is also an important message regarding the decision to urge us toward long-term thinking: "[34] The legislator might only meet these principal requirements, if its decisions are based upon a balanced long-term thinking, overarching political phases."[105]

In his Report in 2013, the Secretary General emphasized that "13. … In fact, as stated in Article 1 of the Universal Declaration of Human Rights 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.' The basis for our moral obligations towards future people is thus argued to be simply the equal concern and respect we owe to all humans, regardless of where and when they may have been born." Later, he stated that "25. … Since we cannot with great certainty ascertain the precise needs and preferences of future generations, we could in devising policies at the very least begin with two considerations: minimizing harm and doing that which benefits both present and future generations."

Several practical hints, mentioned by Ban Ki-moon as well, were added to the aforementioned one: "26. Second, consideration for the needs of future generations would favour policies that work to the advantage of both present and future generations—and which, other factors being roughly equal, are least burdensome to the present generation. Third, where risks to the interests of future generations are reasonably clear and consequential, present generations should exercise forbearance, foregoing some benefits. This finds its expression in the precautionary principle, which is widely but not universally accepted."[106]

At the end of 2021, the UN Secretary General also emphasized that "54. … Accounting for the interests of future generations would require two adaptations: strengthening our capacities to understand and assess the future, building long-term thinking into important policies and decision-making; and creating specific forums and instruments to protect the interests of future generations at all levels of governance."[107]

Here, we thus return to the legal considerations and constituents listed under the general discussion of sustainable development and its instruments, for example, the precautionary principle, subsidiarity, public participation, good governance, and others; moreover, we might add other effective legal devices, such as policymaking or planning, environmental impact assessment, and risk assessment. The above institutional mechanisms are also mentioned and will be presented below.

105 AB, 2017/2.
106 Report of the Secretary-General, 2013.
107 Our Common Agenda, 2021.

I believe without doubt that the second alternative, that is, not entering the field of legal imagination but, instead, using existing means and methods or developing new ones based on current realities, is more beneficial.

4. The role of the state and the duty of everyone

4.1. The state

Responsibility towards future generations and equitable thinking are the primary requirements of fundamentally and necessarily ecologically (creation) centered sustainable development, alongside intragenerational equity. It is clear that present generations cannot take away from future generations the opportunities of equal access to resources and to an environment of appropriate quality even if they could do so. Among the obligations of present generations, the responsibility of states is of utmost importance through the establishment of institutions that can safeguard the appropriate level of protection in the long-term as well as through ensuring the principles of prevention and precaution.

Every international convention, agreement, protocol, guidance, and recommendation first addresses the states. Human rights documents and jurisdictions also focus on state activities and require states to implement the requirements as well as to enforce human rights obligations. Everybody else is indirectly obliged. The jurisprudence of the European Court of Human Rights[108] clearly demonstrates what states should do to properly implement the given rights, meaning that they have a direct obligation to develop the necessary guarantees: "57. The present case does not concern interference by public authorities with the right to respect for the home, but their failure to take action to put a stop to third-party breaches of the right relied on by the applicant. … 62. In these circumstances, the Court finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant's right to respect for her home and her private life, in breach of Article 8 of the Convention."[109]

Art. P of the Fundamental Law of Hungary[110] refers to the obligation of the state and everyone for the sake of future generations, but this does not mean an equally balanced situation. The comprehensive understanding of responsibilities

108 The environmental practice of which is available with permanent updating on internet at: https://www.echr.coe.int/documents/fs_environment_eng.pdf – European Court of Human Rights: Environment and the European Convention on Human Rights.

109 Case of Moreno Gómez v. Spain 2004.

110 Art. P, Par. 1, reads, "Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."

also raises the question of whether it is possible to make a distinction according to the extent of such responsibilities. Similar to what we can learn from ECHR jurisprudence, The Hungarian Constitutional Court stressed first[111] that "[39] Constitutional responsibility to the common heritage of the nation is uniform and joint, still, according to the understanding of the Constitutional Court within this general responsibility the state has a primary and leading role, as the coordinated implementation of the system of institutional guarantees of such responsibility, the setting up, correction and enforcement of the structure of institutional protection is directly and primarily a state function." This was further elaborated some months later[112]: "While the duty to protect the environment is equally relevant to the state in its broadest meaning, the natural and legal persons, this duty might not be identical for the different entities. While we may not generally require that natural and legal persons should tailor their behaviour to an abstract objective, which has not been specified by the legislator and this also may not be enforced, it is required that the state should unequivocally define those legal obligations, which both the state and private persons should implement, for among other reasons to provide an effective protection for those interests, appraised in Article P) (1) of Fundamental Law … all those duties, which the state might implement elsewhere with the protection of fundamental rights, here should be executed via the stipulation of legislative and institutional guarantees" (Reasoning [30]). In short, this refers to the obligation to provide institutional protection.

There is also a shorter version of the same message in Decision of the Constitutional Court No. 3104/2017 (V. 8.) AB, which emphasized that "[39] … for among the general range of responsibilities the state has a primary role to play, as it is the direct and principal duty of the state to implement a harmonized system of institutional guarantees, to create the system of such institutions, also to make the necessary corrections." Thus, the obligation side of the implementation of rights is clearly highlighted.

State activity must be open and transparent, and the conditions of good or better[113] governance apply. State actions and institutions are governed by law, and the society requires that states should formulate the conditions of the responsibility of everybody else, as described above by the Hungarian Constitutional Court. States are parties to different international consultations, agreements, and organs and play a central role in every activity. If one considers the usual setting of sustainable development – environment, society, economy – then states must be part of everything. People expect states to take care of everything while not interfering with private issues. A significant portion of the economy is also taken as private, operating in the shadows with numerous grey areas. The economy also requires the protection

111 AB, 2017/1.

112 AB, 2017/2 s.

113 See, for example, https://www.oecd-ilibrary.org/governance/trust-and-public-policy_9789264268920-en.

provided by the state but does not want to allow substantial interference with its operations. The decision-making procedure and conditions of business organizations are not transparent for others; they are only so if the state obliges them to publish some of their figures. Without direct legal pressure, there is a much less chance to be accessible for non-profitable areas and ideas.

The international legal community also emphasizes the primary role of the state in this respect, including in the preamble of the ILA 2020 resolution[114]: "States must take into account the needs of future generations in determining the rate of use of natural resources."

Ultimately, understanding the vital regulatory role of the state it would be appropriate to have some reference related to intergenerational equity, most likely at the constitutional level. The exact wording may differ, such as the exact location. The preamble, general provisions, and fundamental rights are all equally useful. Even a provision on sustainable development is satisfactory, as – according to the current general perception – it encompasses both inter- and intragenerational concepts. The fundamental right to a safe, clean, healthy, and sustainable environment might not be assumed without at least an indirect indication to future generations.

4.2. The economy

A good example of this ambivalent situation is the use of indicators of economic output. One has no difficulty searching for the answer to why using GDP is an incorrect approach. In the first academic article on the internet,[115] the author clearly described that, "In truth, 'GDP measures everything', as Senator Robert Kennedy famously said, 'except that which makes life worthwhile.' The number does not measure health, education, equality of opportunity, the state of the environment or many other indicators of the quality of life. It does not even measure crucial aspects of the economy such as its sustainability: whether or not it is headed for a crash." As I am not an economist, I do not want to enter a detailed discussion on the matter; however, everybody concerned about sustainability agrees that "We need to know whether, when GDP is going up, indebtedness is increasing or natural resources are being depleted; these may indicate that the economic growth is not sustainable. If pollution is rising along with GDP, growth is not environmentally sustainable." GDP only takes income into account; thus, an environmental catastrophe, as a result of which highly costly clean-up is required, adds to income, while the consequences of the catastrophe are not deducted from the output. Nonetheless, all countries – most likely for the purpose of protecting business interests – use this indicator.

This problem was not touched upon until the Eighth Environmental Action Program.[116] As the Preamble reads, "(19) The transition to a well-being economy, where

114 See ILA, 2020.
115 Stiglitz, 2020.
116 Environment Action Program, 2022.

growth is regenerative, is embedded in the 8th EAP and enshrined in both the 2030 and 2050 priority objectives. To ensure that transition, it will be necessary for the Union to develop a more holistic approach to policymaking through, inter alia, the use of a summary dashboard that measures economic, social and environmental progress 'beyond GDP.'" This may mean that around the 60th anniversary of environmental action programs, the EU might modify the basis of comparison.

Returning to the fundamental requirements of the Eighth Action Program – which is clearly based on the circular economy policy and the current Green Deal, with the new concept of transition to a well-being economy in progress – the main actor is again the state or governance: "(35) As environment policy is highly decentralised, action to attain the priority objectives of the 8th EAP should be taken at different levels of governance, i.e. at Union, national, regional and local levels, with a collaborative approach to multi-level governance. Efficient monitoring, implementation, enforcement and accountability are essential, and effective governance is required in order to ensure coherence between policies."

Considering the necessary means and methods under Article 3 (Enabling conditions to attain the priority objectives) and avoiding the discussion of numerous others, the first three of the many conditions prove highly traditional, focusing on state responsibility as is typical (with point (e) being the development of a 'beyond GDP' dashboard):

> a) ensuring effective, swift and full implementation of Union legislation and strategies …including by providing sufficient administrative and compliance assurance capacity
> b) prioritising enforcement of Union environmental law where implementation is lacking, including through infringement proceedings…
> c) improving guidance and recommendations, including on effective, dissuasive and proportionate penalties to reduce risks of non-compliance with Union environmental law, as well as stepping up action in the area of environmental liability and responses to non-compliance, and strengthening judicial cooperation in the area of, and law enforcement against, environmental crime as laid down in relevant Union legislation, such as Directive 2008/99/EC of the European Parliament and of the Council (13)…

I believe that environmental legislation – whether national or European – generally does not carry out any overall, systemic intervention in business operations; rather, it uses a piecemeal approach. There are several legal requirements focusing on specific areas – from waste management issues to industrial accidents, from the noise emission of products to environmental impact assessments, and so on – but there is much less effort and regulatory order when the essence of business operations should be affected. While standards – emission limits, monitoring requirements, and using specific appliances – might have very detailed obligations, the structural modification of the entire operation is considered a much more delicate

issue. For example, the BAT under the industrial emissions directive[117] has a very limited scope of application "under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator."

Moreover, the entire management system is addressed under the EMAS regime[118]; entering into the system is voluntary, and only the procedure is obligatory,[119] as in case of product and services and applying for an EU ecolabel,[120] although the idea is promising according the preamble: "(5) The EU Ecolabel scheme is part of the sustainable consumption and production policy of the Community, which aims at reducing the negative impact of consumption and production on the environment, health, climate and natural resources."

Extended producer responsibility is a major focus area of a circular economy[121] as well as of the Green Deal; however, it is still a prospect and not an actual legal obligation: "(27) The introduction of extended producer responsibility in this Directive is one of the means to support the design and production of goods which take into full account and facilitate the efficient use of resources during their whole life-cycle including their repair, re-use, disassembly and recycling without compromising the free circulation of goods on the internal market." The phrasing of Article 8 of the directive is very elastic: "Member States may take legislative or non-legislative measures" or "may take appropriate measures to encourage the design of products." Par. 3 states, "When applying extended producer responsibility, member states shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market." Furthermore, while a circular economy is intended to modify the production system, EPR is covered only within the waste legislation.

Many rudimentary attempts are being made today to expand duties regarding the economy comparable to those held by states. Nonetheless, while doing so is a legal duty of the state, it remains a humble request to business operations. The fate of financial instruments within the EC/EU can is a good example. The Fourth Environmental Action Program provided many details of the financial/economic instruments, and since that time (1987), the upcoming programs have all mentioned the need for such legal tools. However, there was no real progress in this respect. Art. 2 par. 2 of the current (eighth) Program also mentions this: "(h) strengthening environmentally positive incentives as well as phasing out environmentally harmful subsidies, in particular fossil fuel subsidies, at Union, national, regional and local level,

117 Industrial Emission Directive, 2010.

118 EMAS Regulation, 2009.

119 "(8) Organisations should be encouraged to participate in EMAS on a voluntary basis and may gain added value in terms of regulatory control, cost savings and public image provided that they are able to demonstrate an improvement of their environmental performance."

120 Ecolabel Regulation, 2009.

121 The essence of which is covered by the Waste Directive.

without delay …" However, the wording of the details coming next also demonstrate the difficulty faced in developing these instruments.

We may refer to the challenge of business and human rights. An open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)[122] provided a proposal for a "Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises"[123] as a good example. The current attempts are based on the OHCHR's 2011 Guiding Principles on Business and Human Rights[124]. It says,

> 13. The responsibility to respect human rights requires that business enterprises:
> (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
> (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Additionally, business enterprises may be required to express their commitment to meeting this responsibility through a policy statement as well as to carry out due diligence in regard to human rights.

The 2021 draft text of the above-mentioned proposal for a legally binding instrument, however, leads us back to the state, as becomes apparent when reading the preamble: "(PP7) Stressing that the primary obligation to respect, protect, fulfill and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory, jurisdiction, or otherwise under their control, and ensure respect for and implementation of international human rights law."

An additional example illustrating this is Responsible Business Conduct (RBC), an alternative term introduced by the OECD in close cooperation with business, trade unions, and non-governmental organizations.[125] The OECD defines RBC as

> (a) making a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and
> (b) avoiding and addressing adverse impacts related to an enterprise's direct and indirect operations, products or services.

However, the obligations are again placed on the state: "Governments adhering to these guidelines have made a legally-binding commitment to set up dedicated

122 UNHCR, 2014.
123 UNHCR, 2022.
124 Guiding Principles on Business and Human Rights, 2011.
125 OECD, 2018.

authorities (so-called National Contact Points) to promote RBC, respond to enquiries, and provide mediation and conciliation platform to help resolve cases of alleged non-observance of the OECD MNE Guidelines (known as 'specific instance')."

There are useful examples dating back to the 1930s of CSR (corporate social responsibility) becoming a social responsibility of company management in the 1950s to facilitate the adoption of decisions that meet the objectives and values of the respective society. Furthermore, the 1964 Civil Rights Act in the USA contains references to management responsibility in a wider context. CSR is a complex issue covering responsible company management from the perspectives of social, ecological, and economical contexts. The primary goal is sustainability, and its regulation is sporadic and fragmented, partly because it is taken as a voluntary action that goes beyond legal compliance.

> Without ethical and responsible behaviour, the legislation is not able to solve the deficiencies of the market. It is a legitimate but not sole purpose of the company to enhance the capital of the owners. At the same time, they take the responsibility to all those stakeholders, who are in touch with the company.[126]

The UN 2000 Global Compact[127] is an enormous sustainability challenge of companies worldwide, requiring them to harmonize their strategies and operations in connection with the major guiding principles related to human rights, labor rights, environmental protection, and anticorruption movement to improve the steps toward societal objectives.

In 2001, the EU Commission published the Green Paper "Promoting a European Framework for Corporate Social Responsibility" (EU Commission 2001)[128] aiming "to launch a wide debate on how the European Union could promote corporate social responsibility at both the European and international level." In the Green Paper, the Commission described the following: "24. There is no unique definition of corporate social responsibility. Most definitions describe it as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Corporate social responsibility provides the foundations of an integrated approach that combines economic, environmental and social interests to their mutual benefit. It opens a way of managing change and of reconciling social development with improved competitiveness."

In 2011, the Commission put forward a new definition of CSR as "the responsibility of enterprises for their impacts on society."[129] It stated that respect for applicable legislation and for collective agreements between social partners is a prerequisite for meeting that responsibility: "To fully meet their corporate social

126 Katona, 2019, p. 45.
127 https://www.unglobalcompact.org/.
128 CSR Green Paper, 2001.
129 CSR Strategy, 2011.

responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

- maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;
- identifying, preventing and mitigating their possible adverse impacts."

According to these principles and guidelines, CSR covers the following items at a minimum: (a) human rights, (b) labor and employment practices (such as training, diversity, gender equality, and employee health and well-being), (c) environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment, and pollution prevention), and (d) combating bribery and corruption.

On February 23, 2022, the European Commission published a proposal for a Directive on corporate sustainability due diligence, the European Union's corporate social responsibility legislation.[130] The objective of EU-level CSR regulation is to promote respect for human rights and the transition toward a carbon-neutral economy. Another objective is to provide a level playing field and legal certainty for businesses operating in the European Union.

Within the EU system, the financial sector has a wide area of regulation, including in connection with sustainability issues. I mention only one example, the regulation related to the investment sector in connection with sustainability,[131] as a follow up to the 2018 Commission Action Plan 'Financing Sustainable Growth', setting up an ambitious and comprehensive strategy on sustainable finance and addressing the problem of greenwashing, among others. This sector has also different prudential requirements,[132] which have been expanded to include sustainable development as well.

Thus, the proposal for a 'legally binding instrument' is also binding for the state and the government. In case of business activities, we rely on either robust state implementation or the self-regulatory attitude of the businesses. As the many EMAS or ecolabel activities – including the parallel ISO standards in the case of environmental management – and the growing number of CSR examples prove, this attitude might also be successful. Nonetheless, it would rely more on the proper ethical conduct of the given business organization than on legally enforceable conditions. Knowing that there are several multinational companies that are economically more powerful than states[133] – in 2018, 157 of top 200 economic entities by revenue were corporations and not countries – it is clear why it is difficult to use similar duties for companies compared with for states.

130 CSR Proposal, 2022.
131 Commission Regulation, 2021.
132 See Prudential Regulation, 2019.
133 See as an example https://www.globaljustice.org.uk/news/69-richest-100-entities-planet-are-corporations-not-governments-figures-show/.

There are emerging new fields combining sustainable development and business activities within the wider scope of governance. This can be presented by a recent report on sustainable development and competition law[134]: "Sustainability and competition law is an emerging topic for competition agencies and other stakeholders, representing an area where there is great potential for further exploration." These attempts may illustrate how the necessity to turn increasingly toward a manifold approach to responsible business conduct is becoming visible and demanding.

Recently, the international legal community has also become increasingly interested in stakeholder engagement. The ILA 2020 Guidance[135] has specific text on this topic – 5.1 Sustainable Resources Management through Transparency and Stakeholder Engagement – including the need for transparency, the development of compliance assessment structures, public information and raising awareness raising, and promoting corporate social responsibility.

There is, however, promising news in connection with the general legal and public requirements concerning business activities. A year ago, a Dutch court adopted a judgment in connection with climate change and the role of a large company, Shell.[136] This is considered a watershed moment in climate litigation, together with other landmark rulings around the world redefining stakeholder responsibility for climate change. The rulings suggest that courts are increasingly viewing climate change as a human rights issue and that judges are willing to require states and even corporations to enact ambitious climate policies. In 2021, courts around the world clarified governments' and companies' climate change duty of care as well as governments' extraterritorial responsibility for climate harm.

In April 2019, seven environmental foundations in the Netherlands – Milieudefensie, Greenpeace, Fossielvrij, Waddenvereniging, Both ENDS, Jongeren Milieu Actief, and ActionAid – and 17,379 individual claimants filed a class-action lawsuit against Shell, claiming that Shell could change its business model to invest more in renewable energy and meet a 45% reduction target by 2030. The court confirmed that NGOs representing Dutch public interests have standing interests (paragraph 4.2.2). It further determined that Royal Dutch Shell (RDS) must reduce emissions by net 45% by 2030 compared with current levels (paragraph 5.3). In addition, it drew this responsibility from the unwritten standard of care, as mentioned in 6:162 Dutch Civil Code, which requires RDS to use caution when drafting Shell Group policies. It claimed that the relevant facts and circumstances of the case, the best available climate science, and broad international consensus on the protective effect of human rights against hazardous climate change were considered.

The court acknowledged that RDS has a policy in place as well as that it is changing and adapting its policy. However, the court also concluded that the policy is vague, with weak wording regarding intent, is non-binding, and has no emission

134 Hungarian Competition Authority, 2021, p. 7.
135 ILA, 2020.
136 Shell Case, 2021.

reduction targets for 2030. Therefore, the current RDS policy does not preclude emission reduction obligations. Moreover, the court asserts the aptitude of the injunctive relief as the current situation indicates imminent violation of the emission reduction obligation.

4.2. Intergenerational equity and possible institutional arrangements

Do we really need institutional arrangements related to the representation of the interests of future generations? If so, what form should they take? There are no exact and uniform answers to these questions. It is decidedly true that neither the environment nor future generations have a voice of their own; both need transmitting. Having some institutions nominated to serve as amplifiers is preferable, but it is far from a necessity. The state – which bears the responsibility of safeguarding both generational equities – might undertake this job with or without exact representation if it is a vital part of the political direction. Moreover, the reverse is also true: any well-structured institutional apparatus may be meaningless if there is no political will. Nonetheless, it is worthwhile to nominate one or more delegates to monitor the progress and to raise a voice if necessary. There are several options, including a council, committee, ombudsperson, or spokesperson, and the capacities should have substantial diversity from a mere message or proclamation to a direct interference as their two extremes. Nothing is settled yet, and there are available examples today.

There may be different possible institutional arrangements mentioned in the 2013 and 2021 papers of the UN Secretary Generals, among others. Many years ago, Weiss also referred to the need for the institutional representation of future generations, and legal and policy scholars analyzed the problem in many respects to clarify the most general features of a proper institutional representation of future generations.[137] In Part III of his 2013 report, the UN Secretary General introduced the existing arrangements and the lessons learned ("39. Canada, Finland, Hungary, Israel, New Zealand, and Wales either have or have had an office that serves to protect the needs of future generations."). He also mentioned the earlier proposal raised during the preparatory process of Rio-20 related to establishing a High Commissioner for Future Generations, which ultimately did not reach the negotiation stage.

Several other proposals have also been provided. Here, I refer only to the World Future Council, a think-tank of several professions with environmental relevance. The Council has formed a Future Justice subcommission and working group dealing extensively with this issue. According to the World Future Council (WFC), the major features of such an institution are long-termism, integration, bringing authority to agreed sustainability goals and holding governments and private actors accountable

137 Among the various papers, a comprehensive one is Szabó, 2015. Additionally, a recent book was published on the same topic: Cordonier Segger-Szabó-Harrington, 2021. We might also mention the website of the Network of Institutions for Future Generations (NIFG), https://futureroundtable.org/web/network-of-institutions-for-future-generations.

for not delivering on them, and connecting citizens with national and even international level decision-making procedures.[138] The WFC issued a leaflet[139] in 2018 on this issue and further broke down the main branches of the responsibilities related to a Guardian:

> The Guardian (a) as an ombudsperson conveys citizen concerns to the legislating units; (b) as an interface creates incentives for integration and prevents policy incoherence; (c) as an advisory body recommends solutions, (d) as an auditing body traces conflicts of interests and road-blocks to implementation.

In the 2021 Our Common Agenda, the current UN Secretary General stated, "I am also making proposals, such as a repurposed Trusteeship Council, a Futures Lab, a Declaration on Future Generations and a United Nations Special Envoy to ensure that policy and budget decisions take into account their impact on future generations." The following provides an explanation: "57. Future generations are, by definition, unrepresented in today's decision-making and unable to articulate their needs. To translate the principle of intergenerational equity into practice, consideration could be given to forums to act on their behalf, as their trustees, as well as instruments to further protect their interests." There are already several existing arrangements: "58. At the national level, some countries have established committees for the future or future generations commissioners who advise governments and public bodies on the effects of present decisions on people in the future. Other States could establish similar mechanisms, building on these good practices."

These existing and proposed institutions certainly have a great deal to accomplish. One specific aspect, which has not been mentioned up to this point, is reflected in the aforementioned decision No. 28/2017 (X. 25.) AB, within which the Constitutional Court, turning to the theoretical structures of the protection of future generations' interests, pointed to a new subject: "[31] On the basis of Par. (1) of Art. P) one might conclude to the autonomous contextual requirements related to state obligations. Par. (1) of Art P) provides a quasi-hypothetical heritage for future generations." This can be considered the source of the specific protective duty of the state [32], in the framework of which the state must take into consideration "the status of heritage of future generations", which also includes objective requirements covering the prohibition of non-retrogression among others. This concept of heritage goes beyond state property and can also be connected to the *public trust doctrine*. Landmark decision No. 14/2020 (VII. 6.) of the Constitutional Court concerning the amendment of the Forest Act proved to be a major success in nature conservation. The Constitutional Court once again recognized and highlighted the importance of preserving biodiversity as a value belonging to the nation's common heritage, and it emphasized the duty of the State to act as a type of public trust and manage

138 https://www.worldfuturecouncil.org/future-justice/.
139 https://www.worldfuturecouncil.org/guarding-our-future/.

the natural and cultural treasures constituting the shared heritage of the nation for future generations as beneficiaries. This common interest cannot be overridden by any current economic interests of the present generations.

5. Concluding remarks

The essence of sustainable development from the very beginning of the universally accepted definition is to focus on intergenerational and intragenerational equity, meaning, in practice, how to integrate the different aspects (as the minimum; in other words, 'weak' sustainability also includes environmental, social, and economic aspects) into one system of long-term decision making. This is reflected in a much more sophisticated and detailed manner within the UN SDGs from 2015, but the core of the question remains the same. We must learn that within sustainable development, the direction or priorities must be clarified, and this clearly points in the direction of an ecologically based and centered type of building, incorporating awareness of the fact that the natural environment (or Creation) is the primary asset of human life and we – current and future generations – are part of the biosphere, cooperators in the work of Creation.

The most difficult task is to specify the legal consequences, in other words, to turn the general dream into a practical answer or a set of practical answers. Many possible elements can be listed; these vary in terms of international consequences, institutional or legal concerns, etc. Some are more characteristic of the problem of sustainable development itself, and some are less specific. Intergenerational equity, namely the interests of future generations, represents a paramount challenge among the many important legal instruments, concepts, and means. It should also be considered together with the human rights perspective, taking future generations as an inclusive part of the environmental rights framework. Even without delving into the details of this human rights discussion, it is evident that the right to the environment should be considered not an individual right but a collective right; the right-bearer – as the Hungarian Constitutional Court stated as early as 1994 – is humanity or the natural environment (or even the created world), and this clearly encompasses future generations as well. Therefore, we should always consider environmental human rights when discussing equity in terms of future generations.

Both sustainable development and the interests of future generations – as two sides of the same coin – have a deep moral background that is more straightforward than the legal content. Moral responsibility to the natural (created) and manmade environment is essentially very simple: not causing harm, considering the consequences of one's behavior, and loving (interestingly enough, this is the final important message of the Meadows couple at the end of the 30s anniversary book of Limits to Growth: "The sustainability revolution will have to be, above all, a collective

transformation that permits the best of human nature, rather than the worst, to be expressed and nurtured"[140]). Several years ago, Saint John Paul II claimed that an ethical crisis lies at the roots of the entire environmental dilemma. In his encyclical as well as later, Pope Francis pointed to the need for an ecological conversion. The Eighth Environmental Action Plan of the EU aims to appear somewhat more pragmatic and emphasizes the need for a green transition. International and national organizations alike are discussing business ethics. It must be remembered that the decisions are made by individuals or groups of individuals, whose personal ethical conduct can also be addressed. When discussing globalization, this should not mean that the individuals, families, and local communities have no role to play; on the contrary, positive ethical conduct is an absolute necessity. Moral background teaches us how to be guardians, how states should act as public trustees, and that every individual decision, every single step, counts. Considering the difficulties of regulating business activities, our ethical dream may be even more valuable. GDP does not reflect true economic output, and the expressions for alternative economic indicators, which should replace it sooner rather than later, are telling word choices: Well-being Index, Gross National Happiness Index, etc.

The required general moral attitude, behavioral changes, and conversion of business operations in the direction of green transition are not self-evident and do not happen overnight. State intervention – long-term policymaking, regulation, setting up the necessary institutions, continuous monitoring, and the use of many indirect methods – is needed. This is the primary, though not the sole, responsibility of the state: to create the playground for other actors – individuals, society, and businesses – to play the game according to the agreed-upon conditions. We may add to this development and safeguarding function the responsibility regarding state property as well as the trustee function for the heritage of the nation or, in a wider context, of mankind. These are managerial functions. When discussing business activities, we must remember the special responsibility of consumers in shaping business attitudes, beginning with the state as one of the largest consumers via its procurement policies and ending with the individual consumer, whose single choices can also have a great impact.

Ecological conversion, green transition, and any other similar catch phrase clearly focus on attitude, the activities of current generations, and the necessity to admit our responsibilities regarding the future. Changing the economic indicators is not a right of the coming generations but a task of the present. Providing access to natural resources equates to setting limits on exploiting them. Imagining what future mankind might require is of no use; rather, an immediate, concrete action is needed. Heritage means that we are leaving assets for the others to come. Mankind is not restricted to the current generations but extended to those that are coming – that is what 'humanity' really means: "Nor is there any doubt in the Book of Genesis,

140 Meadows, Randers, and Meadows, 2005, p. 281.

and elsewhere in the Old Testament, that the responsible guardian in question is all mankind, along with all generations and clans."[141]

If we agree that the best method would be to focus on the responsibilities of the current generations, an expected upcoming problem is how to supervise the implementation of these duties. In addition to providing guidance – on an international level, on a constitutional level, or simply in codes of conduct – is it necessary to look for a supervisor or a guardian? In other words, is it necessary to institutionalize this task? If so, how should this be done? Some countries already have a type of guardian within the state system – a committee, commissioner, ombudsperson, etc. – with a special function of their own or attached to other, similar control functions of a general nature rather than a specific institution. Public participatory rights might also be utilized in this respect. Nonetheless, it is not a crucial problem, as these functions are typically rather symbolic, with no direct actions, and intervention options are attached. These existing institutions function instead as a self-conscience, a spokesperson, sending signs to the decision-makers and the current generations, as their scope of authority is generally not well defined.

Some type of representation or assistance is certainly beneficial, balancing the handicaps of current political, legal, and institutional establishments, which are not designed to properly respond to long-term interests. Numerous interesting ideas may be attached to the concept of future generations, such as long-termism, duties toward unborn people, the idea of responsibility to the natural environment, a precautionary approach, risk assessment, and necessary changes in business indicators. All of these ideas should be channeled into the general structure of governance, but the existing framework is not necessarily receptive.

141 Redemptor hominis, 1979.

Bibliography

Anderies, J. M., Janssen, M. A., Ostrom, E. (2004) 'A Framework to Analyze the Robustness of Social-ecological Systems from an Institutional Perspective', *Ecology and Society*, 9(1), Article 18; https://doi.org/10.5751/ES-00610-090118

Antypas, A. (2012) 'Rio+20: the future we still have to fight for', *Environmental Liability Review,* 20(3), pp. 88–99.

Barral, V. (2012) 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm', *The European Journal of International Law,* 23(2), pp. 377–400; https://doi.org/10.1093/ejil/chs016

Béres, T. (2004) 'Az evangélikus egyház környezetvédelmi nyilatkozatai' ['Environmental declarations of the Evangelist Church'] in Jávor, B., Zlinszky, J., Nacsinák, A. G., Csanády, A. (eds.) *Felelősségünk a teremtett világért – Egyházi dokumentumok az ökológiai válságról [Our responsibility towards the Creation – Churches' Documents on the Ecological Crisis].* Budapest: Védegylet, p. 101.

Beyerlin, U. (2012) 'Sustainable Development', in Max Planck Encyclopedia of Public International Law, Heidelberg: Max Planck Institute for Comparagraphtive Public Law and International Law; IX:716.

Birnie, P. Boyle, A., Redgwell, C. (2009) *International Law and the Environment*. Oxford: Oxford University Press.

Bosselmann, K. (2008) *The Principle of Sustainability (Transforming Law and Governance)*. London: Ashgate; https://doi.org/10.4324/9781315553955

Bosselmann, K. (2017) *The Principle of Sustainability*. London: Routledge; https://doi.org/10.4324/9781315553955

Bulla, M. (2002) 'A fenntartható fejlődés fogalmi világa' ['World of Definitions of Sustainable Development'] in Pálvölgyi, T., Nemes, Cs., Tamás, Zs. (eds.) *Vissza vagy hova – Útkeresés a fenntarthatóság felé Magyarországon [Back or where – pathfinding toward sustainability in Hungary]*. Budapest: Tertia, pp. 105–110.

Carozza, P. G. (2003) 'Subsidiarity as a Structural Principle of International Human Rights Law', *The American Journal of International Law*, 97(1), pp. 38–79; https://doi.org/10.2307/3087103

Cordonier Segger, M.C., Szabó, M., Harrington, A. (2021) *Intergenerational Justice in Sustainable Development Treaty Implementation.* Cambridge: Cambridge University Press; https://doi.org/10.1017/9781108768511

Durán, G. M., Morgera, E. (2012) *Environmental Integration in the EU's External Relations*. Oxford: Hart Publishing.

Essex, B., Koop, S.H.A., Van Leeuwen, C.J. (2020) 'Proposal for a National Blueprint Framework to Monitor Progress on Water-Related Sustainable Development Goals in Europe', *Environmental Management*, 65(1), pp. 1–18; https://doi.org/10.1007/s00267-019-01231-1

Gaba, J. M. (1999) 'Environmental Ethics and Our Moral Relationship to Future Generations: Future Rights and Present Virtue', *Columbia Journal of Environmental Law*, 24(2), pp. 249–288.

Hildering, A. (2004) *International Law, Sustainable Development and Water Management*. Utrecht: Eburon.

Jans, J. H., Vedder, H. H. B. (2012) *European Environmental Law, After Lisbon*. Groningen: Europa Law Publishing.

Katona, K. (2007) 'A vállalati társadalmi felelősségvállalás kritikája a katolikus egyház társadalmi tanításának tükrében' ['Critics of Corporate Social Responsibility in the Light of the Social Teaching of the Catholic Church'], *Iustum Aequum et Salutare,* 2019(4), pp. 23–46.

Kiss, A., Shelton, D. (1999) *International Environmental Law.* Ardseley, New York: Transnational Publishers.

Kiss, A., Shelton, D. (2007) *Guide to International Environmental Law.* Leiden/Boston: Martinus Nijhoff Publishers; https://doi.org/10.1163/ej.9781571053442.1-329

Krämer, L. (2008) 'Sustainable development in EC law', in Bugge, H. C., Voigt, C. (eds.) *Sustainable Development in International and National Law.* Groningen: Europa Law Publishing, pp. 377–398.

Meadows, D., Randers, J., Meadows, D. (2005) Limits to Growth – The 30-Year update. London: Earthscan.

Muzslay, I. (1995) 'Gazdaság és erkölcs' ['Economics and Morals'], Studia *Theologica Budapestinensia, a Pázmány Péter Katolikus Egyetem Hittudományi Karának sorozata 7. eredeti megjelenés [No. 7 of the Series of Publications of the Faculty of Theology of the Pázmány Péter Catholic University]* [Online]. Available at: http://www.ppek.hu/k120.htm (Accessed: 22 August 2022).

O'Brien, K., Pelling, M., Patwardhan, A., Hallegatte, S., Maskrey, A., Oki, T., Oswald-Spring, U., Wilbanks, T., Yanda, P. Z. (2012) 'Toward a sustainable and resilient future' in Field, C. B., Barros, V., Stocker, T. F., Qin, D., Dokken, D. J., Ebi, K. L., Mastrandrea, M. D., Mach, K. J., Plattner, G.-K., Allen, S. K., Tignor, M., Midgley, P. M. (eds.) *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation. A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change (IPCC).* Cambridge: Cambridge University Press, pp. 437–486; https://doi.org/10.1017/CBO9781139177245.011

Ostrom, E. (1999) 'Coping with tragedies of the commons', *Annual Review of Political Science*, 1999(2), pp. 493–535; https://doi.org/10.1146/annurev.polisci.2.1.493

Redclift, M. (2005) 'Sustainable Development (1987–2005): An Oxymoron Comes of Age, Sustainable Development', *Sustainable Development*, 13(4), pp. 212–227; https://doi.org/10.1002/sd.281

Rijswick van, H. F. M. W. (2012) 'The Road to Sustainability: How Environmental Law Can Deal with Complexity and Flexibility', *Utrecht Law Review*, 8(3), pp. 1–6.

Rockström, J., Steffen, W., Noone, K. (2009) 'A safe operating space for humanity', *Nature*, 461, pp. 461–475; https://doi.org/10.1038/461472a

Sands, P. (1994) 'The "Greening" of International Law: Emerging Principles and Rules', *Indiana Journal of Global Legal Studies*, 1(2), pp. 293–323.

Stiglitz, G. J. E. (2020) 'GDP Is the Wrong Tool for Measuring What Matters – It's time to replace gross domestic product with real metrics of well-being and sustainability', *Scientific American* [Online]. Available at: https://www.scientificamerican.com/article/gdp-is-the-wrong-tool-for-measuring-what-matters/ (Accessed: 5 May 2022).

Szabó, M. (2015) 'National institutions for the protection of the interests of future generations' *e-Pública*, 2(2), pp. 6–24.

Thompson, D. F. (2010) 'Representing future generations: political presentism and democratic trusteeship', *Critical Review of International and Political Philosophy*, 13(1), pp. 17–37; https://doi.org/10.1080/13698230903326232

Tladi, D. (2007) *Sustainable Development in International Law: An Analysis of Key Enviro-Economic Instruments.* Pretoria: Pretoria University Law Press.

Toonen, T. (2010) 'Resilience in Public Administration: The Work of Elinor and Vincent Ostrom from a Public Administration Perspective', *Public Administration Review*, 70(2), pp. 193–202; https://doi.org/10.1111/j.1540-6210.2010.02147.x

Tremmel, J. C. (2014) *A Theory of Intergenerational Justice*. Oxford: Routledge.

Weiss, E. B. (1989) *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*. New York: Transnational Publishers, Inc.

Weiss, E. B. (1992) 'In Fairness to Future Generations and Sustainable Development', *American University International Law Review*, 8(1), pp. 19–26.

Zlinszky, J., Hidvéginé Pulay, B., Szigeti-Bonifert, M. (2018) 'Implementation of the Sustainable Development Goals – experience transfer from Central and Eastern European countries to the EU', *Iustum Aequum Salutare*, 14(4), pp. 144–155.

Legal and Other Sources

Aarhus Convention, 1998: The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998.

AB 2017/1: Decision no. 3104/2017. (V. 8.).

AB 2017/2: Decision 28/2017. (X. 25.).

Better Governance, 2012: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Better Governance for the Single Market, Brussels, 8.6.2012 COM(2012) 259 final.

Caritas in Veritate, Encyclical Letter of Benedict XVI on Integral Human Development in Charity and Truth, 2009.

Case C-180/96, United Kingdom vs. Commission, which was also supported by the Council, May 5, 1998, Reports of Cases 1998 I-02265 or First Instance Court.

Case C-50/09. European Commission v Ireland. 3 March 2011, Reports of Cases 2011 I-00873.

Case of Moreno Gómez v. Spain 2004 (Application no. 4143/02) ECHR Judgment Strasbourg 16 November 2004.

Centesimus Annus 1991: Encyclical Letter on the Hundreth Anniversary of Rerum Novarum, John-Paul II, 1991.

Circular Economy, 2015: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Closing the loop – An EU action plan for the Circular Economy, Brussels, 2.12.2015 COM(2015) 614 final.

Commission Regulation 2021: Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms (Text with EEA relevance).

Commission Staff Working Document, Impact Assessment – Accompanying the document Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", SWD(2012) 398 final, Brussels, 29.11.2012.

Compendium, 2004: Pontifical Council for Justice and Peace, Compendium of the Social Doctrine of the Church, 2004.

Council of Europe 12 principles, 2008 [Online]. Available at: https://www.coe.int/en/web/good-governance/12-principles (Accessed: 5 May 2022).

Court of Human Rights: Environment and the European Convention on Human Rights [Online]. Available at: https://www.echr.coe.int/documents/fs_environment_eng.pdf (Accessed: 5 May 2022).

CSR Green Paper, 2001: EU commission: 2001, Green Paper: Promoting a European framework for Corporate Social Responsibility [Online]. Available at: http://europa.eu.int/comm/employment_ social/ soc-dial/csr.htm (Accessed: 5 May 2022).

CSR Proposal 2022: Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final [Online]. Available at: https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex_en (Accessed: 5 May 2022).

CSR Strategy, 2011: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 25.10.2011 COM(2011) 681 final.

Draft Global Pact for the Environment, 2017 [Online]. Available at: https://globalpactenvironment.org/uploads/EN.pdf (Accessed: 5 May 2022).

EC Strategy, 2010: Brussels, 3.3.2010 COM(2010) 2020 final Communication from the Commission Europe 2020, A strategy for smart, sustainable and inclusive growth.

Ecolabel Regulation, 2009: Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (Text with EEA relevance).

EMAS Regulation, 2009: Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC.

Environment Action Programme, 2022: Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030.

European Green Deal, 2019 [Online]. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en (Accessed: 5 May 2022).

Expert Group, 1995: Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development, Geneva, Switzerland, 26-28 September 1995, Prepared by the Division for Sustainable Development for the Commission on Sustainable Development Fourth Session 18 April – 3 May 1996, New York.

Gaudium et Spes, Pastoral Constitution on the Church in the Modern World, – promulgated by His holiness Pope Paul VI, 1965.

Global Pact for the Environment [Online]. Available at: https://globalpactenvironment.org/en/the-pact/origins (Accessed: 5 May 2022).

Good Governance: Definition and Characteristics by UCLG ASPAC | Nov 18, 2021 [Online]. Available at: https://uclg-aspac.org/en/good-governance-definition-and-characteristics/ (Accessed: 5 May 2022).

Guidelines 2010: Council Recommendation of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union (2010/410/EU) OJ, L 191 23.7.2010 p. 0028 – 0034.

Guiding Principles on Business and Human rights, 2011 [Online]. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed: 5 May 2022).

Human Rights Council, 2022, The brand new draft text of the Human Rights Council Forty-ninth session 28 February–25 March 2022 Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. , Text of the third revised draft legally binding instrument with the concrete textual proposals submitted by States during the seventh session, A/HRC/49/65/Add.1.

Hungarian Competition Authority, 2021: Sustainable Development and Competition Law – Survey Report (Special Project for the 2021 ICN Annual Conference) Hungarian Competition Authority.

IAP, 2000: IAP – The Interacademy Partnership – Statement on Transition to Sustainability, The Interacademy Partnership 21 May 2000.

ICJ Judgment 1997: Case concerning the Gabčikovo-Nagymaros Project (Hungary/Slovakia). judgment, I.C.J. Reports 1997.

ILA 2012: Resolution No. 7/2012, Committee on International Law on Sustainable Development, the 75th Conference of the International Law Association held in Sofia, Bulgaria, 26 to 30 August 2012.

ILA 2020: Resolution No. 4 /2020 The Role of International Law in Sustainable Natural Resources Management for Development, The 79th Kyoto Conference of the International Law Association held in Kyoto, Japan, 13th December 2020.

ILA, 2002: International Law Association New Delhi Conference (2002) Legal Aspects of Sustainable Development.

Impact Assessment, 2012: Commission Staff Working Document, Impact Assessment – Accompanying the document Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", SWD(2012) 398 final, Brussels, 29.11.2012.

Industrial Emission Directive, 2010: Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance.

Joint cases, First Instance Court, T-74,76, 83-85,132,137 & 141/00, Artegodan GmbH and others vs. The Commission, November 26, 2002. E.C.R. II-4945.

Laudato Si', 2015 Encyclical Letter of the Holy Father Francis on Care for Our Common Home.

Minors Oposa, Republic of the Philippines Supreme Court Manila, G.R. No. 101083 July 30, 1993 [Online]. Available at: https://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html (Accessed: 5 May 2022).

NFFS, 2012: Az Országgyűlés 18/2013. (III. 28.) OGY határozata a Nemzeti Fenntartható Fejlődés Keretstratégiáról [Parliament Resolution no. 18/2013 (III. 28.) on the National Framework Strategy of Sustainable Development].

OECD 2018: OECD Due Diligence Guidance for Responsible Business Conduct, 2018 [Online]. Available at: https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm (Accessed: 5 May 2022).

OECD Glossray [Online]. Available at: https://stats.oecd.org/glossary/detail.asp?ID=6611 (Accessed: 5 May 2022).

Our Common Agenda 2021: Our Common Agenda, Report of the Secretary-General, 2021.

Our Common Future 1987: A/42/427. Our Common Future: Report of the World Commission on Environment and Development.

Paris Summit, 1972: Meetings of the Heads of State or Government Paris 19-21 October 1972, The First Summit Conference of the Enlarged Community, Bulletin of the European Communities, No. 10, Brussels, p. 15-16 [Online]. Available at: http://aei.pitt.edu/1919/2/paris_1972_communique.pdf (Accessed: 5 May 2022).

Populorum Progressio, 1967: Pope John Paul VI, Populorum progressio, 1967.

Proposal for the 7th EAP: Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", Brussels, 2012.11.29. COM(2012) 710 final, 2012/0337 (COD).

Prudential Regulation 2019: Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014. (Text with EEA relevance).

Recommendation 2010: Council Recommendation of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union (2010/410/EU) OJ, L 191 23.7.2010 p. 0028 – 0034.

RED Directive, 2009: Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC Text with EEA relevance.

Redemptor hominis, 1979: Encyclical letter of Pope John Paul II.

Regulation 2020: Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

Report of the Secretary-General, 2013: Intergenerational solidarity and the needs of future generations, Report of the Secretary-General, Sixty-eighth session Item 19 of the provisional agenda – Sustainable Development, 5 August 2013, A/68/100.

Rerum Novarum 1891: Encyclical letter of Pope Leo XIII Rerum Novarum on Capital and Labor.

Rio Declaration, 1992: Rio Declaration, adopted by the UN Conference on Environment and Development, 3-14 June, 1992, Rio de Janeiro [Online]. Available at: http://www.nfft.hu/dynamic/Rio_Decl_m.pdf (Accessed: 5 May 2022).

SDG 2015: Resolution adopted by the General Assembly On 25 September 2015 [without reference to a Main Committee (A/70/L.1)] 70/1. Transforming our world: the 2030 Agenda for Sustainable Development.

Shell Case 2021: Milieudefensie et al. v. Royal Dutch Shell plc, Court: District court of The Hague, Decided: 26 May 2021 [Online]. Available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339 (Accessed: 5 May 2022).

Sixth Community Environment Action Programme, 2002: Decision No. 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, OJ L 242, 2002. 09. 10.

Solicitudo rei Socialis, 1987: Encyclical letter of Pope John Paul II, Sollicitudo rei Socialis, 1987.

Stockholm 1972, The United Nations Conference on the Human Environment in Stockholm from 5 to 16 June 1972.

Stockholm Resilience Centre's (SRC) contribution to the 2016 Swedish 2030 Agenda HLPF report, Stockholm, February 2017 [Online]. Available at: https://www.stockholmresilience.org/research/research-news/2017-02-28-contributions-to-agenda-2030.html (Accessed: 5 May 2022).

Strategy 2020: Brussels, 3.3.2010 COM(2010) 2020 final Communication from the Commission Europe 2020, A strategy for smart, sustainable and inclusive growth.

Sustainable Development and Competition Law 2021: Sustainable Development and Competition Law – Survey Report (Special Project for the 2021 ICN Annual Conference) Hungarian Competition Authority, 30.09.2021, p. 7.

T-13/99, Pfizer Animal Health SA vs. The Commission (2002), E.C.R. II-3305, September 11, 2001.

T-74,76, 83-85,132,137 & 141/00, Artegodan GmbH and others vs. The Commission, November 26, 2002. E.C.R. II-4945.

The Commission was set up by the Resolution 38/161 of the UN Assembly.

The essence of which is covered by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives. (Text with EEA relevance) These goals are: 1. Eradicate extreme poverty and hunger 2. Achieve universal primary education 3. Promote gender equality and empower women 4. Reduce child mortality 5. Improve maternal health 6. Combat HIV/AIDS, malaria, and other diseases 7. Ensure environmental sustainability 8. Develop a global partnership for development.

Trail Smelter, 1941: Reports of International Arbitral Awards (Trail Smelter Case), Vol. III (1938-1941), 1965.

UNCED conference, 1992: UNCED 3-14 June, 1992. Rio de Janeiro [Online]. Available at: http://www.nfft.hu/dynamic/Rio_Decl_m.pdf (Accessed: 5 May 2022).

UNESCO Declaration, 1997: Declaration on the Responsibilities of the Present Generations Towards Future Generations, 12 November 1997, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 21 October to 12 November 1997 at its 29th session.

UNHCR, 2014: Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights [Online]. Available at: https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc (Accessed: 5 May 2022).

UNHCR, 2018: UN Human Rights Committee General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 2018.10.30.

UNHCR, 2021 48th session of the Human Rights Council: Resolutions, decisions and President's statements, A/HRC/48/L.23/Rev.1 Resolution adopted by the Human Rights Council on 8 October 2021 48/13. The human right to a clean, healthy and sustainable environment.

UNHCR, 2022: Human Rights Council Forty-ninth session 28 February–25 March 2022 Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Text of the third revised draft legally binding instrument with the concrete textual proposals submitted by States during the seventh session, A/HRC/49/65/Add.1.

UNODC and the Sustainable Development Goals [Online]. Available at: https://www.unodc.org/documents/SDGs/UNODC-SDG_brochure_LORES.pdf (Accessed: 5 May 2022).

Venice Declaration 2002: Common Declaration on Environmental Ethics of John Paul II and the Ecumenical Patriarch His Holiness Bartholomew I, Venice, Monday, 10 June 2002.

Waste Directive: Directive 2008/98/EC of the European Parliament and of the Council of 19 november 2008 on waste and repealing certain Directives (Text with EEA relevance).

Weeremantry, 1997: Separate Opinion of Vice-President Weeramantry, Case concerning the Gabčikovo-Nagymaros Project (Hungary/Slovakia). judgment, I.C.J. Reports 1997.

What is resilience? 2015, An introduction to social-ecological research [Online]. Available at: https://www.stockholmresilience.org/research/research-news/2015-02-19-what-is-resilience.html (Accessed: 5 May 2022).
World Charter for Nature, A/RES/37/7 48th Plenary Meeting 28 October 1982 37/7.
World Day of Peace, 1990: Pope John Paul II, Peace with God the Creator, Peace with all of creation, (1990).
World Day of Peace, 1999: Pope John Paul II, Respect for Human Rights: The Secret of True Peace, 1999.
World Day of Peace, 2010: Message of his Holiness Pope Benedict XVI for the Celebration of the World Day of Peace, 1 January 2010.
World Day of Peace, 2020: Message of His Holiness Pope Francis for the Celebration of the 53rd World Day Of Peace, 1 January 2020.

Chapter II

Protection of the Environment in the European Human Rights Framework: A Central European Perspective

Anikó Raisz – Enikő Krajnyák

Introduction

The importance of the protection of the environment is now recognized on a global level, and the challenges that environmental changes pose to humankind are targeted by the instruments of international law, especially the variety of international environmental treaties. Apart from international treaties, however, an even more protective approach could be needed, in order to reverse or slow down certain environmental processes that might cause huge damage to the planet. This research builds upon the argument that the human rights approach could offer a certain solution, or at least, tackle the problem from a different perspective. The European human rights framework has sophisticated tools and mechanisms due to which the interpretation of human rights has been broadened with environmental considerations, and consequently, the European Court of Human Rights has a well-established case law relating to certain "greening" human rights.

Cases from the Central European countries, especially Hungary, Poland and Romania, have significantly contributed to the formulation of the "greening" case law of the Court. Despite this, scientific works and discussions tend to give more attention to landmark cases in which the Court defined the linkages between the given human rights and environmental considerations for the first time, and thus, introduced the environmental perspective to its case law. The present paper does not

Anikó Raisz – Enikő Krajnyák (2022) Protection of the Environment in the European Human Rights Framework: A Central European Perspective. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 73–125. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_3

contest the importance of these cases but aims to draw attention to the constructive findings of the decisions in Central European cases, which, on the one hand, contributed to the deepening the interrelation between human rights and the environment and thus enabled the human rights framework to solidify the absorption of environmental aspects. On the other hand, these cases highlight region-specific environmental problems, which could, at one point, raise the question of forming a common position on such issues, in order to solve cross-border problems in a more comprehensive way. Finally, the study also attempts to outline the current development path of environmental litigation, which poses challenges not only to the process of the "greening" of human rights but also aims to expand the limits of the actually existing human rights framework in general.

1. Context in international environmental law

The relationship between the environment and human rights is by now undeniable; however, the place of human rights law in the development of international environmental law is still debated: in 1972, the United Nations Conference on the Human Environment (Stockholm) declared *"the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being"* and that humans bear the responsibility to protect and improve the environment for present and future generations.[1] Despite the great success in the development of international environmental law and the climate change regime, the United Nations Conference on Environment and Development in 1992 did not use the potential to interpret or further elaborate the human right to environmental quality.[2] Nevertheless, the Rio Declaration established an approach to the interrelation between certain human rights and the environment, namely to use procedural rights to address environmental issues.[3] The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[4] could be regarded as the implementation of this Rio Principle in the European continent.[5]

1 Stockholm Declaration on the Human Environment, 1972, Principle 1.
2 Birnie, Boyle and Redgwell, 2009, p. 271.
3 Rio Declaration on Environment and Development, 1992, Principle 10.
4 See the Aarhus Convention, 1998, Articles 4–9.
5 Although the analysis of the relationship of human rights and the environment in other continents exceeds the limits of this chapter, it is interesting to note that procedural rights in environmental matters are guaranteed by the 2018 Escazú Agreement in Latin America, which also declared the protection of human rights defenders for the first time in the world. See Escazú Agreement, 2018, Article 9.

Human rights as tools to address environmental issues both procedurally and substantively is only one approach to the relationship between human rights and the environment recognized by international law and the legal scholarship.[6] According to another approach, the environment is a precondition to the enjoyment of human rights, implying that its state can affect the realization of particular rights, such as, inter alia, the right to life.[7] The third approach aims to elaborate a new substantive right to a healthy environment. Although the recognition of this right in the international community is not yet settled,[8] it is certainly promising that the UN Human Rights Council recognized the right to a clean, healthy, and sustainable environment in Resolution no. 48/13 on October 8, 2021,[9] and the UN General Assembly adopted a draft resolution on the recognition of the same right on July 26, 2022.[10] Therefore, given that the introduction of the right to a healthy environment on a global level is now being established, we may conclude that at the current stage of human rights law, the first two solutions seem to be dominant in international jurisdictions.

2. Protection of the environment in the European human rights framework

When talking about the environment and human rights in the European continent, the practice of the European Court of Human Rights is inevitably in the center of attention. Although the European Convention (a.k.a. Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter the ECHR)—unlike its (Inter-) American counterpart, which has at least a San Salvador Protocol—has no disposition whatsoever on the environment, it is at least courageous that the European Court of Human Rights (ECtHR) took the initiative to include the environment indirectly in the practice of the ECtHR.[11] In addition to environmental adjudication, the Convention is generally interpreted as a "living instrument" in the hands of the ECtHR, which means that the Court takes into account present-day standards, rather than the intention of the states at the time of drafting the Convention, as an important factor.[12]

6 Boyle, 2012, pp. 617–618; Shelton, 2006, pp. 130–131.
7 OHCHR, 2011, paragraph 7. See also Weeramantry, 1997.
8 Binding international human rights documents of a global scale, such as the UN Charter of the Universal Declaration of Human Rights, do not declare the right to a healthy environment explicitly, although the link between some of their provisions and environmental considerations could be established. The recognition on a regional level seems to be more successful (see the Banjul Charter, 1981, Article 24.; Protocol of San Salvador, 1988, Article 11). The UNHRC and the UNGA Resolutions are welcomed, but it shall be emphasized that they are not of a binding nature.
9 HRC/RES/48/13.
10 A/RES/76/300.
11 For an overview on environmental rights within the frames of the ECHR, see: Kecskés, 2021.
12 Letsas, 2013, p. 107. On the development of the law's interpretation, see Kovács, 2009.

One may argue that the importance of environmental protection in human rights law primarily lies in the well-developed mechanisms and responsiveness to actual challenges that human rights systems can offer for the infringement of environmental law: existing human rights procedures were and are being applied in a wide range of environmental complaints, since at the international level, the enforcement of human rights law is more developed and sophisticated than the procedures of international environmental law.[13] The ECHR has an outstanding mechanism that guarantees, through the Committee of Ministers, the enforcement of the judgments delivered by the ECtHR, apart from the requirement for Contracting Parties to observe the rights and obligations deriving from the Convention.[14] The recognition of the prevalence of environmental aspects in human rights law, therefore, may guarantee the coercivity of these considerations, and environmental aspects may thus form an inevitable part of the interpretation of certain human rights. The human rights approach, however, also has its limits, which are particularly shown by the most recent tendencies of climate change litigation:[15] the victims of environmental damages—especially in the case of climate change—cannot be limited to a group of individuals who launch the action in court but may affect the entirety of humankind. Moreover, the representation of future generations, who will presumably be even more exposed to the impacts of the changing climate, is disputed.[16] Although continuous attempts have been made to enforce their rights,[17] the link between a concrete case and people not yet born may seem to be indirect for some courts; nevertheless, such endeavors are certainly to be hailed. Lastly, the issue of biodiversity shall be mentioned in the context of environmental litigation, as their protection often remains in the background: humans tend to protect the fauna and flora for their short-term usability instead of seeing their inherent value and the

13 Kiss and Shelton, 2007, p. 238. It is also important to note that, so far, there is no independent international environmental judicial forum dealing entirely with environmental legal issues. The forums of environmental jurisdiction are manifold and include courts of arbitration, the International Court of Justice, and universal human rights forums, such as the Human Rights Committee, regional human rights courts, the International Tribunal for the Law of the Sea, the Court of Justice of the EU, the WTO dispute settlement panels, or the International Criminal Court. See Raisz, 2017, pp. 450–452.

14 European Convention on Human Rights, Article 46. See also Guide on Article 46, 2022.

15 For an overview of the recent strategies of climate litigation, see Peel and Markey-Towler, 2021.

16 The importance of respecting the needs of future generations in the context of intergenerational equity has been recognized worldwide; however, the scope of future generations is sometimes ambiguous: it is not clear whether the term applies to our children, their children, and all the people yet to be born, or only to the next generations. Furthermore, already born children unable to defend their rights may also belong to the category of future generations, but it is not explicitly stated in the documents dealing with the issue. See, for instance, the Brundtland Report, 1987.

17 The most high-profile cases include the Minors Oposa case (the Philippines), Juliana v. the US (the United States of America), the Urgenda case (the Netherlands), the Colombian Amazonas case (Colombia), the Neubauer case (Germany), or the Sharma case (Australia). These cases appeared in front of national courts and challenged the domestic regulation related to intergenerational equity.

long-term interdependence of species (including humans).[18] The ECtHR also faces the abovementioned challenges: the issue of climate change, the representation of future generations, intergenerational equity (between living generations), and (indirectly) the protection of biodiversity are all reflected in the cases recently communicated to the Court. Given that the Convention does not enshrine the right to a healthy environment, nor is the environment explicitly linked to any right from the Convention, we may rather speak about the potential "greening" and the reinterpretation of certain existing human rights.[19]

The Convention was adopted in the early 1950s, a few decades before international concern for the protection of the environment emerged; therefore, it is not surprising that the first applications were consequently rejected as being incompatible *ratione materiae* with the Convention.[20] The concern for bad environmental conditions and their interference with the effective enjoyment of rights started to appear in some decisions adopted in the 1980s.[21] Parallelly, the Commission began receiving individual complaints regarding the restrictions of certain rights for safeguarding good environmental conditions.[22] Consequently, the real breakthrough for the "greening" of the Convention came in the 1990s with two major judgments: *Powell and Rayner v. the United Kingdom* and *López Ostra v. Spain*. Although the Court did not find a violation of the rights guaranteed under the Convention by the UK in the first case, the Court examined the question of striking the balance between the country's economic interest and the quality of the applicants' lives. The Court admitted that the right to private and family life was affected by the noise generated by air traffic—given that the homes of the applicants were in the vicinity of Heathrow Airport which serves the economic well-being of the country—but not to that extent that it would exceed the margin of appreciation of the British Government. Although the Court did not hold the violation of human rights, the importance of this decision lies in it raising the question of striking a fair balance between the interests of the individual and of the community as a whole,[23] which became and is still a key issue in the practice of the ECtHR.

More successful was the application of Mrs. López Ostra, who claimed the violation of the right to respect for her home due to heavy industrial pollution. The applicant lived a few meters away from a waste-treatment plant that caused nuisance (smells, noise, and polluting fumes), rendering her private and family life

18 Kiss and Shelton, 2004, pp. 18–20.

19 For further information on the "expansion theory" and the "greening" of rights (i.e., the re-interpretation of human rights in light of the development of environmental law) see Hajjar Leib, 2011, pp. 71–80.

20 See Dr S. v. the Federal Republic of Germany; X and Y v. the Federal Republic of Germany.

21 See Arrondelle v. the United Kingdom; G. and Y. v. Norway; Baggs v. the United Kingdom; Powell and Rayner v. the United Kingdom; Vearncombe and others v. the Federal Republic of Germany.

22 See Hakansson and Sturesson v. Sweden; Fredin v. Sweden; Pine Valley Development Ltd and others v. Ireland; Allan Jacobsson v. Sweden.

23 Powell and Rayner v. the United Kingdom, 41.

impossible. The Court held the Spanish local authorities responsible for the inactivity in mitigating nuisance and examined the abovementioned question of a fair balance between individual and community interests, pronouncing that no balance had been struck between the town's economic well-being and the applicant's enjoyment of her rights.[24] However, the Court found no violation of the prohibition of inhuman or degrading treatment as alleged by the applicant. Considering the two judgments, the main difference in which one application was successful and the other was not lies primarily in the activity of state (or local) authorities: the Court indicated that the British Government had adopted a number of measures to mitigate the consequences of the noise disturbance, while the Spanish authorities had not offered redress for the applicant and had been reluctant to remedy the complaints. Furthermore, in the former case, the Court did not explicitly refer to the environment but did so in the latter one, stating that *"severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health."*[25] The applicant, however, proved that there had been a serious risk for her and her family's health based on medical files presented during the proceedings.[26] Therefore, we may conclude that the earliest examples of "greening" human rights in the ECtHR's practice were related to noise and odor pollution and the possible threat they impose on the right to private life. The outcome, as one could see, is highly dependent on the state's compliance with its obligations under the Convention, and the direct linkage between environmental pollution and its influence on one's well-being and health.

The development of the evolutive interpretation of the Court has led to the reinterpretation of several rights with an added environmental dimension, including the right to life, prohibition of inhuman or degrading treatment, right to liberty and security, right to a fair trial, right to respect for private and family life and home, freedom of expression, freedom of assembly and association, right to an effective remedy, and protection of property. The extensive analysis of the abovementioned nine human rights exceeds the limits of this study; therefore, two of them will be presented in detail: (a) the right to life, which is undoubtedly the most important human right; and (b) the right to respect for private and family life, due to the high number of case law with environmental implications. The interrelation of the environment with the abovementioned other human rights will be presented briefly at the end of the chapter.

24 López Ostra v. Spain, 57–60.
25 López Ostra v. Spain, 51.
26 San José, 2005, pp. 7–15.

3. Right to life (Article 2)

The importance of the right to life—which could be regarded as one of the main human rights in Christian culture—is shown by the fact that it occupies a prominent place in human rights declarations and conventions on both universal and regional levels, and it is usually at the top of the list of human rights.[27]

In the European Convention, the right to life is contained in Article 2, and it leads up the other human rights.[28] According to it, *"the law protects everyone's right to life"*. However, it is immediately elaborated that this right is not absolute as there could be exceptions to the premise that *"no one shall be deprived of his life intentionally."* First, if the intentional deprivation of life takes place *"in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."* This clause has lost its importance in European states as the death penalty was abolished in all Member States of the Council of Europe, the last being in Turkey in 2002. As a matter of fact, it was in the same year that the Thirteenth Additional Protocol on the Abolition of the Death Penalty in All Circumstances opened for signature, which supplemented the Sixth Additional Protocol provided for the abolition of the death penalty only in times of peace, although—being an extremely progressive document of the time—it was already opened for signature in 1983.[29] However, the second group of exceptions is still relevant today as, according to Article 2 (2), the deprivation of life shall not be regarded as inflicted in contravention of the Convention *"when it results from the use of force which is no more than absolutely necessary a) in defence of any person from unlawful violence; b) n order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

In light of the available statistics, the frequency of finding violations of the right to life has significantly increased—not by chance, since the majority of the most problematic states in this regard are not among the original signatories of the European Convention. Between 1998 and 2008, 15 European states were involved, and by far, most of the violations were committed by Russia and Turkey.[30] What is even more worrisome is that the number of direct violations of the right to life in these states is high, and the violation of the right to life is prominent in the proportion of committed violations (more than 16 and almost 10%, respectively). These statistics

27 See the American Declaration of the Rights and Duties of Man (1948), Article I; the Universal Declaration of Human Rights (1948), Article 3; the European Convention on Human Rights (1950), Article 2; the American Convention on Human Rights (1969), Article 4 (here preceded by the right to juridical personality); the Charter of Fundamental Rights of the European Union (2002), Article 2 (here preceded by the right to human dignity); Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995), Article 2; African (Banjul) Charter on Human and People's Rights (1981), Article 4 (preceded by the right to freedom from discrimination and right to equality before the law and equal protection of the law).

28 See Mathieu, 2006.

29 See also Decaux, 2002, pp. 196–214., pp. 199–201.; Ravaud, 2005, pp. 7–26., p. 18.

30 In relation to this, see Riza, 2005, pp. 55–66. and Kaboğlu, 2005, pp. 112–122., p. 121.

could certainly be nuanced with, for instance, the number of the population of the given state, but the aim is not to discuss the sociological aspects. Overall, it can be concluded that violations of the right to life accounted only for 4.67% of the cases.[31]

The violation of the right to life[32] was first held by the ECtHR in the case *McCann and Others v. the United Kingdom* (the so-called Gibraltar case) for shooting three people supposedly preparing for bombings. Although the Court recognized the three victims as terrorists, it pronounced that the violation of Article 2 for the use of force against the suspects was disproportionate to the purpose of defending innocent persons from unlawful violence.[33] Some aspects of the Russo-Chechen war were also evaluated by the Court,[34] which could be supplemented in light of the ongoing war[35] between Russia and Ukraine, although the former will supposedly leave the jurisdiction of the ECtHR in the near future.[36] Other important cases relating to the disproportionate use of force from the side of authorities with possible discriminatory overtones were *Nachova and others v. Bulgaria*[37] and *Ognyanova and Choban v. Bulgaria*.[38] In *Saoud v. France*, the suspect died of asphyxia as a result of a face-down immobilization technique used by the police.[39] On the other hand, the lack of intervention from the police in the father's murder of his children despite several emergency calls also resulted in the violation of the right to life.[40] The violation was not held in *Pretty v. the United Kingdom*, in which the applicant wished to perform euthanasia with the help of her husband and asked for the husband not to be punished for helping her in committing suicide:[41] her request was not supported due to the fact that in the UK—similarly to the majority of European states—suicide is not penalized, but contributing to it is.[42]

31 Overview 1959–2021, p. 6.
32 For further information, see Orentlicher, 1991, pp. 2537–2617., p. 2548.
33 McCann and others v. the UK, 25.
34 See Isayeva and others v. Russia; Kasiyev and Akayeva v. Russia; Katsiyeva and others v. Russia.
35 As of summer 2022.
36 Following the decision of the Council of Europe on March 22, 2022, the Russian Federation ceased to be a Party to the European Convention on September 16, 2022, as confirmed by a Resolution by the Committee of Ministers. Furthermore, the Russian Parliament adopted a law on the withdrawal from the ECtHR on June 7, 2022. See The State Duma adopted laws on non-implementation of the ECHR verdicts [Online]. Available at http://duma.gov.ru/en/news/54515/ (Accessed: September 13, 2022).
37 Nachova and others v. Bulgaria, 162–168.
38 Ognyanova and Choban v. Bulgaria, 148.
39 Saoud v. France, 102.
40 Kontrová v. Slovakia, 52–55.
41 Pretty v. the United Kingdom, 41.
42 In Hungary, only the passive form of euthanasia is recognized (see the Criminal Code). In Europe, the Benelux States and Switzerland recognize certain forms of euthanasia, such as the medically assisted one.

3.1. Right to life and environmental implications

The right to life does not solely concern deaths resulting directly from actions of state authorities, but it also establishes a positive obligation on states to take appropriate steps to safeguard the lives of those within their jurisdiction.[43] In broad terms, this positive obligation has two aspects: (a) the duty to provide a regulatory framework and (b) the obligation to take preventive operational measures.[44] Such obligations under Article 2 have been found by the Court in a wide range of contexts, including healthcare,[45] incidents on vehicles[46] and on road,[47] and dangerous activities, such as nuclear tests and the operation of chemical factories with toxic emissions or waste-collection sites, whether carried out by public authorities or private companies.[48]

3.1.1. Dangerous industrial activities

The most significant case in the Court's practice in relation to dangerous industrial activities was *Öneryildiz v. Turkey*. The applicant's dwelling was built without authorization in the vicinity of a garbage dump in a slum quarter of Istanbul. In April 1993, a methane explosion occurred at the site, as a result of which the refuse erupted from the mountain of waste and engulfed some slum dwellings situated below it, including the applicant's. Thirty-nine people, including some relatives of the applicant, died in the accident. The applicant argued that no measures had been taken to prevent such an explosion as both the city council and the respective ministries had failed to compensate the applicant for pecuniary and non-pecuniary damage. The mayor of the district and one minister—the Minister of the Environment—dismissed the claims, and the other authorities did not even reply. The Court found the violation of Article 2 both from substantive and procedural aspects: firstly, it held that Turkish authorities did not take appropriate steps to prevent the accidental deaths of the applicant's relatives living near the dump. Secondly, there had been a violation on account of the lack of adequate protection by law safeguarding the right to life. The Court emphasized that public access to clear and full information is a basic human right when such dangerous activities are concerned. Furthermore, the Court found a violation of Article 1 of Protocol No. 1 (protection of property) and Article 13 (right to an effective remedy) as regards the substantive head of Article 2 and Article 1 of Protocol No. 1.[49]

43 L.C.B. v. the United Kingdom, 36.
44 Guide on Article 2, 2022, p. 8.
45 See, for instance, Calvelli and Ciglio v. Italy; Vo v. France.
46 See Leray and others v. France; Kalender v. Turkey.
47 See Rajkowska v. Poland; Anna Todorova v. Bulgaria.
48 Öneryildiz v. Turkey, 71.
49 Öneryildiz v. Turkey, 9–10, 37–42, 62, 150–157.

3.1.2. Exposure to nuclear radiation

However, in another landmark case, *L.C.B. v. the United Kingdom* concerning nuclear radiation, the Court did not find a violation of Article 2. The applicant's father—a catering assistant in the Royal Air Force on an island in the Pacific Ocean—was exposed to radiation due to ongoing nuclear tests in the area in the 1950s. The applicant, born in 1966, was diagnosed with leukemia in the early 1970s. The applicant argued that the state had deliberately exposed her father and other servicemen to radiation for experimental purposes but did not provide any information regarding the extent of the exposure to radiation, which would have enabled her to seek treatment at an earlier stage of the illness. As it not had been suggested that the state had intentionally sought to deprive the applicant of her life, the Court assessed the state's obligation to prevent the applicant's life from being avoidably put at risk and held that the link between the exposure of the applicant's father to radiation and the development of the disease in the applicant's infancy is not direct; thus, according to the Court, Article 2 had not been violated.[50]

3.1.3. Natural disasters

Natural disasters, in contrast to dangerous activities, are beyond human control, and as such, they may pose more challenges to the state to comply with the positive obligations' doctrine established by the Court. One of the earliest applications of this kind was found inadmissible: in *Murillo Saldias and others v. Spain*, the applicants were survivors of severe flooding following torrential rain and argued that Spain had not taken all the preventive measures necessary to protect users of the campsite where the disaster had occurred. Having failed to exhaust domestic remedies before lodging their application, the Court found the case inadmissible.[51] In *Viviani and others v. Italy*, the application concerned the risks attached to a potential eruption of the Vesuvius and the measures taken by the authorities to combat those risks. It is interesting to note that the application was not based on a concrete disastrous event but on the potential occurrence of an eruption. The applicants referred to numerous eruptions in the past and scientific evidence that such an eruption in the future is certain; even though its exact moment and intensity were impossible to predict at that moment, its consequences would undoubtedly be catastrophic. Nevertheless, the Court dismissed the application for the reason of not exhausting domestic remedies at the applicants' disposal.[52]

A decision on the merits of a case was delivered in *Budayeva and others v. Russia*, where the Court was asked to evaluate the positive obligation of the state to take appropriate measures to protect the life of its citizens in connection to a

50 L.C.B. v. the United Kingdom, 10–16, 36–41.
51 See Murillo Saldias and others v. Spain.
52 Viviani and others v. Italy, 1–9, 34–55.

mudslide in the town of Tyrnauz. Eight people died in the disaster, and the applicants lost their homes and sustained injuries and psychological trauma. The applicants pointed out that the two tributaries of the Baksan River passing through Tyrnauz were known to be prone to causing mudslides, of which the inhabitants and authorities were generally aware. The authorities failed to prepare the defense infrastructure for the forthcoming hazardous season, and the Court found that the authorities at the time did not seem to implement any alternative land-planning policies in the area, nor did they ensure the functioning of an early warning system. Furthermore, the Court concluded that the question of state responsibility for the accident in Tyrnauz had never been investigated or examined by any judicial or administrative authority, and for these reasons, it found that Article 2 had been violated in its substantive and procedural aspects.[53] Another famous case from Russia is *Kolyadenko and others v. Russia*, concerning a flood in Vladivostok. The Court held the violation of the right to life, the right to respect for private and family life and home, and the protection of property. Although there had been no violation of the right to an effective remedy, the Court dealt with the issue in detail; consequently, it is more suitable to analyze it in connection with the latter right.

The Court may also find a violation of Article 2 solely in its procedural head: this was the case in *Özel and others v. Turkey*, where the applicants' family members had been buried alive under buildings that had collapsed in Çınarcık as a result of a heavy earthquake—one of the deadliest earthquakes ever recorded in the country. The Court recalled that Article 2 requires the state not only to refrain from intentionally causing deaths but also to take appropriate steps to safeguard the lives of those within their jurisdiction. In the case of natural disasters, where the scope of obligations depends on the origin of the threat and the extent to which the risks are susceptible to mitigation, the obligation under Article 2 also applies. The Court thoroughly examined the procedural aspects of the case as there had been numerous domestic proceedings, namely the criminal prosecution of the real estate developers, criminal proceedings against the Mayor and the Head of Technical Services of the Çınarcık Municipality before the earthquake, the prosecution of officials, the application to the Provincial Human Rights Committee and compensation proceedings in the framework of administrative proceedings, as well as civil proceedings against the property developers. The criminal proceedings lasted almost 12 years, with the conviction of only two of the accused; consequently, the Court indicated that the mere passing of time could lead to the detriment of the investigation, fatally jeopardizing its success and inevitably eroding the amount and quality of evidence available. Therefore, the violation of Article 2 in its procedural aspects was held.[54]

53 Budayeva and others v. Russia, 7–38, 147–165.
54 Özel and others v. Turkey, 7–131, 170–179.

3.1.4. Industrial emissions and health

Regarding industrial emissions, the case *Smaltini v. Italy* shall be mentioned, which concerned environmental nuisance caused by the steelwork activity of the Ilva company operating in Taranto, Puglia. The establishment is considered the biggest industrial complex of this type in Europe and has been at the center of polemics for years for its harmful impact on the environment and health. In the given case, however, the applicant failed to prove the causal link between the plant's emissions and the development of her cancer; therefore, the Court found the application inadmissible.[55] The inadmissibility of the application somewhat reminds us of the abovementioned decision in *L.C.B. v. the United Kingdom*, although in this case, the link between the radiation and the development of leukemia was even more distant, as was that with the applicant's father, who had been exposed to the harmful consequences of nuclear tests. In *Smaltini v. Italy*, the applicant herself lived in the plant's vicinity. Nevertheless, it could be concluded from these decisions that the Court does not tend to find the violation of Article 2 in cases where a serious illness has occurred—supposedly, as alleged by the applicants—as a result of harmful human activities as it does not find a direct link between the two events well-founded by the applicants.[56] Furthermore, even though the decision could not be considered a milestone in adjudicating the operation of Ilva, it shall be noted the environmentally harmful activities of the company were challenged in numerous applications[57] in the years following the decision in *Smaltini v. Italy*, as presented in the section dedicated to the right to respect for private and family life and home. Regarding industrial emissions and health, another important—pending[58]—application is *Locascia and others v. Italy,* which concerns a waste disposal plant in the region of Campania. The operation of the waste plant, similarly to the Ilva company, is subject to criticism for environmental nuisance and interference with the right to life and right to respect for private and family life. Given that the Court found the violation of the latter right concerning the waste plant in Campania in *Di Sarno and others v. Italy*, *Locascia and others v. Italy* will also be analyzed in the context of Article 8.

3.1.5. Dumping of toxic waste

When analyzing the case law of the ECtHR, one may conclude that Italy appeared in front of the ECtHR on numerous occasions relating to the management of hazardous human activities: the Ilva steel company in Puglia and the waste plant in Campania are some examples around which individual requests are grouped.

55 Smaltini v. Italy, 4–5, 41–61.

56 For further analysis on the case, see Ferraris, 2016.

57 See Cordella v. Italy, A.A. and others v. Italy, Perelli and others v. Italy, Briganti and others v. Italy, Ardimento and others v. Italy.

58 At the time of writing the chapter.

There is a third "burning" phenomenon—the "Terra dei Fuochi" or the "Land of Fires" in Campania, in the province of Naples, where the biggest illegal waste dump of Europe is situated.[59] The phenomenon is due to the use of formally legal landfills for inappropriate purposes and the existence of illegal landfills, the abandonment of waste, as well as diffuse pollution and the illicit burning of waste, which lead to air pollution, the pollution of drinking water or water used for irrigation, and the exposure of people to harmful materials. The "Terra dei Fuochi" has nearly 3 million inhabitants, which accounts for approximately 52% of the population of the region of Campania.[60] The case *Di Caprio and others v. Italy* was filed by 34 applicants who were victims of different kinds of illnesses, such as cancer, tumor, leukemia, melanoma, and respiratory problems, claiming the violation of Articles 2 and 8. The application is still pending; however, similarly to the applications alleging the violation of human rights by the Ilva company, it may become a precedent for other claims to be brought against the dangerous practices in the "Terra dei Fuochi."

3.1.6. Greenhouse gas emissions

Anthropocenic greenhouse gas emissions are identified as the main drivers of climate change, causing changes to global temperatures, weather patterns, and ecosystems.[61] The development of the climate change legal regime forms a new, currently developing yet crucial part of international environmental law: considering that climate change came to the fore as a political issue only in the 1990s,[62] and its legal foundations were established in the United Framework Convention on Climate Change (UNFCCC) treaty adopted in 1992,[63] attention toward the interrelations between climate change and human rights has recently started growing, certainly boosted by the adoption of the Paris Agreement in 2015 at COP21. Although human rights obligations were mentioned in the context of climate change even before the

59 Euronews, 2015.

60 Di Caprio and others v. Italy, 2–8, Annex I.

61 For an extensive overview of the scientific background of climate change, see IPCC, 2021.

62 The development of the international climate change regime initially took place in the scientific field, recognizing the greenhouse effect and the consequent global warming as a threat to humankind. In the legal field, several conferences were held until the formal treaty-making process started in 1990, when the UN General Assembly established the Intergovernmental Negotiating Committee with the mandate to negotiate a convention on climate change. The UNFCCC was adopted in 1992, being the first international legal instrument to address climate change. Until the adoption of this Convention, international environmental law had little to say about the climate change issue. Further milestones of the development of the climate change regime include the 1997 Kyoto Protocol, the documents of the COP conferences preceding Paris (for instance, the 2009 Copenhagen Accord, the 2010 Cancún Agreements, the 2011 Durban Platform for Enhanced Action), and the 2021 Glasgow Climate Pact. See Bodansky, 2001, pp. 23–24., 31–32; Bodansky, 2016, pp. 291–294.

63 The United Nations Framework Convention on Climate Change, 1992.

adoption of the Paris Agreement,[64] the legally binding nature of this document is what strengthens the justification of the involvement of human rights law in climate change-related issues. The Preamble of the Paris Agreement provides that *"Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity […]"*[65] which draws attention to the Parties' obligations under the treaties they have ratified or may ratify in the future, implying that human rights instruments may be applied when adopting measures to tackle climate change.[66] Furthermore, the prescriptive part of the treaty also makes implicit references to human rights considerations—for instance, responsiveness to vulnerable groups, and environment-related participatory human rights (public awareness, public participation, and public access to information).[67]

Regardless of whether human rights treaties declare an explicit right to a healthy environment or not, human rights courts have developed an extensive interpretation of human rights in a way that considers environmental aspects. Climate change cases, however, have only recently started to appear in front of human rights bodies,[68] and most of these cases are still pending.[69] Therefore, the *locus standi* of climate cases in front of such bodies and the interpretation of climate change in the context of human rights law are questions yet to be answered. Nevertheless, one may see that climate change litigation poses challenges to human rights adjudicators, not only for defining the limits of such an extensive interpretation but also for the fact that such cases confront a systemic problem that will presumably emerge more often in the future. The term "climate change litigation", however, denotes a heterogeneous group of cases that are mostly distinguished by the claimants' intentions. Hence, the first

64 The Cancún Agreements (COP16) emphasize that *"Parties should, in all climate change related actions, fully respect human rights […]"* and refers to Resolution no. 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that *"climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights […]"*. The potential impacts of global warming on certain human rights were elaborated by the UN High Commissioner for Human Rights in Report A/HRC/10/61.

65 Paris Agreement, 2015, Preamble.

66 Savaresi, 2016, p. 25.

67 Paris Agreement, 2015, Article 7(5), 11(2), and 12.

68 From the practice of the human rights treaty bodies, Ioane Teitiota v. New Zeland (UN Human Rights Committee) and Sacchi et al. v. Argentina et al. (UN Committee on the Rights of the Child) shall be highlighted. Although these cases were hailed for the groundbreaking nature of the claims—the first case being related to climate refugees, the second to children's rights—the claim for the protection failed or was found inadmissible. On a domestic level, Milieudefensie et al. v. Royal Dutch Shell plc (the Netherlands), Notre Affaire à Tous, la Fondation pour la Nature et l'Homme (FNH), Oxfam France et Greenpeace France (France), A Sud v. Stato italiano (Italy), and West Virginia v. Environmental Protection Agency (USA) could be regarded as landmark cases.

69 Such pending cases include the Rio Tinto lawsuit (UN Human Rights Committee), Greenpeace Hellas v. the Greek State (Greek Council of State), and the ECtHR cases analyzed below.

category consists of "strategic cases", where the claimants' motives for bringing the claims before a court go beyond the concerns of the individuals and aim at producing systemic impacts on climate regulation. Non-strategic cases, on the other hand, seek to achieve relief for an isolated situation; yet they can still provide opportunities for courts to issue far-reaching judgments.[70]

The ECtHR has also encountered its first climate cases: currently, five applications concerning the human rights impacts of climate change are pending before the Court. One of them, *X. v. Austria*, has not yet been communicated, and it alleges the violation of Article 8 of the Convention; the second one, *Greenpeace Nordic and Others v. Norway*, belongs under a separate category, namely that of petroleum activities. Thus, in this section, the remaining three pending applications, which seek to find the violation of Article 2 resulting from greenhouse gas emissions, will be analyzed.

The first climate change claim before the ECtHR[71]—*Duarte Agostinho and others v. Portugal and others*—fits into the recent tendency of climate change litigation that could be observed in the practice of domestic courts: children, arguing that they will be more exposed to the negative impacts of climate change in the future than older generations, brought a claim before the Court seeking to find guarantees against the increasing interference of global warming with their rights. The argumentation of youth-led cases—including the one discussed—is based on the principle of intergenerational equity,[72] claiming that climate laws unlawfully prioritize present generations over future generations. The applicants' selection is certainly a strategic step[73] that may contribute to the success of climate cases: courts seem to be open to considering children as members of future generations, while they tend to be reluctant to recognize the rights of people not yet born and thus question the legal standing of future generations.[74]

Furthermore, in comparison to other young people's climate cases, where the applicants tended to sue their own countries, the novelty of this case is that the six children brought the claim against 33 countries,[75] including their native country,

70 Setzer and Higham, 2021, pp. 12–13.

71 Lewis, 2021, p. 7.

72 On the principle of intergenerational equity, see Brown Weiss, 2008.

73 Peel and Markey-Towler, 2021, pp. 1487–1488.

74 Donger, 2022, pp. 272–274. Children were considered as part of future generations in the previously mentioned *Neubauer case* or the *Colombian Amazonas case*, while addressing the legal standing of future generations was avoided—for instance, in *Juliana v. the United States*.

75 The application is filed against the following states: Austria, Belgium, Bulgaria, Switzerland, Cyprus, the Czech Republic, Germany, Denmark, Spain, Estonia, Finland, France, the United Kingdom, Greece, Croatia, Hungary, Ireland, Italy, Lithuania, Luxemburg, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Sweden, Turkey, and Ukraine. Given that there are several Central European countries among the respondent states, it is highly possible that the decision will have an impact on these countries as well. It is also worth noting that by the time the Court issues the final decision, the Russian Federation will not be part of the Council of Europe and the ECtHR (Cf. footnote no. 36). See: Duarte Agostinho and others v. Portugal and 32 other States, Annex II.

Portugal. The applicants argue that the 33 respondent states are not respecting their positive obligations undertaken in the Paris Agreement, namely to hold the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels,[76] resulting in the states' failure to comply with their positive obligations under Article 2, Article 8, and Article 14 (prohibition of discrimination) of the Convention. The alleged violation of the prohibition of discrimination is founded upon the abovementioned fact that climate change particularly affects their generation as their perspective of the future is to live in an ever-warming climate during their whole life, which will affect not only them but the generations to come.[77]

The applicants' potential victim status is one of the key issues for the application's success, namely that the claim concerns human rights violations that will take place in the future: even though the applicants have referred to harms related to forest fires in Portugal, the starting point of their argumentation is that such harms will occur in the future due to the inadequacy of the measures taken by high-emitting states.[78] The recognition of potential victimhood in climate cases will be up to the Court's discretion and could open the path for climate litigation in its jurisdiction. In light of Article 34,[79] abstract complaints and *actiones populares* are not allowed before the ECtHR; however, in some specific situations, the Court may accept potential victimhood without a practical interference with the applicant's rights.[80] This reasoning might be acceptable for climate cases owing to the specific nature of its features: the direct effects of climate change are indisputable, and waiting until the harms in question fully manifest—for instance, the irreversible average warming above 2°C or 1.5°C—would lead to disastrous consequences. Therefore, the recognition of the applicants as victims may fall in the category of exceptions under Article 34.

The high number of respondent states further raises the questions of non-exhaustion and extraterritoriality.[81] The applicants did not make use of any domestic remedies, claiming that the exhaustion rule is ill-suited to climate claims, especially when children are concerned. The UN Committee on the Rights of the Child once

76 Paris Agreement, Article 2(a).

77 See Duarte Agostinho and others v. Portugal and 32 other States.

78 Climate litigation cases heavily rely on the facts that: (a) there is a link between man-induced climate change and its negative consequences, and (b) the negative effects of climate change will continue to increase and will lead to more and more severe environmental degradation. However, litigants often neglect there is no scientific certainty about the future effects of climate change. Therefore, scientific uncertainty could be a key obstacle to efficient climate litigation. See: Sulyok, 2021.

79 Article 34 of the ECHR: *"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."*

80 See, for instance, Klauss and others v. Germany, Kennedy v. the United Kingdom, Zakharov v. Russia. See also: Clark, Liston, and Kalpouzos, 2020.

81 See Keller and Heri, 2022, pp. 6–7.

stated that *"children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights";*[82] however, it was the Committee itself who, in *Sacchi et al. v. Argentina et al.,* found the complaint inadmissible for not exhausting domestic remedies.[83] Nevertheless, the Committee acknowledged an exception for the non-exhaustion rule, when domestic remedies have no prospect of success in the light of existing suits in the given state.[84] Similarly to *Sacchi et al.*, the exhaustion issue could be a potential hurdle in the case of Duarte Agostinho as well, although the reasoning according to which the exhaustion of domestic remedies in 33 states would represent an unreasonable impediment to such a time-sensitive issue as climate change may stand its ground. The Court shall, however, take into consideration the consequences of such as step, that is, for instance, the potential encouragement of such (more theoretical) cases. Furthermore, despite the application's inadmissibility, *Sacchi et al.* brought a ground-breaking perspective to the adjudication of such transboundary environmental harms by pronouncing that states have extraterritorial jurisdiction over harms caused by carbon emissions.[85]

Children, however, are not the only vulnerable group particularly affected by the negative impacts of climate change:[86] elderly people, who are on the other margin of the age pyramid, are equally vulnerable. Moreover, climate change further exacerbates gender inequality, which stems from sociocultural and economic factors—poverty, dependence on local natural resources, female illiteracy, and their insufficient representation in the environment—and climate-related decision-making processes.[87] That is the reason why a group of elderly women—an association under Swiss law for the prevention of climate change—with an average age of 73 and four elderly women between 78 and 89 brought a climate claim before the ECtHR in 2020. The claim in *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* shows certain similarities with the claim in *Duarte Agostinho* as the elderly applicants argue that the heatwaves resulting from climate change undermine their living conditions and contribute to the deterioration of their health. They claim that the state did not respect the abovementioned goal set out in the Paris Agreement and thus violated their rights to life, respect for their private and family life, and their right to effective remedies as no effective remedy was available to them for the purpose of submitting their complaints under Article 2 and 8.[88]

82 CRC/GC/2003/5, Article 24.

83 CRC/C/88/D/104/2019, 10.21. For further details on the case, see the case law analysis of the Harvard Law Journal [Online]. Available at https://harvardlawreview.org/2022/05/isacchi-v-argentina/ (Accessed: August 30, 2022).

84 CRC/C/88/D/104/2019, 10.18.

85 CRC/C/88/D/104/2019, 10.5.

86 The adverse human-rights consequences of climate change are likely to have the greatest impact on populations already suffering from human rights violations. Besides children, elderly people, and women, indigenous people and workers in many occupations could be considered more vulnerable than other groups of the society. See: Levy and Patz, 2015, pp. 313–314.

87 Prio and Heinämäki, 2017, pp. 194–196.

88 Verein KlimaSeniorinnen Schweiz and others v. Switzerland, A.

Contrary to the previous case, the non-exhaustion of domestic remedies and extraterritorial jurisdiction may be less problematic in this case. Firstly, because they had exhausted all domestic remedies, the domestic courts dismissed their application on the grounds that they had not been individually and directly affected by climate change and thus could not be regarded as victims. Secondly, even though Switzerland is not the only state responsible for carbon emissions, the question of extraterritoriality is not relevant in this case as the applicants challenge only their native country's failure to comply with the Paris climate goals. From an adjudicating point of view, the question arises of whether it is wise to refer to such an agreement as a point of reference when interpreting human rights—especially in this case—when compliance with the Paris Agreement must be evaluated by the ECtHR.

The applicants' victim status, however, could still be questionable in the light of the ECtHR's approach to potential victimhood.[89] With regards to victims of environmental harm, the reasoning of *Cordella and others v. Italy* shall be noted, where the Court held that 19 out of 180 applicants did not qualify as victims[90] since they were not directly affected by environmental damages. Recalling *Kyrtatos v. Greece*, the Court stressed that the Convention does not ensure the general protection of the environment only when environmental pollution has adversely affected the rights guaranteed by the Convention.[91] In the case at hand, it could reasonably be expected that the Court may recognize the applicants as victims: scientific evidence that these women are more likely to be affected by the heatwaves caused by climate change can differentiate their situation from that of other members of the population.[92] On the other hand, the reason why the claim was found inadmissible on a domestic level was eventually the fact that their victim status was not found grounded by the Swiss courts;[93] nevertheless, *Verein KlimaSeniorinnen Schweiz,* similarly to *Duarte Agostinho*, is a strategic endeavor to challenge the systemic problems of climate change policies. The question of whether a more comprehensive approach (i.e., an application filed against 33 states) or a smaller-scale case challenging the policies of one state (or even both approaches) proves to be more successful remains open.

In the frame of climate change litigation, a third pending application is also worth noting: *Carême v. France*, which also challenges the Member State for taking insufficient measures to prevent global warming. The applicant claims that the action taken by France has been insufficient, including the authorities' failure to take all appropriate measures to meet its own targets for maximum levels of greenhouse gas emissions undertaken in the Paris Agreement, thus violating the applicant's right to life and right to respect for private and family life. The fact that the applicant challenges the state's actions under the Paris Agreement renders the application a strategic climate

89 For a brief overview on the question of admissibility in the mentioned case, see Schmid, 2022.
90 Longo, 2019, p. 339.
91 Kyrtatos v. Greece, 52.; Cordella and others v. Italy, 100.
92 Misasi, 2022.
93 Verein KlimaSeniorinnen Schweiz and others v. Switzerland, A.

case as the litigant aims to produce systemic impacts on the state's climate policy.[94] However, contrary to *Duarte Agostinho* and *Verein KlimaSeniorinnen Schweiz,* the applicant, in this case, does not belong to a group particularly vulnerable to the impacts of climate change, but in his capacity as mayor of the municipality of Grande-Synthe, the applicant represents the whole community, including all age groups and genders living in the territory. Considering the typical problems of climate change litigation presented above, the issue of non-exhaustion does not apply to this case: the claim to the ECtHR was preceded by a domestic proceeding before the French Conseil d'État, which ordered the government to take additional measures by March 31, 2022 to attain the target of a 40% reduction in greenhouse gas emissions by 2030.[95] The question of victimhood, however, is more problematic in this case as well, as the Conseil d'État held that the applicant could not prove his interest in bringing proceedings against the state in relation to climate change but found that the municipality had such an interest for its exposure to the risks stemming from climate change.

In addition to alleging the violation of the right to life, the applicant argues that the Conseil d'État disregarded his right to private and family life. He submits that the state's failure to combat climate change and the violation of his private and family life are directly linked as this failure increases the risk that his home might be affected in the years to come and is already affecting the conditions in which he occupies his property, in particular by not allowing him to plan his life peacefully in that area.[96] As one may conclude from the above, the question of victimhood is one of the most significant issues that can affect the admissibility of climate cases if the Court will adjudicate the issue in light of its established jurisdiction. On the other hand, it could also be expected that the Court starts developing a new approach adaptable only to climate change cases, where the recognition of the (potential) victimhood will be evaluated in a different way. Considering the growing number of climate cases before the ECtHR, this outcome is highly possible—if not in the currently pending cases, then in the cases to be filed in the next years.

3.1.7. Petroleum activities

Climate change litigation often revolves around the states' positive obligations to take appropriate measures to prevent global warming. These positive obligations can manifest in several ways: (a) in the form of the states' failure to adopt adequate climate laws and policies to comply with climate goals undertaken in international treaties, such as the Paris Agreement; or (b) when states engage in overt acts that clearly oppose to the duties of protection.[97] The former is supposed in the abovementioned strategic climate cases of *Duarte Agostinho, Verein KlimaSeniorinnen Schweiz*,

94 See Batros and Khan, 2020.
95 Commune de Grande-Synthe v. France, 7.
96 See Carême v. France (relinquishment).
97 See Duffy and Maxwell, 2020.

and *Carême*, while the applicants of the fourth climate case—*Greenpeace Nordic and others v. Norway*—build their claim upon the latter form of violation of positive obligations to combat climate change: the applicants argue that the state violated their right to life and right to respect for private and family life by granting oil exploration licenses. The domestic court—the Norwegian Supreme Court—refused to annul these licenses, holding that granting licenses was a parliamentary decision that could be overruled only if there had been gross neglect of duties to protect claimants' constitutional rights.[98] Furthermore, the Court argued that the Paris Agreement only requires states to limit emissions on their own territory rather than considering extraterritorial emissions (i.e., the emissions occurring in third states resulting from the oil export from Norway).[99] Interestingly, this was the first time the Norwegian Supreme Court was asked to rule on the remarkably progressive constitutional provision guaranteeing the right to a healthy environment. The right is perceived here as a substantive and procedural right, having an anthropocentric-ecocentric approach, which also focuses on sustainable development and thus on intergenerational equity.[100] However, the Supreme Court only considered the procedural aspect of the provision, and failed to examine the substantive side of the constitutional right, as well as to consider the intergenerational aspect of climate change in the context of rights of future generations.[101]

The application was brought by two organizations (Greenpeace Nordic and Young Friends of the Earth) and six individuals. Disappointed by the decision of the domestic court, they continued their endeavors to hinder further exploration of oil on the Norwegian continental shelf. The issue is particularly relevant these days, not only for the topicality of climate change emphasized by the Paris Agreement but also in the light of the ongoing war in Ukraine.[102] According to the applicants, the government tries to use the war to justify the demand for Norwegian oil, which will consequently

98 People v. Arctic Oil, 142.

99 Greenpeace International, 2022.

100 It is worth citing Article 112 of the Constitution of the Kingdom of Norway that was challenged before the Supreme Court: *"Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well. In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out. The authorities of the state shall take measures for the implementation of these principles."* For a more detailed analysis of this provision, see: Giunta, 2017.

101 Voigt, 2021, 706–707.

102 The response of the EU to the war Ukraine is to accelerate the transition to renewable energy, which fits into the previously adapted EU policies in this field; see, for instance, the EU Green Deal. Norway, although not a Member State, closely cooperates with the EU in climate goals. See Norway and the EU [Online]. Available at https://www.norway.no/en/missions/eu/values-priorities/climate-env/#local-content (Accessed: September 5, 2022). The EU aims to reduce the dependence on fossil fuels imported from Russia by fast forwarding to clean transition and joining forces to achieve a more resilient energy system. See RePower EU Plan. Therefore, the import of Norwegian fossil fuels would be a half-solution for the EU as it would fulfill only one part of the goal set in the RePower EU Plan, but it would not facilitate the transition to renewable energy.

result in increasing greenhouse gas emissions in the upcoming years,[103] thus moving backward from the climate goals undertaken in Paris. Moreover, Norway would particularly be affected by the negative consequences of climate change: being a coastal state, the country is threatened by sea-level rise, one of the most challenging issues in international law. The rise of sea levels worldwide may lead to serious consequences, which can result in rethinking the existing international legal regime and especially international law of the sea, as international law strongly relies on geographical conditions that are generally perceived as stable.[104] Sea-level rise may reshape state territory due to the territorial losses it may cause,[105] and it can also lead to massive disputes between adjacent or opposite states: the delimitation of maritime zones, the role of islands in the construction of baselines and maritime delimitations, or the status of natural and artificial islands may be few examples of the challenges to be solved.[106] It is true, however, that low-lying islands, coasts, and communities—such as the Pacific Islands—are the most likely to be affected by sea-level rise,[107] but due to the continuous rise of sea levels these days, all coastal states—including those of the Arctic—are potential victims.[108] Therefore, Norway could be among the first states to be directly affected by the negative consequences of climate change, which is why it is particularly important for them to respond adequately to the issue.

Of the strategic climate cases pending before the ECtHR, the case of *Greenpeace Nordic* is particularly likely to produce systemic impacts on climate policies for raising the question of how to find the balance between economic interest and environmental protection. The decision of the Court could definitely serve as a precedent for other states either way: in case it holds the violation of the ECHR and obliges the state to focus on complying with the climate targets, it will send the message to other Member States that climate change is above economic interest and that the energy

103 Duffy and Maxwell, 2020.

104 Vidas, 2014, pp. 70–73.

105 In extreme cases, sea level rise may lead to islands becoming uninhabitable, which would have significant implications for the realization of a range of individual and collective human rights, including people's right to self-determination: persons whose land has been rendered uninhabitable, may find themselves in a situation of being citizens of a state that no longer has territory. Given that territory is a fundamental criteria of statehood, in case it would completely disappear due to the effects of climate change, certain people would be victims of "de facto statelessness", for which the current framework of international law does not provide an effective solution. See: Willcox, 2012, pp. 11–12.

106 For an overview of the legal problems sea level rise can cause, see ILC, A/CN.4/74. It is worth noting that the UN Convention on the Law of the Sea does not provide a solution for the phenomenon as it was tailored to the geographical circumstances of its own time, and it could not foresee such substantial changes. In relation to sea level rise and law of the sea, Article 7 of the UNCLOS is often recalled as it refers to "highly unstable" coastlines, of which the interpretation is still not clear—especially, whether coastlines subject to sea level rise could be understood by the term mentioned in the Article. See Andreone, 2017, p. 7.; Vidas, 2014, p. 75.

107 More on the perspective of the Pacific Islands on sea level rise could be found in Freestone and Çiçek, 2021.

108 See, for instance, ILC, A/CN.4/74, p. 12.

demand shall be satisfied from renewable energy sources. On the other hand, there is a possibility that temporarily pressing economic crises may override climate goals that were undertaken prior to the outbreak of such disasters.

4. Right to respect for private and family life

The right to the protection of private and family life[109] or the right to respect for private and family life[110] may not explicitly be declared as a human right in all international human rights treaties; instead, some documents guarantee the rights of the family, including the right to marry and to form a family. Therefore, in international human rights law, the protection of the family could either be considered a human right per se or a state task;[111] nevertheless, the importance of the family as a fundamental group of society is recognized on a high level.[112] However, the right to respect for private and family life may also be intertwined with the right to privacy or the protection from arbitrary interference with privacy, family, home, or correspondence.[113]

In the European Convention on Human Rights, Article 8 declares that *"everyone has the right to respect for his private and family life, his home and his correspondence"* which could be characterized as the sphere of personal or private interest. The Article provides that there shall be no interference by a public authority with the exercise of this right; however, this prohibition is not absolute—exceptions may occur *"in accordance with the law and to the extent that is necessary in a democratic society in interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".* The right guaranteed under Article 8 could be interpreted as a negative obligation for the state, interpreting the right

109 See, for instance, the American Declaration of the Rights and Duties of Man (1948), Article V.

110 The European Convention on Human Rights (1950), Article 8; Charter of Fundamental Rights of the European Union (2002), Article 7; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995), Article 9.

111 See, for instance, the text of the American Convention on Human Rights, Article 17: *"The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. […]"*, or the African (Banjul) Charter on Human and People's Rights (1981), Article 18(2): *"The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community."*

112 See the Universal Declaration of Human Rights (1948) Article 16: *"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State";* and the Banjul Charter (1981), Article 18: *"The family shall be the natural unit and basis of society."*

113 See the Universal Declaration of Human Rights (1948), Article 12; and the American Convention on Human Rights (1969), Article 11.

to respect for private and family life from a liberal perspective, according to which human rights pertain to an area of freedom enjoyed by the individual—an area upon which the state may impinge only in defined circumstances.[114] For instance, the Court found no justification for the interference in the case of the censorship of prisoners' correspondence, when the applicants were prevented from writing to a legal adviser until the inquiry into the matter on which they wanted advice had been completed.[115] On the other hand, "respect" could be perceived as a positive obligation for the state, implying that the state shall take some positive action to ensure the effective enjoyment by individuals of the right guaranteed by Article 8. This approach renders irrelevant the exceptions provided in Article 8(2).[116] In light of the Court's practice, the state shall take some positive measures rather than merely abstain from intrusion; this means, inter alia, that when the state determines certain rules of family law in its domestic legal system, it shall calculate to allow those concerned to lead a normal family life.[117]

In assessing whether the complaint gives rise to a violation of Article 8, the Court applies a two-stage test. Firstly, it shall be determined whether the complaint falls within the scope of application of Article 8, which depends on whether it is possible to conclude that the situation concerns "private life", "family life", "home", or "correspondence" in light of specific circumstances.[118] Although private life is a broad concept without an exhaustive definition within the meaning of Article 8, the Court has provided some guidance as to the meaning and scope of this broad concept. This covers, inter alia, the physical and psychological integrity of a person and, to a certain degree, the right to establish and develop relationships with other human beings. It also may embrace aspects of an individual's physical and social identity, the right to "personal development" or to self-determination, and the right to respect for the decisions both to have and not have a child.[119] Within the scope of physical, psychological, or moral integrity, Article 8 may be applicable in a number of situations, including violence/abuse, reproductive rights, forced medical treatment, health care and treatment, end-of-life issues, disability issues, issues concerning burial, environmental issues, and sexual orientation and sexual life.[120] The Court consistently held that the concept of private life extends to aspects of privacy, data protection, protection of individual reputation, information about one's health, police surveillance, privacy during detention and imprisonment, and so on.[121] In the context of identity, the right to discover one's origins—inter alia, the right to name/identity

114 Connelly, 1986, p. 570.
115 Campbell and Fell v. the United Kingdom, 108–110.
116 Connelly, 1986, p. 572–573.
117 Marckx v. Belgium, 31. See also Forder, 2009.
118 Roagna, 2012, pp. 10–11.
119 Paradiso and Campanelli, 159. Although, in this regard, the decision in Evans v. the United Kingdom may be regarded as doubtful.
120 Guide on Article 8, 2022, pp. 30–44.
121 Guide on Article 8, 2022, pp. 44–60.

documents—the right to ethnic identity, or statelessness and citizenship issues could be highlighted.[122]

The notion of family life is an autonomous concept; therefore, whether or not "family life" exists is rather a question of fact depending upon the de facto existence of close personal ties,[123] such as applicants living together,[124] the length of the relationship, mutual commitment, or having children together.[125] It could be said generally that the sphere of application of family life extends to couples, parents, children, and other family relationships[126]—including, for instance, siblings,[127] aunts/uncles and nieces/nephews,[128] grandparents and grandchildren.[129] Similarly to the notion of family, the notion of home is also an autonomous concept that does not depend on the classification under domestic law.[130] The answer to the question of whether a habitation could be considered a "home" in light of Article 8 rather depends on the factual circumstances, especially the existence of sufficient and continuous links with a specific place.[131] It shall also be noted that the English term "home" may not be regarded as the equivalent French term "domicile", which has a broader connotation: it may extend, for instance, to a professional person's office.[132] Nevertheless, the Court does not limit "home" to traditional residences; it may include caravans and other unfixed abodes,[133] cabins or bungalows stationed on land, regardless of the question of the lawfulness of the occupation under domestic law.[134] Furthermore, it may encompass second homes or holiday homes,[135] partially furnished residential premises,[136] and hotel rooms.[137] However, the Court has established certain limits to the protection of homes guaranteed by Article 8: it does not apply to property on which it is intended to build a house,[138] land used by owners for sports purposes,[139] industrial buildings and facilities used exclusively for professional purposes,[140] or uninhabited or empty buildings.[141]

122 Guide on Article 8, 2022, pp. 60–70.
123 Paradiso and Campanelli, 140.
124 Johnston and others v. Ireland, 56.
125 X, Y, and Z. v. the United Kingdom, 36.
126 Guide on Article 8, 2022, pp. 73–91.
127 Boyle v. the United Kingdom, 41–47.
128 Boughanemi v. France, 35.
129 Marckx v. Belgium, 45; Bronda v. Italy, 51; T.S. and J.J. v. Norway, 23. For more information on the interpretation of "family" under Article 8 of the ECHR, see: Pelloux, 1980, pp. 317–327.
130 Chiragov and Others v. Armenia, 206.
131 Winterstein and others v. France, 141.
132 Niemietz v. Germany, 30.
133 Chapman v. the United Kingdom, 61–74.
134 Winterstein and others v. France, 141. See also: Nadaud and Marguénaud, 2015, pp. 85–88.
135 Demades v. Turkey, 32–34.
136 Halabi v. France, 41–43.
137 National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France, 158.
138 Loizidou v. Turkey, 66.
139 Friend and others v. the United Kingdom, 45.
140 Khamidov v. Russia, 131.
141 Halabi v. France, 41.

Lastly, the scope of the concept of correspondence shall be examined. Generally, the right to respect for correspondence aims to protect the confidentiality of communications in a wide range of situations. The concept covers letters of a private or professional nature,[142] telephone conversations,[143] data from a smartphone,[144] electronic messages, internet use,[145] and data stored on computer servers.[146] Specific issues under the protection of correspondence include prisoners' correspondence, lawyers' correspondence, surveillance of telecommunications in a criminal context, as well as special secret surveillance of citizens or organizations.[147]

After determining whether the complaint falls within the remits of Article 8 (i.e., the situation at stake amounts to private life, family life, home, or correspondence), the second stage is to examine whether there has been an interference with these concepts. In case there has been no interference with the exercise or enjoyment of the right protected under Article 8, the Court further assesses whether the state had a positive obligation to take measures to ensure the fulfillment of its obligations under the Convention. In comparison to the positive obligations under Article 2, the specific nature of Article 8 in this context lies in the Court allowing states a wide margin of appreciation: firstly, the Convention itself provides certain restrictions on the right to private and family life (e.g., necessity in a democratic society). Secondly, the notion of "respect" is not clear-cut, especially the inherent positive obligations; one may conclude that the notion's requirements will vary from case to case. Thirdly, the Court rarely goes so far as to indicate appropriate positive measures for the state—most of the time, it merely declares that there has been a violation of the Article as the state did not strike a fair balance between the interests involved.[148]

4.1. Right to respect for private and family life and environmental implications

In addition to the right to life, environmental issues are the most often interlinked with the right to respect for private and family life, which is also shown by the high number of cases analyzed below. The strong linkage between Articles 2 and 8 was even explicitly recognized by the ECtHR in the abovementioned case of *Budayeva et al v. Russia*, stating that state's positive obligations under the Articles in question *"largely overlap"* in the context of environmental harm;[149] therefore, only those not detailed in the context of Article 2 will be analyzed below.

In the framework of Article 8, the Court examines various situations in relation to the protection of the environment—mainly different kinds of pollution, including

142 Niemietz v. Germany, 32.
143 Margareta and Roger Andersson v. Sweden, 72.
144 Saber v. Norway, 48.
145 Copland v. the United Kingdom, 41–42.
146 Wieser and Bicos Beteiligungen GmbH v. Austria, 45.
147 Guide on Article 8, 2022, pp. 117–139.
148 Akandji-Kombe, 2007, p. 36.
149 Budayeva et al v. Russia, 133.

(but not limited to) noise pollution, emission from vehicles, soil and water contamination, or waste management—as the right to respect for private and family life implies respect for the quality of private life as well as the enjoyment of the amenities of one's home. However, the degradation of the environment violates Article 8 only if the environmental factors directly and seriously affect private and family life or the home.[150]

4.1.1. Dam construction threatening archeological site

The Court defined certain limits to the scope of application of the right to respect for private and family life in relation to the Hasankeyf archeological site in Turkey, which was claimed to be threatened by the planned construction of a dam. The application of *Ahunbay and others v. Turkey* was found inadmissible as being incompatible *ratione materiae* with the Convention: the Court indicated that, according to the knowledge of the time, the Member States had not reached a consensus on the protection of cultural heritage, but the application could rather be falling within the evolving area of the conservation of the cultural heritage and access to it.[151] In light of the above, it could also be concluded that archeological sites could hardly fit in any of the categories falling under the scope of Article 8, namely in private life, family life, home, or correspondence.

4.1.2. Environmental risks and access to information

One of the earliest cases in the practice of the ECtHR where environmental aspects were considered was *Guerra and others v. Italy*. In this case, the applicants complained about the operation of a chemical factory (ENICHEM Agricoltura) producing fertilizers, situated near the town of Manfredonia in the province of Foggia; specifically, they complained about the pollution and poisoning caused by accidents in the factory and the lack of adequate measures from the state, including the authorities' failure to inform the public about potential risks and the procedures to be followed in the event of a major accident. Based on the abovementioned two-stage test to determine whether Article 8 is applicable in the given case, the Court first concluded that the applicants live approximately one kilometer away from the factory, which fits into the scope of "home" protected under the right to private and family life. As for the second stage, the Court assessed the question of infringement of this right: given that the applicants did not complain of an act of the state but of its failure to act, it could be concluded that the state did not comply with its positive obligations required under Article 8. In light of the fact that the factory's malfunctioning had led to serious consequences—for instance, in 1976, owing to an explosion, 150 people were admitted to hospital with acute arsenic poisoning—the

150 Manual on Human Rights and the Environment, pp. 45–46.
151 Ahunbay and others v. Turkey, 19.

Court found a direct link between the damage caused and the operation of the factory.[152] In the context of the state's failure to take positive measures to guarantee the right to respect for private and family life, the applicants alleged that there had also been a violation of their right to freedom of information established in Article 10 of the Convention. However, the Court held that it was not applicable in the given case as Article 10 generally only prohibits a government from interfering with a person's ability to receive information that others wish or may be willing to impart. Therefore, the state's failure to inform the public about the hazards and risks that the factory may cause was interpreted as failure to comply with the positive obligations required from the state to effectively protect citizens' right to respect for private and family life.[153] The relevance of this judgment—apart from the inhabitants' satisfaction—lies exactly in this very clarification of questions falling under Article 8 or Article 10.

4.1.3. Industrial pollution

Issues related to environmental pollution form a significant part of the ECtHR's jurisprudence within the frames of Article 8 and play an important role in extending the interpretation of the Convention from an environmental perspective. The first successful application in which the Court established the foundation of using environmental aspects in its jurisprudence—the abovementioned *López Ostra v. Spain*—was actually related to industrial pollution. Since that decision, the Court has dealt with several similar issues that are considered groundbreaking for the development of the environmental perception within the European human rights framework.

One of the most disputed environmental cases in Central Europe was related to the massive cyanide spill in northern Romania as a result of an industrial accident. The dam released more than 100,000 m^2 of cyanide, and over the course of a few weeks, the polluted water traveled through several countries[154]—Romania, Hungary, and Serbia—and had catastrophic outcomes for the fauna and flora of the river, threatening the region's drinking water supplies.[155] Although numerous (administrative, criminal, and civil) cases have been brought before national courts, this analysis will focus only on the proceeding before the ECtHR. The applicants of the case of *Tătar v. Romania*, father and son, complained that the activities conducted by the company violated their right to life laid down in Article 2 of the Convention. However, the Court considered that the applicants had not succeeded in proving the existence of a causal link between the exposure to cyanide and the aggravation of the applicant's asthma with which he was diagnosed. Instead, the

152 Guerra and others v. Italy, 39–63.
153 Shelton, 2006, pp. 137–138.; See also Born and Haumont, 2011, pp. 1435–1436.
154 UN News, 2010.
155 Danube Watch, 2002.

Court concluded that the existence of a serious and substantial risk to the health and well-being of the applicants could be observed from the perspective of the right to respect for their private and family life.[156] Referring to *López Ostra* and *Guerra*, the Court observed that noise and odor pollution could interfere with a person's private and family life by harming their well-being and that Article 8 could be applied in environmental issues in case the pollution was directly caused by the state or the state's responsibility stemmed from the absence of adequate regulation of private sector activity. Therefore, the Court found a violation of Article 8 as the Romanian authorities had failed to assess the risks that the company's activity entail and to take appropriate measures to protect the rights of those concerned.[157]

The complexity of addressing environmental disasters, such as the one in *Tătar v. Romania*, shows the deficiencies of the currently available legal mechanisms. The several proceedings brought before Hungarian and Romanian domestic courts could only reflect on certain aspects of the disaster but not on the complexity of the issue as a whole. Similarly, the ECtHR could only deal with the human rights aspects of the case: given that the Convention does not enshrine any right to a healthy environment as such (which could have been perfectly applied in the given case) the Court had to evaluate which human right from the Convention is the most suitable to the given situation—the right to life or the right to respect for private and family life. As one could conclude, it may not always be obvious to determine, especially in the case of Articles 2 and 8, under the scope of which human right the given case could fall. Furthermore, even if the Court pronounces the violation of the Convention, it may only find the responsibility of the state. However, in *Tătar v. Romania*, because the company liable for the leak was dissolved without a legal successor, finding the responsibility of the state does not seem to offer a comprehensive solution for the overall problem but rather for individual applicants, and thus, it cannot serve as a retentivity for future (non-state) polluters.[158]

Furthermore, the currently existing mechanisms do not provide effective protection for the damage caused in the fauna and flora, mainly because the protection of the environment in international law is mainly based on the anthropocentric approach, which supports nature conservation due to human comfort, quality of life, and the benefits that a healthy environment could provide for the well-being of humans. On the other hand, the ecocentric perspective supports environmental protection for the intrinsic value of nature, regardless of the economic or lifestyle implications of the conservation.[159] Although the latter approach has also been declared

156 Seminara, 2016, p. 736.

157 Tătar v. Romania, 70–97; 106–107. See also: Nadaud and Marguénaud, 2010, pp. 62–67.

158 On possible state-investor disputes, see, among others, Investor-State Dispute Settlement and Environmental Justice [Online]. Available at: https://ccsi.columbia.edu/content/investor-state-dispute-settlement-and-environmental-justice (Accessed: September 13, 2022).

159 Gagnon Thompson and Barton, 1994, pp. 149–150.

in some international agreements,[160] the effective enforcement of the protection of nature per se still seems to be problematic. The solution to this problem now seems distant, but it illustrates the complexity of environmental disasters well: in light of the above, the current legal mechanisms could provide answers for individual claims but may not tackle all the challenges that such a disaster may cause, including civil, criminal, procedural, and human rights aspects on both the national and international levels as well as the protection of biodiversity and sustainability. On the other hand, considering that the protection of the environment in international law emerged only a few decades ago,[161] it is already a great achievement of the ECtHR that environmental problems could be addressed within the human rights' legal framework through the extensive interpretation of certain human rights.

Another important case from the Central European region is *Apanasewicz v. Poland*, which concerned the construction of concrete works without planning permission on the land adjacent to the applicant's. The operation started immediately, and the factory facilities were expanded gradually. To put an end to the nuisances the operation of the factory caused, the applicant instituted a domestic civil proceeding, as a result of which the court ordered the factory's closure. Given that the factory had not yet been closed at the time of the judgment of the ECtHR, the applicant also complained about the failure to enforce the judgment of the domestic court. Although a major part of the judgment assessed the case in light of Article 6 (right to a fair trial), it also found a violation of Article 8 for the lack of positive measures on the part of the authorities.[162]

Lastly, in the context of industrial pollution, the cases related to the operation of the Ilva steel plant in the region of Puglia in Italy shall be examined. As mentioned above, the Court did not find a violation of the Convention in *Smaltini v. Italy,* but the decision paved the way for the adjudication of other claims arising from the operation of Ilva. *Cordella and others v. Italy* shall be noted for the evaluation of the victim status: the Court, as presented above, found a direct link between the deterioration of their health and the company's environmentally harmful operation in the case of 161 applicants out of 180. The other 19 applicants were not considered victims since they did not live in one of the towns classified as being at high environmental risk, and they could not successfully prove that they were personally affected

160 See, for instance, the UN World Charter for Nature (1982), Preamble: *"Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action"*; and the Brundtland Report (1987), 55: *"[…] the case for the conservation of nature should not rest only with development goals. It is part of our moral obligation to other living beings and future generations."* On the other hand, several international environmental agreements express a strong anthropocentric approach, such as the Stockholm Declaration (1972), Principle 1: *"Man […] bears a solemn responsibility to protect and improve the environment for present and future generations"* and the Rio Declaration (1992), Principle 1: *"Human beings are at the centre of concerns for sustainable development."* See also Washington, Taylor, Kopnina, Cryer and Piccolo, 2017.

161 See above.

162 Apanasewicz v. Poland, 5–6, 60–61, 84–85.

by the situation.[163] Compared to the Court's approach to evaluating the right to life, one may see that proving the causality is less complicated in the context of the right to respect for private and family life, presumably because the distance between the home and the location of the environmentally harmful company already establishes a certain nexus, while it is more difficult to prove that a given harmful practice directly threatened the applicant's life. Based on this affirmation, one could conclude that the abovementioned pending applications of *Duarte Agostinho, Verein KlimaSeniorinnen Schweiz, Carême,* and *Greenpeace Nordic* may be evaluated on the basis of Article 8, rather than Article 2.

The environmentally harmful operation of the Ilva company was challenged by four pending applications: in *A.A. and others v. Italy*, the applicants (altogether 207) are current or former employees of the company, most of them residents of towns considered to be at high environmental risk.[164] Similarly, the applicants of *Perelli and others v. Italy* and *Ardimento and others v. Italy* are or were employed by Ilva, and some of them claim that their illnesses resulted from the factory's toxic emissions.[165] In the fourth application, *Briganti and others v. Italy*, the applicants argue that (a) their working conditions constitute inhuman or degrading treatment, considering the harmful emissions that the applicants were exposed to during their work; (b) their right to respect for their private life was violated, taking into account the findings of *Cordella and others v. Italy;* and (c) they did not have effective remedies at their disposal, as required by Article 13 of the Convention.[166] The outcome of these applications is yet to be seen; however, given that the argumentation of the cases significantly relies on those of *Cordella*, their success could reasonably be expected. The high number of applications and applicants in these cases shows the severity of industrial pollution not only in the province of Taranto but also generally, and it also points to the fact that such activities shall be monitored more thoroughly as the number of potential victims is undoubtedly high.

4.1.4. Noise pollution

The adjudication of issues related to noise pollution within the frames of Article 8 was laid down by *Hatton and others v. the United Kingdom*. Similarly to *Powell and Rayner* mentioned above, the applicants of the case argued that the noise generated by Heathrow Airport violated their rights under the Convention. Although 10 years had passed between the delivery of the two judgments, the Court found no violation of Article 8 in any of the cases, holding that the state did not overstep its margin of appreciation by failing to strike a fair balance between the rights of the individuals

163 Cordella and others v. Italy, 100–110. See also Ceddia, Graziano, Mezzi, Pasanisi and Ramellini, 2020, pp. 10–14.
164 A.A. and others, 1–5, Annex.
165 Perelli and others, 1–8.; Ardimento and others v. Italy, 1–4.
166 Briganti and others v. Italy, 1–3.

and the conflicting interests of others and of the community as a whole.[167] However, the Court held that there had been a breach of Article 13 (right to an effective remedy). In the context of aircraft noise, one could conclude that the Court does not tend to accept the applicants' argumentation, but rather, that it tends to pronounce no violation of Article 8 and decides in favor of the state's public and economic interest.[168]

Finding the violation of the right to private and family life in the matter of noise pollution, therefore, depends on the competing interest: in cases of nightclubs and computer clubs, for instance, the Court pronounced the breach of Article 8. In *Moreno Gómez v. Spain*, the applicant complained of noise and of being disturbed at night by nightclubs near her home. Although the local City Council of Valencia adopted legislative measures to mitigate the noise pollution, they did not prove to be enough not to violate the rights of people living in the area.[169] The judgment had a significant impact on the European legislation: after the adoption of the decision in *Moreno Gómez*, the EU issued the Directive 2006/12/EC on waste, which regulates pollution causing *"nuisance through noise or odours"*.[170] More than 10 years after the Moreno Gómez judgment, a very similar case, *Cuenca Zarzoso v. Spain*, was brought before the Court by an applicant living in the same acoustically saturated zone in the city of Valencia. The Court concluded that these applications do not concern interference by public authorities with the right to respect for the home but their failure to take action to put a stop to third-party breaches.[171] Based on similar reasonings, the Court found a breach of Article 8 in *Mileva and others v. Bulgaria* for the noise and nuisance caused by the running of a computer club in the building where the applicants lived, especially considering that the club was operating without the necessary license and the explicit prohibition of the use of the flat for this purpose.[172] On the other hand, in *Chiş v. Romania*, the Court did not consider the arguments of the applicant well established to find the violation of the right to respect for private and family life; thus, it found the application inadmissible. The Court noted that the minimum threshold of seriousness required to engage Article 8 is inherently relative, and it depends on the set of data of the cause, notably the intensity and the duration of the nuisance, their physical and mental effects, as well as the fact of knowing whether the damage caused was comparable to that linked to the environmental risks inherent to living in any modern city. Based on the research conducted by the competent municipal department and by a private laboratory, the Court found that the noise level did not significantly affect the quality of life of the building's inhabitants.[173]

167 Hatton and others v. the United Kingdom, 119.
168 See also Flamenbaum and others v. France.
169 Moreno Gómez v. Spain, 9–10, 61–63.
170 Directive 2006/12/EC, Article 4(1)(b).
171 Cuenca Zarzoso v. Spain, 44–54; Climent Gallart, 2018, pp 533–534.
172 Mileva and others v. Bulgaria, 99–102.
173 Chiş v. Romania, 31–32.

The case of *Deés v. Hungary* serves as a typical example for noise pollution caused by road traffic. The heavy traffic in the applicant's street rendered his home almost inhabitable due to the unbearable noise and odor pollution. For instance, the applicant observed damage to the walls of his house, which, according to an expert, was caused by the vibrations resulting from the heavy traffic in the neighborhood. The government argued that they had complied with the requirements of positive obligations under Article 8 by several measures, including a speed limit at night, traffic lights to improve traffic safety, or a prohibition of access for vehicles over 6 tons. The Court, however, considered the fact that the measures taken by the authorities had not been properly enforced and had proved insufficient; thus, the road traffic hindered the enjoyment of his home. It shall be noted that, according to the Court, noise pressure significantly above statutory levels, neglected by state measures, may as such constitute a violation of Article 8,[174] while the claim may not be well founded when the noise levels do not reach the high threshold established by domestic law.[175] Furthermore, the Court found a violation of Article 6 of the Convention as the domestic procedures in the case lasted for 6 years and 9 months, which is contrary to the right to a fair trial within a reasonable time.[176]

The case could be considered important for several reasons; firstly, it was the first environment-related application in the jurisdiction of the ECtHR concerning Hungary. Secondly, the case significantly differs from the abovementioned ones in the sense that the Court found the violation of Article 8 not for the lack of positive measures by the state but by the inadequacy and inefficacity of the measures taken. Thirdly, the case could be compared to claims related to aircraft noise, such as *Powell and Rayner* and *Hatton*, as they all concern some kind of nuisance related to traffic; however, in contrary to cases of air traffic, *Deés v. Hungary* was successful. The probable reason for this lies in whether the problems are related to concrete establishments (such as the Heathrow Airport) or to a cross-country network of traffic roads, as in the given case.[177]

Regarding heavy traffic noise, a parallel could be drawn between Deés and another case concerning the same country, *Bor v. Hungary*. Firstly, the applicant alleged the violation of Article 8 for extreme noise disturbance caused by rail traffic near his home. The government argued that the state had taken positive measures to protect people's right to respect for the home: a clear sanction system was introduced, which aimed at prohibiting the railway company from making excessive noise emission by obliging it to bear the costs of installing soundproof doors and windows, and the remaining noise should have been tolerated by the applicant as his house was situated by a railway station, the activity of which served both public and private interests. Nevertheless, the Court noted that the remaining noise was still significantly above

174 Cf. Oluić v. Croatia.
175 Cf. Fägerskiöld v. Sweden.
176 Deés v. Hungary, 7, 18–27.
177 Fodor, 2011, pp. 90–93.

statutory levels, to which the state has not responded with appropriate measures. Considering that the applicant brought the first proceeding on the national level in 1991 and that the first noise-reduction measures were only implemented in 2010, the Court found that the length of the domestic proceedings had been excessive and failed to meet the requirement of a reasonable time, thus violating Article 6 of the Convention.[178]

The two judgments in connection with Hungary draw attention to two severe problems: (a) the length of the proceedings in general; and (b) the marginality of environmental aspects in the implementation of the laws. However, it would be unjust not to mention that the Hungarian framework for environmental protection significantly improved since the decisions were delivered: for instance, in 2011, due to the adoption of the new Constitution (the Fundamental Law), the constitutional frames of the protection of the environment were fundamentally broadened; in 2012, the institution of the Deputy Commissioner for Future Generations was established, continuing the preceding works.

Regarding road traffic noise, a relatively new case from Poland could also be mentioned: in *Kapa and others v. Poland*, the facts of the case were relatively similar to those of *Deés v. Hungary*. The applicants complained about the rerouting of traffic during the construction of a motorway, which had the effect of exposing them to severe nuisance—noise (exceeding domestic and international norms), vibrations, and exhaust fumes. The government submitted that the residents of the area had been regularly informed about the mitigation measures and had been free to lodge complaints and applications in respect of the motorway's operation. The Court concluded that the adverse effects of the pollution emitted by the heavy traffic that affected the applicants' homes had attained the necessary minimum level to bring the applicants' claims within the scope of Article 8.[179]

Lastly, it shall also be noted that although most cases in relation to noise pollution arise from heavy traffic in the vicinity of the applicants' homes, industrial activities may also cause an unbearable nuisance to the inhabitants of the area; however, in the cases brought before the ECtHR, the Court did not find that such noise would establish the violation of the right to respect for private and family life. In *Borysiewicz v. Poland*, the applicant complained about the noise emanating from a tailoring workshop located in an adjacent building; however, as the Court observed, the noise levels complained of were not serious enough to reach the high threshold established in former cases. The applicant also failed to prove that her health had been negatively affected by the noise, and thus, the claim was declared inadmissible,[180] but the Court held the violation of Article 6 for the length of the domestic proceedings.[181] Furthermore, *Martinez Martinez and María*

178 Bor v. Hungary, 22–23, 29–31.
179 Kapa and others v. Poland, 148–152, 153–155, 174–175.
180 Borysiewicz v. Poland, 5, 47–56.
181 Cf. Leon and Agnieszka Kania v. Poland, 82–84, 93–104.

Pino Manzano v. Spain concerned a couple living in the vicinity of an active stone quarry who complained of psychological disorders caused by the noise from the quarry. Despite finding that the noise and pollution levels were equal to or slightly above the norm and considering that the industrial zone where the applicants lived was not meant for residential use, the Court found no violation of Article 8 of the Convention.[182]

Considering the above-presented judgments relating to noise pollution, one may conclude that the most successful applications, in terms of the violation of Article 8 being well founded, concern claims arising from heavy road traffic. While in relation to air traffic and aircraft noise, the Court tends to emphasize the importance of striking a fair balance between public (economic) and private interests, adjudicating in favor of the former, in cases of road and railway traffic, arguments of the latter seem to be preponderant. As indicated above, this could be due to the expansivity of the road or railway systems, in contrary to which airports are concrete establishments in a given location that play an important role in the countries' economies. Furthermore, the reasonings of these judgments suggest that the violation of Article 8 could be established in the event of a lack of positive measures required from the state but also in case of the inadequacy and inefficiency of the measures taken.

In addition to nuisance arising from either air, road, or railway traffic, the Court found that unbearable noises connected to nightlife established a violation of Article 8. The noise levels, however, must reach a certain threshold to fall under the scope of the protection of private and family life. In connection to industrial noise pollution, it may seem more difficult to prove the direct relationship between the effects caused and the operation of an industrial establishment. Nevertheless, the protection of the environment and the implicit right to a healthy environment under Article 8 may not extend to applicants residing in a non-residential industrial area. Additionally, it could be observed that the noise-related case law of the ECtHR is strongly intertwined with Article 6—the right to a fair trial—particularly for exceeding the reasonable timeframe.

4.1.5. Waste collection, management, treatment, and disposal

Concerning Italy, two significant cases were analyzed in the present chapter in various contexts: the harmful emissions of the Ilva company in Puglia and the hazardous phenomenon of the "Terra dei Fuochi" in Campania. Regarding the Ilva company, a major, expectedly precedent-setting judgment, *Cordella v. Italy*, was delivered under the scope of Article 8, and there are currently four other pending applications on the basis of the same merits. In connection to the "Terra dei Fuochi" the abovementioned pending case of *Di Caprio and others v. Italy* is expected to be equally influential as *Cordella*. In addition to these issues, Italy

182 Martinez Martinez and María Pino Manzano v. Spain, 4, 48–51.

faces severe problems with waste management, which was also challenged before the ECtHR.

The first related case, *Di Sarno v. Italy*, concerned a state of emergency lasting for some 15 years in relation to waste collection, treatment, and disposal in the region of Campania, where the applicants lived or worked. This period included 5 months during which the garbage piled up in the streets. In addition to domestic criminal investigations, the European Commission brought an action for non-compliance against Italy. Concerning environmental hazard, the Court of Justice of the EU found the violation of the abovementioned Directive 2006/12 as the accumulation of such large quantities of waste along public roads had given rise to a *"risk to water, air or soil, and to plants or animals"* and had caused *"a nuisance through noise or odours"* within the meaning of Article 4(1)(b) of the Directive. Before the ECtHR, the applicants alleged the violation of Article 8 and Article 13 (right to an effective remedy) of the Convention. Given that they could not prove the existence of a causal link between exposure to waste and an increased risk of developing pathologies, the Court considered that the case did not concern direct interference with the applicants' right to respect for their homes and private life; however, it found the violation of Article 8 in the state's failure to provide adequate measures to ensure the proper functioning of waste management, especially considering the fact that the acute phase of the crisis had lasted for several months. In addition, the Court also found the violation of Article 13, in so far as the complaint related to the effective remedies in the domestic legal system was concerned.[183]

Furthermore, another (although) pending case concerning waste management in the region of Campania shall be mentioned. The applicants of *Locascia and others v. Italy* complained about the danger to their health and the interference with their private life and home caused by the operation of the "Lo Uttaro" waste disposal plant. The plan to reopen the establishment emerged during the waste crisis, which was challenged in the case of *Di Sarno* to manage the disastrous waste situation in Campania. After closing the operation of the "Lo Uttaro" plant in the early 90s, several scientific studies investigated the possible health effects of the waste cycle in Campania, pointing out, inter alia, that the cancer mortality rate in the area was significantly higher than in the rest of the region.[184] Considering the case law of the ECtHR on waste management—especially the findings of Di Sarno—and the scientific evidence in the given case, it is reasonable to expect the violation of Article 8 in the given case as well, for the non-compatibility of the state with the positive measures required to protect the right to respect for private and family life.

183 Di Sarno and others v. Italy, 6–9, 52–56, 104–113.
184 See: Locascia and others v. Italy.

5. The interpretation of further human rights from an environmental perspective

As mentioned above, although the European Convention on Human Rights does not include a specific provision on the right to a safe, clean, and healthy environment, it has progressively developed an environmental dimension to the Convention. Given the extensive case law of the right to life and the right to respect for private and family life, the present chapter focuses on their environmental implications; however, the interpretation of certain other human rights included in the Convention shall also be briefly presented. Thus, the next section will be dedicated to the analysis of the "green" interpretation of these human rights in the practice of the ECtHR.

5.1. Prohibition of inhuman or degrading treatment (Article 3)

Article 3 of the ECHR declares that *"no one shall be subjected to torture or to inhuman or degrading treatment or punishment"*. According to the Court's practice, the distinction between these notions derives principally from a difference in the intensity of the suffering inflicted. Furthermore, treatment is considered "degrading" when it humiliates or debases an individual, showing a lack of respect for—or diminishing—their human dignity. The Court tends to find a violation of this article if the purpose of the treatment was to humiliate or debase the victim. The interrelation between the prohibition of inhuman treatment and environmental protection was shown in *Florea v. Romania* and *Elefteriadis v. Romania*, both cases linked with tobacco control. The applications concerned severely ill applicants serving a sentence in a cell with smokers, despite the doctors' advice and the law in force. The Court thus found a breach of Article 3 for the reason that the conditions of detention to which the applicants had been subjected had exceeded the threshold of severity required.[185] In such cases, several factors shall be considered, including the health condition of the persons exposed to smoke, the duration of the exposure to some, whether the person exposed was a smoker, whether the authorities had adopted any measures to address such exposure, and others.[186]

5.2. Right to liberty and security (Article 5)

Under Article 5, the Convention provides a person's right to liberty and security, of which no one shall be deprived with the exception of a few cases related to their lawful arrest or detention. The right also incorporates (a) one's right to be informed promptly, in a language that they understand, of the reasons of their arrest and of any charge against them; (b) the right to be brought promptly before a judge; (c) the right to trial

185 See Florea v. Romania; Elefteriadis v. Romania.
186 Tsampi, 2022, pp. 62–63.

or to be released pending trial; (d) the right to have lawfulness of detention speedily examined by a Court; and (e) the right to compensation for unlawful detention.[187]

Regarding the interrelation between the right to liberty and security and the environment, *Mangouras v. Spain* is particularly worth mentioning. The case concerned an oil leak in the Atlantic Ocean near the Spanish exclusive economic zone off the coast of Galicia. The spillage of the ship's cargo caused an ecological disaster, including the coloration of beaches and cliffs black, the destruction of the marine fauna and flora, damage to protected natural areas, and repercussions on several sectors of the economy, such as fishing, commerce, and tourism. A criminal investigation was opened, and the applicant—the former captain of the ship—was remanded in custody with the possibility to be released on a bail of 3 million euros. After a detention of 83 days, the applicant was released and granted provisional release as his bail was paid by the shipowner's insurance. Nevertheless, the applicant complained that the amount of bail had been excessively high and had been fixed without regard for his personal situation (e.g., his status as an employee, his nationality and place of permanent residence, his lack of ties in Spain, and his age). The Court found no violation of the right to liberty and security for the amount of bail to be paid for the damage, considering the severity of the environmental disaster caused by the spill. The Court indicated that such huge environmental pollution had seldom been seen in the area and that the tendency to use criminal law as a means of enforcing environmental obligations could be observed in European but also in international law.[188] In this regard, the Court found that the amount of loss imputed on the applicant could also justify the amount set for bail; this argument certainly proves that environmental aspects were duly taken into account in the given case.

5.3. Right to a fair trial (Article 6)

The right to a fair trial is guaranteed by Article 6 of the Convention. According to the text of the provision, *"in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"*. The case law of the Court on this Article is extensive; therefore, it is divided into civil and procedural limbs due to the extensive scope of the right to a fair trial. Both limbs encompass (a) the right of access to a court; (b) institutional requirements of a tribunal, including establishment by law, independence, and impartiality; (c) procedural requirements, such as fairness, public hearing, and a reasonable-time requirement. The criminal limb of the right establishes further specific guarantees, namely the presumption of innocence and the rights of the defense.[189]

187 See Guide on Article 5, 2022, pp. 33–53.

188 Mangouras v. Spain, 13–17, 88–93. On the prevalence of environmental interests over human rights requirements in the Mangouras case, see: Raisz and Seres, 2015.

189 See Guide on Article 6 (civil limb), 2022, and Guide on Article 6 (criminal limb).

Through the right to a fair trial, the ECtHR provides robust support for the right to access to justice in environmental matters guaranteed by the Aarhus Convention. Thus, contrary to the other human rights presented above—the right to life, the right to respect for private and family life, the prohibition of inhuman or degrading treatment, and the right to liberty and security—for whose realization the environment serves as a precondition, the right to a fair trial belongs to the procedural human rights through which environmental issues could be addressed. As presented above, the Court has adjudicated in several environmental matters where a violation of the right to a fair trial arose: in *Apanasewicz v. Poland*, the Court found the violation of Article 6 for the lack of diligence on the part of the authorities and the lack of effective judicial protection; in *Deés v. Hungary*, *Bor v. Hungary* and *Borysiewicz v. Poland*, the Court found a breach of the right to a fair trial on account of the length of the proceedings, that is, exceeding the limits set by the reasonable-time criteria. In addition to the violation of procedural requirements under Article 6, violations of the right to access to a court have also emerged in relation to the environment: for instance, in *L'Érablière A.S.B.L. v. Belgium*, the applicant—a non-profit association campaigning for the protection of the environment—complained against the granting of planning permission to expand a waste-collection site, which was refused by the Conseil d'État on procedural grounds. The Court held a violation of Article 6, given that the imposed limitation had been disproportionate to the requirements of legal certainty and proper administration of justice.[190]

5.4. Freedom of expression and freedom to receive and impart information (Article 10)

Freedom of expression, according to the Court, *"constitutes one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man"*.[191] The Convention declares that the right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers and that the exercise of these freedoms may be subject to certain formalities, conditions, restrictions, or penalties. Similarly to the right to a fair trial, freedom of expression could also be considered a procedural right through which people have the right to access to information on environmental matters.

As one could see above, numerous applicants argued that the state or state authorities had failed to provide them with relevant and appropriate information about the state of the environment and the potential risks they had faced;[192] however, those mentioned above are not typical examples of the interrelation of freedom of expression and environmental issues. As such, a recent decision of the Court could

190 L'Érablière A.S.B.L. v. Belgium, 39–44.
191 Handyside v. the United Kingdom, 49.
192 See above: Guerra and others v. Italy.

be mentioned—*Bumbeș v. Romania*, in which the applicant, who was a well-known activist, had to face sanctions for taking part in a protest against proposed gold- and silver-mining activity in the Roșia Montană area, a landscape registered on the UNESCO's world heritage list. The applicant indicated that the protestors had intended to raise awareness with the action and that the protest had been very short and had not led to the destruction of public property. Given that the situation was clearly interrelated with the freedom of assembly, the Court interpreted freedom of expression in this light and declared the violation of both rights, finding that the interference with the applicant's rights had not been necessary and proportionate.[193] Furthermore, a pending application before the ECtHR—*Bryan and others v. Russia*, which concerns Greenpeace activists and two freelance journalists protesting against oil production in the Arctic[194]—alleged the violation of the obligation to respect human rights (Article 1), the right to liberty and security (Article 5), and Article 10 (freedom of expression). Considering also the arguments of the above-presented case of *Greenpeace Nordic and others v. Norway*, it could be concluded that oil production in the Arctic is a topical issue these days, not only for environmentally critical activities but also for the pressure on the countries of the Arctic circle other than the Russian Federation, that is, the dilemma of striking the balance between the economic interest and combating climate change.

In light of the case law related to the environmental aspects of the right to a fair trial and freedom of expression, one may see that the ECtHR provides a high-level forum for the enforcement of procedural environmental rights. Although no direct legal connection exists between the ECHR and the Aarhus Convention,[195] nor do the two conventions reflect similar environmental objectives,[196] the fact that both conventions allow for the protection of the environment through procedural human rights raises the need for a schematic comparison of the two approaches. Firstly, contrary to the ECHR, the compliance mechanism of the Aarhus Convention does not provide a judicial body, and thus, the three procedural rights guaranteed by it could not be as effectively enforced as the rights enshrined in the ECHR. The Aarhus

193 Bumbeș v. Romania, 5–6, 86–102.

194 See Bryan and others v. Russia.

195 The ECHR does not mention the Aarhus Convention as a relevant and applicable *lex specialis* on matters concerning environmental protection, nor does the Aarhus Convention refer to the rights guaranteed by the ECHR or the case law of the ECtHR on procedural human rights. See Peters, 2018.

196 See, for instance, the following excerpt from the Preamble of the Aarhus Convention: *"Affirming the need to protect, preserve, and improve the state of the environment and to ensure sustainable and environmentally sound development, […] Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself, […] Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations […]."* Cf. excerpts from the Preamble of the ECHR: *"Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend […]."*

Convention Compliance Committee is a non-confrontational, non-judicial body of a consultative nature,[197] and therefore, it is not entitled to issue binding decisions. Although the protection of environmental interests is a secondary aspect in the jurisprudence of the ECtHR (considering that environmental protection per se is not guaranteed in the Court's practice), as those depend on the primary interest of ensuring effective protection of the individual rights enshrined in the Convention, the Court still seems to provide the best solution within the currently available mechanisms in Europe.

5.5. Freedom of assembly and association (Article 11)

Given that participatory rights also form part of procedural environmental rights, the environmental implications of freedom of assembly in the Court's practice are also worth examining. Article 11 of the Convention declares that everyone has a right to freedom of peaceful assembly and to freedom of association with others and that the restrictions placed on the exercise of these rights shall be prescribed by law and be necessary in a democratic society. Apart from *Bumbeș v. Romania*, concerning an environmental protest, the interference with freedom of association arose in connection with the refusal of the registration of an environmental association in *Costel Popa v. Romania*. The association's objectives were, inter alia, to promote the principles of sustainable development at the public policy level in Romania by increasing expertise in the development of sustainable public policies; improve the process of the development of sustainable public policies by facilitating public participation in and access to relevant information about the environment; raising citizens' awareness; informing people of matters of public concern; raising the awareness of the community and of public authorities about the need to protect the environment; and organizing meetings between citizens and representatives of public authorities. The Court held that no pressing social need would have justified the refusal to register the association, and observed that such a refusal by the authorities amounted to an interference with the freedom of association.[198]

5.6. Right to an effective remedy (Article 13)

Article 13 of the Convention guarantees the right to an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. At first glance, one could notice a linkage between this right and the right to a fair trial, which was also crystallized by the

197 The Aarhus Convention, Article 15: *"The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention."*

198 Costel Popa v. Romania, 7, 45–46.

Court's jurisprudence: according to this, the right to a fair trial is *lex specialis* in relation to the right to an effective remedy.[199] In many cases where the Court has found a violation of Article 6, it did not rule separately on a complaint about Article 13. The violation of Article 13 arose in the above-presented *Hatton and others v. the United Kingdom*, in which, although the substantive complaint was rejected, the right to an effective remedy was held. The Court indicated that the domestic law concepts of the time did not allow consideration of the claimed increase in night flights represented a justifiable limitation on Article 8 of the Convention.[200]

5.7. Protection of property (Article 1 of Protocol No. 1 of the Convention)

Lastly, the environmental aspects of Article 1 of Protocol No. 1 of the ECHR could be highlighted. The Article ensures that *"every natural or legal person is entitled to the peaceful enjoyment of his possessions"*. Deprivation of one's possessions is only allowed in the public interest and under the conditions provided for by law and by the general principles of international law. Although the Protocol refers to the "enjoyment of possessions", according to the Court, Article 1 is in substance guaranteeing the right of property. In this scope, negative effects caused by environmental nuisances could indirectly amount to interference with the protection of property; however, in practice, these are not likely to be considered interference unless the property declines in value.[201] Thus, the protection of the enjoyment of possessions is rather interpreted from an economic—and thus restrictive—perspective.[202] Furthermore, the protection of the environment may constitute a legitimate aim of general interest that may justify interference with property rights. Such aspects of environmental protection are, inter alia, town and country planning, the protection of natural sites, the management of forests, or the alleviation of water pollution and sanitary problems.[203]

The above-presented human rights could be interpreted from an aspect that serves the protection of the environment; for instance, a healthy environment serves as a precondition for the enjoyment of substantive rights, such as the right to life or the right to respect for private and family life, and procedural rights, notably the right to a fair trial and the right to an effective remedy, which could be used as a tool for environmental protection. Contrary to these two approaches, the protection of property is interrelated with environmental protection from a different point of view: the protection of the environment, in this case, may pose a restriction to the enjoyment of one's possessions.[204] This affirmation manifests in the Court's practice in the non-violation of Article 1 of the Protocol, that is, finding the protection of the

199 Guide on Article 13, 2022, p. 41.
200 Hatton and others v. the United Kingdom, 141.
201 Desgagné, 1995, pp. 277–278.
202 Weber, 1991, cited in Desgagné, 1995, p. 277.
203 Desgagné, 1995, p. 282.
204 Déjeant-Pons, 1994, pp. 398–408.

environment as a legitimate reason for the interference with the property. This was phrased by the Court in the case of *Hamer v. Belgium* as follows: *"in today's society the protection of the environment is an increasingly important consideration"* and *"even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the state has legislated in this regard"*.[205] Such an approach prevailed, for instance, in a case with Central European implications, *Yaşar v. Romania*. The case concerned the confiscation of a vessel for being illegally used for fishing in the Black Sea. The Court held that there had been no violation of the protection of property: the aim of preventing offenses relating to illegal fishing could have been considered legitimate as such activities pose a serious threat to the biological resources in the area.[206]

6. Concluding remarks

Although no consensus has been reached in international law about the recognition of the right to a clean, healthy, and sustainable environment, human rights law certainly provides a sophisticated platform for the protection of the environment. Human rights bodies have developed numerous ways through which an environmental perspective could prevail in their jurisprudence in the absence of an explicit right to a healthy environment: firstly, the environment could be perceived as a precondition for the enjoyment of certain substantive rights, and thus, its degradation could lead to the violation of such rights; secondly, procedural rights could be used for addressing environmental issues; and thirdly, the protection of the environment could be considered a public interest, and as such, justify the interference with some rights.

The current European human rights framework does not provide a substantive right to a healthy environment; however, the ECtHR developed an extensive interpretation of several human rights, which could be seen from the fact that the reasoning of its judgments, in some cases, may rely on environmental considerations. The interdependence of a healthy environment and the enjoyment of human rights could be best observed in the case law of Article 2 (the right to life) and Article 8 (the right to respect for private and family life). However, environmental aspects were also considered in adjudicating Article 3 (the prohibition of inhuman or degrading treatment), Article 5 (the right to liberty and security), and Article 10 (the freedom of expression). Procedural rights guaranteed by Article 6 (the right to a fair trial) and Article 13 (the right to an effective remedy) were, in numerous cases, used as a tool for strengthening environment-related activities. Lastly, the protection of the

205 Hamer v. Belgium, 79.
206 Yaşar v. Romania, 59.

environment may constitute a legitimate aim for interference with Article 1 of Protocol No. 1 of the Convention (the protection of property).

Regarding the right to life, although the Court has a well-established practice of adjudicating dangerous activities, toxic industrial emissions, and natural disasters, the recent wave of so-called climate litigation cases—which emerged primarily before domestic courts—has also reached the Court. A common characteristic of these strategic applications is that they aim to produce a systemic solution for addressing climate change by broadening the limits of the ECtHR. Considering the facts of the cases, however, several problems may arise that could hinder the successful outcome of the applications: the issues of non-exhaustion, extraterritoriality, potential victimhood, and non-compliance with an agreement outside of the scope of the (European) human rights framework will definitely challenge the Court's margin of appreciation and its willingness to push its boundaries further. Although Central European countries are scarcely represented in the environment-related case law of the right to life, it does not necessarily mean that such problems do not exist in the region. Climate change, for instance, is one of the topical examples of cross-border environmental problems, and it could be expected that the outcome of such cases will have an impact on this region as well—either directly or indirectly. A direct impact could be produced especially by *Duarte Agostinho*, where most countries examined in this volume appear as respondent states. On the other hand, a judgment in other climate litigation cases could pave the way for future climate actions: in case of a positive outcome (i.e., if the Court finds a breach of the Convention for not respecting the goals set in the Paris Agreement), the judgments could call for a more involving state approach to address climate change, while inadmissibility or non-violation could discourage the states from focusing on climate goals and also individuals from standing up for the issue.

Furthermore, the environmental implications of the right to life and the right to respect for private and family life may overlap: as one could conclude from the above, the ECtHR has dealt with several cases where both rights were alleged to have been violated, and determining under the scope of which right the given case fell was a question at the Court's discretion. The importance of the interrelation of the right to respect for private and family life and the protection of the environment is also shown by the fact that the first "green" cases of the Court, which established the evolutive interpretation of the Convention, invoked this right. One could say that cases relating to industrial pollution and noise pollution—including neighboring noise and traffic noise—constitute the core of the environmental case law of the right to private life. Apart from groundbreaking decisions, such as *López Ostra, Cordella and others, Moreno Gómez* and *Di Sarno*, which laid down the fundamentals of the adjudication of environmental aspects of the right to private life, one may come across several cases from the Central European region in various contexts. The cases of *Deés*, *Bor*, and *Kapa and others* significantly contributed to the interpretation and evaluation of the positive obligation of states to guarantee individuals' right to

respect for the home and private life, and the case of *Tătar* points to the deficiencies of the human rights approach to environmental protection.

Given that the enforceability of international environmental law seems problematic—for instance, there is no independent international tribunal for environmental law—the fact that there is a certain flexibility in the human rights framework that allows the inclusion of environmental considerations in the jurisprudence is certainly a great progress for environmental law. However, the human rights approach also has its limits: the question of liability of non-state actors, the protection of biodiversity, the scope of victims compared to the actual applicants, and the choice of right(s) under which the given case might fall are among the most serious challenges to tackle for human rights adjudicating bodies. As for the scope of human rights, a further question may also arise, that is, whether the introduction of a substantive right to a clean, healthy, and sustainable environment would really be necessary. It could be admitted that such a step would be a milestone in the development of international environmental law as it would undoubtedly extend the scope of environmental protection (considering that now the Convention does not guarantee the protection of the environment per se, only if its degradation results in the interference with other human rights); however, would it solve other problems of the human rights approach, such as the question of accountability? Is or is not the current system susceptible to adjudicate systemic problems, such as climate change, loss of biodiversity, or sea-level rise? These are the questions to be decided in the near future.

Bibliography

Abraham, A. (2002) 'Tisza accidents trigger long-term action', *Danube Watch*, 2002/1 [Online]. Available at: http://www.icpdr.org/icpdr/static/dw2002_1/dw0102p06.htm (Accessed: 8 September 2022).

Akandji-Kombe, J. F. (2007) *Positive obligations under the European Convention on Human Rights.* Strasbourg: Council of Europe Publishing.

Batros, B., Khan, T. (2020) 'Thinking strategically about climate litigation', *OpenGlobalRights;* https://doi.org/10.2139/ssrn.3564313 [Online]. Available at: https://www.openglobalrights.org/thinking-strategically-about-climate-litigation/ (Accessed: 4 September 2022).

Birnie, P., Boyle, A., Redgwell, C. (2009) *International Law & the Environment.* Oxford: Oxford University Press.

Bodansky, D. (2001) 'The History of the Global Climate Change Regime', in Luterbacher, U., Detlef, F. S. (eds.) *International Relations and Global Climate Change.* Massachusetts: Massachusetts Institute of Technology, pp. 23–40.

Bodansky, D. (2016) 'The Paris Climate Change Agreement: A New Hope?', *The American Journal of International Law*, 110(2), pp. 288–319; https://doi.org/10.5305/amerjintelaw.110.2.0288

Born, C. H., Haumont, F. (2011) 'Le droit à la protection d'un environnement sain' in Verdussen, M., Bonbled, N. (eds.) *Les droits constitutionnels en Belgique – Les enseignements jurisprudentiels de la Cour constitutionnelle, du Conseil d'Etat et de la Cour de cassation*. Brussels: Bruylant, pp. 1415–1471.

Boyle, A. (2012) 'Human Rights and the Environment: Where Next?', *The European Journal of International Law*, 23(3), pp. 613–642; https://doi.org/10.1093/ejil/chs054

Brown Weiss, E. (2008) 'Climate Change, Intergenerational Equity, and International Law', *Vermont Journal of Environmental Law*, 2008/9, pp. 615–627; https://doi.org/10.2307/vermjenvilaw.9.3.615

Ceddia, A., Graziano, B., Mezzi, M., Pasanisi, F., Ramellini, R. (2020) 'Ambiente e Diritti Umani nei Ricorsi CEDU – NN. 54414/2013 – 54264/2015.', *Rivista Giuridica Ambiente-Diritto.it,* 20(3), pp. 1–34.

Clark, P., Liston, G., Kalpouzos, I. (2020) 'Climate change and the European Court of Human Rights: The Portuguese Youth Case', *EJIL:Talk!, Blog of the European Journal of International Law* [Online]. Available at: https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-portuguese-youth-case/ (Accessed: 30 August 2020).

Climent Gallart, J. A. (2018) 'El TEDH y la contaminación acústica: comentario a la STEDH sobre el caso Cuenca Zarzoso c. España', *Actualidad Jurídica Iberoamericana*, 2018/9, pp. 526–535.

Connelly, A.M. (1986) 'Problems of Interpretation of Article 8 of the European Convention on Human Rights', *The International and Comparative Law Quarterly*, 35(3), pp. 567–593; https://doi.org/10.1093/iclqaj/35.3.567

Decaux, E. (2002) 'La peine de mort, nouvel enjeu des relations internationales', *Annuaire français de relations internationales*, 2002/3, pp. 196–214.

Déjeant-Pons, M. (1994) 'Le droit de l'homme à l'environnement, droit fondamental au niveau européen dans le cadre du Conseil de l'Europe et la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales', *Revue Juridique de l'Environnement*, 1994/4, pp. 373–419; https://doi.org/10.3406/rjenv.1994.3107 .

Desgagné, R. (1995) 'Integrating Environmental Values into the European Convention on Human Rights', *The American Journal of International Law*, 89(2), pp. 263–294; https://doi.org/10.2307/2204204

Donger, E. (2022) 'Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization', *Transnational Environmental Law*, 11(2), pp. 263–289; https://doi.org/10.1017/S2047102522000218

Duffy, H., Maxwell, L. (2020) 'People v Arctic Oil before Supreme Court of Norway – What's at stake for human rights protection in the climate crisis?', *EJIL: Talk!, Blog of the European Journal of International Law* [Online]. Available at: https://www.ejiltalk.org/people-v-arctic-oil-before-supreme-court-of-norway-whats-at-stake-for-human-rights-protection-in-the-climate-crisis/ (Accessed: 4 September 2022).

Ferraris, L. (2016) 'Smaltini v. Italy: A Missed Opportunity to Sanction Ilva's Polluting Activity Within the ECHR System', *Journal for European Environmental & Planning Law*, 13(1), pp. 82–98; https://doi.org/10.1163/18760104-01301006

Fodor, L. (2011), 'Az emberi jogok európai Bíróságának ítélete a zajterhelés csökkentésére tett intézkedésekről és a bírósági eljárás időtartamáról' ['The Judgment of the European Court of Human Rights on the Measures Taken for Reducing Noise Pollution and the Duration of the Court Proceedings'], *Jogesetek Magyarázata*, 2(3), pp. 86–92.

Freestone, D., Çiçek, D. (2021) *Legal Dimensions of Sea Level Rise: Pacific Perspectives*. Washington: World Bank Group; https://doi.org/10.1596/35881 .

Gagnon Thompson, S., Barton, M. A. (1994) 'Ecocentric and Anthropocentric Attitudes Toward the Environment', *Journal of Environmental Psychology*, 14(2), pp. 149–157; https://doi.org/10.1016/S0272-4944(05)80168-9 .

Giunta, A. (2017) 'Can an Ecocentric Approach Open New Frontiers for a Legally Binding International Environmental Right? A Study of Norway's Environmental Constitutional Right', in United Nations Environment Programme (UN Environment) *New Frontiers in Environmental Constitutionalism*. Nairobi: UNEP, pp. 62–78.

Hajjar Leib, L. (2011) *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives*. Leiden/Boston: Martinus Nijhoff Publishers; https://doi.org/10.1163/ej.9789004188648.i-182 .

Kaboğlu, I.Ö. (2005) 'L'évolution des droits de l'homme et la démocratie en Turquie depuis un demi-siècle', *Bulletin des Droits de l'Homme*, No. 11/12. Luxembourg: Institut Luxembourgoise des Droits de l'Homme, pp. 112–122.

Kecskés, G. (2021) A környezeti jogok értelmezése az Emberi Jogok Európai Egyezményébe foglalt jogok körében, *Acta Humana*, 9(2), pp. 207–220; https://doi.org/10.32566/ah.2021.2.9

Keller, H., Heri, C. (2022) 'The Future is Now: Climate Cases Before the ECtHR', *Nordic Journal of Human Rights*, vol(issue),40(1), pp. 1-22; https://doi.org/10.1080/18918131.2022.20640

Kiss, A., Shelton, D. (2004) *International Environmental Law*. New York: Transnational Publishers, Inc.

Kiss, A., Shelton, D. (2007) *Guide to International Environmental Law*. Leiden/Boston: Martinus Nijhoff Publishers; https://doi.org/10.1163/ej.9781571053442.1-329

Levy, B.S., Patz, J.A. (2015) 'Climate Change, Human Rights, and Social Justice', *Annals of Global Health*, 81(3), pp. 310–322; http://doi.org/10.1016/j.aogh.2015.08.008

Lewis, B. (2021) 'The Potential of International Rights-based Climate Litigation to Advance Human Rights Law and Climate Justice', *Griffith Journal of Law & Human Dignity*, 9(1), pp. 2–27.

Longo, A. (2019) 'Cordella et al. v. Italy: Industrial Emissions and Italian Omissions under Scrutiny', *European Papers*, 4(1), pp. 337–343; https://doi.org/10.15166/2499-8249/290

Mathieu, B. (2006) *The Right to Life.* Strasbourg: Council of Europe Publishing.

Misasi, A. (2022) 'The First Climate Case Before the European Court of Human Rights'*, Peace and Humanity* [Online]. Available at: https://peacehumanity.org/2022/07/23/the-first-climate-case-before-the-european-court-of-human-rights/ (Accessed: 31 August 2022).

Nadaud, S., Marguénaud, J.P. (2010) 'Chronique des arrêts de la CEDH 2008-2009. Arrêts Tatar, Fägerskiöld, Borysiewicz et Boudaïeva', *Revue Juridique de l'Environnement*, 2010/1, pp. 61–74 ; https://doi.org/10.3406/rjenv.2010.5375

Nadaud, S., Marguénaud, J.P. (2015) 'Chronique des arrêts de la Cour européenne des droits de l'Homme 2013-2014', *Revue Juridique de l'Environnement*, 2015/1, pp. 84–99; https://doi.org/10.3406/rjenv.2015.6485

Peel, J., Markley-Towler, R. (2021) 'Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases', *German Law Journal*, 22(8), pp. 1484–1498; https://doi.org/10.1017/glj.2021.83

Pelloux, R. (1980) 'Les arrêts rendus par la Cour européenne des droits de l'homme en 1979', *Annuaire français de droit international*, 1980/26, pp. 311–327; https://doi.org/10.3406/afdi.1980.2393

Peters, B. (2018) 'Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention', *Journal of Environmental Law, 30(1), pp. 1–27;* https://doi.org/10.1093/jel/eqx023

Prio, T. L., Heinämäki, L. (2017) 'The Rights and Role of Indigenous Women in Climate Change Regime', *Arctic Review on Law and Politics*, 2017/8, pp. 193–221; https://doi.org/10.23865/arctic.v8.901

Raisz, A. (2017) 'Az önálló nemzetközi környezetjogi bíráskodás létjogosultságáról' ['On the Justification of an Independent International Environmental Jurisdiction'], *Miskolci Jogi Szemle*, 12(2), Special Issue, pp. 449–455.

Raisz, A., Seres, E.L. (2015) 'When Environmental Protection Meets Human Rights – In the Wake of the Prestige', in Szabó, M., Láncos, P.L., Varga, R. (eds.) *Hungarian Yearbook of International Law and European Law,* Vol. 3, pp. 139–149; https://doi.org/10.5553/HYIEL/266627012015003001006

Ravaud, C. (2005) 'L'abolition de la peine de mort et la jurisprudence de la Cour européenne des droits de l'homme', *Bulletin des Droits de l'Homme*, No. 11/12, Luxembourg: Institut Luxembourgoise des Droits de l'Homme, pp. 7–26.

Riza, T. (2005) 'Right to life (art. 2 of ECHR)', *Bulletin des Droits de l'Homme*, No. 11/12. Luxembourg: Institut Luxembourgoise des Droits de l'Homme, pp. 55–66.

Roagna, I. (2012) *Protecting the right to respect for private and family life under the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing.

San José, D.G. (2005) *Environmental protection and the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing.

Savaresi, A. (2016) 'The Paris Agreement: A new beginning?' *Journal of Energy & Natural Resources Law,* 34(1), pp. 16–26; https://doi.org/10.1080/02646811.2016.1133983 .

Schmid, E. (2022) 'Victim Status before the ECtHR in Cases of Alleged Omissions: The Swiss Climate Case', *EJIL:Talk!, Blog of the European Journal of International Law* [Online]. Available at: https://www.ejiltalk.org/victim-status-before-the-ecthr-in-cases-of-alleged-omissions-the-swiss-climate-case/ (Accessed: 31 August 2022).

Sefrioui, S. (2017) 'Adapting to Sea Level Rise: A Law of the Sea Perspective' in Andreone, G. (ed.) The Future of the Law of the Sea. Bridging Gaps between National, Individual and Common Interests. Cham: Springer, pp. 3–22; https://doi.org/10.1007/978-3-319-51274-7_1

Seminara, L. (2016) 'Risk Regulation and the European Convention on Human Rights', *European Journal of Risk Regulation*, 7(4), pp. 773–749; https://doi.org/10.1017/S1867299X00010163.

Setzer, J., Higham, C. (2021) *Global trends in climate change litigation: 2021 snapshot.* London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

Shelton, D. (2006) 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized', *Denver Journal of International Law & Policy*, 35(1), pp. 129–171.

Sulyok, K. (2021) 'Scientific Uncertainty as a Key Obstacle to Efficient Legal Protection of the Environmental Interests of Future Generations' in Cordonnier Segger, M.C., Szabó, M., Harrington, A.R. (eds.) *Intergenerational Justice in Sustainable Development Treaty Implementation Advancing Future Generations Rights through National Institutions.* Cambridge: Cambridge University Press, pp. 295–314; https://doi.org/10.1017/9781108768511.020

Tsampi, A. (2022) 'The European Court of Human Rights and (Framework Convention on) Tobacco Control', *European Convention on Human Rights Law Review*, 3(1), pp. 47–89; https://doi.org/10.1163/26663236-bja10022

Vidas, D. (2014), 'Sea-Level Rise and International Law: At the Convergence of Two Epochs', *Climate Law*, 4(1–2), pp. 70–84; https://doi.org/10.1163/18786561-00402006

Voigt, C. (2021) 'The First Climate Judgment before the Norwegian Supreme Court: Aligning Law with Politics', *Journal of Environmental Law*, 33(3), pp. 697–710; https://doi.org/10.1093/jel/eqab019

Washington, H., Taylor, B., Kopnina, H., Cryer, P., Piccolo, J. J. (2017) 'Why ecocentrism is the key pathway to sustainability', *The Ecological Citizen*, 1(1), pp. 35–41.

Willcox, S. (2012) 'Rising Tide: The Implications of Climate Change Inundation for Human Rights and State Sovereignty', *Essex Human Rights Review*, 9(1), pp. 1–19.

Climate change and the environment, *Mission of Norway to the EU* [Online]. Available at: https://www.norway.no/en/missions/eu/values-priorities/climate-env/#local-content (Accessed: 5 September 2022).

Italy discovers biggest illegal waste dump in Europe, *Euronews*, 2015 [Online]. Available at: http://www.euronews.com/2015/06/16/italy-discovers-biggest-illegal-waste-dump-in-europe (Accessed: 17 August 2022).

Sacchi v. Argentina. Committee on the Rights of the Child Extends Jurisdiction over Transboundary Harms; Enshrines New Test, *Harvard Law Review*, 135(1981) [Online]. Available at: https://harvardlawreview.org/2022/05/isacchi-v-argentina/ (Accessed: 30 August 2022).

The Norwegian State calls for rejection of Arctic oil case by European Court of Human Rights, *Greenpeace International* [Online]. Available at: https://www.greenpeace.org/international/press-release/53505/norwegian-state-calls-for-rejection-of-arctic-oil-case-by-european-court-of-human-rights/ (Accessed: 4 September 2022).

UN marks tenth anniversary of cyanide spill with call for greater vigilance, *UN News* [Online]. Available at: https://news.un.org/en/story/2010/01/327972-un-marks-tenth-anniversary-cyanide-spill-call-greater-vigilance (Accessed: 8 September 2022).

Legal Sources

Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, UNECE (1998).
Analytical Study on the Relationship Between Human Rights and the Environment, OHCHR, A/HRC/19/3 (2011).
Cancún Agreements, Decision 1/CP.16, UN (2010).
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Rome (1952).
Convention on the Rights of the Child, General Comment no. 5., CRC/GC/2003/5 (2003).
Copenhagen Accord, FCCC/CP/2009/11/Add.1, UN (2009).
Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.
Durban Platform for Enhanced Action, 1/CP.17, UN (2011).
Glasgow Climate Pact, Decision 1/CMA.3, UN (2021).
Guide on Article 2 of the European Convention on Human Rights, Council of Europe (2022).
Guide on Article 5 of the European Convention on Human Rights, Council of Europe (2022).
Guide on Article 6 of the European Convention on Human Rights, Council of Europe (civil limb) (2022).
Guide on Article 6 of the European Convention on Human Rights, Council of Europe (criminal limb) (2022).
Guide on Article 8 of the European Convention on Human Rights, Council of Europe (2022).
Guide on Article 13 of the European Convention on Human Rights, Council of Europe (2022).
Guide on Article 46 of the European Convention on Human Rights, Council of Europe (2022).
Human rights and climate change, HRC, A/HRC/RES/10/4 (2009).
Intergovernmental Panel on Climate Change, 'Climate Change 2021: The Physical Science Basis', Sixth Assessment Report (2021).
Kyoto Protocol to the Framework Convention on Climate Change, UN (1998).
Our common future: Report of the World Commission on Environment and Development (Brundtland Report, 1987).
Overview 1959-2021, European Court of Human Rights, 2022.
Paris Agreement, UN (2015).
Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, HRC, A/HRC/10/61 (2009).
RePower EU Plan, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 230 final.
Rio Declaration on Environment and Development, UN (1992).
Sea-level rise in relation to international law. First issues paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law, ILC, A/CN.4/74 (2020).
Separate Opinion of Vice-President Weeramantry, Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), ICJ (1997).
Stockholm Declaration on the Human Environment, UN (1972).
The Constitution of the Kingdom of Norway (1814).
The European Green Deal, Communication from the Commission, COM(2019) 640 final.
The human right to a clean, healthy and sustainable environment, HRC, HRC/RES/48/13 (2021).

The human right to a clean, healthy, and sustainable environment, UN GA, A/RES/76/300 (2022).
United Nations Convention on the Law of the Sea, UN (1982).
United Nations Framework Convention on Climate Change, UN (1992).
United Nations World Charter for Nature, UN GA, A/RES/37/7 (1982).

Judgments of the ECtHR

Ahunbay and others v. Turkey, Application No. 6080/06, Judgment of 21 June 2016.
Aksoy v. Turkey, Application No. 21987/93, Judgment of 18 December 1996.
Allan Jacobsson v. Sweden, Application No. 16970/90, Decision of admissibility of 15 October 1995.
Anna Todorova v. Bulgaria, Application No. 23302/03, Judgment of 24 May 2011.
Arrondelle v. the United Kingdom, Application No. 7889/77, Judgment of 15 July 1980.
Baggs v. the United Kingdom, Application No. 9310/81, Judgment of 19 January 1985.
Bor v. Hungary, Application No. 50474/08, Judgment of 18 June 2013.
Borysiewicz v. Poland, Application No. 71146/01, Judgment of 1 July 2008.
Boughanemi v. France, Application No. 16/1995/522/608, Judgment of 27 March 1996.
Boyle v. the United Kingdom, Application No. 15/1993/410/489, Judgment of 24 February 1994.
Bronda v. Italy, Application No. 22430/93, Judgment of 9 June 1998.
Budayeva and others v. Russia, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgment of 20 March 2008.
Bumbeș v. Romania, Application No. 18079/15, Judgment of 3 May 2022.
Calvelli and Ciglio v. Italy, Application No. 32967/96, Judgment of 17 January 2002.
Campbell and Fell v. the United Kingdom, Applications Nos. 7819/77 and 7878/77, Judgment of 12 May 1982.
Chapman v. the United Kingdom, Application No. 27970/02, Judgment of 18 January 2001.
Chiragov and Others v. Armenia, Application No. 13216/05, Judgment of 16 June 2015.
Copland v. the United Kingdom, Application No. 62617/00, Judgment of 3 April 2007.
Cordella and others v. Italy, Applications Nos. 54414/13 and 54264/15, Judgment of 24 January 2019.
Costel Popa v. Romania, Application No. 47558/10, Judgment of 16 April 2016.
Cuenca Zarzoso v. Spain, Application No. 23383/12, Judgment of 16 January 2018.
Deés v. Hungary, Application No. 2345/06, Judgment of 9 November 2010.
Demades v. Turkey, Application No. 16219/90, Judgment of 22 April 2008.
Di Sarno and others v. Italy, Application No. 30765/08, Judgment of 10 January 2012.
Dr S. v. the Federal Republic of Germany, Application No. 715/60, Decision of inadmissibility of 5 August 1969.
Elefteriadis v. Romania, Application No. 38427/05, Judgment of 25 January 2011.
Fägerskiöld v. Sweden, Application No. 37664/04, Judgment of 15 March 2008.
Flamenbaum and others v. France, Applications Nos. 3675/04 et 23264/04, Judgment of 13 December 2012.
Florea v. Romania, Application No. 37186/03, Judgment of 14 September 2010.
Fredin v. Sweden, Application No. 12033/86, Decision of admissibility of 14 December 1987.

Friend and others v. the United Kingdom, Applications Nos. 16072/06 and 27809/08, Judgment of 24 November 2009.
G. and Y. v. Norway, Application No. 9415/81, Judgment of 3 October 1983.
Guerra and others v. Italy, Application No. 14967/89, Judgment of 19 February 1998.
Hakansson and Sturesson v. Sweden, Application No. 11855/85, Decision of admissibility of 15 July 1987.
Halabi v. France, Application No. 66554/14, Judgment of 16 May 2019.
Hamer v. Belgium, Application No. 21861/03, Judgment of 27 November 2007.
Handyside v. the United Kingdom, Application No. 5493/72, Judgment of 7 December 1976.
Johnston and others v. Ireland, Application No. 9697/82, Judgment of 18 December 1986.
Kalender v. Turkey, Application No. 4314/02, Judgment of 15 December 2009.
Kapa and others v. Poland, Applications Nos. 75031/13 and 3 others, Judgment of 14 October 2021.
Kennedy v. the United Kingdom, Application No. 6839/05, Judgment of 18 May 2010.
Khamidov and others v. Russia, Application Nos. 32267/08 and 3 others, Judgment of 1 March 2022.
Klauss and others v. Germany, Application No. 5029/71, Judgment of 6 September 1978.
Kontrová v. Slovakia, Application No. 7510/04, Judgment of 31 May 2007.
Kyrtatos v. Greece, Application No. 41666/98, Judgment of 22 May 2003.
L.C.B. v. the United Kingdom, Application No. 23413/94, Judgment of 9 June 1998.
L'Érablière A.S.B.L. v. Belgium, Application No. 9230/07, Judgment of 24 February 2009.
Leon and Agnieszka Kania v. Poland, Application No. 12605/03, Judgment of 21 July 2009.
Leray and others v. France, Application No. 44617/98, Judgment of 20 December 2001.
Loizidou v. Turkey, Application No. 15318/89, Judgment of 23 March 1995.
López Ostra v. Spain, Application No. 16798/90, Judgment of 9 December 1994.
Marckx v. Belgium, Application No. 6833/74, Judgment of 13 June 1979.
Margareta and Roger Andersson v. Sweden, Application No. 12963/87, Judgment of 3 October 1990.
Martinez Martinez and María Pino Manzano v. Spain, Application No. 61654/08, 3 July 2012.
McCann and others v. the United Kingdom, Application No. 18984/91, Judgment of 27 September 1995.
Mileva and others v. Bulgaria, Applications Nos. 43449/02 and 21475/04, Judgment of 25 November 2010.
Moreno Gómez v. Spain, Application No. 4143/02, Judgment of 16 November 2004.
Murillo Saldias and others v. Spain, Application No. 76973/01, Judgment of 28 November 2006.
Nachova and others v. Bulgaria, Applications No. 43577/98 and 43579/98, Judgment of 6 July 2005.
National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France, Applications Nos. 48151/11 and 77769/13, Judgment of 18 January 2018.
Niemietz v. Germany, Application No. 13710/88, Judgment of 16 December 1992.
Ognyanova and Choban v. Bulgaria, Application No. 46317/99, Judgment of 23 February 2006.
Oluić v. Croatia, Application No. 22330/05, Judgment of 5 February 2009.
Öneryildiz v. Turkey, Application No. 48939/99, Judgment of 30 November 2004.
Özel and others v. Turkey, Application Nos. 4350/05, 15245/05 and 16051/05, Judgment of 17 November 2015.
Paradiso and Campanelli, Application No. 25358/12, Judgment of 24 January 2017.

Pine Valley Development Ltd and others v. Ireland, Application No. 12742/87, Decision of admissibility of 3 May 1989.
Powell and Rayner v. the United Kingdom, Application No. 9310/81, Judgment of 16 July 1986.
Pretty v. the United Kingdom, Application No. 2346/02, Judgment of 29 April 2002.
Rajkowska v. Poland, Application No. 37393/02, Judgment of 27 November 2007.
Saber v. Norway, Application No. 459/18, Judgment of 17 December 2020.
Saoud v. France, Application No. 9375/02, Judgment of 9 October 2007.
Smaltini v. Italy, Application No. 43961/09, Judgment of 24 March 2015.
T.S. and J.J. v. Norway, Application No. 15633/15, Judgment of 11 October 2016.
Tătar v. Romania, Application No. 67021/01, Judgment of 27 January 2009.
Vearncombe and others v. the Federal Republic of Germany, Application No. 12816/87, Judgment of 18 January 1989.
Viviani and others v. Italy, Application No. 9713/13, Decision of admissibility of 24 March 2015.
Vo. v. France, Application No. 53924/00, Judgment of 8 July 2004.
Wieser and Bicos Beteiligungen GmbH v. Austria, Application No. 4336/01, Judgment of 16 October 2007.
Winterstein and others v. France, Application No. 27013/07, Judgment of 17 October 2013.
X and Y v. the Federal Republic of Germany, Application No. 7407/76, Decision of inadmissibility of 13 May 1976.
X, Y, and Z v. the United Kingdom, Application No. 21830/93, Judgment of 22 April 1997.
Yaşar v. Romania, Application No. 64863/13, Judgment of 26 November 2019.
Zakharov v. Russia, Application No. 47143/06, Judgment of 4 December 2015.

Cases pending before the ECtHR

A.A. and others v. Italy, Application No. 37277/16, Judgment (in the main proceedings and just satisfaction) of 5 May 2022.
Ardimento and others v. Italy, Application No. 4642/17, Judgment (in the main proceedings and just satisfaction) of 5 May 2022.
Briganti and others v. Italy, Application No. 48820/19, Communicated on 4 November 2020.
Bryan and others v. Russia, Application No. 22515/14, Communicated on 6 December 2017.
Carême v. France, Application No. 7189/21, Communicated on 7 June 2022.
Di Caprio and others v. Italy, Application No. 39742/14, Communicated on 5 February 2019.
Duarte Agostinho and others v. Portugal and 32 other States, Application No. 39371/20, Communicated on 13 November 2020.
Locascia and others v. Italy, Application No. 35648/10, Communicated on 23 June 2010.
Perelli and others v. Italy, Application No. 45242/17, Judgment (in the main proceedings and just satisfaction) of 5 May 2022.
Verein KlimaSeniorinnen Schweiz and others v. Switzerland, Application No. 53600/20, Communicated on 17 March 2021.

Other Court Decisions

A SUD et al. v. Stato Italiano, Tribunal Civile di Roma (2022) [Online]. Available at: https://www.isde.it/giudizio-universale-la-nuova-udienza-contro-lo-stato-italiano-per-inazione-climatica/ (Accessed 30 August 2022).

Commune de Grande-Synthe v. France, Conseil d'État, Décision no. 427301 (2021).

Future Generations v. Ministry of the Environment and Others, Supreme Court of Colombia, STC 4360-2018 (2018).

Greenpeace Hellas v. the Greek State [Online]. Available at: https://www.greenpeace.org/greece/issues/perivallon/45410/apofasi-symvoylioy-tis-epikrateias-gia-tous-dasikous-xartes/ (Accessed: 16 September 2022).

Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v Arctic Oil), Supreme Court of Norway, Case No. HR-2020-2472-P (2020).

Human Rights Law Centre v. Rio Tinto, UN Human Rights Committee, [Online]. Available at: https://www.oecdwatch.org/complaint/human-rights-law-centre-vs-rio-tinto/ (Accessed 30 August 2022).

Ioane Teitiota v. New Zeland, HRC, CCPR/C/127/D/2728/2016 (2020).

Juliana et al. v. United States of America, Court of Appeals for the Ninth Circuit, 947 F.3d 1159 (2020).

Milieudefensie et al. v. Royal Dutch Shell plc, District Court of the Hague, ECLI:NL:RBDHA:2021:5337 (2021).

Minors Oposa v. Department of Environmental and Natural Resources, Supreme Court of the Philippines, 33 ILM 173 (1994).

Neubauer et al. v. Germany, Federal Constitutional Court of Germany, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618 (2021).

Notre Affaire à Tous, la Fondation pour la Nature et l'Homme (FNH), Oxfam France et Greenpeace France, Tribunal Administratif de Paris (2021).

Sacchi et al. v. Argentina et al. CRC/C/88/D/104/2019, Committee on the Rights of the Child (2021).

Sharma v. Minister of the Environment, Full Federal Court of Australia, FCAFC 35 (2022).

Urgenda Foundation v. State of the Netherlands, Supreme Court of the Netherlands, ECLI:NL:HR:2019:2006 (2019).

West Virginia v. Environmental Protection Agency, Supreme Court of the United States of America, 596 U.S. (2022).

Chapter III

Croatia: Constitutional Protection of the Right to a Healthy Life – Do We Need More to Safeguard the Environment and Future Generations?

Frane Staničić

1. Introduction

Protection of future generations and the environment is among the most important issues in almost every country in the world at present. The preservation of the environment ensures the protection of future generations as they should be able to live in an environment that offers the necessary conditions for a healthy life. Biodiversity, environmental protection, waste management, and the participation of the public in public policies and administrative procedures regarding construction are the elements that, in close connection, are important when discussing the protection of future generations and the environment. Such protection is being ensured in numerous ways. The aim of this paper is to show how the protection of future generations and environmental protection are regulated in the Republic of Croatia. In all prior historical periods – from the Ancient Period to the Middle Ages and the modern age – little attention was paid to the legal regulation of only some constituent parts of the environment – the air, water, seas, forests, nature, and agricultural land. This was the case in Croatian Law as well. Already in the medieval statutes and reformations of cities and communes – as discussed by, for example, Korcula (1214), Dubrovnik (1272), Split (1312), Trogir (1322), Mljet (1345), Krk (1388), Vodnjan (1492), and Ilok

Frane Staničić (2022) Croatia: Constitutional Protection of the Right to a Healthy Life – Do We Need More to Safeguard the Environment and Future Generations?. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 127–160. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_4

(1525) – numerous legal norms can be observed, regulating the use and protection of water, forests, and agricultural land and forbidding air pollution. The legal regulation protecting some portions of the environment was intensified in the second half of the 19th century, when major modern systemic laws were passed: the Act on Forests (1852), the Act on Water Rights (1891), the Act on Hunting (1893), the Act on the Management of Torrents (1895), etc.[1] Environmental protection is undoubtedly a par excellence general interest. Effort to protect and promote the environment is among the primary tasks for the State, the local self-government, and specialized institutions but also for society as a whole. Since the protection of the environment is a general interest, it cannot be ascribed to a specific interest group, such as those that exist in civil construction, energetics, transportation, agriculture, etc. The environment and its protection should be a concern of every citizen and the public as a whole.[2]

Therefore, this paper gives an extensive overview of the constitutional framework and the problems and debates regarding the constitutional setup of the right to a "healthy life" (rather than a "healthy environment"). Regulatory framework for the protection of the environment is explored, as is the practice of the Constitutional Court of the Republic of Croatia and ordinary courts where applicable.

The constitutional framework must first be explored. The Constitution of the Republic of Croatia[3] contains several provisions that are important regarding the protection of future generations and of the environment. Constitutional provisions, which are the basis for shaping the framework and content of environmental law in the Republic of Croatia, determine (a) the right to a healthy life; (b) the obligation of the State to ensure a healthy environment; (c) the commitment of all, within the scope of their power and activities, to pay special attention to the protection of human health, nature, and the human environment; (d) the provision of special protection to all things and goods of special ecological significance that are of interest for the Republic of Croatia; (e) the possibility of restricting entrepreneurial freedoms and property rights for the protection of nature, the environment, and human health.[4]

First, Article 69[5] prescribes that everyone has the right to a healthy life[6] and that the State is obliged to ensure the conditions for a healthy environment. Moreover, this Article of the Constitution prescribes that everyone is obliged, within the scope

1 Medvedović and Ofak, 2011, p. 70.

2 Medvedović and Ofak, 2011, p. 71.

3 Official Gazette, no. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14. I am using the redactor version of the Constitution developed by the Constitutional Court of the Republic of Croatia; thus, the numbering of articles is different from that in the official version used by Parliament [Online]. Available at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (Accessed: 15 April 2022).

4 Ofak, 2020, p. 39.

5 "Everyone shall have the right to a healthy life.
The State shall ensure conditions for a healthy environment.
Everyone shall, within the scope of their powers and activities, pay special attention to the protection of human health, nature and the human environment."

6 The meaning of "healthy life" is explained in detail *infra*.

of their power and activities, to give particular attention to the protection of human health, nature, and the human environment.

There are other provisions of the Constitution linked to the protection of the environment as well. Article 3 contains the fundamental constitutional values of the constitutional order of the Republic of Croatia, among which the protection of nature and the environment is listed. According to the well-established case law of the Constitutional Court, the provision on constitutional values does not contain human rights and fundamental freedoms, and the Constitutional Court does not provide protection for these values in procedures initiated by constitutional complaints. Nevertheless, these values are important because their role is to inspire judges when interpreting any individual provision of the Constitution and to guide them in resolving their specific cases.[7]

Second, Article 50 of the Constitution prescribes that free enterprise and proprietary rights may be exceptionally restricted by law for the purpose of protecting, inter alia, nature and the human environment. This means that indisputable constitutional rights – free enterprise and the right to ownership – may be curtailed by law in the case of the protection of nature and human environment.

Third, Article 52 establishes special protection to certain things and goods – natural resources, parts of nature, and things legally prescribed as things of interest to the Republic of Croatia.

Fourth, Article 129a prescribes, inter alia, that units of local self-government are obliged to administer, in particular, affairs related to the protection and improvement of the environment.

The importance of the environment for Croatian society and its constitutional order was noted in the Declaration on the Protection of the Environment in the Republic of Croatia. In this Declaration, issued during a time of war and aggression against Croatian territory, it was noted that the Republic of Croatia, known in the world as a country extremely rich in diverse natural resources – such as the coast and islands, fertile soil, water and streams, wildwoods and a great deal of unique and world-renowned beauty – commits itself to sustainable economic development based on sustainable agriculture and forestry, maritime policy and tourism, and economy and industry driven by environmentally permissible technologies.[8]

Given that Croatia is a Member State of the EU, Croatian environmental legislation is in great part based on the environmental *acquis communautaire*.[9] Apart from the constitutional provisions, the general environmental act in Croatia is the Environmental Protection Act (EPA).[10],[11] In addition to general environmental legislation, there is also special environmental legislation that includes legislative acts governing the protection of a specific component of the environment or environmental

7 Ofak, 2021, p. 89.
8 Medvedović, 2015, p. 42, Ofak, 2020, p. 75.
9 Ofak, 2020, p. 30.
10 Official Gazette, no. 80/13, 153/13, 78/2015, 12/18, 118/18.
11 Ofak, 2020, p. 30.

protection against specific pressures.[12] The protection of the environment is assured through the Criminal Act,[13] which has a special section on crimes against the environment. These include such crimes as polluting the environment (Article 193), dumping pollutants from a ship (Article 194), endangering the ozone layer (Article 195), endangering the environment with waste (Article 196), endangering the environment via facilities (Article 197), endangering the environment via radioactive matter (Article 198), endangering the environment by noise, vibrations, or non-ionization radiation (Article 199), destroying protected natural values (Article 200), destroying habitats (Article 201), trafficking in wild species (Article 202), unlawful entering of wild species or GMOs into the environment (Article 203), unlawful hunting and fishing (Article 204), killing or torturing animals (Article 205), transmitting infectious animal diseases and organisms that are harmful to plants (Article 206), manufacturing and trafficking harmful matter for the treatment of animals (Article 207), recklessly providing veterinary assistance (Article 208), destroying forests (Article 209), changing the water lanes (Article 210), unlawful exploitation of ores (Article 211) and unlawful building (Article 212). The Criminal Act also prescribes especially severe crimes against the environment (Article 214).

Regarding the competent body for environmental protection, the Ministry of the Economy and Sustainable Development was established in July 2020 via the Act on the Organization and Scope of State Administration Bodies.[14] Before the establishment of this Ministry, the activities related to environmental protection were performed by the Ministry of Environment and Nature Protection. Therefore, present-day Croatia does not have a special ministry dedicated only to environmental protection.

It should also be mentioned that Croatia is a contracting party to almost all major international and regional conventions in the field of environmental protection.[15] It is additionally important to mention that the domestic constitutional framework also enables the protection of cultural heritage and the protection of space from illegal building (as previously mentioned, unlawful building is a crime punishable by the Criminal Act). Regarding the practice of European courts, there are not many cases concerning environmental protection with regard to Croatia. However, the cases ECHR *Oluić v. Croatia* (no. of complaint 61260/08) – disturbance of private home and

12 Omejec, 2003, p. 68.
Ofak lists the following acts: NPA (OG nos. 80/2013, 15/2018, 14/2019, 127/2019); Air Protection Act (OG no. 127/2019); Act on Climate Change and Ozone Layer Protection (OG no. 127/2019); Water Act (OG no. 66/2019); Forests Act (OG nos. 68/2018, 115/2018, 98/2019, 32/2020); Agricultural Land Act (OG nos. 20/2018, 115/2018, 98/2019); Sustainable Waste Management Act (SWMA; OG nos. 94/2013, 73/2017, 14/2019, 98/2019); Act on Protection from Noise (OG nos. 30/2009, 55/2013, 153/2013, 41/2016, 114/2018); Act on Protection against Light Pollution (OG no. 14/2019); Act on Sustainable Use of Pesticides (OG nos. 014/2014, 115/2018, 32/2020); Act on Radiological and Nuclear Safety (OG nos. 141/2013, 39/2015, 130/2017, 118/2018); Act on Protection against Non-ionizing Radiation (OG nos. 91/2010, 114/2018); Chemicals Act (OG nos. 18/2013, 115/2018, 37/2020); etc.

13 Official Gazette, nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.

14 Official Gazette, no. 85/20.

15 Ofak 2020, p. 71.

private life – noise pollution and the *European Commission v Republic of Croatia*, Case C-250/18 – failure of the State, waste management – can be mentioned.

Liability in environmental matters should also be mentioned. This institute and the obligation of restitution of damages caused by pollution are among the most efficient means of civil law protection of the environment.[16] In Croatia, general liability principles are prescribed in Article 1045 of the Civil Obligations Act.[17] For damages caused by pollution, general rules of obligation law are applicable.[18] The act imposes the subjective criterion of fault as a general principle. However, if damage results from things or activities representing a major source of danger for the environment, liability shall be imposed regardless of the fault. There is a provision in the Civil Obligations Act that prescribes *actio popularis*, that is, that grants the right to everyone to ask for the source of danger to be removed (Article 1047 – Request for elimination of risk of damage).[19] Special liability for damage in environment is prescribed by Article 173–208 of the Environmental Protection Act. Specific liability rules are included in many other legislative acts that regulate the protection of specific components of the environment. For instance, pursuant to Article 69 of the Water Act, the polluter bears the costs arising from polluting the water and the aquatic environment. These costs include expenses for the prevention of further damage, expenses for the restoration of prior status, including the costs of damage assessment and elimination of damage, and expenses for preventing the occurrence of future pollution.[20]

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and especially the environment

Regarding the actors in environmental protection in Croatia, the most important role is that of Parliament (*Hrvatski sabor*), which holds the legislative power and enacts laws. This is the main role of Parliament, which fulfills its constitutional role by enacting laws with regard to environmental protection. It ensures sustainable development and environmental protection in accordance with law and, in particular, monitors and reviews the status of environmental protection and the realization of sustainable development through reports that the Government submits in accordance with the EPA and special regulations; moreover, it determines and adopts

16 Proso, 2015, p. 718.
17 Official Gazette nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018.
18 Proso, 2015, p. 718.
19 Ofak, 2020, p. 329.
20 Ofak, 2020, p. 63.

appropriate starting points for sustainable development and environmental protection (Article 35 para. 1 of the EPA).[21]

However, Parliament does possess several other powers that are important in the field of environmental protection. First, there exists a body of the Parliament established by the Standing Orders of the Parliament, the Environment and Nature Conservation Committee,[22] which shall establish and monitor the implementation of policies; additionally, in procedures to enact legislation and other regulations, it shall have the rights and duties of a competent working body in matters pertaining to (a) fundamental solutions to the protection and promotion of comprehensive environmental protection activities pursuant to international criteria; (b) measures to monitor, preserve, and reinforce the biological and ecological balance between natural resources (sea, water, air, soil, mineral wealth, flora, and fauna) and economic development; (c) measures to utilize and manage specific parts of the environment, particularly with regard to specially protected parts of nature; (d) the monitoring and analysis of issues concerning nuclear and radiological safety to secure a high level of security and effective protection of persons and the environment from ionizing radiation; (e) the promotion of measures to remediate the current status of environmental degradation and the further prevention of pollution to promote the quality of human life and health (municipal and industrial waste treatment, hazardous waste treatment, secondary materials management); and (f) complaints directed to Parliament indicating harmful activities concerning environmental degradation and examining whether such complaints are well founded.

According to the Protection of Environment Act, Parliament also enacts the Strategy of Sustainable Development.[23] It is important to note that the government of the Republic of Croatia (*Vlada Republike Hrvatske*), as the executive branch of power, also plays a major role in the constitutional framework of environmental protection in Croatia. The government ensures sustainable development and environmental protection in accordance with the law and, in particular, (a) monitors and reviews the status of environmental protection through prescribed reports, (b) determines and proposes to Croatian Parliament appropriate starting points for sustainable development and environmental protection, (c) promotes education for the public on sustainable development and environmental protection through appropriate measures, (d) ensures financial and other means for improving the environmental protection system, (e) concludes international agreements and treaties in the field of

21 Ofak, 2020, p. 118

22 It is comprised of 13 members of Parliament and three additional external members/experts (external members do not have the right to vote).

23 The last one for a 10-year period was enacted in 2009 (OG no. 30/09). It identified eight key challenges to obtaining sustainable development: stimulating the growth of the population of the Republic of Croatia; environment and natural resources; focusing on sustainable production and consumption; achieving social cohesion and justice; achieving energy independence and increasing energy efficiency; strengthening public health; connecting the Republic of Croatia; and protection of the Adriatic Sea, coast, and islands. A new one does not exist.

environmental protection and secures the conditions for the implementation thereof, and (f) when needed, establishes appropriate professional and advisory bodies for carrying out the tasks undertaken (Article 35 para. 2 of the EPA).

The role of the competent Ministry must be stressed – the Ministry of Economy and Sustainable Development, which performs different tasks related to the protection of the environment such as the protection of air, soil, water, sea, flora, and fauna in the totality of their interactions, proposing measures for improvements in the field of environmental protection, systematic environmental monitoring, etc.[24]

In the past, special agencies were formed to deal with certain issues in the environmental protection sector. The Croatian Environmental Agency (CEA), which was operational from 2002 to 2015, had the obligation to collect and integrate collected environmental data and information for the purpose of ensuring and monitoring the implementation of the environmental protection and sustainable development policy. It was the central information authority of the State for coordinating reporting and for reporting to the European Commission on the implementation of specific environmental protection regulations, and it performed the tasks of coordinating reporting as well as the reporting itself. In June 2015, the Government established the Croatian Agency for the Environment and Nature by merging the CEA with the State Institute for Nature Protection. This agency ceased to exist in January 2019. All of its activities were transferred to the Ministry.[25]

Another state body of relevance is the State Inspectorate, which includes nature protection, water, sanitary, agricultural, energy, pressure equipment, occupational safety, veterinary, livestock, mining, and toxic chemical management inspection.

The Environmental Protection and Energy Efficiency Fund is a state body that must be mentioned. Its activities[26] comprise the tasks related to financing the prepa-

24 For more details, see Ofak, 2020, p. 64.

25 Ofak, 2020, p. 65.

26 The activities of the Fund comprise the tasks related to financing of the preparation, implementation, and development of programs and projects as well as similar tasks in the field of the conservation, sustainable use, protection, and improvement of the environment and in the field of energy efficiency and the use of renewable energy sources; in particular, the tasks include expert and other tasks in relation to the collection, management, and utilization of the Fund's resources;
acts as an intermediary in matters related to the financing of environmental protection and energy efficiency from foreign funds, international organizations, financial institutions and bodies, and national and foreign legal and natural persons; maintaining the database of programs, projects, and similar activities in the field of environmental protection and energy efficiency as well as of the required and available financial resources for their implementation; promoting, establishing, and cooperating with international and national financial institutions and other legal and natural persons for the financing of environmental protection and energy efficiency in accordance with the National Environmental Strategy, the National Environmental Action Plan, the Energy Development Strategy, the Implementation Program for the Energy Development Strategy, national energy programs, other programs and acts in the field of environmental protection and energy efficiency, and international treaties to which the Republic of Croatia is party for the purposes specified in the provisions of the Act on the Environmental Protection and Energy Efficiency Fund; and other tasks related to promoting and financing environmental protection and energy efficiency that are set out in the Statute of the Fund. Available at: https://www.fzoeu.hr/en/activities-of-the-fund/1325 (Accessed: 20 May 2022).

ration, implementation, and development of programs and projects as well as similar tasks in the field of the conservation, sustainable use, protection, and improvement of the environment as well as in the field of energy efficiency and the use of renewable energy sources.

One group of actors with particular responsibilities regarding environmental protection is the units of regional and local self-government. Their constitutional role should be mentioned as, according to the Constitution, they are explicitly responsible for the protection and improvement of the environment (Article 129a).

The judiciary also should be mentioned as an important actor with regard to environmental protection. The Constitutional Court has an important role in environmental protection as it resolves individual cases as well as questions of the constitutionality (and legality) of laws and bylaws. Individual environmental cases arrive before the Constitutional Court through filing a constitutional complaint. However, the analysis[27] showed that, thus far, there was only one case in 2007[28] in which the Constitutional Court interpreted the right to a healthy life in an environmental context. This does not mean that environmental cases do not appear before the Constitutional Court at all but, rather, that the applicants do not invoke a violation of the right to a healthy environment and instead invoke violations of other constitutional rights, primarily a violation of the right to a fair trial (Article 29 para. 1 of the Constitution). In conclusion, the case law of protecting the constitutional right to a healthy environment in Croatia has yet to be developed, and future research should explore the reasons why the practice of environmental and climate change litigation, which prevails in other European countries, has not arisen yet in Croatia.

The role of the administrative courts is also important as they are responsible for judicial review of the decisions made by administrative bodies with regard to the environment. However, the EPA from 2007 as well as the new EPA from 2013 restricted the right to challenge an administrative decision to only those individuals who participated in the procedure as a concerned public and who can prove impairment of their right due to the location and/or nature and impact of the project (both conditions must be fulfilled).[29]

Several judgments have been issued by the Supreme Court in which the Court interpreted the Environmental Protection Act, primarily in liability cases. For example, in a decision from 2019,[30] the Supreme Court instructed the lower court to discuss the matter at hand, taking into account the EPA in force at the time, particularly its provisions regarding the definition of the environment, the pollution of the environment, polluters, the fact that the Parliament, the government, and local representative bodies are responsible for the effectiveness of environmental protection,

27 Ofak, 2021.
28 U-III/3643/2006, from May 23, 2007.
29 Ofak, 2020, p. 340.
30 Rev-x 295/2018- 2 from April 9, 2019.

the obligation to protect the environment in planning or building, and the fact that the polluter is objectively liable.

The ombudsman should also be mentioned as he is the commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms enshrined in the Constitution, laws, and international legal instruments on human rights and freedoms ratified by the Republic of Croatia. Since 2013, the Annual Ombudsman Reports include a special chapter dedicated to citizens' complaints regarding the environmental protection.[31] For example, in an effort to promote the constitutional right to a healthy life (environment), the ombudsman submitted to Parliament a report on the right to a healthy life and climate changes in the Republic of Croatia (2013–2020) in the context of the global movement regarding the climate and the COVID-19 pandemic. In her latest report for 2021 the ombudsman recommended that the Government additionally expand, through laws and bylaws, the constitutional right to a healthy life and healthy environment, taking into account the internationally recognized right to a clean, healthy, and sustainable environment.[32] An interesting recommendation is Recommendation 120 to the Judiciary Academy enforcing the education of judges in the matter of environmental law.[33] The ombudsman also reacted to multiple complaints regarding environmental issues in 2021 (as well as in earlier years). The complaints on which the ombudsman acted referred to air, water, soil, and sea environment pollution, improper waste management, insufficient protection from noise and light pollution, excessive non-ionization radiation of base receivers of mobile operators, and events caused by climate change. Several complaints refer to long-term problems regarding pollution and waste management, which reflects problems in the functioning of the system.

Another important actor who should be mentioned is the Commissioner for Access to Information. This is an independent body established by the Access to Information Act[34] in 2013. According to the law, this body protects, observes, and

31 Ofak, 2020, p. 343.
Additionally, when individuals have certain knowledge that an environmental crime has been committed, they can notify the police or the public prosecutor, that is, the State Attorney's Office. If the notification is given to the police, the police will provide the State Attorney's Office with all information concerning the crime as soon as possible because the State Attorney's Office is competent for instituting criminal prosecution of all crimes that are prosecuted ex officio. The notification to the State Attorney's Office has a formal effect because the state prosecutor is obliged to act upon it and determine whether the application is well founded. In the case of dismissal, the public prosecutor has the duty to inform the victim of the criminal offense, who has the right to lodge a private lawsuit. The possibility of the victim (injured person) initiating a private prosecution of a misdemeanor or of a criminal offense exists only in the absence of public prosecution. Environmental organizations hold no special rights in proceedings over environmental crimes or misdemeanors, except in cases in which they are direct victims. Ofak, 2020, p. 342.

32 Recommendation 117 in the Report for 2021 [Online]. Available at: https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2021-godinu/?wpdmdl=13454&refresh=6283dd5dc774f1652809053 (Accessed: 20 April 2022).

33 Ibid.

34 OG nos. 25/13, 85/15.

promotes the right to access to information as s constitutional right (Article 35). The Commissioner is appointed by the Parliament for a five-year mandate, and they act as a second instance body in administrative procedures regarding access to information. As will be explained later, environmental protection is hardly possible without the so-called "access rights", especially access to information. The commissioner provides protection in regard to environmental issues as well when the requested information on environmental procedures is denied.

3. Basis of fundamental rights

The Constitution is the basis for every right, and this maxim also applies to the protection of the environment. However, until the beginning of the 1960s, environmental law and environmental policy were essentially unknown terms.[35] The environment and its care are a newer element of *materiae constitutionis* and a consequence of a general trend of the work of constitution makers on expanding the standard constitutional area.[36] Bačić states that because of their expansionism, legislative norms on the environment and its protection are especially sensitive to objections coming from a constitutional perspective and gives an example of the constitutional protection of property, which has the potential to impede the ability of the government to implement certain political measures (for example, for environmental protection). However, one can also take a constitutional approach to the ecological issue as the French did in 2005 via their constitutional charter on the environment, by which certain values connected to sustainable development and the reaffirmation of rights and obligations to the environment were incorporated into the 1958 Constitution.[37] However, the constitutional setting is not an absolute prerequisite for the effective implementation of measures of new public politics (the USA represents a successful example).[38] To achieve the right to a healthy environment, one needs a healthy habitat for humans, which means clean water, air, and soil free from toxins or risks that endanger human health. Thus, the right to a healthy environment is linked to the following obligations of the State: 1. refraining from any direct or indirect interference with the enjoyment of the right to a healthy environment; 2. preventing third parties, such as corporations, from interfering with the enjoyment of the right to a healthy environment; and 3. adopting the necessary measures such that the full realization of the right to a healthy environment is achieved.[39]

35 Bačić, 2008, p. 727.
36 Bačić, 2008, p. 730.
37 Bačić, 2008, p. 732.
38 Bačić, 2008, p. 732.
39 Bačić, 2008, p. 741.

3.1. Right to a healthy life

Most world constitutions acquired constitutional provisions on the environment after the 1970s, according to Bačić, and a vast majority of constitutions mention environmental protection or natural resources. The Croatian Constitution is among those constitutional documents.[40] As previously mentioned, the Croatian Constitution does not explicitly mention the right to a healthy environment. However, by attempting to accept a constitutional document that would be "up to date" the constitution maker constitutionalized "the preservation of nature and human environment" in Article 3 of the Constitution as one of the highest constitutional values of Croatian constitutional order.[41] Second, Article 69 of the Constitution guarantees that everyone shall have the right to a healthy life. However, the same Article prescribes that it is the duty of the State to ensure the conditions for a healthy environment. Moreover, everyone is obliged, within the scope of their powers and activities, to pay special attention to the protection of human health, nature, and the human environment (Article 69 para. 3). Historically, the right to a healthy life environment was introduced in the Croatian Constitution in 1974,[42] at a time when Croatia was still a federal unit within the former Socialist Federal Republic of Yugoslavia.[43] However, the Croatian Constitution in 1990 was more "pro-environment" as the original provision stated that "Everyone shall have the right to a healthy life. Republic of Croatia shall ensure the *right of citizens* (highlighted by the author) to a healthy environment. Citizens, government, public and economic bodies and associations are obliged to pay special attention to the protection of human health, nature and the human environment, within the scope of their powers and activities." Namely, as Ofak states, one could assume that the change from ensuring "the right to" to ensuring "the conditions for" a healthy environment was a major step back for the constitutional recognition of environmental rights.[44] However, Croatian legal theory considers that the right to a healthy environment is protected by the Constitution.[45] The right of everyone to a healthy life, provided for in Article 69 para. 1 cannot be considered a personal or

40 Bačić P., 2008, p. 815.

41 Bačić, 2008, p. 742.

42 Official Gazette, no. 8/74.

43 Ofak, 2021, p. 85.
The Constitution of the Socialist Republic of Croatia prescribes the following (§ 276): *"Human beings have the right to a healthy living environment. The community provides the conditions for exercising this right. Everyone who uses land, water or other natural resources is obliged to do so in a way that ensures the conditions for work and life of humans in a healthy environment. Everyone is obliged to preserve nature and its goods, natural sights and rarities and cultural monuments. Misuse of natural resources and introduction of toxic and other harmful materials into water, sea, soil, air, food and objects of general use are punishable."*

44 Ofak, 2021, p. 86.

45 Ofak, 2021, 86, Omejec, 2003, pp. 52–62, Bačić 2008, pp. 727–743, Rajko 2007, pp. 22–27.
Bačić P. states that the Croatian Constitution does not envisage direct enforceability of the right to a healthy environment, but this right is marked as a desirable state goal. Bačić P., 2008, p. 816.

political right or fundamental freedom. The writers of the Constitution placed this right in the corpus of economic, social, and cultural rights, but they did not regulate it in detail. However, taking into account the content of Article 69 of the Constitution in its entirety, it can be concluded that the right to a healthy life is a special constitutional expression of a broader right called the "right to a healthy environment".[46] One should not mistake the right to a healthy life for the right to life (Article 21 of the Constitution), which is a special right linked to the abolition of the death penalty (in Yugoslavia, the death penalty was legal). By stipulating in Article 21 of the Constitution that every human being has the right to life, the writers of the Constitution prescribed a basic personal and political freedom and right. In contrast, the right of everyone to a healthy life, provided for in Article 69, para. 1, cannot be considered a personal or political right or fundamental freedom.[47]

3.2. Things and goods that have the special protection of the State

It should be noted that the Constitution lists the conservation of nature and the human environment among the highest values of the Croatian constitutional order, and these highest values are the foundation for interpreting the Constitution.[48] Therefore, provisions of Article 69 of the Constitution establish certain constitutional obligations addressed to the State (para. 2) and everyone (para. 3), while the provision of Article 69 para. 1 of the Constitution relates to the establishment of certain rights addressed to everyone.[49] As the constitution maker does not define what the term "healthy life" encompasses, one could conclude that the right to a healthy life is a special constitutional expression of a broader right that is labeled the right to a healthy environment.[50]

The two mentioned provisions of the Constitution are not the only ones linked to the right to a healthy environment. Namely, Article 52 of the Constitution stipulates certain things and goods that have the special protection of the State. It reads as follows:

> The sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

These goods can be classified into two groups according to their natural and other features, especially the ability to be the objects of ownership and other real

46 Ofak 2020, p. 40.
47 Ofak, 2020, p. 40.
48 Ofak, 2021, p. 89.
49 Ofak, 2020, p. 40.
50 Proso, 2015, p. 708.

rights: 1) certain parts of nature (physical things) cannot be the object of ownership and other real (property) rights because their natural characteristics do not allow them to belong to any natural or legal person, and 2) all other things except those belonging to the category of common goods may be the object of real (property) rights, which means that they are things in terms of law on real (property) rights. This also applies to goods and things listed in Article 52 of the Constitution that do not belong to common goods. These goods and things are specific in the sense that they can be declared by law as goods of interest to the Republic of Croatia within the limits of authority provided by Article 52 of the Constitution.[51] It must be stressed that the Constitution allows for the curtailment of certain constitutional rights in the name of preservation of the environment. Namely, Article 50 para. 2 of the Constitution prescribes that free enterprise and proprietary rights may be exceptionally restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature, and the human environment and human health. Free enterprise is set up by Article 49 of the Constitution as the foundation of the economic system of the Republic of Croatia, and property is protected by Article 48. This is possible because the Constitution, despite that it guarantees ownership, also provides that property entails obligations. Holders of a proprietary right and its users should contribute to the common good (Article 48 para. 1).[52] As Ofak rightfully states, it would be impossible to achieve environmental requirements if we insisted on the right to ownership as an absolute right. Therefore, Article 50 para. 2 of the Constitution discusses the protective function of property and entrepreneurship, which is inherent in the public interest of the community as a whole or in part. The Constitution does not guarantee compensation for such restrictions.[53]

3.3. Access to information, public participation, and justice

It is important to note that the environment can and should also be protected by certain rights, which can be related to political freedoms. Therefore, the so-called "access rights" must be mentioned in this regard. "The rights of access to information, public participation and justice ("access rights") are human rights framed within the category of civil and political rights. They are governed by the International Covenant on Civil and Political Rights (articles 19, 25 and 2.3 and 14, respectively) and States are therefore obligated to respect and guarantee the provisions on these rights immediately and on an equal and non-discriminatory basis (article 2)."[54] It is clear that these rights are primarily civil and political rights, particularly the right to access to information. However, their use can significantly help in protecting the environment. This is why access rights are said to be essential to

51 Ofak, 2020, p. 41.
52 Ofak, 2020, pp. 42–43.
53 Ofak, 2021, p. 92.
54 Barrio, 2016, p. 21.

guaranteeing the enjoyment of a safe, clean, healthy, and sustainable environment.[55] It is important to mention that Croatia signed and ratified the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (the Aarhus Convention), which entered into force in Croatia on June 25, 2007. Because of this, some amendments had to be made in the Croatian legislature. For example, the EPA was amended to allow for associations to challenge administrative decisions in front of the administrative courts.[56] In accordance with the Constitution, the Convention thus became part of the Croatian internal legal system, and its provisions are implemented directly. Indeed, the provisions of the Convention have a stronger legal force than the national law.[57] Therefore, if there is a collision between the provisions of this Convention and national legal acts, administrative authorities and courts are obliged to act in accordance with the provisions of the Convention. It was, indeed, sometimes directly implemented in the administrative court's case law to nullify administrative decisions.[58]

Reviewing the Constitution reveals that all of the aforementioned access rights are enshrined therein. The right to access to information is set out in Article 38 para. 4, which reads as follows:

> The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law.

The constitutional right to access to information is further prescribed by the Right to Access to Information Act, which prescribes that information is available to every domestic and foreign physical and legal person in accordance with the conditions and limitations set by this act (Article 6). Information is broadly defined as every piece of data in the possession of a public body authority and is created with regard for the competence of said body. This right is applicable in all environmental matters and is further prescribed by the EPA (Article 17). Namely, "Pursuant to the principle of access to information and public participation (Article 17), the public has the right of access to environmental information held by public authorities, persons supervised by public authorities and persons holding information for

55 Knox, 2013, para. 29.

56 Ofak, 2020, p. 35. Another survey conducted by Ofak showed that there have not been many examples of the direct application of the Aarhus Convention by the courts in SEE countries. In situations in which the Aarhus Convention could be applied, the courts would rather apply the rules of domestic legislation that are relevant to the merits of the case or the provisions of EU directives that regulate access to information, public participation in decision making, and access to justice in environmental matters. In addition, in many environmental cases, the Aarhus Convention is applicable because it does not contain any substantive rules regarding the right to a healthy environment. See Ofak, 2015.

57 Medvedović and Ofak, 2011, p. 71.

58 Ofak, 2016 [Online]. Available at: https://aarhus.zelena-istra.hr/sites/aarhus.zelena-istra.hr/files/Ofak%20II%20-%20Dobra%20sudska%20praksa%20u%20Hrvatskoj.pdf (Accessed: 15 May 2022).

public authorities. The public has the right to be duly informed on environmental polluting, including the right to information on dangerous substances and activities, information on measures undertaken and, in this connection, the right to access to information on state of the environment. The public has the right to participate in the procedures for: determining starting points, developing and adopting strategies, plans and programs and in developing and adopting regulations and general acts (generally applicable acts) relating to environmental protection. The public has the right to participate in procedures being carried out at the request of the project holder and the operator, in conformity with the EPA. The right of access to information and public participation shall be exercised by the public in the manner stipulated by the EPA and by regulations adopted on the basis thereof, as well as in accordance with special regulations."[59]

The EPA further prescribes this right in environmental matters in Article 19, which prescribes the principle of the right to access to justice. This principle "requires that any person (citizen or other natural and legal persons, their groups, associations and organizations) who considers that his request for environmental information has been ignored, wrongfully refused, whether in part or in full, or inadequately answered, has the right to protect his rights before a court of law, in accordance with a special regulation on access to information. There is a second aspect to the principle of the right of access to justice with the aim of protecting the right to a healthy life and sustainable environment and for protecting the environment and its individual components as well as protection against the harmful effects of pressures on the environment. A person who has sufficient legal interest and a person who due to the location of the project and/or due to the nature and/or impact of the project can prove permanent impairment of his right shall have the right to challenge the procedural and substantive legality of decisions, acts or omissions of public authorities before the competent body and/or competent court, in accordance with the law."[60]

The right to justice, or the right to access to a court, is also enshrined in the Constitution in Article 29, which reads as follows: *"Everyone shall be entitled to have his/her rights and obligations, or suspicion or accusation of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law."*

This right is also enshrined in Articles 18 and 19 para. 2 of the Constitution, which reads as follows:

> The right to appeal against individual legal acts made in first-instance proceedings by courts or other authorised bodies shall be guaranteed.
>
> By way of exception, the right to appeal may be denied in cases specified by law if other forms of legal protection are ensured.
>
> Judicial review of individual acts made by administrative authorities and other bodies vested with public authority shall be guaranteed.

59 Ofak, 2020, pp. 34–35.
60 Ofak, 2020, p. 35.

3.4. Case law of the Constitutional Court in environmental matters

There is no direct link to environmental matters regarding the aforementioned constitutional provisions. In other words, the Constitution does not explicitly prescribe that the right to access to information or the right to access to a court applies to environmental matters. This link is made through legislature and the practice of the Constitutional Court.

The practice of the Constitutional Court also connected constitutional rights to access to information and the right to a fair trial. This is the case despite that there are few decisions of the Constitutional Court on environmental matters. For example, it is a well-established practice of the Constitutional Court that the right to a fair trial is a set of procedural guarantees by which fair procedure is ensured.[61] Its position in a democratic society is so important that there cannot be any justification for restrictive interpretation of this guarantee. Environmental cases in Croatia do appear before the Constitutional Court. However, they predominantly concern the assessment of the conformity of laws to the Constitution or of other regulations to the Constitution and law.[62] Individual environmental cases arrive before the Constitutional Court through the filing of a constitutional complaint; however, the applicants invoke not a violation of the right to a healthy environment but, rather, violations of other constitutional rights, mainly of the right to a fair trial.[63] According to her research, Ofak states that there is only one case in 2006 (decided in 2007) in which the Constitutional Court interpreted the right to a healthy life in an environmental context.[64] There was also one case[65] in 2004 in which the Constitutional Court rejected an application in which the applicants claimed that the disputed acts (judgment of the Administrative Court of the Republic of Croatia from 2001 by which the lawsuit of the applicants against the decision of the ministry from 2000 was rejected) violated the constitutional guarantees prescribed by Article 69 paras. 1 and 2 of the Constitution. The Constitutional Court found that this was not the case but did somewhat elaborate its position regarding the protection of the constitutional right to a healthy life and environment. The Court stated the following:

> According to the Constitution, the state is obliged to take every measure to ensure conditions for a healthy life and environment. These measures require, before all else, bringing adequate acts by which organization, means and conditions according to the protection of environment is carried out in the purpose of sustainable development and acts by which unfavorable effects on environment and health of people would be reduced to a minimum. Environmental Protection Act ("Official Gazette", no. 82/94) and bylaws brought according to this Act this constitutional task is ensured. In the

61 U-III-3538/2017 from April 18, 2019; U-III-2466/2017 from October 23, 2019; U-III-1910/2019 from April 15, 2021.
62 Ofak, 2021, p. 96.
63 Ofak, 2021, p. 97.
64 U-III/3643/2006 from May 23, 2007.
65 U-III-69/2002, July 8, 2004.

> concrete case using measures for protecting the environment, determined in the disputed decision of the Ministry of environmental protection and spatial development, by which the proposed construction is adapted and harmonized with the possibilities of the environment, and by which pollution or unfavorable effect on human health is reduced, implementation of acts and standards is ensured, and by doing so also the protection of the constitutional right to a healthy life and environment.

As previously noted, in other cases, the applicants claimed that their right to a fair trial was violated. For instance, in the case[66] of the association the Croatian Society for the Protection of Birds and Nature (*Hrvatsko društvo za zaštitu ptica I prirode*) against the judgement of the High Administrative Court of the Republic of Croatia, the applicant claimed that the judgement violated its constitutional rights guaranteed by Articles 18, 19 para. 2, 29 para. 1, and 52 of the Constitution. Namely, the applicant objected to the study on the influence on the environment of a construction proposal. The ministry rejected these claims. Subsequently, the applicant lodged a lawsuit against this decision of the Ministry before the High Administrative Court. The Court rejected the lawsuit as ill-founded. The applicant claimed that such a decision of the High Administrative Court created a situation in which it was denied the essence of the right to court. Additionally, the applicant claimed that the decision violated Article 52 of the Constitution as this provision affords special protection to water, land, etc. However, the Constitutional Court rejected the application and found that the ministry and the High Administrative Court did not violate the aforementioned constitutional provisions. In another case,[67] the association Green Action (*Zelena akcija*) against the judgement of the Administrative Court in Rijeka, the applicant claimed that the contested judgement violated Articles 18, 19, 29 para. 1, 115 para. 3, 128, and 129a of the Constitution. The competent ministry issued a decision regarding combined conditions of environmental protection in 2012 by which the planned construction was deemed acceptable. The applicant issued a lawsuit against the decision before the Administrative Court in Rijeka, which the Court rejected. Subsequently, the applicant filed an application in which it claimed that their "right to an explained decision of a judicial body", "right to an effective legal remedy", and the "right to appeal against an individual legal act brought in a first instance procedure" were violated. The Constitutional Court rejected the application.

3.5. Right to association

In addition to the aforementioned rights, the protection of the environment can also be linked to the constitutional right to association prescribed by Article 43 of the Constitution, which reads as follows:

> Everyone shall be guaranteed the right to freedom of association for the purposes of the protection of common interests or the promotion of social, economic, political, national,

66 U-III/1114/2014 from April 27, 2016, U-III-1115/2014 from May 11, 2016.
67 U-III/5942/2013 from June 18, 2019.

cultural and other convictions and aims. For this purpose, anyone may freely form trade unions and other associations, join them or leave them, in accordance with law.

Namely, that the EPA prescribes that among the actors in environmental protection with the duty to ensure sustainable development and environmental protection are citizens as individuals, their groups, as well as associations (Article 34). Associations are also entitled the right to suggest, by way of petition, that there is a need to initiate an administrative procedure ex officio to protect public interest. In the environmental domain, this primarily pertains to the petitions of citizens, groups of citizens, and associations informing competent authorities that there is a danger to people's health and the environment.[68] If a citizen, a group of citizens, or an association is unsatisfied with the authorities' reaction to a petition, they are entitled the right of access to the judiciary in case they are dissatisfied with the inspection work.[69]

It also worth mentioning that, pursuant to Article 167 para. 2 of the EPA, an association has sufficient legal interest if it fulfills the following requirements: (1) if it is registered in accordance with special regulations governing associations and if environmental protection, including the protection of human health and of the rational use of natural resources, is set out as a goal in its statute; and (2) if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest) and if it can prove that in that period, it actively participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute.

Such an association has the right to file an appeal with the Ministry or file a lawsuit before the competent court for the purpose of challenging the procedural and/or substantive legality of decisions, actions, or omissions.[70]

4. Regulation of issues regarding responsibility

The Croatian Constitution guarantees the right to a healthy environment (life) as a right of everyone in Croatia. However, to achieve such a right, someone must be responsible for enabling everyone to enjoy this right. Therefore, the Constitution places on the State the responsibility to ensure the conditions for a healthy environment (Article 69 para. 2). Moreover, everyone is obliged to accord particular attention to the protection of human health, nature, and the human environment

68 See also Ofak, 2020, p. 334.

69 Medvedović and Ofak, 2011, p. 82.

70 Ofak, 2020, pp. 335-356. If an association does not meet the stated requirements, it is not assumed to belong to the public concerned. This does not prevent the association from proving its legal interest in a procedure; rather, such an interest is merely not assumed. Ibid.

(Article 69 para. 3). It is necessary to determine what it means that the State is obliged to ensure conditions for a healthy environment what it means that everyone is obliged to accord particular attention to the protection of environment. Who is everyone, and what is everyone obliged to do? Ofak states that these norms are not directly applicable, as they represent political proclamation and non-legal obligation rather than specifically binding legal rule. Their content, scope, and methods of application are left entirely to the will of the legislature, and their feasibility depends on the extent of legislation.[71] This is clearly the case. However, the Constitution gives special weight to the protection of the environment when stipulating that everyone is obliged to accord particular attention, within the scope of their power and activities, to the protection of the environment. We must ask ourselves, "Does this obligation stand only for physical persons or for legal persons (private and public companies, multinational corporations, etc.)?" Because of the wording "their" power and activities, it could be construed that this obligation is valid only for physical persons. However, this would not be in accord with the spirit of the provision taken into account in Article 3 of the Constitution (environmental protection as one of the highest values of the constitutional order). Medvedović also states that the expression "everyone" should be understood as all state bodies, bodies of local and regional self-government, legal persons with public authority, institutions, companies, artisans, associations, religious communities, and other associations and individuals, domestic and foreign.[72] Therefore, it must be concluded that all citizens, including all legal persons (private or public), are obliged to pay special attention to the protection of the environment. The Constitution does not set out any rules regarding the "polluter/user pays" principle; however, this principle is prescribed in the EPA (Article 16), according to which the polluter bears the costs created by pollution.

It should also be noted that the Croatian legal system regulates the misdemeanor and criminal liability of legal persons (entities). For legal entities, stricter penalties are imposed by legislation (than for natural persons), particularly regarding misdemeanor penalties for environmental violations.

5. High protection of natural resources

The significance of environmental protection for Croatian society and constitutional order is highlighted in the Declaration on the Protection of the Environment in the Republic of Croatia, which Parliament passed in June 1992. This Declaration states that the Republic of Croatia is determined to persevere in building a legal system aligned with international contracts and standards of the European and

71 Ofak, 2020, p. 74.
72 Medvedović, 2015, p. 42.

world community by which the permanent, systematic, and effective environmental protection will be assured in full.[73]

The protection of natural resources appears *expressis verbis* in the Constitution, as Article 52 para. 1 establishes resources of interest to the Republic of Croatia. The provision reads as follows:

> The sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

Article 52 para. 2. prescribes further obligation for the State if it declares any resource to be a resource of interest to the State. It reads as follows:

> The manner in which any resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.

Therefore, the State provides special protection to certain things and goods: (a) the sea, seashore, islands, waters, air space, mineral resources, and other natural goods; (b) land, forests, flora and fauna, and other components of nature; and (c) real estate and goods of particular cultural, historical, economic, or ecological significance.[74]

As Omejec explains, these goods can be classified into two groups according to their natural and other features, particularly their ability to be the objects of ownership and other real rights. The first group includes certain parts of nature (physical things) that cannot be the object of ownership and other real (property) rights because their natural characteristics do not allow them to belong to any natural or legal person. These include atmospheric air, sea, and water in its natural course as well as the seashore, which has characteristic of the common good recognized by the customary law. These things – common goods – serve everyone, and no one can dispose of them on any grounds in terms of private law. Although they represent things in the natural, physical sense, they cannot be the object of real rights because they are not considered things in terms of law on real (property) rights. If and when there is power in relation to them, that power is public rather than private. Therefore, it is understandable that the Republic of Croatia takes care of and provides special protection to such things because the State is a holder of public authority (although not the owner of these things).[75] All other things, except those belonging to the category of common goods, can be the object of real (property)

73 Medvedović, 2015, p. 42.
74 Ofak, 2020, p. 41.
75 See Omejec, 2003, pp. 62-63, Ofak, 2021, p. 93.

rights, which means that they are things listed in Article 52 of the Constitution that do not belong to common goods. These goods and things are specific in a sense that they can be declared by law to be goods of interest to the State.[76] This suggests that there is a distinction among natural goods, components of nature, and real estate and "goods of significance" for the State. Among natural goods, the sea, seashore, islands, waters, air space, and mineral resources are highlighted, and among components of nature, land, forests, flora, and fauna are highlighted. All of these things and goods enjoy special protection from the State as they can be declared by law to be goods of interest to the Republic of Croatia within the limits of the authority provided by Article 52 of the Constitution.[77] If they are declared as such, the State is obliged to prescribe by law (a) special protection of such things and goods, (b) the manner in which any resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, and (c) compensation for any restrictions as may be imposed thereon.

The Constitutional Court employed Article 52 when deciding on the (un)constitutionality of several laws. For example, when deciding[78] on the constitutionality of the act legalizing illegal buildings,[79] there was a provision (Article 6 para. 2 line 1) prohibiting the legalization of an illegal building if it is situated within an archeological find or zone, spatial boundaries of a real estate cultural good or cultural-historical whole, etc. The applicant claimed that this provision violated Articles 14 para. 2 and 19 para. 1 of the Constitution (i.e., the principle of legality). The Constitutional Court stated that the legislator is always obliged to respect the request set by the Constitution and especially those derived from the rule of law and by which fundamental constitutional goods and values are protected. By determining the area(s) in which legalization is impossible as was done by the contested provision, the legislator achieved its role in protecting the natural goods and cultural wealth determined by Article 52 of the Constitution. Interestingly, the Treatment of Illegal Constructed Buildings Act was challenged before the Constitutional Court in a separate case.[80] The applicant who submitted the proposal for the assessment of the conformity of the Act on the Treatment of Illegally Constructed Buildings with the Constitution claimed that the Act was, in its very basis, a source of inequality of citizens before the law because it was designed to privilege illegal builders. The Constitutional Court did acknowledge that illegally constructed buildings were a living and well-known fact and a mass phenomenon in Croatia, which could rightly be said to endanger and devalue its territory in many ways – its land, coast, and forests; its natural, cultural, and historical values; and the human environment.[81] However, the Constitutional Court has taken the position that the challenged Act

76 Ofak, 2020, p. 42.
77 Ofak, 2020, p. 41.
78 U-I-6004/2012, November 4, 2014.
79 Treatment of Illegal Constructed Buildings Act, OG nos. 86/12, 143/13.
80 U-I/4597/2012 from November 4, 2014.
81 See Ofak, 2021, p. 90.

can be considered acceptable from a constitutional perspective. Its goals were undoubtedly legitimate – they perceived the legalization of illegal construction as a "lesser evil" than the mass demolition of illegally constructed buildings and were, from that point of view, economically and socially justified and, as such, in line with the interests of the State and society as a whole.[82]

Somewhat different was a case[83] on the (un)constitutionality of the act regulating the rebuilding of walls in Dubrovnik. In this case, the applicant, the Society of Friends of Dubrovnik Antique (*Društvo prijatelja dubrovačke starine*), claimed that the Amendments of the Rebuilding of Endangered Monument Whole of Dubrovnik Act[84] was unconstitutional regarding many provisions of the Constitution (Articles 3, 4, 5, 14, 16, 18, 29 para. 1, 48 para. 1, 50, 52, 69 para 3., and 90 paras. 4 and 114). The government claimed that it is entitled, according to Article 52 para. 2. of the Constitution, to determine the manner for governing and maintaining walls in Dubrovnik. The Constitutional Court agreed, but also stated that the right of the State derived from Article 52 para. 2 of the Constitution is not absolute as the lawmaker is obliged to uphold fundamental values on which the constitutional setup is based. Therefore, it can be said that "conservation of nature and the human environment as the highest values of the constitutional order may be applicable in the procedures of abstract constitutional control of legal norms."[85]

As previously stated, the Constitution determines natural resources; however, it also determines components of nature. Both goods can be specified by law to be of interest to the State. Among natural resources, the Constitution specifically mentions the sea, seashore, islands, waters, air space, and mineral resources. Among components of nature, it specifically mentions land, forests, flora, and fauna. According to Ofak, all of these goods can be classified into two groups according to their natural and other features, particularly the ability to be the objects of ownership and other real rights, that is, certain parts of nature that cannot be the object of ownership and other real (property) rights because their natural characteristics do not allow them to belong to any natural or legal person (*res inexhausti usus*; *res communes omnium* = common goods). All other things, except those belonging to the category of common goods, can be the object of real (property) rights, which means that they are things in terms of law on real (property) rights. This also applies to goods and things listed in Article 52 of the Constitution that do not belong to common goods.[86] [87]

82 See Ofak, 2021, p. 90.
83 U-I-897/2014 from July 18, 2014.
84 OG no. 19/14.
85 Ofak, 2021, p. 89.
86 Ofak, 2020, p. 41-42.
87 In this regard, Article 2 paras. 2 and 3 of the Constitution can be mentioned, and it reads as follows: *"The sovereignty of the Republic of Croatia encompasses its land, rivers, lakes, canals, internal maritime waters, territorial sea, and all air space above these.*
The Republic of Croatia, in accordance with international law, shall exercise sovereign rights and jurisdiction over the maritime zones and seabed of the Adriatic Sea outside its state territory up to the borders of neighbouring countries."

6. Reference to future generations and sustainable development

The Constitution does not mention "future generations" in any way. There is only one constitutional provision that mentions the need for "improving the environment" – Article 129a para. 1, which reads as follows:

> Units of local self-government shall administer affairs of a local nature by which the needs of citizens are directly fulfilled, and in particular affairs related to the organisation of localities and housing, zoning and urban planning, public utilities, child care, social welfare, primary health services, early and primary education, culture, physical education and sports, technical culture, consumer protection, protection and improvement of the environment (highlighted by the author), fire protection and civil defence.

The Constitution does not contain any *expressis verbis* reference to sustainable development. However, the purpose of Article 69 is to achieve three important objectives of environmental policy expressed in the principles of quality of life, duties toward future generations, and sustainable development.[88] Moreover, in the Parliamentary Declaration on the Protection of the Environment in the Republic of Croatia from 1992, economic sustainable development based on sustainable agriculture and forestry, maritime and tourism, and economy and industry based on ecologically permittable technologies is highlighted as the commitment of the State.[89]

Therefore, a need to protect the environment for future generations can be seen in Croatian legislature. For example, the EPA prescribes the principle of preserving the value of natural goods, biodiversity, and landscape (Article 11). In this principle, it is prescribed that all natural goods and landscape values are to be used in a manner so as not to diminish their value for future generations. In Article 6 para. 2, the Water Act[90] prescribes that waters are governed by the principle of unity of the water system and the principle of sustainable development by which the needs of the present generation are fulfilled, without jeopardizing the right and possibility of future generations to achieve the same. This Act has the role of protecting the water bodies that are specifically identified as water intended for human consumption or reserved for this purpose in the future (Article 100). One of the principles of waste management is also to predict future waste occurrence (addendum VI to the Waste Management Act[91]). Waste should be managed in a manner that ensures that the waste remaining after treatment, which is disposed of by landfilling, poses no threat to future generations.[92] The need to care for

88 Ofak, 2020, p. 40.
89 Medvedović, 2015, p. 42.
90 OG nos. 66/19, 84/21.
91 OG no. 84/21.
92 Ofak, 2020, p. 188.

future generations is also mentioned in the Spatial Planning Act (Article 10 para. 2).[93] Moreover, measures for protection against light pollution must not endanger the components of the environment or the quality of life of present and future generations and must not be in conflict with regulations in the field of occupational safety and health (Article 7 of the Act on the Protection against Light Pollution[94]). The polluter pays principle also serves as a tool for preventing the occurrence of future pollution. Therefore, although the reference to the needs of future generations is not *expressis verbis* mentioned in the Constitution, the legislator clearly has the needs of future generations in mind.

The Constitution does not contain any *expressis verbis* reference to sustainable development. However, as previously mentioned, the purpose of Article 69 of the Constitution is to achieve three important objectives of environmental policy expressed in the principles of quality of life, duties toward future generations, and sustainable development. The provisions of Article 69 paras. 2 and 3 of the Constitution establish certain constitutional obligations addressed to the State (para. 2) and everyone (para. 3), while the provision of Article 69 para. 1 relates to the establishment of certain rights addressed to everyone.[95] As the Constitutional Court stated in 2004,[96] *"the state is obliged to take every measure to ensure conditions for a healthy life and environment. These measures require, before all else, bringing adequate acts by which organization, means and conditions according to the protection of environment is carried out in the purpose of sustainable development and acts by which unfavorable effects on environment and health of people would be reduced to a minimum."*

Article 49 para. 3 of the Constitution should possibly also be mentioned as it prescribes that the State shall encourage the economic progress and social prosperity of its citizens and care for the economic development of all regions. This provision is aimed at highlighting the obligation of the State to create equal opportunities for all and for equal development of the entire country, which can be linked to the care of the State for future generations. Croatia chose to accept the guidelines of the sustainable development of the environment by which economic growth and social justice are simultaneously assured as well as the conditions for the protection of natural resources.[97]

As previously mentioned regarding the care for future generations, the need to achieve sustainable development is broadly prescribed in different laws. For example, the EPA contains 83 references to sustainable development, the environment, etc.[98]

93 OG nos. 153/13, 65/17, 114/18, 39/19, 98/19.

94 OG no. 14/19.

95 Ofak, 2020, p. 40.

96 U-III-69/2002 from July 8, 2004.

97 Proso, 2015, p. 705.

98 The EPA defines sustainable development as the development of society, which, as fundamental criteria, includes environmental, economic, and sociocultural sustainability aimed at improving the quality of life and meeting the needs of the present generation while respecting the same ability to meet the needs of future generations; it was also intended to enable the long-term conservation of environmental quality, geodiversity, biodiversity, and landscape (Article 4 para. 1 point 33). It further prescribes that by protecting the environment, the rational use of natural goods and energy is ensured to provide a basis for the concept of sustainable development (Article 3 para. 1). One

Sustainable development is also supported by the circular management of space and buildings by preserving existing resources through arranging and revitalizing space and reusing buildings to create additional long-term value and to enable efficient resource management (Article 10 of the Spatial Planning Act).[99]

7. Other values relevant to the protection of the environment in the Constitution

The Croatian Constitution contains several provisions that may be relevant or connected to the protection of the interest of future generations and of the environment. First, as previously mentioned, Article 3 of the Constitution contains fundamental constitutional values of the constitutional order of the Republic of Croatia, among which the protection of nature and the environment is listed. Although it does not contain human rights and fundamental freedoms, it is important for courts and judges when deciding on cases related to the protection of the environment. Furthermore, Article 35 of the Constitution guarantees respect for and legal protection of each person's private and family life, dignity, and reputation. In the Constitutional Court's practice, it was established that Article 35 guarantees respect for everyone's family life with the basic purpose of this constitutional guarantee to protect individuals from uncalled-for interference by the State in their right to an undisturbed family life.[100] Negative and positive obligations of the State are derived from this. Negative obligations encompass the State's obligation to abstain from interference into family life of individuals, except in cases prescribed by law. However, positive obligations of the State are determined by the fact that the constitutional term "respect" of family life is

of the principal goals for protecting the environment is to achieve the conditions for sustainable development (Article 7). This Act also prescribes, as a legal principle, the principle of sustainable development (Article 9), which prescribes that all public powers are obliged to promote sustainable development and that all must cooperate to achieve it (Article 15, cooperation principle).

99 Ofak, 2020, p. 307–308. According to the principle of the spatial sustainability of development and building excellence when adopting strategies, programs, plans, regulations, and other general acts and during their implementation, the State and the units of local and regional self-government shall stimulate the economic and social development of a society, with the objective of achieving sustainable development and building excellence. The aim of this principle is to meet the needs of today's generation while respecting equal opportunities and meeting the needs of future generations as well as to prevent the prevalence of the interest of individual activities to the detriment of harmonized development, nature, environmental protection, cultural goods, and the needs of other space users. Spatial planning shall support sustainable development on the basis of monitoring, analysis, and evaluation of the development of individual activities and spatial sensitivity to ensure the quality of the living and working environment, uniformity of standards for the development of each area, and efficient management of energy, land, and natural resources and to preserve the spatial identity and provide long-term protection of space as the basis for the common good.

100 U-III-1969/2011 from December 18, 2014.

indeterminate. Therefore, one must always take into account that the interpretation of the State's obligation to "respect" family life can be different on a case-by-case basis because of the opinion of the Constitutional Court that the State has a wide margin of appreciation when regulating this issue and when deciding which activities and measures are to be taken when achieving the constitutional guarantee in Article 35, acknowledging the existing possibilities of the society and its individuals as well.[101] This constitutional provision must be linked to the provisions of Articles 61 and 62 of the Constitution. Namely, in Article 61 para. 1, the obligation of the State to protect family is prescribed. Article 62 reads as follows: *"The state shall protect maternity, children and young people, and shall create social, cultural, educational, material and other conditions promoting the exercise of the right to a decent life."*

In the contemporary Constitutional Court's practice, the obligation of the State to protect children and young people is usually directed toward the protection of the best interests of the child.[102] However, regarding the protection of maternity, one decision[103] should be mentioned. In this decision, the Constitutional Court determined that Article 6 on the Act on the maternity leave of mothers who are self-employed and unemployed mothers was not in accordance with the Constitution from April 3, 1996, to December 31, 2008. The reason for this nonconformity with Constitution was that it created inequality in the eyes of the law for parents who adopted their children because it was stipulated that adoptive parents have the same rights, but rules for the adoption of a child older than one year were not stipulated. Therefore, in practice, mothers who claimed their right to maternity leave could not acquire this right if they adopted a child more than one year old and were self-employed. This is the only example found in the practice of the Constitutional Court linked to the violation of the obligation of the State to protect maternity. It can also be linked to the protection of future generations as it promotes adoption as a mean of parenthood, which enables children without parents and/or children whose parents abandoned them or from whom they had been taken to grow in a safe environment. Furthermore, if more people are ready to adopt, there is a better chance that more women will opt to give the baby up for adoption rather than for abortion.[104] The extent of this provision does not meet the extent of provisions of other constitutions that encourage the commitment to have children[105];

101 U-III/243/2013 from May 11, 2016, U-III-2956/2016 from September 28, 2016, U-III-1674/2017 from July 13, 2017.

102 See, inter alia, U-III/2984/2016 from September 21, 2016, and the decisions cited above. It should be noted that regarding this provision, in most situations, the cases were about parental rights regarding children.

103 U-I-65181/2009 from June 13, 2009.

104 See, for example, Bitler and Zavodny, 2002, pp. 25-33. There are different views on the matter as many researchers have shown that adoption is the least preferred choice for women in their decision-making process. See, inter alia, Porter, 2012, Sisson et al., 2017.

105 See Article 63 para. 2 of the Constitution of the Republic of Serbia (*Ustav Republike Srbije*), Official Gazette, (*Službeni glasnik RS*), nos. 98/2006, 115/2021, Article L para. 2 of the Constitution of Hungary (English version available at: https://www.constituteproject.org/constitution/Hungary_2013.pdf?lang=en. Accessed: 12 April 2022).

however, it may be more pro-childbearing than the provisions[106] that only set out the freedom of choice regarding childbearing. It does not explicitly promote becoming a mother, but the last Strategy of Sustainable Development (2009–2020) shows that one of the key challenges is stimulating the growth of the population of the Republic of Croatia. Therefore, the State could view this provision as a mean to say that its constitutional obligation is to promote childbearing.

The practice of the Constitutional Court regarding Articles 61 and 62 of the Constitution, in connection with Article 35, primarily addresses private, internal relations in families, especially regarding the exercise of parental rights. However, the scope of both articles, especially Article 62, should be viewed more broadly. Namely, it is the obligation of the State to create social, cultural, educational, material, and other conditions promoting the exercise of the right to a decent life and to create conditions that will promote the achievement of the right to a decent life. To do so, it is necessary to include, among "other conditions", the right to a healthy environment and a healthy life in order for everyone, especially young people (young generations), to have a decent life. It is self-evident that decent life is impossible without a healthy environment.

In addition, Article 63 prescribes the protection of children and of older parents by their children and reads as follows:

> Parents shall bear responsibility for the upbringing, support and education of their children, and they shall have the right and freedom to make independent decisions concerning the upbringing of their children.
> Parents shall be responsible for ensuring the right of their children to the full and harmonious development of their personalities.
> Children with physical and mental disabilities and socially neglected children shall be entitled to special care, education and welfare.
> Children shall be obliged to take care of their elderly and infirm parents.
> The state shall devote special care to orphans and minors neglected by their parents.

This provision is important for the protection of future generations and the environment because it includes the responsibility of parents for the support and education of their children. This obligation in known for all people who are themselves not yet parents and/or grandparents. Generally, the "future generation" means unborn children, but I believe that this provision can also be interpreted to include unborn generations. Therefore, the Constitution requires that parents (or grandparents) support the future generation(s).[107] The education of children today should

106 See Article 55 of the Constitution of the Republic of Slovenia (Ustava Republike Slovenije), Official Gazette (Uradni list RS), nos. 33/1991-I, 42/1997 – UZS68, 66/2000 – UZ80, 24/2003 – UZ3a, 47, 68, 69/2004 – UZ14, 69/2004 – UZ43, 69/2004 – UZ50, 68/2006 – UZ121,140,143, 47/2013 – UZ148, 47/2013 – UZ90,97,99, 75/16 – UZ70a, 92/2021 – UZ62a. This Article also prescribes that the State creates the conditions to enable parents to decide on having children.

107 This is also the obligation of grandparents as is prescribed by the Family Act (see Article 281, Article 283 para. 3, Article 288 para 2, OG nos. 103/15, 98/19).

include that on sustainable development, the protection of the environment, etc. Moreover, the obligation of parents (or grandparents) to provide for the upbringing and support of their children represents the care of the State for future generations. This obligation represents the responsibility of both parents, who are obligated to ensure these rights for the child.[108] Article 64 of the Constitution should also be mentioned as it prescribes a general duty to protect children and infirm persons.

8. Financial sustainability

Public finances are crucial for executing state roles defined by the Constitution. Therefore, their mid- and long-term sustainability is necessary for social and economic prosperity.[109] However, sustainability as such does not appear in the Constitution as an aspect among the rules of public finances. The Constitution contains only one provision regarding state financing – Article 91, which reads as follows:

> State revenues and expenses shall be established in the state budget. The Croatian Parliament shall enact the state budget by a majority vote of all Members of Parliament. Any law whose implementation requires financial resources shall provide for the sources thereof.

The only other constitutional provision that relates to state finances and can be partially linked to the interest of future generations is Article 51, which reads as follows: *"Everyone shall participate in the defrayment of public expenses, in accordance with their economic capacity. The tax system shall be based upon the principles of equality and equity."*

It is clear that the entire community participates in creating budget funds, and those funds are being spent (among other things) to create conditions for the protection of the environment and for the protection and development of future generations (by building schools, roads, other infrastructure, etc.). The Constitution prescribes that all physical and legal persons are obliged to participate in the creation of budget funds,[110] in accordance with their economic capacity and that the tax system is based on the principles of equality and equity. This principle of tax equality and equity represents a special form of the general principle of proportionality (Article 16 of the Constitution).[111]

When discussing local finances, Article 131 of the Constitution should be mentioned as it contains portions that can be linked to financial stability; it reads as

108 U-III-4505/2019 from June 2, 2021.

109 Report on the work of the Commission for fiscal policy for 2020 (*Izvješće o radu Povjerenstva za fiskalnu politiku za 2020. godinu*), 2020, 2. Available at: https://www.sabor.hr/sites/default/files/uploads/inline-files/FISKALNA_IZVJ_RAD_2020.pdf (Accessed: 22 May 2022).

110 U-I-2282/2014 from November 3, 2020.

111 U-I-411/2019 from March 29, 2022.

follows: *"Units of local and regional self-government shall be entitled to their own revenues and to dispose of them freely in the performance of the tasks under their remit. Revenues of local and regional units of self-government shall be proportional to their powers as envisaged by the Constitution and law. The state shall provide financial assistance to weaker units of local and regional selfgovernment in compliance with law."*

Para. 2 of this Article shows that the Constitution prescribes the principle of proportionate revenue of local and regional units of self-government with regard to their power (scope of jurisdiction). In other words, their revenue must be such as to allow for sustainable budgets of local and regional units of self-government, with the obligation of the state budget to provide financial assistance to weaker such units in accordance[112] with the law. Their power should not be such that their execution would require more assets than are available.

However, financial sustainability is regulated by the Financial Accountability Act from 2018,[113] the purpose of which is to limit spending, the budget deficit, and public debt; to strengthen accountability for legal, dedicated, and purposeful use of budget funds; and to strengthen the system of control and surveillance to ensure fiscal accountability (Article 1). Furthermore, this Act assures the ensuring and keeping of fiscal accountability, transparency, and mid-term and long-term sustainability of public finances. This goal is to be achieved by establishing, applying, and strengthening fiscal rules and rules for ensuring fiscal accountability (Article 3). This Act applies to the state budget, local and regional budgets, and all budgets of the users of the aforementioned budgets (Article 4 para. 1). It limits the growth of expenses of the state budget by prohibiting it from exceeding the referent potential rate of GDP growth (Article 7) by prohibiting the share of public debt in the GDP from exceeding the referent value of 60% (Article 8). To assist Parliament and the government, this Act establishes a special Commission for fiscal policy (composed of seven members,[114] with the president as a professional). This Commission is named by Parliament at the proposal of its Committee for Finances and State Budget. Unlike some countries,[115] Croatia did not opt to establish a constitutional ban on excessive public debt, instead establishing this limit by law. Croatia chose the Maastricht limit for adopting the euro (as doing so by 2023 is a Croatian national goal). However, the public debt in 2021 amounted to 82.4% of the GDP.[116] It is notable that we do not meet this criterion from 2011.[117]

112 See, especially, Šinković, 2019, pp. 223–250.

113 OG no. 111/2018. The first such act dates from 2010, the Financial Accountability Act, OG nos. 139/2010, 19/2014.

114 The six non-professional members are representatives of the State Audit Office, the Economic Institute of Zagreb, the Institute for Public Finances, the Croatian People's Bank, faculties of economics, and law faculties (for faculties, only from the universities in Zagreb, Split, Osijek, and Rijeka).

115 Germany established the Schuldenbremse in 2009 in their Constitution (Article 109 para. 2 of the Grundgesetz), Hungary also set a limit for the maximum public debt of 50% of the GDP in its Constitution.

116 https://www.hnb.hr/-/dug-opce-drzave-na-kraju-rujna-2021-smanjen-na-82-4-bdp-a (Accessed: 25 April 2022)

117 https://www.hgk.hr/documents/aktualna-tema-odrzivost-javnog-duga-svibanj-201557b6f4884c777.pdf (Accessed: 25 April 2022).

9. The protection of national assets

There are two provisions that can be linked to the protection of national assets other than natural resources. One is Article 68 para. 3, which prescribes the obligation of the State to protect scientific, cultural, and artistic assets as national spiritual values. The other is Article 121a para. 1, which establishes the State Attorney's Office as an autonomous and independent judicial body empowered and duty-bound, inter alia, to protect the property of the Republic of Croatia.

10. Other uniquenesses and peculiarities of the Croatian Constitution, constitutional regulation, and constitutional jurisdiction

Article 49 para. 3 should also be mentioned as it prescribes that the State shall encourage the economic progress and social prosperity of its citizens and care for the economic development of all regions. This provision is aimed at highlighting the obligation of the State to create equal opportunities for all and for equal development of the whole country, which can be linked to the care of the State for future generations.

11. *De lege ferenda* proposals

As was previously shown, the Croatian Constitution is inadequately orientated toward environmental protection and the protection of future generations through sustainable development. It does not contain the "polluter pays" principle as, for instance, the Slovenian[118] Constitution does. Furthermore, there is doubt as to whether the right to a healthy life means, in reality, "the right to a healthy environment" although it is the opinion of Croatian legal theory that it does. The State is obliged only to "create the conditions for" a healthy environment. However, despite this, the Croatian legislature contains rather extensive "environmentally friendly" principles in many laws, as was previously mentioned.

There are proposals that would undoubtably improve the protection of the environment in the Republic of Croatia. First, it would be beneficial if Article 69 were to be amended such that the right to a healthy life is replaced by "the right to a healthy environment" to ensure that the right to a healthy environment is a constitutional

118 See Article 72 para 3.

right. Moreover, the "original" wording from the 1990 Constitution should be used in the manner that the State is obliged to guarantee the right to a healthy environment. Second, as was mentioned in the legal theory,[119] Croatia should consider including the right to water as a fundamental right in the Constitution, similar to Slovenia. Some authors feel that this should be done as it would represent a firm and lasting basis of a guarantee to limit the privatization of water services in the Republic of Croatia as a fundamental choice in managing water services.[120] Another author feels that such commitment is implemented in our legal system in full by the relevant Act (the Waters Act), especially when considering that the service of the public supply of water is reserved only for public suppliers and that this service is not eligible for concessions.[121] However, even with this in mind, when considering the (failed) proposals of legislative changes and attempts of yet more privatization in Croatia's reform plans, the introduction of the right to water into the Constitution does not seem to be a bad idea. Third, it would be beneficial, although this principle is implemented in various laws, to explicitly mention sustainable development as the firm orientation of the State in the Constitution. Fourth, the role of ombudsman in environmental protection was mentioned. The Constitution enables the enactment of a special ombudsman (or, as the Constitution stipulates, "other commissioners of the Croatian Parliament responsible for the promotion and protection of human rights and fundamental freedoms"), and Croatia already has three special ombudsmen – for equality of genders, for disabled persons, and for children. It may be time to consider a special ombudsman for the protection of the environment similar to the one in Hungary,[122] whose role it would be to act as a special body with the task to protect, observe, and promote the protection of the environment. Within their scope of work, they could be responsible for the monitoring of laws regarding their alignment with the constitutional right to a healthy environment and the obligation of the State to ensure conditions for such an environment, have the power to instigate legal remedies against environmental acts (permits, etc.), and help prepare environmental policies, strategies, etc. Fifth, the State should observe the ombudsman's recommendation and organize substantial education for judges regarding environmental matters as general knowledge on environmental law is poor among Croatian practitioners and even scholars.

119 Sarvan, 2016, Staničić, 2018, pp. 34–36.

120 Sarvan, 2016, p. 411.

121 Staničić, 2018, p. 36.

122 Article P of Hungary's Constitution provides that *"Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."* In 2007, Parliament created a special Ombudsman for Future Generations, which was grouped with other ombudsmen in 2012 under the Commissioner for Fundamental Rights. The Ombudsman for Future Generations holds the status of a Deputy Commissioner and reports to Parliament annually. http://environmentalrightsdatabase.org/hungarys-ombudsman-for-future-generations/ (Accessed: 20 May 2022).

Bibliography

Bačić, A. (2008) 'Ustavni temelji i problemi zaštite okoliša u hrvatskom i europskom pravu' ['Constitutional Foundations and Problems of Environmental Protection in Croatian and European Law'], *Zbornik radova Pravnog fakulteta u Splitu*, 45 (4), pp. 727–743.

Bačić, P. (2008) 'O značaju prava na informaciju u upravljanju okolišem i zaštiti ljudskih prava' ['On the Meaning of the Right of Access to Information in Environmental Management and in Protection of Human Rughts'], *Zbornik radova Pravnog fakulteta u Splitu,* 45(4), pp. 811–823.

Barrio, D. (2016) *Society, rights and the environment*. Santiago: United Nations.

Bitler, M., Zavodny, M. (2002) 'Did Abortion Legalization Reduce the Number of Unwanted Children? Evidence from Adoptions', *Perspectives on Sexual and Reproductive Health,* 34(1), pp. 25–33; https://doi.org/10.2307/3030229

Committee on Fiscal Policy (2020) *'Izvješće o radu Povjerenstva za fiskalnu politiku za 2020. godinu ['Report on the work of the Committee on Fiscal Policy for 2020']* [Online]. Available at: https://www.sabor.hr/sites/default/files/uploads/inline-files/FISKALNA_IZVJ_RAD_2020.pdf (Accessed: 27 July 2022).

Knox, J. H. (2013) 'United Nations, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/25/53)' [Online]. Available at: https://digitallibrary.un.org/record/766887 (Accessed: 30 May 2022).

Medvedović, D. (2015) 'Razvoj upravnopravne zaštite okoliša u Hrvatskoj' ['Development of Administrative Law protection of the environment in Croatia] in Barbić, J. (ed.) *Upravnopravna zaštita okoliša [Administrative Law protection of the environment].* Zagreb: Hrvatska akademija znanosti i umjetnosti, pp. 5–85.

Medvedović, D., Ofak, L. (2011) The Legal Position of Associations in Environmental Protection Proceedings in the Republic of Croatia', *The Scientific Journal Facta universitatis Series Law and Politics,* 9(1), pp. 69–84.

Ofak, L. (2015) 'Application of the Aarhus Convention in Southeast Europe' in Rodin, S., Perišin, T. (eds.) *Judicial Application of International Law in Southeast Europe.* Heidelberg – New York – Dordrecht – London: Springer, pp. 43–62; https://doi.org/10.1007/978-3-662-46384-0_4

Ofak, L. (2016) *'Dobra sudska praksa u Hrvatskoj vezana uz primjenu Aarhuške konvencije' ['Good court practice in Croatia with regard to the application of the Aarhus Convention']* [Online]. Available at: https://aarhus.zelena-istra.hr/sites/aarhus.zelena-istra.hr/files/Ofak%20II%20-%20Dobra%20sudska%20praksa%20u%20Hrvatskoj.pdf (Accessed: 15 May 2022).

Ofak, L. (2020) *'Croatia'* in Deketelaere, K. (ed.) *IEL Environmental Law.* Netherlands: Kluwer Law International BV, pp. 1–354.

Ofak, L. (2021) 'The approach of the Constitutional Court of the Republic of Croatia towards the protection of the right to a healthy environment', *Journal of Agricultural and Environmental Law,* 16(31), pp. 85–98; https://doi.org/10.21029/JAEL.2021.31.85

Omejec, J. (2003) 'Uvodna i osnovna pitanja prava okoliša' ['Introductory and basic questions of environmental law'] in Lončarić-Horvat, O. (ed.) *Pravo okoliša, treće, izmijenjeno i dopunjeno izdanje [Environmental Law, third edited and amended edition],* Zagreb: Ministarstvo zaštite okoliša i prostornog uređenja & Organizator, pp. 23–94.

Porter, L. (2012) 'Adoption is Not Abortion-Lite', *Journal of Applied Philosophy*, 29(1), pp. 63–77; https://doi.org/10.1111/j.1468-5930.2011.00553.x

Proso, M. (2015) 'Građanskopravna odgovornost u području zaštite okoliša' ['Civil law liability in the area of environmental protection'], *Zbornik radova Pravnog fakulteta u Splitu*, 52(3), pp. 705–719.
Rajko, A. (2007) 'Ustavno pravo na zdrav život' ['Constitutional Right to Healthy Life'], *Pravo i porezi*, 2007/12, pp. 22–27.
Sarvan, D. (2016) *Ljudsko pravo na vodu – pravno utemeljenje i implikacije implementacije [Human right to water – legal basis and implications of implementation]*. Zagreb: Novi informator.
Šinković, Z. (2019) 'Financiranje jedinica lokalne i područne (regionalne) samouprave' ['Financing the units of local and district (regional) self-management'], *Zbornik radova Pravnog fakulteta u Splitu*, 56(1), pp. 223–250; https://doi.org/10.31141/zrpfs.2019.56.131.223
Sisson, G., Ralph, L., Gould, H., Greene Foster, D. (2017) 'Adoption Decision Making among Women Seeking Abortion', *Womens Health Issues*, 27(2), pp. 136–144; https://doi.org/10.1016/j.whi.2016.11.007
Staničić, F. (2018) 'Vodni resursi Republike Hrvatske i zakonsko uređenje njihovog korištenja i zaštite' ['Water resources of the Republic of Croatia and legal Regulation of their use and protection'] in Ondrašek, G. (ed.) *Vodni resursi R. Hrvatske u funkciji proizvodnje hrane [Water Resources of the Republic of Croatia in the function of food production]*, Zagreb: Sveučilište u Zagrebu, Agronomski fakultet, pp. 4–38.

Legal sources and court practice

Access to Information Act, OG nos. 25/13, 85/15.
Agricultural Land Act, OG nos. 20/2018, 115/2018, 98/2019.
Air Protection Act, OG no. 127/2019.
Chemicals Act, OG nos. 18/2013, 115/2018, 37/2020.
Civil Obligations Act, OG nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018.
Climate Change and Ozone Layer Protection Act, OG no. 127/2019.
Constitution of Hungary [Online]. Available at: https://www.constituteproject.org/constitution/Hungary_2013.pdf?lang=en (Accessed 12 April 2022).
Constitution of the Republic of Croatia, OG, nos. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14.
Constitution of the Republic of Serbia, OG, nos. 98/2006, 115/2021.
Constitution of the Republic of Slovenia, OG, nos. 33/1991-I, 42/1997 – UZS68, 66/2000 – UZ80, 24/2003 – UZ3a, 47, 68, 69/2004 – UZ14, 69/2004 – UZ43, 69/2004 – UZ50, 68/2006 – UZ121,140,143, 47/2013 – UZ148, 47/2013 – UZ90,97,99, 75/16 – UZ70a, 92/2021 – UZ62a.
Constitution of the Socialist Republic of Croatia, OG no. 8/74.
Criminal Act, OG nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.
Environmental Protection Act, OG, no. 80/13, 153/13, 78/2015, 12/18, 118/18.
Family Act, OG nos. 103/15, 98/19.
Financial Accountability Act, OG no. 111/2018.
Financial accountability Act, OG nos. 139/2010, 19/2014.
Forests Act, OG nos. 68/2018, 115/2018, 98/2019, 32/2020.
Nature Protection Act, OG nos. 80/2013, 15/2018, 14/2019, 127/2019.
Organization and Scope of State Administration Bodies Act, OG no. 85/20.
Protection against Light Pollution Act, OG no. 14/19.

Protection against Non-ionizing Radiation Act, OG nos. 91/2010, 114/2018.
Protection from Noise Act, OG nos. 30/2009, 55/2013, 153/2013, 41/2016, 114/2018.
Radiological and Nuclear Safety Act, OG nos. 141/2013, 39/2015, 130/2017, 118/2018.
Report of the Ombudsman for 2021 [Online]. Available at: https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2021-godinu/?wpdmdl=13454&refresh=6283dd5dc774f1652809053 (Accessed: 20 April 2022).
Report on the work of the Commission for fiscal policy for 2020 [Online]. Available at: https://www.sabor.hr/sites/default/files/uploads/inline-files/FISKALNA_IZVJ_RAD_2020.pdf (Accessed: 20 April 2022).
Rev-x 295/2018- 2 from 9 April 2019.
Spatial Planning Act, OG nos. 153/13, 65/17, 114/18, 39/19, 98/19.
Strategy of Sustainable Development, OG no. 30/09.
Sustainable Use of Pesticide Act, OG nos. 014/2014, 115/2018, 32/2020.
Sustainable Waste Management Act, OG nos. 94/2013, 73/2017, 14/2019, 98/2019.
Treatment of Illegal Constructed Buildings Act, OG nos. 86/12, 143/13.
U-I/4597/2012, from 4 November 2014.
U-I-2282/2014 from 3 November 2020.
U-I-411/2019 from 29 March 2022.
U-I-6004/2012, from 4 November 2014.
U-I-65181/2009 from 13 June 2009.
U-I-897/2014, from 18 July 2014.
U-III/1114/2014, from 27 April 2016.
U-III/243/2013 from 11 May 2016.
U-III/2984/2016 from 21 September 2016.
U-III/3643/2006, from 23 May 2007.
U-III/5942/2013, from 18 June 2019.
U-III-1115/2014, from 11 May 2016.
U-III-1674/2017 from 13 July 2017.
U-III-1910/2019, from 15 April 2021.
U-III-1969/2011 from 18 December 2014.
U-III-2466/2017, from 23 October 2019.
U-III-2956/2016 from 28 September 2016.
U-III-3538/2017, from 18 April 2019.
U-III-4505/2019 from 2 June 2021.
U-III-69/2002, from 8 July 2004.
Water Act, OG no. 66/2019.

Chapter IV

Czech Republic: Limited Constitutional Regulation of Environmental Protection Complemented by the Case Law of the Constitutional Court

Michal Radvan

1. Introduction

Compared to other countries, the Constitution of the Czech Republic[1] is rather specific; it is relatively brief and contains only basic rules, mainly connected to the powers of the State. No articles of the Constitution deal with fundamental rights and basic freedoms. However, another relevant document exists called the Charter of Fundamental Rights and Freedoms.[2] The Constitution of the Czech Republic (the Constitution sensu stricto) and the Charter of Fundamental Rights and Freedoms compose the Czech Constitution sensu lato (the Constitutional Order).[3]

Concerning the Constitution sensu stricto, its Art. 7 should be mentioned in particular as it declares that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The Charter in Art. 35 specifically grants the right to a favorable environment and the right to timely and complete information regarding the state of the environment and natural resources.

1 Act no. 1/1993 Sb., the Constitution of the Czech Republic, as amended.
2 Act no. 2/1993 Sb., the Charter of Fundamental Rights and Freedoms, as amended.
3 Radvan, 2016, p. 517.

Michal Radvan (2022) Czech Republic: Limited Constitutional Regulation of Environmental Protection Complemented by the Case Law of the Constitutional Court. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 161–202. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_5

It also states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law. The significance of Art. 35 is diminished by Art. 41, which stipulates that these rights may be claimed only within the confines of the laws implementing these provisions.[4] It should be stated that the term "favorable environment" is the synonym for the "healthy environment" which is used more commonly in international documents.[5] A literal translation of the term "healthy environment" into the Czech language is not possible, as the Czech language does not include such a phrase.

The Environment Act[6] is a framework norm, while most of its provisions are of a proclamatory rather than a normative nature. Officially, it is not a constitutional act; however, it corresponds more to the provisions of constitutional law than to those of ordinary law.[7] The Act defines the environment as everything that creates the natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. The components of the environment are primarily air, water, rocks, soil, organisms, ecosystems, and energy.

The Czech environmental law theory[8] divides environmental acts into two groups: cross-cutting regulations and component regulations. Cross-cutting regulations are laws that contain regulation of the means applied to protect all components of the environment and regulate all threatening and harmful activities,[9] including laws dealing with the various types of liability relations; ownership issues; access to information, including environmental information; tax regulation; and procedural regulations.[10] With regard to liability for environmental matters in civil law, the Civil Code defines the general duty of prevention expressed as an obligation to act in such a way as to avoid unjustified harm to the liberty, life, health, or property of another.[11] In spite of the fact that terms such as nature and environment are not explicitly stated, there is no doubt that the liability for environmental matters is covered by this article. There are two types of crimes related to the environment: crimes against the environment and crimes related to the protection of the environment.[12]

Component regulations refer to legislation dealing with the protection of individual components of the environment such as nature, agricultural land, water

4 Vomáčka and Jančářová, 2021, p. 479. Also Jančářová, 2016, p. 163. Also Vomáčka, 2016, p. 175.
5 E.g., Art. 11 of the Protocol of San Salvador; Art. 38 of the Arab Charter on Human Rights; Art. 4.1 of the Escazú Agreement; UN Human Rights Council's Resolution 48/13 of 8.10.2021.
6 Act no. 17/1992 Sb., Environment Act, as amended.
7 Hanák, 2016, p. 120. See also Supreme Administrative Court, 3 Ans 8/2005-52, 18.5.2006.
8 Hanák, 2016, pp. 121–122.
9 E.g., Act no. 100/2001 Sb., Environmental Impact Assessment Act, as amended; Act no. 76/2002 Sb., Integrated Prevention Act, as amended.
10 E.g., Act no. 183/2006 Sb., the Building Act, as amended; Act no. 258/2000 Sb., the Act on the Protection of Public Health, as amended; Act no. 40/2009 Sb., the Criminal Code, as amended; Act no. 89/2012 Sb., the Civil Code, as amended.
11 Sec. 2900 of the Civil Code.
12 For details, see part IV.

and forests, air, cultural monuments, or animals from cruelty as well as regulations containing conditions for waste management and chemicals. Within the cultural monuments, the Czech law covers the protection of both the built and the cultural heritage.[13] It also establishes the right of access to cultural wealth.[14]

As an EU Member State, the Czech Republic is also bound by regulations based on Art. 191 of the Treaty on the Functioning of the European Union.

The most important administrative authority in the area of the protection of the environment is the Ministry of the Environment as a body of supreme state supervision. Other institutions, such as the Czech Environmental Inspectorate, the Nature and Landscape Protection Agency, and the National Parks Administrations are subordinated to the Ministry. At the local level, regions and municipalities should be mentioned with their departments of the environment.

The international case law in environmental law related to the Czech Republic is scarce: the only case to be mentioned is the case judged by the European Court of Human Rights (case of Sdružení Jihočeské Matky v. Czech Republic[15]), concluding that Art. 10 of the Aarhus Convention cannot be interpreted as guaranteeing an absolute right of access to all technical details concerning the construction of a nuclear power plant as, unlike information related to environmental impact, such data cannot concern a matter of general interest. In the future, it might be interesting to follow the Mine de Turów case[16] in the Court of Justice of the European Union.

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and especially the environment

According to Art. 7 of the Constitution of the Czech Republic, the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The state carries out this duty through the legislative, executive, and judiciary powers. The legislative power is represented by Parliament, which adopts (environmental) law and grants consent to international (environmental) treaties. The Chamber of Deputies has its Committee on Environment, while the Senate has the Committee on Public Administration, Regional Development, and the Environment.

Within the executive power, the role of the President of the Republic is marginal. The government is more crucial as it adopts the primary politics, strategies, and

13 Art. 35/3 of the Charter.
14 Art. 34/2 of the Charter.
15 European Court of Human Rights, Appl. no. 19101/03, 10.7.2006.
16 Court of Justice of the European Union, C-121/21 R, 26.3.2021.

programs dealing with the environment and prepares most of the drafts of acts. The government also adopts many government decrees concerning the environment and its protection. The leading authority in the area of the protection of the environment is the *Ministry of the Environment* as a body of supreme state supervision. The Ministry is the central state administration authority for protecting water, air, nature and landscape, zoos, the agricultural land fund, and the rock environment. It is responsible for waste management and national environmental policy. To ensure the management and control activities of the Government of the Czech Republic, the Ministry of the Environment coordinates the actions of all ministries and other central state administration bodies of the Czech Republic in environmental matters. The Ministry also ensures and manages a unified information system on the environment and administers the Fund for the Creation and Protection of the Environment of the Czech Republic.

The Ministry of the Environment has several subordinated bodies playing a crucial role in environmental protection. The Czech Environmental Inspectorate is an expert body subordinate to the Ministry of the Environment that is responsible for supervising compliance with environmental legislation. It imposes corrective measures and penalties based on identified deficiencies and has the power to restrict or stop operations and other activities if they endanger the environment. The Inspectorate applies statements and binding opinions in proceedings concerning the environment. The Czech Environmental Information Agency collects, evaluates, interprets, and distributes environmental information. The State Environmental Fund of the Czech Republic collects certain ecological taxes sensu lato and finances the protection and improvement of the environment. The Nature Conservation Agency of the Czech Republic performs state administration on the territory of protected landscape areas, national nature reserves, and national natural monuments. Finally, the Czech Hydrometeorological Institute deals with clean air, hydrology, water quality, climatology, and meteorology.

In addition to the Ministry of the Environment, there are other ministries with competencies in the area of environmental protection, such as the Ministry of Agriculture, the Ministry of Industry and Trade, the Ministry of Regional Development, the Ministry of Culture, and the Ministry of Health. Moreover, local bodies are responsible for the given area, specifically municipalities and regions and their environment departments.

Within the judiciary power, the role of the *Constitutional Court* must be highlighted. The decision-making practice of the Constitutional Court is essential for the protection of the environment (from the position of the addressees of rights and obligations as well as from the position of the executors of public authority). The Court protects fundamental human rights and freedoms both through ruling on constitutional complaints and the role of the Constitutional Court as a "negative legislator" in deciding on motions to repeal part or all of a legal regulation. Concerning the exercise of public authority, the Constitutional Court's decision-making powers in

relation to selected conflicts of competence are significant. The Court rules on both fact and legality in environmental matters.

From many judgments dealing with environmental protection, it is necessary to note some of the findings. The Court has dealt with the constitutional enshrinement of environmental protection and stated that "the fact that the environment is a public good (value) within the meaning of the preamble to the Constitution and the Charter and Art. 7 of the Constitution does not exclude the existence of a subjective right to a favorable environment (Art. 35/1 of the Charter), as well as the right to claim it to the extent provided for by law (Art. 41 of the Charter)."[17] Art. 7 of the Constitution does not in itself establish a subjective fundamental right, as it only contains an obligation of the state to ensure the careful use of natural resources and the protection of natural wealth. In this respect, in the opinion of the Constitutional Court, that article cannot be invoked independently.[18] Moreover, the Court noted that "the right to a favorable environment cannot, by its very nature, prohibit all activities that have a negative impact on the environment, and is therefore based on the concept of generally binding prohibitions of negative impacts above a certain defined threshold, the extent, amount or value of which is influenced by the level of human of human knowledge, the situation in society, international obligations, and the results of the national economy, and other, often political, influence."[19]

The Constitutional Court also stated that environmental issues have political and scientific aspects when assessing national parks and the rules on how to behave in them: "It is an ideological conflict between (especially) so-called environmentalists and businessmen, property owners and representatives of local governments, which should be resolved in the legislature, not in the Constitutional Court. The contested legal regulation of national parks is reasonable and appropriately balances the conflict between the right to own property within the meaning of Art. 11/1 of the Charter of Fundamental Rights and Freedoms, the freedom of movement under Art. 14 of the Charter, and the right to self-government under Art. 101 of the Constitution, on the one hand, and the right to a favorable environment, also enshrined at the constitutional level in Art. 35 of the Charter, accompanied by the positive obligation of the state to take care of the protection of natural resources under Art. 7 of the Constitution."[20] This decision of the Constitutional Court may present a perfect example that fundamental rights might be subject to restrictions to protect the environment.

Finally, it is necessary to mention the judgment dealing with two issues: the relationship between Art. 35 and Art. 41 of the Charter ("The right to a favorable environment under Art. 35/1 of the Charter is a right with relative content and can be invoked only within the framework of the laws implementing it [Art. 41/1]. The

17 Constitutional Court, III ÚS 70/97, 10.7.1997.
18 Constitutional Court, II. ÚS 2614/08, 19.8.2010.
19 Constitutional Court, II. ÚS 251/03, 24.3.2005.
20 Constitutional Court, Pl. ÚS 18/17-1, 25.9.2018.

constitutionality of interference with that fundamental right must be assessed not by a proportionality test but by a rationality test. The essence of this right can be considered to be the state's obligation to protect against interference with the environment if the interference reaches such a level that it makes it impossible to fulfill the basic needs of human life"") and the participation of associations in the procedures connected with environmental protection ("Neither the constitutional order nor the international treaties by which the Czech Republic is bound can imply an obligation on the part of the state to ensure that associations whose main mission, according to their statutes, is the protection of nature and the countryside, participate in all administrative proceedings.").[21]

Not only from the decisions mentioned above but also from the long-term practice of the Constitutional Court in other matters, it is possible to state that the Czech Constitutional Court is the court of law administering justice based on legislation and very often also on previous court decisions. It combines practices of both the court of law and the court of facts.

In addition to the Constitutional Court, the ordinary courts are engaged in environmental issues as well. These are primarily civil and administrative courts (regional courts and the Supreme Administrative Court).[22] At least two examples from many cases concerning cross-cutting and component regulations should be mentioned. The *Supreme Administrative Court* confirmed that the right to information covers both natural and legal persons (including associations the main mission of which is to protect nature and the countryside).[23] However, the plaintiff, which is a civil association dealing with the protection of individual components of the environment and is not a holder of rights and obligations arising from substantive law, can only allege a violation of procedural rights in action.[24]

The Constitution of the Czech Republic does not include any special organization or person that has an outstanding function or task for protecting the interest of future generations or the interest of the environment. However, the role of the Public Defender of Rights (the *Ombudsman*) must not be overlooked, regardless of whether the Constitution regulates this institution. The Ombudsman shall work to defend persons against the conduct of authorities and other institutions when such conduct is at variance with the law or does not comply with the principles of a democratic state governed by the rule of law and good administration as well as against their inaction, thereby contributing to the defense of fundamental rights and freedoms.[25] It means that they are also active in environmental issues, including involvement in the comment procedure for draft laws. Between 2015 and 2020, the Ombudsman dealt with more than 4,500 complaints relating to the environment to a greater or

21 Constitutional Court, Pl. ÚS 22/17-2, 26.1.2021.
22 Vomáčka and Žídek, 2016, pp. 315-338.
23 Supreme Administrative Court, 6 A 93/2001-56, 25.10.2004.
24 Supreme Administrative Court, 7 A 139/2001-67, 29.7.2004.
25 Vomáčka, 2016a, pp. 213–214.

lesser extent, including construction activities affecting the landscape, assessments of buildings' impact on the environment, landscaping with waste on runoff conditions in the area, the operation of industrial enterprises affecting air quality, wastewater discharge, waste management, tree felling, the protection of agricultural land, noise pollution, and more.[26]

The Ombudsman is elected by the Chamber of Deputies for a term of six years from among candidates, of whom two shall be nominated by the President of the Republic and two by the Senate. The Ombudsman may be elected for a maximum of two consecutive terms, and they shall discharge their office independently and impartially. They are accountable to the Chamber of Deputies: by March 31 each year, they must submit to the Chamber of Deputies a written annual report on the Ombudsman's activities during the past year. They must also submit to the Chamber of Deputies information on their activities (at least once every three months), a report on individual cases in which adequate remedial measures have not been achieved even after the procedures, and recommendations regarding legal regulations.

The Ombudsman acts on the basis of a complaint lodged by a natural or legal person or on their own initiative. After the investigation, they can mainly suggest the following remedial measures: initiating proceedings on the review of a decision, act, or procedure of the authority if it is possible to initiate such proceedings ex officio, performing acts to eliminate inactivity, initiating disciplinary or similar proceedings, initiating prosecution for a criminal offense, infraction, or some other administrative offense, provision of an indemnification, or filing a claim for indemnification. The Ombudsman is also authorized to recommend that a legal or internal regulation be issued, amended, or canceled.[27] Moreover, they have the right to make a complaint to protect the public interest if they prove a compelling reason for the submission in the public interest.[28] In 2012, the Ombudsman directed his first action for the protection of the public interest against several final administrative decisions of the Duchcov Municipal Office, by which this administrative authority permitted the construction of a photovoltaic power plant in the cadastral area of Moldava and subsequently approved it. As part of its standard investigation, the Ombudsman found a number of shortcomings in the administrative procedure itself, in which the environmental impact of the industrial construction was not assessed in advance (possible and probable impact on the landscape, impact on the favorable status of the

26 Veřejný ochránce práv, 2020.

27 Act no. 349/1999 Sb., the Act on the Public Defender of Rights, as amended.

28 Sec. 66/3 of Act no. 150/2002 Sb., the Code of Administrative Justice, as amended. See also Supreme Administrative Court, 9 As 24/2016-109, 14.7.2016: "The active procedural legitimacy of the Public Defender of Rights under Sec. 66/3 of the Code of Administrative Justice is given only in the case of serious public interest, i.e., e.g., in those cases in which on the date of filing a lawsuit against a decision on a building permit the statutory exemptions from the prohibition of activity in a specially protected area have not been granted (i.e., the activity is ex lege prohibited), or in cases in which the relevant administrative decisions (permits) were issued as a result of criminal activity by officials."

bird area, failure to grant an exemption from the protection conditions for specially protected species of plants and animals). Furthermore, there was a fundamental violation of the Building Act, as construction was permitted and implemented in the open countryside in an undeveloped area and was, therefore, contrary to one of the basic objectives of building-law regulation, which is the protection of undeveloped areas. In view of the intensity of the illegality, which contradicts the very principles of legality and prevention, and in a situation in which the public administration as a whole has been unable to remedy these illegal practices, the defender exercised his active legitimacy and brought the action for the protection of the public interest, knowing that it was an ultima ratio remedy.[29]

The Ombudsman can investigate only in relation to public actors (i.e., when the authorities do not act correctly or according to the law, the complainant disagrees with the authority's decision or does not like the authority's procedure, the authority does not act when it should, the complainant is not invited as a party to the proceedings, the official behaves inappropriately, etc.). As evident from the example of the photovoltaic power plant mentioned above, the Ombudsman cannot react to the activities of private law subjects (including multinational companies) but only to the illegal activities or inactivity of the offices.

Even if it was the first Czech president, Havel, who believed that the Constitution should not lack an ecological article, the role of the President in environmental issues is meaningless.

3. The basis of fundamental rights and protecting the environment by enshrining rights related to political freedoms

The proof that human rights, including the right to a favorable environment, are taken seriously in the Czech Republic, particularly after the communist regime, can be found in several preambles of the most important constitutional acts generally (the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms) or explicitly dealing with environment protection (the Environment Act). The preamble of the Constitution states that the citizens of the Czech Republic in Bohemia, in Moravia, and in Silesia are resolved to guard and develop together the natural, cultural, material, and spiritual wealth handed down to our generation. Similarly, the Charter recalls the share of responsibility to future generations for the fate of all life on Earth. The most concrete is the Environment Act. It states that humans, along with other organisms, are an inseparable part of nature. It reiterates the natural interdependence of humans and other organisms and the respect for the

29 Veřejný ochránce práv, 2012, p. 34. Supreme Administrative Court, 9 As 24/2016-109, 14.7.2016.

human right to transform nature in accordance with the principle of sustainable development. Further, it highlights the awareness of the responsibility to preserve a favorable environment for future generations and emphasizes the right to a favorable environment as a fundamental human right.

As stated above, the Constitution itself is relatively brief, and it does not contain any articles dealing with fundamental rights and basic freedoms. These rights and freedoms are set in the Charter. Only Art. 7 of the Constitution briefly declares that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.[30] The spiritual author of this provision was President Václav Havel, who believed that the Constitution should not lack an ecological article.[31] The term "natural wealth" is synonymous with the "environment".[32] Art. 7 is considered a provision that imposes not only legal but also moral and political obligation on the state to respect the protection of the environment as its priority and state objective. Therefore, the state should respect this priority when designing legislation (including environmental law) and interpreting the law as well as when regulating the behavior of the addressees of the law and limiting other rights to the need to protect the environment. The significance of Art. 7 of the Constitution in practice is thus primarily interpretative: the protection of the environment is declared to be a constitutionally protected value.[33]

Art. 7 of the Constitution is inextricably linked to Art. 35 of the Charter, which regulates the human rights dimension of environmental protection. It specifically grants the *right to a favorable environment* and the right to timely and complete information regarding the state of the environment and natural resources. It also states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law. However, Art. 35 also requires the active action of the legislator, as Art. 41 of the Charter stipulates that these rights may be claimed only within the confines of the laws implementing these provisions. The right to live in a favorable environment also occurred in the Civil Code.[34]

The right to a favorable environment is interpreted in the classical approach. This right belongs to the third generation of human rights as proposed in 1979 by Czech-French lawyer and university professor Karel Vašák, who was the first director of the International Institute for Human Rights in Strasbourg.

The Constitutional Court pointed out that "the right to a favorable environment cannot, by its very nature, prohibit all activities that have a negative impact on the environment, and is therefore based on the concept of generally binding prohibitions of negative impacts above a certain defined threshold, the extent, amount or value

30 Uhl, 2015.

31 Chrastilová and Mikeš, 2003, p. 114.

32 See Constitutional Court, IV. ÚS 652/06, 21.11.2007. See also Hanák, 2016a, p. 148.

33 See the findings of the Constitutional Court mentioned above in the part dealing with the Court's role. See also Hanák, 2016a, p. 150.

34 Sec. 81/2 of the Civil Code.

of which is influenced by the level of human of human knowledge, the situation in society, international obligations, and the results of the national economy, and other, often political, influence."[35] The Court also stated that "the fact that the environment is a public good (value) within the meaning of the preamble to the Constitution and the Charter and Art. 7 of the Constitution does not exclude the existence of a subjective right to a favorable environment (Art. 35/1 of the Charter), as well as the right to claim it to the extent provided for by law (Art. 41 of the Charter)."[36] It further stated that environmental issues have political and scientific aspects, and fundamental rights may be subject to restrictions to protect the environment: "The contested legal regulation of national parks is reasonable and appropriately balances the conflict between the right to own property within the meaning of Art. 11/1 of the Charter of Fundamental Rights and Freedoms, the freedom of movement under Art. 14 of the Charter, and the right to self-government under Art. 101 of the Constitution, on the one hand, and the right to a favorable environment, also enshrined at the constitutional level in Art. 35 of the Charter, accompanied by the positive obligation of the state to take care of the protection of natural resources under Art. 7 of the Constitution."[37]

Compared to the Hungarian practice, the *right to health* is not as strictly related to the right to a healthy environment in the Czech Republic. According to Art. 31 of the Charter, everyone has the right to the protection of their health. Citizens shall have the right, via public insurance, to free medical care and medical aid under conditions provided for by law. Additionally, in this case, Art. 41 of the Charter stipulates that this right may be claimed only within the confines of the laws implementing this provision. Only once was the link between the right to a favorable environment and the right to health stated by the Constitutional Court: "The protection of human freedom without the protection of human life, health, and the environment that makes life and freedom possible would lack meaning. The right to health protection implies a positive obligation of the state to act and protect health by various necessary measures … It is the duty of the state to take adequate measures to ensure and fulfill the right to the protection of health … by, i.a., improving all aspects of external living conditions. In cases transcending the legal sphere of the individual, the state has a duty to protect health even against the will of the persons concerned."[38]

Interference with the environment or its poor condition can interfere not only with the right to health but also with the right to life protected by Art. 6 of the Charter as well as the right to privacy.[39] The right to timely and complete information regarding the state of the environment and natural resources, as mentioned

35 Constitutional Court, II. ÚS 251/03, 24.3.2005.
36 Constitutional Court, III ÚS 70/97, 10.7.1997.
37 Constitutional Court, Pl. ÚS 18/17-1, 25.9.2018.
38 Constitutional Court, Pl. ÚS 7/17-1, 27. 3. 2018. Cited in Constitutional Court, Pl. ÚS 33/16-2, 10.11.2020.
39 Art. 7 of the Charter.

in Art. 35 of the Charter, partially overlaps with the right to information as defined by Art. 17 of the same document. This article states that state as well as territorial self-governing bodies are obliged, in an appropriate manner, to provide information on their activities. The conditions and the implementation thereof shall be provided for by law. Furthermore, several rights from the group of *political rights* are to be mentioned, namely the right of petition, the right of peaceful assembly, and the right of association.[40] All rights mentioned in this paragraph are not limited by Art. 41 of the Charter.

The Czech Republic fully follows the Aarhus Convention[41] when protecting the environment by enshrining rights related to political freedoms. There are several articles in the Charter dealing with these issues, namely the right to timely and complete information regarding the state of the environment and natural resources[42] and the right to information[43] as well as other rights from the group of political rights, specifically the right of petition,[44] the right of peaceful assembly,[45] and the right of association.[46] The right to a fair trial must not be omitted, even if it does not belong to the group of political rights according to the Czech Charter.

The *right to information* is also not a political right according to the Charter. It is one of the legal guarantees of legality in public administration. Access to environmental information is a prerequisite for effective public participation in environmental protection.[47]

The right to timely and complete information regarding the state of the environment and natural resources is stated explicitly in Art. 35/2 of the Charter. This right may be claimed only within the confines of the laws implementing this provision. Moreover, there is a general right to information expressed in Art. 17/5 of the Charter. It states that state bodies as well as territorial self-governing bodies are obliged, in an appropriate manner, to provide information on their activities. The conditions and the implementation thereof shall be provided for by law. According to the Supreme Administrative Court,[48] the right to information applies to both natural and legal persons, including associations the primary mission of which is to protect nature and the countryside. In its decision, the Supreme Administrative Court also stated that both the political right to information in Art. 17/5 of the Charter and the right to timely and complete information regarding the state of the environment and natural resources in Art. 35/2 of the Charter as a third-generation right are among

40 Arts. 18-20 of the Charter.
41 The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.
42 Art. 35 of the Charter.
43 Art. 17 of the Charter.
44 Art. 18 of the Charter.
45 Art. 19 of the Charter.
46 Art. 20 of the Charter.
47 Vomáčka and Humlíčková, 2018, pp. 389–408.
48 There are no essential Constitutional Court decisions in this area.

public nature rights.[49] However, there is no relevant Constitutional Court practice in relation to the right to timely and complete information.

The primary law mandating the right to information is the Act on Free Access to Environmental Information[50] and the Act on Free Access to Information.[51] The reason for the two acts, based on the same premises, was mainly political: the Act on Free Access to Environmental Information was not controversial, while the Act on Free Access to Information was a new issue, and a substantial number of political debates and disputes in Parliament were expected. As Vomáčka states, the acts are very close to each other, and the conclusions of case law interpreting the provisions of one or the other can be reasonably applied.[52] Additionally, according to the case law,[53] there is no reasonable reason why the norms embodied in the Act on Free Access to Information should be interpreted differently from the comparable explicitly expressed norm of the Act on Free Access to Environmental Information. In practice, the Act on Free Access to Information is the general norm, while the Act on Free Access to Environmental Information is a special one. It is up to the obliged body to assess under which act the information will be provided, regardless of the formal designation of the request. If it finds that the information in question cannot be considered environmental information and the special act cannot be applied, it must still assess a possible obligation to provide it under the general act.[54] Vomáčka highlights several other significant differences between these acts, for example, in the definition of obliged bodies, reasons for refusing to disclose the requested information, the method of determining the amount of the payment for disclosure of information, and the length of procedural deadlines.[55] In addition to the Act on Free Access to Environmental Information, the access to environmental information is regulated by a number of specific acts, primarily in the area of regulation of the handling of specific sources of endangerment.

The legislation distinguishes between active and passive disclosure of information. Passive disclosure is defined as the disclosure of information based on a request that the applicant must address to the obliged body to obtain the necessary information. The requested body is obliged to respond and address it adequately. Active disclosure means that the obliged bodies publish selected environmental information without it having to be requested by the public in various registers accessible remotely via the internet.[56] Active access exists in three basic ways: 1. by informing the public in the event of an imminent threat to health or the environment, 2. by informing the public regarding the type and extent of environmental information

49 Supreme Administrative Court, 6 A 93/2001-56, 25.10.2004.
50 Act no. 123/1998 Sb., as amended.
51 Act no. 106/1999 Sb., as amended.
52 Vomáčka, 2016c, p. 246.
53 Supreme Administrative Court, 1 As 44/2010-103, 1.12.2010.
54 City Court in Prague, 9 Ca 270/2004, 27.4.2007.
55 Vomáčka, 2016c, p. 247.
56 Vomáčka, 2016c, p. 238.

that is available to obliged bodies as well as regarding the disclosure process itself, and 3. by creating publicly accessible registers and datasets.[57]

The *right of petition* is guaranteed by Art. 18 of the Charter. For matters of public or other common interest, the Charter additionally states that everyone has the right, on their own or together with other individuals, to address state or territorial self-governing bodies with requests, proposals, or complaints. In these circumstances, the Constitutional Court examined a very interesting case dealing with the conflict between civil and public rights. The Court stated that "the private-law requirement to respect contracts (pacta sunt servanda principle), resp. the contractual freedom, and the assumed obligation of employees to be loyal to their employer cannot a priori exclude another important public-law interest, namely the interest that employees should also be able to contact the state authorities in situations where the employer threatens to endanger important social interests such as the protection of the health of citizens, the protection of the environment, or the protection of clean water, or where these public goods are even violated. The agreement between the employee and the employer cannot interfere with public relations, undermining society's interest in ensuring that every citizen in a democratic state governed by the rule of law can assist the State in detecting shortcomings and, where necessary, draw attention to them. In the present case, in deciding whether the sending of a letter warning the public authorities that the employer, a sewage treatment plant, is not complying with the operating regulations and endangering the environment can be regarded as grounds for the immediate termination of an employee's employment for a particularly serious breach of labor discipline, the general courts failed to adequately assess and compare the public interest in protecting the environment and the health of citizens on the one hand, with the interest in respecting contracts and the employee's loyalty to the employer on the other."[58]

Concerning petitions, it should also be stated that they may not be misused to interfere with the independence of the courts or for the purpose of calling for the violation of the fundamental rights and freedoms guaranteed by the Charter.

Art. 19 of the Charter guarantees the *right of peaceful assembly*. An assembly shall not be made to depend on the granting of permission by a public administrative authority. This right may be limited only by the law in the case of assemblies held in public places if, in a democratic society, it is necessary to protect the rights and freedoms of others, the public order, health, morals, property, or the security of the state. Regarding environmental protection, there are several interesting court findings. For example, the Regional Court in Brno, when judging an assembly with the purpose of expressing criticism of the growing negative impact of car traffic on the environment and human health in Brno, stated that the "prohibition of an announced assembly (street procession) which would cause such a restriction of traffic on the most important and frequented route of the town as to result in the prevention

57 Vomáčka, 2016c, p. 253.
58 Constitutional Court, III. ÚS 298/12-1, 13.12.2012.

of access by motor vehicles to large shopping centers for three hours during normal shopping hours and the restriction of the passage of vehicles to a trauma hospital is justified if the assembly can be held elsewhere without undue hardship and without defeating the announced purpose of the assembly."[59] According to the Supreme Administrative Court, the blockade against the felling of trees lasting several weeks in the national park was not an exercise of the right of assembly.[60]

The related *right of association* is guaranteed by Art. 20 of the Charter: everybody has the right to associate together with others in clubs, societies, and other associations (including political parties and political movements). The exercise of these rights may be limited only in cases specified by law if measures are required that are necessary in a democratic society for the security of the state, the protection of public security and public order, the prevention of crime, or the protection of the rights and freedoms of others. The Constitutional Court confirmed that the existence of a hunting association is a form of the right of association.[61] The Court was also dealing with issues connected to the participation of associations in the procedures related to environmental protection when it stated that "Neither the constitutional order nor the international treaties by which the Czech Republic is bound can imply an obligation on the part of the state to ensure that associations whose main mission, according to their statutes, is the protection of nature and the countryside, participate in all administrative proceedings."[62]

The *right to a fair trial* is created by the set of rights specified in Arts. 36–40 of the Charter. The Charter establishes the right to judicial protection (everyone can claim their rights in court), rights in court proceedings (all parties are equal and have the right to legal assistance and, if they do not understand the language, to an interpreter), the right to a lawful judge (the jurisdiction of the court and the judge is established by law), and rules of criminal prosecution (e.g., the presumption of innocence). The principle of nulla poena sine lege is also enshrined in the Charter, that is, that only acts that are so designated by criminal law are criminal. The Constitutional Court frequently investigates the right to a fair trial in all matters, including environmental protection. The right to claim rights in court ("The fact that the administrative courts decided on the complainant's action against the planning decisions over a period of seven years, without the action being granted suspensive effect, led to the fact that the decisions issued in the meantime to authorize the construction of the motorway caused irreversible interference with the landscape [habitats of specially protected species of animals and plants]. In a situation where the legislation did not allow, when reviewing construction permits issued, to take into account the fact that planning decisions preceding the construction permits had been annulled, such a situation resulted in the complainant not being afforded

59 Regional Court in Brno, 30 Ca 246/2000, 28.5.2000.
60 Supreme Administrative Court, 8 As 39/2014-56, 18.11.2015.
61 Constitutional Court, Pl. ÚS 34/03, 13. 12. 2006; Constitutional Court, Pl. ÚS 74/04, 13.12.2006.
62 Constitutional Court, Pl. ÚS 22/17-2, 26.1.2021.

effective protection by the administrative courts of his right to a fair trial."[63]) and the right to proceed without undue delay ("In the opinion of the Constitutional Court, delays in proceedings also occur when they are not based on subjective, but on objective circumstances on the part of the court affecting its procedural activity."[64]) should be mentioned.

In addition to the aforementioned political and similar rights, both active and passive *rights to vote* regarding representative and self-governing bodies at all levels (state, regional, local) should also be mentioned. Art. 21 of the Charter ensures the right of citizens to participate in the administration of public affairs either directly or through the free election of their representatives. The right to vote is universal and equal and shall be exercised via secret ballot. Citizens shall have access, on an equal basis, to any elective and other public offices.

Compared to most European countries, the Czech Constitution does not directly guarantee a *referendum*. Only Art. 2/2 of the Constitution states that a constitutional act may designate the conditions under which the people can exercise state authority directly. However, Parliament never adopted such a constitutional act introducing a general referendum. There was only an ad hoc referendum (and an ad hoc constitutional act) on the accession of the Czech Republic to the European Union. At the local level, there may be referendums at the regional[65] and municipal levels.[66] For the council to call a local referendum based on a proposal, there must be a certain minimum number of signatories of the proposal. For a referendum result to be valid, at least 35% of eligible citizens must participate. Vomáčka points out the most problematic issues concerning referendums of environmental issues: "It is typical for major sources of environmental pollution that they often take on a supra-local significance, and their planning and permitting is usually the responsibility of the region. However, in relation to local and regional conditions, this fact creates a paradox. In a local referendum, affected citizens can only oblige the municipality to defend their interests in the processes and proceedings before the region, resp. the regional authority. To succeed in the regional referendum, they would also have to secure the support of people who are not affected by the plan or who are satisfied with its location (NIMBY – not in my background), which is very difficult or even impossible."[67]

Other fundamental rights may be subject to *restrictions* with reference to the protection of the environment. The general rule in Art. 35/3 of the Charter states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law. Specifically, the ownership right protected by Art.

63 Constitutional Court, II. ÚS 3831/14-1, 6.5.2015.
64 Constitutional Court, III. ÚS 70/97, 10.7.1997.
65 Act no. 118/2010 Sb., as amended.
66 Act no. 22/2004 Sb., as amended.
67 Vomáčka, 2016d, p. 344.

11 of the Charter may not be exercised so as to harm human health, nature, or the environment beyond the limits established by law. For example, the Constitutional court stated that "in the Czech Republic, hunting and hunting law are social activities approved by the state to protect and develop one of the components of the environment – game. The implementation of hunting and hunting rights is, in general, a legitimate restriction of property rights."[68] Moreover, the Court stated that "a decision ordering the removal of a building constructed without a building permit on someone else's land without the consent of its owner pursues a legitimate aim consisting in the interest of maintaining building discipline, protecting the environment and protecting the property right of the landowner. The imposition of an obligation to remove the 'black' and 'unauthorized' building is an intervention proportionate to the objectives pursued since they could not have been achieved by any other measure. It is not a sanction which would be offered as an alternative to, e.g., a fine for an offense against the building regulations, but a measure aimed at restoring the land to its original state."[69] In addition, the freedom of movement and residence set in Art. 14 of the Charter may be limited by law if such is unavoidable to protect nature. In these circumstances, the decision of the Constitutional Court dealing with the existence of national parks as described above should be mentioned.[70]

The Charter also deals with the right to ownership,[71] stating that ownership entails obligations. The ownership may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. It may not be exercised so as to harm human health, nature, or the environment beyond the limits established by law. This principle is aimed in a general sense at sources that threaten the environment (or human health or nature).[72] In these circumstances, it is necessary to highlight the decision of the Constitutional Court stating that the legislation prohibiting the placement of billboards near motorways and roads is in support of other public interests related to environmental protection.[73] Furthermore, a decision ordering the removal of a building constructed without a building permit pursues a legitimate aim consisting, i.a., in the interest of protecting the environment.[74]

The Charter also guarantees freedom of movement and residence.[75] However, these freedoms may be limited by law if such is unavoidable for the security of the state, the maintenance of public order, the protection of the rights and freedoms of others, or, in demarcated areas, the purpose of protecting nature.

68 Constitutional Court, Pl. ÚS 34/03, 13.12.2006.
69 Constitutional Court, II. ÚS 482/02, 8.4.2004.
70 Constitutional Court, Pl. ÚS 18/17-1, 25.9.2018.
71 Art. 11 of the Charter.
72 Constitutional Court, III. ÚS 77/97, 8.7.1997.
73 Constitutional Court, Pl. ÚS 21/17-1, 12.2.2019.
74 Constitutional Court, II. ÚS 482/02, 8.4.2004.
75 Art. 14 of the Charter.

In addition, other rights may be connected to the right to a favorable environment, for example, the right to property,[76] the right to engage in enterprise and pursue other economic activity,[77] and the right to access to cultural wealth.[78]

Theoretical literature defines three *approaches to using human rights to protect the environment*: 1. an environmental interpretation of existing human rights (e.g., understanding the right to privacy also as a right to non-interference in this space by immissions), 2. the granting of procedural rights to the public and individuals (i.e., the possibility of obtaining information on the environmental impact of activity and of expressing their views regarding such issues), and 3. the formulation of a substantive right to a favorable environment.[79] The most commonly used approach is the second one, as it is the easiest one to implement. Its limitation, however, is that it does not affect the intrinsic nature of the case. The environmental interpretation of human rights is mainly used by the European Court of Human Rights. The limit of this approach is that the interpretation of human rights inevitably requires that the state of the environment or activities within it must impinge on those rights; that is, there has been direct interference with the human sphere. Thus, an ecocentric approach is preferred, which would grant people the means to protect the environment even though its condition does not directly affect them, that is, an approach in which intervention in the human sphere would not have to be demonstrated.[80]

Müllerová, referring to Knox,[81] summarizes the development of environmental rights and their protection by the constitutional courts in four points:

1) Human rights law does not require states to prohibit all activities that may cause environmental damage; in setting substantive legal standards of environmental protection, states have a relatively wide margin of discretion in how they strike a balance between environmental protection and other legitimate social interests, such as economic development, but this balance must be justified and must not result in unwarranted interference with human rights.
2) States must fulfill certain procedural obligations in environmental decision-making (environmental impact assessment, public information, opportunity for participation of affected persons in procedures, effective mechanisms for protection against malpractice by the State) to help ensure that, in formulating the final decision, the environmental protection interests are properly taken into account.

76 Art. 11 of the Charter.
77 Art. 26/1 of the Charter.
78 Art. 34/2 of the Charter.
79 Formulated by Shelton, as stated by Müllerová, 2015, p. 15. Also Kokeš, 2012, p. 715. All in Hanák, 2016b, p. 152.
80 For details, see Hanák, 2016b, pp. 152–154.
81 Knox, 2016, pp. 220 et seq.

3) In the application of environmental measures, states have a general duty of non-discrimination as well as specific obligations toward members of groups particularly vulnerable to environmental harm.
4) States must ensure that these obligations are met with regard to their own conduct.[82]

The theoretical literature also defines several *legal principles of environmental protection* respected by the legislator and in the decision-making practice of the courts. These principles can be subdivided or further categorized: 1. principles with a high degree of generality and vagueness in their definition that deal with the very essence of protection (the principle of the highest value, which declares the need to protect the environment as a supreme and irreplaceable human value, and the principle of sustainable development), 2. principles that have in common the determination of the method of protecting the environment (the principle of prevention, the precautionary principle, the principle of best available technology, and the principle of comprehensive and integrated protection), and 3. principles of responsibility (the principle of state responsibility and the polluter pays principle).[83]

The principle of the highest value is not explicitly defined and expressed in environmental law at the international, EU, or national levels. However, it can be inferred from the so-called right to a favorable environment expressed in Art. 35/1 of the Czech Charter of Fundamental Rights and Freedoms.[84] The principle of sustainable development is defined as a specific goal to be achieved through law. It provides a framework for other principles of environmental protection, and it has a significant influence on the development, interpretation, and application of legal norms, as also stated by the Constitutional Court.[85] The concept of the principle of sustainable development is built on three fundamental pillars: environmental, social, and economical. In Czech law, sustainable development is defined as development that preserves for present and future generations the chance to satisfy their basic life needs, and in doing so, the variety of nature is not reduced, and the natural functions of ecosystems are preserved.[86]

The principle of prevention is one of the core and strong legal principles. It is expressed in the Czech Charter of Fundamental Rights and Freedoms,[87] several sections of the Environment Act,[88] many other cross-cutting and component environ-

82 Müllerová, 2021, p. 553.
83 Dudová, 2016, pp. 129–130. Also Vomáčka, 2013, pp. 194–196. Also Tomoszek et al., 2021.
84 See also Constitutional Court, II. ÚS 482/02, 8. 4. 2004; Constitutional Court, III. ÚS 70/97, 10.7.1997.
85 See also Constitutional Court, Pl. ÚS 18/17, 25.9.2018.
86 Sec. 6 of the Environment Act.
87 Arts. 11 and 35 of the Charter, as analyzed above. See also Supreme Administrative Court, 9 As 24/2016-109, 14.7.2016; Constitutional Court, Pl. ÚS 8/08-1, 8.7.2010.
88 Secs. 9, 17, 18, and 19 of the Environment Act.

mental regulations (e.g., the Environmental Impact Assessment Act[89]), and the Constitutional Court's decisions.[90] The essence of the precautionary principle is the need to take all possible precautions whenever there is a risk of potential danger. This principle should be applied even if the risk is uncertain or not fully verified. This principle is also expressed in Czech law: if there is a supposition in respect to all circumstances of a forthcoming danger of irreclaimable or material damage to the environment, there must be no doubt that such damage happens, which is the reason for the postponement of measures that should avoid the damage.[91] Specifically, the precautionary principle is mentioned in the GMO Act.[92]

The principle of state responsibility for environmental protection expresses the fact that only the state can guarantee the need for comprehensive and integrated environmental protection. Art. 7 of the Czech Constitution directly sets that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.[93] The protection of the environment is the State's task. The interesting point is that this is the only task of the State mentioned explicitly in the Czech Constitution sensu lato. Da Silva precisely describes the relationship between the right to the environment as a fundamental right and a task of the State. He notes that the fundamental right to the environment, as a subjective right, is composed of the following elements: 1. the right of nonaggression (freedom from public aggression; for example, authorities or public services have the duty to refrain from atmospheric emissions or producing polluting waste, which could jeopardize the right to the environment of neighbors or users); 2. the right to the action of public authorities, the content of which is related to the specific and determined duties of the action, to which they are bound by legal norms (prevention and control of pollution, taking measures to prevent its verification, and inspecting and punishing responsible individuals and companies in the event of these situations); 3. the right (at least) to a minimum or a reasonable proportion of state intervention (establishing generic legal duties, tasks, or principles of action under the responsibility of public authorities); and 4. the right to protection by the state against attacks on fundamental rights by private entities (the existence of procedural means to settle disputes between private parties concerning the fundamental right to the environment).[94] Although da Silva uses the Portuguese Constitution, his findings are fully applicable to the Czech case.

The polluter pays principle seems to be the trendiest principle in recent decades. It is included in all international and European treaties, declarations, and legal and

89 Environmental Impact Assessment Act.
90 E.g., Constitutional Court, Pl. ÚS 18/17, 25.9.2018.
91 Sec. 13 of the Environment Act.
92 Sec. 3/3 of the Act no. 78/2004 Sb., the Act on Handling Genetically Modified Organisms and Genetic Products, as amended.
93 See also Constitutional Court, Pl. ÚS 18/17, 25.9.2018, dealing with the existence of national parks, as analyzed above.
94 da Silva, 2022, p. 15.

non-legal acts. In Czech law, the principle is part of the Environment Act,[95] stating that for the contamination of the environment or its parts and for the economic utilization of natural resources, the natural persons or legal entities pay taxes, charges, levies, and other payments stipulated by special regulations.[96] The principle of public information and participation belongs to the third group of legal principles of environmental protection as well. Due to its specifics, a special part of the contribution below deals with this principle.

From the analyses mentioned above, it is possible to state that in law, the principles with the strongest effects, including the courts' decisions, are principles related to prevention and sustainable development.

4. Regulation of issues regarding responsibility

The responsibility regarding the protection of the environment does not appear in the Czech Constitution as a positive provision. However, the responsibility is indirectly mentioned in the preamble, which states that the citizens are resolved to guard and develop together the natural, cultural, material, and spiritual wealth handed down to our generation. In addition, the Czech Charter of Fundamental Rights and Freedoms is very brief in regard to this issue when it recalls in its preamble the share of responsibility to future generations for the fate of all life on Earth. However, Art. 35/3 of the Charter states explicitly that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law.[97] This obligation is valid for everyone: Czech citizens, foreigners, and Czech and international (multinational) corporations, both private and public, which is evident from the decisions of the Constitutional Court dealing with the cases of all of the complainers mentioned above.

Referring to the environmental law theory, liability in its most general form does not exist, even in objective environmental law. Rather, it takes on a form corresponding to the nature of the social relationships that are supposed to be protected. Thus, in environmental law, there is a system of liability based on liability in several forms: private law liability for harm (damage), administrative law liability, criminal

95 Sec. 31 of the Environment Act.

96 See also Constitutional Court, I. ÚS 1821/16, 12.12.2017, dealing with compensation for damages in civil proceedings between a power plant that emits SO_2 and NO_x emissions into the air, which allegedly adversely affect and cause immission damage to forest stands, and a forest owner.

97 See also Constitutional Court, Pl. ÚS 24/2000, 12.10.2001, stating that "it is not possible to absolutize one fundamental right at the expense of the other, in the present case the right to do business and the right to a favorable environment"; Constitutional Court, III. ÚS 338/04, 14.9.2004 dealing with public places in private ownership.

law liability, and specific liability for environmental damage.[98] The different types of liability are separate so that they can be used independently. On the other hand, they are also complementary, and their simultaneous use can be advantageous, at a minimum because of the technical complexity and difficulty of proving a causal link between the defective activity and the damage caused or the need to obtain costly reports, measurements, investigations, etc.[99]

Administrative law liability is regulated by the Act on Liability for Offenses and Proceedings in Respect of Them.[100] An offense is defined as a socially harmful unlawful act that is expressly designated as an offense in the law and has the characteristics set out in the law unless it is a criminal offense (a crime). While a natural person is an offender if, by their culpable conduct, they have fulfilled the elements of an offense, objective liability applies to legal persons and natural persons running a business: culpability (whether intentional or negligent) is not necessary for the commission of the offense. The Act on Liability for Offenses and Proceedings in Respect of Them itself does not deal with environmental offenses but creates a general legal norm applicable in this area. Specific environmental offenses are regulated in specific legal acts,[101] including sanctions (mostly penalties) and precautionary measures. For example, the Environment Act states that in cases in which serious damage to the environment is imminent or has already occurred, the competent authorities of the state administration for the environment are entitled to decide to temporarily suspend or restrict the activity that may cause or has already caused such damage for a period of no more than 30 days (interim measure) and, at the same time, to propose remedial measures to the relevant state administration authorities.[102] Many authors believe that it would be helpful to unify the liability provisions now fragmented into many different regulations.[103]

The *liability for environmental damage* regulated by the Environment Act[104] and the Act on Prevention and Remedying Environmental Damage[105] is a specific type of liability applied only to environmental matters.[106] It is close in nature to liability for damages. Conceptually, however, it is not private law liability because of its public law basis consisting in the public regulation of remedial measures as sanctions of a restorative nature and because of the involvement of the competent state administration bodies, which decide on the imposition of remedial measures.[107] Ecological damage is defined as the loss or impairment of the natural functions of ecosystems

98 Vomáčka, 2016b, pp. 580–581.
99 Vomáčka, 2016b, pp. 581–582.
100 Act no. 250/2016 Sb., as amended.
101 E.g., the Environment Act.
102 Sec. 30 of the Environment Act.
103 Humlíčková, 2012, p. 81.
104 Sec. 27 of the Environment Act.
105 Act no. 167/2008 Sb., the Act on Prevention and Remedying Environmental Damage, as amended.
106 Jančářová et al., 2013, p. 240.
107 Jančářová, 2016a, p. 617.

resulting from damage to their components or disruption of internal linkages and processes due to human activity.[108] The liability for environmental damage is constructed as objective: anyone who has caused ecological damage is obliged to restore the natural functions of the disturbed ecosystem or part of it. If this is not possible or, for serious reasons, is impractical, they shall compensate for the ecological damage in another way (compensation). If this is not possible, they shall compensate for this damage monetarily. The concurrence of these types of compensation shall not be excluded. Additionally, correction measures and penalties may be imposed. The decision on the imposition of these obligations is up to the competent state administration authority.

Criminal law liability is regulated by the Criminal Code and the Act on the Criminal Liability of Legal Entities.[109] According to this act, all environmental crimes can also be committed by legal entities. The ultima ratio principle is being fully applied.

The Criminal Code includes two groups of crimes concerning the environment: 1. criminal offenses (crimes) against the environment and 2. criminal offenses (crimes) related to environmental protection. Offenses against the environment are further divided into the offense of damaging and endangering the environment and special offenses. The general offense against the environment is focused on those who, contrary to another legal enactment, intentionally or out of gross negligence, damage or endanger soil, water, air, forest, or another component of the environment to a larger extent, over a larger area, or in such a way that it may cause serious detriment to health or death or if it is necessary to expend costs to a considerable extent for eliminating the effects of such conduct. It also targets those who increase such damage or threat to a component of the environment or aggravate its aversion or mitigation.[110] The special offenses are damages to a water source or a forest, unauthorized discharge of pollutants (from ships), unauthorized waste disposal, unauthorized production and other disposals of ozone-depleting substances, unauthorized handling of protected wild animals and wildlife plants, damage to a protected component of nature, maltreatment of animals, negligent omission of animal care, poaching, wrongful manufacture, possession and other disposal of pharmaceuticals and other

108 Sec. 10 of the Environment Act. The Act on Prevention and Remedying Environmental Damage is more concrete and defines ecological damage as an adverse measurable change to a natural resource or measurable impairment of its functions, which may occur directly or indirectly. It is a change to 1. protected species of wildlife or plants or natural habitats that has significant adverse effects on the achievement or maintenance of a favorable conservation status of such species or habitats; 2. groundwater or surface water, including natural medicinal and natural mineral water sources, which has a significant adverse effect on the ecological, chemical, or quantitative status of the water or on its ecological potential; 3. land by pollution that presents a significant risk of adverse effects on human health as a result of the direct or indirect introduction of substances, preparations, organisms, or micro-organisms on or below the land surface.

109 Act no. 418/2011 Sb., the Act on the Criminal Liability of Legal Entities, as amended.

110 Secs. 293–294 of the Criminal Code.

substances affecting the efficiency of livestock, spreading contagious animal disease, and spreading contagious disease and pests of commercial herbs.[111]

Criminal offenses related to environmental protection are those in which the perpetrator's actions are not directed against the environment, but as a result, the environment may be adversely affected or endangered. These include criminal offenses that are generally dangerous (public endangerment,[112] damage to and endangerment of the operation of publicly beneficial facilities,[113] unauthorized production and possession of radioactive or highly dangerous substances, nuclear material and special fissionable material,[114] unauthorized production and other disposals with narcotic and psychotropic substances and poisons,[115] and possession of narcotics and psychotropic substances and poisons[116]), criminal offenses against health (endangering health via unhealthy food and other objects[117]), and criminal offenses against property (damage to a thing of another, misuse of property[118]).

There are two issues to be analyzed in *private law*: the prevention duty and the compensation for environmental damage. The Civil Code defines the general *duty of prevention* expressed as an obligation to act in such a way as to avoid unjustified harm to the liberty, life, health, or property of another.[119] As previously stated, even if terms such as nature and environment are not explicitly stated, there is no doubt that the liability for environmental matters is covered by the Civil Code. In terms of special types of prevention, there is an obligation to intervene and a notification obligation.[120] The legal regime for *compensation for environmental damage* is included in the system of the legal regulation of tort liabilities in the Civil Code.[121] The Civil Code is based on the premise that the basic essence of the facts is the subjective obligation to compensate for damage.[122] There are several special characteristics of the facts connected to the environment: damage resulting from operating activities, damage caused by a particularly hazardous operation, damage to an immovable thing (which also affects the damage to the environment and its components), and damage caused by the operation of a means of transport. Compensation in kind (restoration to the original state) is a priority. The Civil Code gives the injured party the possibility to claim compensation monetarily. If restoration to the original state is not possible, the damages shall always be paid in money. Actual damages and lost

111 Secs. 294a–307 of the Criminal Code.
112 Secs. 273–273 of the Criminal Code.
113 Secs. 276–277 of the Criminal Code.
114 Secs. 281–282 of the Criminal Code.
115 Sec. 283 of the Criminal Code.
116 Sec. 284 of the Criminal Code.
117 Secs. 156–157 of the Criminal Code.
118 Secs. 228–229 of the Criminal Code.
119 Sec. 2900 of the Civil Code.
120 Secs. 2901–2902 of the Civil Code.
121 Secs. 2894–2990 of the Civil Code.
122 Průchová, 2016, p. 671.

profits are covered. The court has the power of moderation, which cannot be exercised if the damage was caused intentionally.

The polluter pays principle is not reflected in the Czech Constitutional Order – it is only mentioned in the Environment Act.[123] This provision imposes an obligation on natural or legal persons who pollute the environment to pay taxes, fees, levies, and other payments. It is then obvious that pollution is not necessarily an illegal activity; it also covers the legal use of the environment. From this perspective, there is no connection between the liability and the polluter pays principle. The taxes sensu lato are further set out in specific legislation and analyzed later in this contribution.

5. High level of protection of natural resources

Concerning the Constitution sensu stricto, Art. 7, in particular, should be mentioned as it declares that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The Charter of Fundamental Rights and Freedoms in Art. 35 specifically grants the right to a favorable environment and the right to timely and complete information regarding the state of the environment and natural resources. It also states that no one may, in exercising their rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law.

Natural resources are defined in the Environment Act[124] as parts of living or non-living nature that humans use or can use to satisfy their needs. There are no references to a separate component of natural resources such as water, forest, or air in the Constitution, nor are there any in the Environment Act. Natural resources are divided into renewable and non-renewable ones. Renewable natural resources have the capacity to be partially or entirely renewed by themselves or with the contribution of humans as they are consumed over time. Non-renewable natural resources are lost through consumption. The obligation of the state to ensure the careful use of natural resources and the protection of natural wealth was explicitly mentioned by the Constitutional Court when considering the exemption from the payment of the levy for the permanent withdrawal of agricultural land from the agricultural land fund exclusively for the construction of roads owned by the state (while regions and municipalities or private persons are obliged to pay the levy in respect to roads they own): “The specific examination of whether the contested provision results in a violation of the principle of equality and the prohibition of discrimination, or the protection of the right to property, is precluded by the State’s obligation to ensure the careful use of natural resources and the protection of natural wealth under Art.

123 Sec. 31 of the Environment Act.
124 Sec. 7 of the Environment Act.

7 of the Constitution. In fact, if the Constitutional Court were to annul the contested provision, it would substantially extend the scope of exemptions from the payment of levies on roads. A decision in accordance with the petition would imply the establishment of an exemption from payment of the levy for all road constructions without distinction; it would constitute a significant interference with the basic mission of the law, which is based on the fact that the agricultural land fund is a fundamental natural asset of our country, an irreplaceable means of production enabling agricultural production and one of the main components of the environment."[125]

According to the latest debates in Parliament as well as proposals for amendments, it seems that water is the most important natural resource. The amendment to Art. 7 of the Constitution presented by the deputies representing the Communist party[126] presumed that water as well as other natural resources and natural wealth should be owned by the Czech Republic. This approach would fundamentally change the design of the existing environmental legislation. For example, the Water Act[127] explicitly states that surface and groundwater are not subject to ownership and are not part of or appurtenant to the land on or under which they occur. Water becomes subject to ownership only when it is abstracted.[128] The proposal also stated that the Czech Republic protects and enhances this wealth and is obliged to ensure the protection and sustainable use of water as a basic necessity of life as well as other natural resources and natural wealth for the benefit of its citizens and future generations. A similar amendment to Art. 7 of the Constitution was presented several days later by the deputies representing the Christian and Democratic Union – the Czechoslovak People's Party.[129] The proposal stated that the State shall ensure the sustainable use of natural resources, especially water resources and soil, and the protection of natural resources. Both proposals aim to explicitly reinforce the emphasis on the conservation of water, land, and other natural resources. Neither of the proposed changes in themselves regulate specific activities of natural and legal persons; they only confirm and develop an already existing commitment of the State. Without further implementation of the proposed amendment, the normative impact of this provision is not apparent.[130]

Furthermore, in 2019, deputies from STAN (Starostové a nezávislí – Mayors and Independents) presented a proposal to amend Art. 31 of the Charter dealing with the right to health and add the right to drinking water. They also wanted to define water resources as a public utility administered by the State. Drinking water resources were planned to be used as a matter of priority and in a sustainable manner to supply drinking water for consumption. The drinking water

125 Constitutional Court, Pl. ÚS 30/15-1, 15.3.2016.
126 Chamber of Deputies of the Parliament of the Czech Republic, 2019.
127 Act no. 254/2001 Sb., the Water Act, as amended.
128 Snopková, 2021, p. 572.
129 Chamber of Deputies of the Parliament of the Czech Republic, 2019b.
130 Snopková, 2021, p. 572.

supply should be provided by municipalities on a non-profit basis.[131] The proposal responded to the problems of the water crisis, climate change, related drought, and water imbalances.[132]

In 2020, the group of deputies presented an entirely new constitutional act on the protection of water and water resources.[133] In its preamble, three pillars of the act were mentioned: 1. the responsibility to future generations; 2. the objectives aimed at strengthening the protection of the environment, nature, and landscape as well as natural resources for the quality of life of the population in a healthy environment; and 3. water as an irreplaceable basic condition for life on Earth. The proposal stated, i.a., that everyone has the duty to protect and improve the environment, nature, landscape, and land in order to preserve and protect water resources. No person shall endanger water resources by harmful interference with the environment. The State and the local self-government units shall create conditions for sustainable use of water resources based on the protection of their quantity and quality and on water conservation contributing to the reduction of the consequences of drought. The State and local self-government units shall ensure the protection of waterworks as water resources intended for the mass supply of drinking water to the population. The proposal also contained the right to drinking water. This right was defined as the right to have access, at the place of residence, to drinking water for the basic needs of life from a public water supply or to drinking water from publicly available sources under socially and economically acceptable conditions. The protection of water resources used for the mass supply of drinking water to the public was defined as a matter of overriding public interest. The State and local authorities should ensure the protection of water sources used for the mass supply of drinking water to the population. Further, everyone should be obliged to comply with the measures taken by the competent authorities in the event of a water shortage.

All four above-mentioned proposals have the same shortcomings: they do not follow existing constitutional and legal regulations in the area of environmental protection. They are typical examples of amendments to existing acts or entirely new acts presented by members of Parliament without the assistance of experts dealing with legislation. It would be helpful to establish the right to water on the constitutional level; however, the detailed manner or extent of securing this right must also be regulated. The obligation of individual municipalities to ensure access to drinking water for their inhabitants should be established; however, the feasibility and cost-effectiveness of this system, particularly in relation to the existing water supply infrastructure (in terms of property and operations), are not further addressed. The emphasis on keeping the price of drinking water within a certain affordable range is evident; however, how and whether pricing policy will eventually be further

131 Chamber of Deputies of the Parliament of the Czech Republic, 2019c.
132 Snopková, 2021, p. 573.
133 Chamber of Deputies of the Parliament of the Czech Republic, 2020.

regulated from the status quo is not elaborated on or implied, and whether and how the long-standing dispute over the control of water prices by multinational companies will be resolved is not clear.[134] Finally, there is a question of why to protect only (drinking) water specifically on the constitutional level – why not air, forests, soil, or other environmental components?[135]

6. Reference to future generations

The preamble of the Constitution sensu stricto states the citizens of the Czech Republic in Bohemia, Moravia, and Silesia are resolved to guard and develop together the natural, cultural, material, and spiritual wealth handed down to our generation. Similarly, the Charter of Fundamental Rights and Freedoms recalls the share of responsibility to future generations for the fate of all life on Earth in its preamble. The most concrete is the Environment Act. It states that humans, along with other organisms, are an inseparable part of nature and reiterates the natural interdependence of humans and other organisms and the respect for the human right to transform nature in accordance with the principle of sustainable development. It also highlights awareness of the responsibility to preserve a favorable environment for future generations and emphasizes the right to a favorable environment as a fundamental human right.

References to future generations are also mentioned in the construction law defining the aim of spatial planning,[136] specifically in the legal regulation dealing with the management of radioactive waste and spent nuclear fuel,[137] genetic resources of plants and microorganisms,[138] and gardening activities.[139]

The definitions of "our generation" and "future generations" are missing in the case law of the Constitutional Court. The only reference to generations is included in two decisions of the Supreme Administrative Court dealing with site plan review and changes in land use. The newer decision cites the older one and states that spatial planning aims to create the conditions for construction and sustainable development of the territory, consisting of a balanced relationship between the conditions for a favorable environment, for economic development, and for the cohesion of the community of inhabitants of the territory and that satisfies the needs of the present generation without endangering the living conditions of future generations. The

134 Snopková, 2021, pp. 574–576.
135 See also Vomáčka, 2020, pp. 103–125.
136 Sec. 18 of the Building Act.
137 Sec. 108 of Act no. 263/2016 Sb., the Atomic Act, as amended.
138 Sec. 1 of Act no. 148/2003 Sb., the Act on Genetic Resources of Plants and Microorganisms, as amended.
139 Sec. 2 of Act no. 221/2021 Sb., the Gardening Act, as amended.

regulation of land use is an issue that goes beyond the lifetime of one or more generations and, therefore, must be elevated above the momentary short-term or even immediate needs of this or that political representation resulting from the results of elections.[140] Moreover, the Constitutional Court once mentioned the relationship between the environment and future generations, stating that "The right to a favorable environment derives from the environment as a public good for the protection of which society has assumed its share of responsibility towards future generations. … The right of everyone to a favorable environment thus corresponds to the duty of everyone to prevent pollution or damage to the environment and to minimize adverse effects on the environment."[141]

Furthermore, the scientific literature does not provide any definition of our generation and future generations. The only exception is Müllerová when dealing with climate change and efforts to extend human rights in time and space. She states that several theorists have addressed the question of whether the concept of human rights can be extended to include ratione temporis aspects so that human rights instruments can be effectively applied to the effects of climate change. Müllerová believes that the approaches to the possible conclusion of future persons as holders of human rights described by the author-theorists seem to be far from realistic possibilities. The applicants' approach of involving young people and children, representing the next generation, in the plaintiff groups and using intergenerational justice arguments as merely supplementary, alongside the main argument of an already existing impairment of rights, seems much more pragmatic. If the courts at least partially accept this approach, Müllerová believes that it is a solution that may be satisfactory from the point of view of time (action on climate change must not be postponed but taken now; however, it will only take effect in the future).[142]

It is possible to conclude that the term "our generation" covers all persons living today, while the group of "future generations" includes not only those who have not yet been born but also young people and children. They belong to both groups (our and future generations) as they can (even if only partially) influence (not only) the environment but do not have sufficient real possibilities and legal tools to protect the environment for their future life.

The de lege ferenda proposals mentioned above in the subchapter on the high level of protection of natural resources are also applicable for the issues of future generations.

140 Supreme Administrative Court, 2 Ao 3/2007-40, 24.10.2007; Supreme Administrative Court, 2 Ao 4/2008-88, 5.2.2009.

141 Constitutional Court, IV. ÚS 254/02, 28.1.2003.

142 Müllerová, 2021, p. 564.

7. Reference to sustainable development

Although the principle of sustainable development is among the most important principles in environmental law, sustainable development is not expressis verbis mentioned in the Czech Constitution sensu lato or in the Constitutional Court's decisions. However, the Environment Act reiterates the respect for the human right to transform nature in accordance with the principle of sustainable development and highlights the awareness of the responsibility to preserve a favorable environment for future generations. The sustainable development of society is defined as development that maintains the ability of present and future generations to meet their basic needs for life while not reducing the diversity of nature and while preserving the natural functions of ecosystems.[143] The explanatory report to the Environment Act classifies the principle of sustainable development as one of the cornerstones of European Communities' environmental legislation. The report also states that the Environment Act is consistently based on the generally accepted principle of sustainable development of society and that the principle aims at the greatest possible breadth and diversity of satisfaction of the demands and needs of contemporary human civilization (society) without deteriorating the quality of the environment and without narrowing the space for the search and application of distinctive ways of life, systems of life values, and forms of management, both for present and future generations. The report also highlights that economic and social development is primarily directed toward the use of renewable natural resources while preserving the diversity and richness of nature and the natural functions of ecosystems.[144] Thus, the principle of sustainable development belongs to the generally accepted environmental principles. These findings are also confirmed by (though very rare and indirect) findings of the Constitutional Court dealing with issues other than environmental ones[145] as well as scientific literature.[146]

The principle of sustainable development is mentioned in both environmental law regulation (environmental impact assessment,[147] energy law,[148] mining waste,[149] spatial planning,[150] and environmental education[151]) and non-environmental legal

143 Sec. 6 of the Environment Act.
144 Chamber of Deputies of the Parliament of the Czech Republic, 1991.
145 Constitutional Court, Pl. ÚS 4/18-1, 18.12.2018; Constitutional Court, Pl. ÚS 44/18-1, 17.7.2019.
146 E.g., Mácha and Vícha, 2020, p. 73. Stejskal, 2017, p. 79. Pekárek, 2015, p. 78. Vomáčka, 2013, p. 193. Dudová, 2016, pp. 131–134.
147 Sec. 1 of the Environmental Impact Assessment Act.
148 Sec. 3 of Act no. 406/2000 Sb., the Energy Management Act, as amended; Sec. 1 of Act no. 165/2012 Sb., the Supported Energy Sources Act, as amended; Sec. 5c of Act no. 416/2009 Sb. on Accelerating the Construction of Transport, Water and Energy Infrastructure and Electronic Communications Infrastructure (the Linear Act), as amended.
149 Sec. 5 of Act no. 157/2009 Sb., the Mining Waste Management Act, as amended.
150 Secs. 18–102 of the Building Act.
151 Sec. 2 of Act no. 561/2004 Sb., the Education Act, as amended.

regulation (public procurement law,[152] investment law,[153] development law,[154] public transportation,[155] etc.).

The de lege ferenda proposals mentioned above in the subchapter on the high protection of natural resources are also applicable to the issues connected to sustainable development. Many of them are very useful and should be adopted.

8. Other values relevant to the protection of the environment in the Constitution

The preamble of the Constitution sensu lato states that the citizens of the Czech Republic are resolved to guard and develop together not only natural but also cultural, material, and spiritual wealth. In its preamble, the Charter of Fundamental Rights and Freedoms recalls the share of responsibility to future generations for the fate of all life on Earth and emphasizes universally shared values of humanity and nations' traditions of democracy and self-government. It also brings to mind the bitter experience of periods when human rights and fundamental freedoms were suppressed in our homeland (the Czech Republic).

Family, parenthood, and children are protected by the specific article of the Charter.[156] The text of the Charter states that parenthood and the family are under the protection of the law, and special protection is guaranteed to children and adolescents. All children have equal rights, whether they were born in or out of marriage. In particular, they have the right to parental upbringing and care. Similarly, it is the parents' right to care for and bring up their children. Parents who are raising children have the right to assistance from the state. Parental rights may be limited and minor children may be removed from their parents' custody against their will only by the decision of a court on the basis of the law. Special care, including protection in labor relations and suitable labor conditions, is guaranteed to pregnant women.

Although the Constitution does not explicitly mention the protection of unborn generations, the preamble of the Charter, when discussing the responsibility to future generations, also considers unborn generations. De lege ferenda, it would be helpful to state this principle explicitly, including the encouragement to childbearing.

152 Sec. 28 of Act no. 134/2016 Sb., the Public Procurement Act, as amended.
153 Sec. 1, 3 of Act no. 211/2000 Sb., the Act on the State Investment Promotion Fund, as amended.
154 Sec. 2 of Act no. 151/2010 Sb., the Act on Foreign Development Cooperation and Humanitarian Aid Abroad, as amended; Sec. 7 of Act no. 248/2000 Sb., the Act on Act on Support for Regional Development, as amended.
155 Sec. 2, 4b of Act no. 194/2010 Sb., the Act on Public Passenger Transport Services, as amended.
156 Art. 32 of the Charter.

9. Financial sustainability

Expressis verbis, neither the sustainability nor the protection of the interest of future generations appear in the Czech Constitution sensu lato among the rules of public finances. However, there are several issues to be mentioned in these circumstances. Especially today, shortly after the COVID-19 pandemic and during the Russian aggression in Ukraine, all countries face economic crises connected to inflation growth. To ensure sustainability, price growth (inflation) should be under control. The primary purpose of the Czech National Bank (the state central bank) shall be to maintain price stability as stated in the Constitution of the Czech Republic.[157] The independence of the central bank is guaranteed:[158] interventions into its affairs are permissible only on the basis of the statute.[159]

The budgetary responsibility rules as defined by Directive 2011/85/EU on Requirements for Budgetary Frameworks of the Member States are not set by the constitutional acts but by the regular Act on the Rules of Budgetary Responsibility.[160] The debt brake means a general government debt level of at least 55% of the nominal gross domestic product. It refers to the obligation to take corrective measures, including presenting a draft and medium-term outlook for the state budget and the budgets of the state funds that lead to a long-term sustainable state of public finances, presenting proposals for balanced budgets for health insurance funds, and approving the budgets of local government units as balanced or in surplus. Public institutions may not incur new contractual obligations leading to an increase in the public sector's debt for a period of more than one calendar year. If the public sector debt is more than 60% of the nominal gross domestic product, the government shall propose measures to reduce it.

The other area closely connected to financial sustainability is tax law. Financial sustainability and adequate financial sources are conditio sine qua non for environmental protection. area great deal of tax revenue is used for these purposes at both the state and local levels. Several environmental charges are budgeted for the State Environmental Fund of the Czech Republic.

However, the Czech Constitution sensu lato does not include any principles stating that everyone shall contribute to covering common needs according to their capabilities or shall comply with their responsibilities and public duties, including the payment of taxes. There is no principle limiting the extent of contribution for persons raising children by taking into consideration the costs of raising children. Moreover, the principle of the ability to pay is inferred only from academic publications and judicial decisions; the tax or any other public payment must not be of a liquidating nature (must not have a choking effect) in terms of what is secured by

157 Art. 98 of the Constitution.
158 See also Constitutional Court, Pl. ÚS 59/2000, 20.6.2001.
159 Mrkývka, 2004, pp. 209–210.
160 Act no. 23/2017 Sb. on the Rules of Budgetary Responsibility, as amended.

corrective components (exemptions, relief, etc.) or deferral and waiver of the tax by administrative means. The polluter pays principle (pay-as-you-throw principle) is used for many environmental taxes and other public payments, but it is not enshrined in the Constitutional Order. The only rule concerning taxes is included in the Charter of Fundamental Rights and Freedoms. Its Art. 11/5 states that taxes and fees can be imposed only by acts. This means taxes sensu stricto as well as all of the fees and other taxes sensu largo must be imposed by acts, not merely by ordinances of municipalities or ministries.

Generally, almost every tax sensu lato collected – not only in the Czech Republic – includes ecological aspects in its legal regulation. For clarity, it is possible to divide taxes sensu lato into two groups: taxes sensu stricto collected on a fairly regular basis with no equivalent compensation for the taxpayer and charges (fees) collected on a relatively irregular basis with appropriate consideration for payment. The title of the public payment is decisive; all taxes, charges, fees, levies, etc., have either a tax or a charge nature.[161]

The most common ecological taxes are energy taxes harmonized by the European Union. In the Czech Republic, the tax on natural gas and certain other gases (the tax on gas), the tax on solid fuels (tax on coal), and the tax on electricity were introduced in 2008.[162] These days, the most discussed issue is the exemption of aviation fuel (kerosene) from taxation. Ecological aspects should be apparent in motor vehicles taxation. However, the Czech road tax (annual tax on motor vehicles[163]) is obsolete. The tax is still based on the engine capacity in cm^3 of the personal car or the combination of the highest permissible weights on axles in tons and the number of axles in the case of other motor vehicles rather than on CO_2 emissions. On the other hand, charges for using highways and motorways[164] include ecological motivation such as exemption or lower rates.

There are several pollution taxes sensu lato: a pollution charge from stationary sources, a charge for the discharge of wastewater into surface waters, a charge for the authorized discharge of wastewater into groundwater, and two possible charges on communal waste (a local charge for the municipal waste management system or a local charge for the disposal of municipal waste from the immovable property). Furthermore, several resource taxes sensu lato are collected: a groundwater abstraction charge, a payment for the management of watercourses and river basin districts, a levy for the withdrawal of land from the agricultural land fund, a charge for the withdrawal of forest land, and levies from the mining area and the extracted minerals.

The revenue from ecological taxes sensu lato is usually shared between the State Environmental Fund of the Czech Republic and local budgets. The revenue is usually used to finance measures in the field of environmental protection.

161 Radvan and Neckář, in print.
162 Act no. 261/2007 Sb., on the Stabilization of Public Budgets, as amended.
163 Act no. 16/1993 Sb., on the Road Tax, as amended.
164 Act no. 13/1997 Sb., the Land Roads Act, as amended.

The environmental principle in connection with sustainability is also mentioned in the public procurement law. The contracting authority is obliged to comply with the principles of socially responsible procurement, environmentally responsible procurement, and innovation within the meaning of this Public Procurement Act when establishing the terms of reference, evaluating tender, and selecting the supplier, provided that this is possible given the nature and purpose of the contract.[165] Environmentally responsible procurement refers to a procedure in which the contracting authority is obliged to take into account, for example, the environmental impact, sustainable development, the life cycle of the supply, service, or work, and other environmentally relevant aspects associated with the public contract.[166]

10. The protection of national assets

The basic legal rules dealing with national assets are set in Art. 11/2 of the Charter of Fundamental Rights and Freedoms. This article states that the law shall designate the property necessary for securing the needs of the entire society, the development of the national economy, and the public welfare, which may be owned exclusively by the state, a municipality, or designated legal persons.[167] The law may also provide that certain items of property may be owned exclusively by citizens or legal persons with their headquarters in the Czech and Slovak Federal Republics.[168] The Constitution of the Czech Republic also defines territorial self-governing units (municipalities and regions) as public law corporations that may own property and manage their affairs on the basis of their own budget.[169] However, the Constitution sensu lato does not include any definition of state, municipal, or regional property.

To define ownership exclusively by the state, it is necessary to investigate individual legal acts. State property is thus mineral resources in the territory of the Czech Republic[170] as well as highways and first-class roads.[171] The most recent legislation generally introduces a regime of things exempted from legal commerce (res extra commercium) for the property that was originally the exclusive property of the state; it stipulates that no one can own them. This applies to natural healing

165 Sec. 6 of the Public Procurement Act.
166 Sec. 28 of the Public Procurement Act.
167 Tomoszek and Vomáčka, 2021.
168 Until 2011, there were restrictions on the acquisition of immovable property by foreigners in Act no. 219/1995 Sb., the Foreign Exchange Act, as amended.
169 Art. 101/3 of the Constitution.
170 Sec. 5 of Act no. 44/1988, the Mining Act, as amended.
171 Sec 9/1 of the Land Roads Act.

sources and sources of natural mineral water,[172] surface water and groundwater,[173] and caves.[174] The exclusive owners of second- and third-class roads are the regions, while the owners of local roads are the municipalities in whose territory those roads are located.

The body that audits the management of state property is an independent body: the Supreme Audit Office.[175]

11. Good practices and proposals de lege ferenda

The environmental law regulation at the constitutional level in the Czech Republic is somewhat specific compared to other countries. This is primarily because of the system of the Constitutional Order (the Constitution sensu lato) created by the Constitution of the Czech Republic (the Constitution sensu stricto) and the Charter of Fundamental Rights and Freedoms. From the environmental law perspective, the Constitution declares only that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. Fundamental rights and basic freedoms, including the rights and freedoms related to the environment, are included in the Charter. The regulation is relatively brief, and many articles must be explained using regular acts. The key to interpreting individual rights and freedoms is very often presented by the Constitutional Court. Its decision-making practice is essential for protecting the environment from the position of both the addressees of rights and obligations and the executors of public authority.

It was the Constitutional Court that stated that the environment is a public good (value) and that environmental issues have political and scientific aspects. The Court also highlighted that the right to a favorable environment could not prohibit all activities having a negative impact on the environment. It is necessary to consider both environmental protection and other (business) values, respecting the level of human knowledge, the situation in society, international obligations, and the results of the national economy.[176] Not only based on the decisions mentioned above but also based on the long-term practice of the Constitutional Court in other matters, it is possible to state that the Czech Constitutional Court is the court of law administering justice on the basis of legislation and very often also of previous court decisions; moreover, its decisions are broadly respected.

172 Sec. 4 of Act no. 16/2001 Sb., the Spa Act, as amended.
173 Sec. 3 of the Water Act.
174 Sec. 61/4 of Act no. 114/1992 Sb., the Act on Nature and Landscape Protection, as amended.
175 Art. 97 of the Constitution.
176 Comp. Constitutional Court, II. ÚS 251/03, 24.3.2005.

The role of the Public Defender of Rights (the Ombudsman) must be emphasized, regardless of the fact that the Constitution does not regulate this institution. In relation to environmental law as well as other issues, the Ombudsman may initiate proceedings for the review of a decision, act, or procedure of an authority, perform acts to eliminate inactivity, initiate disciplinary or similar proceedings, initiate prosecution for a criminal offense, infraction, or other administrative offense, and provide an indemnification or file a claim for indemnification. The Ombudsman is also authorized to recommend that a legal or internal regulation be issued, amended, or canceled. Moreover, the Ombudsman has the right to make a complaint to protect the public interest if they prove a compelling reason for the submission in the public interest.

Human rights, including the right to a favorable environment, are taken seriously in the Czech Republic, especially after the communist regime. President Václav Havel believed that the Constitution should not lack an ecological article. He is considered the spiritual author of Art. 7 of the Constitution, which declares that the State shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.[177] Karel Vašák, a Czech-French lawyer and university professor and the first director of the International Institute for Human Rights in Strasbourg, ranked the right to a favorable environment among the third generation of human rights in 1979. The Charter includes all rights necessary for effective protection of the environment, including the right to a favorable environment, the right to health, the right to life, etc. The general right to information and the special right to timely and complete information regarding the state of the environment and natural resources are among the legal guarantees of legality in public administration, as access to environmental information is a prerequisite for effective public participation in environmental protection.

The protection of the environment at the constitutional level in the Czech Republic is generally similar to the regulation in other European countries. However, it might be improved by the good-practice examples from other EU member states. In particular, it seems necessary to specify the responsibility to future generations, especially to unborn generations. The de lege lata constitutional regulation explicitly deals only with already born children and their protection. Although it is clear from the sense of the Constitutional Order and from the regular acts concerning environmental protection that the unborn generation is also under this protection, it would be reasonable to change the wording of the constitutional regulation.

Recent years have shown that the amount of decimal precipitation is decreasing in the Czech Republic, and in some areas, more than drinking water is at risk. Water seems to be the most important natural resource. However, the amendments at the constitutional level introducing the right to drinking water must be followed by the amendments of the related acts to specify the detailed manner and extent of securing this right. If any political party proposes an obligation of individual municipalities

177 Uhl, 2015.

to ensure access to drinking water for their inhabitants, the feasibility and cost-effectiveness of this system must be further addressed, particularly in relation to the existing water supply infrastructure and its operators. In addition, there might be a question as to why to protect only (drinking) water specifically on the constitutional level and not soil, air, forests, or other environmental components.[178]

Financial sustainability and adequate financial sources are conditio sine qua non for effective environmental protection. A great deal of tax revenue is used for these purposes at both state and local levels. In this area, it would be helpful to introduce new principles at the constitutional level: 1. the principle of financial participation in public goods (everyone shall contribute to covering common needs according to their capabilities or shall comply with their responsibilities and public duties, including the payment of taxes; 2. the principle of a reduced contribution for raising children (limiting the extent of contribution for persons raising children by taking into consideration the costs of raising children); 3. the principle of the ability to pay (the tax or any other public payment must not be of a liquidating nature/must not have a choking effect in terms of what is secured by corrective components such as exemptions, relief, or deferral and waiver of the tax by administrative means); 4. The polluter pays principle (pay-as-you-throw principle, applicable for many environmental taxes and charges, especially for communal waste charges).

The last issue to be solved is the amendment of the Linear Constructions Act,[179] as there are different approaches for individual construction offices, and very often, ecological reasons are misused to disproportionately extend the construction preparation time. The Linear Constructions Act regulates the procedures for preparing and permitting the construction of transport, water and energy infrastructure, and electronic communications infrastructure to acquire the rights to the land and buildings necessary for the implementation of this construction and for putting this construction into use to speed up their property-law preparation, permitting, and subsequent judicial review of administrative decisions in connection with this construction. This Act also regulates the exercise of state administration and the procedure for permitting projects of common interest. It is necessary to establish the Supreme Construction Office as a central authority and to limit the possibilities of "wannabe environmental activists" to initiate various appeals, remedies, and actions. On the other hand, related environmental protection must always be secured.

178 See also Vomáčka, 2020, pp. 103–125.
179 Linear Act.

Bibliography

da Silva, V. P. (2022) 'Green Constitution: The Right to the Environment' in Cremades J., Hermida C. (eds.) *Encyclopedia of Contemporary Constitutionalism*. Cham: Springer; https://doi.org/10.1007/978-3-319-31739-7_160-1

Dudová, J. (2016) 'Právní principy ochrany životní prostředí' ['Legal Principles of Environmental Protection'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Hanák, J. (2016) 'České prameny' ['Czech Legal Sources'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Hanák, J. (2016a) 'Ústavní zakotvení práva životního prostředí' ['Constitutional Enshrinement of Environmental Law'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Hanák, J. (2016b) 'Právo na příznivé životní prostředí' ['Right to Favorable Environment'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Humlíčková, P. (2012) 'Odpovědnost v životní prostředí – proč (ne)funguje?' ['Environmental responsibility – why does it (not) work?'] in Jančářová, I. Vomáčka, V. (eds.) *Odpovědnost v právu životního prostředí [Liability in Environmental Law]*. Brno: Masaryk University.

Chrastilová, B., Mikeš, P. (2003) *Prezident republiky Václav Havel a jeho vliv na československý a český právní řád [President of the Republic Václav Havel and His Influence on the Czechoslovak and Czech Legal Order]*. Prague: ASPI.

Jančářová, I. (2016) 'Globální oteplování v reflexi ústavně garantovaného práva na příznivé životní prostředí' ['Global Warming in Reflection of the Constitutionally Guaranteed Right to a Favorable Environment'] in Müllerová, H., Damohorský, M., Blahož, J., Franková, M., Tomoszková, V., Jančářová, I., Vomáčka, V., Průchová, I., Bejčková, P., Doležalová, H., Maslen, M. (eds.) *Právo na příznivé životní prostředí: nové interpretační přístupy [The Right to a Favorable Environment: New Interpretative Approaches]*. Prague: Ústav státu a práva AV ČR.

Jančářová, I. (2016a) 'Odpovědnost za ekologickou újmu' ['Liability for Environmental Damage'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Jančářová, I., Bahýlová, L., Pekárek, M., Průchová, I., Vomáčka, V. (2013) *Odpovědnost v právu životního prostředí – současný stav a perspektivy [Liability in Environmental Law – Current Status and Perspectives]*. Brno: Masaryk University.

Knox, J. H. (2016) 'Human Rights Principles and Climate Change' in Kevin R. Gray, K. R., Tarasofsky, R., Carlarne, C. (eds.) *The Oxford Handbook of International Climate Change Law*. Oxford: Oxford University Press, pp. 213–236; https://doi.org/10.1093/law/9780199684601.003.0011

Kokeš, M. (2012) 'Čl. 35 (Právo na příznivé životní prostředí)' ['Art. 35 (Right to Favorable Environment)'] in Wagnerová, E., Šimíček, V., Langášek, T., Pospíšil, I. *Listina základních práv a svobod. Komentář [Charter of Fundamental Rights and Freedoms. Commentary]*. Prague: Wolters Kluwer (ASPI).

Mácha, A., Vícha, O. (2020) 'Ochrana a veřejné užívání ovzduší' ['Protection and Public Use of Air'], *Správní právo*, 53(2), pp. 65–91.

Mrkývka, P. (2004) 'Veřejné bankovní právo' ['Public Banking Law'] in Mrkývka, P., Pařízková, I., Radvan, M., Šramková, D., Foltas, T., Nováková, P. (eds.) *Finanční právo a finanční správa – 1. díl [Financial Law and Financial Administration – 1st Part]*. Brno: Masaryk University, pp. 206–224.

Müllerová, H. (2015) *Právo na životní prostředí: Teoretické aspekty [The right to the environment: Theoretical Aspects]* [Online]. Available at: http://www.ilaw.cas.cz/env/index.php?page=472 (Accessed: 4 February 2022).

Müllerová, H. (2021) 'Klimatická změna a snahy o rozšiřování lidských práv v čase a prostoru' ['Climate Change and Efforts to Expand Human Rights across Time and Space'], *Právník*, 160(7), pp. 549–564.

Pekárek, M. (2015) 'Několik poznámek k ust. § 66 zák. č. 114/1992 Sb., o ochraně přírody (ve znění pozdějších předpisů)' ['Some Comments on Sec. 66 of Act no. 114/1992 Sb., on Nature Protection (as Amended)'], *Acta Universitatis Carolinae Iuridica*, 61(2), pp. 77–85.

Průchová, I. (2016) 'Prevence a náhrada škody na životním prostředí v soukromém právu' ['Prevention and Compensation for Environmental Damage in Private Law'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Radvan, M. (2016) 'Taxes on Communal Waste in the Czech Republic, Poland and Slovakia', *Lex Localis – Journal of Local Self-Government*, 14(3), pp. 513–522; https://doi.org/10.4335/14.3.513-522(2016)

Radvan, M., Neckář, J. (in print) 'Fiscal Policies in the Czech Republic to Mitigate Climate Change' (chapter for the Asunción General Congress 2022 of the International Academy of Comparative Law; title and publisher not specified).

Snopková, T. (2021) 'Právo na vodu a aktuální tendence k posílení ochrany vody v ústavněprávní rovině českého práva' ['The Right to Water and Current Tendencies to Strengthen the Protection of Water in Czech Constitutional Law'], *Právník*, 160(7), pp. 565–579.

Stejskal, V. (2017) 'Veřejný nebo soukromý zájem na ochraně přírody a krajiny?' ['Public or Private Interest in Nature and Landscape Protection?'], *Acta Universitatis Carolinae Iuridica*, 63(3), pp. 75–83; https://doi.org/10.14712/23366478.2017.15

Tomoszek, M., Tomoszková, V., Vomáčka, V. (2021) 'Čl. 35 – Životní prostředí' ['Art. 35 – Environment'] in Husseini, F., Bartoň, M., Kokeš, M. Kopa, M. (eds.) *Listina základních práv a svobod [Charter of Fundamental Rights and Freedoms]*. Prague: C.H.Beck, pp. 974–1031.

Tomoszek, M., Vomáčka, V. (2021) 'Čl. 11 – Ochrana vlastnictví' ['Art. 11 – Ownership Protection'] in Husseini, F., Bartoň, M., Kokeš, M. Kopa, M. (eds.) *Listina základních práv a svobod [Charter of Fundamental Rights and Freedoms]*. Prague: C.H.Beck, pp. 362–420.

Uhl, P. (2015) 'Čl. 7 (Ochrana přírodního bohatství)' 'Art. 7 (Protection of Natural Resources)' in Rychetský, P., Langášek, T., Herc, T., Mlsna, P. *Ústava České republiky. Zákon o bezpečnosti České republiky. Komentář [Constitution of the Czech Republic. Act on the Security of the Czech Republic. Commentary]*. Prague: Wolters Kluwer (ASPI).

Veřejný ochránce práv (2012) *Souhrnná zpráva o činnosti veřejného ochránce práv [Summary Report on the Ombudsman's Activities]*. Brno: Veřejný ochránce práv.

Veřejný ochránce práv (2020) *Na životní prostředí je třeba myslet nejen 5. června [The environment must be kept in mind not only on 5 June]* [Online]. Available at: https://www.ochrance.cz/aktualne/na-zivotni-prostredi-je-treba-myslet-nejen-5-cervna/ (Accessed: 15 March 2022).

Vomáčka, V. (2013) 'Zásady unijního práva z oblasti ochrany životního prostředí' ['Principles of EU Law on the Environmental Protection'], *Časopis pro právní vědu a praxi*, 21(2), pp. 190–201.

Vomáčka, V. (2016) 'Přeshraniční dosah environmentálních práv' ['Transboundary Reach of Environmental Rights'] in Müllerová, H., Damohorský, M., Blahož, J., Franková, M., Tomoszková, V., Jančářová, I., Vomáčka, V., Průchová, I., Bejčková, P., Doležalová, H., Maslen, M. (eds.) *Právo na příznivé životní prostředí: nové interpretační přístupy [The Right to a Favorable Environment: New Interpretative Approaches]*. Prague: Ústav státu a práva AV ČR.

Vomáčka, V. (2016a) 'Veřejný ochránce práv' ['Public Defender of Rights'] in Jančářová, I., Dudová, J., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Vomáčka, V. (2016b) 'Obecně k odpovědnosti v právu životního prostředí' ['On Liability in Environmental Law in General'] in Jančářová, I., Damohorský, M., Blahož, J., Franková, M., Tomoszková, V., Jančářová, I., Vomáčka, V., Průchová, I., Bejčková, P., Doležalová, H., Maslen, M. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Vomáčka, V. (2016c) 'Přístup k informacím' ['Access to Information'] in Jančářová, I., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část [Environmental Law: General Part]*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Vomáčka, V. (2016d) 'Místní a krajská referenda' ('Local and Regional Referendums') in Jančářová, I., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část (Environmental Law: General Part)*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Vomáčka, V. (2020) 'Pozitivní závazky státu v ochraně životního prostředí: Právo na pitnou vodu (ne)existuje!' ['Positive State Commitments to Environmental Protection: The Right to Drinking Water (Doesn't) Exist!'], *České právo životního prostředí*, 55(1), pp. 103–125.

Vomáčka, V., Humlíčková, P. (2018) 'Public Participation and EIA in the Multi-Stage Decision Making Process: The Czech Example' in Jendroska, J., Bar, M. (eds.) *Procedural Environmental Rights: Principle X in Theory and Practice*. Cambridge: Intersentia, 2018.

Vomáčka, V., Jančářová, I. (2021) 'Climate Change Disputes in the Czech Republic' in Sindico, F., Mbengue, M. M. (eds.) *Comparative Climate Change Litigation: Beyond the Usual Suspects*. Basel: Springer, pp. 472–488; https://doi.org/10.1007/978-3-030-46882-8_23

Vomáčka, V., Žídek, D. (2016) 'Přístup k soudní ochraně' ['Access to Judicial Protection'] in Jančářová, I., Hanák, J., Pekárek, M., Pruchová, I., Vomáčka, V. Židek, D. (eds.) *Právo životního prostředí: obecná část (Environmental Law: General Part)*. Brno: Masaryk University [Online]. Available at: https://dspace.cuni.cz/ (Accessed: 9 November 2022).

Legal Sources

Act no. 1/1993 Sb., the Constitution of the Czech Republic, as amended.
Act no. 100/2001 Sb., Environmental Impact Assessment Act, as amended.
Act no. 106/1999 Sb., as amended.
Act no. 114/1992 Sb., Act on Nature and Landscape Protection, as amended.
Act no. 118/2010 Sb., as amended.
Act no. 123/1998 Sb., as amended.
Act no. 13/1997 Sb., Land Roads Act, as amended.
Act no. 134/2016 Sb., Public Procurement Act, as amended.
Act no. 148/2003 Sb., Act on Genetic Resources of Plants And Microorganisms, as amended.
Act no. 150/2002 Sb., Code of Administrative Justice, as amended.
Act no. 151/2010 Sb., Act on Foreign Development Cooperation and Humanitarian Aid Abroad, as amended.
Act no. 157/2009 Sb., Mining Waste Management Act, as amended.
Act no. 16/1993 Sb., on Road Tax, as amended.
Act no. 16/2001 Sb., Spa Act, as amended.
Act no. 165/2012 Sb., Supported Energy Sources Act, as amended.
Act no. 167/2008 Sb., Act on Prevention and Remedying Environmental Damage, as amended.
Act no. 17/1992 Sb., Environment Act, as amended.
Act no. 183/2006 Sb., Building Act, as amended.
Act no. 194/2010 Sb., Act on Public Passenger Transport Services, as amended.
Act no. 2/1993 Sb., the Charter of Fundamental Rights and Freedoms, as amended.
Act no. 211/2000 Sb., Act on the State Investment Promotion Fund, as amended.
Act no. 219/1995 Sb., Foreign Exchange Act, as amended.
Act no. 22/2004 Sb., as amended.
Act no. 221/2021 Sb., Gardening Act, as amended.
Act no. 23/2017 Sb., on the Rules of Budgetary Responsibility, as amended.
Act no. 248/2000 Sb., Act on Act on Support for Regional Development, as amended.
Act no. 250/2016 Sb., as amended.
Act no. 254/2001 Sb., Water Act, as amended.
Act no. 258/2000 Sb., Act on The Protection of Public Health, as amended.
Act no. 261/2007 Sb., on Stabilization of Public Budgets, as amended.
Act no. 263/2016 Sb., Atomic Act, as amended.
Act no. 349/1999 Sb., Act on the Public Defender of Rights, as amended.
Act no. 40/2009 Sb., Criminal Code, as amended.
Act no. 406/2000 Sb., Energy Management Act, as amended.
Act no. 416/2009 Sb., on Accelerating the Construction of Transport, Water and Energy Infrastructure and Electronic Communications Infrastructure (Linear Act), as amended.
Act no. 418/2011 Sb., Act on the Criminal Liability of Legal Entities, as amended.
Act no. 44/1988, Mining Act, as amended.

Act no. 561/2004 Sb., Education Act, as amended.
Act no. 76/2002 Sb., Integrated Prevention Act, as amended.
Act no. 78/2004 Sb., Act on Handling Genetically Modified Organisms and Genetic Products, as amended.
Act no. 89/2012 Sb., Civil Code, as amended.
Arab Charter on Human Rights.
City Court in Prague, 9 Ca 270/2004, 27. 4. 2007.
Constitutional Court, I. ÚS 1821/16, 12. 12. 2017.
Constitutional Court, II. ÚS 251/03, 24. 3. 2005.
Constitutional Court, II. ÚS 2614/08, 19. 8. 2010.
Constitutional Court, II. ÚS 3831/14-1, 6. 5. 2015.
Constitutional Court, II. ÚS 482/02, 8. 4. 2004.
Constitutional Court, III ÚS 70/97, 10. 7. 1997.
Constitutional Court, III. ÚS 298/12-1, 13. 12. 2012.
Constitutional Court, III. ÚS 338/04, 14. 9. 2004.
Constitutional Court, III. ÚS 70/97, 10. 7. 1997.
Constitutional Court, III. ÚS 77/97, 8. 7. 1997.
Constitutional Court, IV. ÚS 254/02, 28. 1. 2003.
Constitutional Court, IV. ÚS 652/06, 21. 11. 2007.
Constitutional Court, Pl. ÚS 18/17-1, 25. 9. 2018.
Constitutional Court, Pl. ÚS 21/17-1, 12. 2. 2019.
Constitutional Court, Pl. ÚS 22/17-2, 26. 1. 2021.
Constitutional Court, Pl. ÚS 24/2000, 12. 10. 2001.
Constitutional Court, Pl. ÚS 30/15-1, 15. 3. 2016.
Constitutional Court, Pl. ÚS 33/16-2, 10. 11. 2020.
Constitutional Court, Pl. ÚS 34/03, 13. 12. 2006.
Constitutional Court, Pl. ÚS 4/18-1, 18. 12. 2018.
Constitutional Court, Pl. ÚS 44/18-1, 17. 7. 2019.
Constitutional Court, Pl. ÚS 59/2000, 20. 6. 2001.
Constitutional Court, Pl. ÚS 7/17-1, 27. 3. 2018.
Constitutional Court, Pl. ÚS 74/04, 13. 12. 2006.
Constitutional Court, Pl. ÚS 8/08-1, 8.7.2010.
Court of Justice of the European Union, C 121/21 R, 26. 3. 2021.
Escazú Agreement.
European Court of Human Rights, Appl. no. 19101/03, 10. 7. 2006.
Chamber of Deputies of the Parliament of the Czech Republic (1991) Sněmovní tisk 921 [Online]. Available at: https://www.psp.cz/eknih/1990fs/tisky/t0921_01.htm (Accessed: 20 March 2022).
Chamber of Deputies of the Parliament of the Czech Republic (2019) Sněmovní tisk 508 [Online]. Available at: https://www.psp.cz/sqw/historie.sqw?o=8&T=508 (Accessed: 18 March 2022).
Chamber of Deputies of the Parliament of the Czech Republic (2019b) Sněmovní tisk 526 [Online]. Available at: https://www.psp.cz/sqw/historie.sqw?o=8&T=526 (Accessed: 18 March 2022).
Chamber of Deputies of the Parliament of the Czech Republic (2019c) Sněmovní tisk 549 [Online]. Available at: https://www.psp.cz/sqw/historie.sqw?o=8&T=549 (Accessed: 18 March 2022).

Chamber of Deputies of the Parliament of the Czech Republic (2020) Sněmovní tisk 1018 [Online]. Available at: https://www.psp.cz/sqw/historie.sqw?o=8&T=1018 (Accessed: 18 March 2022).
Protocol of San Salvador.
Regional Court in Brno, 30 Ca 246/2000, 28. 5. 2000.
Supreme Administrative Court, 1 As 44/2010-103, 1. 12. 2010.
Supreme Administrative Court, 2 Ao 3/2007-40, 24. 10. 2007.
Supreme Administrative Court, 2 Ao 4/2008-88, 5. 2. 2009.
Supreme Administrative Court, 3 Ans 8/2005-52, 18. 5. 2006.
Supreme Administrative Court, 6 A 93/2001-56, 25. 10. 2004.
Supreme Administrative Court, 7 A 139/2001-67, 29. 7. 2004.
Supreme Administrative Court, 8 As 39/2014-56, 18. 11. 2015.
Supreme Administrative Court, 9 As 24/2016-109, 14. 7. 2016.
UN Human Rights Council's Resolution 48/13 of 8. 10. 2021.
UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Chapter V

Hungary: A Progressive Approach to the Protection of the Environment and Future Generations in a Traditional Constitution

Enikő Krajnyák

1. Introduction

1.1. Constitutional framework in Hungary

The Fundamental Law,[1] which was adopted by Parliament on April 18, 2011, and entered into force on January 1, 2012, is the currently effective constitution of Hungary. Its adoption brought a substantial change in Hungarian constitutional development: before the first written constitution – Act XX of 1949, which was based on the soviet model of 1936 – was passed, Hungary had a so-called 'historical constitution' connected to the symbol of the Holy Crown.[2] Act XX of 1949 served the creation of a totalitarian state system, which ended peacefully in 1989 with the establishment of the Republic. Act XXXI of 1989 declared independence, the democratic frames, and rule of law, although it was only an amendment to the former

1 The Fundamental Law of Hungary [Online]. Available at: https://bit.ly/31xaomS (Accessed: 9 May 2022).

2 Raisz, 2012, pp. 37–39.

Enikő Krajnyák (2022) Hungary: A Progressive Approach to the Protection of the Environment and Future Generations in a Traditional Constitution. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 203–248. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_6

constitution that was intended to be replaced by a new basic law.[3] The new Fundamental Law expresses several value choices, declares that the identity of the nation is rooted in the historic constitution, and denies the recognition of the constitution of 1949.[4]

The Fundamental Law is based on a firm philosophy representing the importance of the protection of the environment,[5] which manifests in the high level of legal protection guaranteed by the constitutional provisions. One may observe that the constitutional regulation incorporates different approaches toward environmental protection: on the one hand, it declares the right to a healthy environment, thereby positioning the environment among the values of fundamental rights; on the other hand, its protection serves as a tool for the effective application of other fundamental rights, in the given case, of the right to physical and mental health. The influence of international tendencies concerning the interrelation of human rights and the environment is, therefore, tangible in the Hungarian constitutional approach.

Despite that the Fundamental Law does not provide an explicit definition for the environment, it may be inferred from the Preamble: *"we commit ourselves to promoting and safeguarding our heritage […] along with all man-made and natural assets of the Carpathian Basin."* Therefore, the fact that built and cultural heritage is included in environmental protection is undeniable and is also supported by the Constitutional Court.[6] Consequently, the protection of the environment encompasses more than the surrounding nature – the inclusion of the built and cultural heritage in the protection of the environment thus implies an anthropocentric approach.[7] Nevertheless, the Fundamental Law also provides a high level of protection for natural resources,[8] thereby expressing respect for their intrinsic value and thus creating a complex system of environmental protection that reflects the needs of both humankind and the planet.

3 Csink and Fröhlich, 2020, pp. 126–127.

4 National Avowal of the Fundamental Law: *"[…] We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State. We do not recognise the suspension of our historic constitution due to foreign occupations. We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and the communist dictatorship. We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; we therefore proclaim it to be invalid. […]"*

5 Antal, 2011, pp. 47–49.

6 See Decision no. 16/2015 (VI.5.) [83]: *"The Constitutional Court extended the right to a healthy environment to the protection of the built environment in its practice subsequent to the Decision of [28/]1994."* See also Decision no. 3104/2017 (V.8.); Decision no. 5/2022 (IV.14.); Decision no. 16/2022 (VII.14.).

7 Horváth, 2013, pp. 223–224.

8 See Article P (1) of the Fundamental Law: *"Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."*

1.2. Protection of the environment in other branches of law

The detailed rules of environmental protection can be found in Act LIII of 1995 on the general rules of environmental protection (further referred to as the Environmental Protection Act). It is considered a lex specialis in this field, defining the basic notions and principles of environmental protection, responsibilities, cooperation, state and local governmental tasks, and economic and administrative issues. According to this act, the environment encompasses environmental components themselves (earth, air, water, the living world, and the man-made artificial environment) as well as their systems, processes, and structure.[9] Therefore, this definition set out in the general act of the environment is in line with the above-mentioned constitutional framework. Furthermore, given that the Fundamental Law is also devoted to the protection of natural resources, Act LIII of 1996 on nature conservation should be mentioned. The act is dedicated to, among other issues, the protection of natural values and natural areas, such as landscape, wildlife, natural habitats, and geological values and lays down the rules of procedure for declaring protected status, the planning and organization system for nature conservation, and ownership rights and sanctions related to nature conservation. Further legal requirements are provided in numerous acts, such as the Water Management Act,[10] the Electricity Act,[11] or the Land Protection Act.[12]

The environmental dimension appears in several other fields of law: the Act V of the Civil Code of 2013, for instance, sets out a special liability system for hazardous activities providing that the person carrying out such activities shall be exempt from liability if they prove that the damage was caused by an inavertable event outside the scope of the hazardous activity (vis maior).[13] Furthermore, criminal law also has a role in the protection of the environment, although as a last resort:[14] Chapter XXIII of the new Criminal Code, Act C of 2012 ('Criminal offenses against the environment and nature') lists several criminal offenses against the environment and nature, namely environmental offenses, damaging the natural environment, cruelty to animals, poaching game, poaching fish, organization of illegal animal fights, violation of waste management regulations, criminal offenses with ozone-depleting substances, misappropriation of radioactive materials, illegal operation of nuclear installations, crimes in connection with nuclear energy, and prohibition from residing in a particular area.[15] It is a significant novelty of the new Hungarian Code that environmental crimes are regulated independently in one chapter: this method

9 Act LIII of 1995 on the general rules of environmental protection, Article 4 (1)–(2).
10 Act LVII of 1995 on water management.
11 Act LXXXVI of 2007 on electricity.
12 Act CXXIX of 2007 on the protection of arable land.
13 Act V of 2013 on the Civil Code, Article 6:535. For a detailed analysis on the dogmatics of environmental liability in civil law, see also Csák, 2013.
14 Görgényi, 2018, p. 66.
15 Act C of 2012 on the Criminal Code, Sec. 241–253.

expresses the growing need for the autonomous protection of the environment rather than the former regulation that incorporated environmental crimes as among the crimes against public health.[16]

Moreover, under Chapter XXXIV ('Criminal offense-related administrative procedures'), the violation of legal liabilities relating to genetically modified plant varieties is introduced.[17] The reconsideration of liability on genetically modified organisms occurred due to a concrete case – in 2011, it was found that on several thousands of hectares, soy and corn had been produced from seeds that contained GMOs as well. The violation of the constitutional provision on the prohibition of the use of GMOs[18] thus resulted in the incorporation of the aforementioned crime into the Criminal Code.[19]

1.3. Administrative framework for the protection of the environment

In the absence of a separate ministry for the environment, the management of environmental matters is shared among different ministries. The Ministry of Agriculture is responsible for nature protection, in the framework of which it prepares laws on the protection of natural values and areas, landscape conservation, Natura 2000 areas, wild organisms, and economic measures serving the protection of nature. The Minister also analyzes and evaluates the state of the environment and its protection, its impact on human health, the processes for the management of natural values and resources, and the experiences of nature protection, its regulated use, and its planned development. Further, they coordinate the information system of the measurement, monitoring, and evaluation of the state of nature.[20] Moreover, the Ministry of Technology and Industry is also competent in certain related fields, given that the portfolio encompasses the protection of the environment, the development of a circular economy, and waste management and energy policy, including climate policy. Within the framework of the protection of the environment, the

16 Nagy, 2019, p. 146.

17 See Act C of 2012 on the Criminal Code, Section 362: *"Any person who:*

a) unlawfully imports, stores, transports or places on the market in the territory of Hungary the propagating materials of genetically modified plant varieties which have not been authorized in the European Union, or releases such into the environment;

b) unlawfully releases into the environment the propagating materials of genetically modified plant varieties which have not been authorized in the European Union for cultivation purposes;

c) violates the prohibitive measures imposed for the duration of the safeguard procedure in connection with the import, production, storage, transport, placing on the market or use of propagating materials of genetically modified plant varieties which has been authorized in the European Union for cultivation purposes; is guilty of a misdemeanor punishable by imprisonment not exceeding two years."

18 See Article XX (2) of the Fundamental Law: *"Hungary shall promote the effective application of the right [to physical and mental health] through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water […]"*

19 Raisz and Szilágyi, 2012, pp. 110–112.

20 183/2022 (V.24.) Government Decree on the Modification of Certain Government Decrees on Determining the Duties and Powers of the Members of the Government, Article 62

Minister drafts laws on general rules of environmental protection, related economic measures, air protection, and protection against the harmful impact of noise and vibration, inter alia.[21] Additionally, the Ministry of Interior also has environment-related competencies related to water supply and the governance of water management bodies.[22] Local authorities for the protection of nature and the environment are integrated into the system of the government offices of the counties, the capital, and, in some cases, the municipalities. Their tasks cover data collection and publication as well as exercising competencies of environmental authorities, such as providing authorization for using the environment or taking part in the construction and authorization procedure.[23] Furthermore, municipalities can also play an important role in environmental policymaking owing to their competency to issue decrees. The most topical fields of regulation on a local level are related to air protection, noise protection, waste management, the protection of wildlife, the protection of the built environment, soil and water protection, water management, energy, and traffic. In regard to the regulatory framework of local authorities, that the characteristics and particularities of the environment of these entities are always reflected in the regulations should be emphasized.[24] Hence, the analysis of these pieces of legislation would exceed the limits of the present study.

1.4. International jurisdiction concerning environmental matters in relation to Hungary

In addition to the national legislative framework, which guarantees a high level of protection for the environment and the interests of future generations, Hungary is also famous for its involvement in the first great trial of environmental law in front of the International Court of Justice (further referred to as the ICJ): the Gabčíkovo-Nagymaros Project (Hungary/Slovakia).[25] A bilateral agreement in 1977 on the construction of a hydroelectric power plant on the Danube River formed the basis of the dispute.[26] Considering the fact that environmental aspects had not been taken into account during the drafting of the agreement, Hungary ceased the building projects around the change of the regime and unilaterally denounced the treaty.[27] The essential argumentative basis of the dispute was founded upon environmental legal

21 183/2022 (V.24.) Government Decree on the Modification of Certain Government Decrees on Determining the Duties and Powers of the Members of the Government, Article 160; 164 (1) f); 165

22 183/2022 (V.24.) Government Decree on the Modification of Certain Government Decrees on Determining the Duties and Powers of the Members of the Government, Article 66, 21–23.

23 Fodor, 2015, pp. 117–120.

24 Fodor: 2019, p. 247.; p. 236. For a comprehensive analysis of the environmental regulatory activities of municipalities, see Fodor, 2019.

25 Gabčikovo-Nagymaros Project (Hungary/Slovakia), 1997.

26 A detailed analysis of the case exceeds the limits of the present chapter; the author only aimed at touching upon certain aspects relevant for the present chapter. For further information, see Herczegh, 2004, pp. 1–20.

27 Raisz and Szilágyi, 2017, pp. 91–93.

considerations (Hungary) versus the principle of pacta sunt servanda (Slovakia).[28] Although the Court did not exploit the possibilities of evaluating environmental aspects to the maximum extent, the importance of the judgment lies in being the first in the practice of the ICJ when the use of environmental principles emerged,[29] and it is often cited as being the most significant international environmental decision from the Central European region.[30]

Hungarian cases occasionally appear in front of the European Court of Human Rights (further referred to as the ECHR)[31] in relation to the environment; the most cited are *Deés v. Hungary* (no. 2345/06) and *Bor v. Hungary* (no 50474/08). In both cases, the ECHR held the violation of Article 8 and Article 6 of the European Convention on Human Rights in relation to the nuisance caused by heavy road or railway traffic noise near the applicants' residence.[32] In the absence of an explicit right to a healthy environment in the Convention, the Court often links environmental matters to other human rights; in the above-mentioned cases, the issue at hand was linked to the right to respect for private and family life or the right to a fair trial.[33] The two judgments are embedded in a broader jurisdictional tendency, which established the violation of Article 8 based on environmental harms: *Taşkin and others v. Turkey, Fadeyeva v. Russia, Giacomelly v. Italy, and Tatar v. Romania* are among the most significant examples.[34]

2. Actors in the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and especially the environment

2.1. The role of the classical actors of constitutional law

The Environmental Protection Act lays down the obligations of state actors concerning environmental protection. The National Assembly has a wide range of tasks in this matter: first, it ensures that the interests of the protection of the environment are taken into account during the legislation; second, it decides on the government's report on the state of the environment, defines the environmental tasks of the federal

28 Kecskés, 2015, p. 65.
29 Raisz, 2015, pp. 262-264. For further interpretation of certain environmental considerations in the judgment, see Bányai, 2011.
30 Raisz, 2017, p. 452.
31 For the interpretation of human rights from an environmental perspective in the practice of the ECHR, see Sulyok, 2014; for further analysis on the practice of regional human rights courts in environmental matters, see Marinkás, 2020.
32 Case of Deés v. Hungary (Application no. 2345/06) Judgment, Strasbourg, November 9, 2010, 18–27. See also the case of Bor v. Hungary (Application no. 50474/08) Judgment, Strasbourg, June 18, 2013.
33 Fodor, 2011, pp. 90–91.
34 Kecskés, 2021, p. 216.

and local governments, and approves resources for the solution of environmental tasks and controls their utilization. Furthermore, the National Assembly adopts the National Environmental Program and evaluates its implementation every two years. The National Environmental Program serves as a basis for planning environmental protection for six years. The Program is drafted and presented by the Government, which – in the framework of its environmental tasks – fulfills the obligations, exercises rights arising from international treaties, and promotes the implementation and dissemination of environmentally friendly products, technologies, and establishments.[35] Regarding the legislative duties related to environmental protection, the National Environmental Protection Council supports the work of the government with proposals, recommendations, and comments, and it is responsible for the social, scientific, and professional foundations of the protection of the environment.[36] The importance of its work for well-founded environmental regulations was also emphasized by the Constitutional Court.[37] In addition, the Committee on Sustainable Development operates as one of the 20 Parliamentary Committees, which are entitled to initiate measures, express opinions, put forth proposals, and monitor the work of the government. In addition to sustainable development, their portfolio covers climate policy, the protection of natural resources, public health, and EU subsidies for environmental protection.[38]

The role of the Constitutional Court in the interpretation of the constitutional provisions concerning the protection of the environment and future generations is of paramount importance in Hungary.[39] The pioneer decision of environmental jurisprudence was Decision no. 28/1994 (V.20.), which interpreted the right to a healthy environment and elaborated on the non-derogation principle.[40] It is worth noting that the Court adjudicated on the basis of the provisions of the former Constitution: Article 18 of Act XX of 1949 – as a result of the amendments of 1989 – declared everyone's right to a healthy environment. According to the fourth amendment of the Fundamental Law, the decisions before its entry into force were repealed,[41] but given that the text of the Fundamental Law is identical to the text of the Constitution regarding the right to a healthy environment, in its Decision no. 3068/2013 (III.14.), the Constitutional Court rendered its former findings applicable in the interpretation of

35 Act LIII of 1995 on the general rules of environmental protection, Article 39–41.

36 Act LIII of 1995 on the general rules of environmental protection, Article 45.

37 Decision no. 30/2000 (X.11.) III. 2-3.

38 Parliament Resolution 11/2022 (V.2.) on the establishment and election of the members of the Parliamentary Committees, 1. b).

39 Szilágyi, 2021a, pp. 133–136.

40 The non-derogation principle is also referred to as the non-regression principle by Gyula Bándi. See: Bándi, 2020a, 19.

41 The Fundamental Law of Hungary, Closing and Miscellaneous Provisions, 5.: *"The decisions of the Constitutional Court made prior to the entry into force of the Fundamental Law are repealed. This provision shall be without prejudice to the legal effects produced by those decisions."*

the right to a healthy environment.[42] In addition to explicitly confirming the findings of the former Constitutional Court practice in this field,[43] Decision no. 16/2015 (VI.5.) put the interpretation of the right to a healthy environment in the context of the new constitutional framework and further developed the non-derogation principle. The other strong principle elaborated by the Court is the precautionary principle, which, by Decision no. 13/2018 (IX.4.), was raised to a constitutional criterion for the benefit of the interest of future generations.[44] Therefore, the Constitutional Court has an outstanding role in the establishment of the dogmatics of the right to a healthy environment, the principles of environmental protection, and their interpretation and position in Hungarian constitutional practice. Moreover, the Court has a special feature in its environmental adjudication: in some cases, the panel conducted a technical or factual evidentiary hearing and provided solutions not only to the legislation under examination but also to the situations and conflicts that had arisen, thus stepping out from its conventional role as a court of law to be, in some aspects, a court of facts.[45] The importance of its findings, the great number of Constitutional Court decisions on environmental issues, and the change of its ordinary form are a few examples that illustrate the fundamental role of the Hungarian Constitutional Court in shaping the constitutional framework for the protection of future generations and the environment.

Environmental issues may appear before the ordinary courts as well; however, these cases may also involve civil, criminal, or other legal questions, as the courts do not interpret the constitutional provisions but do interpret lower-level legal instruments. There are several environment-related cases in the practice of the courts that received significant media attention. The cyanide spill on the river Tisza in 2000, which was labeled *"the worst environmental disaster since the Chernobyl nuclear leak in 1986,"*[46] was adjudicated by the Budapest Court of Appeal[47] and ended without effective reparation, as the Romanian-Australian company liable for the leak was dissolved without a legal successor, which rendered compensation impossible.[48] Moreover, certain issues reached the Supreme Court (the Curia): in the red sludge spill case of 2010,[49] the Curia held the violation of personal rights, such as the right to physical integrity, health, a healthy environment, and human dignity. The first instance court considered the use of the toxic red sludge to be a hazardous activity and held the company liable for the

42 Decision no. 3068/2013 (III.4.), [46]. The application of the findings of the Constitutional Court prior to the entry into force of the Fundamental Law in general was first confirmed by Decision no. 13/2013 (VI.17.) [32].

43 Decision no. 16/2015 (VI.5.) [80].

44 Decision no. 13/2018 (IX.4.) [13]–[14]; [20].

45 Fodor, 2006, p. 162.

46 BBC, 2000.

47 In addition to this case, several legal procedures were connected to the disaster; for instance, the above-mentioned case from the practice of the ECHR, Tatar v. Romania, was related to this issue.

48 Élő Bolygónk, 2020.

49 Similar to the cyanide spill on the Tisza, the red sludge spill also resulted in different civil and criminal procedures.

disaster.[50] The issue of the expansion of the nuclear power plant in Paks is also worth mentioning; in this case, the Curia rejected the initiative for referendum:[51] considering that the expansion was based on an international treaty established with the Russian Federation, the Curia noted that it is contrary to the Fundamental Law to hold a referendum on an obligation arising from such a treaty.[52] Compared to the Constitutional Court, the Curia does not play a particularly leading role in shaping environmental protection; the cases that appear in the practice of the ordinary courts are instead adjudicated on the basis of other branches of law.

The President of the Republic does not have a constitutional obligation toward environmental protection. However, former President János Áder, for instance, had a major role in the development of the case law of the Constitutional Court: both Decisions no. 15/2015 (VI.5.) and 13/2018 (IX.4.) were submitted to the Court upon his initiative.[53] In his reasoning, the President firmly based his argumentation on the principle of non-derogation and the precautionary principle, which, according to his initiative, could be inferred from the constitutional provisions guaranteeing the high level of protection of natural resources and the right to a healthy environment.[54] Moreover, during his term in office, President Áder often voiced his opinions regarding environmental matters: he established a foundation for the protection of the environment (*Kék Bolygó Alapítvány – Blue Planet Foundation*) and launched a podcast on the current issues of sustainable development, climate change, and water crisis.[55] He held notable speeches at various United Nations events on climate change and sustainability, such as in 2015 at the UN Climate Change Conference in Paris, and is a member of the Water and Climate Management Board of the UN.[56] However, the involvement of the President in environmental matters is not without precedent in Hungary: László Sólyom, the president from 2005–2010, had an important role in the establishment of the office of the green ombudsman. As early as in 2000,[57] Sólyom introduced the idea of a separate ombudsman for future generations, which – as presented below – came to fruition during his incumbency.

2.2. The role of special organizations of constitutional law

The institutional protection of fundamental rights is performed by the Commissioner for Fundamental Rights (the Ombudsman) and his Deputies. The work and mandate of the Commissioner and their Office are based on Article 30 of the

50 Kőmüves, 2020, pp. 125–127.
51 Resolution Knk.IV.37.178/2014/3.
52 See Article 8 (3) of the Fundamental Law: *"No national referendum may be held on: […] d) any obligation arising from international treaties […]."*
53 Szilágyi, 2021a, p. 131.
54 Szilágyi, 2018a, pp. 84–85.
55 Kék Bolygó Alapítvány, 2022; Kék Bolygó Podcast, 2022.
56 Budapest Climate Summit, 2021.
57 See Jávor and Sólyom, 2000, pp. 37–46.

Fundamental Law: as a defender of fundamental rights, they shall investigate violations related to fundamental rights that come to their knowledge or shall initiate general or specific measures to remedy such violations. The detailed rules for the competencies, election, mandate, and procedures of the Commissioner are set out in Act CXI of 2011 on the Commissioner for Fundamental Rights. The Commissioner and his Deputies are elected by the Parliament for 6-year terms. Any Hungarian citizen may be elected if they hold a law degree, have the right to stand as a candidate in elections of Members of Parliament, and have outstanding theoretical knowledge or at least 10 years of professional experience; furthermore, they must have reached the age of 35 years and have considerable experience conducting or supervising proceedings concerning fundamental rights.[58]

According to Article 1 (2) of this act, the Commissioner pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the rights of the most vulnerable social groups, and the values determined in Article P of the Fundamental Law (i.e., the interests of future generations). Moreover, the legislator guarantees a high level of protection of the rights of nationalities and the interests of future generations by designating Deputy Commissioners for these two issues. The constitutional mandate of the Deputy Commissioner for Future Generations (also called the Advocate of Future Generations [AFG]) is based on three main pillars: the human right to a healthy environment, the right to physical and mental health, and a novel provision under Article P stipulating the *"common heritage of the nation*."[59] The concept of the common heritage of the nation is elaborated at a later point, but at this point, it is necessary to mention that natural resources – which fall under this category – shall be preserved, maintained, and protected for the benefit of future generations according to the text of the Fundamental Law. Consequently, in the practice of the AFG, the interests of future generations are understood as issues mainly related to protecting the environment and cultural heritage. The AFG has a wide range of competencies in relation to the enforcement of the interests of future generations, including the power to investigate maladministration complaints and environmental nuisance claims; to draw the attention of the Commissioner to the danger of the infringement of the rights of a larger group of natural persons, especially of future generations; to participate in the inquiries of the Commissioner; to propose that the Commissioner institute proceedings ex officio; and to propose that the Commissioner turn to the Constitutional Court or submit legislative proposals to the legislature suggesting new laws or the amendment of existing ones.[60] The latter two competencies are considerably strong: in Decision no. 14/2020 (VII.6.), which was initiated by the Commissioner for Fundamental Rights upon the request of the AFG, the Constitutional Court stated that *"[…] the Commissioner for Fundamental*

58 Act CXI of 2011 on the Commissioner for Fundamental Rights, Article 4–5.

59 Bándi, 2020a, pp. 9–11.

60 Summary of the Hungarian NHRI's engagement with the SDGs, Promoting Ambitious National Implementation of the SDGs by the Hungarian Ombudsman for Future Generations, 2018, p. 1.

Rights together with the Deputy Commissioner responsible for the interests of future generations plays a crucial institutional role in the protection of natural and cultural assets […]" and pointed out that the natural and cultural values stipulated in Article P (1) shall be protected per se for future generations, even if doing so acts against the actual economic interest of current generations.[61] Furthermore, based on their power to prepare legislative proposals, the AFG issued a comprehensive proposal on environmental liability in 2019[62] and on the protection of groundwater resources in 2020.[63]

Moreover, the AFG also frequently issues opinions, recommendations, or awareness-raising reports on various topics related to the interests of future generations, such as the preservation of national parks,[64] protected species,[65] certain elements of the nature (including soil[66] and groundwater resources[67]) the landscape,[68] or waste management.[69] His review on the implementation of sustainable development goals in Hungary has been cited internationally, as it was published as an annex to the document issued at the High-Level Political Forum on Sustainable Development 2018 in New York.[70] The review provided an in-depth analysis of the implementation of certain sustainable development goals, namely Goal 6 (ensure availability and sustainable management of water and sanitation for all), Goal 7 (ensure access to affordable, reliable, sustainable, and modern energy for all), Goal 11 (make cities and human settlements inclusive, safe, resilient, and sustainable), Goal 12 (ensure sustainable consumption and production patterns), and Goal 15 (protect, restore, and promote the sustainable use of terrestrial ecosystems). The AFG articulated several recommendations as to the steps needed on the basis of the Ombudsman's practice: the review pointed out that the individual cases have a concrete, detailed, and specific nature similar to the implementation steps, and thus, the recommendations of the Ombudsman may serve the concretization of broad and abstract goals.[71]

Finally, it is worth mentioning that the current ombudsman structure (one Ombudsman with two Deputies) was introduced by the Fundamental Law:[72] before its

61 Decision no. 14/2020 (VII.6.) [35].
62 Legislative proposal of the Advocate of Future Generations on the effective implementation of environmental liability, 2019.
63 Legislative proposal of the Advocate of Future Generations on the protection of groundwater resources, 2020.
64 National parks as the guardians of natural and cultural values for future generations, 2014.
65 The preservation of Nannospalax (leucodon) montanosyrmiensis for future generations, 2015.
66 The protection of soil, 2016.
67 The protection of groundwater resources, 2017.
68 The fundamental legal aspects of the landscape and the protection, management, and planning of landscape, 2021.
69 The problems regarding the functioning of the waste management public service, 2018.
70 Voluntary National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda, 2018.
71 Voluntary National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda, 2018, p. 6.
72 Csink, 2016, p. 602.

adoption, four separate ombudsmen were operating independently, one of them being the Ombudsman for Future Generations established in 2007.[73] In addition to the subject matter of its office, the specificity of the so-called 'green ombudsman' existed in his competencies: in addition to the general powers of an ombudsman – such as activities related to control over authorities concerning fundamental rights – this person could control the activities of a broader scope of subjects, that is, not only in relation to authorities but also in relation to private persons and organizations using the environment.[74] According to the law establishing the institution of the green ombudsman, they had the right to oblige the person or organization illegally threatening, polluting, or damaging the environment to discontinue such activities, while this power is missing from the competencies of the current AFG.[75] The introduction of the new ombudsman model was heavily debated among state actors: the incumbent green ombudsman at the time, Sándor Fülöp, issued an opinion concerning the ombudsman structure during the process of drafting the Fundamental Law:[76] he argued that the dissolution of the separate ombudsman's office would result in the derogation of the previously achieved level of institutional protection. According to him, given that the protection of the environment requires a wide range of interdisciplinary expertise, including different fields of law and policies (traffic, spacial planning, rural development, energy policy, etc.), its complexity may not be analyzed properly in a system in which the respective ombudsman is integrated into a hierarchical structure.[77] Due to his power of initiating Constitutional Court proceedings, the green ombudsman also initiated an ex-post norm control for the dissolution of the former ombudsman system; however, given the fact that its legal successor, the Commissioner for Fundamental Rights, did not intend to continue the procedure, the Court rejected the motion.[78] Although the Explanatory Memorandum of Article 30 of the Fundamental Law does not clarify why such a comprehensive structural change was necessary, the literature points out that the establishment of newer ombudsmen would result in fragmentation and may lead to different interpretations and, consequently, major conflicts among the ombudsmen.[79] The institutional development of the ombudsman's office brought greater independence for the deputies within the monocratic model, which is shown by the extension of competencies,[80] the changes in the internal structure (i.e., the establishment of the Secretariat of the Deputy

73 Act CXLV of 2007 on the modification of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, Article 10.
74 Fodor, 2008, pp. 47–50.
75 Cf. Act CXLV of 2007, Article 27/B (3) a to Act CXI of 2011, Article 3 (1).
76 It is worth noting that the former Parliamentary Commissioner for Future Generations issued several opinions and recommendations for the environment-related provisions of the Fundamental Law, which will be presented in the upcoming subchapters.
77 Opinion of the Parliamentary Commissioner for Future Generations in connection with the operation of the ombudsman structure, 2010.
78 Order no. 3002/2012. (VI. 21.) [44], [47].
79 Varga Zs., 2012, pp. 136–137.
80 See Act CCXXIII of 2013 on the modification of Act CXI of 2011.

Commissioners),[81] and the growing number of employees and their increased media representation in the last few years.[82]

In conclusion, Hungary guarantees the institutional protection of human rights on a high level, with a special focus on the right to a healthy environment and the protection of natural resources, which are strongly intertwined with the interests of future generations. The office of the Deputy Commissioner for Future Generations underwent fundamental changes after the adoption of the Fundamental Law, which aimed at establishing centralized fundamental rights protection to avoid fragmentation and misunderstandings among the different commissioners. The question of whether the new system is contrary to the non-derogation principle may arise, especially considering the right to address natural and legal persons for illegally causing damage to the environment, which was guaranteed for the former green ombudsman. Nevertheless, the growing independence of the AFG and their international recognition show that the interests of future generations are still represented at a high level in Hungary.

3. Basis of fundamental rights

3.1. The human right to a healthy environment

The approach of the Fundamental Law toward the protection of the environment is complex. On the one hand, the right to a healthy environment is explicitly guaranteed at the constitutional level, and the link between the environment and other human rights is also expressed either expressis verbis in other provisions of the Fundamental Law (the right to health) or by the interpretation of the Constitutional Court (the right to life). On the other hand, the protection of the environment also appears as a state task, which emerges from the specific nature of the environment, reflecting both its intrinsic value and its potential to benefit humans.

Article XXI of the Fundamental Law is dedicated to the protection of a healthy environment in the fundamental rights framework. Paragraph (1) declares that *"Hungary shall recognise and endorse the right of everyone to a healthy environment.*" As previously mentioned, the constitutional amendment of 1989 introduced this right in Article 18 of the Constitution,[83] which was thoroughly analyzed by the Con-

81 Order no. 1/2012 (I.6.) of the Commissioner for Fundamental Rights.

82 Csink: 2016, pp. 603–605.

83 It is worth noting that the right to live in a dignified environment first appeared in Act II of 1976 on the protection of the human environment (Article 2 (2); however, as the right was not enshrined in the Constitution at the time, it was not implemented into practice. Nevertheless, the regulation was certainly progressive as it was based on the philosophy of the Stockholm Conference. See Bándi, 2011, p. 72.

stitutional Court in its Decision no. 28/1994 (V.20.).[84] The Court interpreted the right to a healthy environment as a third-generation fundamental right, with the differentia specifica of having a stronger objective, institutional side, which is ensured by the state's obligation to recognize and endorse the framework for the protection of the environment. The scope of the subjects of this right is unidentifiable as it encompasses the entirety of humankind as well as nature. Contrary to social rights, in the case of which the subjects can be concretized, these subjects – similar to animals, plants, or 'unborn generations' – may not be able to stand up for their own rights.[85] Consequently, the right to a healthy environment may not be interpreted in a way that individuals can directly establish a claim before the court, demanding such environmental conditions that would correspond to their subjective perception.[86]

This is the reason why the protection of the environment also appears as a state task, and active behavior of the State is thus required. However, this obligation is more than a mere task as – in comparison to other state tasks – as the State does not enjoy complete freedom in choosing the tools for its realization,[87] which is reflected in the principle of non-derogation. The principle could be considered a limitation to state activities, as it establishes the prohibition of the derogation from the previously achieved level of protection via three aspects: first, in substantial norms, which would manifest in, for instance, the release of the protective measures of nature, the extenuation of threshold limits, or the reduction of protective zones; second, the non-derogation principle may apply in case of the modification of procedural norms – the abolition of the obligation of authorization or the restriction of the right to remedy would certainly be contrary to the principle; And finally, Decision no. 16/2015 (VI.5.) interpreted the non-derogation principle in the context of the re-regulation of organizational and administrative structures:[88] the previously achieved level of protection is also guaranteed by the institutional structure for the protection of the environment.[89] The reason behind the application of the principle is the strong connection between the extenuation of protective measures and irreversible environmental damage. The derogation is only allowed in case other fundamental rights are also subject to restrictions if it is unavoidably necessary. Pure economic reasons or the vindication of property rights are, for instance, not solid reasons for derogation. Therefore, the application of the principle in practice is a sensitive issue: as Gyula Bándi, a current AFG, points out, the remodeling of the organizational framework of environmental protection may serve the simplification and transparency of the

84 The first – unsuccessful – attempt at the interpretation of the right to a healthy environment emerged soon after the adoption of the constitutional amendment of 1989: the Prime Minister and the President of the Committee for Environmental Protection of the National Assembly requested that the Constitutional Court interpret the right, but the Court refused to deliver an abstract norm control.

85 Decision no. 28/1994 (V.20.) III.

86 László Fodor: Környezetjog, Debrecen, 2015, pp. 104–105.

87 Decision no. 28/1994 (V.20.) IV.1.

88 Decision no. 16/2015 (VI.5.) [109].

89 Fodor, 2007, pp. 14–16.

administration on the one hand, but the classification of environmental interests below or in parallel to other interests may instead be considered derogation.[90]

In addition to the principle of non-derogation, another significant postulate is the precautionary principle, which was elaborated by the Constitutional Court in the greatest detail in Decision no. 13/2018 (IX.4.).[91] The Constitutional Court noted that the precautionary principle may be applicable in two ways: (a) jointly with the non-derogation principle or (b) independent of it.[92] In the first case, when a regulation or measure may affect the state of the environment, the legislator should verify that the regulation is not a step back, that this approach does not cause any irreversible damage, and that it does not provide any ground in principle for causing such damage. The independent application of the precautionary principle may apply with regard to measures that are not formally implemented as a step back, that is, in cases not previously regulated but that still influence the condition of the environment, the legislator shall be constitutionally bound to weigh and take into account in its decision-making the risks that may occur with a high probability.[93] As János Ede Szilágyi notes, the application of the principle may give the possibility of ruling on the rules of new and risky technologies; the outcome of the hypothetical cases would have been interesting if nuclear technology, genetic engineering, or mobile technology had been introduced after the adoption of the above-mentioned Decision from 2018.[94]

Third, the principle of prevention should be mentioned. The fundamental difference between the principle of prevention and that of precaution is that the principle of precaution reduces the level of evidence of the expected consequences from certainty to scientific uncertainty or probability but does not reach the level of unfoundedness,[95] while prevention is relevant in the selection of measures: it is aimed at integrating environmental aspects into the decisions rather than posterior sanctions, which may realize derogation.[96] Although other principles of environmental law were also named by the Constitutional Court (the principle of proportionality, the principle of integration)[97] or by scholars (the principle of state responsibility, the principle of participation, cooperation, and publicity),[98] the strongest environmental postulates in Hungarian constitutional law remain the principles of non-derogation and precaution.

The fact that the right to a healthy environment and the responsibility of the State in this matter are formulated in the same provision – Article XXI (1) – reflects that the institutional side of this right is more decisive. However, in addition to state

90 Bándi, 2017, pp. 180–181.
91 However, the precautionary principle appeared in the case law of the Constitutional Court even before this decision. See Decision no. 3223/2017 (IX.25.); Decision no. 27/2017 (X.25.); Decision no. 28/2017 (X.25.).
92 Szilágyi, 2018a, pp. 87–88.
93 Decision no. 13/2018 (IX.4.) [20].
94 Szilágyi, 2021b, pp. 227–228.
95 Fodor, 2014, p. 86.
96 Fodor, 2005, pp. 256–258.
97 Decision no. 16/2015 (VI.5.) [80–83].
98 Fodor, 2007, p. 18.

responsibility, other legal subjects also have a legal duty regarding the protection of the environment. Article XXI (2) establishes this responsibility, providing that *"Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration, as provided for by an Act."* The interpretation of this provision will be elaborated later; at this point, we only emphasize that Paragraph (2) is the sanction for the non-conformity with Paragraph (1): on the one hand, the right to a healthy environment is declared as a right everyone is entitled to, while on the other, the individual shall also be responsible for its protection.

The Fundamental Law also links proper waste management to the right to a healthy environment: according to Article XXI (3), *"The transport of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited."* The provision is the expression of the public will regarding a concrete case: illegal waste import from Germany in 2006.[99] Nearly 4000 tons of pollutant ('amber') waste was shipped without notification to or permission from the German and Hungarian authorities, breaching the respective EU rules in force at the time (Regulation (EC) No 1013/2006). The dispute was resolved through negotiations, resulting in the delivery of more than half of the waste back to Germany.[100] However, the placement of this rule at a constitutional level is disputed. First, Hungarian environmental law does not operate with notions such as 'disposal of waste' or 'pollutant waste,'[101] and it is thus questionable how they would fit into the conceptual system of the new Waste Act.[102] Secon, the rule may pose a restriction on the free movement of goods, as waste in EU law is qualified as such.[103] Therefore, it may only be applied in cases that are reconcilable with the derogations of the respective EU rules.[104] Nevertheless, the prohibition serves as a guiding principle for lower-level pieces of legislation and shows the commitment of the constitution maker to ensuring that such harmful practices of the past do not occur in the future.[105]

3.2. Other fundamental rights intertwined with the protection of the environment

In addition to the right to a healthy environment, environmental protection explicitly or implicitly appears in relation to other fundamental rights. First and foremost, the Constitutional Court declared that the right to a healthy environment had the strongest linkage to the right to life among the constitutional rights, as the obligation of the State to maintain the physical conditions of human life is thereby

99 Horváth, 2013, p. 231.
100 Csák, 2014, p. 34.
101 Bándi, 2013a, p. 87.
102 Act CLXXXV of 2012 on Waste.
103 Fodor, 2015, p. 113. For a detailed analysis of the problem of the compatibility of this provision with EU law, see Fodor, 2012.
104 Csink and T. Kovács, 2013, pp. 52–53.
105 Szilágyi, 2021a, pp. 137–138.

named as an independent 'right.'[106] Another characteristic of the right to a healthy environment that links it with the right to life is that, aswas noted above, the quantitative and qualitative guarantees may not be exposed to economic and social conditions.[107] Thus, even if the Fundamental Law itself does not pronounce the direct link between the environment and the right to life, the Constitutional Court clearly established and defined their relationship with one another.

Second, the protection of the environment explicitly appears as an instrument for the realization of the right to physical and mental health, which is enshrined in Article XX (1) of the Fundamental Law. The special content of this right is that according to Paragraph (2), *"Hungary shall promote the effective application of this right through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment."* Although the relationship between means other than the protection of the environment and the right to health is indirect,[108] it is worth mentioning that the quality of the environment also influences the quality of food. According to the explanation of the provision, GMO-free products[109] and clean drinking water are the most important conditions for maintaining health, as more than 70% of harmful substances reach the organism through food and water.[110] Moreover, it is worth mentioning that the former Constitution also provided a link between the right to life and environmental protection via Article 70/D, declaring the right to the highest attainable standard of physical and mental health (Paragraph 1), which *"shall be ensured through […] the protection of the built and natural environment."* The explicit link between the right to health and the environment and the declaration of the right to a healthy environment are the two constitutional provisions that were included in the former Constitution and further broadened by the Fundamental Law.

Third, it is important to mention that the rights guaranteed under the Aarhus Convention[111] also form part of Hungarian law, as is declared in Act LXXXI of 2001 on the ratification of the Aarhus Convention. Namely, access to information, public participation in decision-making, and access to justice in environmental matters are undoubtedly regulated on the level of ordinary acts[112]; however, some of them may even be linked to certain rights enshrined in the Fundamental Law, and consequently, some aspects of them may appear in the practice of the Constitutional Court

106 Decision no. 28/1994 (V.20.) III.3.c).
107 Bándi, 2013a, pp. 80–83.
108 Bándi, 2020a, pp. 15–16.
109 For further information on the interpretation of GMO-free agriculture in the Fundamental Law, see Szilágyi, Raisz, and Kocsis, 2017, pp. 167–175.; Raisz, 2022, pp. 192–194.
110 T. Kovács, 2015, pp. 308–309.
111 For a comprehensive overview on the implementation of the Aarhus Convention, see Pánovics, 2010.
112 In addition to Act LXXXI of 2001 on the ratification of the Aarhus Convention, the above-mentioned Act LIII of 1995 on the general rules of environmental protection as well as Governmental Decree no. 314/2005 (XII.25.) regulate certain civil and political rights in relation to the environment, such as public participation in environmental matters and access to environmental information.

or the Ombudsman. For instance, Article XXVIII (1) guarantees the right to a fair trial[113]; however, it is not explicitly linked to environmental matters. Nevertheless, the Constitutional Court interpreted the constitutional right to a fair trial from an environmental perspective several times, notably in Decision no. 4/2019 (III.7.).[114] Moreover, although the Fundamental Law does not provide a general provision on the right to information as such,[115] the Deputy Commissioner for Fundamental Rights raised his voice in relation to this right, pointing out that state guarantees to access to environmental information are crucial for the realization of the protection of the environment enshrined in Article P, XX and XXI of the Fundamental Law; in other words, access and disclosure of such information are prerequisites and form part of the constitutional right to a healthy environment.[116] Furthermore, the Deputy Commissioner noted that the failure of the disclosure of environmental information violated the principle of rule of law and legal certainty.[117]

In practice, civil and political rights may also be used as a tool for the protection of the environment: in 2004, on the initiative of green activists, the civil society successfully hindered the construction of an environmentally harmful NATO radar on Zengő Mountain in southwestern Hungary. In this case, the collision of two constitutional values emerged: national defense and the protection of the environment. The Ministry of Defense argued that environmental aspects shall not surpass the interests of national defense and that the construction would not cause irreversible damage to the environment; however, the impact assessments have shown that although the operation of the establishment would not have led to the complete destruction of the fauna and flora, it would have realized a regression in the level of protection, which is contrary to the non-derogation principle.[118] The ombudsman and the Constitutional Court were also asked to deliver their opinion on the issue,[119] but it was due to the efforts of civil society that the government finally decided to resign from the

113 "Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act."

114 Decision no. 4/2019 (III.7.) concluded that an authority responsible for nature and environmental protection shall not subordinate environmental aspects to other aspects in its decision-making process. [66] Apropos of this decision, the Deputy Commissioner drew the attention to the fact that the right to a fair trial is applicable to any public proceedings, regardless of their denomination, and that the procedural guarantees of the environmental impact assessment shall not be overlooked during the organizational transformation. See Awareness-raising report from the Deputy Commissioner regarding the Constitutional Court Decision no. 4/2019 (III.7.), AJB-4950/2019, pp. 3–4.

115 However, the right to access to information in environmental matters is guaranteed by Article 4 of Act LXXXI of 2001 and by Article 12 (2) of Act LIII of 1995, which declare the right to environmental information to be data of public interest. The definition of data of public interest is set out in Article 3 (5) of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.

116 Gyula Bándi, 2020b, pp. 22–23.

117 Report on the dismantling of the asbestine cement factory of Lőrinci, AJBH 2373/2018, p.57, p. 67.

118 Fodor, 2004, pp. 238–241.

119 See the Report of the Ombudsman regarding the case OBH 3631/2003 and Constitutional Court Decision no. 521/B/2003.

project. In addition to the annulment of the construction of the radar, the importance of the case also lies in showing how the enjoyment of civil and political rights may be used for the benefit of the environment.[120]

Furthermore, the relationship between the right to a healthy environment and other fundamental rights should also be observed from the perspective of the restriction of certain rights with reference to the protection of the environment. With regard to the mandatory membership in a water management association, the Constitutional Court pronounced that the obligation does not violate the right of association because the environmental protection services performed by such associations can be regarded as public tasks.[121] Moreover, according to the Fundamental Law,[122] the right to property may be subject to restrictions for reasons of public interest, and – as the Court confirmed – the vindication of the right to a healthy environment is a public task. In addition, property including arable land may also be restricted with reference to environmental and agricultural policy reasons.[123]

4. Responsibility for environmental protection in the Fundamental Law

The Fundamental Law regulates responsibility for the protection of the environment in terms of two aspects: as a general duty of making prudent use of natural resources provided in the Preamble and as liability for environmental damage enshrined in Article XXI (2).

The Preamble provides that

> We commit ourselves to promoting and safeguarding our heritage, our unique language, Hungarian culture and the languages and cultures of national minorities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.

This guidance is strongly related to the protection of natural resources; thus, it is analyzed in the next section. Regarding responsibility, it should be emphasized that

120 For further information on the involvement of civil society in environmental matters, see Pánovics, 2020.

121 Decision no. 26/2001 (VI.29.) [3.2.].

122 See Article XIII of the Fundamental Law: *"(1) Everyone shall have the right to property and inheritance. Property shall entail social responsibility. (2) Property may only be expropriated exceptionally, in the public interest and in those cases and ways provided for by an Act, subject to full, unconditional and immediate compensation."*

123 Decision no. 35/1994 (VI.24.) [III.2.].

the protection, maintenance, and preservation of natural resources for future generations is the responsibility of the State and everyone. The State has active (legislation, the establishment of the administrative framework, guaranteeing protection) and passive obligations (recognition of the rights of future generations, respect for these objective rights, non-impairment of the rights), while other legal subjects are responsible for the gentle use of these natural resources. [124]

The above-mentioned Article XXI (2) establishes the liability for causing damage to the environment for non-state actors: *"Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration, as provided for by an Act."* Although this provision is often interpreted as the constitutional guarantee of the polluter pays principle,[125] it can instead be regarded as a narrow understanding of this principle. As Gyula Bándi points out, the principle should be interpreted in a complex mode, as according to the OECD report issued in 1972,[126] the polluter pays principle implies that it is for the polluter to meet the costs of pollution control and prevention measures. Thus, given that the provision does not refer to prevention or precaution, Article XXI (2) in this form represents only one aspect of the polluter pays principle.[127] The former green ombudsman also expressed his opinion during the process of drafting the Fundamental Law: in his proposal, Sándor Fülöp suggested the expressis verbis formulation of the principle of precaution, prevention, integration, and the polluter pays principle in the constitutional text,[128] but ultimately, it was not included in the Fundamental Law.

Furthermore, the current AFG issued a legislative proposal[129] in which he presented several solutions for the proper implementation of the polluter pays principle and pointed out that this principle is a broader concept than liability, as it encompasses the entirety of the behavior of the polluter, and thus, their responsibility manifests not only at the time of the occurrence of the damage but from the beginning of using the environment until the elimination of the dangers and damages.[130] It is also worth mentioning that the former green ombudsman expressed a similar opinion on the day of the adoption of the Fundamental Law, highlighting that *one side* of the polluter pays principle was raised to a constitutional level with Article XXI (2).[131] In addition, according to László Fodor, this provision merely refers to the framework of environmental liability.[132] Thus, one may conclude that the perception of the pol-

124 Horváth, 2013, p. 232.
125 See, for instance, Decision no. 16/2015 (VI.5.), Separate Opinion of Judge Imre Juhász [139].
126 Guiding principles concerning international economic aspects of environmental policies C (72), 128.
127 Bándi, 2020a, p. 16.
128 Amendment proposals for the draft law no. T/2627 on the Fundamental Law of Hungary, pp. 1–2.
129 Legislative proposal of the Advocate of Future Generations for the effective implementation of environmental liability, 2019, p. 5.
130 Bándi, 2020b, pp. 20–21.
131 Resolution of the Parliamentary Commissioner for Future Generations on the state responsibility arising from the provisions of the new Fundamental Law on the protection of the environment and sustainability, JNO-258/2011, pp. 3–4.
132 Fodor, 2014, p. 114.

luter pays principle at the constitutional level is a topic of discussion in the scientific literature.

Another problematic issue with Article XXI (2) is the scope of subjects: it is not clear who exactly shall be understood by the term *'anyone.'* The comparison of the competencies of the former green ombudsman and of the current AFG may help in the clarification of the problem. Contrary to the former constitutional framework, in which the green ombudsman was entitled to investigate and take action against natural and legal persons illegally damaging the environment, the current AFG does not have this competency. Consequently, it is questionable whether the scope of liable subjects would encompass the State or legal persons. Nevertheless, the provision reflects the polluter pays principle to a certain extent; however, its interpretation still needs to be clarified.

5. High protection of natural resources

The protection of natural resources is of utmost importance in the Hungarian Constitutional Law: according to the Fundamental Law, it is not only a state task but also the obligation of the citizens. Notably, the Preamble declares responsibility for future generations through making prudent use of material, intellectual, and natural resouces. Furthermore, Article P (1) provides a few examples of what forms the common heritage of the nation:

> Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.

The term *"common heritage of the nation"*[133] is a unique concept of the Hungarian Constitutional Law that encompasses natural and cultural values that define national identity[134] and that should not be separated from the national self-image.[135] According

133 It should be emphasized that there is a conceptual difference between the term *'common heritage of mankind'* used in Public International Law and the above mentioned notion, as the common heritage of mankind, refers to areas that are incapable of national appropriation and where the principle of sovereignty is not applicable (for instance, the seabed and the deep ocean floor or outer space), while national heritage encompasses resources that belong to a certain entity, namely to the nation. See Shaw, 2017, pp. 396–397.; Kovács, 2016, p. 442.; Cf. Szilágyi (ed.), 2017, p. 32.

134 The analysis of the constitutional approach to *'nation'* exceeds the limits of the present work; however, without claim for completeness, it shall be highlighted that the Fundamental Law perceives 'nation' as a mixture of political and cultural nation, which belong together within and beyond the borders of Hungary. See Article D of the Fundamental Law; Kukorelli, 2013, pp. 11–12.

135 Awareness-raising report from the Deputy Commissioner regarding the protection of cultural monuments forming part of the common heritage of the nation, AJB-7304/2020, p. 2.

to the AFG, all cultural elements that appear in the built environment – such as unique urban planning solutions, urban images, buildings as architectural pieces, or other unique pieces – form part of the common heritage of the nation.[136] Furthermore, the fact that natural resources are qualified as 'heritage' implies that (a) the present generation shall bequeath them to future generations, who can be regarded as the beneficiaries, and (b) the quality of this bequest shall not deteriorate with the passage of time, as was confirmed by the Constitutional Court in relation with the non-derogation principle.[137] The classification of natural resources as national heritage also implies that the constitution maker does not merely regard them as subjects of commerce but takes into account their other vital functions as well as intergenerational aspects.[138]

The definition of natural resources is not exhaustive in the Fundamental Law, but a common characteristic among them is their usability to satisfy social needs, as is set out in the Environmental Protection Act.[139] Moreover, the text of the provision is slightly ambiguous in the sense that it may not be clear whether biodiversity and its elements (native plant and animal species) fall within the scope of natural resources or whether it should be treated as a different category. János Ede Szilágyi[140] – based on the categorization of G. J. Cano[141] – as well as the Constitutional Court practice, principally Decision no. 28/2017 (X.25.), consider biological resources (plants and animals; i.e., biodiversity) to be categorized as natural resources. The issue of whether certain elements form part of natural resources is particularly important in terms of their protection; therefore, their preservation is desirable not only because they might be utilized by humans but also because they are valuable per se,[142] as biodiversity is a harmonious and dynamic unit of plants, animals, and microorganisms that complement and rely on each other.[143] The above-mentioned decision pointed out the complexity of the legal protection of biodiversity: in addition to its ecological function (e.g., the production of goods such as water, food, or fuel; the natural self-regulation of rainfall or climatic processes; photosynthesis, soil formation, or the circulation of nutrients), biodiversity should be protected on the basis of natural law as well, which is the starting point for the Christian interpretation of environmental protection.[144] Thus, the Constitutional Court explicitly states that the obligation toward the conservation and protection of biodiversity is founded on the intrinsic value of the diversity of species in addition to their utility for humans.[145] In the author's opinion, this constitutional approach to biodiversity is

136 Report on the activity of the Commissioner for Fundamental Rights and their Deputies, 2019, p. 130.
137 See, for instance, Decision no. 28/1994 (V.20.) [IV.1.]; Decision no. 16/2015 (VI.5.) [110]; Decision no. 28/2017 (X.25.) [25–26].
138 Szilágyi, 2016, p. 47.
139 Act LIII of 1995 on the general rules of environmental protection, Article 4 (3).
140 Szilágyi, 2018b, pp. 290–291.
141 Cano, 1975, p. 30.
142 Decision no. 28/2017 (X.25.) [35].
143 Decision no. 28/2017 (X.25.) [20].
144 Decision no. 28/2017 (X.25.) [36]; Cf. Pope Francis, 2015; Ecumenical Patriarch Bartholomew, 2012.
145 Decision no. 28/2017 (X.25.) [35].

certainly promising, as in addition to the commonly spread anthropocentric viewpoint, it seems to implement an ecocentric approach, which gives intrinsic value to the environment without expecting any benefit from it for humans,[146] as was undoubtedly confirmed by the above-mentioned Constitutional Court decision.[147] Moreover, the constitutional recognition of the protection of biodiversity is a novelty of the Fundamental Law, as the previous Constitution[148] – although it declared everyone's right to a healthy environment in Article 18 – did not refer to natural resources or to biodiversity.

In addition to the exemplificative list of natural resources of Article P (1), the Fundamental Law refers to certain components of such resources elsewhere. First, regarding forests, Article P (2) provides that the acquisition of ownership and the use of arable land and forests are regulated in a cardinal act; thus, the Hungarian Constitutional law gives special importance to these assets. According to the Constitutional Court, forests have the status of the 'common heritage of the nation,' which, in their case, means that their protection is the task of the State, forest owners, forest farmers, and even free users of forests. They are the main subjects of the obligations arising from Article P (2) of the Fundamental Law, in a sense that rather than their free and unconditional use, the requirement of their responsible and sustainable use is preferred, which also takes into account the interest of future generations. Their qualification as part of the *"common heritage of the nation"* also implies that the economic interests of their users may not have priority over their preservation for future generations.[149] As was pointed out by the Deputy Commissioner, the reasoning of the Constitutional Court implies that the protection of natural values is a social norm that derives from the Fundamental Law.[150]

Second, in relation to the right to physical and mental health, Article XX (2) provides certain means through which the effective application of this right shall be ensured by the State. These means are, inter alia, *"access to healthy food and drinking water […] and the protection of the environment.*" Although the protection of water has appeared above in the Fundamental Law, there is a conceptual difference between the two provisions with reference to 'water.' In Article P (1), 'reserves of water' appears as a component of natural resources and thus encompasses a broader category, which includes the totality of water resources in the country that could serve not only social but other – for example, ecological – purposes.[151] Therefore, the constitutional obligation to preserve them for future generations represents the future

146 Gagnon Thompson and Barton, 1994, pp. 149–150.

147 Szabó, 2019, pp. 98–101.

148 I.e., Act XXXI of 1989 on the modification of the Constitution of the Hungarian People's Republic (Act XX of 1949).

149 Decision no. 14/2020 (VII.6.) [23]; [31].

150 Awareness-raising report from the Deputy Commissioner regarding the duties arising from the Constitutional Court decision on the protection of the biodiversity and natural value of forests, AJB-5960-1/2020, p. 7.

151 Fodor, 2013, pp. 338.

dimension of water protection. The importance of the explicit reference to water as a component of natural resources lies in that, as János Ede Szilágyi points out, water, especially groundwater resources, may not belong to the category of 'common heritage of mankind,' which allows other States to access these non-renewable resources and thereby limits the sovereignty of the State.[152] On the other hand, the concept of drinking water takes a pragmatic approach to the right to water, as it could be regarded as a prerequisite for life and thus for the enjoyment of the right to life enshrined in Article II of the Fundamental Law; that being so, access to drinking water constitutes the present dimension of water protection.[153] In light of Article XX (2), water can only fulfill its physiological function if it meets certain qualitative and quantitative requirements,[154] which also proves that access to drinking water – together with access to healthy food – forms part of the right to health,[155] and in this sense, it could be perceived as an implicit declaration of the right to (drinking) water. However, as Anikó Raisz points out, the provision in this phrasing expresses a narrow concept of the right to drinking water, as several other components of this right are not understood by it, such as public healthcare services, the requirement of the affordability of drinking water, and the use of water for other purposes in households or agriculture.[156] Nevertheless, the recognition of the right to water on the constitutional level is certainly forward-looking – considering that the international recognition of the right as such is not well-developed – and it may serve as a basis for other water-related regulations, for instance, the regulation of water utility services.[157]

In addition to the above-mentioned provisions, which guarantee the general protection of natural resources, their preservation appears in relation to the protection of natural assets[158] in Article 38 (1), which states that *"The management and protection of national assets shall aim at serving the public interest, meeting common needs and preserving natural resources, as well as at taking into account the needs of future generations."* It is worth noting that the Hungarian constitutional approach to natural resources is founded on their relevance for future generations:[159] the ultimate aim of their preservation and protection is to hand them down to the next generations to ensure equity for future generations in line with the equity for current generations.[160]

152 Szilágyi, 2013, p. 142.
153 Raisz, 2012b, pp. 156–157.
154 Fodor, 2013, pp. 336–338.
155 Decision no. 3196/2020. (VI. 11.) [11]–[12].
156 Raisz, 2012b, pp. 156–157.
157 Szilágyi, 2018c, p. 266.
158 The relationship between national assets and natural resources also appears in the Preamble of Act LIII of 1995, which states that natural heritage and environmental values constitute part of the national assets.
159 For further and more detailed analysis on environmental protection for future generations, see Part VII of the present chapter.
160 Bándi, 2020a, p. 12.

6. Reference to future generations

The concept of endowing future generations with the common heritage of the nation is a significant novelty of the Fundamental Law.[161] As noted above, the Preamble confers the responsibility of the protection of the living conditions for future generations to the present generation (i.e., 'us'). Additionally, at a later point, the Preamble states that *"the Fundamental Law […] shall be an alliance among Hungarians of the past, present, and future*," which is an interesting statement as it implies that future generations also mean future Hungarians. Moreover, it should be mentioned that the definition of 'future generations' could not be found in legal texts; the Constitutional Court referred to "*future fellow humans who are not born yet,"*[162] but given that it is only mentioned in the Decision, this does not necessarily mean that only unborn people are understood by the term. Furthermore, the formerly operating Ombudsman for Future Generations referred to *"children and unborn generations"* in his first annual report,[163] which, again, does not imply whether already born children are included in the category of future generations. Nevertheless, the constitutional position, that is, the alliance between past, present, and future Hungarians, is particularly important when considering the decreasing Hungarian population and the challenges it can raise for the existence of the nation. However, the fact that the rate of consumption of natural resources is increasing despite the decreasing population poses further challenges to the issue. This is particularly true for non-renewable resouces as crude oil, natural gas, and coal.[164] Therefore, striking the balance between the prevention of depopulation and the maintenance of the availability of natural resources is an acute challenge in Hungary in the 21st century.

The distinction between the subjects of present and future generations is crucial for determining their rights and obligations: in line with the Preamble, the primary responsibility of the present generations is to protect the living conditions for future generations, which is strongly intertwined with Article P and its interpretation, which are be analyzed below. One may think that future generations appear as holders of certain rights, as the environmental responsibility of present generations points to the interests or needs of future generations. However, the problem with the concept of future generations in legal texts is that they encompass a hypothetical, not yet existing group of people, who, owing to this quality, cannot become real holders

161 However, it should be noted that despite the fact that the previous Constitution (Act XXXI of 1989 on the modification of the Constitution of the Hungarian People's Republic) did not contain explicit reference to future generations, the State's institutional obligation to protect the living conditions of future generations was already pronounced by the Constitutional Court in relation to the artificial termination of pregnancy. Thus, responsibility for generations not born yet has been present in the past three decades in the Hungarian constitutional thinking. See Decision no. 64/1991 (XII.17.) C) 3.c).

162 Decision no. 16/2015 (VI.5.) [152].

163 Annual report of the ombudsman for future generations, 2008–2009, p. 159.

164 Pánovics, 2010, p. 10.

of rights until they become living generations, that is, when they are born.[165] The dilemma of whether they can be holders of certain rights stems from the question of whether they can have legal personality or, in the absence thereof, they only have hypothetical interests[166] that can be taken into account but cannot be defended in front of a court. Nonetheless, the debatable term 'rights of future generations' is not reflected in the Fundamental Law, as it refers to the interests or needs of future generations.

Article P (1), which had been mentioned several times, links the protection, maintenance, and preservation of natural resources, biodiversity, and cultural artifacts (i.e., the 'common heritage of the nation') for future generations, who appear as the beneficiaries of this obligation.[167] The text clearly designates the responsibility of the present generations in addition to State responsibility (*"[…] it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations"*). In contrast to the right to a healthy environment, in the case of which the obligation of the State is more heavily emphasized,[168] present generations also have a triple obligation in light of Article P (1), which was interpreted by the Constitutional Court in Decisions no. 16/2015 (VI.5.) and no. 28/2017 (X.25.):[169] the protection, maintenance, and preservation of such elements of the common heritage of the nation, therefore, are the obligation of the State and everyone. Therefore, the protection of the environment is amended via the obligation of maintenance, which could be interpreted as the maintenance of the previous level of protection but also as the harmonization of environmental protection and sustainable development.[170] Furthermore, the Constitutional Court interpreted the obligation of preservation as the obligation to preserve the possibility of choice, quality, and access.[171] The possibility of choice is based on the reasoning that the living conditions of future generations could be ensured if the bequeathed natural heritage gives future generations the possibility of choice in relation to their problems without being trapped by the decisions of present generations. According to the requirement of the possibility of quality, natural heritage shall be handed down to future generations in the state in which it was handed down to the current generation at a minimum. This requirement is closely related to the precautionary principle and the principle of non-derogation, which can be regarded as the core principles of environmental protection in the Hungarian Constitutional Law.[172] Furthermore, the requirement of ensuring access to natural resources means that the present generation has access to the available

165 Weiss, 1990, p. 201.
166 Tattay, 2016, pp. 109–110.
167 Decision no. 14/2020 (VII.6.) [22].
168 Decision no. 28/1994 (V.20.) [III.3.].
169 The following reasoning was also confirmed by Decision no. 13/2018 (IX.4.) [13].
170 Decision no. 16/2015 (VI.5.) [152].
171 The Constitutional Court based its reasoning on the generally accepted theory of intergenerational equity of Weiss. See Weiss, 1989, pp. 22–23.
172 Bándi, 2020c, pp. 1194–1199.

resources until they can respect the equitable interest of future generations[173] and doesnot jeopardize the long-term subsistence of the elements of the common heritage of the nation.[174] Regarding Article P, the Constitutional Court further declared the constitutional manifestation of the public trust doctrine, conferring fiduciary duties on the State to act as a trustee over the natural heritage of the nation for the benefit of future generations to the extent that it does not jeopardize the long-term existence of the natural and cultural assets that are worthy of being protected on account of their inherent value.[175] In other words, based on the public trust doctrine, the State has an obligation to manage the trust's assets for the future beneficiaries of the trust; the doctrine thereby imposes limitations on State policies regarding use, exploitation, and transfer of ownership over these assets.[176]

According to the Constitutional Court, the protection of the interest of future generations can be deduced not only from the Preamble and Article P but also from Article 38 (1).[177] Therefore, the protection of the interest of future generations can be linked to two main fields of Constitutional Law: environmental protection and public finances.[178] In contrast to Article P, the starting point of which is the fact that natural resources will always be important, Article 38 (1) is based on the importance of material, that is, financial resources, for the upcoming generations.[179] There is a conceptual difference in the wording of the two provisions as well: Article P clearly designates the interest of future generations, that is, the protection, maintenance, and preservation of the common heritage of the nation, while the 'needs' of future generations in relation to public finances is less concrete.[180] The hypothesis of the author is that such needs imply financial sustainability, which is reflected in Article 36 of the Fundamental Law.[181]

Finally, for the sake of completeness, the previously described Article 30 should be mentioned, as it establishes the institution of the Commissioner for Fundamental Rights and designates its two Deputies. According to Article 30 (3), one Deputy Commissioner shall protect the interests of future generations. As noted above, the institutional protection of future generations is not new in Hungarian Constitutional Law: the scope of the competence of the previously functioning green ombudsman can even be considered broader in certain aspects. Nevertheless, the interests of future generations had not been mentioned in the previous Constitution,[182] on the

173 Decision no. 28/2017 (X.25.) [33].
174 Decision no. 14/2020 (VII.6.) [21].
175 Decision no. 14/2020 (VII.6.) [22].
176 Sulyok, 2021, pp. 361–362.
177 Decision no. 13/2018 (IX.4.) [15].
178 A detailed analysis of the interrelation of the interest of future generations with financial issues (as well as financial sustainability) is provided in Parts X–XI.
179 Bándi, 2021, p. 346.
180 Antal, 2012, p. 17.
181 For a detailed analysis of financial sustainability, see Part VII.
182 Act XXXI of 1989 on the modification of the Constitution of the Hungarian People's Republic (Act XX of 1949).

basis of which the green ombudsman had been operating, while the Fundamental Law clearly refers to them in relation to the protection of the common heritage of the nation, environment, and public finances. Therefore, one can conclude that the representation of the interests of future generations was symbolic in the previous ombudsman system, and the ombudsman could be considered the defender of the right to a healthy environment enshrined in Article 18 of the previous Constitution.[183] In the author's view, the fact that the Fundamental Law explicitly refers to the interests of future generations may result in the direct (and not indirect) protection of future generations by the current Deputy Commissioner. However, the question of whether the integration of the ombudsman for future generations under the general ombudsman's office falls under the scope of the principle of non-derogation – which is a fundamental principle set out by the Constitutional Court in Decision no. 16/2015 – remains left unanswered. Nonetheless, one may argue that there is a contradiction between the acknowledgment of the interest of future generations at a constitutional level and the dissolution of an independent institution responsible for future generations.

To summarize the Hungarian constitutional approach to future generations, the author concludes that the exact subject scope of 'future generations' is not yet clearly defined. What is certain is that the term also refers to future Hungarians, not only future humankind, by highlighting the alliance between past, present, and future Hungarians. In this sense, it is problematic to grant them concrete rights as they may not be subjects under the law. However, their hypothetical interest could and shall be taken into account in relation to the preservation of the common heritage of the nation, environmental protection, and management of national assets.

7. Reference to sustainable development

The interrelation of sustainable development and the protection of the environment as well as intergenerational equity is undeniable.[184] However, it is embedded in a larger concept: the concept of sustainability.[185] According to the generally accepted classification enshrined in the Johannesburg Declaration, the three pillars of sustainable development are economic development, social development, and environmental protection.[186] The first pillar is manifested in Article N, Article XVII (1), and Article 38 of the Fundamental Law, which are analyzed in the upcoming subchapters. Article P embodies environmental sustainability, while sustainable

183 Fodor, 2008, pp. 47–48.
184 Bándi, 2013b, pp. 11–12.
185 For a detailed analysis of sustainable development in law, see Bányai, 2014.
186 See the Johannesburg Declaration on Sustainable Development, 2002.

development as a broader concept is expressis verbis mentioned in Article Q (1): *"in order to create and maintain peace and security, and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with all the peoples and countries of the world."* This provision is in line with the approach of the so-called Brundtland Report,[187] which, as one of the principles for environmental protection and sustainable development, proposes the general obligation to cooperate with other States to preserve biodiversity and natural resources.[188] The fact that sustainable development could not be maintained or achieved individually by the States and that international cooperation is thus crucial is also proven by the fact that it was mentioned in the same Article, which ensures the conformity of Hungarian law with international law[189] and which provides the obligation to accept the generally recognized rules of international law.[190] The wording of Article Q also implies that sustainable development is an integral part of any endeavor for peace[191] and undoubtedly reflects Article 2 (5) of the Lisbon Treaty.[192] In this context, we can conclude that sustainable development is primarily a state responsibility in relation to foreign affairs and – as presented in the upcoming subchapters – budgetary issues.

The Fundamental Law, however, does not define the notion of sustainable development, but it can be observed in the National Framework Strategy on Sustainable Development, which refers back to the definition set out by the Brundtland Report:

> […] sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.[193]

Similar to the concept of the protection of the interest of future generations, sustainable development did not appear in the text of the previous Constitution – this is unsurprising, however, as the concept of sustainable development began to evolve

187 Although the Report is not a legally binding document for States, its importance and impact are significant in defining sustainable development. See Our Common Future: Report of the World Commission on Environment and Development, Oxford University Press, 1987.

188 Szabó, 2012, pp. 161–163.

189 Article Q (2): *"In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law."*

190 Article Q (3): *"Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in laws."*

191 Gyula Bándi, 2013a, p. 86.

192 In its relations with the wider world, the Union shall uphold and promote its values and contribute to the protection if its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, the eradication of poverty, and the protection of human rights, in particular the rights of the child, as well as to the strict observance and development of international law, including respect for the principles of the United Nations Charter.

193 Parliamentary Resolution no. 18/2013. (III. 28.) on the National Framework Strategy for Sustainable Development, 3.1.

and spread after the adoption of the Constitutional Amendment of 1989.[194] Moreover, one of the greatest milestones in forming the concept of sustainable development occurred in relation to the aforementioned Gabčíkovo-Nagymaros Project. The judgment of the International Court of Justice (hereinafter referred to as ICJ) from 1997 recognized the importance of taking into account the principle of sustainable development in the dispute.[195] Furthermore, the Separate Opinion of Vice-President Weeramantry contained several observations concerning sustainable development, which contributed to a deeper understanding of its perception in international law. According to Weeramantry, sustainable development is more than a mere concept; rather, it should be considered a principle that is an integral part of modern international law even if not all States recognized it explicitly.[196] The case is of particular importance for Hungary partly because it was the first time the ICJ ruled over an environmental dispute and the first occasion on which sustainable development received attention in the jurisprudence of the Court.[197] Given that Hungary based its argumentation on the protection of the environment and sustainable development rather than economic advancement at any cost,[198] the author concludes that the concept of sustainable development had been prevalent in Hungarian legal thought even before it appeared in the constitutional text.

Similar to the definition of sustainable development in the Brundtland Report, the Constitutional Court stated that *"the development is sustainable if the development of the economy results in social prosperity within the limits of ecological capacity, preserving natural resources for future generations*."[199] The cornerstone of both definitions is the balance between the needs of present and future generations while taking ecological aspects into account. Although the Constitutional Court did not explicitly address the constitutional perception of sustainable development, it referred to the above-mentioned National Framework Strategy on Sustainable Development,[200] of which the Introduction provides that the Fundamental Law has a prominent role in the field of sustainability, and outlined fundamental values, namely the principle of sustainable development.[201] Therefore, the strategy that was

194 For instance, the Rio Declaration on Environment and Development was signed in 1992, similar to the United Nations Framework Convention on Climate Change (UNFCCC) and Agenda 21. Furthermore, the New Delhi Declaration of Principles of International Law Relating to Sustainable Development, which was a milestone in the development of the perception of the concept in international law, was adopted in 2002.

195 *"This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development."* See Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25 September 1997, 140.

196 Separate Opinion of Vice-President Weeramantry, pp. 91–92.

197 Separate Opinion of Vice-President Weeramantry, pp. 85.

198 See Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Memorial of the Republic of Hungary, Volume I, 2 May 1994.

199 Decision no. 16/2015 (VI.5.) [77].

200 Decision no. 28/2017 (X.25.) [45].

201 Parliamentary Resolution no. 18/2013. (III. 28.) on the National Framework Strategy for Sustainable Development, Introduction.

adopted by Parliament, the same body that adopted the Fundamental Law, can be regarded as a credible interpreter of the constitutional text. Considering this interpretation, sustainable development in the Hungarian Constitutional Law is both a principle and a value, which implicitly appears in the previously cited formula of the National Avowal.[202] The fact that the commitment to preserve the man-made and natural assets of the Carpathian Basin is to be achieved within the framework of sustainable development was confirmed by the Constitutional Court as well.[203] In the author's opinion, the constitutional approach to sustainable development is reconcilable with Justice Weeramantry's perception: it is more than a principle – it has an inherent normative value that pervades the overall of the constitutional provisions; the Fundamental Law can thus be said to incorporate a holistic approach to sustainable development.[204]

8. Other values relevant to the protection of the environment and future generations in the Fundamental Law

Among the values reflected in the Fundamental Law, Christianity and family protection can be viewed as connected to the interests of future generations and the environment. Respect for Christianity and Hungary's pertinence to the Christian culture are mentioned at several points in the constitutional text: first and foremost, the Preamble declares that Saint Stephen made the Hungarian state a part of Christian Europe and that Christianity has an essential role in preserving nationhood.[205] Furthermore, Article R, which addresses the legal nature of the Fundamental Law and its position in the Hungarian legal system, also establishes the obligation of state organs to protect the constitutional identity and Christian culture of Hungary.[206] However, Christian culture does not necessarily mean Christian religion or faith; rather, the legislator intended to express the protection of a cultural reality created

202 *"We commit ourselves to promoting and safeguarding our heritage, our unique language, Hungarian culture and the languages and cultures of national minorities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources."*

203 Decision no. 16/2015 (VI.5.) [146].

204 Baranyai and Csernus (eds.), 2018, pp. 189–190.

205 See the Preamble of the Fundamental Law: *"We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago." "[…] We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country."*

206 See Article R (4) of the Fundamental Law: *"The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State."*

by faith throughout generations and its permeation in society.[207] Christian theory considers the values of the environment and the responsibility of humans for its protection as part of human dignity. Numerous religious leaders have expressed their concerns regarding the sustainability of the planet and the created world, including Pope John Paul II, Benedict XVI, and Pope Francis as well as Bartholomew of Constantinople.[208] The affirmations of the Encyclical Letter Laudato Si' issued by Pope Francis and the ecological views of Bartholomew were explicitly referred to by the Constitutional Court in Decision no. 28/2017 (X.25.).[209] In conclusion, the Hungarian constitutional approach to the protection of the environment and future generations fits within the scope of Christian axiology.

The protection of family and children can also be viewed as connected to the interest of future generations, especially through the encouragement to include children in Article L (2), which pronounces that *"Hungary shall support the commitment to have children."* In the author's opinion, this provision refers to future generations who are not born yet rather than to already-born children. In this sense, the Fundamental Law expresses a concrete rule for the responsibility to future generations that is declared by the Preamble in general terms.[210] However, encouragement to bear children is a broader category than the protection of family or marriage, as it supports the birth of children regardless of whether they are born in wedlock.[211] As Article L (1) states, family is the basis of the survival of the nation, which – similar to what is reflected in the Preamble[212] – shows the legislator's commitment to the protection of future Hungarians. In addition to these provisions, the Fundamental Law contains several other declarations on the protection of family and children. However, their link is less direct and less evident in relation to the interests of future generations or the environment. Regarding the protection of children, Article XVI (1) declares the State's obligation to *"ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country*," which expresses the interrelation between the preservation of Christian values and future generations. Therefore, the two values are strongly related to each other as well as to the protection of the environment and the interests of future generations.

207 Schanda, 2022, pp. 196–197.

208 Bándi, 2013a, p. 84. For a detailed analysis on the moral considerations of environmental protection, see Bándi, 2006; Bándi, 2020c.

209 Decision no. 28/2017 (X.25.) [36].

210 See the Preamble of the Fundamental Law: *"[…] We bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources."*

211 Schanda, 2012, pp. 77–78.

212 See the Preamble of the Fundamental Law: *"We believe that our children and grandchildren will make Hungary great again with their talent, persistence and moral strength."*
"[The Fundamental Law] shall be an alliance among Hungarians of the past, present and future."

9. Financial sustainability

The three main pillars of sustainability are the ecological, social, and economic systems.[213] Therefore, public finances, which are a determining issue in the economic system, should also be regulated in a way that represents sustainability. This approach prevails in the constitutional regulation of the state budget:[214] according to Article N (1), *"Hungary shall observe the principle of balanced, transparent and sustainable budget management."* This principle can be considered a general one because – as was also noted in the Explanatory Memorandum of this provision – the realization of fundamental rights and the effective functioning of the State can be guaranteed only if the social and economic balance of the country is not threatened by budgetary problems. In the principle, balance refers to the predictable functioning of the State; transparency requires the participation of well-informed and responsible citizens in the democratic public life, while sustainability serves the responsibility for future generations.[215] This responsibility for descendants also appears in the often-cited provision of the Preamble, which states that the protection of the living conditions of future generations shall also be ensured by making prudent use of material (as well as intellectual and natural) resources.

The principle of sustainable budget management is concretized in Article 36 of the Fundamental Law, which defines the general and special rules of government debt. As Paragraph (4) states, *"the National Assembly may only adopt an Act on the central budget as a result of which government debt would exceed half of the total gross domestic product."* If the government debt exceeds this limit, *"the National Assembly may only adopt an Act on the central budget which provides for a reduction of the ratio of government debt to the total gross domestic product."* These rules implicitly protect the interests of future generations by aiming to avoid indebtedness that would pose an intolerable burden on them by giving excessive priority to current needs of interest.[216] Present generations thereby express their responsibility to future generations. The literature points out, however, that the practical realization of this provision is highly problematic: at the time of the adoption of the Fundamental Law, the government debt exceeded 80%.[217] Nevertheless, later rules provide exceptions in the case of a special legal order or an enduring and significant national economic recession.[218]

213 Kuslits, 2011, p. 217.

214 For an overview of the financial provisions of the Fundamental Law, see Simon, 2019.

215 Csák and Nagy, 2020, pp. 46–47.

216 Explanatory Memorandum of Article 36 of the Fundamental Law.

217 Domokos and Gyula Pulay, 2020, pp. 35–36.

218 See Article 36 (6) of the Fundamental Law: *"Any derogation from the provisions of paragraphs (4) and (5) shall only be allowed during a special legal order and to the extent necessary to mitigate the consequences of the circumstances triggering the special legal order, or, in the event of an enduring and significant national economic recession, to the extent necessary to restore the balance of the national economy."*

Regarding budgetary planning, the legislative activity of the National Assembly is supported by the Fiscal Council, which takes part in the preparation of the Act on the central budget. The members of the Fiscal Council are the President of the Fiscal Council, the Governor of the Hungarian National Bank, and the President of the State Audit Office. The Council has a major role in observing the requirements set out in Article 36 (4) and (5): its prior consent is required for the adoption of the central budget.[219] The Council is a professional body independent from the executive branch and thus monitors compliance with the government debt rule. Therefore, it can be concluded that safeguarding the interests of future generations is an outstanding priority in the constitutional regulation of public finances in Hungary: first, the sustainability of budget management is set out as a general principle in Article N in the chapter 'Foundation'; second, a concrete rule on the optimal ratio of government debt is regulated in Article 36, which was introduced to avoid the indebtedness of the upcoming generations and thus expresses the responsibility of present generations to them; and finally, Article 44 introduces procedural guarantees for the adoption of the central budget, which has a strong impact on the government debt ratio.

10. The protection of national assets

National assets may be connected to the protection of the environment and the interests of future generations from two aspects: first, the category of national assets may encompass natural resources, and second, the preservation of natural resources and taking into account the needs of future generations are among the aims of the protection of national assets.

According to Article 38 (1), national assets encompass the property of the State and local governments. Their management and protection aim at the following: serving the public interest, meeting common needs, preserving natural resources, and taking into account the needs of future generations. As previously mentioned, the Constitutional Court also confirmed that the protection of the interests of future

219 See Article 44 of the Fundamental Law: *"(1) As an organ supporting the legislative activity of the National Assembly, the Fiscal Council shall examine the feasibility of the central budget.*
(2) The Fiscal Council shall take part in the preparation of the Act on the central budget, as provided for by an Act.
(3) In order to meet the requirements set out in Article 36 (4) and (5), prior consent of the Fiscal Council shall be required for the adoption of the Act on the central budget.
(4) The members of the Fiscal Council shall be the President of the Fiscal Council, the Governor of the Hungarian National Bank and the President of the State Audit Office. The President of the Fiscal Council shall be appointed for six years by the President of the Republic.
(5) The detailed rules for the operation of the Fiscal Council shall be laid down in a cardinal Act."

generations may be deduced not only from Article P and the Preamble but also from Article 38 (1).[220]

National assets and national resources are not the same concept. National assets can be considered a broader category: the Preamble of the Nature Protection Act declares that natural values and natural areas are unique and irreplaceable parts of national assets. This provision was quoted by the Constitutional Court in its Decision no. 28/2017 (X.25.).[221] Therefore, it can be concluded that this perception applies to the constitutional provisions as well. The overlap was tangible in Decision no. 13/2018 (IX.4.), which was based on the constitutionality initiative of the President of the Republic using the arguments of the amicus curiae submitted by the AFG.[222] The Constitutional Court pronounced the unconstitutionality of a regulation allowing unlimited drilling and use of groundwater wells: given that groundwater resources belong to the exclusive property of the State, as well as the common heritage of the nation, the Court stated that such a regulation would violate the non-derogation principle and, consequently, the protection of natural resources and the right to a healthy environment enshrined in Articles P (1) and XXI (1).[223] The reasoning of the Court was strongly influenced by the arguments of the AFG, which also shows the important role of the Ombudsman's work in shaping the interpretation of constitutional provisions related to the interests of future generations.

The fact that part of the protected natural values of Hungary belongs to the exclusive property of the State also place an obligation on the State to take into account the protection of those values as well as the interests of future generations in the legislation-making process. Concerning the State's obligations arising from Article 38 (1), the AFG expressed his opinion in several concrete questions. For instance, in the case of repealing the protection of a cave of the lime pit in Dorog, the AFG highlighted that caves are the exclusive property of the State, and all decisions concerning them are thus simultaneously decisions on national assets. Therefore, environmental impact assessment in these cases is of crucial importance. Furthermore, regarding the division of the Hortobágy National Park into zones, the AFG drew the decision-makers' attention to the fact that the changes may not lead to the reduction of the protected areas. According to the report, the changes are to be indicated on a map; otherwise, it would be impossible to assess whether the new division violates the non-derogation principle. Further, in relation to the construction of a small train in a protected area, the AFG noted that in protected natural areas, only nature protection investments may be carried out and that the State shall contract with such companies that fulfill the requirements of the protection of nature set by the State.[224]

220 Decision no. 13/2018 (IX.4.) [15].
221 Decision no. 28/2017 (X.25.) [46].
222 Bándi, 2020a, pp. 18–19.
223 Decision no. 13/2018 (IX.4.) [73].
224 Report on the activity of the Commissioner for Fundamental Rights and his Deputies, 2019, pp. 362–363.

11. Good practices and de lege ferenda proposals

The Hungarian Fundamental Law is highly committed to the protection of the environment and the interests of future generations. These values appear directly or indirectly in several constitutional provisions as well as in the declarations of the Preamble. One of the key provisions in this matter is the explicit declaration of the right to a healthy environment in Article XXI (1), which is supplemented by additional rules on liability for damage to the environment and prohibition of the transport of pollutant waste to the territory of Hungary. The expressis verbis declaration of the right to a healthy environment is certainly a progressive step, especially considering that there is as yet no consensus on the recognition of such a right in international human rights law. The right to a healthy environment is connected to several other fundamental rights; the strongest link is with the right to physical and mental health guaranteed in Article XX, which is supported by several state tasks, such as GMO-free agriculture, access to healthy food and drinking water, and the protection of the environment.

The Hungarian Constitutional Court plays a prominent role in shaping environmental law – in addition to the interpretation of the environment-related fundamental rights, the Court established strict requirements for the legislator, most importantly the principle of non-derogation and the precautionary principle. Moreover, in addition to the adjudication of legal matters, the Court conducts procedures on proof of facts, particularly in environmental cases. Furthermore, the activity of the Deputy Commissioner for Future Generations or the Advocate of Future Generations should be mentioned as a 'good practice' of the institutional protection of the interests of future generations and the environment. The Advocate often issues opinions and recommendations and represents the Hungarian viewpoint on the international level. Moreover, they significantly contribute to the jurisprudence of the Constitutional Court by initiating procedures and submitting amicus curiae for the cases. In the author's opinion, the establishment of a special ombudsman who is responsible for safeguarding the interests of future generations is an outstanding element of the constitutional framework for environmental protection, as the fact that the issue is represented by a separate office within the ombudsman system shows that the preservation of the environment for future generations should be a priority topic in national human rights law. Therefore, the Hungarian model can surely serve as an example for other countries seeking to place more emphasis on the institutional protection of the environment.

Third, apart from the protection of fundamental rights and institutional guarantees, the protection of natural resources also appears in Article P as an obligation of the State and everyone. The provision gives a non-exhaustive list of natural resources including biodiversity, which is clearly based on the ecocentric approach to environmental protection, meaning that the Hungarian legislator recognizes the intrinsic value of nature and protects for reasons beyond its usability for humans. This complex approach to the protection of the environment – the preservation for future

generations, that is, for humans, as well as the protection per se – is also progressive in constitutional law, given that most of the regulations protect the environment for what it can offer for mankind: food, drinking water, clean air, renewable energy, etc. The common heritage of the nation – including natural resources and cultural artifacts – is also a unique concept of constitutional law as it implies the preservation of its elements for the future generations of the nation. Consequently, the Fundamental Law is devoted to the responsibility of the present generation to future generations in several matters: apart from the protection of natural resources, responsibility can also be inferred from the rules on government debt by setting a certain limit – 50% of the GDP – as the optimal ratio. The legislator thereby seeks to implement financial sustainability and sustainable development in practice and thus avoid the indebtedness of the next generations.

The overall Hungarian constitutional framework for the protection of the environment and future generations is forward-looking and progressive; however, some provisions are subject to strong criticism in the scientific literature. First, liability for damage caused to the environment and the prohibition of the transport of pollutant waste to the territory of Hungary are declared in the same article as the right to a healthy environment. The attempt to regulate liability at the constitutional level will surely be welcomed. However, the adopted provision raises a number of problematic issues: as previously mentioned, the provision incorporates some aspects but not the entirety of the polluter pays principle, as there is no reference to prevention and precaution. In addition, who is the subject matter of the obligation is unclear – the State, non-state actors, such as multinational companies, or only natural persons. Therefore, it is necessary to clarify the scope of responsible persons or entities to address the issue with concrete rules in lower-level legislative instruments. The expressis verbis inclusion of the polluter pays principle in the constitutional text, as proposed by the green ombudsman at the time of the drafting of the Fundamental Law, could be another solution, and it would also create an opportunity for the Constitutional Court to thoroughly interpret the principle. Second, the prohibition of the transport of pollutant waste is also disputable in several aspects: first, certain authors argue that such a provision would not fit in a constitutional act at all and that it would be satisfactory to regulate it in lower-level acts. Furthermore, although it is a declarative provision, its realization must be in conformity with the EU law, as the issue of the transport of goods is also regulated by the EU in the frame of the common market. Nevertheless, the provision now forms part of the Hungarian constitutional text, and its repeal would certainly raise the question of non-regression, particularly because it is closely related to the right to a healthy environment.

Furthermore, although the objective, institutional side of the right to a healthy environment is decisive, certain subjective rights can also be linked to this fundamental right, though this does not appear explicitly in the constitutional text. The framework for participatory rights in relation to environmental protection is guaranteed to some extent in the Fundamental Law: the right to a fair trial, for instance, is set out as a general rule, and the right to information can also be deduced from

the provisions; however, in the author's opinion, the link between these rights and environmental matters is distant in the current constitutional regulation. The rights guaranteed by the Aarhus Convention are implemented in lower-level acts, and the Deputy Commissioner declared that the State shall ensure access to information in environmental matters for the effective realization of the right to a healthy environment and the right to health; however, taking into account the growing number of national constitutions that enshrine such participatory rights as well as the willingness of the public to be involved in environmental decisions, these links may not be directly deducible purely from the constitutional provisions. Moreover, as one may conclude from the example of the construction of a radar on Mount Zengő, the participation of civil society may and shall have a strong impact on policymaking as its members are the ultimate endurers of the consequences of environmental harms. Therefore, the inclusion of the right to information regarding the state of the environment in the constitutional text as well as access to justice and, most importantly, public participation in the decision-making specifically in environmental matters is certainly worth considering for the legislator, particularly considering that these fundamental rights have already been recognized by several other Central European constitutions.

Bibliography

Antal, A. (2011) 'Az új Alaptörvény környezetvédelmi filozófiája' ['Environmental legal philosophy of the new Fundamental Law], *Közjogi Szemle*, 2011/4, pp. 43–51.

Antal, A. (2012) 'A jövő nemzedékek érdekei az Alaptörvényben' ['Future generations in the Fundamental Law] in Verebély, I. (ed.) *Az állam és a jog alapvető értékei a változó világban [The fundamental values of state and law in the changing world]*. Győr: Széchenyi István Egyetem, pp. 13–21.

Bándi, Gy. (2006) 'Környezetvédelem az életért' ['Environmental protection for the life'], *Iustum Aequum Salutare*, 2(3–4), pp. 32–42.

Bándi, Gy. (2011) *Környezetjog [Environmental Law]*. Budapest: Szent István Társulat.

Bándi, Gy. (2013a) 'A környezethez való jog értelmezése a fenntartható fejlődési stratégia és az Alaptörvény fényében' ['The interpretation of the right to healthy environment in the light of the Sustainable Development Strategy and the Fundamental Law'], *Acta Humana*, 1(1), pp. 67–92.

Bándi, Gy. (2013b) A fenntartható fejlődés jogáról ['On the right to sustainable development'], *Pro Futuro*, 3(1), pp. 11–30; https://doi.org/10.26521/Profuturo/2013/1/5542

Bándi, Gy. (2017) 'Környezeti értékek, valamint a visszalépés tilalmának értelmezése' ['Environmental values, and the interpretation of non-derogation'], *Iustum Aequum Salutare*, 13(2), pp. 159–181.

Bándi, Gy. (2020a) Interests of Future Generations, Environmental Protection and the Fundamental Law, *Journal of Agricultural and Environmental Law*, 15(29), pp. 7–22; https://doi.org/10.21029/JAEL.2020.29.7

Bándi, Gy. (2020b) 'Jogalkotási javaslat a jövő nemzedékek szószólójától' ['Regulatory Proposal of the Ombudsman for Future Generations'], *Pro Futuro*, 10(2), pp. 10–38; https://doi.org/10.26521/PROFUTURO/2020/2/8427

Bándi, Gy. (2020c) 'A Teremtés védelme és az emberi jogok' ['Protecting Creation and Human Rights'], *Acta Humana*, 8(4), pp. 9–33; https://doi.org/10.32566/ah.2020.4.1

Bándi, Gy. (2020c) 'Az állam elkötelezettsége a jövő nemzedékek iránt' ['The State's commitment to future generations'] in Csink, L. Schanda, B., Varga Zs., A. (eds.) *A magyar közjog alapintézményei [The basic institutions of Hungarian public law]*. Budapest: Pázmány Press, pp. 1181–1201.

Bándi, Gy. (2021) 'Környezetbiztonság – jövő nemzedékek védelme – elővigyázatosság' ['Environmental security – protection of future generations – precaution'], *Scientia et Securitas*, 2(3), pp. 342–349; https://doi.org/10.1556/112.2021.00049

Bányai Orsolya (2011) 'Kiút a zsákutcából, azaz a (fenntartható) fejlődés – jogi nézőpontból' ['Way out of the dead end, or (sustainable) development – from a legal perspective'], *Jogelméleti Szemle*, 2011/3; http://jesz.ajk.elte.hu/banyai47.html

Bányai, O. (2014) *Energiajog az ökológiai fenntarthatóság szolgálatában [Energy law in the service of ecological sustainability]*. Debrecen: DELA Kiadó.

Baranyai, G., Csernus, D.I. (eds.) (2018) *A fenntartható fejlődés és az állam feladatai [Sustainable development and the tasks of the State]*. Dialóg Campus Kiadó, Budapest, 2018.

Cano, G.J. (1975) *'A legal and institutional framework for natural resources management'*, Rome: FAO Legislative Studies no. 9.

Csák, Cs. (2013) *A környezetjogi felelősség magánjogi dogmatikája [The dogmatics of environmental liability in private law]*. Miskolc: Miskolci Egyetem.

Csák, Cs. (2014) 'A „felügyelt szabadság" – avagy az információszolgáltatási kötelezettség terjedelme a határon átnyúló hulladékszállítások esetén' ['The "supervised freedom" – or the scope of the obligation to provide information in the case of cross-border waste transports'], *Journal of Agricultural and Environmental Law*, 9(17), pp. 22–38.

Csák, Cs., Nagy, Z. (2020) 'A környezeti és pénzügyi fenntarthatóság – avagy a környezetjog és a pénzügyi jog egyes kapcsolódási pontjai' ['Environmental and financial sustainability – or certain connections of environmental law and financial law'], *Miskolci Jogi Szemle*, 15(1), Special Issue, pp. 38–50.

Csink, L. (2016) 'Az ombudsman' ['The ombudsman'] in Jakab, A., Gajduschek, Gy. (eds.) *A magyar jogrendszer állapota [The state of the Hungarian legal system].* Budapest: MTA Társadalomtudományi Kutatóközpont, 2016, pp. 600–616.

Csink, L., Fröhlich, J. (2020) Magyarország Alaptörvénye [The Fundamental Law of Hungary] in Csink, L., Schanda, B., Varga Zs., A. (eds.) *A magyar közjog alapintézményei [The basic institutions of Hungarian public law].* Budapest: Pázmány Press, pp. 123–141.

Csink, L., T. Kovács, J. (2013) 'Paradigmaváltás a környezet alapjogi jellegében?' ['Paradigm shift in the fundamental right nature of the environment?'], *Jogelméleti Szemle,* 2013/4, pp. 42–54.

Domokos, L., Pulay, Gy. (2020) 'Fenntartható költségvetés és a költségvetésben megjelenő fenntarthatóság', *Pénzügyi Szemle*, 65(2), Special Issue, pp. 25–56; https://doi.org/10.35551/PSZ_2020_k_2_2

Fodor, L. (2004) 'A Zengő hegyére tervezett lokátorállomás engedélyezésének környezetjogi vonatkozásai' ['Environmental legal aspects of permitting the locator station planned for the Zengő hill'], *Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica*, 22, pp. 231–266.

Fodor, L. (2005) 'A jogszabályok környezetvédelmi hatásvizsgálata' ['Environmental impact assessment of laws'], *Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica*, 23(2), pp. 245–278.

Fodor, L. (2007) 'A környezethez való jog dogmatikája napjaink kihívásai tükrében' ['The dogmatics of the right to a healthy environment in the light of the challenges of our time'], *Miskolci Jogi Szemle*, 2(1), pp. 5–19.

Fodor, L. (2011) 'Az Emberi Jogok Európai Bíróságának ítélete a zajterhelés csökkentésére tett intézkedésekről és a bírósági eljárás időtartamáról' ['Judgment of the European Court of Human Rights on the measures taken to reduce noise pollution and the duration of the court proceedings'], *Jogesetek Magyarázata*, 2011/3, pp. 86–92.

Fodor, L. (2012) 'Az Alaptörvény esete a szennyező hulladékokkal és az európai jog' ['The case of the Fundamental Law with pollutant waste and the European law'], *Magyar jog,* 59(11), pp. 641–652.

Fodor, L. (2013) 'A víz az Alaptörvény környezeti értékrendjében' ['The water in the environmental values of the Fundamental Law], *Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica,* 31, pp. 329–345.

Fodor, L. (2014) *Környezetjog [Environmental law].* Debrecen, Debreceni Egyetemi Kiadó.

Fodor, L. (2015) *Környezetjog [Environmental law].* Debrecen: Debreceni Egyetem Kiadó.

Fodor, L. (2019) *A falu füstje. A települési önkormányzatok és a környezet védelme a 21. század eleji Magyarországon. [The smoke of the village. Municipalities and the protection of the environment in Hungary of the early 21st century].* Budapest: Gondolat Kiadó.

Fodor, L., Zágoni, M., Pánovics, A. (2008) 'A jövő nemzedékek jogai' ['The rights of future generations'], *Fundamentum*, 12(1), pp. 47–58.

Gagnon Thompson, S.C., Barton, M.A. (1994) 'Ecocentric and anthropocentric attitudes toward the environment', *Journal of Environmental Psychology*, 14(2), pp. 149–157; https://doi.org/10.1016/S0272-4944(05)80168-9

Görgényi, I. (2018) 'Környezetvédelmi büntetőjog az európai elvárásokra figyelemmel' ['Protection of the environment through criminal law considering the european standards'], *Journal of Agricultural and Environmental Law*, 13(25), pp. 46–80; https://doi.org/10.21029/JAEL.2018.25.46

Herczegh, G. (2004) 'Bős-Nagymaros', *Valóság*, 47(2), pp. 1–20.

Horváth, G. (2013) 'Az Alaptörvény környezetjogi előírásai' ['Environmental provisions of the Fundamental Law'] in Szoboszlai-Kiss, K., Deli, G. (eds.) *Tanulmányok a 70 éves Bihari Mihály tiszteletére ['Studies in honor of the 70-year old Bihari Mihály']*. Győr: Universitas-Győr, pp. 222–234; https://doi.org/10.1080/00207233.2013.791530

Kecskés, G. (2015) 'A Nemzetközi Bíróság ítélkezési gyakorlata a környezeti tárgyú ügyekben' ['The jurisprudence of the International Court of Justice in environmental cases'], *Állam- és Jogtudomány,* 56(3), pp. 55–79.

Kecskés, G. (2021) 'A környezeti jogok értelmezése az Emberi Jogok Európai Egyezményébe foglalt jogok körében' ['Interpretation of Environmental Rights within the Practice of the European Court of Human Rights'], *Acta Humana*, 9(2), pp. 207–220; http://doi.org/10.32566/ah.2021.2.9

Kőmüves, B. (2020) 'Az egészséges környezethez való jog megítélése a „Vörösiszap-katasztrófa" tükrében' ['The adjudication of the right to a healthy environment in the light of the red sludge catastrophe'], *JURA*, 26(4), pp. 123–130.

Kovács, P. (2016) *Nemzetközi közjog [Public international law]*. Budapest: Osiris.

Kukorelli, I. (2013) 'Az Alaptörvény és az Európai Unió' ['The Fundamental Law and the European Union'], *Pro Publico Bono – Magyar Közigazgatás*, 1(1), pp. 4–11.

Kuslits, B. (2011) 'Ökoszisztéma, társadalom, gazdaság' ['Ecosystem, society, economy'] in Fülöp, S. (ed.) *'Beszámoló a jövő nemzedékek országgyűlési biztosának 2010. évi tevékenységéről [Report on the activities of the parliamentary commissioner for future generations of the year 2010]*. Budapest: Országgyűlési Biztos Hivatala, pp. 217–230.

Marinkás, Gy. (2020) 'The Right to a Healthy Environment as a Basic Human Right – Possible Approaches Based on the Practice of the Human Rights Mechanisms, with Special Regard to the Issues of Indigenous Peoples', *Journal of Agricultural and Environmental Law,* 15(29), pp. 133–151; https://doi.org/10.21029/JAEL.2020.29.133

Nagy, A. (2019) 'A víz büntetőjogi védelme' ['The protection of water through criminal law'], *Journal of Agricultural and Environmental Law*, 14(26), pp. 144–161; https://doi.org/10.21029/JAEL.2019.26.130

Pánovics, A. (2010) *Az Aarhusi Egyezmény és alkalmazása az Európai Unió jogában [The application of the Aarhus Convention in the law of the European Union]*. PhD thesis, Pécs: Pécsi Tudományegyetem.

Pánovics, A. (2020) 'A civil szervezetek szerepe a környezeti felelősség érvényesítésében' ['The Role of Non-Governmental Organisations in the Enforcement of Environmental Liability'], *Pro Futuro*, 10(2), pp. 113–127; https://doi.org/10.26521/PROFUTURO/2020/2/8504

Raisz, A. (2012a) 'A Constitution's Environment, Environment in the Constitution – Process and background of the New Hungarian Constitution', *Revue Est Europa numéro special*, 2012/1, pp. 37–70.

Raisz, A. (2012b) 'A vízhez való jog egyes aktuális kérdéseiről' ['On certain actual questions regarding the right to water'] in Csák, Cs. (ed.) *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében [Legal studies in the matter of sustainable natural resources]*. Miskolc: Miskolci Egyetem, pp. 151–159.

Raisz, A. (2015) 'Nemzetközi környezetjogi alapelvek a gyakorlatban' ['International environmental principles in practice] in Szalma, J. (ed.) *A Magyar Tudomány Napja a Délvidéken: 2014 [The Day of Hungarian Science in Voivodina: 2014]*. Újvidék: Vajdasági Magyar Tudományos Társaság, pp. 258–268.

Raisz, A. (2017) 'Az önálló nemzetközi környezetjogi bíráskodás létjogosultságáról' ['On the justification of the independent international environmental jurisdiction'], *Miskolci Jogi Szemle*, 12(2), Special Issue, pp. 449–455.

Raisz, A. (ed.) (2022) *Környezetjog. Különös rész [Environmental Law. Specific Part]*. Miskolc: Miskolci Egyetemi Kiadó; https://doi.org/10.53707/2021.ra.kornykul

Raisz, A., Szilágyi, J.E. (2012) 'Development of agricultural law and related fields (environmental law, water law, social law, tax law) in the EU, in countries and in the WTO', *Journal of Agricultural and Environmental Law*, 7(12), pp. 107–148.

Raisz, A., Szilágyi, J.E. (2017) 'Cross border issues of the Hungarian water resources', *Rivista Quadrimestrale di Diritto Dell'Ambiente*, 2017/1, pp. 73–98.

Schanda, B. (2012) 'A jog lehetőségei a család védelmére' ['The possibilities of law for the protection of family'], *Iustum Aequum Salutare*, 8(2), pp. 77–88.

Schanda, B. (2022) 'The Christian Roots of Hungary's Fundamental Law', *Central European Journal of Comparative Law*, 3(1), pp. 195–202; https://doi.org/10.47078/2022.1.195-202

Shaw, M. N. (2017) *International Law.* Cambridge: Cambridge University Press.

Simon, I. (2019) 'A magyar pénzügyi alkotmányjog átalakulása' ['The transformation of the Hungarian financial constitutional law'], *MTA Law Working Papers*, 6(2), pp. 1–23.

Sólyom, L. (2000) 'A jövő nemzedékek jogai és ezek képviselete a jelenben' ['The rights of future generations and their representation in the present'] in Sólyom, L., Jávor, B. *A jövő nemzedékek jogai [The rights of future generations]*. Budapest: Védegylet, pp. 37–46.

Sulyok, K. (2014) 'Az államok mozgástere a környezetkárosítás elleni védelem meghatározásánál az Emberi Jogok Európai Bíróságának gyakorlatában' ['States' leeway in defining protection against environmental damage in the practice of the European Court of Human Rights], *Jogi Tanulmányok*, 17(1). pp. 484–494.

Sulyok, K. (2021) 'The Public Trust Doctrine, the Non-Derogation Principle and the Protection of Future Generations', *Hungarian Yearbook of International Law and European Law*, 9(1), pp. 359–375; https://doi.org/10.5553/HYIEL/266627012021009001020

Szabó, M. (2012) 'A fenntartható fejlődés: nemzetközi jogi elmélet és szerződéses gyakorlat' ['The sustainable development: international legal theory and contractual practice'], in Raisz, A. (ed.) *A nemzetközi környezetjog aktuális kihívásai [Actual challenges of international environmental law]*. Miskolc: Miskolci Egyetem, pp. 161–174.

Szabó, M. (2019) 'A biológiai sokféleség jogi védelmének jelentősége. Gondolatok a 28/2017 (X.25.) AB határozat nyomán' ['The importance on the legal protection of biodiversity. Thoughts on CC Decision no. 28/2017 (X.25.)'], *Iustum Aequum Salutare*, 15(2), pp. 89–105.

Szilágyi, J.E. (2013) *Vízjog. Aktuális kihívások a vizek jogi szabályozásában [Water law. Actual challenges in the regulation of waters]*. Miskolc: Miskolci Egyetem.

Szilágyi, J.E. (2016) 'Változások az agrárjog elméletében?' ['Changes in the theory of agricultural law?'], *Miskolci Jogi Szemle,* 11(1), pp. 30–50.

Szilágyi, J.E. (2018) *Vízszemléletű kormányzás – vízpolitika – vízjog: kitekintéssel a vízgazdálkodásra és a víztudományra [Water-based governance – water policy – water law: with an outlook on water management and water science].* Miskolc: Miskolci Egyetemi Kiadó.

Szilágyi, J.E. (2018a) 'Az elővigyázatosság elve és a magyar alkotmánybírósági gyakorlat – Szellem a palackból, avagy alkotmánybírósági magas labda az alkotmányrevízióhoz' ['The precautionary principle and the jurisdiction of the Hungarian Constitutional Court'], *Miskolci Jogi Szemle*, 13(2), pp. 76–91.

Szilágyi, J.E. (2018b) 'A természeti erőforrások jogának egy lehetséges megközelítése' ['A potential approach of natural resources law'], *Journal of Agricultural and Environmental Law*, 13(25), pp. 270–293; https://doi.org/10.21029/JAEL.2018.25.270

Szilágyi, J.E. (2021a) 'The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues', *Journal of Agricultural and Environmental Law*, 16(31), pp. 130–144; https://doi.org/10.21029/JAEL.2021.31.130

Szilágyi, J.E. (2021b) 'Észrevételek a jövő nemzedékek érdekeinek alkotmányjogi védelme kapcsán, különös tekintettel a környezethez való joghoz és környezetvédelemhez kapcsolódó más kérdéskörök vonatkozásában' ['Observations in relation to the constitutional protection of the interests of future generations, with special regard to the right to a healthy environment and other environment-related issues'], in Kruzslicz, P., Sulyok, M., Szalai, A. (eds.*) Liber Amicorum László Trócsányi: Tanulmánykötet Trócsányi László 65. születésnapja alkalmából ['Studies commemorating the 65th birthday of László Trócsányi'].* Szeged: Szegedi Tudományegyetem Állam- és Jogtudományi Kar Nemzetközi és Regionális Tanulmányok Intézete, pp. 223–233.

Szilágyi, J.E. (ed.) (2017) *Agrárjog. A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban [Agricultural Law. The possibilities of the Hungarian regulation of agriculture and rural development in the globalizing European Union].* Miskolc: Miskolci Egyetemi Kiadó.

Szilágyi, J.E., Raisz, A., Kocsis, B.E. (2017) 'New dimensions of the Hungarian agricultural law' in respect of food sovereignty, *Journal of Agricultural and Environmental Law*, 12(22), pp. 160–201; https://doi.org/10.21029/JAEL.2017.22.160

T. Kovács, J. (2015) 'A GMO-mentes Alaptörvény hatása a mezőgazdaságra – különös tekintettel a visszaszerzett EU tagállami szuverenitásra és a TTIP-re' ['The impact of the GMO-free Fundamental Law on agriculture – with special regard to the EU Member States' sovereignty and the TTIP'] in Szalma, J. (ed.) *A Magyar Tudomány Napja a Délvidéken: 2014 [The Day of Hungarian Science in Voivodina: 2014]*. Újvidék: Vajdasági Magyar Tudományos Társaság, pp. 300–319.

Tattay, Sz. (2016) 'Képtelen „képes beszéd"? A jövő nemzedékek 'jogainak' képviseletéről' ['On the representation of the 'rights' of future generations'], *Állam-és Jogtudomány*, 57(3), pp. 108–122.

Varga Zs., A. (2012) *Ombudsman, ügyész, magánjogi felelősség: Alternatív közigazgatási kontroll Magyarországon [Ombudsman, prosecutor, liabilities in private law: Alternative administrative control in Hungary]*. Budapest: Pázmány Press.

Weiss, E.B. (1989) *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity.* New York: Transnational Publishers Inc.

Weiss, E.B. (1990) 'Our Rights and Obligations to Future Generations for the Environment', *The American Journal of International Law*, 84(1), pp. 198–207; https://doi.org/10.2307/2203020

'Death of a river', *BBC*, 15 February 2000 [Online]. Available at: http://news.bbc.co.uk/2/hi/europe/642880.stm (Accessed: 7 June 2022).
'Húsz éve történt a tiszai ciánszennyezés' ['The cyanide spill on the Tisza happened twenty years ago'], *Élő Bolygónk*, 31 January 2020 [Online]. Available at: https://bit.ly/3zDJFI1 (Accessed: 7 June 2022)
Kék Bolygó Alapítvány, About us [Online]. Available at: https://bit.ly/3oWFRga (Accessed: 3 June 2022).
Kék Bolygó Podcast [Online]. Available at: https://bit.ly/3vIE0zk (Accessed: 3 June 2022).
Budapest Climate Summit, János Áder [Online]. Available at: https://budapestclimatesummit.com/speaker/janos-ader/ (Accessed: 3 June 2022).

Legal sources

Laws, acts

Act C of 2012 on the Criminal Code.
Act CCXXIII of 2013 on the modification of Act CXI of 2011.
Act CLXXXV of 2012 on Waste.
Act CXI of 2011 on the Commissioner for Fundamental Rights.
Act CXLV of 2007 on the modification of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.
Act CXXIX of 2007 on the protection of arable land.
Act LIII of 1995 on the general rules of environmental protection.
Act LVII of 1995 on water management.
Act LXXXVI of 2007 on electricity.
Act V of 2013 on the Civil Code.
Act XXXI of 1989 on the Amendment of the Constitution (Act XX of 1949).
Amendment proposals for the draft law no. T/2627 on the Fundamental Law of Hungary.
Government Decree no. 183/2022 (V.24.) on the Modification of Certain Government Decrees on Determining the Duties and Powers of the Members of the Government.
Parliament Resolution no. 11/2022 (V.2.) on the establishment and election of the member of the Parliamentary Committees.
Parliamentary Resolution no. 18/2013. (III. 28.) on the National Framework Strategy for Sustainable Development.
The Fundamental Law of Hungary.

Constitutional Court Decisions

Decision no. 13/2018 (IX.4.).
Decision no. 14/2020 (VII.6.).
Decision no. 16/2015 (VI.5.).
Decision no. 16/2015 (VI.5.).
Decision no. 16/2022 (VII.14.).
Decision no. 26/2001 (VI.29.).
Decision no. 27/2017 (X.25.).

Decision no. 28/1994 (V.20.).
Decision no. 28/2017 (X.25.).
Decision no. 3068/2013 (III.4.).
Decision no. 3104/2017 (V.8.).
Decision no. 3196/2020. (VI. 11.).
Decision no. 3223/2017 (IX.25.).
Decision no. 35/1994 (VI.24.).
Decision no. 4/2019 (III.7.).
Decision no. 5/2022 (IV.14.).
Decision no. 521/B/2003.
Decision no. 64/1991 (XII.17.).
Order no. 3002/2012. (VI. 21.).

Decisions of the Supreme Court

Resolution Knk.IV.37.178/2014/3

Decisions of the ECHR and the ICJ

Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, the Hague, 25 September 1997.
Case of Bor v. Hungary (Application no. 50474/08) Judgment, Strasbourg, 18 June 2013.
Case of Deés v. Hungary (Application no. 2345/06) Judgment, Strasbourg, 9 November 2010.

Documents issued by the Advocate of Future Generations or the Parliamentary Commissioner for Future Generations

Annual report of the ombudsman for future generations, 2008-2009.
Awareness-raising report from the Deputy Commissioner regarding the duties arising from the Constitutional Court decision on the protection of the biodiversity and natural values of forests, AJB-5960-1/2020.
Awarness-raising report from the Deputy Commissioner regarding the Constitutional Court Decision no. 4/2019 (III.7.), AJB-4950/2019.
Awarness-raising report from the Deputy Commissioner regarding the protection of cultural monuments forming part of the common heritage of the nation, AJB-7304/2020.
Awarness-raising report from the Deputy Commissioner regarding the Constitutional Court Decision no. 4/2019 (III.7.), AJB-4950/2019.
Legislative proposal of the Advocate of Future Generations for the effective implementation of environmental liability, 2019.
Legislative proposal of the Advocate of Future Generations on the protection of groundwater resources, 27 November 2020.
National parks as the guardians of natural and cultural values for future generations, 16 December 2014.
National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda.
Opinion of the Parliamentary Commissioner for Future Generations in connection with the operation of the ombudsman structure, 26 November 2010.
Order no. 1/2012 (I.6.) of the Commissioner for Fundamental Rights.
Report of the Ombudsman regarding the case OBH 3631/2003.
Report on the activity of the Commissioner for Fundamental Rights and his Deputies, 2019.

Resolution of the Parliamentary Commissioner for Future Generations on the state responsibility arising from the provisions of the new Fundamental Law on the protection of the environment and sustainability, JNO-258/2011.
Summary of the Hungarian NHRI's engagement with the SDGs Promoting Ambitious National Implementation of the SDGs by the Hungarian Ombudsman for Future Generations.
The fundamental law aspects of the landscape, the protection, management and planning of landscape, 20 October 2021.
The preservation of Nannospalax (leucodon) montanosyrmiensis for future generations, 25 September 2015.
The problems of the functioning of the waste management public service, 6 November 2018.
The protection of groundwater resources, 24 May 2017.
The protection of soil, 2016.
Voluntary National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda, 2018.

Other sources

Agenda 21, United Nations, 1992.
Encyclical Letter 'Laudato si' of Pope Francis, 2015
Guiding principles concerning international economic aspects of environmental policies C (72), OECD, 1972.
Johannesburg Declaration on Sustainable Development, United Nations, 2002.
New Delhi Declaration of Principles of International Law relating to Sustainable Development, United Nations, 2002.
On Earth As In Heaven: Ecological Vision and Initiatives of Ecumenical Patriarch Bartholomew, 2012.
Our Common Future: Report of the World Commission on Environment and Development, 1987.
Rio Declaration on Environment and Development, United Nations, 1992.
United Nations Framework Convention on Climate Change (UNFCCC), 1992.

Chapter VI

Poland: One of the Most Protected Values of the Constitution and its Limited Conceptualization in the Practice of the Constitutional Court

Bartosz Majchrzak

1. Introduction

1. The legal framework for environmental protection in Poland is well developed. This can be explained by the legislator's concern for the fullest possible implementation of the value defined as the 'natural environment'[1] or a 'healthy environment'[2] as well as the increasing degradation of this universal good. As proof of this concern, the Constitution of the Republic of Poland of April 2, 1997[3] (hereinafter the 'Constitution', 'Fundamental Law'), refers to the environment in as many as five articles (Arts. 5, 31.3, 68.4, 74, and 86), which is an exceptional situation when compared to the protection of other constitutional values.[4] At the same time, in these provisions of the Constitution, the obligation to protect the environment, which rests with the

1 Cf. Judgment of the Constitutional Court of July 1, 2014, case ref. SK 6/12 (OTK ZU no 7/A/2014, item 68).
2 Cf. Judgment of the Constitutional Court of May 13, 2009, case ref. Kp 2/09 (OTK ZU no. 5/A/2009, item 66).
3 Journal of Laws No. 78, item 483, as amended.
4 Cf. Majchrzak, 2020, p. 102; Rakoczy, 2015, pp. 75–76.

Bartosz Majchrzak (2022) Poland: One of the Most Protected Values of the Constitution and its Limited Conceptualization in the Practice of the Constitutional Court. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 249–308. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_7

'Republic of Poland' (Art. 5), 'public authorities' (Art. 74 (2)), and 'everyone' (Art. 86), has been emphasized in a special way.

Although the Constitution uses the term 'environment', it does not introduce this term's legal definition. This was pointed out by the Constitutional Court in its judgment of May 13, 2009, case ref. Kp 2/09, pursuant to which the term has an established doctrinal content generally known to the judicature. Moreover, in the opinion of the Court, 'the environment' as a constitutional concept is autonomous and should not be assessed solely through the lens of statutory terminology. However, referring to such terminology is not a mistake in itself; hence, for the purposes of individual cases, it can be assumed, pursuant to the Act of April 27, 2001 – the Environmental Protection Law[5] (hereinafter EPL) – that 'environment' is the totality of natural elements; those transformed by human activity, in particular, land, minerals, water, air, landscape, climate, and other elements of biodiversity; and the interaction among these elements (EPL Art. 3 (39)).[6] Additionally, the judgment of the Constitutional Court of December 10, 2014, case ref. K 52/13,[7] is the basis for the conclusion that the constitutional concept of environment does not include farm animals (only wild and free-living animals are part of the environment).[8]

The above-mentioned provisions of the Constitution are operationalized by means of several dozen normative acts of the act rank and hundreds of ordinances and acts of local law that directly implement the acts.[9] First, it is worth considering the EPL, which, together with the Act of October 3, 2008, on Sharing Information on the Environment and Its Protection, Public Participation in Environmental Protection, and on Environmental Impact Assessments[10] (hereinafter SIEA) and the Act of April 13, 2007, on the Prevention and Repair of Environmental Damage[11] (hereinafter PREDA), form a collection of the so-called horizontal acts set. These acts concern institutions that are important for the entire legal framework for environmental protection (including all of its components),[12] namely, general principles of environmental law, the protection of environmental resources, emission permits, financial and legal measures for environmental protection, legal liability in environmental protection, access to information on the environment, public participation in environmental protection, and environmental impact assessment as a result of planning the implementation of acts as well as specific projects. In the context of the latter issue, it is worth emphasizing that, in addition to typical natural elements (indicated in Art. 3 (39) EPL), environmental impact assessment also covers monuments and tangible goods (see Art. 51 (2) (2) letter e) and Art. 62 (1) (1) letter b) and c) of

5 Journal of Laws of 2021, item 1973, as amended.
6 Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.
7 OTK ZU no. 11/A/2014, item 118.
8 Ibid.
9 Cf. Górski, 2014, p. 12.
10 Journal of Laws of 2022, item 1029.
11 Journal of Laws of 2020, item 2187.
12 Górski, 2014, pp. 9–12.

SIEA). In other words, pursuant to SIEA regulations, the environment as an object of protection is understood specifically and broadly, also including elements of cultural heritage (monuments) or even real estate (e.g., facilities) of third parties.[13] Cultural heritage and property are also subject to constitutional protection (see Arts. 5, 21 (1), and 64 (2) of the Constitution), with the proviso that the constitution explicitly leaves these elements outside the objective scope of the concept of 'environment'.

Referring to the above-mentioned horizontal regulations, it is also worth mentioning the Act of April 16, 2004, on the Nature Conservation[14] (hereinafter NCA), which, due to its subject matter as declared in Art. 1 ("goals, principles and forms of protection of living and inanimate nature and landscape") as well as its nature also comes close to horizontal laws.[15]

A highly extensive set of environmental regulations is made up of 'sectoral' acts, covering individual elements of the environment or specific types of actions affecting them.[16] Such normative acts include, for example, the Act of July 20, 2017, the Water Law[17] (hereinafter WL); the Act of December 14, 2012, on Waste[18]; the Act of October 13, 1995, the Hunting Law[19] (hereinafter HL); and the Act of September 28, 1991, on Forests,[20] This group includes also 'non-sectoral' laws, the main purpose of which is not to protect the environment, but the structures these laws contain are also used for the implementation of environmental tasks. An example is the Act of July 7, 1994, the Construction Law,[21] and the Act of July 23, 2003, on the Protection of Monuments and the Care of Historical Monuments.[22].

The provisions on legal liability contained in the Act of June 6, 1997, the Criminal Code[23] (hereinafter CrC), and the Act of April 23, 1964, the Civil Code[24] (hereinafter CiC), can also be placed in this 'non-sectoral' framework. In the first section and in a separate XXII chapter of the CrC, 'offenses against the environment' were regulated.

Including such deeds in the CrC regulation, placing the indicated chapter in the structure of the act before offenses against freedom, and the volume of this fragment of the regulation (covering as many as 59 types of offenses) justify the statement that the environment is a general social value of particular importance.[25] The CrC standardization does not exhaust the problem of environmental offenses. They are

13 Cf. Daniel, 2013, pp. 52–53.
14 Journal of Laws of 2022, item 916.
15 Cf. Habuda, 2019, p. 107.
16 Górski, 2014, p. 13.
17 Journal of Laws of 2021, item 2233, as amended.
18 Journal of Laws of 2022, item 699, as amended.
19 Journal of Laws of 2022, item 1173.
20 Journal of Laws of 2022, item 672.
21 Journal of Laws of 2021, item 2351, as amended.
22 Journal of Laws of 2022, item 840.
23 Journal of Laws of 2022, item 1138.
24 Journal of Laws of 2022, item 1360.
25 Zawłocki, 2014, pp. 129, 133.

additionally provided for in a number of other 'extra-code' acts, in particular, in the provisions of the NCA, WL, and HL.[26] The catalog is also supplemented by offenses against the environment regulated in the Act of May 20, 1971, the Code of Petty Offenses,[27] as well as the EPL and other specific acts.

On the other hand, the provisions of the CiC do not deal directly with the protection of the environment; in fact, they do not even use the concept of the (natural) environment. The CiC aims to protect the interests of individual entities in their mutual relations. Nevertheless, environmental goals can be achieved through safeguarding the subjective rights of an individual. Destructive effects on the environment may violate such rights[28] and result in civil law liability. The general regulations of the CiC are detailed in Art. 323–328 of the EPL, which, in this respect, added a specialized nature in terms of environmental protection to civil liability. Moreover, a certain specification can be found in Art. 126 of the NCA. In particular, it introduces the State Treasury's liability for damages caused by certain protected wild animals (e.g., bison, wolves, lynx, bears, and beavers). Thus, this regulation is not directly aimed at nature protection; rather, this is a consequence of its implementation. In this way, it can indirectly strengthen the achievement of protection goals, guarding the property rights of an individual and thus increasing the acceptance of specific inviolability of the indicated animal species.

2. The analysis of the system of normative acts concerning environmental protection provides grounds for the conclusion that, in this respect, the instruments typical for administrative law prevail. The legislator establishes certain public tasks performed directly by public administration bodies in their typical forms of activity. Moreover, on the grounds of the legal language, the concept of 'environmental protection authority' is specified in Art. 3 point 15 of the EPL. Disregarding the doubts arising from this definition,[29] it can be assumed that such authorities are 1) administrative bodies in the systemic sense (ministers, central government administration bodies, voivodes, other local government administration bodies and local government units) or 2) other administrative entities (public or private) that perform public tasks related to the environment and its protection (e.g., the so-called environmental protection institutions listed in Art. 386 of the EPL).[30]

In accordance with the Act of September 4, 1997, on Government Administration Departments[31] (hereinafter GADA), the following were distinguished among government administration departments: climate and environment. According to the regulation of the Prime Minister of October 27, 2021, on the detailed scope of

26 Cf. Radecki, 2015, pp. 85–87.
27 Journal of Laws of 2021, item 2008, as amended.
28 Skoczylas, 1989, pp. 52–53.
29 For more on this, see Majchrzak, 2016, pp. 112–113; Walas, 2009, pp. 42–44.
30 Majchrzak, 2016, p. 113.
31 Journal of Laws of 2021, item 1893, as amended.

activities of the Minister of Climate and Environment,[32] both of the above-mentioned departments are managed by the Minister of Climate and Environment.

As bodies subordinate to the Minister of Climate and the Environment, the GADA lists the following central government administration bodies: the Chief Inspector of Environmental Protection and the General Director of Environmental Protection. In turn, these administrative bodies are hierarchically superior to provincial environmental protection inspectors and regional environmental protection directors, respectively, as specialized local government administration bodies (combined and not combined, respectively). It is also worth noting that the indicated bodies of the Environmental Protection Inspection, in addition to performing typical functions of public administration, are appointed to prosecute crimes against the environment specified in the CrC as well as environmental offenses, including bringing and supporting indictments.

Public tasks related to environmental protection are also performed by the constitutive and executive bodies of local self-government, as the so-called general administration. Care for the environment condition is only one of many of their public administration functions.

The environmental administration system is complemented by other administrative entities, an example of which are the so-called earmarked funds (National Fund for Environmental Protection and Water Management and provincial funds for environmental protection and water management).

3. The jurisprudence of international and EU bodies also influences the shape of the legal framework for environmental protection in Poland. Key examples in this respect include the relatively recent judgment of the European Court of Human Rights (hereinafter ECHR) of October 14, 2021, in the case of Kapa and others v. Poland (applications nos. 75031/13 and three others). Its importance for domestic jurisprudence has not yet been confirmed in specific judicates. However, it may turn out to be significant, especially in light of doubts as to the existence of an individual's right to the environment in the Polish normative system. In that case, the ECHR clearly refers to the Polish reality in its line of jurisprudence regarding the inference of the right to a clean and quiet environment from Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms[33] (hereinafter Convention).

The judgment of the Court of Justice of the European Union of February 22, 2018, in case C-336/16 European Commission v. Republic of Poland had a real and significant impact on domestic law. It forced legislative changes to the EPL[34] aimed at improving the remedial actions provided for in air protection programs to ensure compliance with the permissible levels of harmful substances in the air.

32 Journal of Laws item 1949.

33 Journal of Laws of 1993, No. 61, item 284.

34 Act of June 13, 2019, on amending the Act – Environmental Protection Law and the Act on crisis management (Journal of Laws item 1211, as amended).

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and the environment

1. The fundamental role in shaping constitutional regulations as to the basic rights relating to the protection of future generations, in particular, the environment, is played by the bicameral Parliament of the Republic of Poland, namely the Sejm and the Senate. With regard to environmental issues, two standing parliamentary committees have been established: 1) one for Energy, Climate, and State Assets and 2) one for Environmental Protection, Natural Resources, and Forestry.[35] The permanent Senate committee is the Environment Committee.[36]

In respects other than legislation, it is difficult to speak of any significant influence by Parliament. However, the function of this body consisting in 'accepting the international law' [37] should be formally mentioned here. In particular, after the Constitution entered into force, the ratification by the President of the Republic of Poland of international agreements on the environment and its protection required the consent of the Sejm and the Senate expressed in the form of a separate act (differing, however, in its nature from typical normative acts).[38]

2. The jurisprudence of the Constitutional Court is potentially of great importance for the analyzed area of regulation. However, it must be assessed in the context of the systemic cognition of this body, as a 'court of law' rather than a 'court of facts'.[39] "Its competences include – in short – the assessment of the compliance of legal acts with the Constitution (…), but in no case may it adjudicate on the application of the law or make a legally significant assessment of the activities of state organs, including courts."[40] It is not changed even by the fact that the Constitutional Court performs the so-called specific control initiated by a constitutional complaint (Art. 79 of the Constitution) or a legal question from a court (Art. 193 of the Constitution), which depends on the existence of a relationship between the questioned legal norm and an individual case of application of the law.

35 Art. 18(1) of the Resolution of the Sejm of the Republic of Poland of July 30, 1992 – Rules of Procedure of the Sejm (Monitor Polski of 2021, item 483, as amended).

36 Art. 15(1) of the Resolution of the Senate of the Republic of Poland of July 30, 1992 – Rules of Procedure of the Senate (Monitor Polski of 2018, item 846, as amended).

37 Bałaban, 2007, pp. 145–146.

38 Cf. ibid., p. 146.

39 The case in which the Constitutional Court controls the procedure of the authority that issued the normative act (i.e., the exercise of its legislative powers), pursuant to Art. 68 of the Act of November 30, 2016, on the Organization and Proceedings Before the Constitutional Court (Journal of Laws of 2019, item 2393), is to be treated as an exception – cf. Syryt, 2019, p. 324.

40 Order of the Constitutional Court of October 26, 2005, case ref. SK 11/03 (OTK ZU no. 9/A/2005, item 110).

> In the event of a constitutional complaint, only a legal norm that violates constitutional rights or freedoms on the basis of which a final decision had already been issued may be the subject of review. In the event of a legal question, the subject of inspection may be a legal norm that has not yet been applied but the application of which is relevant for the resolution.[41]

At the same time, the Constitutional Court, as it stated itself in the case initiated by a constitutional complaint, does not have systemic and related procedural solutions adapted to examining the facts that determine the content of the acts for applying the law of other organs of public authority.[42] The competence of this Court does not include "assessing the practice of other authorities' activities or making any factual findings"[43] or "making a binding interpretation of acts' or 'determining which of the possible interpretative variants of the provision under consideration should be the basis for the court's decision."[44] "A constitutional complaint in the Polish legal system is always a «complaint against a provision and not against a specific defective application of it, even if it would lead to an unconstitutional effect."[45] "A legal question […] cannot […] be treated as a means of removing doubts that arise in practice as to the content of specific provisions."[46]

In the context of the role of the Constitutional Court in the scope of our interest, two elements are worth considering. First, this court is called upon to provide a binding interpretation of the constitutional law,[47] and therefore, the results of interpreting the provisions of the Constitution relating to the environment and its protection presented in its jurisprudence have unique value in the Polish legal system. Second, several judgments of the Constitutional Court, which assessed the constitutionality of statutory provisions, contributed to strengthening the level of protection of the environment (including nature). At the same time, it should be emphasized that the jurisprudence of the Polish Constitutional Court in the matters in question is relatively poor. It is often limited to simple ('dogmatic') statements devoid of broader legal argumentation, including a critical analysis of doctrine views. Hence, pursuant to this judicature, it is difficult to assume that there is any well-established concept of the perception of the environment and its protection.

41 Order of the Constitutional Court of June 10, 2009, case ref. P 4/09 (OTK ZU no. 6/A/2009, item 93).
42 Cf. Order of the Constitutional Court of October 6, 2004, case ref. SK 42/02 (OTK ZU no. 9/A/2004, item 97).
43 Order of the Constitutional Court of July 22, 2021, case ref. SK 24/20 (OTK ZU no. A/2021, item 43).
44 Order of the Constitutional Court of January 8, 2013, case ref. P 48/11 (OTK ZU no. 1/A/2013, item 8).
45 Order of the Constitutional Court, case ref. SK 24/20.
46 Order of the Constitutional Court, case ref. P 48/11.
47 Judgment of the Constitutional Court of November 13, 2013, case ref. P 25/12 (OTK ZU no. 8/A/2013, item 122).

However, the judgments of the Constitutional Court have some interpretative significance: 1) of June 6, 2006, case ref. K 23/05[48] concerning the Act of April 10, 2003, on special principles for the preparation and realization of investments in national roads[49]; 2) of May 13, 2009, case ref. Kp 2/09 concerning the issue on amending the organization and division of public tasks related to environmental protection; 3) of November 28, 2013, case ref. K 17/1[50],2, concerning changes in the municipal waste management system; 4) of July 10, 2014, case ref. P 19/13[51], concerning the creation of hunting districts including private real estate; 5) of September 28, 2015, case ref. No. K 20/14[52] concerning limitations of the State Treasury's liability for damages caused by wild animals covered by species protection. In these judgments, the Constitutional Court referred to such constitutional issues as the existence of individual rights in the field of the environment, the concept of ecological security, the content of the task consisting in the protection of the environment and the obligation to care for its condition, the importance of the principle of sustainable development, and the nature of the norm resulting from Art. 5 of the Constitution.

In turn, the judgments of the Constitutional Court strengthening the legal protection of the environment are: 1) of July 3, 2013, case ref. P 49/11[53], and of July 21, 2014, case ref. K 36/13[54] declaring the unconstitutionality of the provisions of NCA, which were limiting the liability of the State Treasury for damages caused by certain protected wild animals; and 2) of September 10, 2020, case ref. K 13/18[55] recognizing the provision of the EPL as compliant with the Constitution providing for an 'objective' increased fee for placing waste at a dumping site without a permit.

3. The current President of the Republic of Poland also takes steps to protect the environment. In this regard, it is worth paying attention to the adoption of the program document entitled 'Eco-Card' in July 2020. It is a declaration by the President of the Republic of Poland of strong support for initiatives for clean air, the development of renewable energy sources, efficient use of water resources, nature protection, proper waste management, increasing expenditure on environmental education, and promoting these values among children and adolescents.[56] In addition, in June 2021, the President of the Republic of Poland established the Council for Environment, Energy and Natural Resources. Its tasks include supporting the activities of the President of the Republic of Poland in the context of analyzing current problems in the field of the environment, energy, and natural resources; review and

48 OTK ZU no. 6/A/2006, item 62.
49 Journal of Laws of 2022, item 176.
50 OTK ZU no. 8/A/2013, item 125.
51 OTK ZU no. 7/A/2014, item 71.
52 OTK ZU no. 8/A/2015, item 123.
53 OTK ZU no. 6/A/2013, item 73.
54 OTK ZU no. 7/A/2014, item 75.
55 OTK ZU no. A/2020, item 58.
56 Official profile of the President of the Republic of Poland on Facebook, 2020 [Online]. Available at: https://bit.ly/3HY9Iwu (Accessed: 16 February 2022).

analysis of legal solutions as well as the development of assumptions and drafting of presidential legislative initiatives on these topics; and creating a forum for debate and dialogue in this area as well as education and promotion of activities and initiatives to protect the natural environment.[57]

4. Tasks covering environmental protection and ensuring ecological security for the present and future generations (Art. 74 (1) and (2) of the Constitution) are primarily related to the competences and responsibilities of the Council of Ministers and its individual members managing relevant departments of government administration.[58] In this context, it is also worth mentioning the appointment of appropriate government plenipotentiaries 1) for Water Management and Investments in Maritime and Water Management, 2) for Hydrogen Management, 3) for forestry and hunting, and 4) for Renewable Energy Sources as well as for the appointment of the Plenipotentiary of the Prime Minister for the 'Clean Air' Program.[59]

5. The judiciary authorities also have an impact on shaping the constitutional law relating to environmental issues. This is due to, inter alia, their entitlement to the direct application of the provisions of the Constitution (Art. 8 (2) of the Fundamental Law). Hence, the regulations of this act relating to the environment and its protection are the subject of interpretation by, inter alia, administrative courts. For example, the Supreme Administrative Court (hereinafter SAC), in its jurisprudence, repeatedly referred to the constitutional principle of sustainable development (Art. 5), stressing that it concerns both the sphere of lawmaking and the sphere of law application; it includes the need to take into account various constitutional values and to balance them accordingly.[60] Another example of a reference to the provisions of the fundamental act is Art. 86, which, in the opinion of administrative courts, is the constitutional source of deriving the EU's 'polluter pays' principle.[61]

Important theses were also presented in the judgement of the Voivodship Administrative Court in Warsaw of February 10, 2015, case ref. IV SA/Wa 1304/14[62], although they have not yet been upheld in other decisions of administrative courts, particularly the Supreme Administrative Court. In line with this isolated view expressed in the judgment, case ref. IV SA / Wa 1304/14 states the following:

57 Official website of the President of the Republic of Poland, 2021 [Online]. Available at: https://bit.ly/34PXdEZ (Accessed: 16 February 2022).

58 Cf. Order of the Constitutional Court of May 20, 2009, case ref. Kpt 2/08 (OTK ZU no. 5/A/2009, item 78).

59 https://bit.ly/3rlLkzm (Accessed: 1 February 2022).

60 Cf. Judgments of the Supreme Administrative Court: of January 19, 2012, case ref. II OSK 2077/10 (https://bit.ly/357E15G); of January 19, 2012, case ref. II OSK 2078/10 (https://bit.ly/3rUhPVj); of April 25, 2012, case ref. II OSK 233/11 (https://bit.ly/3GRD3Yd) (Accessed: 16 February 2022).

61 Cf. Judgments of the Supreme Administrative Court: of April 29, 2020, case ref. II OSK 144/19 (https://bit.ly/3uW03CY); of April 29, 2020, case ref. II OSK 256/19 (https://bit.ly/36kiXcF) (Accessed: 16 February 2022).

62 Central Database of Administrative Courts Decisions [Online]. Available at: https://bit.ly/3LNPMip (Accessed: 21 February 2022).

> The subjective right in environmental protection is an element of ecological security regulated in Art. 74 (1) of the Polish Constitution. Ecological security is not only a legal guarantee of the public authorities ensuring the protection of the environment itself, but also the broadly understood subjective right to the environment (…). Within the scope of the subjective law, there is an interweaving of rights and obligations of administrative bodies and parties to proceedings. Such a situation may induce a party to the proceedings to demand that administrative bodies ensure the implementation of their subjective right, including ecological security and the right to the environment. In this sense, we can also talk about the implementation of the right to ecological security and the fulfillment of obligations related to it (…). Ensuring ecological security is connected with the obligation to avert threats and provide protection in the event of a threat to humans and the environment (…). The structure of the subjective law is a consequence of assigning entities using the environment comprehensive obligations in the field of environmental protection.

In the analyzed context, the Resolution of the Supreme Court of May 28, 2021, case ref. III CZP 27/20, must be mentioned.[63] According to the theses of this resolution:

> 1) The right to live in a clean environment is not a personal good. 2) Protection, the way it is provided for personal rights, (Art. 23 CiC in conjunction with Art. 24 CiC and Art. 448 CiC) covers health, freedom, privacy, which may be violated (threats) by breach of air quality standards specified in legal provisions.

The Supreme Court responded in this way to the legal question of the District Court in Gliwice dealing with the case of a Rybnik resident who brought an action against the State Treasury for protection of personal rights in connection with serious violations of air quality standards in the plaintiff's place of residence. In the justification of the resolution, the Supreme Court emphasized that personal rights result from those non-material values that combine a unique, self-realizing 'individuality' of a person, their dignity, and their position among other people (these are "values closely related to (…) [a human being] and their dignity as a human"). Therefore, the natural environment of man does not have the characteristics of a personal good. It is a good common to humanity, with a material substrate in the form of air, water, soil, and the world of plants and animals. Moreover, the Supreme Court noted that in their constitutions and international agreements, individual states establish public subjective rights in a vertical relationship to a clean, unpolluted environment. In this context, the Supreme Court recalled the obligations entered into by the Polish State, including the Convention for the Protection of Human Rights and Fundamental Freedoms, to ensure that every person subject to its jurisdiction has the

63 Official website of the Supreme Court [Online]. Available at: https://bit.ly/3gRNKPX (Accessed: 16 February 2022).

rights and freedoms specified in Chapter I of the Convention, including the right to life (Art. 2) and to respect for private and family life and home (Art. 8).

In the opinion of the Supreme Court, although public subjective rights are indirectly aimed at securing personal rights as well, they are not identical to personal rights. The natural environment will remain a common good and not a personal good within the meaning of Art. 23 of the CiC when living in an environment in which air, soil, and water meeting standards established by science, conducive to maintaining health and the exercise of human freedom in its various forms, is directly recognized as a human right as well. The Supreme Court further stated that air, water, and soil quality standards have been indicated in science to define the conditions in which human health and freedom are free from threats. Failure to comply with them – and in some cases, even a one-off breach – is detrimental to personal rights, such as health, freedom, and privacy.

Summarizing the above theses of the Supreme Court, it should be noted in particular that, in its opinion, in the current legal state – under both the Constitution and international agreements binding the Republic of Poland – there are no grounds for deriving the subjective right of a person to live in a healthy environment, ensuring that everyone can exercise their freedom.

6. In this subjective analysis, the Ombudsman, a constitutional body guarding human and civil rights and freedoms defined in the Constitution and in other normative acts (Art. 208 (1) of the Basic Law), must be mentioned. It is worth noting that according to the Act of July 15, 1987, on the Ombudsman,[64] they exercise their powers not only in relation to the supreme and central organs of state administration, government administration bodies, local government units and local government organizational units, courts, public prosecutor's offices, and other law enforcement bodies but also toward the bodies of cooperative, social, professional, and social-professional organizations and bodies of organizational units with legal personality (cf. Art. 13 (1) of the Act on the Ombudsman). The criterion for the subject to be included in the Ombudsman's jurisdiction is only the fact that the legislator entrusted a given body, organization, or institution with the exercise of public authority (cf. Art. 80 of the Constitution).[65]

In recent years, there has been a noticeable intensification of the activities of this body to confirm the existence of a "subjective right to use the environment"[66] under the Polish legal system as well as activities ensuring respect for and the protection of the right to a clean environment as being a human right.[67] Regarding the first issue, the Ombudsman expressed its opinion, inter alia, in the procedural letter

64 Journal of Laws of 2020, item 627, as amended.

65 Trociuk, 2020, point 8.

66 Cf. Litigation document of the Ombudsman of November 30, 2018, in case III CA 1548/18, p. 8. Available at: https://bit.ly/3JDTh9l (Accessed: 17 February 2022).

67 Cf. *Klimat a Prawa Człowieka. Prawo do czystego środowiska jako prawo człowieka*, Global Compact. Network Poland 2019, p. 39. [online]. Available at: https://bit.ly/3rTPBKy (Accessed: 17 February 2022).

of November 30, 2018, in the case with reference number III CA 1548/18 initiated by the above-mentioned action of an inhabitant of Rybnik against the State Treasury for the protection of personal rights.[68] The Ombudsman recalled in this letter that the 'right to use the environment' was explicitly stated in Art. 71 of the Constitution of the Republic of Poland adopted by the Sejm on July 22, 1952[69] (hereinafter the 1952 Constitution; "'Citizens of the Republic of Poland have the right to use the value of the natural environment and the obligation to protect it"). The Constitution currently in force does not contain an analogous regulation but refers to the environment in a number of provisions, and the constitution maker thus attaches great importance to its protection. Moreover, according to the Ombudsman, the following arguments for the 'continuity' of the right to (use) the environment as a subjective constitutional right are correct: 1) it would be difficult to assume that the entry into force of the currently binding Constitution would result in a regression of the protection of individual freedoms and rights, and 2) the subjective law must comply with numerous constitutional obligations in the field of environmental protection. Moreover, even considering the indicated reasons as insufficient does not mean that the existence of the subjective right to use the environment is negated. In the opinion of the Ombudsman, although it was not explicitly mentioned among the constitutional freedoms and rights of an individual, it is *expressis verbis* guaranteed by ordinary legislation, in particular in Art. 4 (1) of the EPL. Its statutory structure additionally supports the recognition of the indicated right as a personal right (personal right within the meaning of Art. 23 CiC). In accordance with the above EPL provision, "universal use of the environment is granted by law to everyone and includes the use of the environment, without the use of installations, in order to meet the needs of personal and household needs, including recreation and sports, in the scope of: 1) introducing into the environment substance or energy; 2) types of common water use other than those listed in point 1 within the meaning of the provisions of the Act of 20 July 2017 – Water Law." The analysis of the so defined right to use the environment allows the Ombudsman to formulate two main conclusions. First, it is a right for 'everyone' who is under the authority of the Republic of Poland (and, therefore, not only for 'citizens'). Second, in the context of recognizing this right as personal and fundamental, it applies only to natural persons. Only they can have "personal and household needs." Summarizing the above, it must be stated that the right to use the environment for personal needs is vested with every person and is inherently related to being a human being. At the same time, the Ombudsman emphasized, referring to the judgment of the Constitutional Court of December 17, 1991, case ref. 2/91,[70] that it is the right to an environment of an appropriate standard ("of adequate quality and of an ensured ecological balance").

68 Connected with the above-mentioned resolution of the Supreme Court, case ref. III CZP 27/20.

69 Journal of Laws of 1976 No. 7, item 36, as amended (a version in force by December 31, 1989).

70 OTK ZU of 1991, item 10. However, it should be emphasized that this decision concerned Art. 71 of the Constitution of 1952.

This right is 'born' together with man; hence, it cannot be disposed of by them. It is, therefore, a personal right.[71]

3. Basis of fundamental rights

1. Since the entry into force of the presently binding Constitution, a discussion has begun regarding the doctrine of environmental protection law as to whether its provisions constitute the right of an individual (citizen) to the environment.[72] This question arises primarily from the fact that the constitutional legislator has not decided to repeat a regulation similar to that resulting from Art. 71 of the Constitution of 1952. Against this background, the Constitutional Court made an unequivocal statement, stating that Arts. 5, 68 (4), 74, and 86 as well as Art. 31 sec. 3 of the Constitution (and, therefore, the general provisions of the constitution relating to the environment) do not establish or guarantee the subjective right to 'live in a healthy environment'.[73] At the same time, however, according to the Constitutional Court, a 'healthy' environment is a constitutional value, the implementation of which should be subject to the process of constitutional interpretation. Some representatives of the legal doctrine expressed a similar opinion regarding the impossibility of deriving from the constitutional law an individual's subjective right to the environment.[74] In particular, L. Garlicki stated that "the Polish constitution does not guarantee the general right of an individual to live in a healthy environment, because the authors of the constitution wanted to avoid introducing a clause of an unrealistic nature and difficult to define legal consequences." [75]

The literature also presents an opposite position, according to which certain regulations of the Constitution are the basis for deriving the constitutional right to the environment (interpreted differently in terms of content). However, depending on the concept, it is sometimes reconstructed on the basis of 1) the concept of sustainable development (Art. 5 of the Constitution)[76]; 2) the obligation of public authorities to ensure ecological security (Art. 74 (1) of the Constitution)[77]; 3) the set of duties of public authorities to ensure ecological security, environmental protection, and support for citizens' activities to protect and improve the condition of

71 Litigation document of the Ombudsman…, pp. 7–9.
72 Cf. e.g., Radecki, 1998, p. 36.
73 Judgment of the Constitutional Court, case ref. Kp 2/09; similarly, Judgment of the Constitutional Court, case ref. K 23/05.
74 Cf. Ciechanowicz-McLean, 2021, p. 7; Habuda, 2019, pp. 108, 111, 112 and 119; Radecki, 1998, p. 36;
75 Garlicki, 2003a, p. 2.
76 Cf. Trzewik, 2016, p. 200.
77 Cf. Korzeniowski, 2012, pp. 173, 177.

the environment (Art. 74 of the Constitution) and to prevent negative health effects of environmental degradation (Art. 68 (4) of the Constitution)[78]; 4) all of the above sources, together with everybody's obligation to care for the state of the environment and responsibility for the deterioration caused to it (Art. 86 of the Constitution)[79]; 5) all the grounds indicated thus far supplemented with the right to life (Art. 38 of the Constitution), the right to health protection (Art. 68 (1) of the Constitution), the right to ownership (Art. 64 (1) of the Constitution), and the right to safe and hygienic working conditions (Art. 66 (1) of the Constitution)[80]; 6) the right to information regarding the environment and its condition (Art. 74 (3) of the Constitution) as well as the general right to a fair trial (the administration of justice – Art. 45 (1) of the Constitution) [81]; and 7) freedom to use the environment as a concept resulting from the assumption that life and use of the environment are inscribed in the very nature of man[82] (cf. Art. 30 and Art. 31 (1) of the Constitution).

2. A contentious issue in the Polish legal literature is also the content of the 'right to the environment'. According to some authors, in the foreground is the right of an individual to use the environment in conditions of ecological security, which is correlated with the obligation of public authorities to conduct a policy ensuring ecological security for contemporary and future generations, in particular, the obligation to prevent the negative health effects of environmental degradation.[83] According to other researchers, this is a matter of 'human rights in environmental protection in Polish law'. These include the constitutional right to information regarding the environment, public participation in environmental protection proceedings, and access to justice.[84] In light of the next position, the right to the environment is a 'complex of rights' containing elements of personal freedom (relating to the use of elements of the environment to satisfy one's needs, which is free from interference by public authorities and other entities), political law (as an opportunity to influence the activities of public authorities that are important for the environment), and social law (imposing on the state the obligation to provide citizens with the environment necessary for their proper development).[85] According to another concept, we should distinguish the subjective right to ecological security, which has a superior position in determining all other types of rights and obligations in environmental protection.[86] This 'superior' right means, in material terms, the right of every human being to meet certain basic needs resulting from the use of

78 Cf. Paczuski, 1999, pp. 234-235.
79 Cf. Haładyj, 2002, p. 37; Karski, 2006, pp. 322–323.
80 Cf. Trzewik, 2016, pp. 238–239.
81 Cf. Jendrośka, 2002, pp. 29–32.
82 Cf. Rakoczy, 2006, p. 208.
83 Cf. Paczuski, 1999, pp. 234–235.
84 Cf. Jendrośka, 2002, pp. 29–32.
85 Cf. Trzewik, 2016, p. 209.
86 Cf. Korzeniowski, 2012, p. 381.

the environment and, moreover, the state of ecological security provided for by law and guaranteed to everyone.[87]

An interesting proposal was also expressed by B. Rakoczy. The starting point is the statement that the silence of the constitutional legislator in the matter of interest results in the need to seek unwritten regulation. Therefore, it is necessary to establish the reasons for which the environment is protected in the Constitution: human life and health, which results from the principle of sustainable development (Art. 5 of the Constitution) and requires implementation for the sake of man and their well-being.[88] Art. 68 (4) of the Constitution may be additionally highlighted here, indicating one of the measures guaranteeing the right to health protection, which is to prevent the effects of environmental degradation. This anthropocentric trend is the basis for considering whether, in the field of the environment, the freedom of the individual should not be included in the discussion. Freedom in its essence (unlike the 'right to the environment') is not defined by the subject law, which can only define the limits of the exercise of this freedom.[89] The source of freedom is natural law, which is objectively binding and irrespective of the declaration of its validity in positive law (here, in the Constitution).[90] In the opinion of B. Rakoczy, in this context, a very important issue should be noted that a man, regardless of any factors, lives in a specific environment and is its element and its most important user. He remains in the environment, can use the environment, and does so regardless of whether such a law is explicitly formulated. Life and the use of the environment are inscribed in the very nature and essence of man, and therefore, it is pointless to formulate such a law. Hence, it is appropriate to formulate the 'freedom to use the environment' as the possibility of using this environment to the full extent and, at the same time, to define the limits of this freedom at the statutory level. B. Rakoczy also noted that adopting this concept does not eliminate the admissibility of formulating positive laws; it is advisable and even necessary. However, these rights will always be secondary to that freedom. In reference to this, among its guarantees, B. Rakoczy mentions the principle of sustainable development under the Constitution (Art. 5 of the Constitution), guaranteeing the development of an individual and satisfying their personal needs, the right to information regarding the environment and its condition (Art. 74 (3) of the Constitution), and the right to live in a „favorable, clean, healthy, and friendly environment" (reconstructed on the basis of Art. 74 (2) of the Constitution).[91]

3. In the Polish Constitution, one can see provisions that clearly link a specific subjective right to the obligations of public authorities in the field of environmental protection. This applies to Art. 68 (4) in connection with Art. 68 (1) of the Fundamental Law. According to the first regulation, "Public authorities shall combat

87 Ibid., p. 380.
88 Rakoczy, 2006, pp. 207–208.
89 Cf. ibid., p. 208.
90 Cf. Garlicki, 2003b, pp. 4–5.
91 Rakoczy, 2006, pp. 208–210, 230.

epidemic illnesses and prevent the negative health consequences of degradation of the environment." They should be seen as complementary to the provisions of Art. 68 (1)[92]. The latter provision is the basis for deriving the "subjective right of an individual to health protection."[93] In the opinion of the Constitutional Court, the content of the indicated subjective right is not some abstractly defined (and in fact undefined) state of health of individuals but the possibility of using a healthcare system functionally oriented at combating and preventing diseases, injuries, and disabilities. At the same time, this system as a whole must be effective.[94] In turn, under Art. 68 (4) of the Constitution, a program norm follows,[95] and therefore, it cannot be considered a source of constitutional subjective rights. At the same time, it does not exclude treating it as a basis for assessing the constitutionality of statutory provisions. It *expressis verbis* imposes certain obligations on public authorities. However, they are so generally defined that Parliament is free to judge whether the adopted regulations are within the limits set out in Art. 68 (4) of the Constitution. The possibility of interference by the Constitutional Court is limited only to cases in which those obligations are manifestly breached.[96]

Against the background of the above-identified content of the right to health protection, it can be noted that the possibility of deriving implicit rights to the environment from it is highly doubtful. It is difficult to conclude that it falls within the scope of the individual's right to use the healthcare system in the institutional sense, meeting the defined conditions of effectiveness.

Next, when referring to the specific rights of an individual related to environmental protection, it is necessary to indicate Art. 74 (3) and (4) of the Constitution. The first provision specifies that everyone has the right to be informed regarding the state and protection of the environment. It is a specification of the more general right to information, including public information, resulting from Art. 54 (1)[97] and Art. 61 (1)[98] of the Constitution.[99] Art. 74 (4) of the Constitution states the obligation of

92 Trzciński, 2003, p. 2.

93 Cf. Judgment of the Constitutional Court of January 7, 2004, case ref. K 14/03 (OTK ZU no. 1/A/2004, item 1).

94 Judgments of the Constitutional Court: of March 23, 1999, case ref. K 2/98 (OTK ZU no. 3/1999, item 38); case ref. K 14/03; of September 29, 2015, case ref. K 14/14 (OTK ZU no. 8/A/2015, item 124); of December 4, 2018, case ref. P 12/17 (OTK ZU no. A/2018, item 71); Order of the Constitutional Court of June 5, 2019, case ref. SK 29/18 (OTK ZU no. A/2019, item 28).

95 Cf. Judgment of the Constitutional Court of July 22, 2008, case ref. K 24/07 (OTK ZU no. 6/A/2008, item 110); Trzciński, 2003, p. 4.

96 Cf. Judgment of the Constitutional Court, case ref. K 24/07.

97 Pursuant to this provision: "The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone."

98 Pursuant to this provision: "A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal or the State Treasury assets."

99 Cf. Garlicki, 2003a, p. 5.

public authorities to support citizens' activities for the protection and improvement of the environment. At the same time, both provisions of Art. 74 (similarly to Art. 68) are included in this sub-chapter of the Fundamental Law, which regulates "Economic, social and cultural freedoms and rights." According to the view presented by the Constitutional Court, they are "less" protected by the Constitution than "classical" (i.e., personal and political) rights and freedoms of man and citizen.[100]

Only Art. 74 (3) of the Constitution may be considered a source of a subjective right of an individual. However, a certain difficulty in assessing the nature of this provision results from Art. 81 of the Fundamental Law,[101] pursuant to which "the rights specified in Art. 65 (4) and (5), Art. 66, Art. 69, Art. 71 and Arts. 74–76, may be asserted subject to limitations specified by statute." Against this background, it is worth noting that thus far, the Constitutional Court has not expressed its position on the direct derivation of a subjective right from Art. 74 (3) of the Constitution.

In turn, the legal literature presents various views on this issue.[102] According to some authors, the above provision does not result in any constitutional subjective right because Art. 81 of the Constitution does not constitute an independent basis for its judicial investigation.[103] Nevertheless, a different opinion prevails: that Art. 74 (3) of the Constitution contains the same inherent right.[104] This thesis deserves approval, as the right to environmental information is a more detailed right to public information,[105] established in Art. 61 (1) of the Constitution, in regard to which the Constitutional Court clearly expresses itself as of a public subjective right, ensuring the possibility of effectively requesting specific behavior from public authorities, enforceable, if necessary, through appropriate procedural institutions.[106] Against this background, it is difficult to assess the legal situation of a citizen differently simply because they demand from the public authority access to information on specific content, namely that concerning the state of environment or environmental protection.

Additional arguments are provided by the case law of the Constitutional Court against the background of economic, social and cultural freedoms and rights listed in Art. 81 different to those specified in Art. 74 (3) of the Constitution. In the opinion

100 Cf. Judgments of the Constitutional Court: of November 10, 1998, case ref. K 39/97 (OTK ZU no. 6/1998, item 99); of June 29, 2005, case ref. SK 34/04 (OTK ZU no. 6/A/2005, item 69). See also Garlicki, 2003c, pp. 5–6.

101 Cf. Tuleja, 2006a, p. 220.

102 In general, there are no decisions of the Constitutional Court relating to Art. 74 (3) of the Constitution. This provision was mentioned exceptionally in the Judgment of December 18, 2018, case ref. SK 27/14 (OTK ZU no. A/2019, item 5), concerning the right to public information. The Court pointed out that information may be protected under regulations guaranteeing the protection of various goods, such as, inter alia, the right to information on the environment or the freedom of the press.

103 Tarnacka, 2009, p. 136.

104 Cf. e.g., Ciechanowicz and Mering, 1999, p. 476; Ciechanowicz-McLean, 2021, p. 7; Haładyj, 2003, p. 52; Krzywoń, 2012, p. 14; Rakoczy, 2006, pp. 220–223.

105 Cf. Garlicki, 2003a, p. 5; Rakoczy, 2006, p. 219.

106 Judgment of the Constitutional Court, case ref. SK 27/14.

of this court, the inclusion of a given right within the scope of Art. 81 of the Fundamental Law does not preclude it from being considered a public subjective right.[107] This provision reduces the scope of claims available to an individual but does not completely exclude them; thus, we can still speak of a constitutional subjective right. In this context, an objection that a statutory regulation is unconstitutional can only be raised when it falls "below a certain minimum of protection and will lead to a situation where a given right is devoid of its actual content." Compliance with Art. 74 (3) of the Constitution would, therefore, be limited, in particular, to examining whether the act clearly and unequivocally contradicts the essence of the right to information on the state and protection of the environment and whether it takes into account a certain minimum standard of requirements.[108]

The subject of the analyzed subjective right is "everyone", that is, both citizens and foreigners as well as legal persons and other organizational units, regardless of any circumstances related to these entities.[109] Art. 74 (3) of the Constitution does not clearly specify the addressee of the obligation to disclose environmental information. Due to the content of the other provisions contained in Art. 74 of the Fundamental Law, it includes 'public authorities' (i.e., the legislative, executive, and judiciary authority as well as institutions other than state and local government, provided that they perform the functions of public authority). The literature also includes the viewpoint that Art. 74 (3) of the Constitution also refers to 'horizontal' relations, which allows for demanding relevant information from non-public entities, provided that they have any impact on the condition or protection of the environment.[110]

In view of these doubts, it would be desirable to supplement Art. 74 (3) of the Constitution with an unambiguous indication of the addressee of the obligation, which would remove any possible interpretation disputes and strengthen the 'capacity' of this provision to being applied directly, in accordance with Art. 8 (2) of the Constitution.

At the same time, it should be noted that the Constitution does not *expressis verbis* provide for a broader right of public participation in the performance of public environmental tasks. However, in the literature on the subject and in the jurisprudence, the statutory provisions contained in the SIEA as well as those relating to public participation in environmental protection are considered to be a substantiation of the obligation resulting from Art. 74 (4) of the Constitution.[111] This provision of the Fundamental Law does not imply a subjective right but only a program norm

107 Cf. e.g., Judgments of the Constitutional Court: of November 24, 2015, case ref. K 18/14 (OTK ZU no. 10/A/2015, item 165); and of October 30, 2018, case ref. K 7/15 (OTK ZU no. A/2018, item 65).

108 Cf. Judgment of the Constitutional Court, case ref. K 18/14.

109 Cf. Garlicki, 2003a, p. 5; Rakoczy, 2006, p. 220.

110 Jabłoński and Wygoda, 2003, pp. 128–129; Węgrzyn, 2010, pp. 450–451. Cf. also Gardjan–Kawa, 1999, p. 115.

111 Górski, 2016a, point XII.1–XII.2; Korzeniowski, 2010, p. 467. Cf. Judgment of the Constitutional Court of July 1, 2021, case ref. SK 23/17 (OTK ZU no. A/2021, item 63).

addressed to public authorities (this issue is discussed in more detail in point 3.5 of this study).

4. Despite that the Constitution only exceptionally combines the subjective rights of an individual with obligations in the field of environmental protection, it is a common practice in the literature on the subject. In particular, the following regulations of the Constitution related to the environment can be indicated, usually in order, to justify the existence of the constitutional right to the environment: the right of access to information on the environment (Art. 74(3) of the Constitution), the right to life (Art. 38 of the Constitution), the right to a court (Art. 45(1) of the Constitution), the right to ownership (Art. 64(1) of the Constitution), and the right to safe and hygienic working conditions (Art. 66(1) of the Constitution).[112]

In the context of issues of public participation in environmental protection, it is also worth referring to Art. 63 of the Constitution,[113] which establishes the right to petition as a public subjective right vested "on the principle of universality (*actio popularis*) in the broadest sense (…), with every person, regardless of their citizenship or place of residence (seat), both a natural person and any collective entities (with and without legal personality)."[114] Its relationship with environmental issues has not yet been considered by the Constitutional Court. However, it is raised by representatives of the legal doctrine, especially through the lens of SIEA regulations, providing for the possibility of submitting comments and motions in proceedings that require public participation.[115]

On the other hand, pursuant to the jurisprudence of the Constitutional Court, a conclusion can be drawn that the relationship between environmental protection and the right to a fair trial as well as respect for property rights and other property rights is recognized.[116] In judgment of May 12, 2021, case ref. SK 19/15, attention was drawn to the fact that in administrative proceedings the subject of which is the right (license) to take actions that may have a negative impact on the environment, the status of a party (and thus the right to a court) to this entity that may suffer due to these interactions must be ensured. Similarly, in the judgment of the Constitutional Court of July 1, 2021, case ref. SK 23/17, the need for the legislator to reconsider the issue of the appropriate shaping of legal procedures guaranteeing public participation in proceedings leading to the adoption of air protection programs was signaled.

112 Trzewik, 2016, p. 239.

113 Pursuant to this provision: "Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person – with his consent – to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute."

114 Judgment of the Constitutional Court of July 12, 2016, case ref. K 28/15 (OTK ZU no. A/2016, item 56). See also Goleń, 2008, pp. 120–123.

115 Cf. Trzewik, 2016, pp. 118–121.

116 Cf. Judgments of the Constitutional Court: case ref. P 49/11; case ref. K 36/13; case ref. SK 23/17; of May 12, 2021, case ref. SK 19/15 (OTK ZU no. A/2021, item 25).

In the opinion of the Constitutional Court, this postulate is justified by the obligation of public authorities to support the actions of citizens for the protection and improvement of the environment (Art. 74 (4) of the Constitution). In the judgements of July 3, 2013, case ref. P 49/11, and of July 21, 2014, case ref. K 36/13, the Constitutional Court pointed to the important relationship between the liability of the State Treasury for damages caused by certain wild animals and the implementation of species protection of these animals. As the Constitutional Court stated, "depriving some of the entities of the right to claim compensation may have a negative impact on the implementation of species protection, as it does not lead to greater acceptance of the statutory prohibitions resulting therefrom. On the contrary, it can cause actions to be taken against such species to prevent damage and to protect property."[117]

5. While the establishment of a subjective right to the environment in the Constitution is the subject of fundamental doubts, the introduction of appropriate state tasks in the provisions of this act does not raise any controversy. The Constitutional Court identified such a task under Art. 5 of the Constitution,[118] according to which "the Republic of Poland (…) shall ensure the protection of the natural environment pursuant to the principle of sustainable development." According to the Constitutional Court, the content of the task is 'environmental protection', which can be understood as all actions (or omissions) that enable the preservation or restoration of natural balance, in particular involving the rational shaping of the environment and management of its resources in accordance with the principle of sustainable development, preventing pollution, and restoring natural elements to their proper condition (cf. Art. 3 (13) EPL).[119]

Similarly, in the opinion of the Constitutional Court, the source of the tasks of public authorities are Art. 74(1)[120] and Art. 74(2)[121] of the Constitution.[122] The concept of 'ecological security' in the first provision should be understood as obtaining such a state of the environment that allows for a safe stay in this environment and enables its use in a way that ensures human development. Environmental protection is among the elements of 'ecological security', but the tasks of public authorities are broader – they also include activities improving the current state of the environment and programming its further development.[123]

117 Judgment of the Constitutional Court, case ref. P 49/11.

118 Judgments of the Constitutional Court: case ref. Kp 2/09; case ref. SK 6/12. See also Czekałowska, 2015, p. 111; Wołpiuk, 2004, pp. 23–24.

119 Judgments of the Constitutional Court: of November 28, 2013, case ref. K 17/12 (OTK ZU no. 8/A/2013, item 125); case ref. K 23/05.

120 Pursuant to this provision: "Public authorities shall pursue policies ensuring the ecological security of current and future generations."

121 Pursuant to this provision: "Protection of the environment shall be the duty of public authorities."

122 Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12. See also Kosieradzka-Federczyk, 2012, p. 82.

123 Ibid. See also Jurgilewicz, 2013a, pp. 387-388; Jurgilewicz, 2013b, pp. 162-163; Jurgilewicz and Ovsepyan, 2017, p. 74; Korzeniowski, 2012, pp. 47–69; Trzcińska, 2020, pp. 18–27.

The norm establishing the tasks of public authorities is also in Art. 68 (4) and Art. 74 (4) of the Constitution. A public task can be defined to be such a legal order addressed to these authorities, which includes the maintenance or achievement of certain states of affairs that constitute the implementation of values distinguished for the common good. On the basis of these provisions, it is undoubtedly possible to reconstruct such positively qualified states of affairs as no environmental degradation or support for citizens' activity to protect and improve the state of the environment. They, in turn, serve to make the values of public health and the environment a reality.

The performance of the above tasks is mandated for public authorities. This concept refers to all authorities in the constitutional sense, namely legislative, executive, and judiciary. Moreover, this term also includes institutions other than state and local government, as long as they perform functions of public authority as a result of entrusting or delegating these functions to them by an organ of state or local government authority. In other words, the exercise of public authority concerns all forms of activity of the State, local government, and other public institutions used in the performance of public tasks.[124]

It is also worth noting that Arts. 5, 68 (4), 74 (1), 74 (2), and 74 (4) of the Constitution are the sources of the so-called program norms,[125] that is, norms prescribing the implementation of (or striving to achieve) a certain goal.[126] They have the nature of legal principles (as opposed to "rules"), namely optimization norms, that oblige the implementation of a certain state of affairs to the highest possible degree, taking into account the factual and legal possibilities. Their characteristic feature, therefore, is that they can be satisfied to a varying degree.[127] At the same time, they can be used as a criterion for assessing the constitutionality of regulations. In particular, the Constitutional Court examines whether a given act meets or is compliant with a specific program norm, that is, whether means have been chosen that, in light of empirical knowledge, lead to the achievement of the goal or whether the conflict of program norms has been properly resolved, such as the case in which one of the normative goals has been given proper weight over the another.[128] Program norms do not grant an individual 'positive' claims for a specific performance of public authority. At most, we can discuss the resulting 'negative' claims, that is, for creasing or refraining from certain actions or for counteracting behaviors that make it difficult or impossible to achieve the goal set in the program norm.[129]

124 Cf. Judgments of the Constitutional Court: of December 4, 2001, case ref. SK 18/00 (OTK ZU no. 8/2001, item 256); of January 20, 2004, case ref. SK 26/03 (OTK ZU no. 1/A/2004, item 3).

125 Cf. Judgments of the Constitutional Court: case ref. Kp 2/09; case ref. K 24/07; Czekałowska, 2015, p. 110–111; Dzieżyc, 2019, pp. 177–178; Gizbert-Studnicki and Grabowski, 1997, pp. 97–98, 111.

126 Gizbert-Studnicki and Grabowski, 1997, p. 97.

127 Ibid., p. 101.

128 Cf. Judgment of the Constitutional Court, case ref. K 24/07; Gizbert–Studnicki and Grabowski, 1997, p. 109-110.

129 Gizbert–Studnicki and Grabowski, 1997, p. 111–112.

6. Environmental protection as an object normalized by the Constitution also occurs in the context of the conditions for the admissibility of restrictions on constitutional freedoms and rights. Pursuant to Art. 31 (3) of the Fundamental Law, "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights." Therefore, the subjective rights of an individual are not absolute, and environmental protection considerations constitute a constitutionally legitimate justification for interference with human and civil rights and freedoms.[130] Additional constitutionality conditions are the statutory form of the introduced restriction and the preservation of its maximum limits, that is, 'necessity' and the prohibition of violating the 'essence' of rights and freedoms.[131] According to the established jurisprudence of the Constitutional Court, this 'necessity' consists of the requirements of usefulness, indispensability, and proportionality in the strict sense. Their evaluation leads to answering three questions concerning the analyzed limiting norm: 1) whether it is able to lead to the effects intended by the legislator (the norm's usefulness), 2) whether it is indispensable (necessary) to protect the public interest to which it is related (the need for the legislator to take action), and 3) whether its effects are in proportion to the burdens or restrictions imposed on a person or a citizen (proportionality *sensu stricto*).[132] On the other hand, the concept of the 'essence' of rights and freedoms is based on the assumption that within each specific right and freedom, it is possible to distinguish certain basic elements (core), without which such a right or freedom cannot exist at all, and certain elements additional (envelope/shell), which may be perceived and modified by the ordinary legislator in various ways without destroying the identity of a given right or freedom.[133]

The subjective rights in conflict with the protection of the environment that are assessed under Art. 31 (3) of the Constitution include, first and foremost, the freedom of engaging in business activity and having property.[134] This conclusion is confirmed, in particular, by several cases decided by the Constitutional Court.[135]

130 For more on this, see Rakoczy, 2006, *passim*.

131 Cf. Garlicki, 2001, p. 6.

132 E.g., Judgment of the Constitutional Court of July 6, 2011, case ref. P 12/09 (OTK ZU no. 6/A/2011, item 51).

133 Judgment of the Constitutional Court of January 12, 2000, case ref. P 11/98 (OTK ZU no. 1/2000, item 3).

134 Leśniak, 2013, p. 285.

135 Cf. e.g., Judgments of the Constitutional Court: of October 13, 2010, case ref. Kp 1/09 (OTK ZU no. 8/A/2010, item 74); case ref. SK 6/12; case ref. K 13/18.

4. Regulation of issues regarding responsibility

1. Pursuant to Art. 86 of the Constitution, "Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute." Against the background of this provision, the judgement of September 28, 2015, case ref. K 20/14, the Constitutional Court applauded the view presented in the doctrine, according to which the obligation to care for the state of the environment results in negative obligations, such as the prohibition of destroying or degrading elements of the environment and polluting water, air, or land, as well as in positive obligations, including, in particular, the imperative to prevent environmental damage and provide the environment's rational shaping.[136] However, it is difficult to deny M. Górski's statement on the legislator deliberately distinguishing between the concepts of "care for the state of the environment" (Art. 86, first sentence *in principio* of the Constitution) and "environmental protection" (Art. 5 and Art. 74 (2) of the Constitution). In this context, it should be recognized that 'care for the state of the environment' is narrower in scope than its 'protection'. Care should be taken not to deteriorate the condition of the environment, and the starting point for the assessment of the fulfillment of this obligation should be the condition of the environment at the time when the impact occurs. However, there are no grounds to recognize that the duty of care also includes improving the amelioration of the condition of the environment. This would be part of the obligation to 'protect the environment', which is understood as formative protection.[137]

2. Art. 86 of the Constitution is considered the basis for deriving the 'polluter pays' principle.[138] It is true that the Fundamental Law does not use the term 'pollution' and recognizes "the deterioration of the environment caused" as a premise of liability. However, this concept of liability is not autonomous due to the reference resulting from the second sentence of Art. 86 of the Constitution. Thus, it means a reference to the types of liability known to the Polish law system, i.e., penal *sensu stricto* for petty offenses, civil or administrative,[139] regulated in a number of acts (especially in the EPL, PREDA, CiC, and CrC). In particular, the above principle has an additional source in Art. 7 of the EPL, which already explicitly refers to 'pollution'. According to this provision, "Whoever pollutes the environment bears the costs of removing the effects of this pollution. Whoever may cause environmental pollution bears the costs of preventing this pollution." By 'pollution', the act refers to emissions that may be harmful to human health or the environment, may cause damage to material goods, may deteriorate the aesthetic value of the environment, or may conflict with other, justified ways of using the environment (EPL Art. 3 (49)). At the

136 OTK ZU no. 8/A/2015, item 123.
137 Górski, 2016b, point VI.2. Cf. also Kielin–Maziarz, 2020, p. 223; Rakoczy, 2006, pp. 240–241.
138 Haładyj, 2003, p. 54; Trzcińska, 2021, p. 144.
139 Ciechanowicz–McLean, 2021, p. 8; Haładyj, 2003, p. 55; Radecki, 2002, p. 38.

same time, analyzing the detailed instruments for the implementation of the 'polluter pays' principle (e.g., ordinary fees for using the environment or civil liability on a strict basis), including Art. 325 of the EPL,[140] it should be stated that the above rule applies not only to illegal activities but also to legal behavior. As a result, it often requires interpretation in isolation from the definition of pollution, approaching the principle of 'impactor pays'.[141] The issue of the legality or illegality of impact is not irrelevant – it will have an influence on the scope and extent of liability of the entity using the environment.

3. Both the obligation and the liability under Art. 86 of the Constitution rest with 'everyone'. In light of the case law of the Constitutional Court, this means that the addressees of this provision are natural persons, legal persons, and organizational units regardless of their nature or type of activity.[142] The thesis on a wide subjective scope of Art. 86 of the Constitution is confirmed in the literature on the subject. J. Boć and A. Haładyj mention the following in this framework: Polish citizens, foreigners, Polish, mixed, and foreign economic entities subject to the Polish legal order, other organizational units, and public administration bodies, namely the government and local government.[143] This is logically justified by J. Boć, who claims, "It is rather understandable that deterioration made physically by the citizens themselves would be clearly small (except in special cases). It is the economic entities that cause the basic and major deterioration and degradation of the environment."[144]

5. Strong protection of natural resources

The currently binding Constitution does not contain regulations that would specifically protect natural resources – in general or a particular one indicated by name[145] (understood through the lens of the definition contained in Art. 3 point 39 of the EPL[146]). This may come as a surprise due to the fact that the Constitution of 1952 introduced such a regulation, providing the following in Art. 12 (1): "National property, in particular: mineral deposits, basic energy sources, state land, waters, state forests (…) – is subject to special care and protection of the state and all citizens."

140 Pursuant to this provision: "The liability for damage made by the impact on the environment is not excluded by the circumstances that the activity being the reason for said damage is conducted under a decision and within its scope."
141 Pchałek, 2019, point 5. See also Borodo, 2016, p. 53; Jurgilewicz and Jurgilewicz, 2013, p. 64.
142 Judgment of the Constitutional Court, case ref. K 13/18.
143 Boć, 2000, p. 194; Haładyj, 2003, pp. 55–56.
144 Boć, 2000, pp. 194–195.
145 Cf. Habuda, 2019, pp. 119–120.
146 This is the meaning suggested by Haładyj and Trzewik, 2014, p. 30.

An attempt was made to amend the Constitution in the above scope by introducing a provision specifying special protection of forests owned by the State Treasury, not subject to ownership transformations (but with exceptions specified in the Act) and made available to everyone on an equal basis. According to the drafters of the amendment, the basis for introducing this special protection is the assumption that state forests are a national good, an essential element of national culture, and one of the natural foundations of civilization. For this reason, care for such forests and the duty of maintaining them in proper condition rests with the State. Such a valuable element of forest property requires forest management, which would be significantly difficult or even impossible in the event of changes in the ownership structure of state-owned forests. Such changes would also threaten the availability of forests for the population, which should be guaranteed as access to the 'common good'.[147] Despite these arguments, the proposed amendment did not obtain the required majority in the Sejm, for which only five votes of support were missing. MPs from the Law and Justice Parliamentary Club were against the act. They opted for the strict exclusion of the admissibility of ownership transformations of state forests, that is, for the exclusion of exceptions to this constitutional rule provided for in the act.[148]

A separate act, the Act of July 6, 2001, on Preserving the National Character of the Country's Strategic Natural Resources,[149] serves a similar purpose of displaying certain natural resources in the context of their increased protection. These types of elements include 1) groundwater and surface water in natural watercourses and in the sources from which these watercourses originate, in canals, lakes, and water reservoirs with a continuous inflow within the meaning of the provisions of the WL[150]; 2) waters of Polish maritime areas together with the coastal range and their natural living and mineral resources as well as natural resources of the bottom and interior of the earth located within the limits of these areas under the meaning of the Act of March 21, 1991 on Maritime Areas of the Republic of Poland and Maritime Administration[151]; 3) state forests; 4) mineral deposits not covered by the ownership of land real estate[152] under the meaning of the Act of June 9, 2011 – the Geological and Mining Law[153]; and 5) natural resources of national parks. At the same time, this catalog is subject to criticism in the legal doctrine, especially due to the fact that it does not cover certain categories of resources (e.g., 'biodiversity'), despite meeting the 'strategic' criterion[154] (a criterion that is not specified by statute, which causes doubts as to its meaning).

147 Druk sejmowy nr 2374/VII kadencja. Available at: https://bit.ly/35t2iDF (Accessed: 3 March 2022).
148 Cf. Szmyt, 2015, p. 25.
149 Journal of Laws of 2018, item 1235.
150 Water (without specifying its type) was also defined as "the basic natural resource of the earth" in the Judgment of the Constitutional Court of March 21, 2000, case ref. K 14/99 (OTK ZU no. 2/2000, item 61).
151 Journal of Laws of 2022, item 457.
152 Cf. Haładyj and Trzewik, 2014, pp. 37–38.
153 Journal of Laws of 2022, item 1072.
154 Cf. Haładyj and Trzewik, 2014, pp. 41–45.

6. Reference to future generations

In the Constitution, environmental issues were clearly referred to in regard to, in particular, "future generations." This was done in Art. 74 (1) of the Fundamental Law, according to which "Public authorities shall pursue policies ensuring the ecological security of current and future generation." The normative significance of this provision is discussed in more detail in section 3.5. The indicated regulation covers the so-called the program standard defining the task of public authorities. Its implementation is to serve the good of the present and future generations. In other words, the 'future generation' appears here as one of the main beneficiaries of designated activities of public authorities and the achievement and maintenance of the State of 'ecological security' (i.e., a state of the environment that "allows for a safe stay in this environment and enables the use of this environment in a manner ensuring human development"[155]). It is worth noting that in Art. 74 (1) of the Constitution, only in one case was given as a model of control exercised by the Constitutional Court, specifically in the judgment of June 6, 2006, case ref. K 23/05. Much more often, it appeared only as an element of strengthening the arguments of this Court while applying other control grounds resulting from the Constitution.[156]

The reference to 'future generations' is also included in the preamble to the Constitution. According to the relevant fragment, "We, the Polish Nation – all citizens of the Republic (…), obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage." In the opinion of the legal doctrine representatives, this 'intergenerational deposit' includes both tangible and intangible elements, including, for example, cultural heritage[157] as well as the natural environment and the environment transformed by man.[158] In this context, it is worth asking a question about the legal nature of the indicated provisions of the preamble. Above all, all of the doubts as to the normative nature of the preamble to the Fundamental Law should be recalled here.[159] In this regard, the view presented by the Constitutional Court in the judgment of December 16, 2009, case ref. Kp 5/08[160] is worthy of approval.

Pursuant to this judgment, the preamble being part of the text of the Constitution, its provisions may have a normative value in the context of a specific issue, especially in connection with the detailed provisions of the Constitution. This value manifests itself in various aspects: 1) it has an interpretative dimension, consisting in indicating

155 Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.

156 Judgments of the Constitutional Court: case ref. Kp 2/09; of June 7, 2001, case ref. K 20/00 (OTK ZU no. 5/2001, item 119); of July 25, 2006, case ref. P 24/05 (OTK ZU no. 7/A/2006, item 87); of July 9, 2012, case ref. P 8/10 (OTK ZU no. 7/A/2012, item 75); case ref. K 17/12; case ref. SK 6/12; of March 17, 2015, case ref. K 31/13 (OTK ZU no. 3/A/2015, item 31); of September 28, 2015, case ref. K 20/14 (OTK ZU no. 8/A/2015, item 123).

157 Zalasińska and Bąkowski, 2009, p. 264.

158 Cf. Bukowski, 2009, p. 461; Ciechanowicz-McLean, 2021, p. 8; Haładyj, 2003, p. 49.

159 For more on this, see Stefaniuk, 2009, pp. 63–78.

160 OTK ZU no. 11/A/2009, item 170.

the way of understanding both the remaining constitutional provisions and the entirety of the provisions that make up the Polish legal system; 2) it involves the use of the provisions of the preamble in the process of building constitutional norms by extracting from them elements of content for the norm being constructed (the so-called co-application situation); 3) consists in independent expression of a constitutional principle of a normative nature in a situation where there are no other constitutional provisions concerning the same issue[161] (e.g., the principle of subsidiarity).

A reference to the heritage of the Polish nation and future generations appeared in judgments of the Constitutional Court of May 25, 2016, case ref. Kp 2/15,[162] and of March 16, 2017, case ref. Kp 1/17[163]. At that time, it was an argument that strengthened the motives for the decision (the fragment of the preamble to the Constitution under analysis has not been used as a model for constitutional review thus far). In the first of the judgements, the above provisions of the preamble were referred to as the 'justification' for the purpose of the challenged provision of the Act, the aim of which was to increase the effectiveness of the protection of movable monuments of particular importance for the national heritage. Moreover, in the assessment of the Constitutional Court in case ref. Kp 2/15, the quoted fragment of the preamble is "an expression of the legislator's assumptions about the existence of an intergenerational bond" expressed in the values associated with a set of rules and directives to achieve them. "One of the means of maintaining the aforementioned intergenerational bond is passing on what is valuable from over one thousand years' heritage." Undoubtedly, this applies at least to the preservation of cultural goods.[164] In turn, in the judgment case ref. 1/17, the Constitutional Court has already clearly indicated that certain socially important values "are to be protected by public authorities and citizens, which results from the preamble to the Constitution (e.g., concern for the existence and future of the homeland and the common good, obligation to pass on to future generations all that is valuable from over a thousand years' heritage of the Republic of Poland (…))."[165]

Therefore, it can be assumed that the Constitutional Court recognizes the normativity of the fragment of the preamble to the Constitution referring to 'future generations'. This fragment includes the obligation to implement values, which is subject to co-application with other regulations of the Fundamental Law aimed at indicating and protecting specific values that make up the intergenerational deposit. In other words, the aforementioned 'heritage' aggregates constitutional values, which are, for example, a democratic state ruled by law, a healthy environment, national heritage, human life and health, human freedom, family, property or availability of public information, the universal or general values listed in the preamble to the Constitution,

161 Ibid.
162 OTK ZU no. A/2016, item 23.
163 OTK ZU no. A/2017, item 28.
164 Judgment of the Constitutional Court: case ref. Kp 2/15.
165 Judgment of the Constitutional Court: case ref. Kp 1/17.

which are derived from the Christian heritage of the Nation or other sources, the reliability and efficiency of public institutions, and subsidiarity.

In summary, both regulations, that is, Art. 74 (1) of the Constitution and the relevant fragment of the preamble, can be assessed as imposing specific obligations on the current generation, appearing here in the 'form' of public authority and 'the Polish Nation – all citizens of the Republic'. The beneficiaries are 'future generations', a concept that has been defined neither at the level of the constitutional law nor on the basis of the judgments of the Constitutional Court. However, taking into account the justification of the judgment, the case ref. K 23/05,[166] it is possible to point to a rather weak basis for considering, in the interpretation of the constitutional concept of 'future generations', of international documents relating to the concept of 'sustainable development', 'protection of the environment', and 'intergenerational solidarity'.

In this context, it is essentially about generations yet unborn (cf. 'Brief summary of the general debate' at the United Nation's Conference on the Human Environment, Stockholm, June 5–16, 1972),[167] "none of its members is alive at the time the reference is made."[168] Such an approach was also presented in more detail in the Report of the Secretary-General of United Nations' General Assembly, prepared after the United Nations' Conference on Sustainable Development 'Rio + 20' in Rio de Janeiro, Brazil, on June 20–22, 2012. The Report primarily uses the term 'future generations, who do not yet exist'[169] and quite clearly differentiates this concept from 'our children and grandchildren'.[170] The concept presented in the Report is important because the document refers to a very large extent to the international legal acquis concerning 'future generations' (treaties and declarations on regional and international levels).[171] For this reason, the concept can be considered authoritative in light of the sources of international law indicated above. It is also justified in the context of placing the concept of 'future generations' next to the term 'current generation' (Art. 74 (1) of the Constitution), because of which a specific 'continuity of the subjective scope of the entitled persons' is preserved.

A certain reinforcement for legitimacy of making reference to the 'international definition' is referring to the so-called 'existing concepts'. It is a mechanism of interpreting legal concepts, the meaning of which has not been exhaustively indicated

166 According to the relevant fragment: "Environmental protection is one of the elements of 'ecological security', but the tasks of public authorities are wider – they also include activities improving the current state of the environment and programming its further development. The basic method of achieving this goal is – prescribed by Art. 5 of the Constitution – by following the principle of sustainable development, which refers to international arrangements, in particular the conference in Rio de Janeiro in 1992."

167 Report of the United Nations Conference on the Human Environment. Stockholm June 5–16, 1972, p. 45 [online]. Available at: https://bit.ly/3w4z09k (Accessed: 15 March 2022).

168 Tremmel, 2009, p. 24.

169 Report of August 5, 2013, 'Intergenerational solidarity and the needs of future generations', pp. 7, 9, 14 [online]. Available at: https://bit.ly/3jWgHMa (Accessed: 21 April 2022).

170 Ibid., pp. 9–10, 32.

171 Cf. ibid., pp. 22–24.

in the Constitution, leading to the recognition that a given concept functions in its current and established meaning, resulting from tradition, legal doctrine, or jurisprudence as well as the law established earlier (i.e., before the entry of the Constitution into force).[172] Additionally, considering, the place in which the term 'future generations' appears in the Constitution of the Republic of Poland and its normative context, especially the properly applied Art. 37 (1) of the Constitution,[173] it should be assumed that it refers to the meaning of 'future types of people'.[174] Therefore, it refers to the collection of all future people with a set of properties,[175] that is, to the Polish nation and anyone who finds themselves under the authority of the Polish State. Following the indication contained in the judgment of the Constitutional Court, case ref. Kp 2/09 on the admissibility of cautious reference to the definitions contained in EPL regulations for the purposes of interpreting constitutional notions, it can be concluded that 'future generations' should be treated both in terms of individual persons (citizens) and particular communities (e.g., constituting commune, poviat, self-government voivodship, national minorities or the whole nation; cf. Art. 3 point 50 EPL). This shows the constitutional legislator's concern for the comprehensive inclusion in the activities of the 'contemporary generation' of the interests of 'future people', both individually and globally. It is also possible to approximate the time limits of this obligation very generally. As the preamble and Art. 74 (1) of the Constitution use the term 'future generations' (plural), they refer to at least two generations. According to various sources, the generation cycle lasts 30–40[176] or 20–25 years.[177] In other words, the indicated concept determines the period of at least several dozen years (depending on the concept, 80 or 50 years) counted from the reference moment.

7. Reference to sustainable development

The Constitution refers to the concept of sustainable development in Art. 5. At this point, it is worth quoting this provision in its entirety, rather than limiting only to its references to environmental protection. Therefore, according to this regulation, "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the

172 Cf. Judgment of the Constitutional Court of February 18, 2003, case ref. K 24/02 (OTK ZU no. 2/A/2003, item 11); Riedl, 2015, p. 95.
173 Pursuant to this provision: "Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution."
174 Cf. Herstein, 2009, pp. 1182–1187.
175 Ibid., p. 1182.
176 Kowalski, 2016, pp. 507–508.
177 Hysa, 2016, p. 387.

natural environment pursuant to the principle of sustainable development." It should be noted that this is a provision in the first chapter of the Fundamental Law, entitled 'the Republic'. Considering the jurisprudence of the Constitutional Court, this chapter contains "fundamental systemic principles",[178] "general principles",[179] "constitutional principles",[180] and "fundamental constitutional provisions which define the basic and most characteristic systemic features of the Republic of Poland."[181] Representatives of the doctrine of law indicate that "these principles are particularly important because they constitute the strongest foundations of a democratic state",[182] and the first chapter of the Constitution, which contains them, serves to gather "such provisions concerning the state and its relations with society, which should be distinguished from the brackets of further regulation" and "indication of constitutional principles determining the way of understanding and applying further provisions of the Constitution."[183]

Art. 5 of the Constitution and the 'principle' of sustainable development *expressis verbis* introduced in it raise serious problems of interpretation as to the content of this principle, its legal nature, and the subjective and objective scope.[184] These doubts have been resolved to some extent by the Constitutional Court in its jurisprudence. In particular, pursuant to the judgment in case ref. Kp 2/09, the above provision of the Fundamental Law indicates the basic goals and tasks of the State, that is, all public authorities of the Republic of Poland – both the legislative and executive authorities as well as judicial and local self-government bodies (i.e., bodies responsible both for establishing the law and law enforcement). The Court also states that although the concepts used in Art. 5 of the Constitution have an autonomous meaning, the reference in their context to statutory definitions is not a mistake in itself. Therefore, with caution, for the purposes of resolving specific cases, the Constitutional Court defines 'sustainable development' as "such social and economic development which extends to the process of integrating political, economic and social actions, with maintaining the environmental balance and sustainability of basic natural processes, with a view to guaranteeing the capability of satisfying basic needs of particular communities or citizens of both the present and future generations" (Art. 3 pkt 50 EPL). For the Court, this means the requirement that the interference with the environment should be as limited as possible (the least harmful),

178 E.g., Judgment of the Constitutional Court of February 23, 2010, case ref. P 20/09 (OTK ZU no. 2/A/2010, item 13).

179 E.g., Order of the Constitutional Court of December 14, 2004, case ref. SK 29/03 (OTK ZU no. 11/A/2004, item 124).

180 E.g., Judgment of the Constitutional Court of November 9, 2010, case ref. K 13/07 (OTK ZU no. 9/A/2010, item 98).

181 E.g., Judgment of the Constitutional Court of November 23, 1998, case ref. SK 7/98 (OTK ZU no. 7/1998, item 114).

182 Kruk, 1998, p. 9.

183 Garlicki, 2007a, p. 4.

184 Cf. Rakoczy, 2006, p. 148.

and the social benefits should be proportional and socially commensurate with the damage caused.[185]

In another judgment, case ref. K 17/12, the Constitutional Court responded to the nature of the principle of sustainable development. In this judgment, it assumed that this case is dealing with a 'systemic principle', which requires action that is 'more comprehensive' than that a directive of the State's policy to ensure ecological security for contemporary and future generations contained in Art. 74 (1) of the Constitution.

In subsequent judgments, the Constitutional Court has expressed its position on the issue giving rise to possibly the greatest number of disputes, namely the scope of application of the principle in question. Here, representatives of the legal doctrine adopt the following different solutions: 1) the principle of sustainable development applies only to the task of ensuring environmental protection,[186] 2) it relates to all 'functions of the State' listed in Art. 5 of the Constitution,[187] 3) it includes some of the functions indicated in this provision (not only environmental protection), [188] and 4) it concerns the tasks of the State listed in Art. 5 as well as other areas of social life or spheres of social relations.[189] In this context, the Constitutional Court held that:

> The principles of sustainable development include not only the protection of nature or shaping the spatial order, but also due care for social and civilization development, related to the need to build appropriate infrastructure, necessary for the life of man and individual communities, taking into account civilization needs. The idea of sustainable development therefore includes the need to take into account various constitutional values and to balance them accordingly.[190]

The Constitutional Court referred to the principle of sustainable development several times in matters related to the financing of local government units, in particular the so-called income equalization system for these units.[191] On this ground, it stated, inter alia, that the above principle is one of the foundations for introducing a mechanism ensuring protection for financially weaker local communities.[192]

185 Judgment of the Constitutional Court, case ref. Kp 2/09. See also Judgment of the Constitutional Court of July 10, 2014, case ref. 19/13 (OTK ZU no. 7/A/2014, item 71).
186 Rakoczy, 2021, p. 125; Wołpiuk, 2004, p. 22.
187 Haładyj, 2003, p. 48; Kielin–Maziarz, 2020, p. 215.
188 Bukowski, 2009, p. 456.
189 Rakoczy, 2006, p. 150; Skrzydło–Niżnik and Dobosz, 2003, pp. 624–625.
190 Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12; similarly: Judgment of the Constitutional Court, case ref. K 20/14.
191 Judgments of the Constitutional Court: of April 9, 2002, case ref. K 21/01 (OTK ZU no. 2/A/2002, item 17); of January 31, 2013, case ref. K 14/11 (OTK ZU no. 1/A/2013, item 7); of March 4, 2014, case ref. K 13/11 (OTK ZU no. 3/A/2014, item 28); of March 6, 2019, case ref. K 18/17 (OTK ZU no. A/2019, item 10).
192 Judgments of the Constitutional Court: case ref. K 14/11; case ref. K 13/11; case ref. K 18/17.

In summary, the Constitutional Court unequivocally declared the necessity of applying the principle of sustainable development (Art. 5 of the Constitution) in a broader subject scope than environmental protection, even opting for the independent (autonomous) nature of this principle,[193] which, in its essence, includes the "mechanism of weighing values."[194] It should be emphasized that in this approach, the Constitutional Court departed from the use of the definition contained in Art. 3 point 50 of the EPL to clarify the constitutional concept.

To show the full normative meaning of Art. 5 of the Constitution, it is worth recalling the findings contained in point 3.5. of this study. They show that the indicated provision contains the so-called program norm based on which the Constitutional Court formulates "applicable" criteria for the control of the constitutional nature of the law. Moreover, it is worth noting that the jurisprudence of the Constitutional Court does not contain sufficient grounds for recognizing sustainable development as a constitutional value (rather, it is called an 'idea'[195]). This position is worthy of approval. According to the definition adopted in some judgments based on Art. 3 point 50 of the EPL as well as in a broader sense, the content of 'sustainable development' is richer – two groups of values are encoded in it, namely socioeconomic development and the appropriate state of the environment (or any other value that conflicts with the 'pro-development' value), as are the guidelines for weighing these values (integrating them, ensuring the possibility of meeting the basic group or individual needs of the contemporary generation of adults and children and future generations). Therefore, the 'principle of sustainable development' means the order in which to implement the above-mentioned positive states using the above 'axiological calculus mechanism'. Thus, 'sustainable development' is not an element of the 'world of values' but, rather, belongs to the 'sphere of describing the way in which they are actually implemented'. This is confirmed by the view of the Constitutional Court expressed in the judgment of June 6, 2006, case ref. K 23/05, according to which 'the idea of sustainable development includes (…) the need to take into account various constitutional values and balance them accordingly.'[196]

The normative significance of the principle of sustainable development is also considered by administrative courts. According to the Supreme Administrative Court, it serves primarily as an interpretation directive when doubts arise as to the scope of obligations as well as their type and manner of implementation. Therefore, its function is similar to the principles of social coexistence or socioeconomic purpose in civil law. At the same time, SAC emphasizes that, in the first place, the legislator is obliged to take into account the principle of sustainable development in the law-making process, but on the other hand, this principle should be taken into account by the authorities applying the law. Sometimes, the actual state of affairs requires

193 Cf. Bukowski, 2009, p. 609.
194 Cf. Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.
195 Cf. ibid.
196 Cf. also Judgments of the Constitutional Court: case ref. K 20/14; case ref. K 17/12.

consideration and balancing of more favorable solutions,[197] applying the principle of sustainable development. This means that wherever there is an interference in the environment, care should be taken not only to ensure that the interference is as small as possible (the least harmful) but that the achieved social benefits are at least proportional and socially adequate in relation to the losses that occur.[198]

8. Other values relevant to the protection of the environment and future generations in the Constitution

The analysis of the text of the Constitution in terms of indirect references to the requirements of environmental protection and future generations allows for a conclusion that they are noticeable particularly on the basis of the fundamental axiological assumptions of the constitution. Of course, they should be treated in normative categories, that is, the disclosure of values recognized by the constitutional legislator, which should also guide the ordinary legislator and other entities creating or applying the law.[199] In this context, the preamble has a special value in conjunction with Arts. 1, 2, 5, and 82 of the Constitution. According to the relevant excerpts:

> We, the Polish Nation – all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources, equal in rights and obligations towards the common good – Poland, beholden to our ancestors for (…) our culture rooted in the Christian heritage of the Nation and in universal human values (…), obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage (…), hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice (…). We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.

197 E.g., Judgments of the Supreme Administrative Court: of March 19, 2019, case ref. II OSK 1097/17 (https://bit.ly/3tfEtIx); of September 11, 2019, case ref. II OSK 2155/18 (https://bit.ly/3IeV9nN); of May 26, 2020, case ref. II OSK 3327/19 (https://bit.ly/36mObzG) (Accessed: 16 March 2022).

198 E.g., Judgments of the Supreme Administrative Court of October 1, 2019, case ref. II OSK 2050/18 (https://bit.ly/3qafJiW); of December 2, 2021, case ref. I OSK 171/21 (https://bit.ly/3w8hsZW) (Accessed: 16 March 2022).

199 Stefaniuk, 2009, pp. 285–286.

The above-mentioned rights and obligations toward the 'common good' as a subject of regulation have also been repeated in Art. 1 ("The Republic of Poland is the common good of all its citizens") and Art. 82 of the Constitution ("(…) concern for the common good is the duty of every Polish citizen"). Respect for justice is detailed in Art. 2 of the Fundamental Law ("The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"). A reference to "all that is valuable from over a thousand year's heritage" can be found in Art. 5 of the Constitution ("The Republic of Poland shall (…) safeguard the national heritage (…)").

First, when referring to the 'Christian heritage of the Nation', it is worth remembering that the preamble reflects the philosophical and religious pluralism of the society (cf. also Art. 25 (1) and (2) of the Constitution). Nevertheless, from the perspective of tradition, Christian heritage is an essential element that creates the identity of today's Poland.[200] Therefore, by its very nature, it determines the axiological foundations of the Republic of Poland, especially in terms of the general human values rooted in this heritage.

In the above context, it should be noted that the achievements of Christian thought (starting from the message of the Bible, through the teaching of the Magisterium of the Church, especially the last 'eco-oriented popes') are also a command of responsible care for the world (including nature) created by God and entrusted to man who as "the gardener of paradise" is to "cultivate it and look after it."[201] According to St. John Paul II, this 'ecological concern' includes the awareness of the limited resources available, the need to respect the integrity and rhythms of nature, take them into account when programming development, and not sacrifice them for demagogic ideas.[202] It is also a reaction to the 'ecological crisis' that is a call for the entire human family to protect 'our common home', to 'ecological conversion' in the personal and community dimensions, and to unite in the pursuit of sustainable and integrated development.[203] Hence, the view expressed by Professor Szilágyi is worthy of approval, according to which "Christian culture and Christianity (…) can also be seen as an institution that helps to protect the interests of future generations and embodies the traditional element of environmental protection."[204]

Referring, then, to the catalog of the so-called universal values declared in the preamble to the Constitution, 'beauty' deserves to be exposed from the environmental perspective. Its definition raises serious cognitive problems (whether it is an objective property of objects and states of affair, or a property of the mind: 'beauty is in the eye of the beholder', or maybe beauty is neither objective nor subjective but universal and intersubjective [in within the species][205]). However, for our needs, it is

200 Cf. Garlicki, 2007b, pp. 9, 11.
201 Podzielny, 2014, pp. 1–4.
202 St. John Paul II, 1987, point 26.
203 Francis, 2015, pp. 12–13, 171–174.
204 Szilágyi, 2021, p 138.
205 Skolimowski, 2003, p. 1.

enough to signal that this value is quite commonly related to the feature that characterizes 'nature', the 'natural world', or 'landscape'.[206] In other words, 'striving for beauty' is especially about caring for the (natural) environment and its individual natural elements.

The relevant fragment of the preamble in connection with Arts. 1 and 82 of the Constitution may additionally be the basis for the conclusion that "the subject of protection by public authorities and citizens' is to be, inter alia, 'common good'."[207] By accepting the views expressed in the literature, the Constitutional Court understands this good to be the sum of "conditions of social life enabling the integral development… of members of the political community."[208] One such condition should undoubtedly be the appropriate state of the environment. Moreover, this is unequivocally confirmed by the jurisprudence of the Constitutional Court, which in the judgment of September 28, 2015, stated that "the Constitution treats the environment as a common good subject to special protection."[209]

The preamble mentions the "duty of solidarity with others" among the "principles" that are "the unshakable foundation of the Republic of Poland." The source of this principle is also seen in Arts. 1 and 2 of the Constitution.[210] Thus, solidarity is a constitutional value that must be respected by both public authorities and citizens. The very concept of solidarity means concerted and joint striving and action as well as supporting each other.[211] This general idea, to which, at the same time, the preamble gave the character of a legal norm-principle, should be implemented in the manner specified in other norms of the Constitution[212] (i.e., inter alia, in Arts. 5 and 74 (1)). This, in turn, makes it possible to perceive the indicated obligation, in particular in the relations between the existing generations (intergenerational solidarity) and between the present generations and the unborn ones (intergenerational solidarity).[213] In other words, the constitutional 'solidarity' is also the normative basis for protecting the interests of future generations.

In the opinion of the Constitutional Court, the imperative to implement the values of solidarity can also be seen in the 'principle of social justice'[214] resulting from Art. 2 as well as from the preamble to the Constitution. Among the many

206 Gorlewska, 2017, pp. 118–119, 123.

207 Judgment of the Constitutional Court of March 16, 2017, case ref. Kp 1/17 (OTK ZU no. A/2017, item 28).

208 Judgment of the Constitutional Court of September 21, 2015, case ref. K 28/13 (OTK ZU no. 8/A/2015, item 120); Piechowiak, 2012, p. 433; similarly: Judgment of the Constitutional Court, case ref. Kp 1/17.

209 Case ref. K 20/14.

210 Cf. e.g., Judgment of the Constitutional Court of December 19, 2012, case ref. K 9/12 (OTK ZU no. 11/A/2012, item 136).

211 Pułło, 2015, pp. 334–335.

212 Mędrzycki, 2021, pp. 113, 148–149.

213 Ibid., p. 113.

214 Judgment of the Constitutional Court of July 12, 2012, case ref. P 24/10 (OTK ZU no. 7/A/2012, item 79).

approaches to the content of this principle, the following can be mentioned, which is presented in the jurisprudence:

> Social justice is the measure by which we evaluate the distributive aspects of the fundamental structure of society (…). [All] disputed values – freedom and opportunity, income and wealth, and the basis of self-respect – are to be distributed equally, unless the unequal distribution of any (or all) of these values is to everyone's advantage.[215]

The Constitutional Court thus links the concept of social justice with equality, especially in the distribution of goods and of people associated therewith.[216] It is true that the judicature of this Court does not clearly link the principle of social justice with the protection of future generations; however, it may occur as a result of the interpretation of Art. 2 of the Constitution in the context of the preamble to the Fundamental Law and its fragment: "obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage". On these grounds, 'social justice' assumes both 'intra-generational justice' and 'intergenerational (intergenerational) justice', and the principle of social justice thus also applies to intergenerational relations.[217] Thus, the implication of this principle is also that the redistribution of goods in society requires taking into account the interests not only of the present but also the future generations. It is worth noting that they include, in particular, ensuring a 'healthy environment' or 'ecological security'. Moreover, all of these elements are aggregated by the principle of sustainable development, which assumes. among other things, environmental protection, 'intra-generational justice', and 'intergenerational justice'.[218]

Another element of significant importance from the perspective of the protection of the interests of future generations is Art. 5 of the Constitution in connection with the relevant fragment of the preamble, which provides for "safeguarding the national heritage." As indicated by the Constitutional Court in one case, ref. Kp 2/15, the concept of 'the national heritage' has not been defined at the constitutional level, but the linguistic context in which it occurs allows us to assume that the constitutional legislator referred to "generational solidarity and the continuity of the cultural and systemic traditions of the Republic of Poland."[219] In the literature on the subject, the term is not understood uniformly; in particular, according to some authors, it should be equated with the term 'the national cultural heritage', which appears in Art. 6 (2)[220] of

215 Judgments of the Constitutional Court: of December 22, 1997, case ref. K 2/97 (OTK ZU no. 5-6/1997, item 72); of December 2, 2008, case ref. P 48/07 (OTK ZU no. 10/A/2008, item 173).
216 Cf. ibid.
217 Cf. Papuziński, 2014, pp. 17–20, 28.
218 Bukowski, 2009, pp. 31–32, 37; Nyka, 2016, pp. 356–357.
219 Judgment of the Constitutional Court, case ref. Kp 2/15.
220 Pursuant to this provision: "The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage."

the Constitution.[221] However, the view according to which 'the national heritage' has a broader meaning is worthy of approval. It includes not only 'the national cultural heritage'[222] but – related to a specific nation[223] – all "cultural, scientific and other goods, both tangible and intangible, left to future generations."[224] Such a broader approach is also indicated by the Constitutional Court in the judgment cited above, defining 'the heritage' (Art. 5 of the Constitution) through the lens of the term "all that is valuable from our over one thousand years' heritage" included in the preamble of the Constitution. At the same time, in its jurisprudence, the Constitutional Court endorses the view expressed in the literature that 'the cultural heritage' consists of "the stock of immovable and movable property, together with related values, historical and moral phenomena, considered worthy of legal protection for the good of society and its development and transmission to future generations."[225]

In this way, both the Court and the representatives of legal science emphasize the interesting relationship between the protection of future generations and the 'national heritage'. At the same time, in the context of the latter term, it is worth paying attention to one more important element. There are arguments that the term 'national heritage' also includes the so-called 'natural heritage'.[226] When interpreting the constitutional concept, it should be taken into account that the analogous term – 'the world heritage' – appears in the Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted by the General Conference of the United Nations at its 17th session in Paris on November 16, 1972).[227] In addition, it is also worth considering the relevant provisions of the NCA Act, namely Art. 4 (1), according to which nature is "national heritage and wealth." The analyzed constitutional concept contained in Art. 5 of the Constitution is autonomous in relation to the international or statutory order, but it does not seem incorrect to also perceive its meaning in terms of 'environmental or natural goods' that should be passed on to future generations.

With regard to the protection of future generations, it can further be mentioned that the Constitution provides for special care for children, that is, persons under 18 years of age.[228] Of course, as entities endowed with the attribute of inherent and inalienable dignity, they are also rightful beneficiaries of constitutional guarantees relating to human rights and freedoms (only due to the specificity of certain rights is a child unable to use them to the full extent).[229] Nevertheless, Art. 72 (1) and the

221 Sarnecki, 2007, p. 2.
222 Sobczak, 2018, p. 196.
223 Zeidler, 2004, p. 345.
224 Ibid., p. 344.
225 Judgments of the Constitutional Court: of October 8, 2007, case ref. K 20/07 (OTK ZU no. 9/A/2007, item 102); case ref. Kp 2/15.
226 Maciejko, 2009, p. 26.
227 Journal of Laws of 1976 No. 32, item 190.
228 Judgment of the Constitutional Court of October 11, 2011, case ref. K 16/10 (OTK ZU no. 8/A/2011, item 80); Bucoń, 2020, p. 13; Morawska, 2007, p. 127.
229 Bielecki, 2019, pp. 7, 22; Morawska, 2007, pp. 127–128.

first sentence of the Constitution[230] clearly established the "constitutional principle of the protection of the good (welfare) of the child",[231] also referred to as a program norm, which does not provide for any subjective right.[232] Moreover, the 'good of the child' should be considered an intrinsic and exceptionally important constitutional value, complementing the wider value that is the good of the family.[233] According to the Constitutional Court, the concept of the 'protection of the rights of the child' used in the indicated provision of the Constitution should be understood as an imperative to ensure protection of the interests of the minor who, in practice, may pursue it independently to a very limited extent.[234] This concept covers many different types of rights provided for in the Constitution, including the right of the child to be brought up in the family (Art. 18 in conjunction with Art. 48 (1) of the Constitution), protection of the child in employment (Art. 65 (3) of the Constitution), special protection of the child's health (Art. 68 (3) and (5)) of the Constitution), the child's right to education (Art. 70 (1), (2), and (4) of the Constitution),[235] the right to request that public authorities protect the child against violence, cruelty, exploitation, and demoralization (Art. 72 (1) – second sentence of the Constitution), the right to care and assistance of public authorities for a child deprived of parental care (Art. 72 (2) of the Constitution), and the obligation to hear and, as far as possible, take into account the opinion of the child by public authorities and persons responsible for the child in the process of determining the rights of the child (Art. 72 (3) of the Constitution).[236] A very important institutional guarantee for the protection of children's rights is also the establishment of the Ombudsman for Children's Rights (Art. 72 (4) of the Constitution) at the level of the Fundamental Law.

Taking into account the findings made in point 6 of this study, the constitutional values underlying the protection of children's rights may be considered elements of the 'intergenerational deposit' which, in accordance with the relevant fragment of the preamble to the Constitution, should be passed on to 'future generations.' Thus, this normative imperative expresses the relationship between the above-mentioned protection and the protection of the rights of future generations as an expression of the intergenerational bond.

Child protection is closely related to Art. 18 of the Constitution, which provides for the protection and care of the Republic of Poland over marriage, family, motherhood, and parenthood. The right to parentage derives from this regulation

230 Pursuant to this provision: "The Republic of Poland shall ensure protection of the rights of the child."

231 Judgment of the Constitutional Court of April 28, 2003, case ref. K 18/02 (OTK ZU no. 4/A/2003, item 32); Bucoń, 2020, p. 12.

232 Stadniczeńko, 2017, p. 15.

233 Judgments of the Constitutional Court: of November 15, 2000, case ref. P 12/99 (OTK ZU no. 7/2000, item 260); of June 29, 2016, case ref. SK 24/15 (OTK ZU no. A/2016, item 46).

234 Judgments of the Constitutional Court: case ref. K 18/02; of September 27, 2017, case ref. SK 36/15 (OTK ZU no. A/2017, item 60).

235 Judgment of the Constitutional Court, case ref. SK 36/15.

236 Cf. Blicharz, 2021, p. 16.

(especially from the protection of parenthood). This means a prohibition of taking actions that limit the freedom of having children as well as a prohibition of taking actions forcing one to have children. In particular, his right applies i to the voluntary decision to conceive a child and belongs to both the mother and the father.[237] At the same time, it can be noted that the Constitution contains regulations that are intended to encourage people to have children. These include provisions obliging public authorities to provide special healthcare for children and pregnant women (Art. 68 (3) of the Constitution) and special assistance to mothers before and after childbirth (Art. 71 (2) of the Constitution).

9. Financial sustainability

In the decision of January 12, 1995, case ref. K 12/94, the Constitutional Court stated that "Ensuring budget balance is a constitutional value, as it determines the State's ability to act and resolve its various interests"[238]. It was then confirmed in subsequent judgements, incl. in judgment of November 24, 2009, case ref. SK 36/07, in which the Court noted that this value was not expressed directly in a specific provision of the Constitution.[239] At the same time, other judgments of the Constitutional Court found the sources of the imperative (value) to maintain the budget balance or, more broadly, the protection of the proper state (balance) of public finances, in Art. 216 (5) and Art. 220 (1) in conjunction with Art. 1 of the Constitution.[240] Additionally, judgments in which the 'budget balance' is combined with the principle of social justice (cf. Art. 2 of the Constitution) can be indicated as 'the constitutive value' of this justice.[241] It is also worth noting the view of the Constitutional Court expressed in the judgment of July 12, 2012, case ref. P 24/10[242]:

> The recognition (…) of [budgetary balance, public finance] as a constitutional value is supported primarily by the principle of the common good, proclaimed in Article 1 of the Fundamental Law (detailed regulations concerning the financial security of the state are, however, specified in Chapter X of the Constitution), and not – as it was sometimes pointed out in jurisprudence – the principle of social justice, expressed in its Art. 2.

237 Cf. Judgment of the Constitutional Court of May 28, 1997, case ref. K 26/96 (OTK ZU no. 2/1997, item 19); Dobrowolski, 1999, p. 25.
238 OTK ZU 1995, item 2.
239 OTK ZU no. 10/A/2009, item. 151.
240 E.g., Judgment of the Constitutional Court of December 12, 2012, case ref. K 1/12 (OTK ZU no. 11/A/2012, item. 134) and the case law cited there.
241 E.g., Judgment of the Constitutional Court of September 5. 2006, case ref. K 51/05 (OTK ZU no. 8/A/2006, item 100). Cf. Gorgol, 2014, pp. 28–29.
242 OTK ZU no. 7/A/2012, item 79.

In accordance with Art. 216 (5) of the Constitution, "It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute." According to the Constitutional Court, the purpose of this regulation is to counteract excessive state indebtedness, which is to prevent the deficit from growing in the upcoming budget years and increase Poland's economic credibility in the international arena. The addressees of the above prohibition are 'public authorities' empowered to borrow or grant guarantees and sureties, in particular, the Council of Ministers and the National Bank of Poland. Indirectly, the provision also applies to Parliament, which cannot pass laws resulting in the State being burdened with public debt exceeding the indicated debt limit.[243]

According to Art. 220 (1), "The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the draft Budget." The Constitutional Court has defined the purpose of this provision as "achieving a budget balance, a state in which state budget expenditure is covered by income." The Court also noted that the legislator *expressis verbis* admitted the existence of a budget deficit.[244] Thus, it did not order the achievement of full budget balance; on the contrary, it assumed the existence of a certain deficit that is limited in size. Therefore, the (relative) balance should be understood as maintaining the deficit in the amounts specified in the draft budget act.[245] Obviously, Art. 220 (1) does not imply a government obligation to plan 'some' deficit.[246] It would be irrational to claim that, in particular, the planning of a budget surplus in the draft violates the provisions of the Constitution.

The Constitutional Court has emphasized several times in its jurisprudence that the values of budget balance and the proper condition of public finances are placed very high in the hierarchy of constitutional goods because the State's ability to act and solve its various problems depends on their implementation.[247] Moreover, in the opinion of the Court, the necessity to protect these values sets the limits for the implementation of the rights and freedoms expressed in the Constitution (especially those of a social nature) and may constitute an independent premise for their limitation on the basis of Art. 31 (3) of the Constitution.[248] However, this view is the subject of criticism in the literature, especially due to the lack of an explicit

243 Judgment of the Constitutional Court, case ref. K 1/12.
244 Ibid.
245 Sokolewicz, 2005, p. 1.
246 Zubik, 2000, p. 11.
247 Judgment of the Constitutional Court, case ref. K 1/12, and the case law cited there.
248 Ibid.; e.g., Judgment of the Constitutional Court of December 7, 1999, case ref. K 6/99 (OTK ZU no. 7/1999, item 160).

introduction of such a limiting premise by the indicated provision of the Fundamental Law.[249] In this context, however, the thesis of the Constitutional Court expressed in the judgment of July 14, 2015, case ref. SK 26/14,[250] should be noted. According to this judgment, maintaining the budget balance may be 'translated' into the category of 'state security' (in the financial dimension) resulting from Art. 31 (3) of the Constitution. At the same time, in the opinion of the Court, it does not have absolute precedence over other constitutionally protected values, and it cannot be a mere, automatic justification of unjust decisions.[251] In addition to assigning 'budget equilibrium' as a 'constitutional value', the Constitutional Court also employs the concept of the 'principle of budget equilibrium'.[252] With some caution, resulting from the few statements of this Court in the indicated scope, one may risk a thesis that we are dealing with a systemic principle.[253] It does not have an absolute value and is – similar to other rules – subject to weighing in the constitutionality assessment of a statutory regulation.[254]

In the context of the findings thus far (cf. point 6 of this study), it is worth noting that despite the lack of explicit reference in Arts. 216 (5) and 220 (1) of the Constitution, there are grounds for relating the budget balance (public finances) to the interests of future generations. This requires approval of the normative nature of the preamble to the Constitution, in particular, in the scope in which it concerns the obligation to pass on to future generations "all that is valuable from over one thousand years' of heritage." The proper condition of public finances can be considered the value that makes up this 'intergenerational deposit'.[255] In addition, the Constitutional Court clearly identified the axiological foundations of Arts. 216 (5) and 220 (1) of the Constitution in its preamble and the "idea of solidarity, including intergenerational one" expressed therein.[256] Moreover, one of the judgments of this body reads as follows:

> Keeping an unbalanced state budget for a long time, which may be influenced by subsidizing the pension fund, is living on credit for future generations, because it limits their development opportunities, and thus is a failure to hand over to them the state in a condition that is at least not deteriorated.[257]

249 Sokolewicz, 2005, pp. 5–6.
250 OTK ZU no. 7/A/2015, item 101.
251 Ibid.
252 E.g., Judgments of the Constitutional Court: of December 13, 2004, case ref. K 20/04 (OTK ZU no. 11/A/2004, item 115); of February 21, 2006, case ref. K 1/05 (OTK ZU no. 2/A/2006, item 18); of January 27, 2010, case ref. SK 41/07 (OTK ZU no. 1/A/2010, item 5); of June 17, 2020, case ref. SK 26/19 (OTK ZU no. A/2020, item 28).
253 Cf. Judgment of the Constitutional Court, case ref. SK 41/07.
254 Cf. Dissenting opinion of the Judge Mirosław Granat to the Judgment of the Constitutional Court of November 4, 2015, case ref. K 1/14 (OTK ZU 10/A/2015, item 163); Sokolewicz, 2005, p. 5.
255 Cf. Judgments of the Constitutional Court: case ref. Kp 2/15; case ref. Kp 1/17.
256 Judgment of the Constitutional Court of May 7, 2014, case ref. K 43/12 (OTK ZU no. 5/A/2014, item 50).
257 Ibid.

Moreover, in the literature on the subject, attention is drawn to the fact that the impulse to ensure special protection of the level of the budget deficit assumed in the government bill draft is "care that the public debt resulting from the deficit does not overburden future generations."[258]

10. The protection of national assets

First, it should be noted that the Constitution does not use the concept of 'national assets'. The Constitutional Court refers to it extremely rarely,[259] at the same time providing no arguments for the existence of a need for a wider introduction or a specific definition of the indicated term.[260] However, the Fundamental Law uses the terms 'the State Treasury assets' and 'the State assets'. They appear in various normative contexts, namely the subjective and objective scope of access to public information, restrictions on the economic activity of members of parliament, the scope of control of the Supreme Audit Office, and references to the regulation of certain issues in the act (cf. Arts. 61 (1), 107 (1), 203 (3), and 218 of the Fundamental Law).

Importantly, none of these regulations provide for the protection of this property, nor do they explicitly refer to the principle of sustainable development or the interests of future generations. The Fundamental Law also does not contain a definition of the analyzed concept, nor does it indicate – even for the sake of an example – the assets of the 'State' or 'State Treasury'. To a very limited extent, this concept is approximated in the jurisprudence of the Constitutional Court, according to which the "assets of the State Treasury (…) are a public property serving the society and the entire state as an organizational structure (…). Its purpose and protection are ultimately to serve the common good."[261] The concept of state assets "includes the assets of the State Treasury and the assets of state legal persons."[262]

State property is protected pursuant to the provisions of the Constitution relating to 'non-adjective property', namely Art. 21 (1) of the Constitution ("The Republic of Poland shall protect ownership and the right of succession"). At the same time, it should be emphasized that 'ownership' in this provision is autonomous in relation to the civil law approach and is considered a synonym for 'assets' (a total

258 Sokolewicz, 2005, p. 13.

259 Judgments of the Constitutional Court: of June 10, 2003, case ref. K 16/02 (OTK ZU no. 6/A/2003, item 52); of April 24, 2007, case ref. SK 49/05 (OTK ZU no. 4/A/2007, item 39).

260 Ibid.

261 Judgment of the Constitutional Court of October 18, 2016, case ref. P 123/15 (OTK ZU no. A/2016, item 80).

262 Judgment of the Constitutional Court of March 21, 2000, case ref. K 14/99 (OTK ZU no. 2/2000, item 61).

of property rights).[263] At the same time, in light of the Constitutional Court's jurisprudence, the State Treasury is not the subject of constitutional property freedom or the right to equal protection of 'assets and other property rights' (here, property in the civil meaning), as provided for in Art. 64 sec. 1 and 2 of the Constitution. Due to the nature and functions of public property, the State Treasury and private entities cannot be considered similar.[264]

The Constitution clearly distinguishes the 'assets of local government' (Art. 107 (1)) and 'communal assets' (Art. 61 (1), Art. 203 (3)) from 'the State Treasury assets' and 'the State assets'. Above all, however, this is provided for in Art. 165 (1) of the Fundamental Law: "Units of local government shall possess legal personality. They shall have rights of ownership and other property rights." Considering this, the Constitutional Court noted the following:

> Art. 165 sec. 1 of the Constitution treats communal property as a guarantee of the legal personality of local government (...), in particular a guarantee of the legal personality of communes. Thanks to it, while maintaining independence, the commune can be a partner of a governmental body. Property vested in communes plays a special, constitutional role and has a systemic significance. In the light of the provisions of Chapter VII of the Constitution, communal property must first of all be perceived as an instrument for the implementation of public tasks and protection of collective interests of the local community (Article 163 of the Constitution).[265]

In connection with the above, it can be noted that the position of a local government unit as the subject of ownership differs significantly from the situation of private-law entities.[266] Hence, in its jurisprudence, the Constitutional Court denies these units (such as the State Treasury) protection of assets and property rights under Art. 64 of the Constitution.[267] At the same time – as in the case of the State Treasury – the Court indicates the validity of Art. 21 (1) of the Constitution in the field of communal property. This provision is the basic constitutional principle that protects property, regardless of its subject.[268] However, the property rights of local government units are subject to special constitutional protection under Art. 165 (1)

263 Jarosz-Żukowska, 2003, pp. 32–43; Judgment of the Constitutional Court of April 3, 2008, case ref. K 6/05 (OTK ZU no. 3/A//2008, item 41).

264 Judgment of the Constitutional Court, case ref. P 123/15, and the case law cited there; similarly: Jarosz-Żukowska, 2003, pp. 104-109.

265 Judgment of the Constitutional Court of October 21, 2008, case ref. P 2/08 (OTK ZU no. 8/A/2008, item 139).

266 Ibid.

267 Cf. e.g., Order of the Constitutional Court of February 23, 2005, case ref. Ts 35/04 (OTK ZU no. 1/B/2005, item 26); Kosieradzka-Federczyk and Federczyk, 2014, p. 225; Jarosz-Żukowska, 2003, p. 141.

268 E.g., Judgments of the Constitutional Court: of December 8, 2011, case ref. P 31/10 (OTK ZU no. 10/A/2011, item 114); of July 11, 2012, case ref. K 8/10 (OTK ZU no. 7/A/2012, item 78).

of the Constitution to the extent that it secures the independence of self-government and the ability to perform public tasks of local importance.[269]

As it results from the considerations made thus far (cf. points 6 and 7 of this study), despite the lack of explicit references in Art. 21 (1) or 165 (1) of the Constitution, there are grounds for applying – with regard to the protection of the assets of the State Treasury and local government or managing them – the principles of sustainable development and the requirement to focus on the interests of future generations. The adoption of such an interpretation is conditional, first, upon accepting the Constitutional Court's view on the independent (autonomous) nature of the indicated principle,[270] and second, it requires approval of the normative nature of the preamble to the Constitution in the scope in which it concerns the obligation to pass on to future generations all that is "valuable from over a thousand-year heritage." The assets of the State Treasury and local government can be considered the value that makes up this 'intergenerational deposit'.[271] Thus, although the link between the protection of the assets of the State Treasury (state) or local government and the principle of sustainable development and the interest of future generations has not been clearly noticeable in the jurisprudence of the Constitutional Court, such a relationship may be derived by drawing conclusions based on general theses presented by said Court.

11. Other uniquenesses and peculiarities of the given Constitution, constitutional regulation, and constitutional jurisdiction

A 'breakthrough' in the Constitution is the introduction of provisions concerning the creation of law and, in particular, the distinction between the sources of universally binding law and those of an internal nature.[272] The acts of universally binding law are those that may contain norms addressed to each entity – natural persons, public authorities, and public and private organizations. The Constitution has 'closed' the system of such sources of law both in terms of their subject (i.e., the forms of normative acts – Arts. 87, 91 (3), and 234 of the Constitution[273]) and object (entities

269 Judgments of the Constitutional Court: case ref. K 18/17.

270 Cf. Judgments of the Constitutional Court: case ref. K 14/11; case ref. K 13/11; case ref. K 18/17.

271 Cf. Judgments of the Constitutional Court: case ref. Kp 2/15; case ref. Kp 1/17.

272 Bałaban, 1997, pp. 34–35.

273 Art. 87 of the Constitution: "(1) The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations. (2) Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments." Art. 91(3) of the Constitution: "If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws." Art. 234 of the Constitution: "(1) Whenever, during a period of

authorized to issue them).[274] The acts of internal law have been specified in the basic scope in Art. 93 of the Constitution. According to this regulation, they may contain norms addressed only to "organizational units subordinate to the organ which issues such act." Nor can they be the basis for decisions (in the broad sense of the word) in relation to citizens, legal persons, and other entities. The constitutional catalog of internally binding acts is neither subjectively nor objectively limited.[275]

Against the background of the above-mentioned, seemingly clear decisions of the constitutional legislator, there is an extensive system of the so-called environmental planning acts.[276] These are very important instruments of environmental protection in Poland, of varying nature, legal forms, and names (e.g., strategy, plan, program, policy). However, these acts of public authorities share the feature that they prospectively define the values (tasks, goals, directions) to be implemented and the means leading to their achievement, without regulating the specific factual state in relation to which the order or prohibition of this action is updated.[277] In many cases, these acts contain legal norms (including the so-called planned norms) also directed at entities situated 'outside' of the public authority's apparatus. Moreover, the legislator sometimes clearly declares the normative nature of environmental planning acts, indicating that they are acts of local law or ordinances of ministers,[278] or making the content of an administrative decision dependent on their provisions.[279]

Nevertheless, the qualification of environmental planning acts within the constitutional catalog of sources of law causes serious interpretation problems, the resolution of which has significant consequences for the jurisprudence's practice. For example, administrative courts quite commonly endorse the thesis that environmental protection programs resulting from Art. 17 EPL do not constitute acts of local law, and their content is, by definition, directional and does not specify the rights or obligations of 'external entities'.[280] However, a different conclusion may be made with reference to Art. 186 (1) point 4 of the EPL, pursuant to which the authority competent to issue a permit will refuse to issue it if doing so would be inconsistent with the action program established based on Art. 17 EPL. Therefore, this regulation

martial law, the Sejm is unable to assemble for a sitting, the President of the Republic shall, on application of the Council of Ministers, and within the scope and limits specified in Art. 228, paras. 3–5, issue regulations having the force of statute. Such regulations must be approved by the Sejm at its next sitting. (2) The regulations, referred to in para.1 above shall have the character of universally binding law."

274 Działocha, 2005, pp. 9–10; Judgment of the Constitutional Court of June 28, 2000, case ref. K 25/99 (OTK ZU no. 5/2000, item 141).

275 Działocha, 2005, p. 9, 13.

276 Cf. e.g., Górski and Kierzkowska, 2012, pp. 212–217.

277 Cf. Gajewski, 2017, pp. 67–68; Duniewska, Z. et al., 2005, p. 149.

278 E.g., Art. 84(1) EPL, Art. 19(5) NCA.

279 E.g., Art. 186(1) point 4 EPL.

280 E.g., Judgment of the Voivodship Administrative Court in Cracow of January 25, 2005, case ref. II SA/Kr 1385/04 (https://bit.ly/3O0n5jj); Order of the Voivodship Administrative Court in Warsaw of December 29, 2017, case ref. IV SA/Wa 1649/17 (https://bit.ly/3v6BguF) (Accessed: 11 April 2022).

indicates a typical feature of a local law act as a source of universally binding legal norms that may constitute the basis for issuing an administrative decision.[281]

The judicature also provides examples of judgments in which – contrary to the express designation in the act for a given environmental planning act to be qualified as an 'act of local law' – courts refuse such a character. Such a situation took place in the Order of the Constitutional Court of October 6, 2004, case ref. SK 42/02. In the justification of this decision, it was stated that the local master zoning plan is a special type of act of local law, which does not fully correspond to the features of normative acts and, therefore, is not subject to the control of the Constitutional Court. This plan lies between the 'classic normative act' and the 'classic individual act' of applying the law.[282]

In practice, doubts related to the constitutional catalog of sources of law are also to be found in the provisions of the acts that require local government bodies to include in their environmental planning acts the provisions contained in analogous acts adopted by other local government units or government administration bodies. Often, such an obligation is a consequence of a planning act that is formally not universally applicable (e.g., Art.91c (1) EPL), and therefore, in accordance with Art. 93 (1) of the Constitution, it may only be addressed to an organizationally subordinate unit, whereas it refers to an entity of public administration with constitutionally guaranteed independence. In light of this, one can observe attempts to remove this contradiction by recognizing that the requirement to 'take provisions into account' should not be compared with binding legal norms contained in normative acts. This means that the above-mentioned acts are excluded from the scope of the provisions of the Constitution on the sources of law, in particular, Art. 93 (1). [283] In this context, a view is also formulated regarding the need to distinguish a new type of normative act that does not correspond to any of the types adopted in the Constitution.[284]

A peculiar phenomenon in the jurisprudence of the Constitutional Court is extending the meaning of the principle of proportionality beyond its traditional understanding derived from German jurisprudence and the *Rechtsstaat* idea. It consists in combining this principle not only with interference with the fundamental rights of an individual (human and citizen[285]) but also with the rights of an individual defined only at the level of the act or in the legal situation (rights) of "variously understood public entities (most often local government units),"[286] for example, the independence or property of a local government or the autonomy of universities.

281 Cf. Judgment of the Voivodship Administrative Court in Cracow of April 23, 2010, case ref. II SA/Kr 88/10 (https://bit.ly/37FI6Pt) (Accessed: 11 April 2022).

282 Order of the Constitutional Court, case ref. SK 42/02.

283 Judgment of the Constitutional Court of July 3, 2012, case ref. K 22/09 (OTK ZU no. 7/A/2012, item 74).

284 Cf. Kokocińska, 2014, p. 153.

285 Cf. Tuleja, 2006b, p. 64.

286 Judgment of the Constitutional Court of February 11, 2014, case ref. P 24/12 (OTK ZU no. 2/A/2014, item 9).

As to the latter, the Constitutional Court does not refer to Art. 31 (3) of the Constitution on the "limitation upon the exercise of constitutional freedoms and rights" of man and citizen but to Art. 2 of the Constitution ("The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"). The requirement that the legislator respect the adequacy of goals and means and the prohibition of excessive interference can be inferred from the latter provision.[287] At the same time, it states that the 'test of proportionality' under Art. 2 of the Constitution (similarly to Art. 31 (3)) includes the examination of 1) whether the challenged regulation is necessary for the protection and implementation of the public interest with which it is related, 2) whether it is effective and enables the achievement of the intended goals, and 3) whether its effects are proportionate to the burdens imposed on a citizen or other legal entity.[288] Such an approach to the principle of proportionality (Arts. 2 and 31 (3) of the Constitution) makes it possible to see in it the guidelines for balancing values, which is required by the principle of sustainable development (narrowly or as an independent principle, going beyond the task of environmental protection or other tasks listed in Art. 5 of the Constitution).

12. Good practices and *de lege ferenda* proposals

As part of the *sui generis* summary, it is worth referring to two additional issues that emerge from the above considerations. First, it can be noted that the analysis of the Constitutional Court's jurisprudence in matters relating to the environment and its protection also shows some 'good practices' of this Court, the application of which is not directly mandated by law but is an expression of finding a specific 'self-solution' to them. In principle, their consequence is to strengthen (streamline) the implementation of the systemic functions of the above-mentioned body within the limits of the applicable law. As previously mentioned, the jurisprudence of the Polish Constitutional Court on the matters in question is poor, but it can signal a specific action that develops the statutory obligations of the Constitutional Court.

In this context, in the Judgment of July 1, 2021, case ref. SK 23/17, despite that the challenged regulation was found to be compliant with the Constitution, it was indicated that the legislator should reconsider the problem of the appropriate shaping of legal procedures guaranteeing public participation in proceedings leading to the adoption of air protection programs. In this regard, the judgment is an example of

287 Ibid.

288 In relation to Art. 2 of the Constitution – cf. e.g., Judgment of the Constitutional Court of July 16, 2009 r., case ref. Kp 4/08 (OTK ZU no. 7/A/2009/7, item 112); in the context of Art. 31(3) of the Constitution – cf. e.g., Judgment of the Constitutional Court of July 6, 2011, case ref. P 12/09 (OTK ZU no. 6/A/2011, item 51).

a practice where the Constitutional Court non-bindingly suggests to the legislator additional directions for reflection related to the case, going beyond the legal obligations of the legislator resulting from the judgment. In this way, the Court, developing its systemic competences as the guardian of the constitutional order, attempts to improve the Polish legal system through a higher degree of implementation of the values resulting from the Constitution or international and European law. There is a certain similarity of such action to that resulting from Art. 35 of the Act of November 30, 2016, on the Organization and Proceedings Before the Constitutional Court. This provision provides for the Court's obligation to notify the law-making bodies of the existence of shortcomings and gaps in normative acts, the removal of which is necessary to ensure the consistency of the legal system of the Republic of Poland. In the case of the Judgment, case ref. SK 23/17, the 'signaling' contained therein does not meet the condition of 'necessity'.

The second important consequence of the analyses carried out is an attempt to formulate *de lege ferenda* postulates for the Constitution in force. Therefore, it should be recalled, above all, that the United Nations' Human Rights Council on October 8, 2021, adopted a resolution recognizing "the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights." Moreover, it encouraged states to strengthen cooperation among themselves and to adopt policies for the implementation of the above-mentioned right. In light of the above, it is difficult to disagree with the postulate put forward in the literature[289] on the need to explicitly establish in the Constitution the 'right to the environment' as everyone's separate subjective right.

In addition to the factual determinants related to the desire to strengthen environmental protection in a reaction, in particular, to 'the climate and environment emergency',[290] there are also significant constitutional and legal grounds for expressly articulating such a right in the Constitution. First, there is no doubt that the Constitution establishes a value in the form of a 'healthy' and 'ecologically safe' environment,[291] which is placed high in the hierarchy of all constitutional values. This is due to a significant number of provisions of the Constitution relating to the protection of this value, including indicating it as a sufficient motive for limiting the rights and freedoms of a person or citizen (Art. 31 (3) of the Constitution).

The obvious consequence of establishing such a value in the Constitution is the obligation to implement it to the highest possible degree. Considering these circumstances, it is reasonable to say that the implementation of the indicated value should result from the implementation not only of an imperative addressed to public authorities and 'everyone' (cf. Arts. 5, 74 (2), and 86 of the Constitution) but also of a

289 Danecka and Radecki, 2019, p. 119; Rakoczy, 2006, p. 206; Rakoczy, 2009, pp. 161–162.

290 Cf. European Parliament resolution of November 28, 2019, on the climate and environment emergency (2019/2930(RSP)) (Official Journal of the European Union of June 16, 2021, C 232, pp. 28–29).

291 Cf. Judgments of the Constitutional Court: case ref. SK 6/12; case ref. K 23/05.

subjective right of an entity. The necessity for public authorities to implement and protect such a right guarantees meeting the underlying values to a greater extent. However, this is a value with a unique position within the constitutional axiology that deserves optimal protection. Furthermore, the provisions of the right to the environment in question should be developed taking into account the provisions of the Fundamental Act related to the environment. Therefore, similar to the above resolution of United Nations' Human Rights Council, the postulate includes "the right to a safe, healthy and sustainable environment." This is a consequence of specifying the scope of the value of the environment in Arts. 5 *in fine*, 68, and 74 (1) of the Constitution. These regulations show that the environment should be "sustainable" and guarantee human health and safety.

Another postulate is related to the proper articulation in the Constitution of what in fact results from the jurisprudence of the Constitutional Court, that is, the independence of the 'principle of sustainable development'. This would lead to an appropriate modification of Art. 5 *in fine* of the Constitution, which may currently suggest that the indicated principle should be applied only to the implementation of the task consisting in the protection of the environment. Therefore, it is reasonable to supplement Art. 2 of the Constitution in the direction of giving it the following wording: "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice *and sustainable development*."

After introducing this change, the principle of sustainable development would require a systemic interpretation (similar to the current one, on the grounds of Art. 5 of the Constitution). In other words, starting from the 'existing concepts' and the meaning given to 'sustainable development' in international law, one should look for the wording of this rule in the principles of solidarity and social justice (intragenerational and intergenerational), the requirements of so-called proportionality (i.e., Arts. 2 and 31 (3) of the Constitution, respectively), related to the weighting of values focused on development in the social or economic dimension, and other values conflicting with the previous ones, including, for example, ecological security (as a consequence of Art. 74 (1) of the Constitution). At the same time, it needs to be emphasized that for the principle of sustainable development to apply, there is no need for interference with the state of the environment to take place (only, for example, regarding national heritage, the appropriate state of public finances or state property, or the existence of a need to properly balance only the 'pro-development' values).

The legal literature includes a postulate to regulate in the Constitution the issue of the protection of the country's natural resources as a special public good.[292] Such regulations are provided for in a number of constitutions of European countries (e.g., Hungary, the Czech Republic, Croatia, Romania, Serbia, Slovakia, and Slovenia). Hence, it is desirable to introduce an appropriate regulation to the Constitution of the Republic of Poland. It could take the form of a listing of the most important

292 Rakoczy, 2009, pp. 166–167.

activities serving the implementation of the environmental protection obligation by public authorities. Therefore, Art. 74 (2) of the Constitution, which refers to such an obligation, could read as follows: "Protection of the environment, in particular through the conservation and economic use of natural resources, effective water management and water retention, reduction of greenhouse gas emissions, and waste prevention is the responsibility of public authorities." This type of enumeration may raise doubts due to the possible accusation of not including other important elements in it or pointing to issues that are not sufficiently important. Nevertheless, in this case, it is only an exemplary catalog, the main aim of which is to evoke constant reflection of public authorities on at least the seemingly most sensitive environmental problems in Poland.

Moreover, an amendment to Art. 74 (4) of the Constitution consisting of the replacement of its current wording with a clear guarantee of public participation in matters relating to environmental protection is worth considering.[293] Thus, the provision, which currently has little normative significance due to the general nature of the obligation of public authorities to support the actions of citizens, would contain a specific obligation of these authorities to ensure that everyone participates in the decision-making and adoption of environmental policy acts. At the same time, this regulation could even provide for the subjective right of public participation and thus, in fact, lead to an increase in the rank of this right that results in the current legal circumstances from the provisions of the SIEA. The argument in favor of adopting such a constitutional regulation is once again the desire to strengthen the fulfillment of the obligation to care for the state of the environment (cf. Art. 86 of the Constitution) and the fact that these are the rights of society expressed in the Act related to participation in proceedings regarding environmental protection that represent the real implementation of Art. 74 (4) of the Constitution.

293 Similarly: Leśniak, 2014, p. 746.

Bibliography

Bałaban, A. (1997) 'Źródła prawa w polskiej Konstytucji z 2 kwietnia 1997 r.' ['Sources of law in the Polish Constitution of 2 April 1997'], *Przegląd Sejmowy*, 22(5), pp. 33–44.

Bałaban, A. (2007) 'Sześć funkcji Sejmu Rzeczypospolitej Polskiej' ['Six functions of the Sejm of the Republic of Poland'], *Przegląd Sejmowy,* 81(4), pp. 127–150.

Bielecki, M. (2019) 'Wolności i prawa polityczne dziecka' ['Freedoms and political rights of the child'], *Studia Prawnoustrojowe*, 2019(45), pp. 7–25; https://doi.org/10.31648/sp.5186

Blicharz, J. (2021) 'Ochrona praw dziecka na tle Konstytucji RP z 1997 roku – ramy normatywne' ['Protection of children's rights against the background of the Constitution of the Republic of Poland of 1997 – normative framework'], *Acta Universitatis Wratislaviensis*, *Przegląd Prawa i Administracji*, 2021(127), pp. 15–33; https://doi.org/10.19195/0137-1134.127.1

Boć, J. (2000) 'Ochrona środowiska w postanowieniach Konstytucji Rzeczypospolitej Polskiej' ['Environmental protection in the provisions of the Constitution of the Republic of Poland'], *Acta Universitatis Wratislaviensis*, no. 2244, *Prawo,* no. CCLXXII, pp. 187–195.

Borodo, A. (2016) 'Opłaty i kary za korzystanie ze środowiska – aspekty finansowo-prawne' ['Charges and penalties for the use of the environment – financial and legal aspects'], *Prawo Budżetowe Państwa i Samorządu*, 4(3), pp. 49–76; http://dx.doi.org/10.12775/PBPS.2016.014

Bucoń, P. (2020) 'Konstytucyjne prawo dziecka do opieki i pomocy władz publicznych' ['The child's constitutional right to care and assistance by public authorities'], *Przegląd Sejmowy*, 158(3), pp. 9–28; https://doi.org/10.31268/PS.2020.32

Bukowski, Z. (2009) *Zrównoważony rozwój w systemie prawa [Sustainable development in the legal system]*. Toruń: TNOiK 'Dom Organizatora'.

Ciechanowicz, J., Mering, L. (1999) 'Ochrona środowiska w Konstytucji RP' ['Environmental protection in the Constitution of the Republic of Poland'] in Mik, C. (ed.) *Konstytucja Rzeczypospolitej Polskiej z 1997 roku a członkostwo Polski w Unii Europejskiej [The Constitution of the Republic of Poland of 1997 and Poland's membership in the European Union]*. Toruń: TNOiK 'Dom Organizatora', pp. 465–480.

Ciechanowicz-McLean, J. (2021) 'Ochrona środowiska w Konstytucji Rzeczypospolitej Polskiej a globalne problemy środowiska' ['Environmental protection in the Constitution of the Republic of Poland and global environmental problems'], *Doradztwo Prawne i Podatkowe RB BIULETYN*, 37(8), pp. 4–10.

Czekałowska, M. (2015) 'Problem konstytucyjnych norm programowych dotyczących ochrony środowiska na tle wybranych regulacji ustawowych' ['The problem of constitutional program norms regarding environmental protection against the background of selected statutory regulations'], *Zeszyty Naukowe Uniwersytetu Szczecińskiego*, 870(11), pp. 109–123; https://doi.org/10.18276/ais.2015.11-07

Danecka, D., Radecki, W. (2019) 'Prawo do środowiska w świecie, Republice Czeskiej i w Polsce na kanwie trzytomowego dzieła Hany Müllerovej' ['The right to the environment in the world, the Czech Republic and Poland based on the three-volume work of Hana Müllerova'], *Przedsiębiorstwo i Prawo*, 2019(8), pp. 58–122.

Daniel, P. (2013) 'Ochrona dóbr materialnych w postępowaniu w przedmiocie wydania decyzji o środowiskowych uwarunkowaniach zgody na realizację przedsięwzięcia' ['Protection of material goods in the procedure for issuing a decision on the environmental conditions of consent for the implementation of a project'], *Kwartalnik Prawa Publicznego*, 13(2), pp. 47–60.

Dobrowolski, M. (1999) 'Status prawny rodziny w świetle nowej Konstytucji Rzeczypospolitej Polskiej' ['The legal status of the family in the light of the new Constitution of the Republic of Poland'], *Przegląd Sejmowy*, 33(4), pp. 21–34.

Duniewska, Z., Górski, M., Jaworska-Dębska, B., Olejniczak-Szałowska, E., Stahl, M. (2005) 'Plany, strategie, programy i inne zbliżone formy prawne działania administracji' ['Plans, strategies, programs and other similar legal forms of administration' activity'] in [unknown editor] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej Poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego [Public administration entities and legal forms of their activities. Studies and materials from the Scientific Conference dedicated to the 80th birthday of Professor Eugeniusz Ochendowski]*. Toruń: TNOiK 'Dom Organizatora', pp. 141–175.

Działocha, K. (2005) 'Zamknięty system źródeł prawa powszechnie obowiązującego w konstytucji i w praktyce' ['Closed system of sources of universally bindig law in the constitution and in practice'] in Szmyt, A. (ed.) *Konstytucyjny system źródeł prawa w praktyce [The constitutional system of sources of law in practice]*. Warszawa: Wydawnictwo Sejmowe, pp. 9–34.

Dzieżyc, M. (2019) 'Obowiązki związane z ochroną środowiska w Konstytucji RP' ['Obligations related to environmental protection in the Constitution of the Republic of Poland'] in Łukomiak, K. (ed.) *Człowiek a natura, historia, prawo, przemysł [Man and nature, history, law, industry]*. Łódź: Wydawnictwo Naukowe Archaegraph, pp. 171–186 [Online]. Available at: https://bit.ly/3ge0EHW (Accessed: 1 February 2022).

Francis (2015) Encyclical 'Laudato si' [Online]. Available at: https://bit.ly/3J6zFL1 (Accessed: 10 March 2022).

Gajewski, S. (2017) *Programy rządowe. Studium administracyjnoprawne [Government programs. Administrative and legal study]*. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego; https://doi.org/10.31338/uw.9788323526124

Gardjan–Kawa, L. (1999) 'Ochrona środowiska w przepisach Konstytucji Rzeczypospolitej Polskiej' ['Environmental protection in the provisions of the Constitution of the Republic of Poland'] in Janku, Z., Szewczyk, M., Waligórski, M., Wojtczak, K., Ziemski, K. (eds.) *Z problematyki prawa administracyjnego i nauki administracji [From the issues of administrative law and administration science]*. Poznań: Wydawnictwo TERRA, pp. 111–121.

Garlicki, L. (2001) 'Przesłanki ograniczania konstytucyjnych praw i wolności (na tle orzecznictwa Trybunału Konstytucyjnego)' ['Premises for limiting constitutional rights and freedoms (against the background of the jurisprudence of the Constitutional Tribunal)'], *Państwo i Prawo*, 2001(10), pp. 5–24.

Garlicki, L. (2003a) 'Komentarz do art. 74' ['Commentary on Art. 74'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III [The Constitution of the Republic of Poland. Commentary. Volume III]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–5.

Garlicki, L. (2003b) 'Komentarz do art. 31' ['Commentary on Art. 31'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III [The Constitution of the Republic of Poland. Commentary. Volume III]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–36.

Garlicki, L. (2003c) 'Rozdział II: Wolności i prawa ekonomiczne, socjalne i kulturalne' ['Chapter II: Economic, social and cultural freedoms and rights'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III [The Constitution of the Republic of Poland. Commentary. Volume III]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–6.

Garlicki, L. (2007a) 'Rozdział I: Rzeczpospolita' ['Chapter I: The Republic'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom V [The Constitution of the Republic of Poland. Commentary. Volume V]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–9.

Garlicki, L. (2007b) 'Wstęp' ['Introduction'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom V [The Constitution of the Republic of Poland. Commentary. Volume V]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–20.

Gizbert-Studnicki, T., Grabowski, A. (1997) 'Normy programowe w Konstytucji' ['Program norms in the Constitution'] in Trzciński, J. (ed.) *Charakter i struktura norm Konstytucji [The nature and structure of constitutional norms]*, Warszawa: Wydawnictwo Sejmowe, pp. 95–113.

Goleń, G. (2008) 'Prawo petycji w postępowaniach z zakresu ochrony środowiska' ['The right to petition in environmental protection proceedings'], *Kwartalnik Prawa Publicznego*, 2008(3–4), pp. 119–131.

Gorgol, A. (2014) 'Równowaga budżetowa w świetle orzecznictwa Trybunału Konstytucyjnego' ['Budget balance in the light of the jurisprudence of the Constitutional Tribunal'], *Państwo i Prawo*, 823(9), pp. 23–35.

Gorlewska, E. (2017) 'Nazwy wartości uniwersalnych w polskiej Konstytucji – znaczenia tekstowe i konotacje potoczne' ['Names of universal values in the Polish Constitution – textual meanings and colloquial connotations'] in Andruczyk, K., Gorlewska, E., Korotkich, K. (eds.) *Logos – filozofia słowa. Szkice o pograniczach języka, filozofii i literatury [Logos – philosophy of the word. Sketches on the boundaries of language, philosophy and literature]*. Białystok: Wydawnictwo Uniwersytetu w Białymstoku, pp. 105–125 [Online]. Available at: https://bit.ly/3tKdtQt (Accessed: 10 March 2022).

Górski, M. (2014) 'Wprowadzenie' ['Introduction'] in Górski, M. (ed.) *Prawo ochrony środowiska. Komentarz [Environmental protection law. Commentary]*. 2nd edn. Warszawa: C.H.Beck, pp. 3–14.

Górski, M. (2016a) 'Komentarz do art. 74' ['Commentary on Art. 74'] in Safijan, M., Bosek, L. (eds.) *Konstytucja RP. Tom I. Komentarz do art. 1–86 [Constitution of the Republic of Poland. Volume I. Commentary on Art. 1-86]*. 1st edn. Warszawa: C.H.Beck, Legalis [Online]. Available at: https://legalis.pl/ (Accessed: 9 November 2022).

Górski, M. (2016b) 'Komentarz do art. 86' ['Commentary on Art. 86'] in Safijan, M., Bosek, L. (eds.) *Konstytucja RP. Tom I. Komentarz do art. 1–86 [Constitution of the Republic of Poland. Volume I. Commentary on Art. 1-86]*. 1st Warszawa: C.H.Beck, Legalis [Online]. Available at: https://legalis.pl/ (Accessed: 9 November 2022).

Górski, M., Kierzkowska, J. (2012) 'Strategie, plany i programy' ['Strategies, plans and programs'] in Hauser, R., Niewiadomski, Z., Wróbel, A. (eds.) *System prawa administracyjnego. Prawo administracyjne materialne. Tom 7 [Administrative law system. Substantive administrative law. Volume 7]*. Warszawa: C.H.Beck, pp. 179–220.

Habuda, A. (2019) 'The Right to the Environment in the Republic of Poland', *Studia Prawnoustrojowe*, 2019(44), pp. 107–121; https://doi.org/10.31648/sp.4898

Haładyj, A. (2002) 'Konstytucyjne prawo do korzystania z wartości środowiska' ['Constitutional right to use the values of the environment'], *Prawo i Środowisko*, 2002(2), pp. 37–44.

Haładyj, A. (2003) 'Konstytucyjne podstawy ochrony środowiska' ['Constitutional basis of environmental protection'], *Prawo-Administracja-Kościół*, 2003(1–2), pp. 39–58.

Haładyj, A., Trzewik, J. (2014) 'Pojęcie strategicznych zasobów naturalnych – uwagi krytyczne' ['The concept of strategic natural resources – critical remarks'], *Przegląd Prawa Ochrony Środowiska*, 2014(1), pp. 27–46; https://doi.org/10.12775/PPOS.2014.002

Herstein, O. J. (2009) 'The Identity and (Legal) Rights of Future Generations', *George Washington Law Review*, 77(5–6), pp. 1173–1215.

Hysa, B. (2016) 'Zarządzanie różnorodnością pokoleniową' ['Managing of generational diversity'], *Zeszyty Naukowe Politechniki Śląskiej. Organizacja i Zarządzanie [Scientific Papers of the Silesian University of Technology. Organization and Management]*, 2016(97), pp. 385–398 [Online]. Available at: https://bit.ly/3Nmm1G7 (Accessed: 25 March 2022).

Jabłoński, M., Wygoda, K. (2003) 'Konstytucyjne uprawnienia jednostki w sferze informacyjnej' ['Constitutional rights of an individual in the information sphere'] in Garlicki, L., Szmyt, A. (eds.) *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje [Six years of the Constitution of the Republic of Poland. Experiences and inspirations]*. Warszawa: Wydawnictwo Sejmowe, pp. 123–134.

Jarosz-Żukowska, S. (2003) *Konstytucyjna zasada ochrony własności [The constitutional principle of property protection]*. Kraków: Zakamycze.

Jendrośka, J. (2002) 'Prawa człowieka w ochronie środowiska w prawie polskim' ['Human rights in environmental protection in Polish law'], *Prawo i Środowisko*, 2002(1), pp. 29–32.

Jurgilewicz, M. (2013a) 'Bezpieczeństwo ekologiczne państwa – podstawowe zagadnienia' ['Ecological security of the State – basic issues'] in Niemiec, W., Pacana, A., Jurgilewicz, O., Jurgilewicz, M. (eds.) *Aspekty zarządzania środowiskiem w praktyce inżynierskiej [Aspects of environmental management in engineering practice]*. Rzeszów: Oficyna Wydawnicza Politechniki Rzeszowskiej, pp. 383–401.

Jurgilewicz, M. K. (2013b) 'Zarys znaczenia bezpieczeństwa ekologicznego państwa' ['An outline of the concept of the ecological security of the State'], *Zeszyty Naukowe Wyższej Szkoły Informatyki, Zarządzania i Administracji w Warszawie*, 25(4), pp. 158–165.

Jurgilewicz, M., Jurgilewicz, O. (2013) 'Wybrane problemy prawa ochrony środowiska w Polsce' ['Selected problems of environmental law in Poland'] in Niemiec, W., Pacana, A., Jurgilewicz, O., Jurgilewicz, M. (eds.) *Aspekty zarządzania środowiskiem w praktyce inżynierskiej [Aspects of environmental management in engineering practice]*. Rzeszów: Oficyna Wydawnicza Politechniki Rzeszowskiej, pp. 43–75.

Jurgilewicz, M., Ovsepyan, A. (2017) 'Bezpieczeństwo energetyczne a ochrona środowiska' ['Energy security and environmental protection'], *Studia Prawnicze KUL*, 70(2), pp. 71–83; https://doi.org/10.31743/sp.3323

Karski, L. (2006) 'Prawa człowieka i środowisko' ['Human rights and the environment'], *Studia Ecologiae et Bioethicae*, 2006(4), pp. 309–325; https://doi.org/10.21697/seb.2006.4.1.22

Kielin-Maziarz J. (2020) 'Zasada zrównoważonego rozwoju – uwagi na tle jej miejsca w Konstytucji RP' ['The principle of sustainable development – comments on its place in the Constitution of the Republic of Poland'], *Krytyka Prawa*, 12(1), p. 206–228; https://doi.org/10.7206/kp.2080-1084.370

Kokocińska, K. (2014) *Prawny mechanizm prowadzenia polityki rozwoju w zdecentralizowanych strukturach władzy publicznej [The legal mechanism of development policy in decentralized structures of public authority]*. Poznań: Wydawnictwo Naukowe UAM.

Korzeniowski, P. (2010) *Zasady prawne ochrony środowiska [Legal principles of environmental protection]*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego; https://doi.org/10.18778/7525-470-9

Korzeniowski, P. (2012) *Bezpieczeństwo ekologiczne jako instytucja prawna ochrony środowiska [Ecological security as a legal institution for environmental protection]*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.

Kosieradzka-Federczyk, A. (2012) 'Realizacja konstytucyjnych wymogów ochrony środowiska na przykładzie ocen oddziaływania na środowisko' ['Implementation of constitutional environmental protection requirements on the example of environmental impact assessments'], *Zagadnienia Sądownictwa Konstytucyjnego*, 4(2), pp. 81–94.

Kosieradzka-Federczyk, A., Federczyk W. (2014) 'Czy podział na prawo publiczne i prywatne zachowuje nadal swoją przydatność? Uwagi na przykładzie pozycji jednostek samorządu terytorialnego w Polsce' ['Is the division into public and private law still relevant? Comments on the example of the position of local government units in Poland'] in Federczyk, W. (ed.) *Jedność norm i wartości. Zbiór studiów dedykowanych Profesor Marii Gintowt-Jankowicz [Unity of norms and values. Collection of studies dedicated to Professor Maria Gintowt-Jankowicz]*. Warszawa: Krajowa Szkoła Administracji Publicznej, pp. 219–229.

Kowalski, M. (2016) 'Cykle pokoleniowe w czasie i przestrzeni' ['Generational cycles in time and space'], *Przegląd Geograficzny*, 88(4), pp. 489–510; https://bit.ly/3ixmS8S (Accessed: 25 March 2022).

Kruk, M. (1998) 'Konstytucyjne zasady podstawowe – ich znaczenie prawne i katalog' ['Constitutional basic principles – their legal meaning and catalog'] in Sokolewicz, W. (ed.) *Zasady podstawowe polskiej konstytucji [Basic principles of the Polish constitution]*, Warszawa: Wydawnictwo Sejmowe, pp. 7–13.

Krzywoń, A. (2012) 'Konstytucja RP a środowisko' ['Constitution of the Republic of Poland and the environment'], *Państwo i Prawo*, 2012(8), pp. 3–17.

Leśniak, N. (2013) 'Granice ingerencji w sferę praw i wolności jednostki ze względu na konstytucyjną przesłankę »ochrony środowiska«' ['Limits of interference in the sphere of rights and freedoms of an individual due to the constitutional premise of »environmental protection«'] in Bator, A., Jabłoński, M., Maciejewski, M., Wójtowicz, K. (eds.) *Współczesne koncepcje ochrony wolności i praw podstawowych [Contemporary concepts of the protection of freedoms and fundamental rights]*. Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa, pp. 281–290 [Online]. Available at: https://bit.ly/3LQnx2x (Accessed: 22 February 2022).

Leśniak, N. (2014) 'Obowiązki państwa w zakresie ochrony środowiska i bezpieczeństwa ekologicznego' ['State obligations in the field of environmental protection and ecological security'] in Jabłoński, M. (ed.) *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym [Implementation and protection of constitutional freedoms and rights of the individual in the Polish legal order]*. Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa, pp. 741–753 [Online]. Available at: https://bit.ly/3jINft2 (Accessed: 15 April 2022).

Maciejko, W. (2009) 'Prawny obowiązek poszanowania dziedzictwa kulturowego' ['Legal obligation to respect cultural heritage'] in Chammas, B. (ed.) *Ochrona środowiska, turystyka i dziedzictwo kulturowe Pogórza Dynowskiego [Environmental protection, tourism and cultural heritage of the Dynów Foothills]*. Dynów: Związek Gmin Turystycznych Pogórza Dynowskiego, pp. 25–31 [Online]. Available at: https://bit.ly/3vxarjz (Accessed: 19 April 2022).

Majchrzak, B. (2016) 'Osoby wykonujące samodzielne funkcje techniczne w budownictwie a pojęcie organu ochrony środowiska' ['Persons performing independent technical functions in construction and the concept of an environmental protection authority'] in Cieślak, Z., Kosieradzka-Federczyk, A. (eds.) *Prace studialne WSAA. Ochrona środowiska a działalność inwestycyjna. Aspekty prawne. Tom V [WSAA study works. Environmental protection and investment activity. Legal aspects. Volume V]*. Warszawa: Wydawnictwo Wyższej Szkoły Informatyki Stosowanej i Zarządzania w Warszawie, pp. 111–120.

Majchrzak, B. (2020) 'Sejm jako podmiot zobowiązany do udostępniania informacji o środowisku' ['The Sejm as an entity obliged to provide environmental information'], *Przegląd Sejmowy*, 158(3), pp. 101–121; https://doi.org/10.31268/PS.2020.36

Mędrzycki, R. (2021) *Zasada solidarności społecznej w prawie samorządu terytorialnego [The principle of social solidarity in the law of local government]*. Warszawa: Wolters Kluwer.

Morawska, E. (2007) 'Ochrona praw dziecka w świetle art. 72 Konstytucji RP. Uwagi na tle orzecznictwa Trybunału Konstytucyjnego' ['Protection of children's rights in the light of Art. 72 of the Polish Constitution. Comments on the jurisprudence of the Constitutional Tribunal'], *Kwartalnik Prawa Publicznego*, 2007(4), pp. 125–144.

Nyka, M. (2016) 'Sprawiedliwość międzypokoleniowa w międzynarodowym prawie środowiska' ['Intergenerational justice in international environmental law'], *Gdańskie Studia Prawnicze*, 35(1), pp. 355–372.

Paczuski, R. (1999) 'Ochrona środowiska w polskiej Konstytucji z dnia 2 kwietnia 1997 roku' ['Environmental protection in the Polish Constitution of 2 April 1997'] in [unknown editor] *Księga pamiątkowa profesora Eugeniusza Ochendowskiego [Professor Eugeniusz Ochendowski's Memorial Book]*. Toruń: TNOiK 'Dom Organizatora', pp. 227–236.

Papuziński, A. (2014) 'Zrównoważony rozwój w kontekście teorii sprawiedliwości międzygeneracyjnej' ['Sustainable development in the context of the theory of intergenerational justice'] in Sierzputowska, K., Sadowski, S., Koseski A. (eds.) *Świat, Niemcy, Polska: szkice politologiczne i historyczne ofiarowane prof. dr. hab. Zbigniewowi Leszczyńskiemu w 70. rocznicę urodzin [World, Germany, Poland: political and historical sketches dedicated to prof. dr. habil. Zbigniew Leszczyński on the 70th anniversary of his birth]*. Bydgoszcz: Wydawnictwo Uniwersytetu Kazimierza Wielkiego, pp. 11–30.

Pchałek, M. (2019) 'Komentarz do art. 7' ['Commentary on Art. 7'] in Górski, M. (ed.) *Prawo ochrony środowiska. Komentarz [Environmental Protection Law. Commentary]*. 3rd edn. Warszawa: C.H.Beck, Legalis [Online]. Available at: https://legalis.pl/ (Accessed: 9 November 2022).

Piechowiak, M. (2012) *Dobro wspólne jako fundament polskiego porządku konstytucyjnego [The common good as the foundation of the Polish constitutional order]*. Warszawa: Biuro Trybunału Konstytucyjnego.

Podzielny, J. (2014) 'Ekologia w myśli chrześcijańskiej' ['Ecology in Christian thought'], *Konsekwencje wiary. Sympozja*, 2014(85), pp. 1–20 [Online]. Available at: https://bit.ly/3IVT5lI (Accessed: 10 March 2022).

Pułło, A. (2015) 'Idea solidarności w systemie zasad konstytucyjnych' ['The idea of solidarity in the system of constitutional principles'], *Gdańskie Studia Prawnicze*, 33(1), pp. 331–341.

Radecki, W. (1998) 'Prawo do środowiska w świetle nowej konstytucji' ['The right to the environment in the light of the new constitution'], *Aura*, 1998/2, p. 36.

Radecki, W. (2002) *Odpowiedzialność prawna w ochronie środowiska [Legal responsibility in environmental protection]*. Warszawa: Difin.

Radecki, W. (2015) 'Regulacje penalne w systemie prawa ochrony środowiska' ['Penal regulations in the system of environmental protection law'] in Korzeniowski, P. (ed.) *Zagadnienia systemowe prawa ochrony środowiska [Systemic issues in environmental protection law]*. 1st edn. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, pp. 81–99.

Rakoczy, B. (2006) *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej [Limitation of the rights and freedoms of an individual due to environmental protection in the Constitution of the Republic of Poland]*. Toruń: TNOiK 'Dom Organizatora'.

Rakoczy, B. (2009) 'O potrzebie zmiany Konstytucji Rzeczypospolitej Polskiej w zakresie ochrony środowiska' ['On the need to amend the Constitution of the Republic of Poland in the field of environmental protection'], *Studia Prawnicze KUL*, 38–39(2–3), pp. 157–168.

Rakoczy, B. (2015) 'Prawo ochrony środowiska w styku z innymi obszarami systemu prawa' ['Environmental protection law in contact with other areas of the legal system'] in Korzeniowski, P. (ed.) *Zagadnienia systemowe prawa ochrony środowiska [Systemic issues in environmental protection law]*. 1st edn. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, pp. 69–79.

Rakoczy, B. (2021) 'Constitutionalisation of Environmental Protection in Poland', *Journal of Agricultural and Environmental Law*, 31(16), pp. 121–129; https://doi.org/10.21029/JAEL.2021.31.121

Riedl, K. (2015) 'Koncepcja pojęć zastanych w orzecznictwie Trybunału Konstytucyjnego' ['The concept of existing notions in the jurisprudence of the Constitutional Tribunal'], *Przegląd Sejmowy*, 130(5), pp. 83–98.

Sarnecki, P. (2007) 'Komentarz do art. 6' ['Commentary on Art. 6'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom V [Constitution of the Republic of Poland. Commentary. Volume V]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–2.

Skoczylas, J. J. (1989) 'Odpowiedzialność cywilna za naruszenie obowiązku ochrony środowiska' ['Civil liability for violation of the obligation to protect the environment'], *Palestra*, 383–384(11–12), pp. 52–69.

Skolimowski, H. (2003) 'Piękno jako potrzeba ludzka' ['Beauty as a human need'], *Estetyka i Krytyka*, 5(2), pp. 1–13 [Online]. Available at: https://bit.ly/3w0zM79 (Accessed: 10 March 2022).

Skrzydło–Niżnik, I. and Dobosz, P. (2003) 'Pojęcie zrównoważonego rozwoju w systemie prawa i nauce prawa administracyjnego' ['The concept of sustainable development in the legal system and the science of administrative law'] in Filipek, J. (ed.) *Jednostka w demokratycznym państwie prawa [An individual in a democratic State ruled by law]*. Bielsko-Biała: Wydawnictwo Wyższej Szkoły Administracji, pp. 614–627.

Sobczak, J. (2018) 'Pojęcie dziedzictwa narodowego w świetle regulacji konstytucyjnych' ['The concept of national heritage in the light of constitutional regulations'], *Przegląd Prawa Konstytucyjnego*, 45(5), pp. 187–208; https://doi.org/10.15804/ppk.2018.05.11

Sokolewicz, W. (2005) 'Komentarz do art. 220' ['Commentary on Art. 220'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom IV [Constitution of the Republic of Poland. Commentary. Volume IV]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–19.

St. John Paul II (1987) Encyclical 'Sollicitudo Rei Socialis' [Online]. Available at: https://bit.ly/3tGuivA (Accessed: 10 March 2022).

Stadniczeńko, S. L. (2017) 'Ochrona praw dziecka wynikająca z art. 19 Konwencji o prawach dziecka oraz art. 72 Konstytucji RP' ['Protection of children's rights under Art. 19 of the Convention on the Rights of the Child and Art. 72 of the Constitution of the Republic of Poland'], *Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy*, 22(1), pp. 9–23 [Online]. Available at: https://bit.ly/3rxN6x1 (Accessed: 4 April 2022).

Stefaniuk, M. E. (2009) *Preambuła aktu normatywnego w doktrynie oraz w procesie stanowienia i stosowania polskiego prawa w latach 1989–2007 [Preamble of a normative act in the doctrine and in the process of establishing and applying Polish law in the years 1989–2007]*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej.

Syryt, A. (2019) 'Trybunał Konstytucyjny – czy tylko sąd prawa?' ['The Constitutional Tribunal – is it just a court of law?'] in Granat, M. (ed.) *Sądownictwo konstytucyjne. Teoria i praktyka. Tom II [Constitutional judiciary. Theory and practice. Volume II]*. Warszawa: Wydawnictwo Naukowe Uniwersytetu Kardynała Stefana Wyszyńskiego, pp. 311–338.

Szilágyi, J. E. (2021) 'The Protection of the Interests of Future Generations in the 10–Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues', *Journal of Agricultural and Environmental Law*, 31(16), pp. 130–144; https://doi.org/10.21029/JAEL.2021.31.130

Szmyt, A. (2015) 'Projekt ustawy o zmianie Konstytucji RP w zakresie ochrony lasów państwowych' ['Draft act on the amendment to the Constitution of the Republic of Poland in the field of protection of state forests'], *Przegląd Sejmowy*, 128(3), pp. 9–25.

Tarnacka, K. (2009) *Prawo do informacji w polskim prawie konstytucyjnym [The right to information in Polish constitutional law]*. Warszawa: Wydawnictwo Sejmowe.

Tremmel, J. C. (2009) *A Theory of Intergenerational Justice*. London-Sterling, VA: Earthscan [Online]. Available at: https://bit.ly/34Jc6ca (Accessed: 15 March 2022).

Trociuk, S. (2020) 'Komentarz do art. 1' ['Commentary on Art. 1'] in Trociuk, S., *Ustawa o Rzeczniku Praw Obywatelskich. Komentarz [The act on the Ombudsman. Commentary]*. 2nd edn.Warszawa: Wolters Kluwer, LEX [Online]. Available at: https://legalis.pl/ (Accessed: 9 November 2022).

Trzcińska, D. (2020) 'Bezpieczeństwo ekologiczne – pojęcie i koncepcja' ['Ecological security'] in Trzcińska, D., Kierzkowska, J. S. (eds.) *Bezpieczeństwo ekologiczne w realizacji zadań publicznych [Ecological security in the implementation of public tasks]*. Warszawa: Difin, pp. 18–27.

Trzcińska, D. (2021) 'Problematyka obliczania opłat za korzystanie ze środowiska za wydanie uprawnień do emisji gazów cieplarnianych' ['The problem of calculating environmental fees for issuing greenhouse gas emission permits'], *Gdańskie Studia Prawnicze*, 51(3), pp. 143–152; https://doi.org/10.26881/gsp.2021.3.10

Trzciński, J. (2003) 'Komentarz do art. 68' ['Commentary on Art. 68'] in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III [Constitution of the Republic of Poland. Commentary. Volume III]*. Warszawa: Wydawnictwo Sejmowe, pp. 1–7.

Trzewik, J. (2016) *Publiczne prawa podmiotowe jednostki w systemie prawa ochrony środowiska [Public subjective rights of an individual in the system of environmental protection law]*. Lublin: Wydawnictwo KUL.

Tuleja, P. (2006a) 'Podstawowe problemy związane z interpretacją Konstytucji Rzeczypospolitej Polskiej w orzecznictwie Trybunału Konstytucyjnego' ['Basic problems related to the interpretation of the Constitution of the Republic of Poland in the Constitutional Tribunal's jurisprudence'] in Zubik, M. (ed.) *Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego [Book on the 20th anniversary of the jurisprudence of the Constitutional Tribunal]*. Warszawa: Biuro Trybunału Konstytucyjnego, pp. 205–231.

Tuleja, P. (2006b) 'Zastane pojęcie państwa prawnego' ['Existing concept of the rule of law'] in Wronkowska, S. (ed.) *Zasada demokratycznego państwa prawnego w Konstytucji RP [The principle of a democratic state ruled by law in the Polish Constitution]*. Warszawa: Wydawnictwo Sejmowe, pp. 49–72.

Walas, M. (2009) 'Organy ochrony środowiska w Polsce' ['Environmental protection authorities in Poland'], *Przegląd Prawa Ochrony Środowiska*, 2009(1), pp. 41–50.

Węgrzyn, J. (2010) 'Prawo do informacji o stanie i ochronie środowiska w Konstytucji RP z dnia 2 kwietnia 1997 r.' ['The right to information on the state and protection of the environment in the Constitution of the Republic of Poland of 2 April 1997'] in Pierzchała, E., Woźniak, M. (eds.) *Dostęp do informacji publicznej w Polsce i w Europie – wybrane zagadnienia prawne [Access to public information in Poland and Europe – selected legal issues]*. Opole: Wydawnictwo Uniwersytetu Opolskiego, pp. 437–462.

Wołpiuk, W. J. (2004) 'O konstytucyjnym zadaniu państwa w zakresie ochrony środowiska – zgodnie z zasadą zrównoważonego rozwoju' ['About the constitutional task of the state in the field of environmental protection – according to the principle of sustainable development'], *Prakseologia (Praxeology)*, 2004(144), pp. 21–31.

Zalasińska, K., Bąkowski, T. (2009) 'Paradygmat zrównoważonego rozwoju w prawnej ochronie nieruchomości zabytkowych – próba adaptacji' ['The paradigm of sustainable development in the legal protection of historic properties – an adaptation attempt'] in Szfrański, W., Zalasińska, K. (eds.) *Wokół problematyki prawnej zabytków i dzieł sztuki. Tom III [Around the legal issues of monuments and works of art. Volume III]*. Poznań: Wydawnictwo Poznańskie, pp. 259–271.

Zawłocki, R. (2014) 'Karnoprawna ochrona środowiska naturalnego' ['Criminal law protection of the natural environment'], *Przegląd Prawa Rolnego*, 14(1), pp. 127–146; https://doi.org/10.14746/ppr.2014.14.1.6

Zeidler, K. (2004) 'Pojęcie »dziedzictwa narodowego« w Konstytucji RP i jego prawna ochrona' ['The concept of »national heritage« in the Polish Constitution and its legal protection'], *Gdańskie Studia Prawnicze*, 12(1), pp. 343–353.

Zubik, M. (2000) 'Problem deficytu budżetowego w Konstytucji RP' ['The problem of the budget deficit in the Polish Constitution'], *Państwo i Prawo*, 892(6), pp. 9–24.

Legal sources

Act of 10 April 2003 on special principles for the preparation and realization of investments on national roads (Journal of Laws of 2022, item 176).

Act of 13 April 2007 on the Prevention and Repair of Environmental Damage (Journal of Laws of 2020, item 2187).

Act of 13 June 2019 on amending the Act – Environmental Protection Law and the Act on crisis management (Journal of Laws item 1211, as amended).

Act of 13 October 1995 – the Hunting Law (Journal of Laws of 2022, item 1173).

Act of 14 December 2012 on Waste (Journal of Laws of 2022, item 699, as amended).

Act of 15 July 1987 on the Ombudsman (Journal of Laws of 2020, item 627, as amended).

Act of 16 April 2004 on the Nature Conservation (Journal of Laws of 2022, item 916).

Act of 20 July 2017 – the Water Law (Journal of Laws of 2021, item 2233, as amended).

Act of 20 May 1971 – the Code of Petty Offenses (Journal of Laws of 2021, item 2008, as amended).

Act of 21 March 1991 on Maritime Areas of the Republic of Poland and Maritime Administration (Journal of Laws of 2022, item 457).

Act of 23 April 1964 – the Civil Code (Journal of Laws of 2022, item 1360).

Act of 23 July 2003 on the Protection of Monuments and the Care of Historical Monuments (Journal of Laws of 2022, item 840).

Act of 27 April 2001 – the Environmental Protection Law (Journal of Laws of 2021, item 1973, as amended).
Act of 28 September 1991 on Forests (Journal of Laws of 2022, item 672).
Act of 3 October 2008 on Sharing Information on the Environment and Its Protection, Public Participation in Environmental Protection, and on Environmental Impact Assessments (Journal of Laws of 2022, item 1029).
Act of 30 November 2016 on the Organization and Proceedings Before the Constitutional Court (Journal of Laws of 2019, item 2393).
Act of 4 September 1997 – on Government Administration Departments (Journal of Laws of 2021, item 1893, as amended).
Act of 6 July 2001 on Preserving the National Character of the Country's Strategic Natural Resources (Journal of Laws of 2018, item 1235).
Act of 6 June 1997 – the Criminal Code (Journal of Laws of 2022, item 1138).
Act of 7 July 1994 – the Construction Law (Journal of Laws of 2021, item 2351, as amended).
Act of 9 June 2011 – the Geological and Mining Law (Journal of Laws of 2022, item 1072).
Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended).
Constitution of the Republic of Poland of 22 July 1952 (Journal of Laws of 1976 No. 7, item 36, as amended).
Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of the United Nations at its seventeenth session Paris, 16 November 1972 (Journal of Laws of 1976 No. 32, item 190).
Convention for the Protection of Human Rights and Fundamental Freedoms, adopted at Rome, 14 November 1950 (Journal of Laws of 1993, No. 61, item 284).
Regulation of the Prime Minister of 27 October 2021 on the detailed scope of activities of the Minister of Climate and Environment (Journal of Laws item 1949).
Resolution of the Sejm of the Republic of Poland of 30 July 1992 – Rules of Procedure of the Sejm (Monitor Polski of 2021, item 483, as amended).
Resolution of the Senate of the Republic of Poland of 30 July 1992 – Rules of Procedure of the Senate (Monitor Polski of 2018, item 846, as amended).

Chapter VII

Romania: A Constitution with Essential Standards and the Developing Practice of the Constitutional Actors

Károly Benke

1. The right to a healthy environment and the protection of future generations in the Constitution of Romania

The Constitution of Romania was adopted in the sitting of the Constituent Assembly of November 21, 1991,[1] and entered into force after its approval by the national referendum of December 8, 1991. In its initial version, it did not include a specific provision concerning the right to a healthy environment. The Constitution provided only for the obligation of the state *"to secure the exploitation of natural resources, in conformity with national interests, and the environmental protection and recovery, as well as preservation of the ecological balance."*[2] In its chapter dedicated to fundamental rights, the Constitution connected the fundamental right to property to a certain specific environmental obligation, stating expressly that *"The right of property compels to the observance of duties relating to environmental protection and ensurance of neighborliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom."*[3] This constitutional provision had to be interpreted through article 15 para. (1), according to which *"All citizens enjoy the rights and freedoms granted to them by the Constitution and other laws, and have the duties*

1 Published in the Official Gazette of Romania, Part I, no. 233 on November 21, 1991.
2 See ex-article 134 para. (2), letters d) and e).
3 See ex-article 41 para. (6).

Károly Benke (2022) Romania: A Constitution with Essential Standards and the Developing Practice of the Constitutional Actors. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 309–358. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_8

laid down thereby." Thus, there was an incumbent duty for the owners to protect the environment; however, an explicit right of human beings to a healthy environment was not enacted.

The Constitution was amended and completed via the addition of Law no. 429/2003[4] on the revision of the Constitution of Romania,[5] which, in addition to the aforementioned norms, introduced a new fundamental right in the catalog of the fundamental rights and freedoms comprised by the Constitution of Romania, namely the right to a healthy environment. This new fundamental right is a social-economic right and is provided by article 35 of the Constitution, according to which:

> (1) The State shall acknowledge the right of every person to a healthy, well preserved and balanced environment. (2) The State shall provide the legislative framework for the exercise of such right. (3) Natural and legal entities shall be bound to protect and improve the environment.

As a consequence, the Constitution of Romania contains references to environmental issues in three articles: article 35 on the right to a healthy environment, article 44 para. 7 concerning the relationship between the right to property and environmental duties[6]; and article 135 para. (2) letter e), concerning state obligations regarding environmental matters.[7] In addition to these legal norms, there are other texts in connection with these, namely article 34, the right to protection of health; article 45, economic freedom; or article 135 para. (2) letters d) and f)[8] concerning the state obligations to ensure the exploitation of natural resources in conformity with national interests and to create all necessary conditions so as to increase the quality of life. In a broader sense, article 32, *Right to education*, and article 33, *Access to culture* of *the Constitution*, can also be mentioned, particularly the final paragraph of the latter, according to which *"(3) The State must make sure that spiritual identity is preserved, national culture is supported, arts are stimulated, cultural legacy is protected*

4 According to article 73 para. (1) and (2) of the Constitution, Parliament passes three types of laws, one of them being the constitutional laws that pertain to the revision of the Constitution.

5 Published in the Official Gazette of Romania, Part I, no. 758 on October 29, 2003. Law no. 429/2003 on the revision of the Constitution of Romania was approved by the national referendum of October 18-19, 2003, and entered into force on October 29, 2003, the date of the publication in the Official Gazette of Romania, Part I, no. 758 on October 29, 2003, of Decision of the Constitutional Court no. 3 of October 22, 2003, regarding the confirmation of the result of the national referendum of October 18–19, 2003, concerning the Law on the revision of the Constitution of Romania. The Constitution – as amended by Law no. 429/2003 – was republished in the Official Gazette of Romania, Part I, no. 767 on October 31, 2003.

6 Ex-article 41 para. (6) of the initial version of the Constitution.

7 Ex-article 134 para. (2), letter e) of the initial version of the Constitution.

8 These two legal norms provide that the State shall secure the exploitation of natural resources, in conformity with national interests [letter d)] and the creation of all necessary conditions so as to increase the quality of life [letter f)].

and preserved, contemporary creativity is developed, and Romania's cultural and artistic values are promoted throughout the world."[9]

Notably, in the entire constitutional history of Romania,[10] this is the first time an act of constitutional nature provided for a set of fundamental rules or principles that concerns the protection of the environment. This initial openness of the Constitution of Romania to new values may be explained considering that the Commission for the Drafting of the Constitution created a documentary fund, which included the constitutions of democratic states, studies in the field of constitutional law, and international legal literature on matters to be regulated by the provisions of the Basic Law and initiated working meetings with European specialists.[11] However, as we noted, the right to a healthy environment became part of the Constitution in 2003 on the occasion of its sole amendment. Throughout this entire period (1991–2003), even if the right at stake was not covered by a normative provision of the Constitution, this does not mean that it was not implicitly recognized,[12] taking into account that there were adopted legislative acts that concerned the protection of the environment[13]; however, there was little concern regarding this matter during the post-communist transition. When the fundamental right itself was enacted, the legal literature emphasized that this decision was a matter of course and took into consideration the intrinsic importance of this third-generation right, the international and European orientations in this specific field, and the requirements for the accession of Romania to the European Union, wherein the protection of the environment represents a priority for EU policies.[14]

The sphere of protection of this fundamental right is not limited only to ensuring a viable surrounding nature that supports human life. On the one hand, the right to a healthy environment supposes ensuring a high-quality environment and preserving environmental elements, and on the other hand, an ecologically balanced environment means the protection of those relationships between the elements of an ecologic system that ensure the preservation, operation, and an ideal dynamic.[15]

9 It worth mentioning that, unfortunately, there is no relevant case law of the Constitutional Court that would valorize the link between these two constitutional provisions and the right to a healthy environment.

10 This is considering a period of more than 150 years, as the first Constitution of the United Principalities of Moldavia and Wallachia was adopted in 1866.

11 Enache, 2021, p. 82.

12 Duțu, 2013, p. 15. The author cites (pp. 15–16) a Supreme Court decision (no. 1112/1997), in which the right to a healthy environment is recognized as a subjective and fundamental right derived from the general obligation of the State to secure environmental protection and recovery as well as the preservation of ecological balance, even if the right at stake is not listed in the catalog of fundamental rights and freedoms provided by the Constitution.

13 See, for example, Law no. 84/1993 for the accession of Romania to the Vienna Convention for the Protection of the Ozone Layer, published in the Official Gazette of Romania, Part I, No. 292 on December 15, 1993.

14 Selejan–Guțan, 2008, p. 326. See also Decision no. 54/2022, published in the Official Gazette of Romania, Part I, No. 212 on March 3, 2022, para. 63.

15 Ibid, pp. 27–28.

The holder of the right to a healthy environment is the human being, regardless of its citizenship or civil status, and this right can be exercised either individually or collectively; in the latter case, non-governmental organizations having an important role.[16] Regarding its nature, it is a right of solidarity between the present generation and future generations. The former expresses the common interest of humanity and the interdependence between the individuals of the same species and the surrounding nature, while the latter expresses the right of future generations to inherit a high-quality environment that supposes an obligation in terms of the preservation of nature in the long term and the application of policies that promote sustainable development.[17]

In accordance with the Constitutional Court case law, the right to a healthy environment means taking all necessary measures to ensure the increased quality of the environment, while maintaining a healthy environment means, in reality, preserving and improving the conditions of quality of life to maintain ecological balance.[18]

The Court held that the state has both negative and positive obligations. With regard to positive obligations, they imply the creation of a legislative and administrative framework aimed at the effective prevention of damage to the environment and human health. Thus, the normative framework must be aimed at preventing environmental degradation, establishing the necessary remedies, and regulating the sustainable use of natural resources.[19] To fulfill its obligations of protection, the state must adopt, in a sufficient way, normative measures that lead to a real exercising of each person's right to a healthy environment.[20]

An attempt was made to modify this constitutional text in 2014. The proposal of the amendment indicated an intention to add two more paragraphs to article 35 as follows:

"(2^1) The state ensures the protection, sustainable use and restoration of the natural heritage.

(3^1) Ill-treatment of animals, as defined by law, is prohibited."

Performing a constitutional review on the proposed constitutional amendment,[21] the Constitutional Court stated that the wording of the latter paragraph contains a

16 Ibid, p. 29.

17 Ibid, p. 30.

18 Decision no. 295/2022, published in the Official Gazette of Romania, Part I, no. 568 on June 10, 2022, para. 173.

19 Decision no. 80/2014, published in the Official Gazette of Romania, Part I, no. 246 on April 7, 2014, para. 401.

20 Decision no. 295/2022, para. 174.

21 According to article 146 letter a) 2nd indent, the Constitutional Court has the attribution to review, ex officio, the constitutionality of the initiatives to revise the Constitution. This review is performed before the initiative is submitted to Parliament; it is meant to verify the observance of the procedural requirements for the submission of the initiative, on the one hand, and of the substantive limits of revision, the so-called eternal clauses, on the other hand. These clauses are enacted in article 152 para. (1) and (2) of the Constitution, according to which *"(1) The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the repub-*

standard of conduct but is imprecise, as it is not clear whether the phrase "defined by law" refers to animals or to ill treatment. The Court recommended the reformulation of the text.[22]

The same proposal to amend the Constitution attempted to reword article 135 para. (2) letters d) and e) as follows:

> The state guarantees and promotes the increase of the competitiveness of the Romanian economy by:
> d) the exploitation of the production resources in conditions of maximum economic efficiency and with the granting of non-discriminatory access to all those interested;
> e) economic development in terms of environmental protection and maintaining the ecological balance.

In the same decision, the Court noted that article 135 para. (2) letter d) stipulates that the state must ensure "the exploitation of natural resources, in accordance with the national interest", while the proposed amendment eliminates the reference to the national interest, replacing it with maximized economic efficiency. The Court observes that the action of the State in accordance with the national interest is a guarantee for citizens regarding the protection of their rights and freedoms. Thus, the Court finds that the desired amendment ignores the general interest transposed in the concept of the national interest in favor of a particular interest. The Court finds that the amendment to the provision of article 135 para. (2) letter d) exceeds the limits of the revision, as they are provided in article 152 para. (2) of the Constitution.[23]

Regarding letter e), para. (2) article 135, the Court has noted that in the current wording, the state must ensure the restoration and protection of the environment, and maintain the ecological balance, while the draft revised law provides that the state guarantees economic development while protecting the environment and maintaining ecological balance. The Court observes that the current text of the Basic Law corresponds exclusively to the positive obligation of the state correlative to the right to a healthy environment provided by article 35 of the Constitution. On the other hand, the proposed amendment highlights economic development, as it is the one guaranteed and promoted by the state. The court considers that this leads to a change in the wording of the text, which excludes the obligation of the state to restore and protect the environment and to maintain ecological balance. The Court notes that the State has both negative and positive obligations with regard to the right to a healthy environment, and the measures in question must thus be aimed at preventing environmental degradation, establishing the necessary remedies,

lican form of government, territorial integrity, independence of justice, political pluralism and official language shall not be subject to revision.
(2) Likewise, no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof."

22 Decision no. 80/2014, para. 130–132.

23 Decision no. 80/2014, para. 395–398.

and regulating the sustainable use of natural resources. The Court finds that the amendment to the provision of article 135 para. (2) lit. e) results in the suppression of the guarantee of the right to a healthy environment provided by article 35 of the Fundamental Law, violating article 152 para. (2) of the Constitution.[24]

One specific constitutional guarantee of the right to a healthy environment is the obligation to protect and improve the environment, an obligation that only exists in correlation with this specific right and does not exist independently as in the case of other fundamental duties provided by the Constitution.[25] The legal procedural guarantees of this fundamental right are as follows[26]: (a) the access to environmental information in compliance with the requirements of confidentiality; (b) the right of association in environmental protection organizations; (c) the right to be consulted in the decision-making process concerning environmental policies, programs, and legislation; (d) the right to address to the administrative and judicial authorities in environmental matters regardless of whether environmental damage has occurred; and (e) the right to compensation for damages.

In this context, it is of paramount importance to mention that article 152 para. (2) of the Constitution stipulates that no revision of the Constitution shall be made "if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof." It is an eternity clause[27] and a limit imposed on the delegate constituent power, being precluded its possibility to affect the existing rights, freedoms, and guarantees enshrined in the Constitution precluded. As a consequence, the protection of human beings cannot have a descending orientation through constitutional revision.[28] Taking into consideration the aforementioned factors, the right to a healthy environment cannot be eliminated from the Constitution, and its level of protection cannot be affected either directly (through its direct amendment) or indirectly (through the amendment of other constitutional texts that are connected to this fundamental right).

Regarding the protection of future generations, there are no explicit texts in the Constitution; this can eventually be deduced from article 35 as a consequence or an intrinsic part of the right to a healthy environment. Moreover, there is no explicit rule regarding the state's conduct toward future generations, but when the Constitution refers to the exploitation of natural resources in conformity with national interests or when it establishes that certain assets belong to the state, we can conclude that

24 Decision no. 80/2014, para. 399–402.

25 Duțu, ibid, p. 25.

26 Duțu, ibid, p. 23 and pp. 31–35.

27 The Venice Commission advocates for a restrictive and careful approach to the interpretation and application of "unamendable" provisions. It notes that the principles and concepts protected by unamendability provisions should, to a certain extent, be open to dynamic interpretation; see the European Commission for Democracy through Law (Venice Commission) – Report on constitutional amendment, adopted by the Venice Commission at its 81st Plenary Session (Venice, December 11–12, 2009), para. (220) and (221).

28 See Decision no. 80/2014, para. (65).

all of these regulations are created taking into consideration not only the present interest of the state or of the present generation but the interest of future generations as well. In this sense, the Constitution provides that the mineral resources of public interest, the air, the waters with energy potential that can be used for national interests, the beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, and other possessions established by organic law shall be exclusively public property. Moreover, public property is inalienable.[29]

The Constitution do not include an express provision on sustainability as a principle of budgetary management. The only aspect mentioned is that "No budget expenditure shall be approved unless its financing source has been established" (article 138 para. (5) of the Constitution). A budgetary rule, *lato senso*, protects the future generations as well. In 2011, at the proposal of the government, the President of Romania initiated a law for the amendment of the Constitution that inter alia proposed a normative text concerning rules on financial policy. In reviewing this initiative,[30] the Constitutional Court noted that the revision law enshrines, at the level of the legal norm of constitutional rank, the principle of budgetary balance: the regulation of a maximum budget deficit of 3% of the gross domestic product and of a public debt that cannot exceed 60% of the gross domestic product. The proposal is based on the need to convert into a criterion of constitutionality the economic requirement regarding budgetary discipline and rigor and does not violate the limits of the revision of the Constitution provided by article152 para. (1). However, afterward, in 2013, the Parliament rejected the President's initiative.[31]

2. Legislative acts concerning the right to a healthy environment

2.1. Preliminary remarks

According to article 1 para. (4) of the Constitution, the State shall be organized based on the principle of the separation and balance of powers – legislative, executive, and judicial – within the framework of constitutional democracy. Each power has well-established competence and must exercise it in the environmental field as well.

In terms of competence, every public authority must exercise its competence within the limits provided by the Constitution and the laws. According to article 61 para. 1 of the Constitution, the Parliament is the supreme representative body

29 See article 136 para. (3) and (4) of the Constitution.

30 Decision no. 799/2011, published in the Official Gazette of Romania, Part I, no. 440 on June 23, 2011.

31 See http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=12163. Accessed: 12 June 2022.

of the Romanian people and the sole legislative authority of the country. In addition, however, the government can adopt legislative acts with the force of law through legislative delegation; that is, it can adopt ordinances or emergency ordinances. Therefore, in the environmental field, the state can adopt laws, ordinances, and emergency ordinances, all these being primary regulations. Notably, criminal offenses, whether they are connected to the environment field or to another field, can be regulated only by organic law – passed by the majority vote of the members of each Chamber – and emergency ordinances.[32]

According to article 108 para. (2) of the Constitution, the government can issue decisions to organize the execution of laws. This means that the premise of the adoption of such a decision is the prior existence of a legislative act, as decisions are not a source of law. The Constitution does not contain provisions concerning the acts of the other central public authorities, but Law no. 24/2000 specifies that normative orders, instructions, and other such acts of the heads of ministries and other bodies of the specialized central public administration or of the autonomous administrative authorities are issued only on the basis and in the execution of laws, decisions, and ordinances of the government. Additionally, there is no constitutional obligation that, first, the organization of the law be carried out by a decision of the government and only in the application of the decision of the government, conditioned by its existence, to adopt orders of the Minister. Such a rule would lead to an excessive stiffening of the legislative process and to the overloading of the normative system. Therefore, the identification of the most appropriate instrument for law enforcement does not follow an algorithmic structure and is likely to require a predefined hierarchy; however, it takes into account primarily the need for regulation and the material competence of the issuing body.[33]

2.2. General laws

As long as the state recognizes the right of every person to a healthy and ecologically balanced environment, it must ensure the legislative framework for the exercise of this right.[34]

The general law on the protection of the environment is Government Emergency Ordinance no. 195/2005.[35] This ordinance lays down a set of legal regulations on environmental protection, an objective of major public interest, based on the principles

32 See article 73 para. (3) letter h) and article 115 para. (1), (4), and (6) of the Constitution.

33 Decision no. 16/2022, published in the Official Gazette of Romania, Part I, no. 59 on January 19, 2022, para. (17).

34 Decision no. 511/2017, published in the Official Gazette of Romania, Part I, no. 788 on October 4, 2017, para. (14).

35 Published in the Official Gazette of Romania, Part I, no. 1196 of December 30, 2005. This emergency ordinance is the third normative act on environmental protection adopted in the history of Romania. The first two are Law no. 9/1973, published in the Official Gazette of Romania, no. 91 on June 23, 1973 (adopted immediately after the Stockholm Declaration of 1972), and Law no. 137/1995, published in the Official Gazette of Romania, Part I, No. 304 on December 30, 1995 (repealed by Government Emergency Ordinance no.195/2005).

and strategic elements that lead to sustainable development. According to this legislative act, the environment represents the set of conditions and natural elements of the Earth: air, water, soil, subsoil, characteristic aspects of the landscape, all atmospheric layers, and all organic and inorganic substances as well as living beings, interacting natural systems including the listed elements and some material and spiritual values, quality of life, and the conditions that may affect human well-being and health.

All of these elements of the environment are regulated by diverse legislative acts as follows: (a) air: Law no. 104/2011 on ambient air quality,[36] Law no. 173/2008 on active interventions in the atmosphere,[37] or Law no. 293/2018 on reducing national emissions from certain air pollutants[38]; (b) water: Water Law no. 107/1996[39] and Law no. 458/2002 on drinking water quality[40]; (c) soil: Law no. 246/2020 on land use, conservation, and protection[41]; (d) forests: Law no. 57/2020 on the sustainable management of Romania's forests[42]; (e) organic and inorganic substances/living beings: Government Emergency Ordinance no. 57/2007 on the regime of protected natural areas, conservation of natural habitats, and wild flora and fauna[43] or Government Emergency Ordinance no. 59/2007 on the establishment of the National Program for improving the quality of the environment by creating green spaces in localities and Law no. 407/2006 on hunting and the protection of the hunting resources[44] or Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture[45]; (f) spiritual values: Law no. 26/2008 on the protection of intangible cultural heritage[46]; (g) material cultural heritage: Government Ordinance no. 68/1994 on the protection of national cultural heritage[47] or Law no. 182/2000 on the protection of national mobile cultural heritage.[48] It seems that in the near future, a Code on cultural heritage will be adopted as a government decision has been adopted for the approval of the preliminary theses of the draft Cultural Heritage Code.[49]

36 Published in the Official Gazette of Romania, Part I, no. 452 on June 28, 2011.
37 Published in the Official Gazette of Romania, Part I, no. 715 on October 21, 2008.
38 Published in the Official Gazette of Romania, Part I, no. 1042 on December 7, 2018.
39 Published in the Official Gazette of Romania, Part I, no. 244 on October 8, 1996.
40 Republished in the Official Gazette of Romania, Part I, no. 875 on December 12, 2011.
41 Published in the Official Gazette of Romania, Part I, no. 1057 on November 10, 2020.
42 Published in the Official Gazette of Romania, Part I, no. 402 on May 15, 2020.
43 Published in the Official Gazette of Romania, Part I, no. 442 on June 29, 2007. Concerning this emergency ordinance, the Constitutional Court stated that its purpose is to guarantee the conservation and sustainable use of natural heritage, an objective of major public interest, and a fundamental component of the national strategy for sustainable development, which regulates, among others, the categories of protected natural areas, its regime, and the regime of the administration of protected natural areas (Decision no. 385/2020, published in the Official Gazette of Romania, Part I, no. 145 on February 12, 2021, para. 27.)
44 Published in the Official Gazette of Romania, Part I, no. 944 on November 22, 2006.
45 Published in the Official Gazette of Romania, Part I, no. 180 on March 10, 2008.
46 Published in the Official Gazette of Romania, Part I, no. 168 on March 5, 2008.
47 Published in the Official Gazette of Romania, Part I, no. 247 on August 31, 1994.
48 Republished in the Official Gazette of Romania, Part I, no. 259 on April 9, 2014.
49 See Government Decision no. 905/2016, published in the Official Gazette of Romania, Part I, no. 1047 on December 27, 2016.

Government Emergency Ordinance no. 196/2005[50] created the Environmental Fund; this Fund is an economic and financial instrument intended to support and implement projects and programs for the protection of the environment and for the achievement of the objectives of the European Union in the field of environment and climate change in accordance with the legal provisions in force.[51]

Moreover, Law no. 292/2018 on assessing the impact of certain public and private projects on the environment must be mentioned.[52] This law regulates the environmental agreement as the administrative act issued by the competent authority for environmental protection that establishes the conditions and measures for environmental protection and must be observed when planning a project.

Law no. 278/2013 on industrial emissions[53] regulates the prevention and integrated control of pollution resulting from industrial activities, establishing the conditions for the prevention or, where possible, reduction of emissions impacting air, water, and soil as well as a high level of environmental protection, considered as a whole.

Law no. 82/1993 established the Danube Delta Biosphere Reserve[54] as an area of national and international ecological importance. To ensure the protection and

50 Published in the Official Gazette of Romania, Part I, no. 1193 on December 30, 2005.

51 See Constitutional Court Decision no. 485/2017, published in the Official Gazette of Romania, Part I, no. 783 on October 3, 2017, para. (22). According to article 13 para. (1) of the Act, the Environmental Fund finances pilot projects/programs for environmental protection that concern reducing the impact on the atmosphere, water and soil, including monitoring air quality; noise reduction; waste management; protection of water resources, integrated water supply systems, treatment plants, sewers, and treatment plants; integrated coastal zone management; biodiversity conservation and the management of protected natural areas; afforestation of degraded lands and ecological reconstruction and sustainable management of forests; education and public awareness on environmental protection; increasing the production of energy from renewable sources; restoring land in the natural circuit; restoration of historically contaminated sites, excepting those regulated by special laws; the application of clean technologies, including, but not limited to, coal gasification and high-efficiency cogeneration; conducting monitoring, studies, and research in the field of environmental protection and climate change on tasks arising from international agreements, European directives, or other national or international regulations as well as research and development in the field of climate change; modernization and rehabilitation of energy groups; the closure of tailings ponds in the mining sector; carrying out works intended to prevent, remove, and/or reduce the effects produced by extreme meteorological phenomena as well as other harmful factors in accordance with the law; installation of heating systems using renewable energy, including replacement or completion of conventional heating systems; the national program for improving the quality of the environment by creating green spaces in urban areas; the National Car Park Renewal Stimulation Program; the renewal of the National Park of Tractors and Self-Propelled Agricultural Machines Stimulation Program; the program for the construction of tracks for cyclists in urban and peri-urban areas; the National Air Quality Monitoring Network's development and optimization program; the reduction of greenhouse gas emissions in transport by promoting energy-free road transport vehicles; performing works for energy efficiency; reduction of greenhouse gas emissions in agriculture; the program for the development and optimization of the National Network for Environmental Radioactivity Surveillance; the waste assessment, characterization, and classification program; the Environmental Infrastructure Investment Financing Program for Selective Waste Collection, Treatment, and Recycling.

52 Published in the Official Gazette of Romania, Part I, no. 1043 on December 10, 2018.

53 Published in the Official Gazette of Romania, Part I, no. 671 on November 1, 2013.

54 Published in the Official Gazette of Romania, Part I, no. 283 on December 7, 1993.

conservation of natural habitat areas and specific biological diversity as well as to capitalize on available natural resources, according to the consumption requirements of local populations and within the limits of the natural biological potential for regeneration of these resources, the following areas have different ecological protections: (a) strictly protected areas with a conservation regime of scientific reservations; (b) buffer zones, with the role of protection of strictly protected areas and in which limited activities of capitalization on the available resources are permitted in accordance with the approved management plans; (c) areas of sustainable development, which are economically exploitable through traditional practices or new technologies and are ecologically accepted; and (d) areas of ecological reconstruction, in which measures are taken only to restore the damaged environment and which later become areas of sustainable development or strictly protected areas.

2.3. Civil law

The Romanian Civil Code does not include a special chapter on liability in relation to environmental issues. As a consequence, the provisions that regulate the tort liability in the code shall be applied in regard to those environmental issues, meaning the legal duty to compensate someone for damages caused. Article 1349 para. 1 and 2 of the code states that every person has the duty to observe the rules of conduct imposed by the law or custom of the place and not to infringe, through his actions or inactions, on the rights or legitimate interests of other persons. A person who, having discernment, violates this duty is responsible for all damages caused and is obliged to repair them in full.

The Civil Code includes two specific provisions concerning the environment. One of these provisions is article 603, according to which "The right of property compels to the observance of duties relating to environmental protection and ensurance of neighborliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom." This article is identical to article 44 para. (7) of the Constitution. The other provision is article 2518, which provides for a limitation period of 10 years for bringing proceedings to repair the damage caused to the environment. This is a special limitation period; as the general rule, the length of limitation periods is three years, according with article 2517 of the same Act. This is the longest limitation period enacted in the Civil Code.

We must emphasize that in this specific field, a special normative act, namely Government Emergency Ordinance no. 68/2007 on environmental liability, regulates the prevention and repair of environmental damage.[55] This normative act establishes the framework for environmental liability based on the "polluter pays" principle to prevent and repair environmental damage. Its ambit covers the following situations:

a) damage to the environment caused by any type of professional activity and any imminent threat of such harm caused by any of these activities

55 Published in the Official Gazette of Romania, Part I, no. 680 on October 9, 2007.

b) damage to protected species and natural habitats and any imminent threat of such damage caused by any professional activity when the operator acts intentionally or through fault

This act applies to environmental damage or an imminent threat of such damage caused by diffuse pollution only when a causal link can be established between the damage and the activities of individual operators. However, this emergency ordinance does not entitle individuals or legal entities under private law to compensation as a consequence of environmental damage or the imminent threat of such damage. In these situations, the provisions of the Civil Code (article 3 para. (4)) apply.

2.4. Contravention law

The general regime of the contraventions in the Romanian legal system is regulated by Government Ordinance no. 2/2001.[56] The contraventions are subject to an administrative regime,[57] but in the same decision, the Constitutional Court stated that, in accordance with the case law of the European Court of Human Rights, a contravention can be considered a "criminal" offense within the meaning of article 6 of the European Convention of Human Rights if the Engel criteria are met.[58]

For environmental issues, the general *sedes materiae* is article 96 of Emergency Ordinance no. 195/2005, which comprises 81 contraventions applicable to both natural and legal persons. The sectorial acts regulate specific contraventions in their particular sphere; e.g. article 87 of Water Law no. 107/1996 regulates 67 specific contraventions to the water regime.

2.5. Criminal law

The most important normative act that regulates criminal offenses in the environment field is Emergency Ordinance no. 195/2005. Article 98 of the act provides the framework for the protection of the environment by way of criminal norms.[59]

56 Published in the Official Gazette of Romania, Part I, no. 410 on July 25, 2001.

57 See Constitutional Court Decision no. 197/2003, published in the Official Gazette of Romania, Part I, no. 545 on July 29, 2003.

58 The three Engel criteria are as follows: the text defining the offense at issue belongs, according to the legal system of the respondent State, to criminal law; the nature of the offense and the nature and degree of severity of the penalty that the person concerned risked incurring must be examined with regard to the object and purpose of article 6, to the ordinary meaning of the terms of that article, and to the laws of the Contracting States.

59 It provides the following: "(1) The following acts constitute criminal offenses and shall be punished by imprisonment from 3 months to one year or by a fine, if they were likely to endanger the life or health of humans, animals or plants:

a) burning of stubble, reeds, shrubs and grassy vegetation in protected areas and on lands subject to ecological restoration

b) accidental pollution due to non-supervision of the execution of new works, operation of installations, technological equipment and treatment and neutralization, mentioned in the provisions of the environmental agreement and / or the integrated environmental authorization / authorization

(2) The following acts constitute criminal offenses and shall be punished by imprisonment from 6 months to 3 years or by a fine, if they were likely to endanger the life or health of humans, animals or plants:
a) pollution by the discharge, in the atmosphere or on the ground, of some wastes or dangerous substances
b) the production of noise beyond the permitted limits, if this seriously endangers human health
c) continuation of the activity after the suspension of the environmental agreement or of the authorization, respectively of the integrated environmental authorization
d) the import and export of prohibited or restricted dangerous substances and preparations
e) failure to report immediately on any major accident by persons in charge of this obligation
f) the production, delivery or use of chemical fertilizers, as well as any unauthorized plant protection products, for crops intended for sale
g) non-compliance with the prohibitions regarding the use on agricultural lands of plant protection products or chemical fertilizers
h) the production, import, export, placing on the market or use of substances that deplete the ozone layer, in violation of the relevant legal provisions
(3) The following acts constitute criminal offenses and shall be punished by imprisonment from 6 months to 3 years, if they were likely to endanger the life or health of humans, animals or plants:
a) non-supervision and non-insurance of landfills of waste and hazardous substances, as well as non-compliance with the obligation to store chemical fertilizers and plant protection products only packaged and in protected places
b) the production or import for the purpose of placing on the market, as well as the use of dangerous substances and preparations without complying with the provisions of the normative acts in force and the introduction on the Romanian territory of waste of any nature for the purpose of their elimination
c) the transport and transit of dangerous substances and preparations, in violation of the legal provisions in force
d) carrying out activities with genetically modified organisms or their products, without requesting and obtaining the import / export agreement or the authorizations provided by the specific regulations
e) cultivation of genetically modified higher plants for testing or commercial purposes, without the registration required by law
f) the operation, in violation of the legal provisions in the field, of an installation in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used, likely to cause outside the installation the death or personal injury of a person or damage significant impact on the environment
(4) The following acts constitute criminal offenses and shall be punished by imprisonment from one to 5 years, if they were likely to endanger the life or health of humans, animals or plants:
a) provocation, due to non-monitoring of ionizing radiation sources, environmental contamination and/or exposure of the population to ionizing radiation, failure to promptly report the increase beyond the permitted limits of environmental contamination, improper application or failure to intervene in case of nuclear accident
a1) the discharge, emission or introduction, in violation of the legal provisions in the field, of sources of ionizing radiation in air, water or soil that are likely to cause environmental contamination or exposure of the population to ionizing radiation
b) the discharge of wastewater and waste from ships or floating platforms directly into natural waters or the deliberate provocation of pollution by the discharge or sinking into natural waters, directly or from ships or floating platforms, of dangerous substances or waste
(5) The following acts constitute criminal offenses and shall be punished by imprisonment from 2 to 7 years:
a) continuation of the activity that caused the pollution after the disposition of the cessation of this activity
b) failure to take measures for the total disposal of hazardous substances and preparations that have become waste
c) refusal to intervene in case of accidental pollution of waters and coastal areas
d) refusal to control the introduction and removal from the country of dangerous substances and preparations or introduction into the country of crops of microorganisms, plants and live animals of wild flora and fauna, without the consent of the central public authority for environmental protection

The Romanian Criminal Code criminalizes certain behaviors that affect the quality of the environment and endanger public health; namely, article 355 criminalizes the spread of diseases to animals or plants,[60] and article 356 criminalizes water pollution.[61]

Distinctively, article 442 para. (2) of the Criminal Code provides that "Carrying out an attack by military means, in an international armed conflict, knowing that it will cause extensive, lasting and serious damage to the environment, which would have been clearly disproportionate to the overall concrete and directly expected military advantage, is punishable by imprisonment from three to 10 years and a ban on exercising certain rights." This criminal offense is considered a war crime and is part of the homonym chapter.

3. International treaties

According to article 11 para. (2) and article 20 para. (2) of the Constitution, the treaties ratified by Parliament are part of national law, and where any inconsistencies exist between the covenants and treaties on the fundamental human rights to which Romania is a party and the national laws, the international regulations shall take precedence unless the Constitution or national laws comprise more favorable provisions.[62] Moreover, article 20 para. (1) of the Constitution provides that consti-

(6) The attempt shall be punished.
(7) In the case of the offenses provided in par. (2) letter a) and h) and par. (4) letter a[1]), committed by negligence, the punishment limits are reduced by half.
(8) The offense provided in par. (3) lit. letter f), committed through by negligence, shall be punished with imprisonment, provided in par. (3), whose special limits are reduced by half, or with a fine.
(9) By derogation from the provisions of article 137 para. (2) of Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented, in the case of the criminal offenses provided for in this article, the amount corresponding to one day-fine for the legal person is between 500 lei and 25,000 lei."

60 "(1) Failure to comply with the measures regarding the prevention or control of infectious diseases in animals or plants or pests, if it has resulted in the spread of such a disease or pests, shall be punished by imprisonment from 3 months to 3 years or by a fine.
(2) If the act is the result of negligence, the special limits of the punishment shall be reduced to half."

61 "(1) Pollution by any means of water sources or networks, if the water becomes harmful to the health of humans, animals or plants, shall be punished by imprisonment from one to 5 years.
(2) If the act is the result of a negligence, the punishment is imprisonment from 6 months to 3 years or a fine.
(3) By exception from the provisions of article 137 para. (2), in the case of the offense provided in this article, the amount corresponding to one day-fine for the legal person is between 500 lei and 25,000 lei.
(4) The attempt shall be punished."

62 To avoid the ratification of international agreements/treaties contrary to the Constitution, the Constitutional Court was vested with the power to adjudicate on the constitutionality of treaties or other international agreements upon notification (article 146 letter b) of the Constitution). However, the Court has not exercised this competence as of this writing.

tutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights as well as with the covenants and other treaties to which Romania is a party.

Taking into account that the content of the constitutional norms is shaped by the provisions of ratified international agreements/treaties, the Constituent Assembly implicitly imposed a level of constitutional protection regarding fundamental rights and freedoms at least at the level provided for in international acts; as a result, the guarantees of a certain complex constitutional right included in ratified international acts can be constitutionalized through the Constitutional Court's case law.[63]

All of these are legal consequences of article 11 para. (1) of the Constitution, according to which the Romanian State pledges to fulfill, as such and in good faith, its obligations as derived from the treaties to which it is a party. This reflects the application of one of the fundamental principles of trust between states in their international relations, the *pacta sunt servanda principle*, according to which states have the obligation to respect and apply, accurately and in good faith, the treaties to which they are a party; otherwise, the states' liability may be engaged.[64]

Regarding environmental policy, Romania seems open to any initiative that aims to improve the legislative framework targeting the protection, conservation, and development of the environment as it has ratified a significative number of treaties, conventions, and agreements concluded on the international, European, and regional levels.

3.1. Ratified international treaties in the environmental field

The first world conference on the human environment was held in Stockholm from June 5 to 16, 1972, and is considered the founding moment for international environmental law and the decisive catalyst for the affirmation of environmental law in general.[65] The Eastern bloc – lead by the Soviet Union – boycotted the conference, but Romania did not do so.[66]

Romania ratified the Framework Convention on Climate Change[67]; the Convention on Biological Diversity[68]; the Convention on Access to Information, Public

63 See Constitutional Court Decision no.64/2015, published in the Official Gazette of Romania, Part I, no. 286 on April 28, 2015, para. 23 and 25.

64 See Constitutional Court Decision no.195/2015, published in the Official Gazette of Romania, Part I, no. 396 on June 5, 2015, para. 23.

65 Duțu, 2021, *online*. The same author emphasizes that under the influence of the founding moment in 1972, the first framework regulation on the matter, Law no. 9/1973 on environmental protection, and the first specialized institutionalized structure, the National Council for Environmental Protection (established in 1974), were attempts at a national response within the limits of the historical context.

66 See Sohn, 1973, p. 431.

67 Ratified by Law no. 24/1994, published in the Official Gazette of Romania, Part I, no. 119 on May 12, 1994.

68 Ratified by Law no. 58/1994, published in the Official Gazette of Romania, Part I, no. 199 on August 2, 1994.

Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention)[69]; the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)[70]; the Landscape Convention[71]; and the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat.[72]

Taking into consideration Romania's geographical position and natural landscape, it concluded numerous regional treaties that concern its topographic elements. The Framework Convention on the Protection and Sustainable Development of the Carpathians, adopted and signed by the Czech Republic, Hungary, Poland, Romania, Serbia, the Slovak Republic, and Ukraine in Kyiv in May 2003 and entered into force in January 2006,[73] and the Convention on the Protection of the Black Sea Against Pollution[74] are worth mentioning. Regarding wildlife, the Convention on International Trade in Endangered Species of Wild Fauna and Flora,[75] the African-Eurasian Waterbird Agreement,[76] and the Convention on the Conservation of Migratory Species of Wild Animals[77] are notable. Romania is also part of the Antarctic Treaty System.[78]

3.2 The Convention for the Protection of Human Rights and Fundamental Freedoms

Romania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms via Law no. 30/1994.[79] Although there is no explicit right in the Convention to a clean and quiet environment, where an individual is directly and seriously affected by noise, smells, or other pollution, an issue may arise under

69 Ratified by Law no. 86/2000, published in the Official Gazette of Romania, Part I, no. 224 on May 22, 2000.
70 Ratified by Law no. 22/2001, published in the Official Gazette of Romania, Part I, no. 105 on March 1, 2001.
71 Ratified by Law no. 451/2002, published in the Official Gazette of Romania, Part I, no. 536 on, July 23, 2002.
72 Ratified by Law no. 5/1991, published in the Official Gazette of Romania, Part I, no. 18 on January 26, 1991.
73 Ratified by Law no. 389/2006, published in the Official Gazette of Romania, Part I, no. 879 on October 27, 2006.
74 Ratified by Law no. 98/1992, published in the Official Gazette of Romania, Part I, no. 242 on September 29, 1992.
75 Ratified by Law no. 69/1994, published in the Official Gazette of Romania, Part I, no. 211 on August 12, 1994.
76 Ratified by Law no. 89/2000, published in the Official Gazette of Romania, Part I, no. 236 on May 30, 2000.
77 Ratified by Law no. 13/1998, published in the Official Gazette of Romania, Part I, no. 24 on January 26, 1998.
78 Ratified by Decree no. 255/1971, published in the Official Gazette of Romania, no. 91 on July 31, 1971.
79 Published in the Official Gazette of Romania, Part I, no. 135 of 31 May 1994.

Article 8[80] concerning the right to respect for private and family life, and this article may be applied in environmental cases, whether the pollution is caused directly by the state or the latter's liability results from the absence of adequate regulation of private sector activity. To raise an issue under Article 8, interference must directly affect an applicant's home, family, or private life, and the adverse effects of environmental pollution must attain a certain minimum level of severity. The assessment of that minimum is relative and depends on all of the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects.[81]

In the case law of the European Court of Human Rights (hereinafter ECHR), environmental issues that concerned Romania generated some interesting cases. One of these is the *Tătar* judgment[82] that was delivered in a case concerning an environmental accident – at the site of a gold extracting operator, a dam had breached, releasing about 100,000 m^3 of cyanide-contaminated tailing water into the environment – and its effects on the private life of the applicant. After the accident, Mr. Tătar filed administrative complaints concerning the risk incurred by him and his family. The Court observed that pollution could cause a deterioration in the quality of life of the riparian and, in particular, affect the comfort of the applicants and deprive them of the use of their home, so as to affect their private and family life. The State had a duty to ensure the protection of its citizens by regulating the authorization, setting-up, operation, safety, and monitoring of industrial activities, especially activities that are dangerous for the environment and human health. The Court also noted that authorities had to ensure public access to the conclusions of investigations and studies. The Court recalled that access to information, public participation in decision-making, and access to justice in environmental matters are enshrined in the Aarhus Convention of June 25, 1998, and the State has a positive obligation to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues.[83] It stressed that the failure of the Romanian government to inform the public, in particular by not making public the 1993 impact assessment on the basis of which the operating license had been granted, had made it impossible for members of the public to challenge the results of that assessment. The Court concluded that the Romanian authorities had failed in their duty to assess to a satisfactory degree the risks that the company's activity might entail and to take suitable measures to protect the rights of those concerned in terms of respect for their private lives and homes under the meaning of Article 8 and, more generally, their right to enjoy a healthy and protected environment.

The Court emphasized that the precautionary principle recommends that States take effective and proportionate measures as soon as possible to prevent the risk of

80 Decision as to admissibility (Application no. 38197/03) Ioan Marchiș and others v. Romania, para. (28), and Decision as to admissibility (Application no. 65175/10.) Fieroiu and others v. Romania, para. (18).

81 Ioan Marchiș and others v. Romania, para. (33).

82 Judgment of January 27, 2009, in Tătar v. Romania (Application no. 67021/01).

83 See para. (97), (113) and (118).

serious and irreversible damage to the environment in the absence of scientific or technical certainty. This principle is part of the inherent positive obligations of respecting private or family life imposed on national authorities and applies, a fortiori, to the period following an environmental accident.[84]

An activity incompatible with environmental requirements that generates a high level of pollution and forces people in nearby areas to endure offensive odors may violate article 8 of the Convention. In this context, the Court stated that the lack of state action to cease the activity of a rubbish tip that generated offensive odors affecting a person detained in a nearby prison violates this article.[85]

Notably, the ECHR case law concerning article 10, Freedom of expression, and article 11 concerning freedom of assembly and association has addressed environmental issues in the context of protests against a mining project for gold and silver deposits and of the registration of an environmental association.

In the former case,[86] the applicant and three other persons decided to express their negative opinion regarding the government's project concerning the mining of gold and silver deposits in Roșia Montană and to raise public awareness of the bill by handcuffing themselves to a barrier, blocking access to the parking area of the government's headquarters, and by holding up signs. The applicant was fined by the police; he contested the fine, but the national courts upheld it. The ECHR noted that the proportionality principle demands a balance to be struck between the requirements of the purposes listed in Article 11 para. (2), on the one hand, and those of the free expression of opinions by word, gesture, or even silence by persons assembled on the streets or in other public places, on the other. The Court concluded that the national courts did not seek to strike this balance, giving the preponderant weight to the formal unlawfulness of the event in question and the imposition of a sanction, administrative or otherwise, however lenient, on the author of an expression that qualifies as political can have an undesirable effect on public speech. The Court considered that the decision to fine the applicant was an unnecessary interference in a democratic society based on the meaning of Article 10 of the Convention. Accordingly, a violation of that Article interpreted in consideration of Article 11 had occurred.[87]

In the latter case,[88] the EcoPolis association opened proceedings before the Bucharest District Court to seek registration in the Register of Associations and

84 See para. 109 and 120–121.

85 See the Judgment of April 7, 2009, in Brânduşe v. Romania (Application no. 6.586/03), para. 68–76.

86 See the Judgment of May 3, 2022, in Bumbeș v. Romania (Application no. 18079/15), para. 8, 98, 101, 102.

87 The issues of freedom of expression and freedom of peaceful assembly are closely linked in the present case, as the protection of personal opinions, secured by Article 10 of the Convention, is among the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention; see para. 67 of the aforementioned decision.

88 See the Judgment of 26 April 2016 in Costel Popa v. Romania (Application no. 47558/10), para. 10, 41, 45–47.

Foundations maintained by that court. The District Court granted the registration; however, the County Court considered the objectives of the association[89] to have been very general and to have run the risk of being understood as belonging to the field of activities of political parties. It noted that the registration of a political party is subject of a different law (Law no. 14/2003) than the law applicable to associations (Government Ordinance no. 26/2000). As a consequence, it quashed the first court judgment and disallowed the registration. The ECHR noted that the last-instance court's statements seem to have been based on mere suspicions regarding the true intentions of the association's founders and the activities it might have engaged in once it had begun to function. The provisions of the association's founding instruments gave no indication that its goal was the setting up of a political party or that it had intended to involve itself in political activities. Moreover, there is no evidence in the case file that the association's founding members had intended to use their association as a de facto political party. Had it been founded as an association, their organization would not have been able to take part in the elections and in establishing public authorities. The Court observed that there is no need to speculate as to whether the law on political parties defines any field of activity as an exclusive domain of political parties, which an association is not allowed to enter, and whether the goal and objectives of the applicant's association as described by its memorandum and articles of association could have included any attributes that entered that hypothetical domain. The Court considered that the reasons invoked by the authorities for refusing registration of the EcoPolis association were not guided by any "pressing social need" nor were they convincing or compelling. The measure is disproportionate to the aim pursued; thus, the interference cannot be deemed necessary in a democratic society.

89 The association's goal, as declared in its memorandum of association as well as its articles of association, was that of promoting the principles of sustainable development at the public policy level in Romania. The association's objectives were to increase expertise in the development of sustainable public policies, to improve the process of the development of sustainable public policies by facilitating public participation in and access to relevant information about the environment, to increase the accountability of the relevant official bodies by scrutinizing the implementation of public policies with an impact on the environment, to facilitate the access of official bodies to best practices by examining the Government's environmental initiatives in a European context, to ensure transparency in the work of public institutions and increase their responsibility for their actions in relation to other citizens, to review whether public institutions worked on the basis of principles of sustainability, and to defend the right to a clean environment as provided by international treaties. The activities envisaged by the association aimed at achieving its objectives were inter alia research and analysis, public debates and conferences, monitoring the implementation of European Union directives, reviewing the development and implementation of public policies in the environmental field, raising citizens' awareness, informing people of matters of public concern, raising the awareness of the community and of public authorities regarding the need to protect the environment, organizing meetings between citizens and representatives of public authorities, organizing debates and opinion polls on issues impacting the environment, developing programs in partnership with public authorities, the active involvement of citizens in the development of public policies and the decision-making process, improving the legal framework, setting up annual prizes for environmental activities, and networking with similar national and international organizations – see para. 7 of the Judgment.

Taking into consideration the *res interpretata* principle – according to which once the ECHR has made a pronouncement regarding an issue, it is to be expected that the Convention will be interpreted and applied in the same manner if the Court is confronted with the same issue again in a different state[90] – and the *erga omnes* effects of the ECHR's decisions, the Romanian State has the obligation to observe not only the cases in which it is a party but the entirety of the ECHR's case law in this very specific field.

4. Responsible national authorities for the protection of the environment

Regarding central public authorities that have competences in the areas of managing, monitoring, and controlling the obligations in the environmental field, it must be emphasized that, according to article 116 para. (1) and article 117 para. (1) of the Constitution, ministries should be organized only in subordination to the government and are set up, organized, and function in accordance with the law. This means that the ministries must be set up by an act with the force of law, and the details that concern their organization/ functioning can be regulated by an administrative act.

The Ministry of Environment, Waters, and Forests was established by reorganizing the Ministry of Environment and merging it with the Ministry of Waters and Forests by taking over the activities and structures of the former Ministry of Environment, as well as the units subordinate to, coordinated by and under the authority of the two ministries.[91] As a consequence, the government decision on the organization and operation of the Ministry of Environment, Waters, and Forests was adopted.[92]

The National Agency for Environmental Protection was established by article 76 of Emergency Ordinance no. 195/2005; it has legal personality, is the specialized body for the implementation of policies and legislation in the field of environmental protection, and is subordinate to the Ministry of Environment, Waters, and Forests. The Administration of the Environmental Fund is established by article 3 para. (1) of Emergency Ordinance no. 196/2005; it has legal personality, ensures the management of the homonymous fund, and is coordinated by the Ministry of Environment, Waters, and Forests.

90 For more details on the principle of res interpretata, see Arnardóttir O.M., 2017, pp. 819–843.

91 Article 6 para. (1) of the Government Emergency Ordinance no. 68/2019, published in the Official Gazette of Romania, Part I, no. 898 on November 6, 2019.

92 Government Decision no. 43/2020, published in the Official Gazette of Romania, Part I, no. 55 on January 28, 2020.

The National Agency for Protected Natural Areas was established by Law no. 95/2016[93] to ensure the unitary and efficient administration of the protected natural areas regulated by the provisions of Government Emergency Ordinance no. 57/2007. As a consequence, the government decision on the organization and operation of this central public structure was adopted (no. 997/2016). It has legal personality and is subordinate to the Ministry of Environment, Waters, and Forests.

The management of the Danube Delta Biosphere Reservation is carried out by the Danube Delta Biosphere Reserve Administration, a public institution with legal personality financed from the state budget and subordinate to the Ministry of Environment, Waters, and Forests (article 4 of Law no. 82/1993).

Government Decision no. 1005/2012 regulates the organization and functioning of the National Environmental Guard.[94] It is a specialized inspection and control body, and its commissioners are civil servants appointed to specific public positions in accordance with the law, who may take measures to sanction, suspend, or terminate the activity due to pollution and environmental damage or for non-compliance with the conditions imposed by regulatory acts issued by the competent authority for environmental protection and the measures set out in the notes on the findings and in the inspection and control reports (article 1 para. 2). It has legal personality and is subordinate to the Ministry of Environment, Waters, and Forests.

Government Decision no. 464/2009 approved the Technical Norms regarding the organization and development of control and inspection activities in the field of environmental protection, while Government Decision no. 546/2006 regulates the framework for achieving public participation in the development of certain plans and programs related to the environment.

There are administrative acts enacted by the central public authorities that regulate plans for organizing a specific activity related to the environment, for example, Government Decision no. 942/2017 on the approval of the National Plan on Waste Management, Government Decision no. 53/2009 on the approval of the National

93 The Agency's main tasks are as follows:
a) proposes elaboration strategies and programs in the field of protected natural areas for protected flora and fauna species
b) verifies and approves the conservation measures, management plans, and regulations regarding the protected natural areas, which it submits, according to the legal provisions, to the central public authority for the protection of the environment, waters, and forests for approval
c) coordinates and verifies the implementation by the management structures of the management plans and activities related to the protected natural areas through a unitary, computerized system for managing and updating the electronic database, ensuring the specific monitoring of the natural capital
d) establishes and implements performance criteria for the evaluation of the administrators of protected natural areas
e) provides the necessary technical support for the substantiation of normative acts, strategies, and policies regarding protected natural areas as well as harmonization with the acquis communautaire, conventions, agreements, and treaties to which Romania is a party.

94 It was established by Government Decision no. 1167/2001, published in the Official Gazette of Romania, Part I, no. 789 on December 12, 2001.

Plan for the protection of groundwater against pollution and damage, Government Decision no. 1076/2021 on the approval of the National Integrated Plan in the field of energy and climate change for 2021–2030, Government Decision no. 683/2015 on the approval of the National Strategy and the National Plan for the Management of Contaminated Sites in Romania, and Government Decision no. 893/2006 on the approval of the National Plan for Preparedness, Response, and Cooperation in the Event of Marine Pollution with Hydrocarbons and Other Harmful Substances. Other plans that have a sectorial effect are adopted by the Environmental Minister; examples include Order of the Environmental Minister no. 625/2018 on the approval of the National Action Plan for the conservation of the brown bear population in Romania, Order of the Environmental Minister no. 1992/2014 for the approval of national action plans for cormorants (Phalacrocorax pygmeus) and red ducks (Aythya nyroca), and Order of the Environmental Minister no. 1327/2014 on the approval of the National Action Plan for the Conservation of the Lesser Spotted Eagle (Aquila pomarina) and the Guide to the Habitat Management of the Lesser Spotted Eagle. The central level also has the competence to adopt the acts containing the criteria for financing environmental projects (see, for example, Life Program 2022).

In addition to the government, the President of the Republic is committed to sustaining environmental programs. In 2020, the President of Romania granted patronage to and actively participated in the government's afforestation program *A forest as big as a country* (O pădure cât o țară), in which more than 50 million seedlings were planted. In 2021, the President encouraged responsible institutions, civil society, and the economic environment to increase the level of ambition in this area.[95]

According to article 64 para. 4 of the Constitution, each Chamber may institute inquiry committees or other special committees, and the Chambers may set up joint committees. The role of the special committees is to deliver opinions on complex normative acts and elaborate draft legislative proposals or other purposes specified in the decisions establishing the respective committee.[96]

In environmental matters, taking into consideration that the Romanian authorities approved a concession license for gold mining by a private company in Rosia Montană, on two occasions, the Parliament set up special committees to evaluate the Roşia Montană mining development project (2003)[97] and a law project related to the exploitation of gold and silver ore in the Roşia Montană perimeter as well as the stimulation and facilitation of the development of mining activities in Romania (2013).[98] The latter committee developed a report with a special view on the environmental problems of the exploitation project: the use of cyanide; dam and decantation pool safety; the

95 See https://www.presidency.ro/en/commitments/climate-and-sustainability. Accessed: 12 June 2022.

96 See Constitutional Court Decision no.828/2017, published in the Official Gazette of Romania, Part I, No.185 on February 28, 2018, para. 50.

97 Parliament Decision no. 8/2003, published in the Official Gazette of Romania, Part I, no. 219 on April 2, 2003.

98 Parliament Decision no. 56/2013, published in the Official Gazette of Romania, Part I, no. 588 on September 17, 2013.

pollution of water, air, and soil; and the damage to biodiversity.[99] Other identified risks concerned the archaeological and cultural heritage of the specific zone in which the project was to be developed.[100] The committee proposed the rejection of the law, an evaluation by the competent state authorities of the environmental risks identified in the report, and taking the necessary steps to include the historic site of Rosia Montana on UNESCO's world heritage list.[101] Finally, taking into account the results of the report, the draft law regarding the mining operations in Roșia Montană was rejected by the Senate and then by the Chamber of Deputies with a large majority.[102]

Regarding the Ombudsman (Advocate of the People), it has to be pointed out that this individual is appointed for a term of office of five years to defend natural persons' rights and freedoms, and their deputies are specialized per fields of activity.[103] The Ombudsman shall exercise their powers ex officio or at the request of persons aggrieved in their rights and freedoms within the limits established by law.[104]

Acting ex officio, the Ombudsman questioned the Ministry of Environment, Waters, and Forests regarding Black Sea pollution. The ministry stated that "the marine ecosystem is in an ecological moment that can be assimilated with a state of convalescence, a state characterized by fragile balance, … [it] becomes vulnerable to the persistence of anthropogenic impact, ecological accidents and the effects global climate change… There was a risk of failure to achieve good ecological status for certain descriptors, namely D5 eutrophication, D8 contaminants, and D1 biodiversity, so the natural process of restoring the health of the sea depends on the continuity and firmness of implementing measures for conservation and protection of the marine environment." Following the steps taken by the Ombudsman, the Ministry of Environment, Waters, and Forests updated the Program of Measures to Achieve Good Ecological Status of the Black Sea according to the Marine Strategy Framework Directive, which was published on March 22, 2022.[105]

Following the notice of the European Commission to stop illegal logging, acting ex officio, the Ombudsman ordered an investigation of the competent authorities in the field of forestry. Following the specific steps of the investigation, it issued a Recommendation addressed to the Ministry of Environment, Waters, and Forests and published the Special Report on the Protection of Romania's Forest Areas. To comply

99 Available at: http://www.cdep.ro/comisii/rosia_montana/pdf/2014/rp520_13.pdf (in Romanian); see especially pp. 25–35.

100 Ibid., p. 36.

101 This gold mining area dating back to the period of the Roman Empire was included in UNESCO's world heritage list on July 27, 2021. See https://whc.unesco.org/en/list/1552/. Accessed: 12 June 2022.

102 For more information, see http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=13777#%20). Accessed: 12 June 2022.

103 Article 58 para. (1) of the Constitution.

104 Article 59 para. (1) of the Constitution.

105 Dossier no. 22933/2019 https://avp.ro/index.php/domenii-de-activitate/domeniul-drepturile-omului-egalitate-de-sanse-intre-barbati-si-femei-culte-religioase-si-minoritati-nationale/activitate/. Accessed: 12 June 2022.

with the regulations adopted at the national and international level, in the field of environmental protection and, implicitly, of forests, the People's Advocate provided a series of recommendations for (a) streamlining the fight against illegal logging, (b) sustainable management of all categories of protected natural areas in the forestry sector, and (c) combating desertification in the context in which the south of the country has recently experienced an accelerated process of aridification.

Proposed solutions include banning clear-cut and quasi-clearing in protected natural areas and buffer zones and restricting the application of these types of forest treatments to the entire forest fund, establishing larger areas where forest treatments are not applied in all categories of protected natural areas provided for in national legislation, including Natura 2000 and UNESCO sites, developing a national strategy to control floods and afforestation, and creating a national afforestation program to implement the objective of the afforestation of land with a destination other than forestry in an area of 2 million ha by 2035.[106]

Acting ex officio, the Ombudsman examined the possible violation of the right to a healthy environment and to support of the national culture, the promotion of Romania's cultural values around the world, to carry out in, a timely manner, the steps under the responsibility of public authorities for listing Roșia Montană in the UNESCO World Heritage List and the protection of this site of great cultural value. A recommendation addressed to the Minister of Culture and the Minister of Environment, Waters, and Forests was issued requesting that they take the necessary steps, based on their responsibilities, to fulfill the procedural requirements provided by the UNESCO World Heritage Convention, for the inclusion of the site in the UNESCO World Heritage List, to protect the integrity of the Roșia Montană site, which was nominated for inclusion in the UNESCO World Heritage List, and to ensure the continuity of cultural values hosted by this landscape, which dates back to Roman times and is proof of multimillennial continuity. Following the issuance of the recommendation, between July 16 and 31, 2021, the meeting of the World Heritage Committee took place, and on July 27, 2021, the Committee decided to add 13 cultural sites from around the world to the UNESCO World Heritage List, including the Roșia Montană Mining Landscape (Romania). Roșia Montană was simultaneously listed in the List of World Heritage in Danger, with the goal of removing threats to its integrity, as represented by plans to resume mining, which would damage much of the mining landscape.[107]

Regarding the High Court of Justice and Cassation, its case law focuses on the observance of the law and the administrative acts enacted, such that its case law cannot be considered overly innovative from a constitutional perspective. Notably, in a case

106 Dossier no. 19249/2019 https://avp.ro/index.php/domenii-de-activitate/domeniul-drepturile-omului-egalitate-de-sanse-intre-barbati-si-femei-culte-religioase-si-minoritati-nationale/activitate/. Accessed: 12 June 2022.

107 Dossier no. 2663/2021 https://avp.ro/index.php/domenii-de-activitate/domeniul-drepturile-omului-egalitate-de-sanse-intre-barbati-si-femei-culte-religioase-si-minoritati-nationale/activitate/. Accessed: 12 June 2022.

concerning road construction in a protected natural area, the High Court of Justice and Cassation reviewed the observance of article 35 and article 135 para. (2) letter e) of the Constitution by the authority that issued the environmental agreement.[108] The Court considered that the invoked constitutional provisions were observed as an environmental agreement but also that all of the documentation that was the basis for its issuance was drawn up in compliance with the normative framework applicable in the field; the biodiversity study showed the effects of the project as well as the protection measures. The environmental agreement provided, inter alia, works for wildlife protection; measures to prevent, reduce, and offset significant adverse effects on the environment related to deforestation of forest vegetation and the prevention and reduction of water, soil, and subsoil pollution; reduction measures targeting the impact on biodiversity and protected natural areas; measures for the management of toxic waste and hazardous substances; measures for landscape protection; a plan for monitoring pollution sources; biodiversity monitoring, including habitat and species status; compensatory measures taken to restore and/or improve habitats in protected natural areas; and an environmental management plan, including monthly monitoring.

In this context, it should be mentioned that, according to the Constitutional Court's case law, the general courts have the power to directly apply the Constitution only in the case and terms established by the decision of unconstitutionality issued by the Constitutional Court.[109] Therefore, the courts can apply the Constitution directly only if the Constitutional Court has found the unconstitutionality of a legislative solution and has authorized, by that decision, the direct application of certain constitutional provisions in the absence of a legal regulation as a result of the decision of unconstitutionality.[110] Therefore, from this perspective, the direct application of article 35 of the Constitution by the general courts is questionable. This means that in the view of the Constitutional Court, the general court can apply only the legislative acts that apply/develop/detail the aforementioned fundamental right, but it cannot apply the constitutional norm itself.

Regarding the investigation of environmental offenses, the public prosecutor's offices play a central role. In a study on criminal proceedings in the field of environmental offenses committed between 2011–2016, a solution of indictment was disposed in only four cases out of 822 cases solved by the prosecution units.[111] The au-

108 Decision no. 1670/2015, issued by the High Court of Justice and Cassation – Administrative and Fiscal Section, not published.

109 See, regarding the direct application of the Constitution, Decision no. 186/1999, published in the Official Gazette of Romania, Part I, no. 213 on May 16, 2000; Decision no. 774/2015, published in the Official Gazette of Romania, Part I, no. 8 on January 6, 2016, Decision no. 895/2015, published in the Official Gazette of Romania, Part I, no. 84 on February 4, 2016, Decision no. 24/2016, published in the Official Gazette of Romania, Part I, no. 276 on April 12, 2016, para. 34, or Decision no. 794/2016, published in the Official Gazette of Romania, Part I, no. 1029 on December 21, 2016, para. (37).

110 Constitutional Court Decision no. 377/2017, published in the Official Gazette of Romania, Part I, no. 586 on July 21, 2017.

111 Lazăr and Hosu, 2016, pp. 68–69.

thors observe that the investigations carried out by the prosecutors did not concern the major polluters or serious situations that result in significant damage to the environment (irreversible or long-term damage) or the death or severe injury of a person's physical integrity or health. Rare cases existed in which the perpetrator was a legal person.[112] In regard to forestry crimes, during the abovementioned period, there were 429 cases in which criminal convictions were disposed. However, the number of these types of criminal offenses remains high throughout the country, and the fight against this phenomenon is not efficient, despite the efforts of the police and forestry staff; moreover, the aggressiveness of the perpetrators is being caused by their living conditions in disadvantaged areas and by constant and secure earnings.[113] The main criminal offenses in the forestry field are tree felling and tree thefts.[114] As a general conclusion, the investigated cases are not complex, and the decisions convicting the perpetrators are oriented toward the minimum of the imprisonment punishment provided by the law; in most of the cases, the courts applied a conditional sentence that suspended the execution of the penalty. During the mentioned period, there was no investigation of a legal person with activities in the field of wood exploitation for committing a forestry offense.[115]

Parliament even enacted a law for the establishment of a Directorate for the Investigation of Environmental Crimes within the Public Ministry, in other words, a specialized prosecution unit. However, the Constitutional Court struck down the law because it approved budget expenditure – consisting in the expenditure connected with the operation of the prosecution unit – without establishing the financing source. Such an institutional behavior of the Parliament is contrary to article 138 para. (5) of the Constitution,[116] and it has precluded this law's entry into force.

5. Assessing the constitutionality of the legislative framework in environmental issues

According to the Constitutional Court's case law, the Constitution is not a declaration of rights, as the latter is only proclamatory in nature and lacks both legal guarantees for their implementation and a coercive force in the case of their violation. Thus, the declarations of rights do not include legal norms that are mandatory for all subjects of law; rather, they are simple statements of principles, the violation of which does not trigger a state sanction in order to restore the authority of the

112 Ibid, p. 86.
113 Lazăr and Hosu, 2016, pp. 108–109.
114 Ibid, pp. 110–219.
115 Ibid, pp. 220–221.
116 Constitutional Court Decision no.681/2020 published in the Official Gazette of Romania, Part I, no. 959 on October 19, 2020.

violated rule and repair damages to legal subjects. These should not be confused with the guarantees of rights that are ensured by imperative, constitutionally enshrined legal norms. That is why a proclamatory text finds neither its place nor its rationale in the text of the Constitution.[117]

Thus, the Constitution comprises only normative rules/fundamental rights and freedoms/principles, and it is the task of the Constitutional Court to identify and develop their normative content and limits.

According to article 146 letters a) and d), the Constitutional Court has the power to adjudicate on the constitutionality of laws before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the government, the High Court of Cassation and Justice, the Advocate of the People, or a total of at least 50 deputies or at least 25 senators as well as to decide on objections as to the unconstitutionality of laws and ordinances that are brought before courts of law or commercial arbitration. the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People. Therefore, the Constitution provides for a priori and a posteriori constitutional review.

In its case law, the Constitutional Court embraced the living law doctrine, stating expressly that it "is indisputable that society is evolving, and the new political, social, economic, cultural realities have to have a normative expression, to be found in the content of positive law. The law is alive, so that, together with society, it must adapt to changes. Thus, laws are repealed, reach their time limit, amended, supplemented, suspended or simply fall into disuse, depending on new social relations, requirements and opportunities. However, all these legislative incidents and the normative solutions they enshrine must respect the principles of the Basic Law. The Constitutional Court, once notified, has the task of controlling the norm, being irrelevant that the norm criticized for unconstitutionality belongs or not to the active part of the legislation."[118]

Moreover, in determining the normative content of the law subject to constitutional review, the Court must take into account the way in which it is interpreted in judicial practice. The interpretation of laws is a rational operation, indispensable in the process of their application and observance, with the aim of clarifying the meaning of legal norms or their field of application; in the process of resolving the cases with which they were invested, this operation is carried out necessarily by the courts by resorting to interpretive methods. The interpretation thus realized indicates to the constitutional court the meaning of the legal norm subject to the constitutionality control, objectifying it and circumscribing its normative content. To achieve this purpose, the interpretation given to legal norms must be generally accepted. This can be done either by the High Court of Cassation and Justice by way

117 Constitutional Court Decision no.80/2014, published in the Official Gazette of Romania, Part I, no. 246 on April 7, 2014, para. 54–55.

118 Constitutional Court Decision no. 766/2011, published in the Official Gazette of Romania, Part I, no. 549 on August 3, 2011.

of preliminary rulings or when resolving appeals in the interest of the law or by a constant judicial practice. Constitutional review concerns the normative content of the legal norm, as it is established by a general and continuous interpretation at the level of courts and cannot be performed on the content of the legal norm resulting from erroneous and isolated interpretations of some courts. Therefore, the review of constitutionality may concern the norm as it is interpreted continuously by constant judicial practice, by preliminary rulings, and by decisions rendered in appeals in the interest of the law when they contravene the provisions of the Basic Law. However, the jurisdiction of the Constitutional Court is also exercised when there is a divergent and continuous judicial practice that is not isolated and in which one of the interpretations given to the norm in question is contrary to the requirements of the Constitution. In other words, the fundamental criterion for determining the competence of the Constitutional Court to exercise constitutionality control over an interpretation of the legal norm is the continuous character of this interpretation, specifically its persistence in time, within the judicial practice and, therefore, the existence of a judicial practice that indicates a certain degree of acceptance at the court level. Thus, the Court is empowered to intervene when it is notified of the existence of a unitary/non-unitary practice of interpretation and application of the law that could violate the requirements of the Constitution, while isolated interpretations that are obviously erroneous cannot be subject to constitutional review but are of judicial control.[119]

When performing a proportionality test, the Constitutional Court operates with aspects that go beyond the strict normative sense of the law. If the Court notes state interference in a specific fundamental right, it will assess the pursued aim and whether it is legitimate, and then it performs the *stricto senso* proportionality test, namely whether the measure is suitable, necessary, and respects a fair balance between the concurrent interests at stake (the individual and the public).[120] Article 53 provides *expressis verbis* for the possibility of restricting the exercise of certain rights or freedoms and adds a condition of proportionality of the restriction. In its case law, the Court notes that the normative scope of this constitutional text refers to situations that deviate from the natural course of political, economic, and social life, its application intrinsically implying an exceptional character of the circumstances in which the analyzed legal norm is adopted. Therefore, the provisions of article 53 of the Constitution are not applicable *rationae materiae* when reviewing the constitutionality of a framework norm with a generally valid configuration.[121] That is why the Court applies the proportionality test as a typical method to determine

119 Constitutional Court Decision no.276/2016, published in the Official Gazette of Romania, Part I, no. 572 on July 28, 2016.

120 The first decision in which the Romanian Constitutional Court performed the proportionality test was Decision no.266/2013, published in the Official Gazette of Romania, Part I, no. 443 on July 19, 2013.

121 Constitutional Court Decision no. 851/2021, published in the Official Gazette of Romania, Part I, no. 454 on May 6, 2022.

the content and limits of the fundamental right at stake and only exceptionally use it within the meaning of article 53 of the Constitution – that is, only in exceptional factual situations.[122]

In the environmental field, the Constitutional Court performed a proportionality test in a case concerning the interdiction of the meadows' owners to change their category of use.[123] Analyzing the purpose pursued by the Parliament by adopting this measure, the Court has found that it aims, on the one hand, to regulate the organization, administration, and operation of permanent pastures in accordance with the provisions of Regulation (EC) no. Council Regulation (EC) No 73/2009 of January 19, 2009, and, on the other hand, to ensure the maintenance, upkeeping and use of the land to preserve the floristic composition of the meadows – which is a gain for the quality of the environment – as well as the creation of economically viable farms and the support of farmers in the development of a short- and medium-term business plan and development program adapted to market requirements. The Court thus has found that these objectives are legitimate. The obligation to maintain the land as meadow represents an adequate and necessary measure for the fulfillment of the aforementioned legitimate purpose. The Court has found that the law strikes the right balance between measures that have limited the use of property as an attribute of ownership and the legitimate aim pursued, as there is a reasonable relationship of proportionality between the competing interests of the community and the individual. The measure in question ensures both the protection of the interests of the community regarding the preservation of the phytocenosis specific to the meadows – and, therefore, of a component part of the national ecosystem – and the possibility of the owner of the property's right to use the meadows according to their nature and typology.

In its case law, the Constitutional Court reviewed the constitutionality of forestry crimes. Its review concerns the observance of article 23 para. (12) of the Constitution,[124] such that the incrimination of certain facts by legal norms of criminal law must respect the principle of proportionality of the incrimination, according to which the incrimination must be strictly necessary to the objective pursued by the legislator, and the intrusion into the fundamental rights restricted by the application of the incriminating rule must be justified.[125] In this jurisprudential context, the Court noted that the social values protected by the incrimination of forestry crimes consist in the social relations meant to protect the forest fund as an essential factor in maintaining the quality of the environment at an optimal level. The state is primarily responsible for achieving the principles of the continuity of timber harvests,

122 For a detailed picture on this issue, see Pivniceru and Benke, 2015, pp.73–93.

123 Constitutional Court Decision nr. 13/2015, published in the Official Gazette of Romania, Part I, no. 175 on March 13, 2015, para. 28–30.

124 According to this constitutional provision, "Penalties shall be established or applied only in accordance with and on the grounds of the law."

125 Constitutional Court Decision no. 418/2018, published in the Official Gazette of Romania, Part I, no. 625 on July 19, 2018, para. 30.

functional efficiency, and ensuring the conservation and improvement of biodiversity, which is likely to legitimize its quality as the main passive subject of such crimes. All of these principles are clear reasons that justify the material and moral interest of the Romanian state in taking all necessary steps to ensure the protection of forest vegetation from uncontrolled acts of cutting, breaking, destroying, degrading, or uprooting trees, seedlings, or shoots belonging to this fund.[126]

Concerning the legal norms that allow the building of the elements of physical infrastructure necessary to support electronic communications networks in urban green spaces if they do not exceed 50 m^2 and 10% of the total area of the respective parcel of green space – 5G networks – the Constitutional Court noted that it pursues a legitimate aim, namely to facilitate the development of electronic communications networks, and that it responds to the need for electronic communication of individuals and legal entities as well as the need to create high-performance infrastructure adapted to technological developments. However, such a measure has a significant negative impact on sustainable development and ecological balance in urban communities, and it appears to be inadequate and even excessive. The Court considers that the criticized legislative solution is not necessary for the pursued aim, as it can be achieved in a way other than that which violates fundamental rights. Finally, regarding the fair balance among the specific interests of the beneficiaries of the law, the Court emphasized that, in applying the principle of proportionality in matters of legislation, the legislator is bound by a condition of reasonableness, namely not to call into question the very existence of rights, or, by the measure provided, the legislator violated this condition of reasonableness, as the criticized provisions have a legal effect of the production of an imbalance between the general public interest represented by the need to develop electronic communications networks and individual interests regarding the right to healthcare and to a healthy environment.[127] Therefore, the Constitutional Court is very protective regarding these two fundamental rights as once they are affected, the provoked damaged is irreparable.

Analyzing the constitutionality of a legal norm that concerned the payment of a fee by the natural or legal person entrusting for final disposal of municipal, construction, and demolition waste, the Constitutional Court established the aim pursued by the legislator, namely to align the Romanian legislation with the European legislation in the field of waste management and to implement some very important economic instruments for the modernization of waste management in Romania. Thus, the economic instruments that were implemented in the national legislation were "pay for what you throw away" "extended producer responsibility" and storage tax. To implement the economic instruments "pay for what you throw away" and "extended producer responsibility" it was necessary to amend and supplement the relevant legislation so as to clearly establish the responsibilities and obligations

126 Constitutional Court Decision no. 755/2012, published in the Official Gazette of Romania, Part I, no. 717 on October 22, 2012.

127 Constitutional Court Decision no. 295/2022, para.180.

of all parties involved, including changes made by promoting the circular economy package. The Constitutional Court emphasized that this landfill tax is a tool used in all European Union countries to reduce the amount of recyclable waste.[128]

However, regarding facts or shortcomings in the legislation, the Constitutional Court is no longer competent to decide on the issue at hand. For example, the absence of the obligation of specialized and authorized economic agents to take over and recover industrial waste and the absence of a legal procedure regarding the publicity of this category of economic agents do not concern the constitutionality of the norm; thus, these aspects cannot be examined by the Constitutional Court.[129] Likewise, the aspects presented regarding the factual situation in the case cannot be retained, as they do not fall within the competence of the Constitutional Court.[130]

The legislator may impose on economic operators that pollute the environment the payment of a tax/contribution to the Environmental Fund, as such a regulation is an approach to fulfilling the positive obligation of the Romanian state to ensure an adequate legal framework for exercising the right of any person to a healthy and ecologically balanced environment, with both individuals and legal entities having the duty to protect and improve the environment.[131]

The positive obligation of the Romanian state to ensure an adequate legislative framework for the exercise of the right to a healthy environment is achieved by taxing motor vehicles for the pollution they produce based on certain criteria. The Court noted that the polluter pays principle is not of constitutional rank, but, taking into account the principle of fiscal equity, such a tax must be paid by the polluter.[132] Instituting such an environmental tax, the state fulfilled its obligation enshrined in article 35 para. (1) and (2) of the Constitution, according to which it provides the legislative framework for exercising the right of any person to a healthy and ecologically balanced environment, as this tax was established for environmental protection and air quality improvement as well as for compliance with limit values provided for in Community legislation in this field. Moreover, from a fiscal perspective, such a tax is the expression, at the legal level, of the constitutional norm of article 35 para. (3),

128 Constitutional Court Decision no. 897/2020, published in the Official Gazette of Romania, Part I, no. 335 on April 1, 2021, para. 20–21, and Constitutional Court Decision no. 95/2021, published in the Official Gazette of Romania, Part I, no. 642 on June 30, 2021, para. 24–25.

129 However, when the legal gaps have constitutional relevance, the Court considers that it is competent to examine the constitutionality of the norm (specifically, the omission of the norm). The assessing of the constitutional relevance of the gap implies two objective criteria: (a) a specific constitutional provision that imposes a certain obligation/right/competence and (b) that specific obligation is not enacted in the legislative act; see, for example, Decision no.503/2010, published in the Official Gazette of Romania, Part I, no. 353 on May 28, 2010.

130 Decision no. 506/2004, published in the Official Gazette of Romania, Part I, no. 68 on January 20, 2005.

131 Decision no. 485/2017, published in the Official Gazette of Romania, Part I, no. 783 on October 3, 2017, para. 23, and Decision no. 268/2017, published in the Official Gazette of Romania, Part I, no. 629 on August 2, 2017, para. 17.

132 Decision no. 802/2009, published in the Official Gazette of Romania, Part I, no. 428 on June 23, 2009.

according to which "Natural and legal persons have the duty to protect and improve the environment."[133]

Activities with a possible significant impact on the environment can take place only on the basis of the environmental permit and the integrated environmental permit that have been regulated in consideration of the provisions of article 35 para. (2) of the Fundamental Law, which establishes the obligation of the state to ensure the legislative framework for the exercise of the right to a healthy and ecologically balanced environment, recognized for any person via the provisions of para. (1) of the same article.[134]

Restrictive regulation of the areas in which smoking is allowed is an option of the legislator that gives expression to the constitutional provisions that guarantee the right to life and the right of a person to physical and mental integrity [article 22 para. (1)], the right to healthcare while establishing the obligation of the state to take measures to ensure hygiene and public health [article 34 para. (1) and (2)], the right of any person to a healthy and ecologically balanced environment, namely the obligation of the state to ensure the legislative framework for the exercise of this right [article 35 para. (1) and (2)], and the right of children and young people to a special regime of protection and assistance in the realization of their rights [article 49 para. (1)]. These constitutional provisions impose on the state a series of positive obligations, which presuppose adequate legislative measures for their fulfillment, in respect of which the legislator has a wide margin of appreciation, for the protection of citizens' constitutional rights, regardless of whether they are smokers or non-smokers.[135]

Neither the Constitution nor the Constitutional Court's case law provide for a non-derogation or precautionary principle as part of the normative part of the right to a healthy environment, but when performing the proportionality test, the Constitutional Court is highly deferent if the limitation of a certain fundamental right or freedom is justified by considerations regarding the right to a healthy environment. Even if the two aforementioned principles do not appear in the case law or Constitution, the Constitutional Court has a highly cautious approach when it comes to nature/the environment and the presentation of its decisions contains – implicitly at a minimum – the precautionary principle.[136]

Moreover, according to article 20 para. (1) of the Constitution, constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights considering

133 Decision no. 487/2014, published in the Official Gazette of Romania, Part I, no. 901 on December 11, 2014, para. 28.

134 Decision no. 92/2015, published in the Official Gazette of Romania, Part I, no. 318 on May 11, 2015, para. 14, Decision no. 774/2014, published in the Official Gazette of Romania, Part I, no. 124 on February 18, 2015, para. 19.

135 Decision no. 29/2016, published in the Official Gazette of Romania, Part I, no. 196 on March 16, 2016, para. 28.

136 See especially Decision no. 295/2022, para. (181).

the covenants and other treaties to which Romania is a party. Therefore, even if these principles are neither enshrined in the Constitution nor developed – yet – in the Constitutional Court's case law, if a certain environmental issue were to raise a problem related to these principles, the Court can interpret article 35 in consideration of the Rio Declaration.[137] Additionally, considering that in the Tătar case, the ECHR itself used the precautionary principle when assessing the conduct of the state vis-à-vis article 8 of the Convention, the Constitutional Court will likely eventually use this principle in its jurisprudence.

6. The relationship between the right to a healthy environment and other fundamental rights/liberties

6.1. Human dignity

According to the Constitutional Court's case law, human dignity is a guiding principle of the fundamental rights and freedoms and of the guarantees associated with them, as their source; at the same time, it is a distinct fundamental right.[138] Any violation of fundamental rights and freedoms is a violation of human dignity, given that their basis constitutes a mediated violation of human dignity and that because human dignity can be considered fundamental with distinct normative value, the possibility of its direct violation must be accepted, distinct from the fundamental rights and freedoms provided for in the Constitution.[139]

From a constitutional perspective, human dignity presupposes two inherent dimensions, namely human relations, which concern the right and obligation of human beings to be respected and, in correlation, to respect the fundamental rights and

137 See, for example, Decision no. 64/2015, published in the Official Gazette of Romania, Part I, no. 286 on April 28, 2015, para. 23–28. In this decision, the Court extensively interpreted the normative content of article 41 of the Constitution (Labor and the social protection of labor) in light of the European Social Charter, making use by article 20 para.1 of the Constitution. The Court stated that by establishing the obligation to interpret the rights and freedoms of citizens in accordance with the international treaties to which Romania is a party, the constituent legislator implicitly imposed a level of constitutional protection of fundamental rights and freedoms at the level provided in international acts at a minimum. In this context, the regulation of a measure of social protection of labor in an international treaty, corroborated by its importance and social amplitude, results in conferring the right or freedom provided in the Constitution on an interpretation in accordance with the international treaty, in other words, an interpretation that evolves the evolutionary concept of the constitution – see, especially, para. 23 of the decision.

138 Decision no. 464/2019, published in the Official Gazette of Romania, Part I, no. 646 on August 5, 2019, para. (31) and (52).

139 Ibid, para. (48).

freedoms of their fellow human beings,[140] and human beings' relationship with the environment, including the animal world, which implies a moral responsibility of care for these beings in a way that illustrates the level of civilization attained.[141] Animals can be seen as an integral part of a sustainable and ecologically balanced environment, their protection being incorporated into the wider framework of ensuring the conditions for maintaining a healthy nature, which will benefit both present and future generations.[142]

6.2. Right to property

Once the right to a healthy environment becomes a fundamental right, its relationship to other enacted constitutional provisions must be determined. In this equation, the most relevant relationship is with the right of property, as article 44 of the Constitution that concerns private property makes an express reference to its exercise with the observance of duties relating to environmental protection. Article 555 para. (1) of the Civil Code defines private property as "the right of the owner to own, use and dispose of an asset exclusively, absolutely and perpetually, within the limits established by law." The reference to "absolutely" in the legal text raised difficulties in qualifying the aforementioned right as absolute or relative. In its case law, the Constitutional Court pointed out that the right to property provided by article 44 of the Constitution is not an absolute right. According to para. (1) of article 44 of the Constitution, "The content and limits of these rights (property rights and claims on the state) are established by law", which allows the legislator, in consideration of specific interests, to establish rules that harmonize the incidence and other fundamental rights of citizens other than property rights in a systematic interpretation of the Constitution, such that they are not suppressed by the approach to regulating property rights. As a consequence, a law that bans a change of the destination of the lands arranged as green spaces and/or provided as such in the urban planning documents, the reduction of their surfaces or their relocation is limiting the right of property; however, it has a social and moral justification, considering that the strict observance of these norms represents a major objective, the protection of the environment and, therefore, of the existing green space, which has a direct connection with the level of public health, thus constituting a value of national interest.[143]

A provision of a law that establishes an obligation on all natural and legal persons to refrain from any activities likely to cause degradation to the natural or

140 See, in this regard, Decision no. 62/2007, published in the Official Gazette of Romania, Part I, no. 104 on February 12, 2007.

141 Decision no. 1/2012, published in the Official Gazette of Romania, Part I, no. 53 on January 23, 2012.

142 Decision no. 511/2017, para. (14).

143 Decision no. 824/2008, published in the Official Gazette of Romania, Part I, no. 587 on August 5, 2008, or Decision no. 1416/2008, published in the Official Gazette of Romania, Part I, no. 77 on February 10, 2009.

landscaped environment, through uncontrolled storage of waste of any kind was rendered constitutional. The Constitutional Court noted that in this specific way, the legislative act ensures a healthy environment even if the owner of the property rights experiences a restriction in the exercise of the attributes of their rights. The legislator is, therefore, competent to establish the legal framework for the exercise of the attributes of the property rights under the primary meaning conferred by the Constitution, so as not to conflict with the general or legitimate interests of other subjects of law, thus establishing reasonable limitations in its use as a guaranteed subjective right. In this respect, the Court has found that the legislator did nothing but express these imperatives within the limits and according to its constitutional competence.[144]

Concerning the ownership of forests – which constitute a good under the meaning of article 1 of Protocol no. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms – the Constitutional Court stated that it is subject to strict state regulation.[145] In the specific case analyzed by the Court, the authors of the exception of unconstitutionality were dissatisfied with the fact that they were fined and forced to pay 50% of the value of the damages produced in the forest they own as a result of non-compliance with the legal provisions regarding the forest regime, specifically due to non-compliance with the obligation to ensure the management of the forest/forestry services (guarding the forest against illegal logging, theft, destruction, degradation, grazing, and other acts detrimental to the forest fund) established under the law. However, the Court noted that such regulation is justified as it is proportionate to the legitimate aim pursued, namely to ensure the sustainable management of forests, whereby on the one hand, the legislator wanted, on the one hand, the owner to continue the forestry policy issued before the possession or forest lands by natural and legal persons based on land laws, respectively the execution of technical forestry works according to forestry arrangements and regulations imposed by the forestry regime and, on the other hand, to ensure the legal framework for carrying out tasks related to environmental protection. As such, the measures established by the legal provisions do not amount to a "duty" related to environmental protection are obligations imposed on the owner in consideration of the property to ensure the sustainable management of forests/the forest fund. Therefore, in relation to the legitimate aim pursued, the Court found that the special regime for the regulation of the attribute of use, including the obligation of the owners to conclude the contracting of administration/forestry services, is adequate, necessary, and proportionate and respects a fair balance between the general interests of the society and the specific interests of the holders of the property rights.

144 Decision no. 68/2004, published in the Official Gazette of Romania, Part I, no. 206 on March 9, 2004.

145 In Decision no. 158/2000, published in the Official Gazette of Romania, Part I, no.566 on November 15, 2000, the Court pointed out that the ownership of forests can only be exercised in compliance with the Forest Code, which determines its content and limits.

One law imposes the obligation of the owners of the lands allocated to a hunting fund to allow the exercise of hunting, the application of hunting protection measures, and the location of temporary hunting facilities and arrangements provided that the respective actions do not affect the basic use of those lands. Even if, through this, the holder of the property rights suffers a restriction of the exercise of the attributes of their rights, the legal regulation itself does not reveal any contradiction to the fundamental right to private property because, on the one hand, capitalization of the hunting fund – a public good of national interest and, at the same time, a renewable natural resource of international interest – is ensured, and, on the other hand, setting the content and limits of property rights is the exclusive attribute of the legislator.[146] The hunting fund is represented by the hunting management unit consisting of the fauna of hunting interest and the land area, irrespective of its category, regardless of the owner and delimited so as to ensure the highest possible stability of the fauna of hunting interest within it. The exceptions are urban areas and the strictly protected area and buffer zone of the Danube Delta Biosphere Reserve. Fauna of hunting interest, which consists of all specimens from the populations of wildlife species existing in the territory of Romania, represents a renewable natural resource and a public good of national and international interest. Thus, the fauna of hunting interest represents a different element from the land surfaces on which it can be found, the two elements being interdependent and only together forming a hunting-related element. The area of land that forms part of a hunting fund remains the property of the natural or legal person who owned it until its establishment.[147]

In another case, the Constitutional Court had to analyze the constitutionality of a law that provided for the carrying out of the deratization activity on private property only by the operator that concluded such an agreement with the local authorities. Private persons that attacked the constitutionality of the norm considered that if they had no possibility of selecting another operator on the criteria of supply and demand or report quality/price, specific to the market economy, their right to private property, more precisely to the usus attribute, is infringed upon because the state or another unit of public law can dispose only with regard to public property and not to private property. The Court stated that such a provision of law is meant to ensure the effective realization of the sanitation of such localities beyond the will of each individual. As it is a service of public interest, leaving it to the discretion of the individual and thus endangering public health, a value protected at the constitutional level by article 35 (the right to a healthy environment), would be inadmissible.[148] Such a legal norm is justified by the fact that the sanitation of localities has the legal nature of a public service and is carried out in the interest of the entire local

146 Decision no. 345/2003, published in the Official Gazette of Romania, Part I, no.746 on October 24, 2003.

147 Decision no. 295/2016, published in the Official Gazette of Romania, Part I, no. 616 on August 11, 2016.

148 Decision no. 612/2009, published in the Official Gazette of Romania, Part I, no. 391 on June 10, 2009.

community, and therefore, it is developed only by licensed operators under the special law, respecting the principles of public health and the conservation and protection of the environment. Moreover, the distinction between the collection of waste stored on private property and waste stored in public spaces is irrelevant because the nature of "public sanitation service" takes into account the public interest of a certain community, namely the satisfaction of the needs of local sanitation communities, and is thus within the scope of the community services provided by public utilities, regardless of the origin of the waste or the place of storage.[149]

The right to property does not confer to its holder a right to build in any condition. The law specifies the conditions under which the execution of construction work must take place, establishing as the responsibility of the holder – of land and/or construction certain obligations deriving from the need to protect the general interest that urbanism and landscaping, as well as security and safety in construction represent. The Court noted that the obligation to obtain a building permit and to prosecute those who do not comply with this obligation protects the rights and freedoms of others, and the activity of building or demolishing buildings of any type must be subject to the conditions prescribed by the law. It was also noted that the obligation to obtain a building permit aims to prevent negative consequences in the case of improper construction; therefore, fulfilling this obligation is intended to prevent the consequences of accidents in the case of improper construction, which justifies the restrictive regulation by Law no. 50/1991 of the authorization for the execution of construction work. Thus, the location, design, execution, and operation of buildings are operations that must comply with urban planning and landscaping as well as certain quality and safety standards. Moreover, the Court emphasized that the aim of the normative acts that establish the quality system in construction is to protect people's lives, property, society, and the environment as well as to prevent negative consequences in the case of construction in breach of applicable law. However, at the same time, the legislator a wide margin of appreciation to criminalize or de-criminalize the actions that breach the authorization conditions provided by the law. For example, the Court accepted the de-criminalization of certain breaches to the regime of the execution of construction work,[150] stating that the legislator took into account the fact that they present a lower social danger, with less harmful consequences for the protected social values. From this perspective, as long as the Parliament

149 Decision no. 358/2021, published in the Official Gazette of Romania, Part I, no. 736 on July 27, 2021.

150 Construction, reconstruction, modification, extension, repair, modernization, and rehabilitation work on roads of any type, forest roads, works of art, networks and technical-municipal equipment, connections to utility networks, hydrotechnical work, riverbed arrangements, land improvement work, infrastructure installation work, work for new capacities of the production, transport, and distribution of electricity and/or heat as well as rehabilitation and refurbishment of existing capacities, drilling and excavation work required for geotechnical studies and geological surveys, and the design and opening of quarry and ballast mines, gas and oil wells, and other surface, underground, or underwater mining.

considers the social danger of a certain act to be greater than that of another one, it will qualify them and, implicitly, will always sanction them differently. Otherwise, it would mean that we would no longer have distinct criminal and administrative offenses, but there would be a single institution for all acts considered "antisocial".[151]

The right to property, as with any other right, must be exercised in good faith and in accordance with the interests and rights of other rightsholders or the general interest of a particular company or community. In this regard, the Court noted that the legal norms regarding land use planning and urbanism, regulated by Law no. 350/2001, aim precisely to obtain a reasonable balance between the specific interests of the owners of the property rights and the public interest that consists in protecting the environment and ensuring the right to a healthy environment as guaranteed by article 35 of the Constitution. To avoid abuses in the field of construction, with extremely serious consequences for the goal of harmonization of the urban environment with the protection of the natural environment, the law contains certain rules on the building permit regime, which were developed according to the nature, purpose, and social impact of each type of construction. Compliance with these rules cannot be converted into an alleged restriction on the exercise of property rights.[152] A new stricter regulation on land use planning and urbanism was necessary to drastically reduce the practices of derogatory urbanism, practices which have led to a process of incoherent internal transformation of localities and uncontrolled expansion that has caused dysfunctions and costs that were sometimes unbearable for local communities, the occupation and dismantling of green spaces, which has generated serious environmental problems, and an avalanche of disputed situations that have affected the legal security of investments.[153]

In conclusion, the Constitutional Court must find a fair balance between the two competing fundamental rights. As R. Alexy noted, the principle of proportionality consists of three sub-principles: the principles of suitability, of necessity, and of proportionality in the narrow sense. All three principles express the idea of optimization. Balancing is the subject of the third sub-principle of the principle of proportionality, the principle of proportionality in the narrow sense. This principle expresses the idea of the "Law of balancing" which has three stages. The first stage is a matter of establishing the degree of nonsatisfaction of or detriment to the first fundamental right at stake, the second stage establishes the importance of satisfying the competing fundamental right, and the third stage answers the question of whether the importance of satisfying the competing fundamental right justifies the detriment to, or non-satisfaction of, the first.[154] Therefore, the Constitutional Court has the

151 Decision no. 142/2019, published in the Official Gazette of Romania, Part I, no. 356 on May 8, 2019, para. 41, 43, 55.

152 Decision no. 734/2019, published in the Official Gazette of Romania, Part I, no. 133 on February 19, 2019, para. (18).

153 Decision no. 286/2014, published in the Official Gazette of Romania, Part I, no. 569 on July 31, 2014, para. (20).

154 Alexy, 2003, pp. 135–136.

paramount task to apply the law of balancing. At the same time, environmental aims pursued by a certain legal norm give precedence to the fundament right to a healthy environment in relation to the right to property.

6.3. State's obligations in the environmental field

Article 35 of the Constitution should be read in conjunction with article 135 para. (2) letters d)–f) of the Constitution[155] as they provide for correlative obligations of the state to the right to a healthy environment.[156] The fundamental right in question has not only substantive but procedural content because of the state obligation to secure environmental protection and recovery as well as the preservation of ecological balance. As mentioned in Section 1, the state's obligations in environmental matters are guarantees of the right to a healthy environment.

In analyzing the Constitutional Court case law, we can identify a case concerning the constitutionality of imposing a harvesting quota of migratory birds per hunter, in which the Court noted that, in accordance with the State's obligation to maintain the population of migratory bird species "at a satisfactory level" the legislature provided separate harvest/day/hunter quotas for each species, taking into account the population trend of these species presented in the International Union for the Conservation of Nature's studies and in its inventory published in the "Red List". Parliament's option in this respect is the result of an evaluation regarding the appropriateness of the legislative measure adopted, within the margin of appreciation provided by article 61 para. (1) of the Constitution. The Constitutional Court noted that setting, by law, the harvest quota of migratory bird species as representing the maximum number of birds that can be hunted in one day by a hunter of the bird species qualified for hunting does not affect article 35 or article 135 para. (2) letters d) and e) of the Constitution.[157]

Regarding state obligations in environmental issues, the Constitutional Court emphasized that the constitutional obligations of the state thus include the preservation of biodiversity as an integral part of the ecological balance and the sustainable exploitation of natural resources in accordance with the national interest in ensuring a healthy natural environment.[158] The preservation of sufficient diversity is essential for the conservation of all species of birds; therefore, special conservation measures must be provided for certain species of birds in respect of their habitats to ensure their survival and reproduction in the range. Such measures must also take into account migratory species and must be coordinated to establish a coherent framework.[159]

155 Decision no. 54/2022, para. (63).
156 Decision no. 313/2018, published in the Official Gazette of Romania, Part I, no. 543 of 29 June 2018, para. (30).
157 Ibid, para. (74) and (75).
158 Ibid, para. (58).
159 Ibid, para. (68).

In the same decision, the Constitutional Court pointed out that even if a legal norm is clear, precise, and foreseeable in its intrinsic construction, its effects/impact on the environment can be unforeseeable at the time of its adoption. Thus, the Constitutional Court remarked that the application of a hunting law can generate unpredictable consequences on the number of game species over time. Therefore, the national legislator has the obligation to set a series of limitations on the mode of hunting exploitation of the hunting fund, such as the regulation of the species for which hunting is allowed, hunting periods/seasons or harvest quotas, and allowing each state to have its own approach regarding the various game species in accordance with the relevant European legislation providing for "the maintenance of the population of those species at a satisfactory level." All of these limitations and, therefore, the harvest quota, regardless of how it is established, are meant to ensure the predictability of the impact of hunting on the number of hunted species, expressing the mandatory preventive character inherent in any measure of environmental protection and the sustainable use of biodiversity.[160]

Finally, it must be noted that the Constitutional Court gives great importance to the qualification of the personnel involved in environmental issues, and the level of their knowledge in this field is considered part of the state's obligation to protect the environment. That is why, according to case law, the period of the internship for the preparation of the candidate for obtaining a permanent hunting permit falls within the ambit of article 35 and article 135 para. (2) letter e) of the Constitution.[161]

The Constitutional Court noted that even when the legislator adopts legislative measures in favor of economic interests, it is obliged to legislate in consideration of the prevalence of environmental protection and maintaining the ecological balance.[162]

6.4. Right to protection of health

Article 34 of the Romanian Constitution guarantees the right to the protection of health, and despite that it does not contain reference to environmental obligations, a direct link between a healthy environment and a healthy person cannot be denied. As a healthy environment provides the framework for individuals' harmonious development, it presupposes the possibility of the full exercise of other fundamental rights of the person, such as the right to healthcare, enshrined in article 34 of the Constitution.[163]

The Constitutional Court ruled that a quality environment also involves healthy wildlife, as the animals' health problems can affect human health and safety. Therefore, concern for animal health reflects the human right to healthcare guaranteed at the constitutional level by the provisions of article 34, which establishes

160 Ibid, para (66) and (72).
161 Ibid, para. (77) and (82).
162 Decision no. 295/2022, para. (173).
163 Ibid, para. (173).

the obligation of the state to take measures to ensure hygiene and public health. Improper treatment of animal diseases that are communicable to humans, potential health problems among the population from the consumption of products from sick animals, and those who have been irrationally administered certain drugs are among the risks that can be avoided by only allowing veterinarians specializing in the products mentioned in the criticized text of the law to sell them.[164]

According to Constitutional Court case law, the activities performed exclusively by veterinarians, such as the sale and use of organic products, pesticides, and veterinary medicinal products, fall within the ambit of articles 34 and 35 of the Constitution.[165]

6.5. Economic freedom

Article 45 of the Constitution guarantees the free access of persons to economic activity, free enterprise, and their exercise under the conditions prescribed by law. It contains no reference to environmental obligations; however, when it refers to their exercise under the conditions prescribed by the law, the legislator has the constitutional obligation to ensure a fair balance between article 45 and article 35 read in conjunction with article 135 para. (2) letters d) and e).

For example, the Constitutional Court had to rule on the constitutionality of a legal norm that provided for an exception to the general rule enshrined in the legislation in force concerning the change of the boundaries of protected natural areas of national interest. According to the challenged norm, the state withdrew from the protected natural areas those lands affected by concession licenses approved until June 29, 2007 (the date of the entry into force of Government Emergency Ordinance no. 57/2007) by government decision for the exploitation of non-renewable mineral resources based on the mining legislation in force. The Constitutional Court stated that this provision sets the regulatory framework that considers, on the one hand, the right of every person to a healthy and ecologically balanced environment and,

164 Decision no. 511/2017, para. (15).

165 The activities that the Parliament places within the exclusive competence of veterinarians are of special importance as they have a direct impact on animal health and an indirect impact on human health. In view of these values, which are intended to be protected, the carrying out of the activities provided by law as within the competence of veterinarians requires special theoretical and practical training, that can be proven with the diploma issued by a higher education institution. Completion of academic studies in veterinary medicine (university education conducted over the course of 6 years) is a requirement for the acquisition of specialized knowledge that defines a genuine professional who is able to act responsibly and competently to prevent, combat, and cure animal diseases. Establishing by law the exclusivity of the veterinarian in the field of marketing and the use of biological products, antiparasitics for special use, and veterinary drugs gives professionalism to the veterinary act and avoids the risk that a person with no specialized training to exercise the skills of a strictly specialized profession. Such an inappropriate exercise of a profession would lead to the dangerous consequence of possibly committing mistakes that could negatively affect the health of animals and people, too. See Decision no. 511/2017, para. 16.

on the other, free access of the person to economic activity as well as free initiative under the conditions established by law. The Constitutional Court observed that the law provides for restrictive conditions for carrying out the exploitation of natural resources in protected natural areas, taking into account that this field of activity is a regulated one and is subject to state authorization and thus controlled by the public authority. The measure can ensure a fair balance between the requirements of the general interest regarding the right to a healthy environment and those of the private interest of economic operators who have leased land for their mining exploitation and meet the requirements regarding the adequacy and necessity of the pursued purpose.[166]

The right to economic freedom must be understood in conjunction with respect for other fundamental rights and freedoms, such as the right to life and the right to health and a healthy environment. The prohibition of smoking in enclosed public spaces does not, in itself, constitute a restriction on economic freedom; however, it is a condition for the pursuit of economic activities with the observance of the aforementioned rights.[167]

6.6. Access to justice and the right to information

Article 21 para. (1) and (2) of the Constitution provides the following:

"(1) Every person is entitled to bring cases before the courts for the defense of his legitimate rights, liberties and interests. (2) The exercise of this right shall not be restricted by any law."

According to article 31 para. (1) and (2) of the Constitution, a person's right of access to any information of public interest shall not be restricted. According to their competence, public authorities are legally bound to provide correct information to citizens regarding public affairs and matters of personal interest.

The right to access to justice and the right to information do not expressly reference environmental issues. However, in a decision,[168] the Constitutional Court observes that the Environmental Protection Law, which regulates the principles and strategic elements underlying the sustainable development of society through environmental protection, lists the following principles: the prevention of ecological risks and damage, priority removal of pollutants that directly and seriously endanger human health, maintenance, improvement of the quality of the environment and the reconstruction of damaged areas, and the creation of a framework for the participation of non-governmental organizations and the population in the elaboration and implementation of decisions. The Court notes that the provisions of this law are in accordance with the relevant international regulations, namely the Convention on Access to

166 Decision no. 313/2018, para. 25–27.

167 Decision no. 29/2016, published in the Official Gazette of Romania, Part I, no. 196 on March 16, 2016, para. (31).

168 Decision no. 7/2001, published in the Official Gazette of Romania, Part I, no. 109 on March 5, 2001.

Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. It emphasizes that the convention, which focuses on decision-making awareness, transparency, and public participation in decision-making, regulates the following: public participation in decisions on specific activities; public participation in the preparation of environmental plans, programs, and policies; and access to justice for the public concerned. In this indirect link to the right to justice and the right to information, we can deduce that there is an implicit connection between them.

6.7. Right to a healthy environment and European law

In the Constitutional Court's case law, "the use of an EU norm in the context of the review of constitutionality as an interposed norm to the reference one implies, pursuant to Article 148 para. (2) and (4) of the Constitution of Romania, a cumulative conditionality: on the one hand, that norm must sufficiently clear; precise and unequivocal in itself or its meaning must have been determined in a clear, precise and unequivocal manner by the Court of Justice of the European Union and, on the other hand, the norm must be limited to a certain level of constitutional relevance, so that its normative content may support the possible infringement by national law of the Constitution – the only direct norm of reference in the context of constitutional review."[169] Therefore, the contradiction between the national and the EU norms does not *per se* constitute a breach of the norm of reference in the review of constitutionality, namely the Constitution, but may be an argument to demonstrate a breach of the Constitution.[170]

Regarding environmental issues, the Constitutional Court noted, for example, that Directive 2009/147/EC of the European Parliament and of the Council of November 30, 2009, on the conservation of wild birds and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as well as the provisions of article 191 para. (1) of the Treaty on the Functioning of the European Union, which enshrines the objectives of the Union's environmental policy, can be considered clear, precise, detailed aspects of the content of the right to a healthy environment, as they fulfill the former condition. However, regarding the latter condition, the Constitutional Court noticed that it protects the same fundamental value expressly enshrined in article 35 of the Romanian Constitution, that is, the right to a healthy environment; thus, their constitutional relevance on which a constitutionality control could be based by indirect reference to these norms is absorbed by the constitutional norm, which enshrines the protection of the fundamental right to a healthy environment. Because the Court established the constitutionality of the law under review by reference to article 35 of the Constitution, the arguments of the Court are applicable *mutatis mutandis* in the analysis based on article 148 of the Constitution.[171]

169 Decision no. 668/2011, published in the Official Gazette of Romania, Part I, no. 487 on July 8, 2011.
170 Dorneanu, 2022, p. 113.
171 Decision no. 313/2018, para. 32–33.

7. Conclusions and *de lege ferenda* proposals

The right to a healthy environment and the protection of future generations are important spheres in the constitutional existence of a state, and its action must be coherent and protective in these areas. Romania is a perfect example in the discussion of awareness in the environmental field as, initially, its Constitution provided only for state obligations but not the fundamental right of the human being. In 2003, after a difficult period of transition from communism to democracy, it has become evident that the Constitution must encompass the right itself. The case law that has been generated in these almost 20 years proves that a great deal of progress remains to be made with respect to the necessary development of the right to a healthy environment in the Constitutional Court's decisions. We can observe some tendencies in this case law, as follows: between 2003 and 2014, there are references to this right, but they are inconsistent, and the situation is similar to a puzzle when one attempts to search the jurisprudential line on the subject matter – in other words, it seems that the right in question is a marginal one among the overall catalog of fundamental rights and freedoms; between 2014 and 2022, there are more consistent references to this right, as the Court tends to develop it more thoroughly, to provide normative content, and to perform proportionality tests when it comes about restrictions on other rights determined by environmental issues. This reflects an evolution, and the Court seems not to be on a slippery slope when it analyzes aspects concerning this third-generation right. We can observe that constitutional awareness has been developed in the Court's jurisprudence in terms of protecting the environment, which is a valuable step for an Eastern European country in the field of the environment.

De lege ferenda, we can see that article 35 of the Romanian Constitution has general content, but the rationale of a constitution is to regulate the general principles and main aspects of the enacted rights and liberties. It is the task of a Constitutional Court to seek and identify the specific guarantees attached to the right in question and to develop the normative content of that right. Details are developed in laws and other normative regulation.[172] However, in this context, constitutionalizing the prin-

172 In Decision no. 80/2014, para. 74–75, the Constitutional Court stated that the level of detail of the constitutional principles must be a minimum, and this task falls to the lower normative acts. Moreover, an overly detailed regulation of a field or social relationship has the effect of causing instability of the constitutional text. In this regard, the European Commission for Democracy through Law (the Venice Commission), stated that "the need for change in a given system depends on the length and level of detail of the constitutional text." The more detailed the constitutional text, the more it identifies with ordinary legislation, and the more frequently it is subject to changes (see Report on the revision of the Constitution, adopted by the Venice Commission to the 81st plenary session, December 11–12, 2009). Considering the review procedure, the Romanian Constitution is a rigid one, and regulations detailing constitutional principles – true constants of law – cannot be found in its text. Regarding fundamental rights and freedoms, the aim of a constitutional review can only be to increase the level of protection of the citizen, both by extending the scope of fundamental rights and freedoms and by ensuring more effective guarantees of existing rights. It precludes minor changes to constitutional text.

ciple of sustainable development, the precautionary principle, and the principle of non-derogation seems justified; moreover, doing so would improve the Court's case law. However, these principles can be observed in the normative content of the right as the creativity of the Court cannot be underestimated. In its case law, the Court developed the doctrine of evolutionary concepts,[173] which means that a certain right or liberty does not have fixed and immutable content; rather, the content is adapted to the realities of the society in question. Theoretically, it would be a valuable step forward for the protection of the right to a healthy environment to enact, in the text of the Constitution, the aforementioned three principles. However, as we noted, the Constitution of Romania is a rigid constitution that is difficult to amend. Therefore, it is preferable for the Court to interpret article 35 in an evolutionary manner and to develop these principles from its general content.

Concerning the protection of future generations, the Constitution does not comprise normative texts in this regard; thus, the case law on this subject matter is non-existent. However, in securing the right to a healthy environment and establishing the exclusive property of the state upon certain assets or that every budgetary expenditure must have an established financing source, we can see that the intention is to preserve the present heritage for both the present and the future; the society secures "the rights" of the future generations. This is the perspective of the Romanian Ombudsman as, when it challenged a legislative act to the Constitutional Court, it expressly stated that "it has been recognized the public's right to information on the state of the environment and access to justice in case of violation of the right to a healthy environment, as well as the rights of future generations, based on the idea of preserving the natural heritage for the present and future."[174] Personally, I believe that there are no rights of or obligations toward future generations, but the present generation and the state have obligations to encourage procreation and ensure the continuity of the existent values and living conditions/welfare. Thus, in this constitutional context, an amendment to the Constitution seems necessary to broaden and improve the Court's case law.

173 Decision no. 500/2012, published in the Official Gazette of Romania, Part I, no. 492 on July 18, 2012, or Decision no.139/2021, published in the Official Gazette of Romania, Part I, no. 302 on March 25, 2021, para. (115).

174 See Decision no. 295/2022, para. (43).

Bibliography

Alexy, R. (2003) 'Constitutional Rights, Balancing, and Rationality', *Ratio Juris*, 16(2), pp. 131–140; https://doi.org/10.1111/1467-9337.00228

Arnardóttir, O.M. (2017) 'Res Interpretata, Erga Omnes Effect and the Role of the Margin of Appreciation in Giving Domestic Effect to the Judgments of the European Court of Human Rights', *The European Journal of International Law,* 28(3), pp. 819–843; https://doi.org/10.1093/ejil/chx045

Dorneanu, V. (2022) 'Constitutional Courts Are the Keystones of National Ethos', interview with Lénárd S., *Hungarian Conservative*, 2(3) [Online]. Available at: https://www.hungarianconservative.com/articles/philosophy/constitutional-courts-are-the-keystones-of-national-ethos/ (Accessed: 12 June 2022).

Duțu, M. (2013) *Introducere în dreptul penal al mediului [Introduction to environmental criminal law].* Bucharest: Hamangiu Publishing House.

Duțu, M. (2021) '*Provocări ale noului Drept al mediului și climei. Analize și perspective românești – Pentru un congres științific național' ['Challenges of the new Environmental and Climate Law. Romanian analyzes and perspectives – For a national scientific congress']* [Online]. Available at: https://www.juridice.ro/essentials/4685/provocari-ale-noului-drept-al-mediului-si-climei-analize-si-perspective-romanesti-pentru-un-congres-stiintific-national (Accessed: 12 June 2022).

Enache, M. (2021) 'De la redactarea la exegeza Constituției României din 1991 – Experiențe și reflecții' ['From writing to interpreting the Constitution of Romania from 1991 – Experiences and Thoughts'] in Dorneanu, V., Manole, D., Benke, K., Papuc T. (eds.) *Patrimoniul constituțional și valorile democratice [Constitutional heritage and democratic values].* Bucharest: Hamangiu Publishing House, pp. 77–97.

Lazăr, A., Hosu, E. G. (2016a) 'Analysis of criminal cases concerning waiver/ discontinuing the prosecution/ dismissal of the case or non-prosecution by applying an administrative sanction for crimes laid down in Government Emergency Ordinance no. 195/2005 on environmental protection and Law no. 101/2011 on preventing and sanctioning certain facts regarding the degradation of the environment' in Lazăr, A., Duțu, M., Hosu, E.G., Duțu A. (eds.) *Environmental and forestry protection through criminal law*, Bucharest: Academiei Române/ Universul juridic Publishing Houses, pp. 62–89.

Lazăr, A., Hosu, E. G. (2016b) 'Analyses of cases regarding forest crimes bearing definitive final judgements' in Lazăr, A., Duțu, M., Hosu, E. G., Duțu, A. (eds.) *Environmental and forestry protection through criminal law.* Bucharest: Academiei Române/ Universul juridic Publishing Houses, pp. 105–122.

Pivniceru, M.M., Benke, K. (2015) 'The Principle of Proportionality Reflected in the Case-Law of the Constitutional Court of Romania. German Constitutional Influences', *Constitutional Law Review*, 1(1), pp. 73–93; https://doi.org/10.47743/rdc-2015-1-0002

Selejan-Guțan, B. (2008) 'Comentariu la articolul 35 din Constituție' ['Comment on article 35 of the Constitution'] in Muraru, I., Tănăsescu, E.S. (eds.) *Constituția României – Comentariu pe articole [The Constitution of Romania – By article comments]*. Bucharest: C. H. Beck Publishing House, pp.

Sohn, L. B. (1973) The Stockholm Declaration on the Human Environment, *The Harvard International Law Journal*, 14(3), pp. 423–515.

Legal sources

Laws

Constitution of Romania.
Law no. 104/2011 on ambient air quality.
Law no. 173/2008 on active interventions in the atmosphere.
Law no. 182/2000 on the protection of the national mobile cultural heritage.
Law no. 246/2020 on land use, conservation and protection.
Law no. 26/2008 on the protection of the intangible cultural heritage.
Law no. 278/2013 on industrial emissions.
Law no. 292/2018 on assessing the impact of certain public and private projects on the environment.
Law no. 293/2018 on reducing national emissions of certain air pollutants.
Law no. 407/2006 on hunting and protection of the hunting resources.
Law no. 458/2002 on drinking water quality.
Law no. 57/2020 on the sustainable management of Romania's forests.
Law no. 82/1993 on the establishing the Danube Delta Biosphere Reserve.
Water Law no. 107/1996.

Government Emergency ordinances/ ordinances

Government Ordinance no. 68/1994 on the protection of the national cultural heritage.
Government Emergency Ordinance no. 195/2005 on the protection of environment.
Government Emergency Ordinance no. 196/2005 concerning the Environmental Fund.
Government Emergency Ordinance no. 57/2007 on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna.
Government Emergency Ordinance no. 59/2007 on the establishment of the National Program for improving the quality of the environment by creating green spaces in localities.
Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture.
Government Emergency Ordinance no. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage.
Government Ordinance no. 2/2001 on the legal regime of the contraventions.

Constitutional Court decisions

Decision no. 1/2012, published in the Official Gazette of Romania, Part I, no. 53 of 23 January 2012.
Decision no. 13/2015, published in the Official Gazette of Romania, Part I, no. 175 of 13 March 2015.
Decision no. 139/2021, published in the Official Gazette of Romania, Part I, no. 302 of 25 March 2021.
Decision no. 1416/2008, published in the Official Gazette of Romania, Part I, no. 77 of 10 February 2009.
Decision no. 142/2019, published in the Official Gazette of Romania, Part I, no. 356 of 8 May 2019.
Decision no. 158/2000, published in the Official Gazette of Romania, Part I, no. 566 of 15 November 2000.

Decision no. 16/2022, published in the Official Gazette of Romania, Part I, no. 59 of 19 January 2022.
Decision no. 186/1999, published in the Official Gazette of Romania, Part I, no. 213 of 16 May 2000.
Decision no. 195/2015, published in the Official Gazette of Romania, Part I, no. 396 of 5 June 2015.
Decision no. 197/2003, published in the Official Gazette of Romania, Part I, no. 545 of 29 of July 2003.
Decision no. 24/2016, published in the Official Gazette of Romania, Part I, no. 276 of 12 April 2016.
Decision no. 266/2013, published in the Official Gazette of Romania, Part I, no. 443 of 19 July 2013.
Decision no. 268/2017, published in the Official Gazette of Romania, Part I, no. 629 of 2 August 2017.
Decision no. 276/2016, published in the Official Gazette of Romania, Part I, no. 572 of 28 July 2016.
Decision no. 286/2014, published in the Official Gazette of Romania, Part I, no. 569 of 31 July 2014.
Decision no. 29/2016, published in the Official Gazette of Romania, Part I, no. 196 of 16 March 2016.
Decision no. 295/2016, published in the Official Gazette of Romania, Part I, no. 616 of 11 August 2016.
Decision no. 295/2022, published in the Official Gazette of Romania, Part I, no. 568 of 10 June 2022.
Decision no. 313/2018, published in the Official Gazette of Romania, Part I, no. 543 of 29 June 2018.
Decision no. 345/2003, published in the Official Gazette of Romania, Part I, no. 746 of 24 October 2003.
Decision no. 358/2021, published in the Official Gazette of Romania, Part I, no. 736 of 27 July 2021.
Decision no. 377/2017, published in the Official Gazette of Romania, Part I, no. 586 of 21 July 2017.
Decision no. 418/2018, published in the Official Gazette of Romania, Part I, no. 625 of 19 July 2018.
Decision no. 464/2019, published in the Official Gazette of Romania, Part I, no. 646 of 5 August 2019.
Decision no. 485/2017, published in the Official Gazette of Romania, Part I, no. 783 of 3 October 2017.
Decision no. 487/2014, published in the Official Gazette of Romania, Part I, no. 901 of 11 December 2014.
Decision no. 500/2012, published in the Official Gazette of Romania, Part I, no. 492 of 18 July 2012.
Decision no. 503/2010, published in the Official Gazette of Romania, Part I, no. 353 of 28 May 2010.
Decision no. 506/2004, published in the Official Gazette of Romania, Part I, no. 68 of 20 January 2005.
Decision no. 511/2017, published in the Official Gazette of Romania, Part I, no. 788 of 4 October 2017.

Decision no. 54/2022, published in the Official Gazette of Romania, Part I, no. 212 of 3 March 2022.
Decision no. 612/2009, published in the Official Gazette of Romania, Part I, no. 391 of 10 June 2009.
Decision No. 62/2007, published in the Official Gazette of Romania, Part I, no. 104 of 12 February 2007.
Decision no. 64/2015, published in the Official Gazette of Romania, Part I, no. 286 of 28 April 2015.
Decision no. 668/2011, published in the Official Gazette of Romania, Part I, no. 487 of 8 July 2011.
Decision no. 68/2004, published in the Official Gazette of Romania, Part I, no. 206 of 9 March 2004.
Decision no. 681/2020 published in the Official Gazette of Romania, Part I, no. 959 of 19 October 2020.
Decision no. 7/2001, published in the Official Gazette of Romania, Part I, no. 109 of 5 March 2001.
Decision no. 734/2019, published in the Official Gazette of Romania, Part I, no. 133 of 19 February 2019.
Decision no. 755/2012, published in the Official Gazette of Romania, Part I, no. 717 of 22 October 2012.
Decision no. 766/2011, published in the Official Gazette of Romania, Part I, no. 549 of 3 August 2011.
Decision no. 774/2014, published in the Official Gazette of Romania, Part I, no. 124 of 18 February 2015.
Decision no. 774/2015, published in the Official Gazette of Romania, Part I, no. 8 of 6 January 2016.
Decision no. 794/2016, published in the Official Gazette of Romania, Part I, no. 1029 of 21 December 2016.
Decision no. 799/2011, published in the Official Gazette of Romania, Part I, no. 440 of 23 June 2011.
Decision no. 80/2014, published in the Official Gazette of Romania, Part I, no. 246 of 7 April 2014.
Decision no. 802/2009, published in the Official Gazette of Romania, Part I, no. 428 of 23 June 2009.
Decision no. 824/2008, published in the Official Gazette of Romania, Part I, no. 587 of 5 August 2008.
Decision no. 828/2017, published in the Official Gazette of Romania, Part I, no. 185 of 28 February 2018.
Decision no. 851/2021, published in the Official Gazette of Romania, Part I, no. 454 of 6 May 2022.
Decision no. 895/2015, published in the Official Gazette of Romania, Part I, no. 84 of 4 February 2016.
Decision no. 897/2020, published in the Official Gazette of Romania, Part I, no. 335 of 1 April 2021.
Decision no. 92/2015, published in the Official Gazette of Romania, Part I, no. 318 of 11 May 2015.
Decision no. 95/2021, published in the Official Gazette of Romania, Part I, no. 642 of 30 June 2021.

Reports of the Venice Commission

European Commission for Democracy through Law (Venice Commission) – Report on constitutional amendment, adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009).

Chapter VIII

Serbia: Constitutional Framework for Environmental Protection: Value in Regulation, Silence in Realization

Sanja Savčić

1. Introduction

1.1. Constitutional framework

The definition of the term "healthy environment" is not provided in the Constitution. Moreover, the Law on Environmental Protection[1] provides a definition of "environment" but not of a "healthy environment".

In attempting to focus our research on this topic, a theoretical definition can be utilized instead. Therefore, a "healthy environment" can be considered a set of physical, biological, social, cultural, and other conditions with an impact on qualitative human life as well as the sustainability of biological diversity.[2] From this perspective, protection of the environment should include all natural value, such as water, air, and biological diversity, as well as added value made by human beings (e.g., buildings intended for the maintenance of natural wealth and cultural heritage).[3] Broad legislative actions are required to cover all or, at a minimum, the major aspects of a healthy environment.

1 Official Gazette of Republic of Serbia, No.135/2004, Art. 3 para. 1, ad 2, 3.
2 Lilić and Drenovak Ivanović, 2014, pp. 15–16.
3 Drenovak Ivanović, 2021, p. 17.

Sanja Savčić (2022) Serbia: Constitutional Framework for Environmental Protection: Value in Regulation, Silence in Realization. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 359–397. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_9

Environmental protection has been recognized as a task of the highest level of law. In this sense, the Constitution has three types of provisions that are of importance in this matter.

The first type is the provision on the right to a healthy environment.[4] The second type is provisions that treat a healthy environment as a reason for the restriction of some other rights.[5] Finally, the determination of competence for the issue of environmental protection is provided by the Constitution as well. Accordingly, the Republic of Serbia shall organize and provide for sustainable development, a system of protection and improvement of environment, the protection and improvement of flora and fauna, production, trade and transport of arms, and poisonous, inflammable, explosive, radioactive and other hazardous substances.[6] Autonomous provinces shall, in accordance with the Law, regulate the matters of provincial interest in the field of agriculture, water economy, forestry, hunting, fishery, tourism, catering, spas and health resorts, and environmental protection.[7]

The municipality shall, through its bodies and in accordance with the Law, be responsible for environmental protection, protection against natural and other disasters, protect cultural heritage of the municipal interest,[8] and protect, improve, and use agricultural land.[9]

1.2. Laws on the protection of the environment in the Republic of Serbia

Considering the provisions on competence for the matters of a healthy environment, identifying a great number of laws and bylaws related to this task is not unexpected.[10] The most important are the Law on Environmental Protection, the Law on Environmental Impact Assessment, the Law on Integrated Pollution Prevention and Control, the Law on Strategic Environmental Assessment,[11] and the recently adopted Law on Climate Changes.[12] In addition, there are numerous laws on environmental protection in specific tasks (water, industry, climate changes, etc.).[13]

4 The Constitution of the Republic of Serbia, Official Gazette of the RS No. 98/2006, Art. 74.
5 Constitution, Art. 83.
6 Constitution, Art. 97 para. 1, ad 9.
7 Constitution, Art. 183 para. 2, ad 2.
8 Constitution, Art. 190 para. 1, ad 6.
9 Constitution, Art. 190 para. 1, ad 7.
10 According to the official data, there are 17 laws and over 270 bylaws included in the field of the environmental protection [Online]. Available at: https://www.ekologija.gov.rs/sites/default/files/inline-files/List_of_regulations.pdf (Accessed: 10 February 2022).
11 All of them are published in the Official Gazette of the Republic of Serbia, No.135/2004.
12 Official Gazette of the Republic of Serbia, No. 26/2021.
13 The Law on the Environmental Protection Fund, the Law on Nature Protection, the Law on National Parks, the Law on the Protection and Sustainable Use of Fish Stock, the Law on Chemicals, the Law on the Prohibition of Development, Production, Storagem and Use of Chemical Weapons and Their Destruction, the Law on Biocidal Products, the Law on Waste Management, the Law on Packaging and Packaging Waste, the Law on the Transport of Hazardous Materials, the Law on Trade in Explosive Materials, the Law on Air Protection, the Law on Environmental Noise Protection, the Law on

The common feature of these laws is the fact that provisions regulate measures in different areas of the environment, which need to be undertaken to keep or improve a healthy environment. Apart from this, each law included in this Environment package provides for offenses and fines for not applying certain measures.

In accordance with constitutional provisions on competence, autonomous provinces and municipalities manage environmental matters as well.

1.3. Crimes related to the environment

The Criminal Code[14] contains a particular chapter 24 on criminal offenses against the environment, which include environmental pollution (Art 260), failure to take environmental protection measures (Art. 261), illegal construction and commissioning of facilities and plants that pollute the environment (Art. 262), damage to facilities and devices for environmental protection (Art. 263), environmental damage (Art. 264), destruction, damage, and taking abroad and bringing into Serbia a protected natural asset (Art. 265), import of dangerous substances into Serbia and illegal processing, disposal, and storage of dangerous substances (Art. 266), illegal construction of nuclear buildings (Art. 267), violation of the right to information on the state of the environment (Art. 268), killing and abusing animals (Art. 269), the transmission of infectious diseases in animals and plants (Art. 270), unscrupulous veterinary care (Art. 271), the production of harmful agents for the treatment of animals (Art. 272), contamination of food and water for food, such as feeding animals (Art. 273), forest devastation (Art. 274), forest theft (Art. 275), illegal hunting (Art. 276), and illegal fishing (Art. 277).

Judging from the range of incrimination, it could be concluded that criminal protection is of greater importance than it is in practice. One reason for this is that criminal law should be the last point in the system of environmental protection. If criminal procedure is invoked, that means that the environment was endangered or already damaged. However, criminal law has another function apart from punishment (special prevention): general prevention. In other words, punishment is aimed at discouraging others from wrongdoing. However, in this sense, Serbian criminal law lacks efficiency in environmental matters. The reason may be found in its particularly pronounced fragmentary nature and subsidiarity. In addition, terms used in the descriptions of the offenses are broad and imprecise, which may influence the complications in attempting to prove intent to commit the crime and hence minimize the punishment, if any.[15]

Emergency Situations, the Law on Ionizing Protection Radiation and Nuclear Safety, and the Law on Protection Against Non-Ionizing Radiation. All of these are published in the Official Gazette of the Republic of Serbia, No. 36/09.

14 Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 – corec., 107/2005 – corec., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

15 Samardžić, 2011, p. 756.

1.4. Liability for environmental matters in civil law

Offenses and crimes related to the environment have special and general prevention as their major function. Therefore, the aim of providing fines for unlawful actions is protecting the public interest.

In contrast, civil law, by nature, protects private interests. In this sense, civil law liability can emerge in any case in which personal rights are endangered or harmed.[16] In the context of the environment, if a natural or legal person cause the damage by their action, they are obliged to compensate for it or to undertake a certain action to repair damage. This follows the general principle settled in the Law on Obligations: Everyone is bound to refrain from an act that may cause damage to another.[17] According to the Law on Obligations, injury or loss occurring in relation to a dangerous object of property or a dangerous activity shall be treated as originating from such object or activity unless it is proven that it was not the cause of injury or loss.[18] The owner of a dangerous object of property shall be liable for injury or loss caused by it, while in the case of injury or loss caused by a dangerous activity, the person performing it shall be liable.[19]

The civil law protection of the environment could be achieved through property rights as well.[20] Namely, the owner of real estate has the obligation to refrain from actions that make it difficult to use other real estate or cause significant damage. If the real estate causes a condition that makes it difficult for others to use their real estate, the owner is obliged to remove those causes.[21] This action (negatory claim) has limited application because it is effective only in relation to objects of real estate that are close to each other (usually neighboring). In other words, ecological damage is beyond the scope of this provision. This does not mean that there is no civil liability for that type of harmful emission. Moreover, in this respect, the Law on Obligations provides that everyone may demand from another to eliminate a source of danger threatening considerable damage to them or to an unspecified number of persons as well as to refrain from an activity causing disturbance or danger of loss, should the ensuing disturbance or loss be impossible to prevent via adequate measures. On the request of an interested person, the court shall order the taking of adequate measures to prevent the emergence of damage or disturbance or to eliminate the source of danger – at the expense of the holder of the source of danger, should they themselves fail to act accordingly. Should loss occur in the course of an activity undertaken in the interest of the general public and otherwise permitted by

16 Pajtić, 2015, pp. 1669–1679.
17 Art. 16, Prohibition of Causing Damage
18 Art 173.
19 Art 174.
20 Pajtić Bojan, 2011, 249–264.
21 Law on Fundamentals of Property Relations, *Official Gazette of the Social Federal Republic of Yugoslavia*, No. 6/80 i 36/90, *Official Gazette of Federal Republic of Yugoslavia*, No. 29/96 and *Official Gazette of the Republic of Serbia*, No. 115/2005, Art. 5.

a competent agency, the only recovery to be demanded shall concern loss exceeding normal limits. However, in such a case, it shall also be possible to demand taking socially justified measures to prevent the emergence of or reduce damage.[22]

Due to its preventive nature, this lawsuit (known as "environmental" or "ecological") has great potential in regard to environmental protection. Compared to previously explained negatory claims, the major reason is that the claim holder can be any interested person. That means that lawsuits can be brought not only by persons threatened by considerable damage but any third party if the considerable damage threatens an indefinite circle of persons (*actio popularis*).[23] It entitles a substantial number of organizations and even governmental bodies to take action in preventive care for the environment, in particular those in charge of doing so. However, the reality is quite different. In practice, it has been very rarely been used despite that it has existed in the Serbian legal system since 1978, and when it has, it was primarily to protect personal interests.[24] There are a number of reasons for this. First, *actio popularis* differs from other civil law actions (which can be filed only when a subjective right or a legally protected interest of a concrete person has been violated[25]); hence, it remains invisible to those it may concern. Second, judicial procedures take a great deal of time and expense; thus, for many entities, they remain unaffordable.

The adoption of the Law on Environmental Protection did not improve the situation despite that the rules on liability for damage are settled more precisely.[26] Namely, the polluter who causes pollution of the environment is responsible for damage according to the rules of strict liability. This means that they have an obligation to compensate for damage regardless of their fault, which is more comfortable for an injured party. Further, a polluter whose construction or activity poses a high degree of danger to human health and the environment must be insured against liability in the event of damage caused to third parties as a result of an accident. This obligatory insurance is a type of socialization of the risk and places damaged persons in a better position as the possibility of compensation is enhanced by the fact that there is more than one debtor. A claim for damages can be submitted directly to the polluter or to an insurer, or financial guarantor of the polluter due to whom the accident occurred if such an insurer or financial guarantor exists. If more than one polluter is responsible for the damage caused to the environment, and the share of individual polluters cannot be determined, the costs shall be borne according to the rules of joint and several liability. The initiation of a procedure for compensation for damage is statute-barred for three years from the time when the injured party gained knowledge of the damage and the tortfeasor. This claim becomes unenforceable 20 years after the damage occurred. Proceedings before the court for damages are an

22 Law on Contracts and Torts, Art. 156.
23 Miščević and Dudaš, 2021, p. 60; Dudás, 2015, pp. 27–43
24 Pajtić, 2021, p. 1069.
25 Salma, 2014, pp. 895–915.
26 Law on Environmental Protection, Art. 102–108.

urgent matter. The Republic of Serbia reserves the right to compensation if there are no other persons who have that right. In such a case, compensation is income in the public budget and is directed toward environmental protection purposes.

1.5. Administrative framework for the protection of the environment

Within the competence of administrative authorities, particular regulations and inspection supervision are important.[27]

Among a great number of laws and bylaws regulating environmental protection in the administrative branch, the Law on Environmental Impact Assessment should be singled out[28].

This law regulates the impact assessment procedure for projects that may have significant effects on the environment, the content of the study of environmental impact assessment, the participation of interested bodies and organizations and public, cross-border notification for projects that may have significant effects on the environment in another country, monitoring, and other issues of importance for environmental impact assessment.[29] Impact assessment is performed for projects in the fields of industry, mining, energy, transport, tourism, agriculture, forestry, water management, waste management, and utilities as well as for projects planned on the protected natural resources and in the protected environment of immovable cultural property.[30] The Government of the Republic of Serbia shall prescribe 1) a list of projects for which an impact assessment is mandatory and 2) a list of projects for which an impact assessment may be required. The holder of a project for which an impact assessment is obligatory or a project for which the need for an impact assessment has been determined cannot initiate, such as the construction and execution of, the project without the consent of the competent authority for the impact assessment study.

The procedure has three phases: deciding on the need for impact assessment for projects referred, determining the scope and content of the impact assessment study, and deciding on consenting to the impact assessment study. During the procedure, the competent body has to inform stake holders and the public regarding the facts and experts' opinions. Moreover, all of the documentation that the holder of the project prepared in order to initiate the procedure has to be exposed to the public. Aside from everyone's constitutional right to be informed on environmental matters, the practical application of these provisions could lead to opposite and, therefore, unwitting consequences. Namely, documentation is usually substantial, consisting of hundreds of pages, and is supported by different experts' opinions. For this reason, it is difficult to imagine that one (except the competent body) would focus on the available material. Even in such a case, the terminology of a project (and experts' evaluation) is generally incomprehensible for the majority of people.

27 Milkov, 2013, pp. 61–73, Milkov, 2015, pp. 1441–1458.
28 Official Gazette of the Republic of Serbia, No. 135/2004 and 36/2009.
29 Law on Environmental Impact Assessment, Art. 1.
30 Law on Environmental Impact Assessment, Art 3 para. 3.

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and especially to the environment

Considering the legislative function of Parliament, the Parliament of the Republic of Serbia has a significant role in shaping the rules on environmental protection. In addition, there is an Environmental Protection Committee, which is a working body of Parliament. Within its competences, the Committee follows the work of the Government and other bodies and authorities whose work supervised by the National Assembly in accordance with the Constitution and the law. The Committee considers the reports of the bodies, organizations, and authorities submitted to Parliament under the law.[31]

According to the Law on Ministries, the Ministry of Environmental Protection performs state administration tasks regarding the environmental protection.[32] Due to the scope and complexity of laws and bylaws in the field of environmental protection, the Ministry of Environment Protection is divided into several internal units, which are established to perform activities within its scope.[33] Under the laws in the field of environmental protection, some tasks are entrusted to the Autonomous Province and local self-government units as well.

31 The composition, purview, and manner of operation of the committees is regulated by Articles 46 through 67 of the National Assembly Rules of Procedure [Online]. Available at: www.poslovnik.rs. (Accessed: 20 February 2022).

32 Official Gazette of RS" No. 128/2020, Art 6. The competence of this Ministry includes the basics of environmental protection, the system of environmental protection and improvement, national parks, inspection supervision in the field of protection environment, application of the results of scientific and technological research and development research in the field of environment, implementation of the Convention on Public Participation, Access to Information and the Right to Legal Protection in the Field of Environment, nature protection, air protection, protection of the ozone layer, climate change, transboundary air and water pollution, protection of water from pollution to prevent the deterioration of surface and groundwater quality, the determination of environmental protection conditions in spatial planning and construction, protection against major chemical accidents and participation in response to chemical accidents, protection against noise and vibration, protection against ionizing and non-ionizing radiation, the management of chemicals and biocidal products, the implementation of the Chemical Weapons Convention in accordance with the law, waste management except radioactive waste, creating conditions for access and implementation projects within the scope of that ministry that are financed from the pre-accession funds of the European Union, donations and other forms of development assistance, approval of the transboundary movement of waste and protected plant and animal species, and other activities determined by law.

33 The Sector for Financial Management and Control, Sector for Environmental Management, Sector for Nature Protection and Climate Change, Sector for Strategic Planning, Projects, International Cooperation, and European Integration, Sector for Waste Management and Wastewater, and Sector for Environmental Monitoring and Precaution. Furthermore, inspectional supervision includes tasks to be performed by the state administration.

The Ministry of Environmental Protection contains the Environmental Protection Agency, which performs professional activities regarding the development, supervision, and care of the environment.[34]

Apart from the aforementioned bodies having competence in environmental protection, there are two independent entities that could, among other activities, take action in regard to that aim. The first is the Protector of Citizens (Ombudsman) and the second is the Commissioner for Information of Public Importance and Personal Data Protection. Both institutions are established through laws rather than the Constitution,[35] but their role can be considered significant.

In this respect, the Protector of Citizens is responsible for initiating the procedure against administrative decisions, activities, or passive positions regarding the environmental protection, mediates and gives advice and opinions related to the environment, proposes laws and provides opinions on draft laws and other regulations in the field of environmental protection.[36] They are an intermediary between citizens and state authorities, mainly in an administrative regard. In this sense, the Protector of citizens is "the first line" for receiving citizen complaints regarding the acts of authorities that could be considered risky or dangerous for human rights. Afterward, the Protector notices the entity on determined misconduct and offers recommendations for particular measures that should be undertaken. For instance, in a recent case, the Protector of Citizens determined that the Ministry of the Protector of Citizens has inefficiencies in regard to the field of air protection by failing to work to the detriment of citizens' rights to a healthy environment because it did not monitor in a timely manner the actions of local self-government units in connection with the application of the Law on Air Protection, to which it is authorized according to those local self-government units that have not fulfilled the prescribed obligation to adopt air quality plans and short-term action plans and to provide recommendations on

34 The Environmental Protection Agency, as a body within the Ministry of Environmental Protection, which has the status of a legal entity, performs professional activities related to the development, harmonization, and management of the national information system for environmental protection (monitoring of the state of environmental factors through environmental indicators, a register of pollutants, etc.); implementation of state monitoring of air and water quality, including implementation of prescribed and harmonized programs for the control of air, surface water, and groundwater quality of the first issue, and Precipitation Management of the National Laboratory Collection and consolidation of environmental data; their processing and preparation of reports on the state of the environment and the implementation of environmental protection policy; the development of procedures for processing environmental data as well as their assessment; keeping data on best available techniques and practices and their application in the field of environmental protection; cooperation with the European Environment Agency (EEA) and the European Information and Observation Network (EIONET), and other matters specified by law [Online]. Available at: http://www.sepa.gov.rs/index.php?menu=100&id=4&akcija=showAll. (Accessed: 16 February 2022).

35 The Law on the Protector of Citizens, *Official Gazette of Republic of Serbia,* No. 79/2005 and 54/2007, the Law on Free Access to Information of Public Interest, *Official Gazette of Republic of Serbia,* No. 120/2004, 54/2007, 104/2009, 36/2010, and 105/2021.

36 The Law on the Protector of Citizens, Art. 17–23.

further actions.[37] The Regular Annual Report of the Protector of Citizens for 2021 stated that less than 1% of the complaints were environmental matters.[38] It would not be appropriate to conclude that the reason for this low participation among the total number of the Protector's cases reflects a good condition in the field of environmental protection; rather, citizens are not familiar with the Protector's competence in this matter.

Because the Constitution envisages the right of everyone to be informed on environmental tasks, the Commissioner for Information of Public Importance and Personal Data protection has an important role in that respect, particularly having in mind their competence to monitor compliance with the obligations of government bodies established by this Law and to inform the public and the National Assembly thereof and initiate the enactment or amendment of regulations to implement and improve the right of access to information of public importance.[39] Unlike the Protector of Citizens, the Commissioner for Information of Public Importance is empowered to make decisions in particular administrative procedures and, hence, to order particular actions regarding the relevant information. From this position, the Commissioner has the power to provide information on environmental conditions or on measures related to the environment, which are necessary for the effective protection of the human right to a healthy environment. Recently, the Commissioner stated that Ministry of Environmental Protection is obliged to respond to citizens despite that this body does not have evidence regarding particular environmental facts, at least in terms of the entity proceeding relevant information.[40]

Taking into account that the right to a healthy environment is provided by the Constitution, the role of the Constitutional court should be considered as well. In that sense, it is necessary to discuss the competence of the Court. Namely, the Constitutional Court is an autonomous and independent state body that protects constitutionality and legality as well as human and minority rights and freedoms.[41] With respect to environmental matters, both powers are significant. Its primary power is to protect constitutionality and legality, that is, to assess whether general legal acts are in accordance with the Constitutional Act and laws. Decisions in this procedure are final, enforceable, and generally binding (*erga omnes*). Because a procedure can be initiated by authorized petitioners or on self-initiative, when the general act on

37 The Protector of Citizens, 3115-22/20, dated November 18, 2020 [Online]. Available at: www.ombudsman.rs, (Accessed: 1 May 2022). See also: Recommendations of the Protector of Citizens No. 3115-1098/20, No. 13-22-1751/17 [Online]. Available at: www.ombudsman.rs. (Accessed: 10 May 2022).

38 Regular Annual Report of the Protector of Citizens for 2021 [Online]. Available at: https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji. (Accessed: 12 May 2022).

39 Law on Free Access to Information of Public Interest, Art. 35 para. 1 ad 1 and 2.

40 Commissioner for Information of Public Importance, Decision No. 071-01-762/2021-03, dated October 4, 2021 [Online]. Available at: https://praksa.poverenik.rs/predmet/detalji/F40F7103-54F9-4FFD-B8C6-87E3FF7D6D28. (Accessed: 25 May 2022).

41 Constitution, Art. 166.

environmental issues is perceived as unconstitutional and unlawful, Parliament is given an instructive time limit to make law compatible with the Constitution.[42]

Regarding the protection of human and minority rights, a more effective approach may be the constitutional complaint. Namely, when all available legal remedies are exhausted, citizens can submit such a complaint. As this remedy is perceived as the last means to eliminate the injustice caused to citizen by the act of authorities, it can be considered exceptional rather than a rule.[43] In addition, decisions on constitutional complaints have an *inter partes* effect. Consequently, when the right to a healthy environment is infringed upon by authorities' acts, every involved and interested person can submit a constitutional complaint. The decision of the Constitutional Court is of non-derogation power.

Therefore, the role of the Constitutional Court in shaping environmental protection may be significant. However, according to the available decisions, it is not as apparent in practice. Procedures for the protection of constitutionality and legality dominate the procedure in relation to the right to a healthy environment as such.[44] The reason for this modest role of the Constitutional Court may be the fact that there are many entities and means of environmental protection before the cases enter the competence of the Constitutional Court.

It appears that the ordinary courts have many more cases relating to environmental protection. In this sense, the approach of the courts during the interpretation of the relevant provisions regarding environmental tasks and, in particular, the criteria for jeopardizing and violating the right to a healthy environment are noteworthy. This is particularly the case when civil law rules on liability arise. For example, the Supreme Court of Cassation confirmed the decision of the second instance court on the termination of a contract on the sale of an apartment because unpleasant odors were spreading in the apartment. Namely, the building was made using formwork oil. However, in this particular case, there was a chemical incident due to a mistake in the procedure with subcontractors in one batch. Although decontamination was performed, the court decided to terminate the contract on the sale of the apartment. According to the court, from the perspective of the experts, this is a safe space, and when the fear of health consequences of exposure to phenol, that is, organic pollutants that prosecutors suffer for their own health and the health of their children as a form of stress and safe living, is taken into account, it can be treated as a life-threatening space, particularly bearing in mind that the plaintiff was medically verified to have depression and anxiety disorder in connection with the event in question. Therefore, it is clear that an apartment in which unpleasant odors spread

42 Orlović, 2022, pp. 141–161, 142.

43 Orlović, 2022, p. 142.

44 Decision No. IУо-338/2013, Decision No. IУо-1176/2010, Decision No. IУо- 1256/2010, Decision No. IУо-1537/2010, Decision No. IУо-49/2009, Decision No. IУз-1575/2010. In deciding on the initiative, the Court's primary task is to determine whether the disputed act was put forth for public discussion.

does not meet the basic preconditions of respecting home and enjoying family life, even if the level of emission is within the administrative allowance.[45]

3. Basis of fundamental rights

3.1. The right to a healthy environment and other human rights

The Constitution contains a provision (Art. 74) that is the legal basis for the protection of environment.

Healthy Environment – Everyone shall have the right to a healthy environment and the right to timely and complete information regarding the state of environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of the environment. Everyone shall be obliged to preserve and improve the environment.

The fact that the provisions on the protection of the environment are placed in Section II, titled Human and Minority Rights and Freedoms, suggests that this right is one of the fundamental individual rights. Moreover, separating provisions envisaging the right to a healthy environment from those referring to the obligation to maintain it needs to be realized in the meaning that the Constitution provides guarantees for this right, independent of the question of whether the duty of care is obeyed.

Moreover, some of the constitutional provisions consider a healthy environment to be a reason for the limitation of other constitutional rights. Thus, entrepreneurship may be restricted by the Law for the purpose of the protection of people's health, the environment and natural goods, and the security of the Republic of Serbia.[46] Similarly, according to the Constitution, the Law may restrict the models of utilization and management of agricultural land, forest land, and municipal building land on private assets to eliminate the danger of causing damage to the environment or preventing the violation of the rights and legally justified interests of other persons.[47]

Though the right to a healthy environment is explicitly prescribed by the Constitution, it is included in the content of some other rights as well. Namely, pursuant to Art. 60 (para. 4), everyone shall have the right to the respect (…) of their safe and healthy working conditions. Furthermore, women as well as young and disabled persons shall be provided with special (…) working conditions in accordance with the law (Art. 60 para. 5).

45 Judgment of the Supreme Court of Cassation, No. Rev. 5730/2018, dated July 10, 2019.
46 Constitution, Art. 83.
47 Constitution, Art. 88.

Regarding the right to health, the Constitution contains a provision on healthcare.[48] The Republic of Serbia shall assist in the development of health and physical culture, which, in a certain meaning, includes environmental protection measures.

Regarding cultural heritage, the Constitution specifies that everyone shall be obliged to protect natural rarities and scientific, cultural, and historical heritage as well as goods of public interest in accordance with the law. The Republic of Serbia, autonomous provinces, and local self-government units shall be held particularly accountable for the protection of heritage.[49]

3.2. Protecting the environment via rights relating to political freedoms

Although the Constitution contains provisions that expressly provide the right to a healthy environment, protection of the environment can be achieved by other rights in relation to political freedoms as well. The reasons are twofold. On one hand, although a healthy environment is everyone's right, it is a public interest as well. From that point of view, political freedoms are grounds for participation in making decision on important issues related to the environment. At the same time, exercising political freedoms, individuals, in a certain way, control the authorities.

Bearing this in mind, the right to information is of particular relevance. Namely, in Art. 51 of the Constitution provides that everyone shall have the right to be informed accurately, fully, and in a timely manner regarding issues of public importance. The media is obliged to respect this right. Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers in accordance with the law.

This provision may be of direct relevance to environmental matters as these matters are of public importance. Moreover, the Constitution envisages "the right of everyone to timely and full information about the state of environment" as an integral part of the right to a healthy environment (Art. 74). In addition, this constitutional provision is entirely consistent with the ratified United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Arhus Convention).[50]

With respect to environmental matters, the Constitutional Court often argues regarding the right to be informed. For instance, in decision No. Iuo – 1256/2010, it determined that the Decision on Compensation for the Protection of the Environment of certain municipalities is not in accordance with the Constitution and the law because the municipal authorities did not organize a public hearing in the

48 Constitution, Art. 68.

49 The Constitution Act, Art. 89. For this task, the Law on Planning and Construction is important (*Official Gazette of the Republic of Serbia*, No. 72/2009, 81/2009. (…) 52/2021.).

50 The Law on Confirming the Convention on the Availability of Information, Public Participation in Decision-Making, and the Right to Legal Protection in Environmental Issues, *Official Gazette of the Republic of Serbia*, No. 38/2009.

procedure for determining the proposal of the disputed decision. Namely, an initiative was submitted to the Constitutional Court to initiate proceedings in order to assess the constitutionality and legality of the Decision on Compensation for Environmental Protection and Improvement, which was passed by the Municipal Assembly. The initiator claimed that the disputed Decision was not in accordance with the Constitution and the law because the proposer of this act did not hold a public debate before the decision was made. The response of the bearer of the act states that sessions of the expert working body of the Municipal Assembly were held on several occasions, and representatives of the only legitimate association of small business organizations and entrepreneurs in the municipality were invited and participated in the form of public debate, and suggestions regarding the draft of the disputed decision were given. They informed their members on these occasions before making the decision at the session of the Municipal Assembly. The decision-maker points out that, considering that the disputed decision covers only a small number of economic entities from the territory of the municipality, a wider public debate was not organized; rather, only one with the representatives of economic entities to which the decision applies was held. The response further states that the authorized proposer of the challenged decision needs to inform the public and to open discussion, prior to its adoption. In the conducted procedure, the Constitutional Court further found that the omission of the public hearing during the adoption of this decision also violated the constitutional right to information under Art. 51 para. 1 of the Constitution.

In direct relation to the right to information is the freedom of the media. According to Art. 50, and of particular importance to environmental matters, everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner prescribed by law. The indicated provision regulates not only the freedom of the newspapers but other means of providing information to the public as well.[51] Taking into an account that communication and the exchange of information are moved from a physical to a digital form, which makes the circulation of information faster and easier, the freedom of the media is of relevance for environmental matters. Freedom of the media can be said to support the right to a healthy environment as the right to be informed on environment matters is an integral part of this right.[52] This is more accurate if we consider that censorship should not be applied.[53] Exceptions that a competent court could employ to prevent the dissemination of information do not target environmental matters.[54]

The freedom of association is guaranteed by the Constitution in Art. 55. According to this article, freedom of political, union, and any other form of association shall be guaranteed as shall the right to stay out of any association. Regarding environmental matters, this freedom enables citizens to congregate around common

51 Orlović, 2019, p. 127.
52 Constitution, Art. 74 para. 1.
53 Constitution, Art. 50 para. 3.
54 Constitution, Art. 50 para. 3.

interests, which could be directed to activities on improving and maintaining a healthy environment. Freedom of assembly can be understood in a similar manner.[55] Freedom of association and freedom of assembly have been used frequently during recent years to stress citizens' attitude toward projects related to environmental matters. In doing so, associations committed to a healthy environment, included an NVO-organized series of protests to halt investments in lithium mining, which resulted in the president's intervention and the government canceling the project. Moreover, the number of civil associations increased after Cluster 4 and Chapter 27 in the accession negotiations with the European Union opened.[56]

In addition, the right to participate in the management of public affairs is guaranteed to all citizens and supposes that they shall have the right to take part in the management of public affairs and assume public service and functions under equal conditions.[57] The right to petition is particularly important for environmental matters.[58] Namely, everyone shall have the right to put forward petitions and other proposals alone or together with others to state bodies, entities exercising public powers, bodies of autonomous provinces, and local self-government units as well as to receive a reply from them if they so request.[59]

Finally, as the right to a healthy environment is recognized as a human right, meaning that everyone has the right to seek its protection, the right to a fair trial strengthens the protection of the environment as well. According to Art. 32 of Constitution, everyone shall have the right to a fair trial, which refers to the right to a public hearing before an independent and impartial tribunal established by law within a reasonable time that shall pronounce judgment on their rights and obligations as well as grounds for suspicion resulting in initiated procedures and accusations brought against them. Regarding the right to a fair trial, there are not many available cases that reference to environmental matters as such but, rather, to a

55 Constitution, Art. 54.

56 One practical implication of this support is a program of support for civil society regarding environmental protection and the sustainable development of communities, named "Strong Green," in which associations work together to develop and implement green project ideas that will improve the quality of life in the community [Online]. Available at: https://www.energetskiportal.rs/program-podrske-snazno-zeleno-konkurs-za-organizacije-civilnog-drustva/. (Accessed: 28 May 2022).

57 Constitution, Art. 53. This right is not explicitly reserved for those who are citizens of the Republic of Serbia. Orlović, 2019, p. 129.

58 Constitution, Art. 56.

59 The Rules of Procedure of the National Assembly stipulate that the committees of the National Assembly, as its working bodies, consider initiatives, petitions, and proposals within their scope. After considering the submitted initiatives, petitions, and proposals, the committee informs the submitter of the initiative, petitions, and proposals in writing regarding its position. In the event that the board submits the initiative, petition, or proposal to another body as the competent authority, it will inform its submitter. Rules of the Procedure of the National Assembly, Art. 44 para. 1 ad 8 [Online]. Available at: http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-(consolidated-text)/entire-document---rules-of-procedure.1424.html. (Accessed: 20 March 2022).

particular demand or wrongdoing that is the subject of the trial.[60] However, among the rare cases, there is one in the case laws of the Constitutional Court. Namely, in its decision, the Constitutional Court emphasized that a "failure to consider issues that are crucial for assessing the merits of a claim in the context of the right to a healthy environment has led to a violation of the right to a reasoned court decision, as an element of the right to a fair trial from Art. 32 (para. 1) of the Constitution, in connection with the right to a healthy environment from Art. 74 of the Constitution."[61]

All of the mentioned political freedoms formed the legal base for the implementation of the Arhus Convention, which was ratified in 2009, three years after the enactment of the Constitution. Though the ratified Convention could be directly applied, many laws have been adopted or amended to ensure the consistency of the legal protection of the environment with the international and, in particular, European framework.

From this perspective, the contribution of the Convention can be viewed from the point of view of strengthening the position of citizens and associations dealing with issues of environmental importance, introducing a certain order in the rules relating to the protection of certain environmental rights and internationalization of procedural aspects of the protection of the right to a healthy environment from Art. 74 of the Constitution of the Republic of Serbia.

A significant contribution of the Convention would be the easier transposition and application of horizontal EU legislation in the field of environment in the process of Serbia's European integration.[62] However, in the enforcement process, several obstacles can be recognized. Among them, it is worth focusing on the fact that general level of social awareness of the need to protect the environment and the level of environmental culture in the Republic of Serbia are not sufficiently high. Associations in Serbia generally have problems with financing as the State does not support them sufficiently and does not treat them as equal actors in the political process. During the public debate, the position was expressed that associations do not have sufficient support; that is, it is usually limited to short-term support and campaigns and not to support for the systematic strengthening of the non-governmental sector in the field of the environment. One of the obstacles is the insufficiently developed awareness among state bodies, especially at the level of local self-government, regarding the need and necessity of partnership with the civil sector in developing environmental awareness

60 For instance, in Judgment No. Rev 5077/2019, the Supreme Cassation Court had to determine whether the concentration of unpleasant odors poses a risk of long-term air pollution and whether there is a risk to the health of the surrounding population as well as whether the measures provided by the owner of the facility are suitable to prevent and eliminate adverse environmental effects on site and in the vicinity.

61 Decision of the Constitutional Court No. Už-7702/2013, from 07.12.2017, Bulletin of the Constitutional Court for 2017, Belgrade 2019, 612-629, 629. Detailed analysis of the Decision in: Miščević and Dudaš, 2021, pp. 65–67.

62 Draft of IV National Report on the Enforcement of the Aarhus Convention, from 2020 [Online]. Available at: https://www.ekologija.gov.rs/sites/default/files/izvestaji/4.%20Izve%C5%A1taj%20o%20sprovo%C4%91enju%20Arhuske%20konvencije%20fin..pdf. (Accessed: 20 May 2022), p. 112.

and solving environmental problems. Finally, reporting on sustainable development processes and the environment is not sufficiently represented in the media.[63]

For the purpose of implementing this Convention, five Arhus centers were established with the goal of supporting citizens in understanding and exercising their rights as provided by the Convention as well as to assist authorities in implementing the Convention. Regrettably, their contribution is rather modest as only a few are active. Rather than these citizen-friendly centers, there are more than 30 websites with different types of information on environmental matters, which might be counterproductive as individuals must search a great deal to find what they need.

4. Regulation of issues regarding responsibility and duty

The Constitution in Art. 74 (para. 3) provides that everyone shall be obliged to preserve and improve the environment, but the Republic of Serbia and autonomous provinces are accountable for the protection of the environment (Art. 74 para. 2). Apart from this provision, the Constitution does not contain precise rules on responsibility and accountability. These issues are the subject matter of particular laws. The rules of low-level regulations are presented here to illustrate the state of the legal system in relation to environmental protection in Serbia.

4.1. The Constitutional Court and the duty to care regarding the right to a healthy environment

When environmental protection encroaches on other rights and freedoms recognized by the highest legal act, the Constitution needs to address the possibility of restrictions. This is the case with the freedom of entrepreneurship, which could be restricted if it works against a healthy environment.[64]

With respect to this, the Constitutional Court declined to discuss the constitutionality and legality of the Law on the Prohibition of the Construction of Nuclear Power Buildings in the Federal Republic of Yugoslavia.[65] According to the explanation in the Constitutional Court decision, the disputed Law does not distort free competition by creating or abusing a monopoly or dominant position on the market, as the initiator claimed, because the restriction on the use of nuclear energy is regulated to protect the environment from possible nuclear incidents, which is a constitutional obligation of the Republic of Serbia.[66]

63 Ibid, p. 24.
64 Constitution, Art. 83.
65 Official Gazette of the FRY, No. 12/95, and " Official Gazette of the RS, No. 85/05.
66 Decision of Constitutional Court, No. ИУз-1575/2010.

4.2. The duty of care regarding a healthy environment in laws

In addition to the aforementioned, responsibility is regulated by numerous laws and bylaws within all legal areas. Even these regulations cover different sectors of the economy and life, and the Law on Environmental Protection can be regarded as the general law because it contains principles of environmental protection, the "polluter pays" and "user pays" principles being among them.[67]

In accordance with Art. 9 para. 1 ad 6, the polluter pays a fee for environmental pollution when their activities cause or may cause a burden on the environment or if they produce, use, or place on the market raw materials, semi-finished products, or products containing substances harmful to the environment. In accordance with the regulations, the polluter bears all costs related to measures to prevent and reduce pollution, which include the costs of environmental risks and those of eliminating the damage caused to the environment. Additionally, everyone who uses natural values is obliged to pay a realistic price for their use and reclamation of space ("user pays" principle, Art. 9 para. 1 ad 7). In respect to the latter, the fee for the use of natural values is of the greatest importance. It is in accordance with the Law on Environmental Protection paid by the user of natural values, who also bears the costs of rehabilitation and degradation of the given natural space. The funds collected through this fee are part of the revenue of the budget of the Republic as well as the budget of autonomous provinces, namely the unit of local self-government, depending on the type of fee and legal regulations, which are regulated by special laws. All of these fees are destined revenues, which means that their purpose is determined in advance, and they are used to protect and improve the environment. The goal of compensation as an economic instrument of environmental protection is to promote the reduction of the burden on the environment on the basis of respect for the principles of "polluter pays" and "user pays"[68]

The principle of responsibility of the polluter and their legal successor is of direct relevance to the matters of responsibility. Namely, a provision of Art. 9 para. 1 ad 5 provides that a legal or natural person whose illegal or incorrect activities lead to environmental pollution is liable in accordance with the law. The polluter is also responsible for the pollution of the environment in the event of liquidation or bankruptcy of the company or other legal entities in accordance with the law. The polluter or their legal successor is obliged to eliminate the cause of pollution and the consequences of direct or indirect environmental pollution. Changes in the ownership

67 Law on Environmental Protection, Art. 9 para. 1 ad 6 and 7. Others are the principle of integrity, the principle of the prevention and precaution, the principle of the preservation of natural values, the principle of sustainable development, the principle of responsibility of the polluter and his legal successor, the subsidiary liability principle, the principle of the application of incentive measures, the principle of information and public participation, and the principle of protection of the right to a healthy environment and access to justice. For details: Pajtić, Radovanović and Dudaš, 2017, pp. 131–139.

68 Stojanović, 2017, p. 43.

of companies and other legal entities or other forms of change of ownership must include an assessment of the state of the environment and determination of responsibility for environmental pollution as well as the settlement of debts (burdens) of the previous owner for pollution and/or damage to the environment. However, in cases in which the polluter is unknown as well as when the damage occurs due to environmental pollution from sources outside the territory of the Republic of Serbia, state authorities, within their financial capabilities, eliminate the consequences of environmental pollution and reduce damage (Art. 9 para. 1 ad 8).

Revenue collected by the application of the mentioned principles is included in the budget and is applied to environmental protection.

5. High protection of natural resources

The idea of "natural" is presented in the Constitution through several provisions that mention it *expressis verbis*.

The first such provision is found in Art. 83 para. 2 and stipulates that entrepreneurship may be restricted by the Law for the purpose of the protection of people's health, the environment and natural goods, and the security of the Republic of Serbia. In addition, in Art. 85 para. 2, which regulates the proprietary rights of foreigners, the Constitution provides concession right for natural resources and goods as well as other rights stipulated by the law.[69]

Of crucial importance is a provision of Art. 87 that regulates state assets. According to this provision, natural resources, goods that are stipulated by the law as goods of public interest, and assets used by the bodies of the Republic of Serbia are state assets. Natural and legal entities may obtain specific rights to particular goods in public use under the terms and in a manner stipulated by the law, but the utilization of natural resources must be carried out under the terms and in a manner stipulated by the law. This is also the case for regulated assets of autonomous provinces and local self-government units in terms of the methods of their utilization and management.

According to Art. 89, everyone is obliged to protect natural rarities and scientific, cultural, and historical heritage as well as goods of public interest in accordance with the law.

The Constitution does not provide definitions of these natural matters. Operating with different "natural" terms, the cited provisions open the question as to whether the differentiation is of legal importance. To answer this question, it is necessary to consult relevant provisions of the laws that stipulate natural resources and goods as *sedes materiae*.

69 According to Art 85 para. 1, foreign natural and legal entities may obtain real estate property in accordance with the law or an international contract.

It is worth first mentioning the Law on the Protection of Nature.[70] In its Art. 4 para. 1 ad 59, nature is determined as the unity of the geosphere and biosphere, exposed to atmospheric changes and various influences and includes natural goods and natural values that are expressed by biological, geological, and landscape diversity. Hence, the legal framework of nature protection preserves nature as a value as such, regardless of the conservation of the environment. This value is expressed on the basis of the welfare it produces for human life. Laws and bylaws do not protect nature in an absolute manner in its intact condition but, rather, through particular categories that represent an integral part of the environment and that ensure the realization of the human right to life and development in a healthy environment and a balanced relationship between economic development and the environment.[71]

In the definition offered in the Law on the Protection of Nature, natural values are parts of nature that deserve special protection due to their sensitivity, endangerment, or rarity for the preservation of biological, geological, and morphological and landscape diversity, natural processes, and ecosystem services or for scientific, cultural, educational, health, and other public interest (Art. 4 para. 1 ad 60). The Law on Environmental Protection provides in Art. 3 para. 1 ad 3 that natural values include air, water, land, forests, geological resources, flora, and fauna. It appears that this definition is much broader than the previous one as it is not restricted to the parts that deserves special protection.

The Law on Environmental Protection regulates only natural goods that could be considered applicable for protection. With respect to this, provision of Art. 3 para. 1 ad 4 defines a protected natural good as a preserved part of nature with special values and characteristics (geodiversity, biodiversity, landscapes, etc.) that has everlasting ecological, scientific, cultural, educational, health-recreational, tourist, and other significance and, therefore, as a good of general interest, enjoys special protection. The Law on the Protection of Nature specifies natural goods through three categories: protected areas, protected wild species, and movable protected natural documents.[72] Protected areas are areas that have pronounced geological, biological, ecosystem, and/or landscape diversity and are, therefore, declared protected areas of general interest by an act of protection (Art. 4 para. 1 ad 26). Protected species are wild species that are protected by international treaties and/or this law (Art. 4 para. 1 ad 25). Finally, movable protected natural documents are parts of geological, paleontological, and biological heritage that are of exceptional scientific and educational importance (Art. 4 para. 1 ad 53). The term "natural rarities" mentioned in Art. 89 of the Constitution is not further elaborated in special laws, but its meaning can be understood from the provisions related to special protected natural goods. Protection of natural rarities includes species of wild plants and animals the survival in natural

70 Law on Protection of Nature, Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 91/2010 – correction, 14/2016, 95/2018, 71/2021.

71 Pursuant to Art. 1 of Law on Protection of Nature.

72 Law on Protection of Nature, Art. 4 para. 1 ad 27.

habitats of which is endangered to such an extent that they belong to species that will soon become extinct without special protection measures (endangered species) or for which there is a danger of their extinction (vulnerable species). Protection is provided throughout the Republic in a certain area or part of the area in accordance with the decision of the body competent to determine whether these species are endangered or vulnerable according to the degree of endangerment.[73]

Apart from the explicit mention of "natural" in cited provisions, the Constitution refers to separate components of natural resources as well. This is the case with the stipulated possibility to restrict utilization and management of land and municipal building on private assets when utilization and management endangers or violates the rights and legally based interests of other persons (Art. 88 para. 2). As the right to healthy environment, which include natural resources, is guaranteed by the Constitution, restriction can undoubtedly be justified by the necessity to protect this right of others. The Constitution does not extend the application of this provision to the forests or water. However, the previously mentioned provision of Art. 87 on state assets is regulated in detail primarily by the Law on Public Assets as well as by numerous *lex specialis* laws (Law on Forests,[74] Law on Waters,[75] Law on Agriculture Land,[76] Law on Public–Private Partnership and Concession[77]).

Turning back to the constitutional provisions, it is worth mentioning the provisions on the competences of the Republic of Serbia and the autonomous provinces. Accordingly, the Republic of Serbia organizes and provides for the protection and improvement of flora and fauna,[78] while autonomous provinces are competent to regulate matters of provincial interest in the fields of agriculture, water economy, forestry, hunting, fishery, tourism, catering, spas and health resorts, environmental protection, etc.[79]

6. Reference to future generations

"Future generations" are not *expressis verbis* mentioned in the Constitution. There is no explicit provision on obligations "for present to future generations", but provisions in Art. 74 para. 2 and 3 *("Everyone, especially the Republic of Serbia and*

73 Regulation on the Protection of Natural Rarities, Official Gazette of the Republic of Serbia, No. *50/93 and 93/93.*

74 Official Gazette of the Republic of Serbia, No. *30/2010, 93/2012, 89/2015, and 95/2018.*

75 Official Gazette of the Republic of Serbia, No. *30/2010, 93/2012, 89/2015, and 95/2018.*

76 Official Gazette of the Republic of Serbia, No. *62/2006, 65/2008, 41/2009, 112/2015, 80/2017, and 95/2018.*

77 Official Gazette of the Republic of Serbia, No.*88/2011, 15/2016 i 104/2016.*

78 Constitution, Art. 97 para. 1 ad 9.

79 Constitution, Art. 183 para. 2 ad 2.

autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.") and Art. 89 *("Everyone shall be obliged to protect natural rarities and scientific, cultural and historical heritage, as well as goods of public interest in accordance with the Law. The Republic of Serbia, autonomous provinces and local selfgovernment units shall be held particularly accountable for the protection of heritage.")* have exactly that teleological meaning.

If other laws related to environmental matters are taken into account, "future generations" can be identified as a principal value of the regulations. The Law on the Protection of Nature explicitly mentions "future generations". Namely, according to Art. 4 para. 1 ad 43, the sustainable use of natural resources and/or other resources is the use of components of biodiversity or geodiversity in a way and to an extent that does not lead to long-term reduction of biodiversity or geodiversity, maintaining their potential to meet the needs and aspirations of present and future generations. Although this provision is among the rare ones explicitly mentioning "future generations", determining the term "sustainable use" by usefulness to "future generations" places "future generations" in the focus of sustainability as such. In other words, when doubting whether an action or regulation is sustainable, whether it is going to be of use in the future is of relevance.

7. Reference to sustainable development

The great challenge today is to find a compromise between nature and mankind. Living conditions, population growth, increasing use of limited resources, and numerous environmental problems have confronted every modern state with the issue of sustainable development and the need to act globally to preserve the planet in order to enable life for future generations.[80] Specifically, the aim is to promote development that will not endanger living conditions for a long period, that is, to arrange sustainable development.

Sustainable development must be realized as a complex, multidimensional concept. Although it is a commitment of the Republic of Serbia, the Constitution mentions it *expressis verbis* only in the provisions on the competence of the Republic of Serbia. According to Art. 94, *Balanced development*, the Republic of Serbia shall take care of balance and sustainable regional development in accordance with the law. In addition, Art. 97 para. 1 ad 9 regulates that the Republic of Serbia shall organize and provide for sustainable development, a system for the protection and improvement of the environment, the protection and improvement of flora and fauna, production, and the trade and transport of arms and poisonous, inflammable, explosive, radioactive, and other hazardous substances.

80 Nikolić, 2009, p. 16.

Considering the importance and complexity of sustainable development, the competence of the state authorities is not unexpected, despite that provinces and local municipalities have a number of delegated competences regarding environmental matters.[81] Moreover, mentioning sustainable development in the context of environmental protection directly placed the core of sustainability in the framework of the protection of the environment and, in particular, natural values. To provide a framework for environmental protection, the Law on Environmental Protection explicitly prescribes the principle of sustainable development[82] and provides its meaning. In this respect, sustainable development should be understood as a harmonized system of technical-technological, economic, and social activities in overall development in which the natural and created values of the Republic of Serbia should be used in the principles of economy and reasonableness to preserve and improve environmental quality for present and future generations. More precisely, sustainable development is achieved by making and implementing decisions ensuring the harmonization of the interests of environmental protection and the interests of economic development. In other words, the principle of sustainable development could be considered an expression of the necessity to set a permanent and consistent system of balanced and simultaneously economic prosperity and environmental protection.[83] In theory, this balance is qualified as dynamic, having in mind the intensive progress of society.[84] Accordingly, living in harmony with nature and with one another is the logical essence of sustainability. If it is understood as the aim, sustainable development must be realized as a fundamental concept of development, which should overcome the influence of institutional and group interests [85] and take future generations into account.

8. Other values relevant to the protection of the environment in the Constitution

In addition to the provisions revealed in the previous sections, there are several other provisions that may be relevant for the protection of the interest of future generations and of the environment. It is not that obvious that the provisions are of relevance for these matters, but many of them could lead to such results.

81 Regarding environmental matters of autonomous provinces, Constitution Act of RS, Art. 183 para. 2 ad 2, and competence of local self-government units regarding the environment, Art. 190 para. 1 ad 6 and 7.
82 Law on Environmental Protection, Art. 9 para. 1 ad 4.
83 Drenovak-Ivanović, 2021., p. 39.
84 Nikolić, 2009, p. 50.
85 Mebratu, 1998, pp. 515–518.

It is worth mentioning the provisions on the special protection of children. Art. 66 para. 4 of the Constitution stipulates that children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals. Even absent the direct link to "future generations", special protection of youth has an explanation that can refer to this matter. Namely, this type of state intervention in labor relationships is due to the need to protect the most sensitive groups because of the consequences that working conditions could have on them. In the long term, by protecting the young population, their lifespan is extended, diseases, especially those caused by a harmful environment, can be avoided, etc. In this sense, the preservation of children may have an impact on their ability to reproduce as well as on the health of their offspring.

The case of provisions on other matters is similar. Care regarding present generations implicitly involves the protection of future generations, especially because the latter cannot be placed in precise age boundaries. The first step in building a bridge between "now" and "tomorrow" is putting unborn humans in present thoughts, especially in respect to their birth. In this sense, apprehension regarding future generations can be recognized in particular measures related to the encouragement of a commitment to have children. Namely, Art. 63 para. 2 of the Constitution stipulates that the Republic of Serbia shall encourage parents to decide to have children and assist them in this matter, though everyone has the freedom to decide whether they will procreate.[86] Naturally, the Constitution does not specify which type of encouragement the Republic of Serbia should provide for, but numerous of laws regulate different aspect of procreation as well as life conditions. For example, the Ministry of the Health approved an unlimited number of attempts for artificial fertilization free of charge insomuch as medical reasons allow it, according to the rules of the Law on Biomedical Assisted Fertilization.[87] This measure arose from the fact that many couples who are not able to have children face financial problems when they decide to procreate through the process of biomedical assisted fertilization. Starting in 2006, the legal regulations on *in vitro* fertilization have changed several times. The Health Insurance Fund of the Republic of Serbia had previously paid for only one attempt.[88] Afterward, funding for two attempts was provided, and the conditions that a woman has to achieve to apply for public funds were set at a lower level than in the previous regulations.[89] Additionally,

86 Constitution, Art. 63 para. 1.

87 Law on Biomedical Assisted Fertilization, *Official Gazette*, No. 40/2017 and 113/2017.

88 Bjelica, 2017, p. 236.

89 In February 2022, the RHIF issued a new instruction on the treatment of infertility with biomedically assisted fertilization, reducing the number of conditions that couples must meet to undergo this procedure at the expense of the State [Online]. Available at: https://www.rfzo.rs/download/vto/Uputstvo%20za%20sprovodjenje%20lecenja%20neplodnosti%20postupcima%20biomedicinski%20potpomognutog%20oplodjenja%20(BMPO)28022022.pdf?fbclid=IwAR02SJAH4jvtNXIqRwjH82RWYJAgCbgB7W71CsNkvPaAy6xSv5ab0mFnuTc. (Accessed: 12 May 2022).

the age limit for women was increased from 38 to 40, then to 42, and, in 2022, to 45. This is of similar importance as the financial support because couples today have prolonged their procreation beyond the recommended reproduction age. The dominant, though not the only, reason for this is the economic realities of young couples, mostly those with university education, because their will to create a family is accompanied by the will to provide proper economic conditions for their children. Hence, most of them, after a long period of education, wait for a good, well paid, and long-term job. With this in mind, over the last year, the Republic of Serbia accepted several measures of an economic nature to support procreation and future generations. The most important is the financial support in the amount of EUR 20,000 for the purpose of constructing or buying a flat or house for mothers who give birth to a child as of January 1, 2022, regardless of whether it is the first child and whether she is married.[90]

Additional concerns of future generations could, at some point, be recognized in the provision of special protection of the family, mother, single parent, and child (Art. 66). Namely, these categories shall enjoy special protection in accordance with the law. In particular, during pregnancy and after childbirth, special support is provided to mothers. This is regulated in more detail in the Law on Labor,[91] which forbids the termination of a labor contract during this period and obliges the employer to create appropriate work conditions when necessary.[92]

It is worth noting that religion, with its teaching and beliefs, can also have great influence on important social elements, such as the environment. Although it is not legally binding, for a major portion of the population, the rules and attitude of the church authorities can shape their own behavior and approach to environmental matters as well as to "future generations".

Regarding the Christian culture, the Constitution does not mention it as a particular value. According to Art. 11, the Republic of Serbia is a secular state. Moreover, it is very difficult to say that a Christian culture is absent or unrecognizable in ecological matters. The impact of the Christian attitude is existent in such matters, as is the case with religion as such. Theological minds, speaking from an Orthodox viewpoint, are involved in a global battle for the environment. Reiterating that harmony between Heaven and Earth, as it should be between man and creation, is always an important theme in Judeo-Christian scriptures and traditions,[93] the Orthodox Church involved Christian beliefs in identifying and

90 Law on Financial Support for Families with Children, *Official Gazette of the Republic of Serbia*, No. 113/2017, 50/2018, 46/2021 – US, 51/2021 – US, 53/2021 – decision of CC, 66/2021 i 130/2021, Art. 25a.

91 Law on Labor, *Official Gazette of the Republic of Serbia*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 i 95/2018.

92 Law on Labor, Art. 89–100.

93 Гледиште Архиепископа Димитрија на еколошка питања, Archbishop Dimitrije's View on Environmental Issues [Online]. Available at: http://www.spc.rs/sr/pravoslavno_bogoslovlje_ekologija_na_delu. (Accessed: 12 May 2022).

resolving ecological problems. Accordingly, ecology is the environment in which human salvation is comprehended. The ecological aspects and behavior of believers must be in accordance with their faith in the Triune God, as the Creator, Lord, and Savior of man and the world. Today, the environmental crisis is due to spiritual and ethical causes. Mankind is who causes imbalance in the environment due to wrongdoing regarding their social and natural surroundings, insatiable greed, and selfishness leading to the unreasonable exploitation of natural resources.[94] Hence, mankind must realize the transience of his existence. People must have in mind the fact that future generations should be able to have their inalienable right to the natural goods entrusted to humans by the God.[95] For that reason, humans need to return to their natural values. Churches and denominations that cooperate with the World Council of Churches have begun to reconsider their teachings and practices, their worship, and their activities when it comes to man's attitude toward the natural world from a macro ecological point of view.[96] The Orthodox Church, leading with Ecumenical Patriarch of Constantinople Bartholomew, has a highly intensive activity on awakening orthodox believers regarding environmental matters.[97] In relation to this, the Parliament of the Serbian Orthodox Church paid special attention to the sanctuary of marriage and family and established a special committee at the Holy Synod dealing with that issue as well as a committee for bioethics and ecology.[98]

Returning to the constitutional framework, religious matters can be considered state interference in a particular situation in indirect manner. According to the Art. 43 para. 4, freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, the morals of democratic society, the freedoms and rights guaranteed by the Constitution, or public safety and order or to prevent the inciting of religious, national, and racial hatred. Further, the Constitutional Court may ban a religious community only if its activities infringe upon the right to life, the right to mental and physical health, the rights of children, the right to personal and family integrity, or public safety and order or if it incites religious, national, or racial intolerance (Art. 44 para. 3).

94 *Епископ крушевачки Давид Перовић, Свештена екологија у окрињу Православне цркве, Црквене студије*, (Bishop of Kruševac David Perović, Sacred Ecology Under the Auspices of the Orthodox Church, Church Studies), 14/2017, pp. 209–219, 209.

95 Ibid.

96 Проф.др Илија Икономиду: Православно гледиште на еколошку кризу, Prof. Dr. Ilija Ikonomidu: Orthodox View of the Ecological Crisis [Online]. Available at: https://www.eparhijazt.com/sr/news/predanje/2756.prof-dr-ilija-ikonomidu-pravoslavno-glediste-na-ekolosku-krizu.html (Accessed: 12 May 2022).

97 [Online]. Available at: https://mitropolija.com/2015/06/15/patrijarh-vaseljenski-vartolomej-domacinje-drugog-samita-na-halki-bogoslovlje-ekologija-i-rijec/. (Accessed: 12 May 2022).

98 Press release of the Holy Synod of Bishops of 10 May 2018 [Online]. Available at: http://www.spc.rs/sr/saopshtenje_za_javnost_svetog_arhijerejskog_sabora_srpske. (Accessed: 20 May 2022). More in theological literature: Episkop David (Perović), 2016, pp. 3-13.

9. Financial sustainability

9.1. Sustainability as an aspect among the rules of public finances

Part Three, Economic System and Public Finances, regulates assets as well as market and public finances. Under that meaning, Arts. 83 para. 2, 87, 88, 89, and 94 are relevant to the sustainability and environmental protection.

The aforementioned *Freedom of entrepreneurship*[99] can be restricted for the purpose of people's health, environment, and natural goods and security. This is the precise reason that the restrictions indicated in a very clear manner that concern the environment are prioritized over economic interests.

In addition to this directly expressed relation between economic freedoms and the right to a healthy environment, as one segment of sustainability as such, there are several provisions of the relevant laws relating to sustainability as an aspect among the rules of public finances.

9.2. Summary of the act-level regulation of public finances

Of primary importance is the rule on public debt. According to the provision of Art. 27e para. 2 of the Law on the Budget System,[100] the General Fiscal Rules determine the target medium-term fiscal deficit as well as the maximum debt-to-GDP ratio to ensure the long-term sustainability of fiscal policy in the Republic of Serbia. The term "sustainability" in the context of public finances means providing and controlling public finances on a level that ensures the solvency of the state for future generations. In view of that, general government debt (public debt) must not exceed 45% of the GDP (Art. 27e para. 4 ad 2). Though it is regulated explicitly in the law, public debt increased to more than 56.9 % in 2021. In such a case, the Government is obliged to submit to the National Assembly, together with the budget for the coming year, a program to reduce the debt in relation to the GDP (Art. 27e para. 12).

As the protection of the environment is a commitment of the state authorities, the sustainability of public finance demands balance between income and expenses in environmental matters. From that perspective, financial instruments are aimed at providing public finances on one hand and incentives for private businesses to harmonize their activities with environmental protection policy on the other.[101] Art. 18 para. 1 and 2 of the Law on the Budget System provides that fees may be introduced for the use of goods that are determined by a special law to be natural resources,

99 Constitution, Art. 83(2).

100 Law on the Budget System, *Official Gazette of the Republic of Serbia*, No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – corr. 108/2013, 142/2014, 68/2015, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019, 72/2019, 149/2020 and 118/2021.

101 Cvjetković, 2014, p. 386.

namely, goods of general interest and goods in general use.[102] All of the provided fees are included in the Green Fund, which was established in 2016,[103] in accordance with the Law on Environmental Protection.

Namely, the aim of the Green Fund is to record funds intended for financing the preparation, implementation, and development of programs, projects, and other activities in the fields of conservation, sustainable use, and the protection and improvement of environmental change. This fund finances landfill remediation, waste treatment, and recycling. It also serves to support the introduction of new, cleaner technologies as well as the infrastructure required to improve the environment. Education and training programs can also be financed from this fund. Therefore, any activity aimed at improving environmental protection and promoting sustainable development and a green economy should be financed from this fund. The idea was that according to the polluter principle, everyone, whether an individual or an entrepreneur, violating the law related to environmental protection and in some way endangering the environment must pay a certain amount of money prescribed by law, and that money will be placed in the Green Fund. The fund can also be financed from eco-taxes, donations, loans, and other public revenue.[104]

In addition to the matters within the exclusive competence of the Republic of Serbia, the issue of the protection of environment is, in major part, delegated to the region's authorities. To undertake necessary actions regarding everyone's constitutional rights, local governments and other authorities need a certain amount of financing, including from the state budget. Taking sustainable development into account, as a framework for action, state budget should be created through financial sustainability. Moreover, financial sustainability is an inseparable part of sustainability, together with ecological sustainability and social responsibility.[105]

However, although it may be inferred from the context of mentioned regulations, there is no doubt that an explicit reference to financial sustainability would contribute to improving the clear understanding and, therefore, the application of the cited provisions as well as the measures undertaken and bringing legal act on that matter within particular commitment.

102 The person liable to pay the fee, the basis for payment of the fee, the amount of the fee, the manner of determining and paying the fee, and the affiliation of the fee are regulated by a special law proposed and implemented by the ministry in charge of finance. The usual fees in Serbia are a fee for the use of natural values (Law on Environmental Protection, Art. 84), compensation for environmental pollution (Law on Environmental Protection, Art. 85), a fee for the use of a fishing area, a fee for the use of a protected area, a fee for the collection, use, and trade of species of wild flora, fauna, and fungi, a fee for the protection and improvement of the environment, compensation for products that become special waste streams after use, a fee for packaging or packaged products that become packaging waste after use, and a fee for water pollution (Law on fees for the use of public goods, Official Gazette of the Republic of Serbia, No. 95/2018, 49/2019, 86/2019, 156/2020, 15/2021).

103 Decision on the establishment of the Green Fund of the Republic of Serbia: 91 / 2016-17, 78 / 2017-24, Official Gazette of the Republic of Serbia, No. 91/2016.

104 Law on Environmental Protection, Art. 90–100.

105 Milošević 2011, p. 122.

9.3. Sustainability as a principle

Sustainability can be considered as a principle even though it is not explicitly defined in that manner and there is no explicit reference to it. However, considering the importance of this matter for the public interest and state commitments, sustainability can be said to be a value that should be retained. This commitment is present in numerous measures undertaken by state, autonomous provinces, and local self-governmental authorities, as these entities are in charge of issuing acts and taking measures to maintain sustainability.

9.3.1. Summary of the act-level regulation of sustainability

Sustainable management of natural values and the protection of the environment are achieved in accordance with the Law on Environmental Protection and a special law. With respect to this, sustainability as a principle is recognized in all laws that regulate particular natural values (e.g., water, forests)

The Law on Water provides that the management of waters must take place in such a manner that the needs of current generations are met in a way that does not jeopardize the ability of future generations to meet their needs; that is, water usage must be ensured based on long-term protection of available water resources, quantity, and quality (Art. 25 para. 1 ad 1). This provision explicitly takes into consideration future generations.

Regarding the protection of forests, a special law promotes sustainability as the aim of the legal protection of the forests (Art. 3, Law on Forests).

Forest management in the forest areas of the Republic of Serbia is based on the principles of sustainable management, which ensures sustainability of yield, sustainability of production, sustainability of income, and ultimately, sustainability as a balance of use and production while preserving and improving the sustainability of biodiversity (Art. 3).[106]

106 Regarding sustainability in energy, the capacity of the Republic of Serbia in that matters should be analyzed. Namely, Serbia has great potential in terms of renewable energy sources (solar, wind, water, geothermal, biomass). Renewable energy sources are exploited with the aim of producing electricity, heat, and mechanical energy, and their significant sustainable feature is environmental friendliness, with reduced CO2 emissions in the energy production process. The most significant potential of renewable energy sources in Serbia is the energy from biomass, estimated at 3.405 million tenge (tons of oil equivalent), and in the total potential of RES biomass particulates with 60.3%. Currently, the highest level of energy use from renewable sources in Serbia is from hydropower, for which the total gross potential of water flowing in watercourses in the territory of the Republic of Serbia is about 25,000 GWh (gigawatt hours) per year. https://www.energetskiportal.rs/obnovljivi-izvori-energije/, May 29, 2022. Real efficiency could be reached with the support of state or local authorities. For instance, the City Administration for Environmental Protection of Novi Sad has announced a public call for the participation of citizens in the implementation of the energy rehabilitation measure through the installation of solar panels for the production of electricity for their own needs in family houses for 2022. https://environovisad.rs/javni-konkursi/30, May 29, 2022. This example is one of the numerous similar projects within the competent Ministry.

Considering the proclaimed support for citizens to procreate, the approach of the State to demographic sustainability is clearly *pro* natality. Moreover, as many citizens leave the country primarily for economic reasons, procreation is not merely a matter of sustainability but also a matter of national existence. In addition to the support to reproduction as such, the government delivered measures that impact other values. In this context, a measure announced by the government should be mentioned, according to which young couples receive non-refundable funds for the purchase of a rural house with a garden in the territory of the Republic of Serbia for 2022.[107] This is a means to preserve rural areas, in particular, those where agriculture is the dominant form of production, but also a means to preserve urban areas as the danger of overpopulation increases.

9.4. Future generations among the constitutional rules of public finances

"Future generations" are not *expressis verbis* mentioned in the Constitution. Art. 74 para. 2 and 3 *("Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.")* and Art. 89 *("Everyone shall be obliged to protect natural rarities and scientific, cultural and historical heritage, as well as goods of public interest in accordance with the Law. The Republic of Serbia, autonomous provinces and local self-governments units shall be held particularly accountable for the protection of heritage.")* can be interpreted as meaning that the Constitution recognizes the future generation as a protected category. Stipulating the accountability of the state and of local governments for these particular values, the Constitution, at the same time, introduces authorities to account for this obligation during the making of the budget.

The strongest proof of the state's care regarding "future generations" is the restriction of public debt.

10. The protection of national assets

10.1. Protection of national assets in the Constitution

State assets, according to Art. 87, include natural resources, goods that are designated by Law as goods of public interest, and assets used by the bodies of the Republic of Serbia as well as other things and rights according to the law. The Constitution provides protection through the provisions on the protection of property and

107 Decree on determining the grant program for the purchase of a rural house with a garden in the territory of the Republic of Serbia for 2022, Official Gazette of the Republic of Serbia, No. 9/2022.

its equality (Art. 86). Special protection is stipulated in Art 89 regarding heritage (natural rarities and scientific, cultural, and historical heritage as well as goods of public interest in accordance with the law).

By providing state assets in the form of natural resources and goods of public interests, the Republic of Serbia expresses the interest to control the use of these categories to retain, as much as possible, their substantial form. The same reasons are behind the provision on land as the Constitution stipulates that the law may restrict the utilization and management of agricultural land, forest, and municipal building land, which are private assets, if that utilization and management could cause damage to the environment.[108]

Despite that it is not explicitly mentioned, the fact that the Republic of Serbia is held particularly accountable for the protection of heritage is explained by the need to preserve these values not only for present but for future generations. This provision confirms respect for values produced and saved by our precedents and, at the same time, expresses the commitment to receive respect from young and unborn generations.

10.2. 'National assets' according to the Constitution

The Constitution guarantees the equality of all types of assets, which means private assets, assets of cooperatives, and public assets.[109] Regarding public assets, the Constitution stipulates that public assets include state assets, assets of autonomous provinces, and assets of local self-government units.

According to Art. 87, public assets include natural resources, goods stipulated by the law as goods of public interest, and assets used by the bodies of the Republic of Serbia as well as other things and rights according to the law. Further, the Law on Public Assets[110] regulates which goods and rights are under the regime of public property. Accordingly, among those mentioned in Art. 87, the Law stipulates rights such as patent, trademark, and other industrial property. Regarding natural resources, the Law on Public Assets provides that the use of those resources is to be regulated by special laws.

Considering that the range of public assets is broad and its nature divergent, it is almost impossible to imagine that state or regional authorities could successfully manage and use all goods or rights included in the term of public assets. Moreover, history has demonstrated the weaknesses of broad competence in respect to the use and management of the public assets. In an economic sense, it would be expensive and the accomplishment slow. Setting aside the concept of social assets, which was the leading form during the almost half a century after the Second World War, the

108 Constitution, Art. 88 para. 2.
109 Constitution, Art. 86 para. 1.
110 Law on Public Assets, *Official Gazette of the Republic of Serbia*, No. 72/2011, 88/2013, 105/2014, 104/2016, 108/2016, 113/2017, 95/2018 i 153/2020.

economy was based on the principle of a competitive market. In this business environment, contribution of private (as opposed to public) entities to the use and management of goods that are under the regime of public assets could be of benefit for all interested parties. Consequently, the Constitution stipulates that natural and legal entities may obtain particular rights on particular goods in public use under the terms and in a manner provided by the law.[111]

In that sense, the Law on Public Assets provides that the legal regime of construction land, agricultural land, water land, forests, and forest land in public ownership is to be regulated by a special law (Art. 8). According to Art. 9, titled "Natural Resources", waters, watercourses and their sources, mineral resources, groundwater resources, geothermal and other geological resources and reserves of mineral raw materials, and other goods determined by a special law to be natural resources are owned by the Republic of Serbia. The manner and conditions of the exploitation and management of natural resources are regulated by a special law. Agricultural and construction land, forests and forest land, and port land may not be alienated from public property unless otherwise provided by law (Art. 12 para. 2 of the Law on Real Estate[112]). However, regarding agricultural land, even in the case that the land is not property of the State, transferring ownership to foreigners is not permitted.[113] An exception is granted to citizens of EU member states in accordance with the Stabilization and Association Agreement Between the European Union and Their Member States and Serbia.[114]

Citizens of EU member states are allowed to obtain ownership of agriculture land under certain conditions, but not more than 2ha.[115] This restriction provides not only control over natural goods of the public interest but the ability to guard vital national values, even sovereignty in certain meanings, as it services the food

111 Constitution Act, Art. 87 para. 2.

112 Official Gazette of the Republic of Serbia, No. *93/2014, 121/2014 and 6/2015*.

113 Law on Agriculture Land, Art. 1 para. 4.

114 Official Gazette of the Republic of Serbia – International Agreements, No. 83/2008.

115 According to Art. 72đ, privately owned agricultural land may be acquired by an EU citizen if 1) they have been permanently residing in the local self-government unit in which the agricultural land is traded for at least ten years, 2) they cultivate the agricultural land that is the subject of a legal transaction with or without compensation for at least three years, 3) they have a registered agricultural farm in active status as the holder of a family agricultural farm in accordance with the law governing agriculture and rural development without interruption for at least ten years, and 4) they own machinery and equipment for agricultural production. The subject of the legal transaction referred to in paragraph 1 of this Article may be privately owned agricultural land if 1) it is not agricultural land that has been determined as construction land in accordance with a special law, 2) it does not belong to the category of protected natural resources, and 3) it does not belong to or border a military facility or military complex and is not located in protection zones around military facilities, military complexes, and military infrastructure facilities, nor does it belong to or border the territory of the Ground Security Zone. The subject of legal business referred to in paragraph 1 of this Article may not be privately owned agricultural land located at a distance of up to 10 km from the border of the Republic of Serbia. See Dudás, 2021, pp. 59–73; Baturan and Dudás, 2019, pp. 63–71.

and health of citizens.[116] As regards other real estate, reciprocity is required for the transfer of private ownership. For public assets, the most common legal framework of use is concession or lease. A concession or the right of use, that is, exploitation, can be acquired on natural wealth in accordance with a special law.[117]

Utilization and management of the land, according to Art. 88 of the Constitution, may be restricted for the purpose of environmental protection regardless of whether it is under private or public ownership. For this reason, some of the actual global problems are included in the legal framework of the utility and management of agriculture land. Among others, special attention is paid to GMO products. No modified living organism or product from a genetically modified organism may be placed on the market, that is, cultivated for commercial purposes in the territory of the Republic of Serbia. A genetically modified organism is not considered to be an agricultural product of plant origin that quantitatively contains up to 0.9% of impurities of genetically modified organisms and impurities originating from genetically modified organisms. Seed and reproductive material are not considered to be genetically modified organisms if they quantitatively contain up to 0.1% of impurities of the genetically modified organism and impurities originating from the genetically modified organism.[118]

The position in connection to other national values is similar. In addition to the forests of national assets, the State regulates utility and management in private ownership. According to Art. 7 of the Law on Forests, the owner or user of forests is obliged to implement forest protection measures, to protect forests and forest lands from degradation and erosion, to implement forest management plans, and to implement other measures prescribed by this Law as well as regulations adopted on the basis of this Law. The use of waters is also regulated based on principles of planning and supervising.[119]

10.3. Link to future generations/environmental protection/sustainable development?

The underlying idea, the *ratio legis* of legal protection, of all previously mentioned values is to preserve it for the future. In that sense, the use of public assets should be rational and performed with special care. There is no better way to achieve it than to delegate this task, which is particularly important and of public interest, to the highest level of authority. There are several reasons for this. First, it is worthwhile to highlight the fact that all goods and other values included in the term of public assets are not made by humans but given by nature or our ancestors. The

116 János Ede Szilágyi, 2017, p. 1067.
117 Law on Public Assets, Art. 3 para. 3.
118 Law on Genetic Modified Organisms, Official Gazette of the Republic of Serbia, No. 41/2009, Art. 2 and 3.
119 Law on Waters, Art. 29.

present generation owes due care to save them for future generations, which is at the core of sustainability. Undoubtedly, it is of public interest. Governments are chosen by the will of the citizens, which will be, much more than previously in history, shaped by the attitude and political programs in relation to the use, management, and improvement of nature, national, cultural, and civil engineering heritage. This is common for all levels of public authorities.

Regarding environmental protection, it is hard to qualify it below the public interest because the environment as such has no defined borders. Moreover, a healthy environment can be considered as the precondition for some other freedoms and rights, such as the right to health. Giving the power to the authorities to take care of goods included among the public assets, which are of relevance for a healthy environment as a human right, private entities do not abandon the right itself. Their voice, and care on this matter, will be heard through elections. With this in mind, it is predictable that the competent public entities would perform this task in the public interest.

11. Good practices and *de lege ferenda* proposals

11.1. Good practices

Taking into account the constitutional provisions on environmental protection and future generations as well as the position of stakeholders interested in these matters, it seems prudent to analyze the rules on the right to propose legal reform as well. Namely, the Constitution specifies that the Protector of Citizens (Ombudsman) shall have a right to propose laws falling within their competence (Art. 107, para. 2). As citizens have easy communication with this entity, the Ombudsman has the best view of the worries of citizens as well as proposals for actual problems.

The fact that the right to be informed is included in the right to a healthy environment makes this right much closer to citizens' control, as they could be involved in important decisions based solely on the information they have. On the other hand, each citizen feels responsibility for the protection of the environment.

A great range of measures have been introduced to support motherhood. Some have already been mentioned, but there are others. For instance, according to the Law on financial support of families with children, the parental allowance for the first child born January 1, 2022, or later is determined in the amount of 300,000.00 dinars and is paid once. The parental allowance for the second child born July 1, 2018, or later is determined in the amount of 240,000.00 dinars and is paid in 24 equal monthly installments of 10,000.00 dinars. The parental allowance for the third child born July 1, 2018, or later is determined in the amount of 1,440,000.00 dinars and is paid in 120 equal monthly installments of 12,000.00 dinars. The parental

allowance for the fourth child born July 1, 2018, or later is determined in the amount of 2,160,000.00 dinars and is paid in 120 equal monthly installments of 18,000.00 dinars (Art. 23, para. 1, 2, 3, and 4).

11.2. De lege ferenda

Researching the constitutional framework for environmental protection and future generations in Serbia revealed not only the fact that the legal system of Serbia can respond to the demand for the preservation of natural and human resources but also the fact that more could be done regarding these matters.

The Serbian Constitution does not explicitly mention future generations, even it is possible to conclude that the *ratio legis* of a numerous provisions are exactly the protection of the interests of the future generations. For a better understanding of the concept and to set a guideline for the decisionmakers, an explicit provision on future generations as a principle would contribute to the certainty of the very complex legislative activity in this matter. This would result in a higher level of attention on what would be the best solution for tomorrow, not only for the present.

During the process of the preparation of the Law on the Efficient Use of Energy, it was proposed that tax, customs, and other relief may be granted for legal and natural persons who apply technologies or products or place on the market products that contribute to more efficient use of energy under the conditions specified in the law and other regulations governing taxes, duties, and other charges. Unfortunately, the enacted text of the Law does not contain such a rule. Though some of the particular laws stipulate similar benefits, it would be much better for their implementation and their impact on business activities concerning efficiency if there were a general principle of the protection of future generations.

Finally, considering the complex system of environmental protection, the great number of relevant regulations, the obligation of making information on environmental matters available to the public, and the right of everyone to participate in the decision making, it appears that the Ombudsman has a great deal to do. This could lead to inadequate efficiency of the Ombudsman's work, the projected task of which is to protect the interests of the citizens. For that reason, and in particular, due to the fact that the Ombudsman has the right to propose laws falling within their competence, it would have a greater impact on efficient environmental protection if a separate Ombudsman for the Environment were to be instituted.

Bibliography

Baturan, L., Dudás, A. (2019) 'Legal Regime of Agricultural Land in Serbia with Special Regard to the Right of Foreigners to Acquire Ownership', *CEDR Journal of Rural Law,* 5(1), pp. 63–71.

Bishop David Perović (2016) 'Review of Prayer Theology and Hymnology with Commentaries', *Theology*, 2016/1, pp. 3–13.

Bjelica, A. (2017) 'Komparacija politika vantelesne oplodnje u Srbiji I drugim evropskim zemljama' ['Comparison of in vitro Fertilization Policy in Serbia and Other European Countries'], *Timočki medicinski glasnik*, 42(4), pp. 236–244; https://doi.org/10.5937/tmg1704236B

Cvjetković, C. (2014) 'Ekološke naknade kao instrument zaštite životne sredine' ['Environmental Charges as an Instrument of Environmental Protection'], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 48(2), pp. 385–399; https://doi.org/10.5937/zrpfns48-6744

Drenovak Ivanovic, M. (2021) *Ekološko pravo*. Belgrade: Pravni fakultet Univerziteta u Beogradu.

Dudás, A. (2015) 'Környezetvédelmi polgári jogi felelősség a szerb jogban' ['Civil Law Liability in Relation to the Protection of Environment'] in Sáry, P. (ed.) *Decem anni in Europaea Unione III*. Miskolc: Miskolci Egyetemi Kiadó, pp. 27–43.

Dudás, A. (2021) 'Legal Frame of Agricultural Land Succession and Acquisition by Legal Persons in Serbia', *Journal of Agricultural and Environmental Law,* 16(30), pp. 59–73; https://doi.org/10.21029/JAEL.2021.30.59

'Global Environment Outlook – GEO4 – Environment for development', Nairobi: United Nations Environment Programme, in Nikolić, D. (ed.) *Fundamentals of Environmental Law.* University of Novi Sad: Faculty of Law, Centre for publishing.

Lilic, S., Dranovak Ivanović, M. (2014) *Ekološko pravo*. Belgrade: Pravni fakultet Univerziteta u Beogradu.

List of Environmental Regulations in Serbia [Online]. Available at: https://www.ekologija.gov.rs/sites/default/files/inline-files/List_of_regulations.pdf (Accessed: 10 February 2022).

Mebratu, D. (1998) 'Sustainability and Sustainable Development: Historical and Conceptual Review', *Environmental Impact Assessment Review,* 18(6), pp. 493–520; http://dx.doi.org/10.1016/S0195-9255(98)00019-5

Milkov, D. (2013) 'Uprava i zaštita životne sredine' ['Administration and Environmental Protection'], *Zbornik radova pravnog fakulteta u Novom Sadu*, 47(3), pp. 61–73, https://doi.org/10.5937/zrpfns47-5111

Milkov, D. (2015) 'Inspekcijski nadzor i zaštita životne sredine' ['Inspection Control and Environmental Protection'], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 49(4), pp. 1441–1458; https://doi.org/10.5937/zrpfns49-10383

Miščević, N., Dudaš, A. (2021) 'The Environmental Lawsuit as an Instrument of Preventive Protection of the Constitutional Right to Healthy Environment in the Law of the Republic of Serbia', *Journal of Agriculture and Environmental Law*, 16(31), pp. 55–69; https://doi.org/10.21029/JAEL.2021.31.55

National Assembly Rules of Procedure [Online]. Available at: www.poslovnik.rs (Accessed: 10 February 2022).

Orlović, S. (2019) *Ustavno pravo*. Novi Sad: Pravni fakultet u Novom Sadu.

Orlović, S. (2022) '(In)consisting Practice of Serbian Constitutional Court In Selected Cases of Protection', *Law, Identity and Values*, 2(1), pp. 141–161; https://doi.org/10.55073/2022.1.141-160

Pajtić, B. (2011) 'Zaštita životne sredine – prevencija i naknada štete' ['Environmental Protection – Prevention and Damage Compensation'], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 45(2), pp. 249–264; https://doi.org/10.5937/zrpfns1102249P

Pajtić, B. (2015) 'Građanskopravna odgovornost zbog zagađivanja životne sredine' ['Civil Legal Responsibility for Environmental Pollution'], *Zbornik radova Pravnog fakulteta u Novom Sadu,* 49(4), pp. 1669–1679; https://doi.org/10.5937/zrpfns49-9906

Pajtić, B. (2021) 'Pravo zaštite životne sredine – između etike dobrih namera i etike odgovornosti' ['The Right to Environmental Protection in Serbia – Between Ethics of Good Intention and Ethics of Responsibility'], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 55(4), pp. 1063–1082; https://doi.org/10.5937/zrpfns55-30732

Pajtić, B., Radovanović S., Dudaš, A, (2017) 'Načela zaštite životne sredine i njihova konkretizacija u pojedinim aspektima društvenog života' ['Principles of the protection of the environment and their concretization in certain aspects of social life'], in Dabanović, R. (ed.) *Pravni aspekti biomedicine i zaštite životne sredine [Legal aspects of biomedicine and protection of the healthy environment].* Novi Sad: Pravni Fakultet, Centar za Izdavačku Delatnost, pp. 131–139.

Pivašević, J., Hafner, P. (2013) 'Institucionalna dimenzija održivog razvoja' ['Institutional dimension of sustainable development'], *Škola biznisa*, 2013/3–4, pp. 119–128; https://doi.org/10.5937/skolbiz1304119P

Salma, M. (2014) 'Preventivna tužba za otklanjanje izvora opasnosti od štete u svetlu održivog razvoja' ['Preventive Legal Action for Eliminating the Source of Possible Damage in Light of Sustainable Development'], *Zbornik Pravnog fakulteta u Novom Sadu*, 48(4), pp. 895–915; https://doi.org/10.5937/zrpfns48-7408

Samardžić, S. (2011) 'Krivičnopravna reakcija u oblasti zaštite životne sredine' ['Some problems in response of the Criminal Law to Environmental Crimes'], *Zbornik radova Pravnog fakulteta u Novom Sadu,* 45(3), pp. 737–758; https://doi.org/10.5937/zrpfns1103737S

Stojanović, M. (2017) 'Ekološke naknade kao deo sistema ekološkog poreza u Republici Srbiji' ['Environmental Fees as a Part of the Environmental Taxes System in the Republic of Serbia'], *Ekonomski signali*, 12(1), pp. 40–54; https://doi.org/10.5937/ekonsig1701041S

Szilágyi, J. E. (2017) 'Cross-border Acquisition of the Ownership of Agricultural Lands and Some Topical Issues of the Hungarian Law', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 51(3), pp. 1055–1070; https://doi.org/10.5937/zrpfns51-13620

Archbishop Dimitrije's view on environmental issues [Online]. Available at: http://www.spc.rs/sr/pravoslavno_bogoslovlje_ekologija_na_delu (Accessed: 12 May 2022).

City Administration for Environmental Protection Novi Sad [Online]. Available at: https://environovisad.rs/javni-konkursi/30 (Accessed: 29 May 2022).

Commissioner for Information of Public importance, *Decision No. 071-01-762/2021-03, dated 4th October 2021* [Online]. Available at: https://praksa.poverenik.rs/predmet/detalji/F40F7103-54F9-4FFD-B8C6-87E3FF7D6D28 (Accessed: 25 May 2022).

Draft of IV National Report on Enforcement of the Arhus Convention, from 2020 [Online]. Available at: https://www.ekologija.gov.rs/sites/default/files/izvestaji/4.%20Izve%C5%A1taj%20o%20sprovo%C4%91enju%20Arhuske%20konvencije%20fin..pdf (Accessed: 20 May 2022).

Ecumenical Patriarch Bartholomew hosts the second Summit in Halka "Theology, Ecology and the Word" [Online]. Available at: https://mitropolija.com/2015/06/15/patrijarh-vaseljenski-vartolomej-domacin-je-drugog-samita-na-halki-bogoslovlje-ekologija-i-rijec/ (Accessed: 12 May 2022).

Ilija Ikonomidu: Orthodox View of the Ecological Crisis [Online]. Available at: https://www.eparhijazt.com/sr/news/predanje/2756.prof-dr-ilija-ikonomidu-pravoslavno-glediste-na-ekolosku-krizu.html (Accessed: 12 May 2022).

Instruction on the treatment of infertility with biomedically assisted fertilization [Online]. Available at: https://www.rfzo.rs/download/vto/Uputstvo%20za%20sprovodjenje%20lecenja%20neplodnosti%20postupcima%20biomedicinski%20potpomognutog%20oplodjenja%20(BMPO)28022022.pdf?fbclid=IwAR02SJAH4jvtNXIqRwjH82RWYJAgCbgB7W71CsNkvPaAy6xSv5ab0mFnuTc (Accessed: 12 May 2022).

National Assembly Rules of Procedure [Online]. Available at: www.poslovnik.rs (Accessed: 10 February 2022).

Press release of the Holy Synod of Bishops of 10th May 2018 [Online]. Available at: http://www.spc.rs/sr/saopshtenje_za_javnost_svetog_arhijerejskog_sabora_srpske (Accessed: 20 May 2022).

Protector of Citizens; Recommendations of the Protector of Citizens [Online]. Available at: www.ombudsman.rs (Accessed: 12 May 2022).

Regular Annual Report of the Protector of Citizens for the 2021 [Online]. Available at: https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji (Accessed: 12 May 2022).

Renewable energy [Online]. Available at: https://www.energetskiportal.rs/obnovljivi-izvori-energije/ (Accessed: 29 May 2022).

Strong Green Program [Online]. Available at: https://www.energetskiportal.rs/program-podrske-snazno-zeleno-konkurs-za-organizacije-civilnog-drustva/ (Accessed: 28 May 2022).

The Environmental Protection Agency [Online]. Available at: http://www.sepa.gov.rs/index.php?menu=100&id=4&akcija=showAll (Accessed: 16 February 2022).

Legal Sources

Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006.

Criminal Code, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 – corec., 107/2005 – corec., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

Decree on determining the Grant Program for the purchase of a rural house with a garden in the territory of the Republic of Serbia for 2022, Official Gazette of the Republic of Serbia, No. 9/2022.

Judgement of the Supreme Court of Cassation, No. Rev. 5730/2018, dated 10th July 2019.

Law on Agriculture Land, Official Gazette of the Republic of Serbia, No. 62/2006, 65/2008, 41/2009, 112/2015, 80/2017, and 95/2018.

Law on Biomedical Assisted Fertilization, Official Gazette of the Republic of Serbia, No. 40/2017 and 113/2017.

Law on Budget System, Official Gazette of the Republic of Serbia, No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – corr. 108/2013, 142/2014, 68/2015, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019, 72/2019, 149/2020, and 118/2021.

Law on Climate Changes, Official Gazette of the Republic of Serbia, No. 26/2021.

Law on confirming the Convention on the Availability of Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Issues, Official Gazette of the Republic of Serbia, No. 38/2009.

Law on Contracts and Torts, Official Gazette of the Republic of Serbia, No. 18/2020.
Law on Environmental Protection, Law on Environmental Impact Assessment, Law on Integrated Pollution Prevention and Control, Law on Strategic Environmental Assessment, Official Gazette of the Republic of Serbia, No. 135/2004.
Law on Fees for the Use of Public Goods, Official Gazette of the Republic of Serbia, No. 95/2018, 49/2019, 86/2019, 156/2020, and 15/2021.
Law on Financial Support for Families with Children, Official Gazette of the Republic of Serbia, No. 113/2017, 50/2018, and 46/2021.
Law on Forests, Official Gazette of the Republic of Serbia, No. 30/2010, 93/2012, 89/2015, and 95/2018.
Law on Free Access to Information of Public Interest, Official Gazette of Republic of Serbia, No. 120/2004, 54/2007, 104/2009, 36/2010, and 105/2021.
Law on Fundamentals of Property Relations, Official Gazette of the Social Federal Republic of Yugoslavia, No. 6/80 and 36/90, Official Gazette of Federal Republic of Yugoslavia, No. 29/96 and Official Gazette of the Republic of Serbia, No. 115/2005.
Law on Genetic Modified Organisms, Official Gazette of the Republic of Serbia, No. 41/2009.
Law on Labour, Official Gazette of the Republic of Serbia, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017, and 95/2018.
Law on Planning and Construction, Official Gazette of the Republic of Serbia, No. 72/2009 and 81/2009.
Law on Protection of Nature, Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 91/2010 – correction, 14/2016, 95/2018, and 71/2021.
Law on Protector of Citizens, Official Gazette of Republic of Serbia, No. 79/2005 and 54/2007.
Law on Public Assets, Official Gazette of the Republic of Serbia, No. 72/2011, 88/2013, 105/2014, 104/2016, 108/2016, 113/2017, 95/2018, and 153/2020.
Law on Public-private Partnership and Concession, Official Gazette of the Republic of Serbia, No. 88/2011, 15/2016, and 104/2016.
Law on Real Estate, Official Gazette of the Republic of Serbia, No. 93/2014, 121/2014, and 6/2015.
Law on the Prohibition of the Construction of Nuclear Power Buildings in the Federal Republic of Yugoslavia, Official Gazette of the FRY, No. 12/95 and Official Gazette of the Republic of Serbia, No. 85/05.
Law on Waters, Official Gazette of the Republic of Serbia, No. 30/2010, 93/2012, 89/2015, and 95/2018.
Regulation on Protection of Natural Rarities, Official Gazette of the Republic of Serbia, No. 50/93 and 93/93.
Stabilization and Association Agreement between the European Union and Their Member States and Serbia, Official Gazette of the Republic of Serbia – International Agreements, No. 83/2008.

Court Decisions

Decision No. ИУз-1575/2010.
Decision No. ИУо- 1256/2010.
Decision No. ИУо-1176/2010.
Decision No. ИУо-1537/2010.
Decision No. ИУо-338/2013.
Decision No. ИУо-49/2009.
Decision of Constitutional Court, No. 51/2021.
Decision of Constitutional Court, No. 53/2021.
Decision of Constitutional Court, No. ИУз-1575/2010.
Decision of the Constitutional Court No. Už-7702/2013.
Decision on the establishment of the Green Fund of the Republic of Serbia: 91 / 2016-17, 78 / 2017-24.
Judgement No. Rev 5077/2019 the Supreme Cassation Court.

Chapter IX

Slovak Republic: Constitution and the Protection of Environment and Natural Resources

Michal Maslen

The objective of this paper is to illustrate the approach of certain Slovak administrative authorities and of the Constitutional Court of the Slovak Republic toward environmental protection, the protection of natural resources, and the connection between family and parenthood protection and the protection of future generations and sustainable development. The paper adopts the traditional methods of scientific research, which include analysis, induction, deduction, generalization, and analogy. The key questions that the paper tackles include the issue of how the Slovak legislation and constitutional protection respond to the relation of human society and environment. In this relationship, human seems to try to convince nature of his superiority and supremacy, and nature seems to persistently prove its autonomy and independence to humans. Scientific research has already shown that nature is capable of independent existence without man. It also shows that man needs nature to survive and to have a certain quality of life. Research has compared parts of nature significantly affected by humans with parts of nature relatively unaffected by humans, coming to the conclusion that nature—or the natural part of the environment—has an elaborate system of balance and stability, and the more a person intervenes in this system (mainly with the aim of satisfying his own economic and social needs), the more they disrupt the established stability and destabilize said system. This paper aims to add some value and contribute to environmental protection.

Michal Maslen (2022) Slovak Republic: Constitution and the Protection of Environment and Natural Resources. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 399–437. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_10

1. The constitutional framework for environmental protection

Article 4 of the Constitution of the Slovak Republic (hereinafter referred to as the "Constitution") addresses environmental protection.[1] Therefore, in the context of the mentioned article, one can speak about the principle of sustainable development anchored in the Article 4 sec. 1 of the Constitution and the constitutional value of water resources, which is expressed in Article 4 sec. 2 of the Constitution. In addition to the abovementioned provision, Article 44 of the Constitution establishes the right to a favorable environment.[2] Moreover, Article 45 ensures the right to information about the state of the environment.[3] The Constitution also anchors a special provision connected with property right expressed within Article 20 sec. 3. This provision can be understood as a limit to the performance of property[4] and limits the owner in the performance of the property right in such way that would harm cultural heritage[5] or the environment.

1 Under the mentioned provision *"(1) Mineral resources, caves, groundwater, natural healing resources and watercourses are owned by the Slovak Republic. The Slovak Republic protects and enhances these resources, gently and effectively uses mineral wealth and natural heritage for the benefit of its citizens and future generations. … (2) The transport of water taken from water bodies located in the territory of the Slovak Republic across the borders of the Slovak Republic by means of transport or pipelines is prohibited; the prohibition does not apply to water for personal consumption, drinking water packaged in consumer packaging in the territory of the Slovak Republic and natural mineral water packaged in consumer packaging in the territory of the Slovak Republic and to the provision of humanitarian aid and emergency assistance. Details of the conditions for the transport of water for personal consumption and water for the provision of humanitarian aid and emergency assistance shall be laid down by law."*

2 Under the mentioned article: *"(1) Everyone has the right to a favorable environment. … (2) Everyone has a duty to protect and enhance the environment and cultural heritage. (3) No one may, beyond the law, endanger or damage the environment, natural resources and cultural monuments. … (4) The state takes care of the careful use of natural resources, the protection of agricultural and forest land, the ecological balance and the effective care of the environment and ensures the protection of designated species of wild plants and wildlife. … (5) Agricultural land and forest land as non-renewable natural resources enjoy special protection by the state and society. … (6) Details of the rights and obligations under paragraphs 1 to 5 shall be laid down by law."*

3 Under the Article 45 of the Constitution: *"Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of that state*."

4 Under the Article 20 sec. 3 of the Constitution*, "Property is binding. It may not be abused to the detriment of the rights of others or contrary to the general interests protected by law. The exercise of property right must not harm human health, nature, cultural monuments and the environment to the extent required by law."*

5 According to the case law of the Slovak courts the impact of Art. 20 sec. 3 of the Constitution of the Slovak Republic is that, if the subject of ownership is real estate in the monument territory, its owner is limited in the exercise of ownership rights in accordance with the Monument Fund Protection Act and is obliged to fulfill the obligations under the Monument Fund Protection Act. (See the Judgement of the Supreme court of the Slovak Republic of October 24th, 2018, no. 7Sžk/8/2017). Therefore, the building does not have to be declared a cultural monument, but it can still be subject to the regime of monument protection. In addition to cultural monuments, according to the Monument Fund Protection Act, areas with a concentration of cultural monuments in a comprehensive preserved historical

Then, Article 43 sec. 2 of the Constitution stipulates that *"the right of access to cultural wealth is guaranteed under the conditions laid down by law."*[6] All the above-mentioned provisions of the Constitution create the constitutional framework of environmental protection in the Slovak Republic. This legislation created a space for the adoption of a specific act on the protection of the environment in the Slovak Republic.

In the mentioned context, the Slovak legislation contains the general act protecting the environment designated Act no.17/1992 Coll. on the environment (hereinafter referred to as "the Act on environment"), which established the principles of environmental protection transposing the principles of international environmental law. Specific separate laws address the protection of the environment's individual components, such as waters, air, forests, nature, and landscape. The Act on environment is also important because it established basic principles and rules on liability for environmental matters in civil law. Article 27 of the Act on environment establishes the liability for the breach of the environmental legislation.[7] The general legislation protecting cultural monuments is expressed within Act. No 49/2002 Coll. on the protection of monument fund (hereinafter referred to as the Monument Fund Protection Act).[8]

settlement structure or areas with a concentration of topographically defined archaeological sites and localities are also protected. For buildings that are not cultural monuments but are in a protected area, conditions and restrictions apply. These measures are defined in the principles of protection of the monument fund developed for the area. These criteria create the conditions of constitutionality in the restriction of property rights. The public interest in the protection of cultural heritage is therefore undoubtedly given in such localities. (See the Judgement of the Supreme Court of the Slovak Republic of August 7, 2019, no. 3Sžk/24/2019). According to the Constitution of the Slovak Republic, ownership is binding; it may not be abused to the detriment of the rights of others or contrary to the general interests protected by law. The property owner has a duty to the basic protection of the monument area and the obligation to ensure, among other things, the preservation of monument values in the area and their good technical, operational, and aesthetic condition through his cooperation with state administration bodies and local government bodies. (See the Judgement of the Supreme court of the Slovak Republic of September 24, 2014, no. 7Sžo/1/2013).

6 According to the Slovak case law, the protection of the monument fund must be considered public interest, which is based on the preservation of the monumental value, also consisting of the land's development. The protection of this public interest must be ensured in accordance with other public interests, including the protection of life and health (see the Judgement of the Supreme court of the Slovak Republic of July 28, 2011, no. 8Sžo/203/2010).

7 According to Article 27 sec. 1 of this Act: *"Anyone who has caused ecological damage or other illegal actions to the ecological stability is obliged to restore the natural functions of the disturbed ecosystem or its part. If this is not possible or for serious reasons effective, he is obliged to compensate the environmental damage in another way (substitute performance); if this is not possible, he is obliged to compensate this damage financially. Concurrence of these compensations is not excluded. The method of calculating environmental damage and other details shall be laid down in a special regulation."* Section 3 of this Article states that *"For the environmental damage, the general rules on liability and compensation shall apply, unless sections 1 to 3 provide otherwise."* This means that the general provisions of the Civil Code (Act no. 40/1964 Coll.) expressed in Article 415 and the following shall apply.

8 According to the Supreme Court of the Slovak Republic, the increased protection of cultural heritage is in the public interest. Therefore, it is necessary to adopt such solutions and legal tools so that nonconceptual interventions in the monument fund do not recur now or in the future and monuments and ensembles do not gradually disappear (see the Judgement of the Supreme court of the Slovak Republic of April 30, 2012, no. 5Sžp/17/2011).

To complete this scheme, we must mention that also the Criminal Code (Act no. 300/2005 Coll.) contains a special part related to crimes against the environment. The subject matters of these crimes are expressed in Chapter Six of the Special Part of the Criminal Code. The first subject matter is a general one called *"Danger and damage to the environment"*, which is expressed in Article 300 of the Criminal Code. Then, other special subject matters are connected with the protection of special environmental components or with the prohibition of special activities. These subject matters include, for example, Article 302 sec. 1 (Unauthorized waste management)[9] or Article 303 sec. 1 (Violations of water and air protection) of the Criminal Code.[10] What is common to all the mentioned provisions of criminal protection of environment in Slovakia? All these subject matters refer to environmental legislation; therefore, criminal liability is connected with the duties and prohibitions expressed in environmental legal regulations. However, there is also a general definition of environmental damage established by Article 124 sec. 3 of the Criminal Code.[11]

However, no constitutional provision exists regarding the definition of environment; the term or concept of environment is defined in Article 2 of the Act on environment.[12] The discussion on the content of this definition resulted in the opinion that the Slovak legal definition of environment is more ecocentric than anthropocentric because it is oriented on favorable conditions for the existence of all organisms. Nevertheless, it is important to mention that Article 44 sec. 3 of the Constitution establishes a general prohibition to damage the environment above the extent set by the law, which means that the state, natural persons, and legal entities (e.g., private companies) must follow this prohibition. This fact also represents the balance between property rights and economic liberties on one hand and the environment's constitutional value on the other one.

9 Under the mentioned provision, *"Anyone who manages waste on a small scale in contrary to the generally binding legal regulations shall be punished by imprisonment for up to two years."*

10 Under the mentioned provision, *"Anyone who acts contrary to the generally binding legislation for the protection of water and air and causes a deterioration in the quality of surface water or groundwater or air by: a) putting another person at risk of serious injury or death; or b) causing a risk of significant damage, shall be punished by imprisonment for a term of six months to three years."*

11 Under the mentioned provision, *"In the case of environmental crimes, damage means the sum up of environmental damage and property damage, while property damage also includes the costs of restoring the environment. In the case of an offense of unauthorized waste management under the Article 302, the scope of the offense means the price at which the waste is usually collected, transported, exported, imported, recovered, disposed of or landfilled at the time and place of the offense and the price for removing the waste from the place which it is not intended to be stored at."*

12 Under the mentioned Article, *"The environment is everything that creates the natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. Its components are mainly air, water, rocks, soil, organisms."*

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and the environment

2.1. The National Council of Slovak Republic

First, the legislative sphere of the Slovak legal system must be addressed. The parliament does not play a significant role in shaping environmental protection other than through legislation; however, in the Slovak Republic, the parliament is also responsible for adopting so-called "resolutions", such as the Resolution of the National Council of the Slovak Republic of February 28, 2001, no. 91/2001. Through this resolution, the parliament adopted the Declaration of the National Council of the Slovak Republic on the protection of cultural heritage (hereinafter referred to as "Declaration"). The mentioned Declaration has been adopted for the purpose of supporting the principles enshrined in international treaties, conventions, and recommendations of international organizations for the protection of cultural heritage—in particular, documents by UNESCO and the Council of Europe. It shall also develop everyone's rights and obligations to protect cultural heritage and evaluate the public's relationship with cultural and historical values according to Art. 44 of the Constitution of the Slovak Republic. The preservation of cultural heritage is important for future generations, and therefore, it must be protected.[13]

The institutes of parliamentary control of the public administration include the Committee of the National Council of the Slovak Republic for Agriculture and the Environment. As the initiative and control body of the National Council of the Slovak Republic, it focuses its activities primarily on (a) draft laws and other recommendations to the National Council in matters falling within its competence; (b) the monitoring of how laws are enforced and whether regulations issued to enforce them align with them; (c) cooperation with state and public administration bodies and the professional public; (d) fundamental issues of development of the Slovak Republic connected with the environment and agriculture—in particular the implementation of the Government's Program Statement, the draft state budget and its implementation, and the state final account.

The committee's competence includes agriculture, forestry and water management, geodesy, cartography and land register, rural development, environment, and nature protection. The committee also discusses opinions on drafts of legally binding acts and other acts of the European Union. In doing so, it uses

13 See the Resolution of the Constitutional court of the Slovak Republic of September 21, 2016, no. PL. ÚS. 9/2016.

suggestions and analyses submitted proactively by representatives of professional circles.[14]

2.2. Judicial performance of state powers in the field of environmental protection

The authority of the Constitutional Court of the Slovak Republic is relevant to the field of judicial performance of state powers. Currently, 87 decisions of the Constitutional Court of the Slovak Republic have been directly connected with Article 44 of the Constitution (the right to a favorable environment) since 1993. However, it is noticeable that the Constitutional Court of the Slovak Republic—when ruling on this article—is rather cautious and reserved as there are issues connected with the legal standing of legal persons with regard to the performance of the right to a favorable environment. The Court holds that this right belongs primarily to the natural persons; thus, it is almost legally impossible to file a constitutional complaint related to the right to a favorable environment for a legal person or a municipality.[15] Article 127a of the Constitution anchors the constitutional municipal complaint for the municipalities to be used; however, this institute is being used extremely rarely. The Administrative Judicial Code (Act no. 162/2015 Coll.) establishes the right of the legal persons representing the public the right to file the administrative judicial action connected with right to a favorable environment to the administrative courts. In our opinion, this fact opens the gateway for these types of legal persons to also file constitutional complaints, if the judicial protection before the administrative courts fails.[16] For a legal person (entity) representing the public is therefore necessary to bind the content of Article 46 with Article 44 of the Constitution. We must mention that changes in the legislation mainly expressed within the Administrative Judicial Code are mostly connected with relevant case law of the CJ EU. The Case of the Brown Bear decided by the CJ EU (C-240/09) and the Case of the Pezinok Landfill also decided by the CJ EU (C-416/10) are related to the procedural environmental rights and to the application of the Aarhus Convention within the Slovak legislation. This case had an outstanding importance in domestic law with regard to the legal standing of legal persons in the area of environmental justice. In addition, the recent

14 See the Committee of the National Council of the Slovak Republic for Agriculture and the Environment. Basic information about the committee [Online]. Available at https://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=158 (Accessed: February 27, 2022).

15 See the Resolution of the Constitutional court of the Slovak Republic no. III. ÚS 93/08 of April 1, 2008. See also the Resolution of the Constitutional court of the Slovak Republic no. III. ÚS 95/08 of April 1, 2008 and the Resolution of the Constitutional court of the Slovak Republic no. III. ÚS 100/08 of April 1, 2008.

16 Under the Article 46 sec. 1 and 2 of the Constitution, "*(1) Everyone can claim their right in an independent and impartial court and in cases established by law in another body of the Slovak Republic. … (2) Whoever claims to have been deprived of his rights by a decision of a public authority may apply to a court to review the legality of such a decision unless the law provides otherwise. However, review of decisions concerning fundamental rights and freedoms must not be excluded from the jurisdiction of the court.*"

case of Constitutional Court no. I. ÚS 380/2019-83 showed that it is possible for the public concerned represented by a civic association to file a successful constitutional complaint; this case is related to the protection of the Brown Bear.

In the case of the Recycling Fund,[17] the parliament adopted Act no. 223/2001 Coll. on waste, creating the Recycling Fund to perform public tasks and collect public financial benefits to provide financing in the field of environmental care. The highest body of this fund was to be the board of directors. According to the legislation at the time, two thirds of its members were to be appointed by the Minister of Economy of the Slovak Republic on the proposal of a representative association of employers (i.e., private association of persons). The group of parliament's representatives objected that the Minister of Economy of the Slovak Republic was to be bound by the proposals of the employers' association under this act; thus, the legislation created a situation in which a private association had to decide on public tasks and the collection of public benefits to provide care in the field of creation and protection. Members of the National Council of the Slovak Republic argued that the state could not get rid of its obligation to care for the environment by transferring it to a private entity without maintaining effective control. However, the Constitutional Court did not find a contradiction with Art. 44 of the Constitution, and it came to conclusion that the Recycling Fund of the Slovak Republic is also subject to the laws of the Slovak Republic and therefore to the principle of lawfulness. However, a different opinion was presented by Judge Ladislav Orosz, who expressed the legal opinion that the regulation of Art. 1 sec. 1 of the Constitution of the Slovak Republic, which naturally incorporates the principle of the substantive rule of law, includes, inter alia, the principle of protection of the public interest. For this reason, it is the state's duty to prevent private interests from penetrating into the public interest. The principle of proportionality should primarily serve to achieve this goal; therefore, in this view, the structure of the fund did not guarantee the performance of tasks related to the protection of health and the environment in the public interest.

As for relevant case law of ordinary courts or the Supreme Court in relation with environmental protection, one can mention, for example, the case connected with the CJEU decisions in the cases of the Brown Bear (e.g., the decision of the Supreme Court of the Slovak Republic no. 6Sžk/12/2020 of June 16, 2021) and Pezinok Landfill (e.g., the decision of the Supreme Court of the Slovak Republic no. 1 Sžp/1/2010 of May 14, 2013).

The Constitutional Court of the Slovak Republic has recently defined the legal interest in the legal management of waste and the implementation of waste management. The Constitution of the Slovak Republic does not explicitly mention or define the concept of waste. However, the case law of the Constitutional Court of the Slovak Republic points to the existence of a public interest in waste management and the implementation of obligations related to waste management. It links this interest

17 The Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 3/03-189 of January 28, 2009.

primarily with the right to environmental protection and the right to a favorable environment under Art. 44 of the Constitution of the Slovak Republic. The existence of waste legislation is linked by the case law of the Constitutional Court of the Slovak Republic with the need to reflect current trends that are characteristic of the globalized society of the twenty-first century, in which context the Constitutional Court of the Slovak Republic speaks of the emblematic character of the mentioned trends. However, this does not indicate a continuous increase in the production and manufacture of goods, which is inextricably linked to our consumer society and leads to a geometric increase in the amount of waste, but a gradual promotion of the need for a global concept of ecological ethics. In this context, the Constitutional Court of the Slovak Republic speaks of the existence of ecological ethics, which is based on evolutionary fundamentals and assumes that humanity can abandon the anthropocentric approach toward nature and expand its ethical circle to organic and inorganic nature. The idea in question is to accept a moral obligation to take an active part in protecting and conserving nature. This is not a novelty, but according to the Constitutional Court of the Slovak Republic, it is more of a normative transformation of the generally accepted interest in environmental protection. Simply put, the Constitutional Court of the Slovak Republic finds the foundations of public interest in the existence of waste legislation in Art. 44 of the Constitution of the Slovak Republic, which enshrine the right to a favorable environment and the obligations of the state and other entities in environmental protection. The public interest in waste management and the implementation of waste management find their normative anchoring in the provisions of the Constitution of the Slovak Republic on the right to environmental protection and are subsequently reflected in the meaning, purpose, and content of the Waste Act. According to case law, the very definition of waste management is therefore a reflection of the constitutional value on environmental protection and the realization of ecological ethics of the twenty-first century.[18] According to case law and doctrine, the constitutional regulation of the right to environmental protection affects three areas: the right to a favorable environment, the right to information about the environment, and the constitutional regulation as the provision of obligations of the state—but also of other entities—in environmental protection. [19]

2.3. The President of the Slovak Republic

Another body or person who plays an important practical role in environmental protection—albeit not their constitutional task—is the President of the Slovak Republic. The current president was involved in the abovementioned Case of the Pezinok Landfill, and she also engages actively in environmental issues, even though it is not her primary obligation. The President of the Slovak Republic also spoke at the

18 See the Decision of the Constitutional Court of the Slovak Republic of April 25, 2018, no. PL. ÚS 51/2015-94.

19 See Majerčák, 2011, p. 9. See also Stejskal, 2008.

UN Climate Change Conference in Glasgow on November 2, 2021; according to her, countries have one shared goal, namely to save the planet, and thus shall act accordingly. She stated that the conference in Glasgow was critical, and her activities also serve the protection of future generations; therefore, she encouraged doubling down on common efforts to cut emissions and mitigate the impact of the climate crisis and warned that, otherwise, the future outcome shall be the irreversible devastation of our world and its habitats. In the mentioned conference, the president emphasized that the young generation is seriously worried about climate change and knows that we are running out of time. In such sense, the President of the Slovak Republic actively enforces the promotion of the principle of sustainable development, especially in the field of green industry, emissions, and buildings.[20] Moreover, on the 30th anniversary of the founding of the Bratislava plant of Volkswagen Slovakia, she visited the mentioned factory, meeting the company's management and its employees and becoming acquainted with the plant's production. She reminded that the automobile industry represents a third of Slovak industrial production and half of its exports. According to the president, the direction and future of the automobile industry also largely determines the success of the Slovak economy; therefore, it is important to actively work to ensure that Slovak factories remain competitive and succeed in producing new models with the latest green technologies.[21] On May 20, 2020, the President of the Slovak Republic supported biodiversity by celebrating World Bee Day, on which she decided to install beehives in the Presidential Garden as part of the City Bees project. She noted the importance of bees and their benefits for biodiversity and pointed out that bees and other pollinators help plants that serve as food and shelter for other animals reproduce. The production of a considerable portion of food consumed by humans also depends on the activities of pollinators. The global decline of bees and other pollinators due to climate change and the interference in nature is therefore a warning for the protection of biodiversity as well as humankind. Pollinators can survive without people, but not the other way around. The city is also a place for bees.[22]

Another activity of the President of the Slovak Republic in the field of future generations protection is reflected within her speech on World Earth Day, which, she argues, reminds us of the great impact of our activities on the planet and the environment in which we live. She emphasized that it was during the current pandemic that nature became a refuge to which we turned for encouragement as we became even more aware of our vulnerability and close connection with nature. However,

20 See "Glasgow Conference is make-or-break moment for our planet" [Online]. Available at https://www.prezident.sk/en/article/konferencia-v-glasgowe-je-pre-nasu-planetu-rozhodujuca/. (Acccessed: May 30, 2022).

21 See "The automobile industry must remain competitive in the future" [Online]. Available at https://www.prezident.sk/article/automobilovy-sektor-musi-zostat-konkurencieschopny-aj-v-buducnosti/ (Accessed: May 30, 2022).

22 See "Bee decline is a warning for us all" [Online]. Available at https://www.prezident.sk/en/article/ubytok-vciel-je-pre-nas-varovanim/ (Accessed: May 30, 2022).

during hikes in our forests, we encountered not only nature's beauty but also examples of human recklessness. According to the President of the Slovak Republic, while progressing on the path out of the crisis and toward economic recovery, it is also important to strive to ensure that the transformation that awaits will be green, innovative, and not merely a return to the status quo in relation to nature. However, this is not only about countries' commitments; the President of the Slovak Republic believes that the obligation under Art. 44 sec. 2 and 3 of the Constitution influences every individual and community. Therefore, everyone should participate as, 10 to 20 years from now, our current actions toward the planet will be judged by the next generation.[23]

Finally, the project of the climate-neutral office of the President of the Slovak Republic by 2030 is worth mentioning. The Office of the President of the Slovak Republic perceives the climate crisis as one of great challenges of present times; therefore, it fully assumes liability for its share in meeting the climate commitments of Slovakia and the EU. The Presidential Office, which set out to become the first climate neutral public institution in Slovakia by 2030, annually evaluates its carbon footprint based on the calculations of the Environmental Policy Institute's carbon footprint calculator. The Office of the President of the Slovak Republic is reducing transportation emissions by renovating its fleet; vehicles with combustion engines are gradually being phased out and replaced by electric and hybrid vehicles. It also has installed four charging stations and added new bicycle racks. The office has also conducted a special-purpose energy audit for palaces used by the President of the Slovak Republic. These audits identified a set of measures with the potential of reducing CO2 emissions created by the consumption of energy in these buildings by two thirds. Energy efficiency and renewable energy resources are the crucial areas.[24]

The mentioned approach of the current President of the Slovak Republic represents mainly policy in the field of environmental protection and climatic neutrality. As for her legal approach toward environmental protection, it is important to mention the Judgment of the Court of Justice of the EU of 15 January 15, 2013, no. C - 416/10. In this case, the CJ EU ruled on the case of Pezinok Landfill. The current President of the Slovak Republic acted then as an active member of public concerned in the mentioned case. Thus, the legal approach of the current President of the Slovak Republic is mainly oriented toward the promotion of procedural environmental rights arising from the Aarhus Convention, and to emphasizing the role of the public and the importance of the civic society within environmental protection.

23 See "Earth Day Reminds Us of How Much We Affect Our Planet" [Online]. Available at https://www.prezident.sk/en/article/den-zeme-nam-pripomina-ako-velmi-ovplyvnujeme-planetu/ (Accessed: May 30, 2022).

24 "Climate neutral office of the President of the Slovak Republic by 2030" [Online]. Available at https://www.prezident.sk/en/page/green-office/ (Accessed: May 30, 2022).

2.4. Administrative authorities in the field of environmental protection in Slovakia

As for the institutional protection of the environment in the sphere of governmental administration in the Slovak Republic, the main authority belongs to the Ministry of Environment of the Slovak Republic, whose powers and authority are expressed within the Great Competence Act (the Act no. 575/2001 Coll. on the organization of government activities and the organization of the central state administration). Then, there is also the Slovak Environmental Inspectorate—a specialized supervisory authority providing for the state supervision and imposing fines on the matters concerning environment protection and conducting municipal administration in the field of integrated pollution prevention and control. It was established in 1991 by merging two autonomous bodies, the State Water Management Inspectorate and the State Technical Air Protection Inspectorate. Current spheres of its activity include integrated pollution prevention and control, waste management, water protection, air protection, nature and landscape protection, and biosafety. The inspectorate supervises how legal persons, natural persons, entrepreneurs, and municipalities follow environmental legal provisions; it also imposes fines and introduces corrective measures, if a breach of the environmental legal provisions by the monitored subjects is observed. Then it controls the imposed correction measures. The inspectorate issues integrated permits. Finally, it also resolves complaints, notices, and inputs from public, organizations, other institutions of the state, and municipal administration.[25]

2.5. The Public Defender of Rights

In the field of fundamental rights protection, the Public Defender of Rights also plays an important role. Under Art. 151a of the Constitution, the Public Defender of Rights is an independent body of the Slovak Republic, which, to the extent and in the manner prescribed by law, protects the fundamental rights and freedoms of natural and legal persons in proceedings before public administration bodies and other public authorities if their actions, decisions, or inactions are contrary to the legal order. In cases provided by law, the Public Defender of Rights may be involved in the liability imposition of persons acting in public authorities, if those persons have infringed a fundamental right or freedom of natural and legal persons. All public authorities shall provide necessary cooperation to the Public Defender of Rights.

For example, in 2016, the Public Defender of Rights performed a survey focused mainly on finding out whether the public authorities in the Slovak Republic deciding on the location, construction, and operation of small water powerplants thoroughly assessed the submitted proposals from the point of view of nature and landscape protection. The Public Defender of Rights analyzed whether everyone's right to a

25 See "Slovak Environmental Inspectorate. About us." [Online]. Available at https://www.sizp.sk/slovak-environmental-inspectorate/about-us (Accessed: February 27, 2022).

favorable environment has been protected and whether the right to environmental information and the right to other legal protection have been kept. The Public Defender of Rights also examined whether the rights arising from international treaties by which the Slovak Republic is bound (e.g., the Aarhus Convention) were respected in the permitting processes. The survey presented a conclusion that the public authorities within the mentioned permitting processes broke the participants' fundamental environmental rights (mainly represented by the public concerned), and it also recommended the adoption of legal measures protecting the environmental rights of natural and legal persons.[26]

The Office of Public Defender of Rights in the Slovak Republic also highlighted the problems of enforcing the right to water and safe, hygienic environmental conditions. According to § 23 sec. 1 of Act no. 564/2001 Coll. on the Public Defender of Rights, as amended,

> Each year in the first quarter, the Public Defender of Rights submits to the National Council an activity report setting out his knowledge of the respect of fundamental rights and freedoms of natural persons and legal persons by public authorities and his proposals and recommendations for remedy of the shortcomings identified.

According to the conclusions of the Public Defender of Rights of November 2016, the Slovak Republic has not developed solutions to fulfill its obligation to ensure access to drinking, safe, and affordable water for all through local governments. In 2016, the Office of the Public Defender of Rights conducted a survey in Roma settlements and municipalities throughout Slovakia—but especially in the Košice and Prešov regions, whose population is also of Roma nationality—on the protection and observance of everyone's fundamental right to access drinking water. The Constitution of the Slovak Republic does not contain a fundamental right on access to drinking water. However, the Public Defender of Rights found the legal basis for the protection of this right within the extensive interpretation of several other fundamental rights provided by the Constitution of the Slovak Republic, namely the right to life (Article 15), human dignity (Article 19), to health (Article 40), and to a favorable environment (Article 44). The twenty towns and villages included Sečovce, Dobšiná, Jelšava, Vtáčkovce, Ostrovany, Svinia, Jarovnice, Chminianske Jakubovany, Letanovce, Hranovnica, Huncovce, Stará Ľubovňa, Hodejov, Rimavská Sobota, Žiar nad Hronom, Horná Lehota, Jelka, Selice, and Hurbanovo Golden Ears. The survey was based on findings by the local inspectorate and obtained by a structured interview with local self-government representatives.[27] The Public Defender of

26 See "Report on the protection of the right to the environment within the proceedings of public authorities permitting the construction of small water powerplants" [Online]. Available at https://www.ziverieky.sk/assets/Uploads/9a173e044a/Sprava-vodne-elektrarne.pdf (Accessed: February 27, 2022).

27 Report on the Survey of Fundamental Rights and Freedoms. Access to drinking water and information on ensuring fire protection in Roma settlements [Online]. Available at http://www.vop.gov.sk/files/Pristup_k_vode.pdf (Accessed: May 30, 2022).

Rights, therefore, stated that the Slovak Republic did not implement its obligations in this area, arising from the international conventions. If the state had continued at the current pace, it would have fulfilled its commitment to creating the conditions for everyone to have access to drinking, safe, and affordable water in 2035 at the earliest. She also pointed out that no single state body would comprehensively address this issue. In addition, in this case, the Public Defender of Rights proposed to the National Council of the Slovak Republic the adoption of the specific act on drinking water.[28] On the one hand, this initiative looked highly appropriate and positive; on the other hand, in my opinion, it cannot be said with certainty that the Slovak Republic needs a separate law on drinking water as existing laws regulate this issue; nor can it be uncritically accepted that the creation of a new independent body dealing only with water would resolve the situation in this area. Drinking water is defined by the Art. 7 of Act no. 364/2004 Coll. on Waters and on the Amendment to the Act of the Slovak National Council no. 372/1990 Coll. on offenses as amended (Water Act). In my opinion, it can therefore be stated that, in terms of legislative measures, our legislation pursues the setting of World Health Organization (WHO) standards in the area of access to drinking water and sanitation services. In this respect, I do not agree with the intention of the Office of the Public Defender of Rights of the Slovak Republic on the need to develop a separate law on drinking water as drinking water management is only part or one of the types of water management in general. Water is first and foremost a natural resource, and legislation seeks to take this into account. Nevertheless, what is true are the gaps in application practice and the gaps in the actual achievement of the legislatively set requirements for the implementation of access to water and sanitation services. Therefore, it is more likely to argue that water supply and sanitation services should rather be considered as public services and should not be conducted primarily for profit but for the economic, political, and social sustainability of the exercise of the right of access to water.

3. Basis of fundamental rights

As for the content of the Constitution, it explicitly mentions the right to a favorable environment described at the beginning of this chapter. Why does the Constitution use the expression “favorable” instead of “healthy”? The provisions on the care for the environment and cultural heritage express that the Slovak Republic also places emphasis on this aspect of the lives of its inhabitants.[29] A favorable environment

28 See Dubovcová, 2016.

29 See “Explanatory Memorandum to the Government Draft of the Constitution of the Slovak Republic” [Online]. Available at https://www.nrsr.sk/dl/Browser/Document?documentId=75408 (Accessed: February 28, 2022).

is a basic condition for the existence of life; however, the case law of the Slovak courts also uses the concept of the right to a healthy environment.[30] In this context also linked to the protection of life and health,[31] however, the term "favorable" also means connection to personality rights in the field of civil law. Under the Article 11 of the Civil Code (the Act no.40/1964 Coll.), *"A natural person has the right to the protection of his or her personality, in particular life and health, civil honor and human dignity, as well as privacy, his or her name and expressions of a personal nature."* The Slovak legislation uses the term "favorable" because such environment is connected not only to good health and life condition but also to the private surroundings of a certain human. Such surroundings may also be represented by the private sphere of gardening and the local quality of the environment directly connected with human personality. In such sense, the term "favorable" is more precise.[32]

As for the content of the right to a favorable environment, this right has often been called an "impotent" right in the Slovak legal practice. The Constitution does not explain what is understood as favorable; the content of the term is understood through the duties of the state and of the natural and legal persons expressed in other sections of Article 44 of the Constitution. The case law of the Constitutional Court declares, on one hand, that all the fundamental rights established by the Constitution are equal;[33] on the other hand, it shows that the right to a favorable environment is relatively "weak" when it collides with property.[34] However, rights like right to privacy (private life),[35] right to judicial protection, and right to public participation can be interpreted extensively in an environmental context.[36] In the sense of the right to a fair trial connected to the environmental protection, the issues of the holders (entities) of the right to a favorable environment ought to be mentioned. Several complaints and decisions of the Constitutional Court of the Slovak Republic are related to the issue of holders of the right to a favorable environment. In the past, the case law of the Constitutional Court of the Slovak Republic rejected the fact that a legal person could also be the holder of the right to a favorable environment, and thus its subject. In its decisions, the Constitutional Court of the Slovak Republic

30 Mainly in the field of the Act no. 50/1976 Coll. on spatial planning and building regulations (Building Act) the case law of the Slovak courts emphasizes the issue of the right to a healthy environment. According to the case law, compliance with the legal conditions for the issue of a building permit is therefore subject to an assessment of the public interest in the protection and rational use of the land and of the promotion of a healthy human environment. (See the Judgement of the Supreme Court of the Slovak Republic of October 24, 2018, no. 7Sžk/35/2017).

31 Then, the Constitution also mentions the right to health protection. Under the Article 40 of the Constitution, *"Everyone has the right to protection of health. Under health insurance, citizens have the right to free health care and medical supplies under the conditions laid down by law."*

32 Cf. Průchová, 2016, pp. 201–216.

33 Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 7/96.

34 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 223/09 of May 27, 2010.

35 Jankuv, 2009, p. 94.

36 Finding of the Constitutional Court of the Slovak Republic no.I. ÚS 380/2019 of July 13, 2021. Finding of the Constitutional Court of the Slovak Republic no.I. ÚS 529/2019 of January 19, 2021.

strictly insisted that the holder of this right is always only a natural person. A legal person can never be the subject of this right as it does not have the capacity to be the holder of the right to a favorable environment.[37] Therefore, the Constitutional Court of the Slovak Republic has created a doctrine according to which the legal norms are created by the people. Given that the people create legal norms, the subject of the right to a favorable environment is, therefore, always only a natural person and never a legal one. Another reason for this doctrine is the fact that the state and level of the environment determine the quality of human life and not the quality of existence of the legal entities.[38] It must be said that the Constitution itself somehow "leads" to this opinion because, according to Art. 2 par. 1 of the Constitution, *"State power comes from citizens who exercise it through their elected representatives or directly."* On the other hand, this doctrine did not consider Art. 18 par. 2 letter a) of Act no. 40/1964 Coll. Civil Code, according to which *"legal persons are: … a) associations of natural or legal persons, …"* in the context of Art. 1 par. 1 of the Constitution.

This is caused mainly by the judicial activities of the ECHR (*Lopez Ostra c. Spain*) and by the abovementioned decisions of the CJ EU. When ruling on the right to a favorable environment, the Constitutional Court respects all principles of international environmental law that have been laid down by the conference on sustainable development in Rio de Janeiro in 1992 (principle of sustainable development, precautionary principle, principle of prevention) as well as the principles developed by the ACCC through the Aarhus Convention.

In the mentioned context, the Constitution mentions liability in relation with the environment, through duties established for the Slovak Republic and for other entities (natural persons and legal persons). However, it is necessary for the statutory legislation to establish the basic rules for legal liability related to the environment (civil, administrative, and criminal). The protection of the environment is, therefore, also perceived as an obligation for citizens; again, Article 44 mentioned above stipulates that the environmental protection is a general obligation. However, a certain amount of pollution is permitted within the limits laid down by the law. In such sense, the liability of other actors (private and public companies, multinational corporations) also appears in the Constitution in relation with the environment. The case law of the Supreme Court of the Slovak Republic presents an approach by which the public interest in environmental protection as a basic precondition for the existence of a human being is extraordinary; therefore, the legal order of the Slovak Republic pays increased attention and, in case of conflict of this public interest, exercises these rights. This is particularly evident in the event of a conflict between the public interest in environmental protection and private rights, such as property rights, the content of which (Article 20) and increased protection in administrative justice (Article 46 (2), second sentence) are enshrined directly in the Constitution of

37 The Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 93/08 of April 1, 2008.

38 The Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 100/08 of April 1, 2008.

the Slovak Republic.[39] Companies and businesses are bound by Article 20 sec. 3 of the Constitution. The mentioned provision represents a limit to the performance of property right (i.e., also a limit to business activities), which may be understood as a misuse of property in an environmental context. The Constitution does not explicitly set out the "polluter/user pays" principle; however, this can be found within Act no. 17/1992 Coll. on the environment. According to Article 31 of Act no. 17/1992 Coll., *"natural or legal persons shall pay taxes, fees, levies and other charges for the pollution of the environment or its components and for the economic use of natural resources, if special regulations provide so."*

3.1. Protecting the environment by enshrining rights related to political freedoms

The Constitution of the Slovak Republic (hereinafter referred to as "the Constitution") is protecting the right to a favorable environment directly within Art. 44 but also indirectly through the right to information set out in Art. 26 of the Constitution.[40] Traditionally, the right to information is understood as an instrument of democratization of state administration and local self-government entities, and it helps to apply the principles of transparency and publicity. In general, the legal science considers the abovementioned principles as manifestations of the so-called good administration.[41] The constitutional right to seek, receive, and share information is not restricted in relation to its addressees; it belongs to everyone (i.e., to any natural or legal person). According to the case law of the Constitutional Court of the Slovak Republic, the personal scope of the fundamental right to information is therefore given to everyone. The right to seek and receive information must be understood as a procedure aimed at obtaining, receiving, and processing information.[42] The constitutional obligation to provide information to every holder of public power arises from Art. 26 par. 5 of the Constitution. However, this obligation is limited because it does not bind everyone but only public authorities in connection with their activities. Other entities that are not part of public authorities do not have a constitutional obligation

39 Judgement of the Supreme Court of the Slovak Republic no. 3Sžp 2/2008 of December 4, 2008.

40 Under the Art. 26 of the Constitution, *"(1) Freedom of expression and the right to information are guaranteed. … (2) Everyone has the right to express his or her views orally, in writing, in print, in images or otherwise, and to seek, receive and impart ideas and information freely, regardless of national frontiers. The publication of the press is not subject to an authorization procedure. Business in the field of radio and television may be subject to state permission. The conditions shall be established by law. … (3) Censorship is prohibited. … (4) Freedom of expression and the right to seek and impart information may be restricted by law in the democratic society necessary for the protection of the rights and freedoms of others, the security of the state, public order, public health and morality. … (5) Public authorities are obliged to provide information on their activities in an adequate manner in the state language. The conditions and manner of implementation shall be established by law."*

41 See: Bartoň, Dienstbier, Horáková, Peterková, Pouperová, Sládeček, 2009, pp. 318–319.

42 See: Finding of the Constitutional Court of the Slovak Republic file no. IV. ÚS 256/07 of January 31, 2008.

to provide information to everyone. The Constitutional Court of the Slovak Republic emphasizes that the modern state is a highly complex body and that the subjects of power manifest themselves in many ways. From this point of view, it is often difficult to assess the diverse situations in requests for information as the Freedom of Information Act is relatively laconic in this respect; however, this does not change the sensitivity to a possible non-transparency of power.[43] The court sees the restrictions on the right to disseminate and provide information through measures that are necessary in a democratic society to protect the rights and freedoms of others, the security of the state, public order, and the protection of public health and morals.[44] The legislation of Art. 26 of the Constitution is general; it does not directly mention the protection of environment as the reason to disseminate information or to restrict the right to information. However, Art. 26 par. 4 of the Constitution mentions state security as the reason to restrict the right to information. Security is a constitutional value under the special Constitutional Act no. 227/2002 Coll. on state security in time of war, state of war, exceptional state, and state of emergency.[45] Environmental protection creates an integral part of the constitutional value of state security, and it may also become a reason to restrict the dissemination of information under the constitutional regulation of the right to information.[46]

Although Art. 26 of the Constitution does not directly mention environmental protection, Art. 45 establishes a special right to information about the state of the environment. Under the mentioned provision, *"everyone has the right to timely and complete information about the state of the environment and the causes and consequences of that state."* The Constitutional Court of the Slovak Republic states that the right to information on the environment is a fundamental right of a material nature, which

43 See: Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 1/09 of January 19, 2011.

44 See: Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 22/06 of October 1, 2008.

45 The term "state security" is defined by the Art. 1 par. 3 of the above mentioned special constitutional act. Under the mentioned provision: *"Security is a state in which the peace and security of the state, its democratic order and sovereignty, the territorial integrity and inviolability of the state's borders, fundamental rights and freedoms are preserved and the lives and health of persons, property and the environment are protected."*

46 This opinion also meets the requirements of the *Recommendation of the Committee of Ministers of the Council of Europe No. (2002) 2 on access to official documents*, which, in its introduction, emphasizes the need for the easy availability of information on matters of public interest. On the other hand, this Recommendation also considers restrictions on access to this information due to the national security, defense, international relations, public security, and nature protection. However, all these restrictions must also consider the requirements of the principles of proportionality, objectivity, and impartiality. Similarly, the Council of Europe Convention on Access to Official Documents adopted on June 18, 2009 in Tromsø, Norway, considers the transparency of public administration as the key element of good administration and the indicator of a democratic and pluralistic society open to citizens' participation in matters of public interest. However, the Convention also enables to restrict access to information for the reasons set out in Art. 3. Therefore, this provision considers the protection of environment as the ground for legitimate restrictions on access to information. Again, this restriction is possible only when respecting the principle of lawfulness.

can be claimed only within the limits of the laws that exercise this right (Article 51 par. 1 of the Constitution).[47] Therefore, within the constitutional complaint, the complainant must describe specific facts that would indicate a possible connection between the alleged interference with the right to information and the actions of the public authority. If the public authority provides the natural person or legal person with environmental information during the whole proceeding, then its actions do not establish a breach of the right to information on the state of the environment.[48]

3.2. Right to a fair trial in environmental matters

In addition the right to information and the right to information on the state of the environment, the Constitution also sets out the right to a fair trial within Art. 48 of the Constitution, under which

> (1) No one can be taken away from his legal judge. The jurisdiction of the court shall be established by law. … (2) Everyone has the right to have his case heard in public without undue delay and in his presence and to be able to comment on any evidence taken. The public can be excluded only in cases provided by law.

However, this article does not mention environmental protection. The relationship between the right to a fair trial and the right to a favorable environment finds the Constitutional Court of the Slovak Republic in the legal position of the public concerned under the Aarhus Convention. It is the representation of public interest in environmental protection that puts the public—which is the specific position of a general *"environmental advocate"*—and the public interest associated with it vis-à-vis the public authorities. The Constitutional Court of the Slovak Republic derives the mentioned position of the public concerned from the purpose of the Aarhus Convention. Under Article 1 of the mentioned Convention, its goal is to contribute to the protection of the right of every person, a member of this and future generations, to live in an environment that is adequate for preserving their health and achieving well-being.[49]

In a state governed by the rule of law, laws are not in conflict, and the legal system is comprehensive and compact. If the legal entities are formed by natural persons or associate natural persons, the doctrine derived from Art. 2 par. 1 of the Constitution of the Slovak Republic is not comprehensive. Therefore, in the past, it was problematic for the legal entities (especially NGOs) to access courts for environmental matters. This fact changed after the Judgment of CJEU no. C-240/09 of March

47 Under Art. 51 par. 1 of the Constitution, *"To claim the rights referred to in Art. 35, 36, 37 par. 4, Art. 38 to 42 and Art. 44 to 46 of this Constitution is possible only within the limits of the laws that implement these provisions."*

48 The Resolution of the Constitutional Court of the Slovak Republic no. I. ÚS 590/2016 of September 21, 2016.

49 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19, 2021.

8, 2011, also known as the Brown Bear decision. This was related to the question of whether it was possible to recognize Art. 9 par. 3 of the Aarhus Convention, which had become part of community law and could be recognized as having a direct effect within the meaning of the settled case law. The outcome of the mentioned judgment of the CJEU was the obligation of the Slovak Republic to interpret the rights established to legal entities representing the public favorably; in other words, these entities had the right to access the court in environmental matters to challenge the decisions of administrative authorities, the unlawfulness of which lies in its effect on the environment. The mentioned CJEU decision is primarily connected with access to the general court of law. However, if the obligation of the Slovak Republic is to provide the legal entities (NGOs) also with an effective right to a judicial protection under Art. 46 of the Constitution[50] and with an effective right to a fair trial under Art. 48, then it is possible to conclude that these entities shall also have access to an individual constitutional protection. In addition, special legislation establishes the right to a favorable environment. Art. 24 par. 2 of the Act no. 24/2006 Coll. on Environmental Impact Assessment and on Amendments to Certain Acts (hereinafter referred to as the "EIA Act") established the right of the public concerned to a favorable environment. The provision may be connected with Art. 42 of Act no. 162/2015 Coll. the Judicial Administrative Code (hereinafter referred to as "the Judicial Administrative Code"). Under Art. 42 of the Judicial Administrative Code, *"if the public concerned has the right under a special regulation to participate in administrative proceedings in environmental matters, it is also entitled to file an administrative action or participate in the proceedings on the administrative action."* In such case, it is not possible to deny an individual constitutional protection to NGOs, if an NGO bounds the breach of the right to a favorable environment with the right to a judicial protection and the right to a fair trial.[51]

3.3. Political participatory rights and freedoms linked with environmental protection

As for other political freedoms (e.g., participatory rights), which could be directly or indirectly linked with environmental matters, one can speak about the right to participate in public affairs under Art. 30 of the Constitution. Under this article,

50 Under Art. 46 of the Constitution, *"(1) Everyone may claim their right to an independent and impartial court and, in the case provided for by law, to another body of the Slovak Republic. … (2) Whoever claims that his rights have been curtailed by a decision of a public administration body may apply to a court to review the legality of that decision, unless the law provides otherwise. However, review of decisions concerning fundamental rights and freedoms must not be excluded from the jurisdiction of the court. … (3) Everyone has the right to compensation for damage caused by an illegal decision of a court, another state public administration body or an incorrect official procedure. … (4) Conditions and details of judicial and other legal protection of the founding law."*

51 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19, 2021.

> (1) Citizens have the right to participate in the administration of public affairs directly or by free choice of their representatives. Foreigners with permanent residence in the territory of the Slovak Republic have the right to vote and be elected to the municipal self-government bodies and to the self-government bodies of higher territorial units…. (2) Elections must be held within time limits not exceeding the regular election period established by law. … (3) The right to vote is universal, equal and direct and is exercised by secret ballot. The conditions for exercising the right to vote shall be laid down by law. … (4) Citizens have access to elected and other public offices under the same conditions.

The content of this right can also be explained in the sense of the abovementioned CJEU Pezinok Landfill decision.

Participatory rights in field of Slovak environmental legislation are mainly established by the *UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, adopted in Aarhus on June 25th, 1998* (hereinafter only the "Aarhus Convention"). The Aarhus Convention follows the enshrinement of procedural environmental rights within principle no. 10 of the *1992 Declaration on Sustainable Development adopted at the Rio de Janeiro Conference*, according to which environmental issues are best addressed with the participation of all citizens concerned and at the relevant level. The Declaration, therefore, enshrined the following procedural environmental rights: (a) procedural right to environmental information (access to information on the state of the environment held by public authorities, including information on hazardous materials and activities at the local level); (b) the right to participate in the decision-making process (wide availability of information); and (c) access to justice in environmental matters (effective access to administrative proceedings and the right to compensation and effective remedy).

According to its Art. 3, the aim of the Aarhus Convention is to guarantee the right of access to information, public participation in decision making, and access to justice in the field of environmental protection. To fulfill this objective, each party to the Convention shall take the necessary legislative, administrative, and other measures—including measures to comply with the provisions of this Convention as well as proper implementing measures.[52] In such approach, the doctrine of the Slovak jurisprudence sees a solution to the relation of international environmental law and national legislation. The Aarhus Convention enriches the area of international environmental law through procedural environmental rights;[53] its specificity is that the EU is also a party to it. The European Community acceded to the Aarhus Convention as the EU's legal predecessor, and the international treaties to which the EU accedes become part of EU law and are in the hierarchy of sources of law between primary

52 See Decision of ACCC in case of Kazakhstan no. ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, of March 11, 2005.

53 See Jankuv, 2001, p. 43.

law and secondary law. Such contracts should then be used in the circumstances of a Member State in such a way that the protection of the rights deriving from them is not inefficient and does not cause inequality in the exercise of rights under national law compared with the rights guaranteed by EU law. The condition is that the EU adopts a specific instrument to implement those treaties, such as a directive or regulation.[54]

This fact means that the public administration of the Member State of the EU has an obligation to cooperate with the public in the process of permission of certain projects, plans, and programs in the field of environmental protection. An example of waste management can be mentioned: approximately within 3 months at the turn of the years 2005 and 2006, two panels of the Constitutional Court of the Slovak Republic decided on the matter of participation according to Art. 74 sec. 4 of Act no. 223/2001 Coll. on waste and on the amendment of certain laws as amended (hereinafter referred to as the "former Waste Act"). It must be said that the mentioned decisions—although contradictory—can still be used to interpret Art. 97 sec. 1 of Act no. 79/2015 Coll. on waste and on the amendment of certain laws as amended (Hereinafter referred to as "the Waste Act") because the wording of said provision does not differ significantly from the wording of Art. 74 sec. 4 of the former Waste Act. The essence of these decisions was the application of the conditions of participation in granting consent under the former Waste Act, while applying the legal conditions for the establishment of participation under Art. 14 of Act no. 71/1967 Coll. on administrative proceedings (Administrative Code Procedural) as amended (hereinafter referred to as the "Administrative Code Procedural").[55] In both cases, the complainants sought the recognition of the status of a participant in the administrative proceedings conducted pursuant to Art. 81 sec. 3 and 4 of the former Waste Act, in which the consents for the operation of a landfill disposal facility were reviewed. The dispute over the admission of participation in both cases depended on the assessment of whether the concept of participation under Art. 14 of the Administrative Code Procedural is defined in a general way, thus giving preference to special legal regulations to specify who is a party to the proceedings. In the *Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 359/05-22 of December 14, 2005*, the Court chose a restrictive interpretation of the right to a favorable environment according to Art. 44 of the Constitution and explained the participation enshrined in Art. 74 par. 4 of the former Waste Act; thus, it did not grant the complainant legal protection when seeking to participate in the procedure under cited provision of the law. On the contrary, in the *Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 154/05-64, of February 28, 2006*, the Court deviated from

54 See Judgement of the CJ EU no. C-240/09 of March 8, 2011.

55 Under the mentioned act, *"(1) The party to the proceedings is the person whose rights, legally protected interests or obligations are to be held or whose rights, legally protected interests or obligations may be directly affected by the decision; also a party who claims that he may be directly affected by a decision in his rights, legally protected interests or obligations shall be a party to the proceedings, until the moment that contrary is proved. … (2) A party to the proceedings is also a person to whom a special legislation grants such a status."*

the abovementioned argumentation and interpreted the content of participation according to the former Waste Act more extensively and systematically in the context of the Administrative Code Procedural. In this decision, the Constitutional Court of the Slovak Republic said that participation regulated by waste legislation must be interpreted in the context of the Administrative Code Procedural. A contrary interpretation may constitute an infringement of the right to a fair trial under the Art. 46 sec. 2 of the Constitution and deny the essence of the right to a favorable environment.

This extensive approach has been confirmed by the latter case law of the Slovak courts. The essence of the abovementioned case law is that the non-recognition of the legal status of a party to an individual or to the public in a permitting proceeding relating to a landfill constitutes a *"harsh"* interference with the right to a favorable environment, regardless of the existence of the definition of environment under Act no. 17/1992 Coll. The case law approaches the environment as a complex and legally indivisible matter that is publicly available to every individual without the possibility of being excluded from its benefits—*"The subjective right of an individual to a favorable environment cannot be viewed in any other way than the effort of mankind to maintain a favorable state of the environment for the future generations."* Therefore, the right of the public to engage in the process of finding the most sensible variants of human activities or the product of these activities—which, in this respect, will not worsen the achieved state of the environment—must be assessed as highly related and linked to the environment. To achieve highly effective public involvement in this process, the state must carefully ensure the transmission of information describing not only the proposed options but also their impact on the state of the environment from and to the public. This obligation also includes the requirement of gaining comments and proposals from the public concerned in environmental matters.[56] Therefore, the case law declares that the legislation has strengthened the legal position of the public in relation to public administration decisions in field of environmental matters. The purpose of this regulation is to strengthen the position of the public, which is to be informed about the legal act that has legal consequences for local self-government, community, or society as a whole. Under the influence of European case law, the legislature tightened the legal requirements for the publication of documents. The purpose of this legislation is to increase the likelihood that public participants will learn about the content of the legal acts and will be able to defend their interests on that basis.[57]

The abovementioned ideas can be supported by the opinion of the Constitutional Court of the Slovak Republic for the adoption of environmental legislation. The court finds that Article 8 of the Aarhus Convention gives legal basis for the liability of

56 See the Judgement of the Supreme court of the Slovak Republic of May 14, 2013, no. 1 Sžp 1/2010.
57 See the Judgement of the Supreme court of the Slovak Republic of April 30, 2012, no. 5 Sžp 9/2012.

public administration for finding necessary means for effective public participation in the preparation of generally binding regulations.[58]

Therefore, in my opinion, at the level of constitutional law, the legal status of the public as a party in the environmental permitting proceedings is derived from the constitutional requirement enshrined in Art. 44 sec. 2 of the Constitution of the Slovak Republic. According to this provision, *"everyone is obliged to protect and enhance the environment and cultural heritage."* The role of the public and its activity in judicial and administrative proceedings is thus perceived not only as a constitutionally guaranteed right but also as a constitutional obligation to protect the environment. In this way, the public is exercising its fundamental rights to environmental information; therefore, it is necessary to consider that the purpose of this individual fundamental right is to share co-liability—for maintaining a favorable level of the environment and also participating in controlling the steps that may influence this state of the environment, not only now but also in the future. This point of view can also be supported by the CJ EU case law, according to which the essence of the legal protection provided to the public in environmental matters relates to the requirement of the legislation to provide the public concerned with effective opportunities to take part in the proceeding and at the appropriate time. This guarantee is interpreted by the CJ EU in the context of the Aarhus Convention.[59] The purpose of the legal position of the public concerned in environmental matters is also the protection of future generations. The right to take an active part in environmental matters is therefore protecting the future environment.[60]

58 Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 352/2015, of July 14, 2015.

59 The legal status of the party to the proceedings in the mentioned sense is a manifestation of the right to participate in the administration of public affairs. In the area of landfill permitting, the *Judgment of the Court of Justice of the EU of 15 January 15th, 2013, no. C - 416/10* anchors the essence of the abovementioned environmental rights. The case law of the Slovak courts essentially follows it requirements. In that case, the CJ EU examined whether EU law required the public concerned to have access to a zoning decision on the location of a landfill from the beginning of the permitting proceeding. The Court also considered the question of whether the refusal to make the environmental information accessible to the public could be justified by recourse to business secrets protecting the information contained therein or. Then, it also considered that whether the decision was not made available could be remedied by giving the public concerned access to that decision during the second instance administrative proceedings. It is also important to answer the question of whether the operation of landfill represents a landfill that can store more than 10 tons of waste per day or has a total capacity of more than 25,000 tons of waste. The case law of the CJ EU accepts the conclusion that EU law emphasizes the participation of the public concerned in the permitting proceeding and that it also provides such participation as mandatory. This approach also includes the obligation of the public administration to inform the public. Therefore, the public concerned has the right to obtain the relevant information as well as the date and place where this information will be made available to the public. The rules on public participation must be interpreted in light of the provisions of the Aarhus Convention, with which EU law must be "*properly aligned*." (See the Judgement of the CJ EU of May 12, 2011, in case of Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, no. C-115/09, Zb. s. I-3673, point 41).

60 See the Finding of the Constitutional Court of the Slovak Republic of February 28, 2005, no. I. ÚS 154/05.

4. Protection of natural resources, natural wealth and heritage, and the protection of future generations

The protection of natural resources does *expressis verbis* appear in Art. 44 sec. 3, 4, and 5 the Constitution. In these provisions, the Constitution of the Slovak Republic establishes the obligation not to damage natural resources above the limits laid down by law. It also highlights the state's primary obligation to protect and enhance natural resources and expresses the special protection of the forest and agricultural land. The content of the term "natural resources" can also be interpreted through that of Article 4 of the Constitution.[61] Therefore, the term "natural resources" also includes *"mineral resources, caves, groundwater, natural healing resources and watercourses".* In addition, the protection of natural resources under Art. 44 of the Constitution should be mentioned. Therefore, the list of "natural resources" under Art. 4 of the Constitution is not exhaustive because Art. 44 includes forests, plants, and animals in this category. The respect toward natural resources finds the Constitutional Court of the Slovak Republic when expressing the balance between the property rights and economic liberties on one hand and the protection of natural resources on the other. [62]

The Constitution does not define the term "future generations".[63] The Constitutional Court of the Slovak Republic used the term in the context of Art. 1 of the Aarhus Convention, under which,

> in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

In the event that the public concerned suspects that the state, resp. its bodies in a specific case, act in violation of the constitutional requirements under Art. 44 par.

61 *"(1) Mineral resources, caves, groundwater, natural healing resources and watercourses are owned by the Slovak Republic. The Slovak Republic protects and enhances this wealth, gently and efficiently uses mineral wealth and natural heritage for the benefit of its citizens and future generations."*

62 Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 22/06 of October 1, 2008.

63 According to the case law of Slovak courts, in matters of environmental protection, it is necessary to take into greater account the protection of the Slovak natural resources. Any exemptions granted, consent permitted, or minimal intervention into the Slovak natural resources must be sufficiently justified. Interventions that do not consider the possibility of a negative impact on the biota of protected areas and meet human requirements ultimately erase the differences between the different levels of nature protection in Slovakia, which, for this reason, lose their meaning. Both the right to the environment and the property right (right to the investment resp. the right to use the land) are protected by the Slovak legislation. However, none of these rights is an absolute right. The case law states that, if these rights collide, their conflict must be resolved using the principle of fair balance (See the Judgement of the Supreme court of the Slovak Republic of June 20, 2017, no. 10Sžo/76/2015).

4 of the Constitution (*careful use of natural resources*), it can apply to an independent court, which will subject the state proceedings to judicial review. The institute of the public concerned in environmental issues represents one of the control mechanisms within the framework of environmental protection when, through Art. 44 par. 2 of the Constitution *(obligation of everyone to protect the environment)*, it ensures the fulfillment of Art. 44 par. 4 of the Constitution and, at the same time, the protection of everyone's subjective right to a favorable environment according to Art. 44 par. 1 of the Constitution. The role of the public concerned is to seek the protection of the right to a favorable environment in relation to all (i.e., also to future generations) since it represents the public interest on environmental protection.[64] However, the mentioned approach of the Constitutional Court of the Slovak Republic cannot be understood as a method of defining the concept of future generations. The obligations arising from Art. 4 par. 1 of the Constitution can be understood as the material components of the principle of sustainable development. The Constitution does not directly name Art. 4 as the principle of sustainable development. However, if Art. 6 of the Act no.17/1992 Coll. on the environment, which defines sustainable development,[65] is applied, it can be concluded that the content of Art. 4 of the Constitution expresses the requirements of the principle of sustainable development. The position of the future generations here is connected with their ability to satisfy their basic needs, while not reducing the diversity of nature and preserving the natural functions of ecosystems.

5. Constitutional protection of marriage and parenthood

This part of the Slovak chapter is oriented toward other values relevant for the protection of the environment in the Constitution of the Slovak Republic. As for other relevant provisions and values that might be relevant for the protection of the interest of future generations and of the environment, the protection of marriage and family ought to be mentioned. According to Art. 41 of the Constitution of the Slovak Republic

> (1) Marriage is a unique bond between a man and a woman. The Slovak Republic comprehensively protects the marriage and helps its good. Marriage, parenthood and the family are protected by law. Special protection for children and adolescents is guaranteed. … (2) A pregnant women are guaranteed special care, protection in working relationships and adequate working conditions. … (3) Children born in or

64 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19, 2021.

65 Under Art. 6 of Act no. 17/1992 Coll. on the environment, *"Sustainable development of society is development that preserves the ability of current and future generations to meet their basic needs, while not reducing the diversity of nature and preserving the natural functions of ecosystems."*

> out of wedlock have the same rights. … (4) The care and upbringing of children is the right of parents; children have the right to parental education and care. Parents' rights can be restricted and minors can be separated from their parents against the parents' will only by a court decision on the basis of the law. … (5) Parents who take care of children have the right to state assistance. … (6) Details of the rights under paragraphs 1 to 5 shall be established by law.

The Constitutional Court of the Slovak Republic argues that the Constitution expresses—and thus also protects—many objective values such as marriage, parenthood, family (Art. 41 sec. 1.), health (Art. 40), nature (Art. 20 sec. 3), the environment (e.g., Art. 20 sec. 3, Art. 44) or morality (Art. 24 sec. 4). The Constitution guarantees protection to objective values in various forms and with different intensity that are explicitly expressed in the Constitution, such as freedom, equality, or human dignity, as basic constitutional values. In other words, these values are general constitutional principles and the most general rules of conduct, which, in a concentrated form, express the most general objectives of the legal system and together form the system of fundamental values on which the state's constitutional order is based. At the same time, by a concrete manifestation of these fundamental values, the Constitution recognizes the intensity of the protection in the form of fundamental rights or fundamental freedoms. This means that specific manifestations of these basic values are formulated in the form of subjective claims of natural persons or legal entities against the state. The intensity of the protection of fundamental rights is also granted by the Constitution to other objective values, such as health or the environment, even if *"only within the limits of the laws implementing those provisions"*. The Constitution of the Slovak Republic also provides an exceptionally high level of protection to other mentioned values (nature, morality), when it considers their protection to be a legitimate reason to restrict certain fundamental rights or freedoms, such as property rights or freedom of movement and residence. The Constitution of the Slovak Republic also protects marriage, parenthood, and the family by a special legislation. The obligation of the state to protect the value of unborn human life (nascitura) can undoubtedly be deduced from the diction of Art. 15 sec. 1 of the second sentence of the Constitution of the Slovak Republic,[66] but the text clearly shows, compared to other objective values mentioned, the commitment ("worthy of protection") as well as the different degree of intensity of its constitutional protection. The constitutional imperative for the protection of unborn human life has its autonomous content, and its final specification belongs—in case of doubt—to the role of an authorized "interpreter" of the constitutional text, which is the Constitutional Court of the Slovak Republic. Just as the Constitutional Court cannot decide on behalf of the legislator as to when an unborn human life has existed, so it can and must decide on the content and effects of the constitutional duty to protect unborn human life. The legal nature of this value explicitly expressed

66 *"Human life is worthy of protection even before birth."*

in the Constitution establishes an imperative aimed at all public authorities. It is therefore necessary to interpret the meaning of this provision in comparison with the classical fundamental right. The state's obligation to ensure the protection of a fundamental right, which is a positive aspect of the concept of fundamental rights, is, of course, not identical to the state's obligation to ensure the protection of a constitutionally guaranteed value. Therefore, the rule connected with the existence of fundamental rights is *"where there is right, there is also legal protection"*, even by the judiciary.[67] However, as for the existence of constitutional values, the constitutional and legal protection is weaker.[68]

As for the institutional framework of the family in the Slovak legal system, it does not recognize the term "mate" or "fiancé" as such relationship is only factual and does not have a legal relevance according to the Slovak legislation. On the other hand, the concept of "husband" or "wife" is relatively clearly defined in the legal system and defines a person who has married another person under the Family Code or under Canon Law. Given the above structure, the content of individual terms and their clear legal distinction, it cannot be stated that, in the broadest admissible sense, the term "husband or wife (spouse)" also includes that of "companion, mate, or close person"—a loose interpretation is out of the question. Therefore, it is up to the legislator to link special rights with marriage and family.[69] The link between constitutional protection and parenthood and protection of future generations in the case law of the Constitutional Court of the Slovak Republic is evident in the constitutional provisions protecting health. The protected constitutional values in Art. 40 of the Constitution are primarily health and access to health care, which are to be achieved by financing through a jointly conceived health insurance system under the conditions established by law. The state is bound by the obligation to establish a system of jointly based health insurance, to maintain it, and to ensure that the provision of health care financed through this system is not based on economically equivalent consideration (price) of the insured in favor of the health care provider. In this respect, Art. 40 of the Constitution can be considered an institutional guarantee and a commitment by the state. The purpose of health care as a state duty is also the protection of future generations.[70]

The Slovak doctrine presents an opinion by which the constitutional concept of economic, social, and cultural constitutional rights and constitutional values can pose a serious problem, mainly because of their hierarchically understood status in relation to personal and political rights. While civil and political rights can be restricted only by the Constitution, economic, social, and cultural rights can be limited by the

67 See the Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 58/07.

68 See the Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 12/01 of December 4, 2007.

69 See the Resolution of the Constitutional Court of the Slovak Republic no. II. ÚS 481/2021 of October 14, 2021.

70 See the Finding of the Constitutional Court of the Slovak Republic of November 15, 2017, no. PL. ÚS 49/2015.

laws that implement them. The second chapter of the Constitution, entitled "Fundamental rights and freedoms", includes two groups of rights with different ways of content and accessibility. The provision of Art. 51 sec. 1 of the Constitution has established a principle by which laws can restrict human rights. Under the doctrine of the Slovak constitutional law, this provision has created an unpleasant finding that human rights can also be defined by laws.[71] Therefore, the very value of human rights is devalued by accepting that there are also *"legal"* human rights.[72] The constitutional way of enshrining economic, social, and cultural rights in the Slovak Republic is that the definition of these rights is left to the legislator, while the Constitution contains the calculation (framework) of these rights, including procedures for the legislator to enshrine the legal conditions for their implementation. This way of anchoring is traditionally justified by the fact that economic, social, and cultural rights are significantly dependent on the success of the state's economic and social development.[73] Undoubtedly, the extent and real exercise of economic, social, and cultural rights is influenced by the state's economic power; however, at the same time, in line with the modern constitutionalism, the constitutional regulation for this category of human rights is unquestionable—especially in terms of values, which are protected to ensure human dignity and the quality of human life.[74] An increasing number of ideas promote the same importance and same value of these rights in relation to the other fundamental rights enshrined in the Constitution.[75] Jurisprudence argues in favor of this thesis on the basis of the construction of the obligations of states arising from human rights norms. These obligations are divided into three groups: respect, protection, and fulfillment of human rights.[76] The obligation to respect requires the state to refrain from any behavior (negative obligation); on the contrary, the obligation to protect and fulfill requires active action by the state; in other words, it calls on the state to take legislative, administrative, and other measures to ensure that human rights are exercised as far as possible. Based on a previous Slovak analysis of individual constitutional rights, it is possible to come to a generalization according to which the corresponding obligations of all three groups can be proved for all human rights.[77]

In other words, considering the abovementioned facts, it is necessary to apply and interpret the Constitution of the Slovak Republic from a complex and coherent point of view. The Constitution of the Slovak Republic protects marriage, parenthood, but also the working conditions of pregnant women. In the sense of life, health, and dignity protection, then I argue that these values can be understood as specifying environmental protection and natural resources for future generations.

71 See Somorová, no date [Online]. Available at https://www.judikaty.info/document/article/2256/ (Accessed: April 30, 2022).
72 Barany, 2007, pp. 51–70.
73 Čič, et al., 1997, p. 24.
74 See Somorová, no date.
75 Drgonec, 1999, pp. 174–175.
76 Doc. UN no. E / CN. 4 / Sub. 2/1987 / 23m 7, July 1987
77 Drgonec, 1999, pp. 174–175.

The Constitution of the Slovak Republic does not specify the concept of future generation; however, this concept can be understood through the constitutional protection of marriage, parenthood, and pregnant women as well as through the constitutional will to protect an unborn life. The protection of parenthood and family can be understood through the doctrine of the Constitutional Court of the Republic, which states that the protection of marriage, parenthood, and family is provided in Slovakia through legal norms of family law, civil law, tax law, and also criminal law. All this legislation is based on the material essence of the meaning and purpose of marriage and family as they have been respected for centuries in the European cultural space.[78] Children and parents are protected from illegal interventions into family relations, and only a court of law can legally interfere with certain family conditions.[79] Parental rights and obligations belong to both parents; if the parents are married, it is assumed that they perform them in principle on the basis of mutual agreement and in the interest of the minor child.[80] From the abovementioned decisions, it is possible to deduce that the Constitutional Court of the Slovak Republic holds an interpretative approach that respects the autonomy of the family and its position as a fundamental unit of the Slovak society. This approach is important mainly because of the sustainability of the Slovak society and its generational restoration connected with the continual transfer of standard social values.

6. Financial sustainability

The constitutional aspects toward sustainability are regulated within Art. 55 and 55a of the Constitution of the Slovak Republic. These provisions appear as rules of public finances. Under Art. 55 of the Constitution of the Slovak Republic,

> (1) The economy of the Slovak Republic is based on the principles of a socially and ecologically oriented market economy. … (2) The Slovak Republic protects and promotes competition. Details will be provided by law." Under Art. 55a of the Constitution of the Slovak Republic, "The Slovak Republic protects the long-term sustainability of its economy, which is based on the transparency and efficiency of public spending. In support of the objectives set out in the previous sentence, the Constitutional Act regulates the rules of budgetary responsibility, the rules of budgetary transparency and the powers of the Council on budgetary responsibility.

78 See the Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 47/97 of October 28, 1997.
79 See the Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 26/05 of July 6, 2006. Finding of the Constitutional court of the Slovak Republic no. PL. ÚS 14/05 of October 18th, 2006.
80 See the Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 10/20 of January 14, 2020.

Therefore, it can be concluded that sustainability in an economic sense can be perceived also through the protection of natural resources and elements of the environment, in the context of Art 4. Under the mentioned provision, *"Mineral resources, caves, groundwaters, natural healing resources and watercourses are owned by the Slovak Republic. The Slovak Republic protects and enhances this wealth, gently and efficiently uses mineral wealth and natural heritage for the benefit of its citizens and future generations."* The abovementioned articles 55 and 55a of the Constitution can be understood in the sense or meaning that the sustainability of the economy shall be understood as a principle also governing environmental protection and the protection of natural resources.

In addition, Art. 44 sec. 4 and 5 can be included into this concept. Under these provisions, *"(4) The state shall maintain the careful use of natural resources, the protection of agricultural and forest land, the ecological balance and the effective care of the environment. It shall also ensure the protection of designated species of wild plants and wildlife. … (5) Agricultural land and forest land as non-renewable natural resources enjoy special protection by the state and society."* The protection of forest land and agricultural land has been introduced into the Constitution of the Slovak Republic through Constitutional Act. no. 137/2017 Coll. amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended. The legislature has explained the purpose of this legislation in the explanatory memorandum to this constitutional act. The land is undoubtedly a natural resource of the state and also an important commodity of strategic importance—an irreplaceable component of the environment and all living ecosystems. It is also a limiting factor for the sustainable development of regions and society. Undoubtedly, there is a public interest on its protection (regulation of the acquisition of property rights); therefore, it is understood as a unique and non-renewable natural resource. It helps to provide food security in the Slovak Republic and forms part of the state's sovereignty. The mentioned reasons have caused its promotion to a constitutional value.[81] Speaking of the protection of the interest of future generations, it does not appear among the constitutional rules of public finances. The protection of the interest of future generations is directly expressed only within Art. 4 (1) of the Constitution, which sets out the framework for the principle of sustainable development in an environmental meaning. However, in the context of the abovementioned articles 55 and 55a of the Constitution, the protection of the interest of future generations can also be understood as a principle belonging to the constitutional rules of public finances.

As for the practice of Constitutional Court of the Slovak Republic in relation to Art. 55 of the Constitution of the Slovak Republic, it is possible to mention the Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 13/97, of July 1, 1998. Under this decision, Art. 55 of the Constitution formulates the principles of economic policy of the Slovak Republic; these include the support and protection of the competitive economic

81 The explanatory memorandum to Constitutional Act no. 137/2017 Coll. amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended [Online]. Available at https://www.najpravo.sk/dovodove-spravy/rok-2017/137-2017-z-z.html (Accessed: May 2, 2022).

environment and the creation of legal means and guarantees against the restriction of competition, which the law considers illegal. The principles of economic policy belong to the basic constitutional principles, and through them, the constitutional protection of legal entities is guaranteed in the Slovak Republic. The basic constitutional principles in the rule of law determine the activities of all state bodies and the process of drafting and content of legal regulations because the norms set out in the Constitution in the rule of law are not only of political or declarative significance. The National Council of the Slovak Republic may adopt any number of laws that contain legal norms relating exclusively or partially to the protection and promotion of competition. In accordance with the promise of the Constitution of the Slovak Republic to protect and promote the competition, the National Council of the Slovak Republic can adopt legal norms for the protection and promotion of competition in laws on taxes, prices, and several other laws in which competition can be protected and promoted. The practice of the Constitutional Court of the Slovak Republic distinguishes between freedom to engage in business and the protection of competition within the national economy. The public interest in restricting competition cannot be equated with, or confused with, that justifying a restriction on the exercise of the right to engage in business and other gainful activities. The public interest in restricting competition cannot be presumed, but it must be proven. Within this finding, the Constitutional Court of the Slovak Republic has indicated that the protection of competition cannot take precedence over all other public interests; for example, the protection of health through health insurance and pension insurance is among the social relationships that can be excluded from competition in the public interest. This fact should be given by the purpose of health and pension insurance and its legal nature as both health and pension insurance can, to some extent, be assessed as a service in the public interest aimed at exercising an individual's constitutional rights. The state shall ensure the provision of this service as a debtor who fulfills its obligation to all persons, by allowing them to exercise their constitutionally guaranteed right to adequate material security in old age and incapacity for work, as well as in the event of loss of the breadwinner (Article 39 (1)), resp. the right to free health care based on health insurance (Article 40). Health and pension insurance companies in basic health and pension insurance are only intermediaries in fulfilling the state's obligation to the individual.

7. The protection of national assets and budgetary responsibility

Article 4 of the Constitution of the Slovak Republic defines, in an environmental sense, the objects that are exclusive property of the state alongside a special legislation contained in Act no. 278/1993 Coll. on State Property Management. As for local self-government, two special legislative acts ought to be mentioned, namely the

Act of the National Council of the Slovak Republic no. 138/1991 Coll. on municipal property and Act no. 446/2001 Coll. on the Property of Higher Territorial Units. The entities in the field of local self-government also play an important role in providing drinking water to inhabitants and businesses. They are often shareholders of water distribution companies under Act no. 442/2002 Coll. on public water supplies and sewers; this fact complies with the constitutional requirements of Article 20 sec. 2 of the Constitution of the Slovak Republic.[82]

As for the protection of national assets, this term does appear in the abovementioned Art. 55a of the Constitution of the Slovak Republic. To explain the content of this concept, it is necessary to also include the legislation on the special Constitutional Act no. 493/2011 Coll. on budgetary responsibility. Under Art. 2 (Definitions) of this act,

> For the purposes of this Constitutional Act, it is understood … e) net wealth of the Slovak Republic, the sum of equity of public administration entities, equity of the National Bank of Slovakia, equity of state administration enterprises and local government enterprises, adjusted for implicit liabilities and contingent liabilities, other assets and other liabilities.

The explanatory memorandum to this constitutional act explains that the purpose of this legislation was to introduce the concept of the Slovak Republic's wealth into its fiscal policy. Therefore, it was necessary to define the concept of net wealth, which, in the future, shall also indicate the quality of governance and administration of the Slovak Republic.[83]

These provisions can be linked with future generations, environmental protection, and sustainable development through Art. 7 of the special Constitutional Act no. 493/2011 Coll. on budgetary responsibility. Within the mentioned article, the special constitutional act sets out the rules of the long-term sustainability indicator and public costs limit. This indicator includes (a) the value of the structural primary balance; (b) demographic forecasts published by Eurostat; (c) the European Commission's Committee on Macroeconomic Forecasts and Long-Term Macroeconomic Forecasts; (d) long-term forecasts of age-sensitive costs calculated by the European Commission; (e) long-term capital revenue forecasts calculated by the European Commission; (f) implicit liabilities and contingent liabilities; and (g) other indicators affecting long-term sustainability.

82 Under this provision, *"The law shall establish which other property, in addition to the property listed in Art. 4 of this Constitution, necessary for ensuring the needs of society, the food security of the state, the development of the national economy and the public interest, may only be owned by the state, municipality, specified legal entities or specified natural persons. The law can also stipulate that certain things can only be owned by citizens or legal entities with their seat in the Slovak Republic."*

83 The explanatory memorandum to Constitutional Act no. 493/2011 Coll. on budgetary responsibility [Online]. Available at https://www.najpravo.sk/dovodove-spravy/rok-2011/493-2011-z-z.html (Accessed: May 2, 2022).

Under the explanatory memorandum to this constitutional act, the mentioned provision contains a calculation of all factors that are considered in determining the long-term sustainability indicator; before doing so, the Slovak Council for budgetary responsibility shall publish on its website the calculation methodology and the facts on which it will base its calculation. The introduction of expenditure limits is the most appropriate fiscal rule to ensure the long-term sustainability of the Slovak Republic's economy and acceptable indebtedness. Expenditure ceilings offer a clear and transparent view of compliance with the rules, and their advantage is that their evaluation can be ensured relatively effectively by the council. The procedure for determining expenditure limits shall be established by law.[84]

8. Good practices

Under Art. 44 sec. 4 of the Constitution of the Slovak Republic, *"The state takes care of the careful use of natural resources, the protection of agricultural and forest land, the ecological balance and the effective care of the environment, and ensures the protection of designated species of wild plants and wildlife."*

The term "good practices" in the field of environmental law can be connected to the abovementioned constitutional request to the state to take effective care of the environment. As an example of good practice at the constitutional level of environmental protection, Art. 4 sec 2. of the Constitution of the Slovak Republic prohibits the export of water outside the state territory through a pipeline or through a water tank. This legislation has been challenged at the Constitutional Court of the Slovak Republic; according to the complainants, this amendment to the Constitution of the Slovak Republic was supposed to represent a contradiction with the requirements of EU water management expressed mainly in the Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community's action in the field of water policy. The challenged legislation has been assessed by the Constitutional Court of the Slovak Republic also in terms of Art. 34 and 36 of the Treaty on the Functioning of the EU. The Court also refused to analyze the compliance of the constitutional amendment with the Constitution of the Slovak Republic because the legislation had been challenged by an individual constitutional compliant. Moreover, it proclaimed that the legislation analyzed did not contravene the right to a favorable environment. On the contrary, such legislation promoted environmental protection and the protection of natural resources of the Slovak Republic. In this context, the Constitutional Court of the Slovak Republic pointed to its

84 The explanatory memorandum to Constitutional Act no. 493/2011 Coll. on budgetary responsibility [Online]. Available at https://www.najpravo.sk/dovodove-spravy/rok-2011/493-2011-z-z.html (Accessed: May 2, 2022).

previous jurisprudence, in which it already stated that the content of the state's positive obligation in relation to the rights and freedoms of the citizen is the obligation to take measures to protect the rights granted to the citizen in the Constitution. At the same time, the state also has positive obligations that result from the interest in the effective protection of rights. Such a special category of positive obligations of the state includes ensuring the effective protection of rights guaranteed by international treaties through the existence of a certain (law-regulated) process.[85]

Another example of good practice at the constitutional level of environmental protection can be found within the already mentioned activities of the Public Defender of Rights. The benefits of this authority are unquestionable in the field of access to drinking water and sanitation services and also in the area of protection of biodiversity. The role of the Public Defender of Rights is primarily to protect individual rights in relation to public authorities. However, previous experience shows that the Public Defender of Rights has quite the potential in providing legal protection to natural persons and legal entities (such as fishery associations), when it comes to defending the environment, natural resources, or biodiversity.

9. De lege ferenda

In Art. 4 sec. 2, the Constitution of the Slovak Republic establishes the protection of waters. Under the mentioned provision,

> The transport of water taken from water bodies located in the territory of the Slovak Republic across the borders of the Slovak Republic by means of transport or pipelines is prohibited. The prohibition does not apply to water for personal consumption, drinking water packaged in consumer packaging in the territory of the Slovak Republic and natural mineral water packaged in consumer packaging in the territory of the Slovak Republic and to the provision of humanitarian aid and emergency assistance. Details of the conditions for the transport of water for personal consumption and water for the provision of humanitarian aid and emergency assistance shall be laid down by law.

Almost the same legislation is part of Act no. 364/2004 Coll. on waters. From my point of view, it would be more transparent if the Constitution stated that *"The transport of water taken from water bodies located in the territory of the Slovak Republic across the borders of the Slovak Republic by means of transport or pipelines is prohibited. Details shall be laid down by law."* Currently, the constitutional legislation is too complicated and technical, while it should be more principled and general.

85 The Resolution of the Constitutional Court of the Slovak Republic no. III. 352/2015 of July 14, 2015.

It is also necessary to mention the area of the right to information on the state of the environment under Art. 45 of the Constitution. Nowadays, information on the presumed environmental burdens cannot be accessed by the public and is not disclosed under the conditions established by the Geological Act. At the beginning of this month, the representatives of the National Council of the Slovak Republic have accepted the Amendment to the Geological Act within the first reading, although this situation has not yet been finalized. The amendment will prevent the classification of publicly funded final reports but also the final reports of business-funded surveys, insofar as they contain knowledge of deteriorating environmental quality. The draft amendment to the act does not allow private companies to conceal survey results that confirm soil and water contamination. According to the Ministry of the Environment of the Slovak Republic, the state will have effective mechanisms to prevent the secrecy of the results on environmental pollution. The draft amendment increases to inform municipalities and cities. In this regard, it introduces the obligation to inform the client of the final report from the geological survey or from the remediation of the environmental burden about the serious risk to human health and the environment, identified and verified in their cadastral area. However, the Ministry does not speak about establishing this obligation also to the registry of environmental burdens. Currently, the presumed environmental burdens create a classified part of the registry of environmental burdens.

Another area of problematic issues in the field of environmental law is waste management. In Slovakia, the goals of the hierarchy of waste management are quite problematic in practice, and the respect for these objectives and principles is quite difficult to fulfill. In the Slovak Republic, it is common practice for the biggest part of waste management to be represented by landfills and waste disposal. Currently, only two plants are oriented toward the energetic use of waste (waste to energy approach), and the practice does not respect the value of recycling, which is higher than the energetic use of waste. All these issues would practically create a good constitutional principle if the Constitution prescribed a rule by which the state should prevent waste disposal and also support the energetic use of waste, respecting the climatic goals of the Slovak Republic and the recycling economy.

Bibliography

Barany, E. (2007) *Terms of good law.* Žilina: Eurokódex.

Bartoň, M., Dienstbier, F., Horáková, M., Peterková, M., Pouperová, O., Sládeček, V. (2009) *Kontrolní mechanismy fungování veřejné správy [Control mechanisms of the functioning of public administration].* Olomouc: Faculty of Law of the Palacký University in Olomouc and Periplum publishing house.

Čič, M. (1997) *Commentary on the Constitution of the Slovak Republic*. Martin: Matica Slovenská.

Drgonec, J. (1999) *Fundamental Rights and Freedoms. Constitution of the Slovak Republic*. Volume 2. Bratislava: MANZ.

Dubovcová, J. (2016) *The state does not guarantee access to drinking water.* Top Stories. Conservative Journal. November 16th, 2016 [Online]. Available at: http://www.hlavnespravy.sk/dubovcova-stat-nezabezpecuje-pristup-k-pitnej-vode-pre-vsetkych/860376 (Accessed: 2 May 2022).

Jankuv, J. (2001) *Environmentalizácia medzinárodného práva verejného a jej vplyv na právo Európskej únie a právny poriadok Slovenskej republiky [Environmentalization of international public law and its impact on the law of the European Union and the legal order of the Slovak Republic].* Prague: Leges.

Jankuv, J. (2009) *Ľudské právo na životné prostredie a jeho ochrana podľa Európskeho dohovoru o ochrane ľudských práv a základných slobôd, Rada Európy a ochrana životného prostredia [The human right to the environment and its protection according to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe and environmental protection].* Proceedings from the international scientific conference held on September 11th, 2008 (VEGA Project No. 1/0387/08), Typi Universitatis Tyrnaviensis, publishing house of Trnava University in Trnava, joint workplace of TU and SAV, Trnava.

Majerčák, T. (2011) 'Ústavnoprávny rozmer práva na priaznivé životné prostredie' ['Constitutional extent of the Right to a favorable environment'] in Perduková, V., Koľová, S. (eds.) *Ochrana životného prostredia v podmienkach územnej samosprávy: Zborník príspevkov z vedeckej konferencie [Protection of the environment in the conditions of local self-government: Proceedings of a scientific conference].* Košice: University of Pavel Jozef Šafárik Košice, pp. 7–16.

Průchová, I. (2016) 'Environmentální spolky, opatření obecné povahy a práva ve vztahu k příznivému životnímu prostředí – vývoj, současný stav a perspektivy' ['Environmental associations, measures of a general nature and rights in relation to a favorable environment – development, current status and perspectives'] in Müllerová, H., Damohorský, M., Blahož, J., Franková, M., Tomoszková, V., Jančářová, I., Vomáčka, V., Průchová, I., Bejčková, P., Doležalová, H., Maslen, M. (eds.) *Právo na příznivé životní prostředí: Nové interpretační přístupy [The right to a favorable environment: New interpretive approaches].* Prague: Institute of State and Law AV ČR, pp. 201–214.

Somorová, Ľ. (no date) *The Constitutional regulation of fundamental rights and freedoms* [Online]. Available at: https://www.judikaty.info/document/article/2256/ (Accessed: 30 April 2022).

Stejskal, V. (2008) 'Legal liability in the area of environmental protection and Act on prevention and remedying of environmental damage' in *Czech and European environmental law.* Yearbook. 2008, vol. 3, pp. 40–44.

Legal Sources

Act no. 17/1992 Coll. on the environment.
Act no. 50/1976 Coll. on Spatial Planning and Building Regulations (Building Act).
Constitution of the Slovak Republic.
Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.
Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.
Decision of ACCC in case of Kazakhstan no. ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, of March 11th, 2005.
Decision of the Constitutional Court of the Slovak Republic of April 25th, 2018, no. PL. ÚS 51/2015-94.
Doc. UN no. E / CN. 4 / Sub. 2/1987 / 23m 7, July 1987.
Explanatory Memorandum to Constitutional Act no. 137/2017 Coll. amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended [Online]. Available at: https://www.najpravo.sk/dovodove-spravy/rok-2017/137-2017-z-z.html (Accessed: 2 May 2022).
Explanatory Memorandum to Constitutional Act no. 493/2011 Coll. on the budgetary responsibility [Online]. Available at: https://www.najpravo.sk/dovodove-spravy/rok-2011/493-2011-z-z.html (Accessed: 2 May 2022).
Explanatory Memorandum to the Government Draft of the Constitution of the Slovak Republic [Online]. Available at: https://www.nrsr.sk/dl/Browser/Document?documentId=75408 (Accessed: 28 February 2022).
Finding of the Constitutional Court of the Slovak Republic file no. IV. ÚS 256/07 of January 31st, 2008.
Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 1/09 of January 19th, 2011.
Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 22/06 of October 1st, 2008.
Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 223/09 of May 27th, 2010.
Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.
Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 352/2015, of July 14th, 2015.
Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 58/07.
Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 47/97 of October 28th, 1997.
Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 10/20 of January 14th, 2020.
Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 3/03-189 of January 28th, 2009.
Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 7/96.
Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 22/06 of October 1st, 2008.
Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 12/01 of December 4th, 2007.
Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 26/05 of July 6th, 2006.
Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 14/05 of October 18th, 2006.

Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 380/2019 of July 13th, 2021.
Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.
Finding of the Constitutional Court of the Slovak Republic of February 28th, 2005, no. I. ÚS 154/05.
Finding of the Constitutional Court of the Slovak Republic of November 15th, 2017, no. PL. ÚS 49/2015.
Judgement of the CJ EU no. C-240/09 of March 8th, 2011.
Judgement of the CJ EU of May 12th, 2011, in case of Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, no. C-115/09, Zb. s. I-3673.
Judgement of the Supreme Court of the Slovak Republic no. 3 Sžp 2/2008 of December 4th, 2008.
Judgement of the Supreme Court of the Slovak Republic of April 30th, 2012, no. 5 Sžp/17/2011.
Judgement of the Supreme Court of the Slovak Republic of April 30th, 2012, no. 5 Sžp 9/2012.
Judgement of the Supreme Court of the Slovak Republic of August 7th, 2019, no. 3 Sžk/24/2019.
Judgement of the Supreme Court of the Slovak Republic of July 28th, 2011, no. 8 Sžo/203/2010.
Judgement of the Supreme Court of the Slovak Republic of June 20th, 2017, no. 10 Sžo/76/2015.
Judgement of the Supreme Court of the Slovak Republic of May 14th, 2013, no. 1 Sžp 1/2010.
Judgement of the Supreme Court of the Slovak Republic of October 24th, 2018, no. 7 Sžk/8/2017.
Judgement of the Supreme Court of the Slovak Republic of September 24th, 2014, no. 7 Sžo/1/2013.
Judgment of the Court of Justice of the EU of 15 January 15th, 2013, no. C – 416/10.
Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 93/08 of April 1st, 2008.
Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 95/08 of April 1st, 2008.
Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 100/08 of April 1st, 2008.
Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 93/08 of April 1st, 2008.
Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 100/08 of April 1st, 2008.
Resolution of the Constitutional Court of the Slovak Republic no. I. ÚS 590/2016 of September 21st, 2016.
Resolution of the Constitutional Court of the Slovak Republic no. II. ÚS 481/2021 of October 14th, 2021.
Resolution of the Constitutional Court of the Slovak Republic no. III. 352/2015 of July 14th, 2015.
Resolution of the Constitutional Court of the Slovak Republic of September 21st, 2016, no. PL. ÚS. 9/2016.

Online Sources

Bee decline is a warning for us all [Online]. Available at: https://www.prezident.sk/en/article/ubytok-vciel-je-pre-nas-varovanim/ (Accessed: 30 May 2022).
Climate neutral office of the President of the Slovak Republic by 2030 [Online]. Available at: https://www.prezident.sk/en/page/green-office/ (Accessed: 30 May 2022).

Committee of the National Council of the Slovak Republic for Agriculture and the Environment. Basic information about the committee [Online]. Available at: https://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=158 (Accessed: 27 February 2022).

Earth Day Reminds Us of How Much We Affect Our Planet [Online]. Available at: https://www.prezident.sk/en/article/den-zeme-nam-pripomina-ako-velmi-ovplyvnujeme-planetu/ (Accessed: 30 May 2022).

Glasgow Conference is make-or-break moment for our planet [Online]. Available at: https://www.prezident.sk/en/article/konferencia-v-glasgowe-je-pre-nasu-planetu-rozhodujuca/ (Acccessed: 30 May 2022).

Report on the protection of the right to the environment within the proceedings of public authorities permitting the construction of small water powerplants [Online]. Available at: https://www.ziverieky.sk/assets/Uploads/9a173e044a/Sprava-vodne-elektrarne.pdf (Accessed: 27 February 2022).

Report on the Survey of Fundamental Rights and Freedoms. Access to drinking water and information on ensuring fire protection in Roma settlements [Online]. Available at: http://www.vop.gov.sk/files/Pristup_k_vode.pdf (Accessed: 30 May 2022).

Slovak Environmental Inspectorate. About us. [Online]. Available at: https://www.sizp.sk/slovak-environmental-inspectorate/about-us (Accessed: 27 February 2022).

The automobile industry must remain competitive in the future [Online]. Available at: https://www.prezident.sk/article/automobilovy-sektor-musi-zostat-konkurencieschopny-aj-v-buducnosti/ (Accessed: 30 May 2022).

Chapter X

Slovenia: An Example of a Constitution Guaranteeing High-Level Protection of Natural Resources and *Sui Generis* Right to Drinking Water

Miha Juhart – Vasilka Sancin

1. Introduction

Environmental protection has a long tradition in Slovenia. It is no coincidence that the first world conference on the environment, held in Stockholm in 1972, was accompanied by the publication of *"The Green Book on the Threat to the Environment in Slovenia",*[1] which presented both the state of the environment and the first guidelines for improving it. The institutional framework, which was not particularly conducive to effective environmental protection, nevertheless allowed sufficient scope and freedom to intensify pressure from environmentally conscious individuals and organizations. The establishment of the Assembly Commission and the Republican Committee (a government department) for Environmental Protection and the adoption of the first environmental regulations in the 1970s as well as the Problem Conference on Ecology, Energy, and Austerity in the mid-1980s succeeded in bringing together a number of efforts and in producing results that lack real comparison with the situation in the countries of the former socialist bloc. The foundations were laid for the rehabilitation of large thermal power plants, the gasification of Slovenia, and more.

1 Peterlin, Novak, Kos, and Slivnik, 1972.

Miha Juhart – Vasilka Sancin (2022) Slovenia: An Example of a Constitution Guaranteeing High-Level Protection of Natural Resources and Sui Generis Right to Drinking Water. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 439–478. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_11

Slovenia was then given its first ecological fund and a dedicated environmental resource to replenish it. The first programming document was also drawn up as a basis for channeling the fund's resources, with priorities identified in the areas of air, water, waste, and soil protection. Good organization and internationally fully comparable forest management have contributed to a remarkably well-preserved forest ecosystem as an important legacy for an independent country. The Slovenian farmer has traditionally cared for the land and has contributed to the fact that Slovenia has achieved independence, democratic change, and change in its political and economic composition with relatively little environmental damage, especially compared to other transition countries.[2]

1.1. Most important environmental legal regulation in Slovenia

The normative framework of environmental protection is an intricate system that can be broken down by several criteria. The Slovenian legal regulation of environmental protection can be divided into constitutional, legislative, and self-governing local-level regulation.

The highest legal source in the Republic of Slovenia is the Constitution of the Republic of Slovenia, which was adopted on December 23, 1991.[3] The Constitution, in the broader sense of the constitutional order of Slovenia, is defined by the totality of all regulations of a constitutional nature. The relevant constitutional system is composed of the Constitution and other regulations (norms, provisions) of a constitutional nature, namely the Fundamental Constitutional Charter and constitutional laws for its implementation, which are hierarchically above laws; constitutional laws for the implementation of the Constitution and its amendments; and other possible constitutional laws adopted by the National Assembly with a different purpose and substance.[4]

Furthermore, according to Article 153 para. 2 of Slovenia's Constitution, "Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general acts must also be in conformity with other ratified treaties."

2 Available at: https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran/!ut/p/z1/jY_BCoJAFEW_xYVb31OxrJ0SGGMRapLNJjSmUVBHximhr09oVZT4dvdyzoUHFDKgbf6oeK4q0eb1mM90cSGr0CNhYGLgBC5Gx_AQk62Prr-E0xdgxQ5GG8vfJ2hjkphA5_j45zyc508AdHqeAOW1KN6vem1huxyoZDcmmTTucqxLpbp-raOOwzAYXAheM-MqGh1_KaXoFWSfJHRNmmbPHTt5mvYCc9LReA!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=C12563A400319AA2C12567E100470F3C&db=kon_akt&mandat=II&tip=doc (Accessed: 1 August 2022).

3 The Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a, and 92/21 – UZ62a).

4 Jambrek in Komentar, 2019 II, p. 38.

This means that in principle, treaties that are binding for Slovenia, including those regulating environmental matters,[5] take precedence over laws, while some categories of treaties[6] are hierarchically positioned under the laws but above regulations and other general acts.

Although the core of the Constitution consists of a chapter on fundamental human rights and freedoms (Chapter II, Articles 14–63), the right to a healthy living environment (Article 72) as the primary constitutional provision relating to the protection of the environment is regulated in Chapter III on economic and social relations. Article 72 provides that "Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law."

Another important constitutional provision contained in the same chapter is relevant to mention, namely Article 70a (Right to Drinking Water),[7] which provides that "Everyone has the right to drinking water. Water resources shall be a public good managed by the state. As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity. The supply of the population with drinking water and water for household use shall be ensured by

5 Slovenia is a State party to all of the main international environmental treaties (full list is available at: https://www.gov.si/drzavni-organi/ministrstva/ministrstvo-za-okolje-in-prostor/zakonodaja/) (Accessed: 1 August 2022), including the Aarhus convention (the Act on the Ratification of the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters [Official Gazette of the Republic of Slovenia – MP, No. 17/04]), the Kyoto Protocol (the Act on the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change [Official Gazette of the Republic of Slovenia – MP, No. 17/02]), and the Paris agreement (the Act on the Ratification of the Paris Agreement [Official Gazette of the Republic of Slovenia – MP, No. 16/16 and 6/17]).

6 These treaties shall be ratified by the Government and according to Article 75, para. 6 of the Foreign Affairs act (Official Gazette of the Republic of Slovenia *[Uradni list RS]*, No. 113/03, 20/06 – ZNOMCMO, 76/08, 108/09, 80/10 – ZUTD, 31/15 in 30/18 – ZKZaš) include treaties that
- regulate matters which, according to internal legal order, fall within the competence of the Government
- are concluded with the aim of implementing the instruments of international organizations that are binding for the Republic of Slovenia
- are concluded with the aim of implementing concluded international treaties
- are concluded by ministries and deal with the exchange of experience and maintenance of contacts with ministries in other countries
- regulate issues associated with diplomatic and consular relations
- involve the implementation of assumed obligations or adopted decisions on the international cooperation of the Republic of Slovenia in the field of defense or internal affairs.

7 Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, which was adopted on November 25, 2016, and entered into force on the same date (Official Gazette of the Republic of Slovenia No. 75/16).

the state directly through self-governing local communities and on a not-for-profit basis." This provision is elaborated further in subchapter 3.3.1.

Given the inclusion of these two articles in Chapter III, it is quintessential that the Constitutional Court doctrine and case law on fundamental rights and freedoms be interpreted more broadly and not limited to those rights and freedoms explicitly listed in a specific chapter.[8] In cases in which the Constitutional Court relied on the preamble, it took into account the broader meaning of human rights. The nomotechnical structure and titles of the chapters contribute to the transparency of the constitutional text and do not have the meaning of legal definitions. It is common that human rights and fundamental freedoms in terms of the possibility to act (*facultas agenda*), which is legally protected when the right is violated or imperiled, are also regulated by the provisions of other chapters of the Constitution. Such reasoning is vital, as it also ensures the protection of the individual with a constitutional complaint due to the violation of fundamental human rights and freedoms before the Constitutional Court.

The concept of the living environment from Article 72 of the Constitution is not specified in detail in either the Constitution or other legal acts. The umbrella law in this area is the Environmental Protection Act (*Zakon o varstvu okolja* – ZVO-2).[9] Environmental protection includes both environmental protection and nature protection.[10] ZVO-2 defines the environment as the part of nature that is or could be affected by human activity as well as nature as the whole of the material world and the structure of interdependent elements and processes interlinked according to natural laws (Article 3 of ZVO-2). In this connection, the principle of sustainable development (Article 4 of ZVO-2) features as a fundamental principle supporting the purposes of this Act.

In addition to the specific act regulating the protection of the environment, now ZVO-2, Slovenia also adopted the Nature Conservation Act (*Zakon o ohranjanju narave* – ZON).[11] Individual issues in this area are regulated by numerous other laws that regulate the protection of individual parts of nature or the environment as well as the use of or special interventions in the environment and space. In environmental protection, bylaws are also important and are adopted primarily by the Ministry of the Environment and Spatial Planning based on authorization under law. Under ZVO-1 (now ZVO-2) alone, more than 100 implementing regulations have been adopted; these regulate specific issues in more detail. The vast majority are technical norms and standards that are crucial for assessing individual practices.

8 Jambrek, in Komentar, 2019 II, p. 16.

9 The Environmental Protection Act (Official Gazette of the Republic of Slovenia, Nos. 44/22), adopted on March 16, 2022. Prior to its adoption the previous Environmental Protection Act (ZVO-1) was amended several times: UPB, 49/06 – ZMetD, 66/06 – CC decision, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108 / 09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15, 30/16, 61/17 – GZ, 21/18 – ZNOrg, 84/18 – ZIURKOE, and 158/20). Hereinafter, the references in the text to this act refer to either ZVO-1 or ZVO-2, as appropriate.

10 Vrbica, 2020, p. 962.

11 Nature Conservation Act (Official Gazette of the Republic of Slovenia, Nos. 96/04 – UPB, 61/06 – ZDru-1, 8/10 – ZSKZ-B, 46/14, 21/18 – ZNOrg, 31/18, 82/20, and 3/22 – ZDeb).

Compensatory protection of the environment is regulated on several levels. The general rule on the prohibition of causing harm is set out in the Code of Obligations (*Obligacijski zakonik* – OZ).[12] Already, the general rules of tort law broadly define the concept of no-fault liability. Every perpetrator shall be liable without fault if the damage originates from a dangerous object or dangerous activity. Environmental damage also has a special place in civil tort law. The provision of Article 133 of the Code of Obligations stipulates a special claim for removing the danger of damage, from which a specific individual or a large number of people are threatened with great damage. The following paragraph defines a particular form of liability for damage from generally beneficial activities that cannot be prohibited. Liability for environmental damage is also regulated in ZVO-2 (Articles 161 to 170 of ZVO-2). Slovenia has thus transposed into its legal system the content of Directive 2004/35/EC of the European Parliament and of the Council of April 21, 2004, on environmental liability with regard to the prevention and remedying of environmental damage.[13][14] The concept of liability irrespective of fault is also established in ZVO-2. However, there currently exists no case-law that would clarify the relationship between liabilities under OZ and ZVO-2.

The Criminal Code (*Kazenski zakonik* – KZ-1)[15] of Slovenia contains several provisions referring to the protection of the environment, particularly in Chapter 32 (Criminal offenses against the environment, space and natural resources), which, for example provides for a prohibition of the burdening and destruction of environment (Article 332), a provision on the pollution of the sea or waters from ships (Article 333), illegal import and export of radioactive substances (Article 334), unlawful acquisition or use of radioactive or other dangerous substances (Article 335), the pollution of drinking water (Article 336), the destruction of forests (Article 340), and various provisions criminalizing certain handling of animals (Articles 342–347).

The Constitution of the Republic of Slovenia also explicitly stipulates the importance of the protection of natural resources and cultural heritage (Article 73). The subjects of protection are thus the values of natural wealth and cultural heritage, which the State is obliged to respect, protect, and implement. The provision establishes the constitutional protection of natural sights, rarities, and cultural monuments. The protection of natural resources and cultural heritage encompasses both the physical and spiritual integrity of human dignity, thus realizing the human right to life.[16] The cultural heritage protection is specially regulated in the Cultural Heritage Protection Act (*Zakon o varstvu kulturne dediščine* – ZVKD-1).[17]

12 Code of Obligations (Official Gazette of the Republic of Slovenia, Nos. 97/07 – official consolidated text, 64/16 – CC decisions and 20/18 – OROZ631).

13 OJ L 143, 30.4.2004.

14 Pihler, 2009, p. 1312.

15 Criminal Code (Official Gazette of the Republic of Slovenia, Nos. 50/12 – official consolidated text, 6/16 – amended, 54/15, 38/16, 27/17, 23/20, 91/20, and 95/21 in 186/21).

16 Letnar Černič in Komentar, 2019 I, p. 582.

17 Cultural Heritage Protection Act (Official Gazette of the Republic of Slovenia, Nos. 16/08, 123/08, 8/11 – ORZVKD39, 90/12, 111/13, 32/16, and 21/18 – ZNOrg).

1.2. Most important administrative framework for the protection of the environment in Slovenia

Following Slovenia's independence, a special ministry was organized within the Government of the Republic of Slovenia with the basic competence of the care for the environment; currently, this ministry is the Ministry of the Environment and Spatial Planning (MOP). The exact boundaries and competencies of ministerial departments are determined by law, the content of which is adjusted with each new government. The main tasks of the Ministry are to ensure a healthy living environment for all of the people of the Republic of Slovenia and to promote and coordinate efforts for achieving sustainable development, which, while ensuring social well-being, is based on the rational and economical use of natural resources.[18]

The Agency of the Republic of Slovenia for Environmental Protection (*Agencija Republike Slovenije za okolje* – ARSO) acts within the Ministry with the task to assist citizens and public authorities in making appropriate environmental decisions. The Agency performs professional, analytical, and administrative tasks in the field of the environment at the national level. Among them, the following should be particularly emphasized[19]: the Agency monitors and analyzes natural phenomena and processes in the environment, such as the weather, water quality and quantity, and air quality; it also addresses issues in the field of climate change, which are also the result of excessive emissions of greenhouse gases into the atmosphere, monitors emissions, records them, and influences their reduction through systemic measures. The Agency monitors the state of the environment and provides quality public environmental data, manages the preservation of natural resources and biodiversity, and ensures the sustainable development of the country. With the data and services provided by the Agency, individuals can make appropriate decisions in various life circumstances, such as when planning a trip, economic investments, farming, overflights, floods, polluted air, or allergic sensitivity.

Another important body within the Ministry is the Inspectorate for the Environment and Spatial Planning.[20] The main task of the Inspectorate is to supervise the implementation of regulations in the field of environment and space, conduct individual procedures, and impose sanctions for violations. Among other things, the Inspectorate is responsible for conducting procedures regarding the implementation of laws and regulations in environmental protection and nature conservation, water management, industrial pollution, and genetically modified organisms.

At the local level, the organization of a special body for environmental protection depends on the decision of each individual local community. The unit of local

18 Available at: https://www.gov.si/drzavni-organi/ministrstva/ministrstvo-za-okolje-in-prostor/o-ministrstvu/ (Accessed: 1 August 2022).

19 Available at: https://www.gov.si/drzavni-organi/organi-v-sestavi/agencija-za-okolje/o-agenciji/ (Accessed: 1 August 2022).

20 Available at: https://www.gov.si/drzavni-organi/organi-v-sestavi/inspektorat-za-okolje-in-prostor/o-inspektoratu/ (Accessed: 1 August 2022).

self-government in Slovenia is the municipality. Municipalities in Slovenia differ significantly in area and population. A special body for environmental protection is formed in larger municipalities, while in smaller ones, these tasks are performed by other bodies. The largest municipality in the country is the City of Ljubljana, which has a special department for environmental protection.[21] The main responsibilities of this department are performing tasks related to ensuring environmental protection and nature conservation, preparing measures, guidelines, and recommendations in the fields of environmental protection and nature conservation, proposing rehabilitation programs and ensuring their implementation and control, providing more detailed or special monitoring of the state of the environment and nature and managing the information system for the protection of the environment and nature, preparing vulnerability studies and threat assessments as well as reports on the state of the environment and nature, assessing the impact of plans and planned environmental interventions, and providing management of protected natural values of local importance.

1.3. Relevant international jurisprudence concerning environmental matters in Slovenia

Slovenia has not (yet) deposited any declaration recognizing the jurisdiction of the International Court of Justice (hereinafter ICJ) as compulsory as per Article 36 para. 2 of the ICJ's Statute.[22] It has also not submitted a written instrument to the Depositary of the United Nations Framework Convention on Climate Change, indicating that, in respect to any dispute concerning the interpretation or application of the Convention, Slovenia recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligatory submission of the dispute to the ICJ; further, it has thus far not concluded any special agreements with other States, on the basis of which "an environmental case" could have been submitted to the ICJ.

Slovenia joined the Council of Europe on May 14, 1993,[23] which makes it important to also consider the case law of the European Court of Human Rights (hereinafter ECtHR). There is currently a case pending before the ECtHR that was brought against 33 Contracting States of the European Convention on Human Rights (hereinafter ECHR), including Slovenia: *Duarte Agostinho and Others v. Portugal and Others* (communicated case) – 39371/20. The case concerns the greenhouse gas emissions from 33 States, which, according the applicants' submission, contribute to global warming and result, inter alia, in heatwaves that are affecting the applicants' living

21 Available at: https://www.ljubljana.si/sl/mestna-obcina/mestna-uprava-mu-mol/oddelki/oddelek-za-varstvo-okolja/ (Accessed: 1 August 2022).

22 Slovenia became a Member State of the UN on May 22, 1992, and thus *ipso facto* also a State party to the Statute of the ICJ.

23 Available at: https://www.coe.int/en/web/portal/slovenia (Accessed: 1 August 2022).

conditions and health. The applicants complain, inter alia, of the failure by these 33 States to comply with their undertakings, in the context of the 2015 Paris Agreement on Climate Change (COP21), to keep the increase in the global average temperature well below 2° C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5° C above those same levels, it being understood that this would substantially reduce the risks and impact of climate change. The applicants submit that the signatory States, including Slovenia, are obliged to take measures to regulate, in an adequate manner, their contributions to climate change. The applicants emphasize the absolute urgency of taking action in favor of the climate and consider that, in this context, it is crucial that the Court recognize the States' shared responsibility and exempt the applicants from the obligation to exhaust the domestic remedies in each member State.[24]

It is additionally important to mention that in March 2020, the ECtHR delivered its judgment in *Hudorovic et al. v. Slovenia* (App. nos. 24816/14 and 25140/14) on the basis of two complaints filed by Roma families who had been living in informal settlements with no access to water, sanitation, sewage, or electricity for decades. This was the first time that the ECtHR had to examine whether the right to access safe drinking water and sanitation is protected by the ECHR (particularly under Article 8). The case attracted a number of third-party interventions (e.g., from the European Roma Rights Centre and the Human Rights Centre of Ghent University). The facts of the case were as follows: The first set of applicants, father and son, who reside in the Roma settlement of Goriča vas in Ribnica Municipality, have no access to clean water; they collect water from the cemetery or a polluted stream and sometimes from other houses nearby. Due to the lack of sanitation services, they have to defecate in areas around their home. The second set of applicants, a family of 14, live at Dobruška vas 41 in the Škocjan Municipality and also lack access to basic infrastructure. A fountain with drinking water is available 1.8 kilometers away from their hut, and although there is a group water-distribution point in their settlement, they are not connected to it. For years, hostile neighbors allegedly did not allow these applicants to lay a pipe. Because Slovenian law forbids all of the applicants from accessing the public water network, which is only open to households with the required building permits, alternative solutions, such as relocation and the use of a co-financed water tank and a diesel generator have been attempted without success. The applicants claimed that lacking water and other basic infrastructure has resulted in hygiene problems, frequent diseases, discomfort, embarrassment, and pain. Moreover, for their children, these living conditions and the ensuing stigmatization have compromised their schooling and social integration. They therefore alleged a violation of the prohibition of inhuman or degrading treatment (Article 3 ECHR) and the right to enjoy their private and family life as well as home (Article 8 ECHR) taken alone and in conjunction with the prohibition of discrimination (Article 14 ECHR).

24 Available at: https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22duarte%22],%22sort%22:[%22kpdate%20Descending%22],%22itemid%22:[%22002-13055%22]} (Accessed: 1 August 2022).

In its judgment, the ECtHR recalled previous case law on environmental and health issues and confirmed that the high risks to health associated with contaminated water constitute an interference with Article 8 rights (§ 113). Without recognizing a "right to water" protected by the ECHR, the Court notably accepted that a "persistent and long-standing" lack of access to safe water may trigger the State positive obligations under Article 8. Ultimately, however, it held that "even assuming that Article 8 is applicable there has been no violation of that provision." On this basis, a possible violation of Articles 3 and 14 of the ECHR were also dismissed. The conclusion mainly relies on (1) the positive measures taken by the respondent State, viewed against its wide discretion in socioeconomic matters and the progressive realization of water and sanitation rights, (2) the social benefits received by the applicants "which could have been used towards improving their living conditions", and (3) the applicants' lack of substantiation and evidence of the adverse effects that lacking access to water and sanitation has had for their dignity and health. Although the judgment does not challenge the restrictions set by Slovenian legislation to access water and sanitation services, it does acknowledge that such legislation could produce disproportionate effects on the members of the Roma community insofar as, similar to the applicants, they live in illegal settlements and rely on social benefits for their subsistence (§ 147). Although in this concrete case, the ECtHR decided that those risks were sufficiently mitigated, the precedent may be of value for future complaints by Roma or other disadvantaged groups living without basic utilities.

Given Slovenia's membership in the EU since 2004, it is also important to mention the jurisprudence of the Court of Justice of the European Union (CJEU) against Slovenia in environmental matters.

Thus far, there have been six cases initiated against Slovenia, mostly due to non-transposition or non-respect of the EU waste management legislation. Thus, in case C-506/17, the Commission initiated proceedings against Slovenia for late transposition of a directive concerning municipal waste landfills (Council Directive 1999/31/EC). The case was closed with a finding that Slovenia breached the Council Directive. In case C-153/16, following a complaint by an individual, the Commission opened an investigation into the alleged improper management of waste, in particular, used car tires, in a gravel pit on the territory of the municipality of Lovrenc na Dravskem polju. The case was closed, with the Commission's lawsuit partially successful. Further, in case C-140/14, the Commission opened an investigation into alleged environmental pollution linked to the "old Cinkarna" site, a large brownfield site near the center of Celje (the fourth-largest city in Slovenia). The site contains brick residue, demolition waste, tar, and other waste, some of which originates from zinc smelting activities. The case was closed with a finding that Slovenia breached relevant EU Directives. In case C-49/10, the Commission initiated proceedings against Slovenia for delayed transposition of Directive 2008/1, resulting in only 12% of waste treatment plants operating with the relevant certificates. The case was closed with a finding that Slovenia failed to fulfill its obligations under Directive 2008/1.

Case C-402/08 was initiated because Slovenia failed to send a notification on the transposition of Directive 2004/35/CE of the European Parliament and of the Council of April 21, 2004, on environmental liability with regard to the prevention and remedying of environmental damage. In response to a question from the Commission, it was clarified that the Directive will be transposed by the Act on Amendments and Additions to the Act on Environmental Protection. The case was closed with a finding that Slovenia failed to fulfill its obligations under Directive 2004/35 and thus failed to ensure compliance with the polluter pays principle.

Finally, in case C-365/10, the Commission informed Slovenia that the PM10 limit values laid down in Council Directive 1999/30/EC of April 22, 1999, relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter, and lead in ambient air have been exceeded in several areas and agglomerations in Slovenia. The case was closed with a finding that Slovenia breached Directive 1999/30.

2. Actors of the formation of constitutional law and constitutional jurisdiction related to the protection of future generations and especially the environment

2.1. The role of Parliament in shaping environmental protection beyond legislation

The National Assembly of Slovenia[25] in March 2020[26] adopted a National Environment Protection Program with programs of measures until 2030 (ReNPVO20-30), which determines "conservation of nature and a quality environment as values of Slovenian society."[27] The ReNPVO20-30 states that to achieve Slovenia's environmental vision of a *Preserved nature and healthy environment in Slovenia and beyond enabling quality of life for present and future generations*, the National Program for Environmental Protection for the period of 2020–2030, it sets out the orientations, objectives, tasks, and actions of environmental stakeholders, namely: (a) long-term environmental protection policies, objectives, targets, and measures; (b) long-term policies, objectives, targets, and measures for the conservation of biodiversity and the protection of natural values (National Nature Conservation Program); (c) the

25 Article 72 para. 1 of the ZVO-2 provides that "the National Assembly of the Republic of Slovenia, on the proposal of the Government, shall adopt a national programme for environmental protection, which shall contain long-term objectives, guidelines and tasks for environmental protection."

26 Between October 1999 and April 2022, the National Environment Protection Action Program, adopted by the National Assembly in September 1999, guided environmental actions in Slovenia.

27 Available at: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODLO1985 (Accessed: 1 August 2022).

National Water Management Policy (National Water Management Program); (d) measures to achieve the objectives of the Slovenian Development Strategy 2030, which also identifies a preserved and healthy natural environment as one of the strategic orientations for achieving a high quality of life; (e) guidelines for the planning and implementation of policies in other sectors that have an impact on the environment; (f) guidelines and measures for meeting international development commitments (in particular, the 2030 Agenda for Sustainable Development); (g) policies and measures to meet international commitments in the field of environmental protection, nature conservation, and water management.

Furthermore, in February 2020, the Government of Slovenia adopted the Integrated National Energy and Climate Plan of the Republic of Slovenia,[28] a strategic action plan to tackle climate change through 2030, and in July 2021, the National Assembly of Slovenia adopted a Resolution on Slovenia's long-term climate strategy through 2050 (ReDPS50),[29] with the aim of achieving zero net emissions and climate neutrality by 2050.

A special working body of the National Assembly of Slovenia dealing with environmental matters is the Committee on Infrastructure, Environment, and Spatial Planning.

2.2. The role of the Constitutional Court in shaping environmental protection

Several times, in its jurisprudence, the Constitutional Court has tackled environmental matters and, with its interpretation of the relevant constitutional provisions, significantly contributed to the formation of environmental protection in Slovenia. The relevant decisions are analyzed below (see subchapter III).

2.3. Relevant case law of ordinary courts and the Supreme Court in relation to environmental protection

Regarding the protection of the environment, the regular courts in the Slovenian legal system primarily provide compensatory protection for individuals who suffer damage due to harmful effects from the environment. The rules of civil law are very narrow with regard to the possibility for an individual to request the cessation of the impact due to environmental interventions, such as the removal of the source of the impact or the prohibition of performing a certain activity.[30] If harmful factors from one property interfere with the use of neighboring or nearby property across the border, which is normal given the nature and purpose of the property and local conditions, or cause significant damage, it is considered prohibited immission. If

28 Available at: https://www.energetika-portal.si/dokumenti/strateski-razvojni-dokumenti/nacionalni-energetski-in-podnebni-nacrt/ (Accessed: 1 August 2022).

29 Official Gazette of the Republic of Slovenia, No. 119/2021.

30 Možina, 2016, p. 22.

appropriate measures cannot be taken to prevent disruption or damage, the prohibition of such activity or the removal of the source of the damage may be required. Similarly, the prohibitive injunction is also stipulated by the regulations on environmental protection, where its *sedes materiae* is Article 231 of ZVO-2. Under this provision, citizens as individuals or their associations and organizations may file a motion for the court to stop the interference if it causes or could cause excessive pollution of the environment, if it causes or could cause an immediate threat to human life or health, or to prohibit it from initiating an intervention in the environment if it is demonstrated that it is likely to cause such consequences. Despite this provision, the case law still refers to general civil law provisions and does not deal with slightly different conditions on different legal grounds.[31]

Among the main sources of harmful effects on the environment are various industrial and infrastructural activities that are regulated by special regulations on ecological standards and permissible pollution limits (limit emissions performance). Even when an industry is a source of harmful immissions, an activity is not in itself illegal if it has been issued with appropriate operating and other administrative permits and is performed according to the prescribed standards; thus, it cannot simply be prohibited by civil action. Industrial activity, in particular, the operation of public infrastructure, can be a generally beneficial activity, the effects of which the injured parties must suffer.[32] Therefore, it is not possible to file an injunction for a prohibition on activities carried out in the public interest. This follows from Article 133(3) of the Civil Code. It provides that "If damage arises during the performance of generally beneficial activities for which permission has been given by the relevant authority it shall only be possible to demand the reimbursement of damage that exceeds the customary boundaries." In the case of adverse effects from generally beneficial activities, the legal protection of an individual is limited to a claim for compensation for excessive damage but not to the possibility of filing an injunction for an operating prohibition. Although the case law has yet to confirm this, the position that this also applies to the enforcement of a prohibitive injunction on the basis of Article 231 of ZVO-2 is defended. Although this statutory provision has no direct connection to Article 133(3) of the Civil Code, it should not apply to activities performed in the public interest.[33] The case law interprets the legal standard of generally useful activity very broadly. In general, the acceptability of activities in the broader environment is assessed, primarily at the expense of individuals who are heavily affected by the operation: "A generally useful activity in the sense of Article 156(3) of the ZOR [the decision refers to the previously valid law, but it is exactly the same statutory text as Article 133(3) of the currently valid OZ] is any activity that a certain environment recognises as necessary and useful and which serves not only the interests of a limited, predetermined range of

31 Vrbica, 2020, p. 962.
32 Damjan, 2011, p. 245.
33 Ibid.

entities."[34] Moreover, case law has yet to establish any rules on the understanding of the concept of authorization by the competent authority. It would be correct to consider only those permits for which the fact of adverse effect was taken into account in the issue procedure.

The case law developed in regard to road noise damage is very interesting for the development of the protection of individuals from harmful effects from the environment. In Slovenia, truck transit traffic has increased substantially, and the increase has not been followed by the construction of motorways. Before the completion of the motorways, truck traffic ran through some settlements and caused vibrations and noise, especially at night. Due to the previously mentioned Article 133(3) of the Civil Code, local residents did not initiate proceedings to prohibit traffic through the settlement but filed a claim for damages against the state that owns the road. The problem with this claim for damages was the definition of damage. There were no concerns regarding the reimbursement of property damage caused to the buildings due to the vibrations (e.g., cracks in the walls), and the State paid substantiated claims without court proceedings. The question then arose as to whether local residents could also claim non-pecuniary damage due to the uncomfortable feelings caused by transit traffic. Under Slovenian law, the possibility of claiming non-pecuniary damage is limited. The provision of Article 179(1) of the Civil Code, which stipulates that monetary compensation may also be paid for mental distress suffered owing to the violation of personal rights, is essential. In such a case, the court may determine only monetary compensation regardless of the compensation for pecuniary damage, even if there is no pecuniary damage.[35] The question before the court was whether the locals experienced mental distress due to the violation of their personal rights. The Supreme Court of the Republic of Slovenia ruled that "The right to a healthy living environment (Article 72 of the Constitution) is a personal right. If the interference with the individual's right (in this case due to noise that exceeded the permissible noise limit and to which the person was exposed for a long period of time) has already occurred, the victim is entitled to compensation for damages. Under Article 200 of the ZOR [the decision refers to the previously valid law, but it is exactly the same legal text as the Article 179(1) of the currently valid Civil Code), mental pain due to the violation of the right to personality, depending on the degree of pain and its duration, is also legally recognised, where it is not necessary for the interference with personal rights to lead to impairment of health. The concept of mental distress should be interpreted broadly so that it encompasses any psychological discomfort. There is no basis in the law for concluding that only those who suffer consequences in their health due to encroachments on personal rights have the right to compensation."[36] This position has been reaffirmed several times, and on this basis, the State has paid out the awarded compensation to local

34 Judgment of the Supreme Court of the Republic of Slovenia II Ips 473/2001 of May 30, 2002.
35 Jadek Pensa, 2009, p. 1036.
36 Judgment of the Supreme Court II Ips 507/1992 of March 25, 1993.

residents along transit roads.[37] For example, the individuals who suffered the most from noise pollution, as their house was a mere 6 meters away from the road, were awarded compensation in the amount of EUR 5,500 and EUR 5,600, respectively, for the relevant period of 57 months (January 2004 to October 2008).[38]

2.4. The role of the President of the Republic of Slovenia and the Ombudsman for human rights

In 2019, the President of the Republic of Slovenia, who, according to Article 102 of the Constitution, performs a representative function (executive powers being entrusted to the Government), established a permanent consultative committee for climate policy, which issues positions and recommendations and regularly consults with it on matters relating to climate change.[39]

The Constitution also established the institution of Ombudsman for Human Rights and Fundamental Freedoms (Article 159), mandated to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority. The Office of the Ombudsman for the Rights of Citizens was established by the Human Rights Ombudsman Act.[40] The Ombudsman regularly examines petitions in the field of the environment.[41]

A good example of the Ombudsman's activities is the following case concerning access to drinking water.[42] In the spring of 2019, the petitioners informed the Ombudsman of problems in the municipality of Rogaševci regarding their connection to the public water supply network. Their properties are located only a few meters from the pipeline, yet they could not connect to the water supply network. The water supply at their home was inappropriate, as the groundwater is mineral water and thus unsuitable for drinking. The Ombudsman turned to the municipality with several questions. The municipality explained the process of reconstructing the public water supply project. The project, which was completed in 2015, did not enable connection to all households. The municipality stated that it is planning a project to upgrade the water supply network, but it is proceeding slowly due to a lack of financial resources. The municipality's answers did not convince the Ombudsman. If the municipality's funds are not sufficient or if the municipality expects that construction will not be possible in a reasonable time due to limited funds, it is expected to do everything it

37 Judgment of the Supreme Court II Ips 813/2007 of November 29, 2007, Judgment II Ips 409/2009 of February 28, 2010.

38 Možina, 2016, p. 23.

39 See at: https://www.up-rs.si/up-rs/uprs.nsf/objave/053003EDFF3B5143C125837E005219F4?OpenDocument (Accessed: 1 August 2022).

40 Official Gazette of the Republic of Slovenia, No. 69/17.

41 Since May 2012, the Ombudsman has dealt with 40 initiatives concerning environment and spatial planning and has regularly interacted with competent ministries and civil society concerned with the protection of the environment. See: https://www.varuh-rs.si/en/activities/varovanje-pravic-po-podrocjih/environment-and-spatial-planning/ (Accessed: 1 August 2022).

42 Opinion 18.1-11/2019 of December 23, 2019.

can to solve the problem of the supply of drinking water to all residents, who have no influence on the implementation of the investment. They are the only ones directly affected by the long-term actions of the authorities. The municipality initially did not accept the Ombudsman's opinion but later announced that it had found a solution for the petitioners and connected them to the public water supply network on December 6, 2019. The Ombudsman considers the behavior of the municipality to be adequate, despite that the solution was only achieved through his intervention. The initiative of the petitioners was justified, and the Ombudsman concluded that the municipality violated the principle of good governance.

The Constitution also provides (Article 159, para. 2) that "special ombudsmen for the rights of citizens may also be established by law for particular fields." Up to the present, no special ombudsperson for "environmental rights" has been established, but such a development under the mentioned constitutional provision cannot be ruled out in the future.

Further, in cases in which certain environmental information is requested but not provided (in a timely manner) by the relevant organs, the Information Commissioner – an autonomous and independent state body with competences in the field of two fundamental human rights protected by the Constitution of the Republic of Slovenia (the right of access to public information and the right to the protection of personal data) – has a mandate to request such environmental information and is in practice oftentimes acting in this capacity.[43] The annual reports of the Information Commissioner mention some concrete examples of such cases, and the report for 2021[44] exposed four such instances. Among this is also a case[45] in which the Information Commissioner emphasized that due to the provisions of the Aarhus Convention, environmental information is not exempted from free access to public information under the Public Information Access Act.[46] Namely, the applicant has requested to receive a letter from the Public Enterprise Vodovod Kanalizacija Snaga, d.o.o. addressed to the Municipality of Ljubljana on the acquisition of property rights within the narrowest water protection area, together with a table of possible infringements. The authority refused access, citing the exception of the protection of administrative procedure. In the appeal proceedings, the Information Commissioner found that the contested decision (and the requested documents) did not show that (any) administrative procedure had been initiated, nor had the authority demonstrated any prejudice to its implementation, and they therefore upheld the appeal and ruled that the authority should provide the requested information to the applicant. In the appeal procedure, the Information Commissioner also found that the requested information concerned data on emissions into the environment and that the requested document and its

43 See at: https://www.ip-rs.si/ (Accessed: 1 August 2022).

44 See at: https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/LP2021.pdf (Accessed: 1 August 2022).

45 Number of the Information Commissioner's decision is 090-292/2020.

46 Official Gazette of the Republic of Slovenia, No. 51/06, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – decisions of the Constitutional Court, Nos. 102/15 in 7/18.

annex contain the detection of infringements in the water protection areas from agricultural use. Consequently, it decided that the requested information is absolutely freely accessible information of a public nature pursuant to Article 6(3)(2) of the Public Information Access Act (environmental data).

3. Basis of fundamental rights

3.1. The right to a healthy living environment in Slovenia's Constitution

The core stipulation of Slovenia's Constitution relating to environmental protection is, as mentioned above, the provision of its Article 72. In paragraph one, it explicitly stipulates that everyone has the right, in accordance with the law, to a healthy living environment. The use of the term "living" in this connection is accidental, and no special meaning is attached to it. More interestingly, the right to a healthy environment is included not in the chapter on fundamental human rights and freedoms but in the chapter on economic and social relations. The doctrine sees the reason for this in the programmatic nature and limited enforceability of this right.[47] Nevertheless, the recent Constitutional Court case law also treats the right to a healthy environment as a fundamental human right and provides legal protection to the individual who invokes it.[48] However, this legal protection is not unconditional, as Article 72(2), which prescribes the tasks of the State, must also be considered. The State shall promote a healthy living environment, and to this end, the conditions and manner in which economic and other activities are pursued shall be established by law. It follows that an individual does not have an unconditional injunction to prohibit certain activities or a motion for the State to carry out certain conduct.[49]

In a high-profile case, a group of individuals demanded that the regular court prohibit the first-instance administrative body and the Ministry of the Environment and Spatial Planning from issuing a building permit, environmental permit, use permit, or any other document that could allow the company to rehabilitate and operate, store, and process hazardous and other wastes. Before that, hazardous waste was dumped and stored at this location, and there was significant pollution of the surroundings and especially the river, where fish died. As no other remedy is available, it was alleged that the recurrence of such an event could only be prevented by prohibiting the administrative authorities from issuing permits, as this alone ensures that the reopening and rehabilitation of the disputed facility are prevented.

47 Grad, Kaučič, and Zagorc, 2020, p. 862.
48 Knez in Komentar, 2019 I, p. 576; Grad, Kaučič, and Zagorc, 2020, p. 862.
49 Jadek Pensa, 2009, p.1332; Pličanič, 2003, p. 109.

The Supreme Court dismissed this lawsuit and stated, "It is wrong for the plaintiff to understand that in an administrative dispute, he can achieve a prohibition of future actions of the administrative body – the possible issuance of administrative permits and consents to a third party. Deciding on preventive measures for remediation and prevention of environmental damage is not within the jurisdiction of the court."[50] Therefore, the constitutional provision does not mean that it is the obligation of the State to provide everyone with a healthy living environment, which would mean the exclusion of all risks arising from human relations with nature: "The substance of the right to a healthy living environment is determined by the legislator by setting the limits of admissibility of interventions in the environment and, therefore, also determining the conditions for the exploitation and use of natural resources. The state shall also ensure a healthy living environment by preserving the diversity and quality of natural resources and by reducing the consumption of natural resources. With its active conduct, the state is obliged to attend to the protection of the public interest and thus also the appropriate normative regulation."[51] According to the Court's majority, the addressee of the right to a healthy living environment is not the environment itself but the individual who is present in the environment at the moment. At least *prima facie,* it is not about protecting future generations.[52] The environment is thus protected indirectly in the sense that the anthropological rather than the ecocentric ontological aspect prevails.[53] However, different views also exist that place the environment as a whole at the forefront and view humans as an integral part of the environment.[54]

It is important that the right to a healthy living environment is considered a fundamental human right in the Slovenian legal system, which is also the basis for its comprehensive legal protection, enforced both at the level of reviewing the constitutionality of laws and other general legal acts and at the level of constitutional appeal if it constitutes interference with the legal position of an individual.

3.2. The right to a healthy living environment in the Constitution and the jurisprudence of the Constitutional Court

The right to a healthy environment (Article 72) of the Constitution can be considered an important hard law framework provision (including the polluter pays principle enshrined in paragraph 3 of Article 72), as while, at a first glance, this article seems to be of a declarative nature, envisaging its content to be further regulated in legislation, the Constitutional Court significantly contributed to its normative development through its relevant jurisprudence in environmental matters.

50 Decision of the Supreme Court I Up 15/2018 of March 21, 2018.
51 Decision of the Constitutional Court U-I-98/04 of November 9, 2006.
52 Knez in Komentar, 2019 I, p. 577.
53 Pličanič, 2003, p. 51.
54 Jadek Pensa, 2009, p. 1333.

For example, in Decision U-I-98/04 of November 9, 2006, the Constitutional Court of Slovenia addressed the question of the compatibility of the Game and Hunting Act with the Constitution, as the Act does not limit the duration of the priority right of previous hunting ground managers to obtain a concession for sustainable game management to the procedure for the first grant of a concession after the entry into force of the Act. It found that Article 72 determines the obligation of the legislator "…to ensure a healthy living environment and, to that end, to determine the conditions and manner in which economic and other activities are to be carried out. The content of the right to a healthy living environment is determined by the legislator by setting the limits of permissibility of interference in the environment…" Moreover, "…The State also ensures a healthy living environment by preserving the diversity and quality of natural goods and by reducing the consumption of natural resources…."

Further, Decision U-I-164/14 of November 16, 2017, considered the issue of the unlawfulness of the Act on Spatial Planning of National Significance,[55] the Water Act,[56] and the Decree on the National Spatial Plan for the Central Training Ground of the Slovenian Armed Forces Postojna,[57] which allegedly interfered with the constitutional position of the Municipality of Postojna by impermissibly interfering with the municipality's original competence to adopt spatial planning acts regulating spatial and environmental aspects of spatial planning interventions. The Court pronounced that "The right to a healthy living environment is protected by standards or norms which ensure that there are no impacts on the environment which are so excessive as to endanger human health, and that emission limit values are one of the most important bases for the exercise of the right to a healthy living environment." Similar pronouncements can be found in Decisions Up-262/97, U-I-87/99, and U-I-80/04.

In Decision U-I-40/06 of October 11, 2006, the Court had to pronounce regarding allegations that ZVO-1 interferes with the property rights of forest owners by providing that game is state property. The Court stated, "Under Article 72(2) of the Constitution, the State has a duty to ensure a healthy living environment. It must promote social development that provides long-term conditions for human health, well-being and quality of life, and the preservation of biodiversity. The purpose of exercising the right to hunt is to ensure a healthy living environment by protecting wild game, which is a natural treasure." It specifically referenced the principle of sustainable development when, in para. 23, it stated, "In the review of proportionality in the narrow sense the Constitutional Court balanced the need to exercise the [broader] hunting right for the preservation of the natural resource against the

55 Since 2007, assumed within the Spatial Planning Act (Official Gazette of the Republic of Slovenia, Nos. 33/07, 70/08 – ZVO-1B, 108/09, 80/10 – ZUPUDPP, 43/11 – ZKZ-C, 57/12, 57/12 – ZUPUDPP-A, 109/12, 76/14 – odl. US, 14/15 – ZUUJFO, 61/17 – ZUreP-2 in 199/21 – ZureP-3).

56 Official Gazette of the Republic of Slovenia, Nos. 67/02, 2/04 – ZzdrI-A, 41/04 – ZVO-1, 57/08, 57/12, 100/13, 40/14, 56/15, and 65/20.

57 Official Gazette of the Republic of Slovenia, Nos. 17/14 and 75/17 – the decision of the Constitutional Court repealed the Decree.

weight of the interference with the right to private property. On the basis of Art. 72.2 of the Constitution, the state is obliged to promote a healthy living environment. It must encourage social development such that it enables the long-term conditions for people's physical and mental well-being, quality of life, and the preservation of biological diversity. The goal of environmental protection is inter alia also to ensure the sustainable use of natural resources. According to the principle of sustainable development determined in Art. 4 of ZVO-1, the state is obliged to encourage such economic and social development of the society which in satisfying the needs of the present generation considers the equal possibilities of satisfying the needs of future generations and enables the long-term preservation of the environment."

Another interesting decision juxtaposing the prohibition of discrimination and the right to health and to a healthy living environment is Decision U-I-218/07 of March 26, 2009, in which the Court had to address the issue of the constitutionality of the ban on smoking in restaurants, which might place smokers in an unequal position. The Court posited that the right to a healthy environment also includes the absence of tobacco smoke because "on the other hand, there is the individual right to health (Article 51 of the Constitution) and the right to a healthy living environment (Article 72 of the Constitution), which require the legislator to take appropriate measures to ensure that they are safeguarded." A similar pronouncement can be found in Decision U-I-141/97.

In Decision U-I-40/12 of April 11, 2013, the Court had to address the supposition that the Act on the Prevention of Restraints of Competition is contrary to the right to inviolability of the home under Article 36 of the Constitution and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court confirmed that "The power of the legislature to determine the conditions and manner of carrying on a commercial activity in order to ensure a healthy living environment (Article 72(2) of the Constitution). In order for the legislator to be able to give effect to all of the above-mentioned constitutional powers, it is not sufficient for it to regulate the exercise of particular economic activities in accordance with those powers, but it must also ensure that those rules are effective in everyday life."

There is also important constitutional jurisprudence on restrictions of the right to free economic initiative to protect the right to healthy environment. In U-I-30/95 of December 21, 1995, in its petition for an assessment of the constitutionality and legality of the contested zoning plan, the Association of Ecologists of Slovenia stated that it is a planned and rough intervention in the spatial area, which, due to its natural values, requires a much more cautious approach, in which a report on the state of the environment is required by ZVO-1. The Court annulled the Decree on adopting the building plan of the small industry zone of Spodnje Gorje, morphological unit "U-B15" – region "1.2. – Bled".

In Rm-2/02 of December 13, 2002, a third of the members of the National Assembly submitted a proposal to the Constitutional Court for an opinion on the compatibility of the Treaty between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the regulation of status and other legal

relations related to the investment in and exploitation and decommissioning of the Krško Nuclear Power Plant (NEK) with the Constitution. The Court found that the obligation of the State to ensure a high level of nuclear safety is derived from Arts. 72.1 and 72.2 of the Constitution (a healthy living environment). In determining the individual aspects of nuclear safety guaranteed by the Constitution, in the context of the discussed matter, the treaties that deal with the field of ensuring nuclear safety, the principle of the compulsory subsidiary actions of the State as one of the fundamental principles in the field of spatial planning, and the fundamental grounds of the statute that regulates nuclear safety had to be considered. The provisions of the Treaty would, according to the Court, be inconsistent with Articles 72.1 and 72.2 of the Constitution if they prevented the State from fulfilling the obligations that it has in ensuring a high level of nuclear safety or if the State were, on the basis of such an obligation, to adopt a regulation that would prevent it from fulfilling these obligations. Irrespective of the Treaty, during the regular operating period of the NEK, Slovenia is obliged to plan nuclear waste management and spent nuclear fuel management and is responsible for ensuring that any solution adopted is in accordance with the highest safety standards, the observance of which is required by the Constitution. Furthermore, the State is not obliged to wait infinitely for the eventual adoption of a joint solution regarding the decommissioning of NEK. It is obliged to fulfill its part of the obligations determined in the Treaty, and after the regular operating period of NEK, as the State on the territory of which NEK is located, it must ensure its decommissioning and, if necessary, adopt all of the necessary measures. Accordingly, Art. 10 of the Treaty is not inconsistent with Arts. 72.1 and 72.2 of the Constitution. In addition, after the eventual entering into force of the Treaty, the Republic of Slovenia, as the State on the territory of which NEK is located, must provide that the means for decommissioning NEK and for the disposal of nuclear waste and spent nuclear fuel will be ensured at all times. Thus, Art. 11 of the Treaty, in which the contracting Parties agreed to how they would distribute the financial burden concerning the decommissioning of NEK and how they would dispose of nuclear waste and spent nuclear fuel, is not inconsistent with Arts. 72.1 and 72.2 of the Constitution. In the event that the safety of NEK operation was endangered, the provision of a deciding vote is built into the decision-making system, which enables a decision to be reached promptly. Furthermore, the regulation of the management of the company, envisaged in Art. 3 of the Treaty, does not prevent the State from executing its competencies regarding the supervision of the operation of NEK and, above all, in regard to ensuring nuclear safety. Accordingly, the Court found that Art. 3 of the Treaty is not inconsistent with Arts. 72.1 and 72.2 of the Constitution. Several times, the Court *expressis verbis* also relied on the principle of no undue burden on future generations (paras. 30, 31, and 37) when emphasizing that in dealing with radioactive waste, "solutions adopted must, in conformity with the principle of prohibition against too excessive burdening of future generations, respect the strictest safety standards."

Further, in U-I-64/14 of October 12, 2017, concerning illegal construction in existing Roma settlements, the Court Stated that "The Government emphasises that

legislation in the field of spatial planning and construction of buildings is primarily intended to protect the public interest, which is expressed in the requirements for the safe use of buildings, a safe and healthy living environment, the rational use of land and the protection of other constitutional values."

In U-I-22/15 of March 27, 2019, the Court stated that "The right to a healthy living environment under Article 72(1) of the Constitution is one of these values, which require the State to take appropriate nuclear and radiation safety measures"; this was further confirmed in a similar decision, U-I-292/97.

It is worth mentioning in particular the separate opinion in the affirmative of Dr Rajko Knez, the judge in Up-133/16 of March 14, 2019, in which the Court defined the immovable property constituting the protected farm as well as the movable property forming part of the estate of the deceased and declared the Appellant the transferee of the immovable property constituting the protected farm. Judge Knez, referring to the sustainable development principle, stated, "At the same time, Article 72(1) enshrines the right to a healthy living environment as a human right. For this to be effective, the environment must be protected, and natural resources conserved, with care taken to strike an appropriate balance between these values and the many interests at stake. In my view, the inheritance of agricultural land also involves not only a clash between the private interests of the heirs and the question of the economic value of the farm, but also a clash between these interests and the interests of farmland conservation – that is to say, a clash between private interests and the public interest."

In U-I-181/16 of November 15, 2018, the Council of State submitted a request for a review of the constitutionality of the Health Care and Health Insurance Act and the Pension and Disability Insurance Act, which provide for compensation for damage caused to the Health Insurance Institution of Slovenia and the Pension and Disability Insurance Institution of Slovenia by their insured persons in certain circumstances. The Court added that "in interpreting the second sentence of Article 74(2) of the Constitution, it is necessary to have regard to Article 72(2) of the Constitution, which obliges the State to ensure a healthy living environment for the individual, of which the working environment is a part."

In U-I-182/16 of September 23, 2021, it was alleged that the amendments introduced, under which the validity of environmental permits is no longer limited in time and under which less stringent emission limit values may exceptionally be set in an environmental permit for installations that are likely to cause pollution on a large scale, are constitutionally controversial. The Court had to consider the level of protection that the constitutional right offers to a healthy environment, the preventative principle in connection to the jurisprudence of the ECHR, access to green information in connection to the Aarhus Convention, and principles of sustainable development and future generations. The Court unequivocally stated that "It is also important to point out that the right to a healthy living environment under Article 72 of the Constitution, which is the right most closely linked in substance to the protection of the environment as such, although it is placed in the chapter on economic

and social relations, enjoys the same protection as the rights set out in the chapter on human rights." This was also confirmed in Decisions Up-88/94 and Up-629/02.

In U-I-195/16 of September 17, 2020, the Court relied on sustainable development, intergenerational fairness, and protection of biodiversity when determining whether the local authority had unilaterally encroached upon existing fisheries and fishery management in contravention of the Fisheries Act and the bylaws adopted thereunder.

In U-I-194/19 of April 9, 2020, on the selective and limited removal from the wild of specimens of the brown bear and wolf species, regulated in parallel by different legal acts adopted at different levels of the normative hierarchy, the Constitutional Court decided, relying on the precautionary principle and the principle of sustainability, that the protection of endangered species is also an integral part of the right to a healthy environment.

In U-I-386/06 of March 13, 2008, on whether the procedure for drafting the Regulation on Amendments and Additions to the Regulation on Protected Wildlife Species and the Regulation on the Taking of Specimens of the Brown Bear Species was carried out in breach of Article 8 of the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, concluded that the Rules are also contrary to Articles 5, 63, 72, and 73 of the Constitution in that the removal of specimens of the brown bear species ("bears") from the wild, which the Rules provide for, depletes natural wealth, and the deliberate killing of animals is not conducive to the harmonious development of civilization that the State is constitutionally required to pursue but, rather, encourages violence and permits the torture of animals.

In its dissenting opinion to Decision U-I-327/20 of January 20, 2020, Judge Dr. Rajko Knez, stated, "More important is the substantive aspect of protecting a healthy living environment (Article 72(1) of the Constitution), which we are obliged (more than ever before) to protect for our posterity, especially given that spatial interventions are generally irreversible."

In U-I-263/95 of March 18, 1998, the Court tackled the rules on the criteria for the establishment of opening hours and stated, "By differentiating the possibility of setting the opening hours of catering establishments, the legislator also guaranteed the right of residents to a healthy living environment (in particular, for example, protection against noise at night), as laid down in Article 72 of the Constitution."

In U-I-130/96 of July 3, 1997, the Court decided that spatial planning must consider the right to a healthy environment.

In U-I-344/96 of April 1, 1999, the Court, albeit rejecting the petition, mentioned the polluter pays principle and decided that "the contested provisions are also not contrary to Article 72 of the Constitution, as they constitute a fulfilment of the provisions of Article 72 State's obligation to "ensure a healthy living environment". This obligation is fulfilled by the State, inter alia, by prescribing measures to prevent or minimise pollution. One of those measures is the payment of a charge for the water, soil and air pollution and the generation of waste, since, on the one hand, the State

thereby encourages polluters to minimise environmental pollution, while on the other hand it provides funds for the remediation of pollution already for the remediation of existing encroachments. Therefore, the introduction of an environmental pollution charge in this way is not contrary to the provisions of Article 72 of the Constitution. Nor does it follow from the provisions of Article 72 of the Constitution that citizens are directly owners of natural resources, as the petitioner claims. Nor is there any constitutional support for the petitioner's assertion that that citizens should have the right to enjoy natural goods free of charge within the limits of their personal use. The conditions, criteria and methods for the enjoyment of natural goods are regulated by law, which may also prescribe in this context certain material obligations relating to their enjoyment or to the burden on them the environment. In the case of water use, these are the water pollution charge and the reimbursement (price) for consumption of water as a natural good. The petition to challenge Article 80 of the Law on Environmental Protection is therefore unfounded and must be rejected."

In U-I-243/98 of September 21, 2000, the Court emphasized that every new construction project can be a threat to the environment, but that is why the government needs to set standards and limitations; similarly, in U-I-315/97, the Court referenced the principle of prevention.

In U-I-255/00 of December 7, 2000, the Court stated that according to Article 4 of ZVO-1, the Association of Landscape Architects is among the entities that the Constitutional Court recognizes as having a legal interest in the protection of the environment.

In a separate opinion affirming Decision U-I-6/17 of June 20, 2019, Judge Dr. Katja Šugman Stubbs stated, "I am convinced that in the future, with population growth, the increasing pollution of whole areas of the world, pressure from immigration, etc., the battle for definitions in this area will be fought again, and the need to protect space and nature in the public interest will become ever greater. The interest of the owner in preserving the use of his land cannot outweigh the public interest in regulating the use of space. Space is not only a finite but also an irreplaceable commodity. All the activity of human beings (and other inhabitants of this spatially limited planet) takes place in this limited space and is dependent on space. The quality of life of all inhabitants depends on the layout of space (green spaces, natural parks, public space as a place for socialising, etc.), but above all the use of space is linked to the survival of humanity (food processing, the forest as the lungs of the planet, access to water resources, the preservation of the ecosystem, etc.). Space is a common good which, because of its vital importance for life, for ecology, for social and, above all, for livelihoods, cannot and must not fall prey to vested private interests; it is a common asset that must be protected by the law of the land. This is why spatial planning will be of particular importance; it is the zoning of space that is one of the essential tasks of spatial planning."

In U-I-215/11, joined with Up-1128/11, of January 10, 2013, the appellant brought an action against the decision of the Environment Agency of the Republic of Slovenia on the assessment of the water refund for 2008. The Court *expressis verbis*

(para. 12) referred to the polluter pays principle and used it as a "value criterion" when it stated that the economic valuation principle, which includes the costs of polluting, protecting, and regulating water,[58] is an implementation of the polluter pays principle set out in Article 10 of ZVO-1 in the field of water management. It further stated that this fundamental principle of environmental protection implies that the polluter, in the concrete case, the user of a public water good, is obliged to bear the costs incurred as a result of the use of the environment and that in interpreting the meaning of the legal regulation, it should be borne in mind that the principle of economic valuation is a fundamental principle of the Water Act (Article 3(4)). It emphasized that the principle is a value criterion that binds both the regulator and the specific users in the application of the statutory provisions and that the statutory text does not require, as the petitioner erroneously suggests, that the amount of the water charge should be based on a precise calculation of the specific costs incurred by each specific water charge payer in the specific use of the public water asset. The court clarifies that the law merely requires that the principle of cost recovery be taken into account as a value criterion in setting and interpreting the criteria for determining the amount of the water charge and that the criteria for determining the level of water compensation must be reasonably related to the purpose of the water refund. In regulating the level of water charges, the legislator has laid down criteria that make it possible to give effect to this fundamental principle in fixing the level of water charges. Any use of a natural good implies a burden on the environment (as per Article 3(6) of ZVO-1). The greater the extent of the use of the natural good, the greater the burden on the environment and the greater the cost of the measures that the public authority must take for the purposes of environmental protection. Therefore, the court concludes, the basic criterion for determining the amount of water compensation is the scope of the water right (Article 124(1) Water Act and Article 5(1) of the decree on the water fee[59]).

In U-I-304/04 of February 17, 2005, by challenging Article 50 of the Chemicals Act, the petitioners sought a ban on the use of pesticides containing imidacloprid on the grounds that they cause the death of bees. The Court concluded that the petitioners' contention that the precautionary principle is established only by the international legal instruments to which they refer in their petition and that, therefore, Article 50 of the Chemicals Act is incompatible with Article 8 of the Constitution because it does not take account of that principle was unfounded.

In U-I-113/00 of October 19, 2000, the petitioners challenged the regulation on the emission of substances into the air from municipal waste incinerators and the regulation on the emission of substances into the air from hazardous waste incinerators. They submitted that the implementation of the contested regulations will dangerously deteriorate the living environment, contrary to Article 72

58 The Water Act (ZV-1A) changed this principle to the principle of reimbursement of costs related to water pollution.

59 Official Gazette of the Republic of Slovenia, Nos. 103/02, 122/07, and 3/21.

of the Constitution, which guarantees the right of everyone to a healthy living environment.

As evident from the above, the right to a healthy living environment is interpreted via the classical approach. The Constitutional Court considers it a standalone fundamental right and does not categorize it only in terms of generations' rights.

In its case law, as also discussed above, the Constitutional Court has applied a number of environmental principles, such as the sustainable development principle, the principle of prevention, the precautionary principle,[60] the concept of environmental impact assessment, and the polluter pays principle.

In cases U-I-81/09 and U-I-174/09 of April 16, 2009, the municipalities of Domžale and Dobrova-Polhov Gradec challenged the Decree on Conditions and Restrictions for Activities and Spatial Interventions in Areas at Risk from Flooding and Related Erosion of Inland Waters and the Sea.[61] It was submitted that, by the contested provisions of the Decree, the State has transferred to local authorities certain State obligations in the field of protection against the harmful effects of water, contrary to the Constitution. The court found no unconstitutionality, while also explicitly referencing – without any further details – the sustainable development principle and the principle of prevention when explaining the obligation to carry out a comprehensive environmental impact assessment.

In case U-I-325/02 of January 22, 2004, the petitioners unsuccessfully challenged the decree on spatial planning conditions, stating that they live in the area of the spatial unit where the investor intends to build a biomass heating plant, which will worsen the living conditions in the area. In its decision-making, the court relied on the principle of prevention when explaining the obligation of environmental impact assessment.

In case U-I-313/04 of February 2, 2006, the petitioners unsuccessfully challenged the decree on the national location plan for the Koper-Izola highway section,[62] which defines the planning area for that section of the highway. They submitted that they have farms (even protected farms) in the area or in its vicinity and that the State will not be able to provide them with the same or similar farms because they do not exist in the wider area. In its decision when explaining the requirement of environmental impact assessment, the court also relied on the principle of prevention and the precautionary principle and stated that ZVO-1 gave special meaning to precaution by separately defining the precautionary principle in Article 8 as a fundamental principle in addition to the principle of prevention in the field of environmental protection. It emphasized that their essence is to direct norms and practices toward the prevention of the harmful consequences of human behavior for the environment.

60 For example, in U-I-140/14, the precautionary principle is explicitly mentioned in a separate concurring opinion.

61 Official Gazette of the Republic of Slovenia, Nos. 89/08 and 49/20.

62 Official Gazette of the Republic of Slovenia, No. 112/04.

3.3. Other fundamental rights related to the environment according to the Constitution

3.3.1. Right to drinking water

In addition to the basic provision of Article 72, the Constitution explicitly mentions the environment or some of its essential elements in some other provisions. As indicated above, a unique feature of the Constitution is its regulation of the right to drinking water (Article 70a). The Constitutional Court tackled water issues in a number of decisions, such as in the abovementioned Decision U-I-164/14, where regarding the provision of the local public service of drinking water supply, the applicant complained that the laws in question do not allow for the provision of substantively adequate minimum information and its assessment on the potential and actual impacts and risks of the planned spatial developments of national significance on the municipal source of drinking water. A separate opinion in the affirmative by Judge Dr. Matej Accetto stated that the position of the Court is, after all, confirmed by a constitutional provision not mentioned in the decision – the new Article 70a of the Constitution on the right to drinking water, which was added to the Constitution by a constitutional law in November 2016. The fact that the decision in the present case does not mention this article of the Constitution is, on the one hand, perhaps understandable: the disputed conduct dates back to 2012 and 2013, and the 18-month deadline for the harmonization of the laws substantively related to Article 70a has not yet expired. However, it is difficult to understand this provision in any other way than as already further underlining the importance of water resources as a constitutionally protected public good, which must now be given even greater weight in such cases of balancing.

Furthermore, in U-I-223/16 of April 23, 2020, the petitioner submitted that the organization of funeral and cemetery services was established as a prerogative of municipalities by the adoption of the Local Self-Government Act[63] and that the contested provision of law disproportionately interferes with the original competences of municipalities, as the Constitution does not expressly provide for the exclusive competences of local self-government, with the exception of the provision on drinking water and the domestic water supply (Article 70a(4) of the Constitution).

In Decision U-I-483/20 of April 1, 2021, concerning a request for a review of the constitutionality of the Act on the Provision of Funds for Investments in the Slovenian Armed Forces for the Years 2021 to 2026,[64] with respect to which the National Assembly prohibited a legislative referendum because allegedly it was a law on urgent measures to ensure the defence of the state and security as determined by

63 Official Gazette of the Republic of Slovenia, Nos. 94/07 – Official Consolidated Text, 76/08, 79/09, 51/10, 40/12 – ZUJF, 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A, and 80/20 – ZIUOOPE.

64 Official Gazette of the Republic of Slovenia, No. 175/20.

the first indent of Article 90(2) of the Constitution. The applicant claimed that Article 90(2) of the Constitution had been infringed upon in the process of the adoption of the Act, as the challenged law is not a law on urgent measures to ensure the defense of the State and security, hence, a referendum on this law should be admissible. Here, the applicant referred, by way of example, to make a point on how the text should be interpreted, to Article 70a of the Constitution, according to which the State "shall ensure" the supply of drinking water to the population and of water for domestic use.

Further, in Decision U-I-226/04 of December 1, 2005, the petitioners challenged the provisions of the Water Act, which regulate the supply of water in areas where the water supply is not provided by the public water supply network. The Constitutional Court stated that Art. 70 of the Constitution does not ensure the petitioners the right to the general use of water for the supply of their households and that the Waters Act does not exclude the general use of water but, on the basis of Art. 70(1) of the Constitution, limits it by determining special rights for its use to achieve environmental protection goals. It stressed that to achieve these goals, payment for the use of natural resources is envisaged and that the emphasized public nature of water law is also reflected in the fact that it is not possible to acquire the right to property on water. It therefore concluded that the petitioners' position that they are the owners of water resources or that these resources are under the ownership of everyone is unsubstantiated. Additionally, in this decision, albeit adopted after the entry into force of Article 70a, this specific provision guaranteeing the right to drinking water was interestingly not mentioned.

There are other relevant decisions of the Constitutional Court concerning drinking water; however, these predate the adoption of Article 70a of the Constitution.[65]

3.3.2. Other relevant constitutional provisions

Regarding the positive obligation on the part of the State to care for the conservation of natural wealth, enshrined in Article 5 of the Constitution, the Constitutional Court adopted a number of important decisions, such as the abovementioned Decisions U-I-98/04 of November 9, 2006, U-I-40/06 of October 11, 2006, Up-395/06 and U-I-64/07 of June 21, 2007, discussed further below, U-I-386/06 of March 13, 2008, and U-I-227/00 of October 10, 2001. In Decision U-I-182/16 of September 23, 2021, also mentioned above, the Court stated that Article 5(1) of the Constitution implies a duty on the part of the State to ensure the preservation of natural wealth and to create opportunities for the harmonious development of civilization and culture and that the State's obligation to ensure a high level of protection of human rights, through which nature and the environment are protected, is also derives from Article 5(1) of the Constitution, which has the particularly important message that it

65 See, for example, Decisions U-I-3/92 of September 17, 1992, U-I-32/95 of June 30, 1995, U-I-221/95 of July 3, 1997, and the above-mentioned Decision U-I-344/96 of April 1, 1999.

imposes positive duties (active conduct) on the State to protect human rights. Other decisions to be mentioned in relation to article 5 are Decision U-I-195/16 of September 17, 2020, U-I-77/93 of July 6, 1995, U-I-314/94 of March 5, 1998, and U-I-62/96 of March 5, 1999. In the latter, the Court, among others, stated that the State and the local community, as the owners of certain natural resources, have a duty of care under the adopted and ratified international treaties to ensure the exploitation of natural resources in the context of sustainable development and, under Article 5 of the Constitution, to ensure the preservation of natural resources.

It is also relevant to mention Article 67 of the Constitution, which determines the substance of the right to property and is linked to a provision in Article 33 that defines the right to private property as a fundamental human right. Article 67 provides that "The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social, and environmental function." This constitutional provision derives from the realization that property must have, in addition to its individualistic function (the exercise of human freedom in the field of property), a function for the entire social community. This realization is defined in theory as the idea of the "social commitment" of property (German: *Sozialgebundenheit*). The social commitment of property means that not only must the handling of a thing or a right remain in the sphere of decisions of the owner or holder of the right, but it must also consider the public interest. The idea of the social commitment of property is legally expressed as a commandment that the owner's right must also serve the exercise of freedom and the personal development of others or the entire social community. By determining the ecological function of property or its exercise in the public interest, the Constitution authorizes the legislator to determine the substance and limits of property rights, whereby the legislator shall also take into account the preservation of natural balance. This is reflected in a series of restrictions on the freedom of property, which means that the owner must suffer something or be required to take certain active action. It should be stressed that such legal restrictions on the freedom of property, although restricting the owner's right, are only a way of enjoying the right to property and not an encroachment on this right. Precisely because of this, the owner is not entitled to compensation as provided for expropriation and other similar encroachments on property rights. The ecological function of property is also highlighted in Article 17 of ZVO-2. It stipulates that the enjoyment of property rights or other rights to use natural resources, to respect the ecological function of property, must ensure the preservation and improvement of the quality of the environment, the preservation of natural values, and biodiversity.

Article 70 of the Constitution, which regulates public goods and natural resources, is further explained in the subchapters below; goods that can be used by anyone for a specific purpose (general use) are considered public goods regardless of who owns the property (e.g., water and coastal land), and the conditions for the utilization of natural resources are regulated by law.

Article 71 of the Constitution regulates the protection of land. Paragraph one provides that "The law shall establish special conditions for land utilisation in order to

ensure its proper use." This constitutional requirement can only be met by spatial and construction legislation, which appropriately includes in its instruments (planning, impact assessment, permitting, monitoring, active land policy measures, etc.) regulatory requirements for environmental protection and natural resource management and cultural heritage conservation. Land use planning as a limited natural resource requires a confrontation of different private and public interests. It requires comprehensive consideration and coordination of economic, social, and environmental aspects of space. In addition to deliberate encroachment on space, including protection against excessive construction, constitutional protection also includes the protection of pedological characteristics (at least to a certain extent) of land, protection against excessive soil pollution, and remediation of degraded areas.[66] Paragraph two stresses the protection of agricultural land, which is also concretized by the Agricultural Land Act (*Zakon o kmetijskih zemljiščih* – ZKZ),[67] stipulating, *inter alia*, the conditions for changing the purpose of agricultural and forest areas into building land. The purposeful use of agricultural land is also stressed in the requirement that the land must be used in accordance with its purpose and to prevent its pollution or other degradation and pollution or other inhibition of plant growth.

As previously indicated in subchapter I.1., Article 73 of the Constitution regulates the protection of natural and cultural heritage. First, the general obligation of protection is defined: "Everyone is obliged in accordance with the law to protect natural sites of special interest, rarities, and cultural monuments." This provision is primarily the grounds for the adoption of regulations penalizing misuse and interference. Paragraph two sets out the obligation of the State and local communities to ensure the preservation of natural and cultural heritage. The provision is programmatic, as it fails to create self-executing state obligations. Therefore, individuals cannot exercise any rights based on it or resort to legal remedies before the courts.[68] The relevant Constitutional Court's jurisprudence concerning Article 73 can be found, for example, in Decisions U-I-81/93 of May 12, 1994, U-I-314/94 of March 5, 1998, Up-395/06, U-I-64/07 of June 21, 2006, U-I-386/06 of May 22, 2008, U-I-182/16 of September 23, 2021, U-I-76/07 of December 6, 2007, and U-I-37/10 of April 18, 2013. In Decision U-I-195/16 of September 17, 2020, the Court observed that notwithstanding the fact that Article 73(2) of the Constitution does not explicitly refer to the law, it is clear that the State can only implement this positive obligation on the basis of appropriate legislation, as the Constitution itself does not precisely define the content and scope of those values the preservation of which is of inestimable importance for the future. It continued to state that both the content and extent of natural wealth and the way in which it is protected today in order to ensure its preservation for future generations are, therefore, by their very nature, left to

66 Pucelj Vidovič in Komentar 2019 I, p. 569.

67 Agricultural Land Act (Official Gazette of the Republic of Slovenia, No. 71/11 – official consolidated text, 58/12, 27/16, 27/17 – ZKme-1D and 79/17).

68 Letnar Černič in Komentar 2019 I, p. 582.

the law. Finally, Article 73 of the Constitution has also been applied many times by general courts in Slovenia.[69]

In relation to the protection of the environment through the invocation of rights related to political freedoms, it is relevant to mention that the Constitution also contains an explicit provision regulating the right to information (Article 39, Freedom of Expression), which, in the relevant portion (para. 2), states, "Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well-founded legal interest under law." Although there is no direct reference to the environment in this provision, the Constitutional Court explicitly recognized that the rights under the Aarhus Convention, including access to environmental information, can be directly applied in Slovenia (see the analysis of constitutional jurisprudence). Further, the fair trial guarantees are included in a number of articles of the Constitution, such as Article 22 (Equal Protection of Rights), Article 23 (Right to Judicial Protection), Article 24 (Public Nature of Court Proceedings), and Article 25 (Right to Legal Remedies). Similarly, as with the right to information, these provisions do not directly mention the environment; however, as the analyzed jurisprudence demonstrates, these rights are also important in cases of "environmental litigation". Furthermore, and perhaps in an indirect manner, the following participatory rights may be relevant for expressing environmental ideas and protests: Article 42 (Right of Assembly and Association), Article 44 (Participation in the Management of Public Affairs), and Article 45 (Right to Petition), which can be relied upon in environmental action.

3.4. Environmental principles in the jurisprudence of general courts in Slovenia

A number of Slovenia's general courts[70] have further specified the normative content of constitutional provisions. For example, in its Decision I Up 221/2019, in which the plaintiff brought an action against the decision of the Inspectorate of the Environment and Spatial Planning of the Republic of Slovenia and which ordered the plaintiff to remove in its entirety an illegally dumped excavation that it had introduced without having obtained an environmental permit for the recovery of waste, the Supreme Court referred to the principle of prevention and

69 The Supreme Court referred to it, for example, in the Decision I Up 134/2011, the Decision X Ips 134/2013 and in the Judgment I Up 101/2003 Further, the Higher Court addressed it in decisions, such as Decision II Cp 2950/2013, Decision I Cp 1931/2013, Decision II Cp 926/2011, Judgment and Decision I Cp 2111/2004, Decision II Cp 3538/2014, Decision II Cp 1866/2015 and Decision I Cp 501/99. Finally, the Administrative Court tackled article 73 in judgments, such as the Judgment I U 502/2013, Judgment I U 2541/2018-26, Judgment I U 102/2018-17 and the Decision IV U 44/2021-7.

70 The court system of the Republic of Slovenia consists of general and specialized courts. General courts operate at four levels: local and district courts (first-instance courts), higher courts, which allow appeals against first-instance courts, and the Supreme Court, which is the highest court in the country. Available at: https://www.gov.si/en/policies/rule-of-law-and-justice/the-judicial-system/ (Accessed: 1 August 2022).

the precautionary principle. In its Judgment X Ips 36/2019, addressing a case in which the Court of First Instance dismissed the action brought by the applicants against the decision of the Inspectorate of the Environment and Spatial Planning of the Republic of Slovenia ordering the first applicant to collect 347 used tires and hand them over to a collector of used tires within two months of notification of the decision, it again referred to the principles of prevention and the precautionary principle. Additionally, in its Judgment Cp 643/2013 concerning the defendant's property, which the defendant occupies for active leisure and gardening purposes and which does not constitute a dwelling and is, therefore, not subject to compulsory collection of municipal waste, the Higher Court Celje stated that the basic act regulating environmental protection is ZVO-1, which provides in Article 1 that this Act regulates the protection of the environment against pollution as a prerequisite for sustainable development and, in this context, lays down the basic principles of environmental protection, environmental protection measures, environmental monitoring, and information on the environment – the sustainable development principle. Further, in its Judgment II Cp 2420/2013 in a dispute over the veracity of information labeling gaming mats as unsafe and the due diligence involved in publishing such information, the Higher Court Ljubljana referred to the precautionary principle. A number of the Administrative Court's judgments also refer to the mentioned environmental principles.[71]

It can be argued on the basis of jurisprudential analysis that a number of principles have a strong normative effect, in particular, the sustainable development principle, the principle of prevention, precautionary principle, and polluter pays principle.

4. High protection of natural resources in Slovenia's Constitution

The protection of natural resources appears *expressis verbis* in Slovenia's Constitution. Namely, Article 70 (Public Goods and Natural Resources) provides the following:

> Special rights to use a public good may be acquired, subject to conditions established by law. The conditions under which natural resources may be exploited shall be

71 See, for example, Judgment II U 404/2020-23 (polluter pays principle), Judgment I U 1729/2017-18 (principle of prevention, precautionary principle), Judgment I U 2135/2018-17 (precautionary principle), Judgment III U 115/2009 (principle of prevention, sustainable development principle), Judgment III U 16/2017-46 (polluter pays principle), Judgment I U 1435/2016-38 (sustainable development principle, public participation, access to information).

established by law. The law may provide that natural resources may also be exploited by foreign persons and shall establish the conditions for such exploitation.

Article 70 regulates two different matters, namely public goods and natural wealth. While these are two separate concepts, the commonality is the regulation of the relations concerning the use of these socially important goods by the regulator, which is why they are closely connected to Articles 33 (Right to private property and inheritance), 67 (Property), and 69 (Expropriation).[72] Article 67 is particularly important in this regard, as it allows the regulator to limit the right to property by requiring that "The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function."

The fact that the concept of natural wealth is not clearly defined can be attributed to a change in consciousness. From the realization that all natural resources are limited, we can conclude that every natural resource is also a form of natural wealth.[73] The use of a natural good can only be such that it does not endanger the environment or its part, which has the status of a natural public good, and its natural role is not excluded. Consequently, the legislator must regulate the conditions for the special use of the public good. This represents a restriction of general use, which is not unconditional, as it is necessary to ensure its preservation or improvement. The State can promote the economic and social development of a society that takes into account equal opportunities to meet the needs of future generations and enables the preservation of the environment.[74]

5. Regulation of issues regarding responsibility in Slovenia's Constitution

Slovenia's Constitution does not explicitly mention the responsibility of a State in relation to the environment, but it does stipulate (Article 72 para. 3) that "The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation", which has been used in relevant jurisprudence as explained above. A person who damaged the living environment is any legal or natural person that directly or indirectly, exclusively or simultaneously, pollutes the environment.

72 Pucelj Vidovič in Komentar 2019 I, p. 560.
73 Ibid.
74 Avbelj and Šturm, 2011, pp. 1015–1020.

6. Other values relevant to the protection of the environment in the Constitution

Slovenia's Constitution contains a relatively broad range of fundamental rights and freedoms, many of which can be linked to environmental protection institutions.

The most general provision to which legal protection of the environment can be linked is the provision of Article 2 of the Constitution that Slovenia is a state governed by the rule of law and a social state. Article 5 of the Constitution also builds on this general provision and is one of the general provisions of the constitutional order of the Republic of Slovenia, that is, one of the provisions forming the basis of the constitutional order and is a guiding principle for the interpretation of provisions in further chapters of the Constitution.[75] The provision reads as follows: "In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for the autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. It shall provide for the preservation of the natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia."

At the principle level, the provisions of Article 5 stress the protection of human rights and fundamental freedoms as a special task and responsibility of the State. In this respect, this article is the basis of the catalog of human rights and fundamental freedoms of those constitutional provisions that define individual rights and freedoms. The provision obliges the State not only to "protect" human rights and fundamental freedoms, the rights of autochthonous minority national communities, and the rights of their members but also to "maintain concern" for our autochthonous minorities in neighboring countries and to "maintain concern" for Slovenian emigrants and expatriates. It also commits the State to "provide" for the preservation of natural resources and cultural heritage.[76]

The case law of the Constitutional Court, as discussed above, often refers to Article 5 of the Constitution in decisions related to the environment and nature, especially if general and principled issues of legal protection arise. In its decision U-I-40/06 of October 11, 2006, the Court stated, "The ZVO-1 does not interfere with the property rights of forest owners by providing that game is state property. Under general provisions, Article 5 of the Constitution sets out certain positive obligations of the State, including the preservation of natural wealth. The State has acted in accordance with its powers under Articles 5 and 70 of the Constitution in determining that game is the property of the State and no one else's property. Therefore, the contested legislation did not interfere with the right to private property under Article 33

75 Petrič in Komentar 2019 II, p. 77.
76 Ibid.

of the Constitution. The Constitutional Court did not have to decide in the present case whether a different regulation would also be compatible with the provisions of Articles 5 and 70 of the Constitution. Under Articles 5 and 70 of the Constitution, the legislator is obliged to determine by law the conditions for the exploitation of natural resources, the conditions for the use of land, the conditions and manner of carrying out economic and other activities in order to fulfill the State's concern for a healthy living environment." Furthermore, in its Decision U-I-182/16 of September 23, 2021, the Court stated, "The starting point for regulatory protection of the environment is already to be found in the general provisions of the Constitution. Article 5(1) of the Constitution implies a duty on the part of the State to ensure the preservation of natural wealth and to create opportunities for the harmonious development of civilisation and culture. This duty is derived from several provisions in the chapter on economic and social relations.

At the same time, the State's obligation to ensure a high level of protection of human rights, through which nature and the environment are protected, also derives from Article 5(1) of the Constitution, which has the particularly important message that it imposes positive duties (active conduct) on the State to protect human rights." Finally, in its Decision U-I-227/00 of October 10, 2001, it found that "The contested acts changed the use from manufacturing, warehousing, and terminals to residential and ancillary activities. All the former industrial buildings in the area were to be demolished and a new part of the development was to be built on the vacant land. The petitioners state that, although they do not object to the change of use of the area in question, they contest the procedure for the preparation and adoption of the acts in question. Since space is a natural asset and an irreplaceable asset, the State must ensure that the conditions under which it is used are such as to preserve it from the point of view of environmental protection, as well as from the point of view of its landscape and townscape."

7. Financial sustainability

7.1. General

Slovenia's Constitution determines financial sustainability only in connection with the state budget but fails to mention financial sustainability in connection with specific tasks or individual rights. From this perspective, Articles 148 (2) and 148 (3) of the Constitution are important; they stipulate the following: "(2) Revenues and expenditures of the budgets of the state must be balanced in the medium-term without borrowing, or revenues must exceed expenditures. (3) Temporary deviation from this principle is only allowed when exceptional circumstances affect the state."

However, regarding the financial sustainability of the budget, the essential tasks of the budget are stressed, and in particular, the commitment of sufficient resources to pursue various policies, such as rural development and agriculture, together with environmental protection policies, which are intended to create and provide conditions for healthy living and conservation of natural resources.[77]

One also cannot find any special provisions in the Constitution that would regulate in more detail the provision of financial resources for sustainable development or responsibility to future generations. Despite references to sustainable development and future generations in constitutional jurisprudence, as explained above, no further details in relation to financial sustainability have been provided. Unfortunately, this is an area that Slovenia should carefully consider further.

7.2. National assets and national resources

Article 70 of the Constitution, also discussed above, regulates two different matters: national assets and natural resources.

The basic legal consequence arising from the Constitutional Court decisions is the legislator's obligation to regulate legal relations concerning the use of socially important goods; thus, this constitutional provision is closely related to other constitutional provisions governing property rights, their restrictions, nature, and a healthy living environment.

Article 70 (1) is the basis of the legal regulation of national assets. According to their purpose, national assets can be used by anyone under the same conditions (general use). In Roman law, they were referred to as *"res publicae, quae in uso publico habentur"*. The law determines what qualifies as a national asset and prescribes the conditions for their use. The law may stipulate that only the State or the local community has the right of ownership over a certain type of national asset. Most importantly, no one, including the State, has exclusive rights to such assets in the sense of the absoluteness of the right to property. The role of the State is limited to the obligation to ensure that these assets can be used by everyone under the same conditions and that a special right of use can be acquired for national assets under legally determined conditions. National assets cannot be part of legal transactions. Therefore, these goods are intended for general and equal use by citizens, and they and must comply with the regulations under which these goods may be used. This use may be carried out only strictly pursuant to the purpose of the individual thing or asset or in the usual and socially recognized way. The use shall be anonymous and permitted to all persons. However, no one may use the national asset in such a way that their use can exclude all others or make their use more difficult. Roads, waters, and certain land, such as water and coastal lands, are considered to be national assets. Special use is the right of a certain person to use a national asset in a way that is not contained in general use. The right of special use is granted by

77 Arhar in Komentar 2019 II, p. 374.

the body managing the assets for general use. This right cannot be transferred to another or can only be transferred with the consent of the body managing it. In any case, special use is limited. Its substance is determined by an administrative permit, which is sometimes granted indefinitely, sometimes only for a limited time, and sometimes only until revoked. It can also be granted only under certain other conditions if these are specified in the law as such. A typical example is the use of a natural watercourse to operate a mill or similar device. The Constitutional Court in the Decision U-I-226/04 of December 1, 2005, stated, "The petitioners challenge the provisions of the Water Act referred to in the operative part of the judgment, which regulate the supply of water in areas where the water supply is not provided by the public water supply network. They submit that many people are supplied with water from their own water sources and from a network which they have built themselves. The contested provisions of ZV-1 require them to obtain a water right for that water supply, which must be paid for. Otherwise, the contested provisions of ZV-1 provide for a fine and the possibility of being prohibited from using the water. Therefore, under Article 70(1) of the Constitution, the legislator is obliged to regulate the conditions for the special use of public goods. These conditions are adapted to the fact that the special use constitutes an exception to the rule that the use of the public good is open to all on equal terms."

Article 70 (2) refers to the concept of natural resources. The constitutional provision provides only a general framework, which is divided into several special laws. Unfortunately, notion of natural resources is not clearly defined in any particular. Some special laws expressly define individual elements of nature as (natural) resources. Thus, Article 1 (2) of the Game and Hunting Act speaks of the game as a natural resource.[78] Article 4 (1) of the Mining Act provides similarly[79] that mineral raw materials shall be mineral resources owned by the Republic of Slovenia as a natural resource. In other laws, however, one can only infer indirectly that a thing has the property of a natural resource.

The right to property and the manner of management, use, or exploitation of natural resources are regulated by law. Some natural resources are state property. The legislation still explicitly establishes state ownership of game and mineral resources, thus excluding these natural assets from the property rights of the owner of the land on which they are located. Irrespective of property, the legal regime that defines the exploitation or management of a certain natural asset should ensure the preservation of its natural role. In this sense, Article 163 (1) of the former ZVO-1 stipulated that natural resources shall be under the special protection of the state or municipality. Their ecological function was being strengthened as the idea of sustainable use of resources in production and consumption and the concept of the

78 Game and Hunting Act (Official Gazette of the Republic of Slovenia, No. 16/04, 120/06 – CC decision, 17/08, 46/14 – ZON-C, 31/18, 65/20, 97/20 – corr. and 44/22).

79 Mining Act (Official Gazette of the Republic of Slovenia, No. 14/14 – official consolidated text, 61/17 – GZ and 54/22).

circular economy entered into law. Simultaneously, the social regime was often strongly emphasized in the legal regimes of individual types of natural resources (forest, coastal land, water).[80] For some unknown reason, this provision was deleted from the new ZVO-2.

8. Conclusions

In Slovenia, the protection of the environment falls under the scope of the protection of fundamental rights, and it is a task of the State, meaning the task of the Government as well as municipalities. As the jurisprudential analysis demonstrated, other fundamental rights may be subject to restrictions with reference to the protection of the environment (e.g., the right to free economic initiative). The Constitutional Court and other courts in Slovenia regularly address environmental matters and, with their interpretation in the case of the former and their application in the case of the latter, of the relevant constitutional provisions contribute in an important way to the tradition of environmental protection in Slovenia.

Although no Constitutional provision explicitly mentions the rights of future generations, the case law demonstrates that these rights do appear in the *dicta* of the Constitutional Court judges. Moreover, as all of the "environmental rights" are, in effect, also, by their purpose, "pro futuro" rights, it is perhaps interesting to mention Article 55 (Freedom of Choice in Childbearing) of the Constitution, which states the following: "Everyone shall be free to decide whether to bear children. The state shall guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children."

Therefore, by placing an obligation on the State to create conditions that enable decision-making for having children, in the future, this could also be progressively interpreted as an obligation to guarantee conditions of a healthy environment the children would be born into.

Finally, given the mentioned Constitutional stipulation in Article 159 para. 2, it would be advisable and in accordance with Slovenia's policy documents and statements to establish a position of a "special ombudsmen for the rights of citizens" in the field of environmental protection.

80 Pucelj Vidovič in Komentar 2019 I, 561; Arhar in Komentar 2019 II, p. 375.

Bibliography

Avbelj, M. (ed.) (2019) *Komentar Ustave Republike Slovenije ['Commentary of the Constitution of the Republic of Slovenia']. Book I and Book II.* Ljubljana: Nova univerza, Evropska pravna fakulteta.

Avbelj, M., Šturm, L. (2011) *Komentar Ustave Republike Slovenije – dopolnitev A ['Commentary of the Constitution of the Republic of Slovenia – Supplement A']*. Kranj: Fakulteta za državne in evropske študije.

Damjan M. (2011) *Množični zahtevki zaradi posegov v zdravo življenjsko okolje ['Mass claims for interference with a healthy living environment']*. Ljubljana: Pravni letopis.

Grad F., Kaučič I., Zagorc S. (2020) *Ustavno pravo ['Constitutional Law']*. Ljubljana: Pravna fakulteta v Ljubljani.

Jadek Pensa D. (2009) 'Pravica do zdravega življenjskega okolja in denarna odškodnina za nepremoženjsko škodo' ['Right to a healthy living environment and financial compensation for non-material damage'], *Podjetje in delo*, 2009/6–7, pp. 1320–1333.

Juhart M., Plavšak N. (eds.) (2003) *Obligacijski zakonik s komentarjem ['Obligations Code with Commentary']. Book 1.* Ljubljana: Gospodarski vestnik.

Karlovšek S. (2016) *Varstvo okolja z instituti civilnega prava ['Environmental protection through civil law']*. Ljubljana: Pravna fakulteta v Ljubljani.

Možina D. (2016) 'Nepremoženjska škoda zaradi posega v pravico do zdravega življenjskega okolja: odškodninska odgovornost države za cestni hrup' ['Non-pecuniary damage for interference with the right to a healthy living environment: the State's liability for road noise'], *Podjetje in delo,* 42(1), pp. 21–47.

Peterlin S., Novak D., Kos M., Slivnik F. (1972) *Zelena knjiga o ogroženosti okolja v Sloveniji ['Green Paper on environmental threats in Slovenia']*. Ljubljana: Prirodoslovno društvo Slovenije, Zavod za spomeniško varstvo SR Slovenije.

Pichler D. (2009) 'Odgovornost za okoljsko škodo po ZVO-1B' ['Liability for environmental damage under the Environmental Protection Act-1B'], *Podjetje in delo*, 35(6–7), pp. 1312–1319.

Pličanič S. (2003) *Temelji ekološkega prava ['Foundations of Environmental Law']*. Ljubljana: Cankarjeva založba.

Pličanič S. (ed.) (2010) *Komentar Zakona o varstvu okolja ['Commentary of the Environmental Protection Act']*. Ljubljana: Inštitut za javno upravo.

Samac A. (2020) 'Pravica do zdravega okolja v Evropski uniji in Sloveniji' ['The right to a healthy environment in the European Union and Slovenia'], *Urbani izziv*, 2020/10, pp. 115–121.

Vrbica Šifkovič S. (2020) 'Varstvo okolja v slovenski pravni praksi' ['Environmental protection in Slovenian legal practice'], *Podjetje in delo,* 46(6–7), pp. 962–969.

Legal Sources

Act on Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Official Gazette of the Republic of Slovenia – MP, No. 17/04).

Act on Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Official Gazette of the Republic of Slovenia – MP, No. 17/02).

Act on Ratification of the Paris Agreement (Official Gazette of the Republic of Slovenia – MP, No. 16/16 and 6/17).

Act on the Provision of Funds for Investments in the Slovenian Armed Forces for the Years 2021 to 2026, Official Gazette of the Republic of Slovenia, No. 175/20.

Agricultural Land Act (Official Gazette of the Republic of Slovenia, No. 71/11 – official consolidated text, 58/12, 27/16, 27/17 – ZKme-1D and 79/17).

Code of Obligations (Official Gazette of the Republic of Slovenia, Nos. 97/07 – official consolidated text, 64/16 – CC decisions and 20/18 – OROZ631).

Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, which was adopted on 25 November 2016 and entered into force on 25 November 2016 (Official Gazette of the Republic of Slovenia No. 75/16).

Criminal Code (Official Gazette of the Republic of Slovenia, Nos. 50/12 – official consolidated text, 6/16 – amended, 54/15, 38/16, 27/17, 23/20, 91/20, 95/21 in 186/21).

Cultural Heritage Protection Act (Official Gazette of the Republic of Slovenia, Nos. 16/08, 123/08, 8/11 – ORZVKD39, 90/12, 111/13, 32/16 and 21/18 – ZNOrg).

Decree on Conditions and Restrictions for Activities and Spatial Interventions in Areas at Risk from Flooding and Related Erosion of Inland Waters and the Sea, Official Gazette of the Republic of Slovenia, Nos. 89/08 and 49/20.

Decree on the national location plan for Koper-Izola highway section, Official Gazette of the Republic of Slovenia, No. 112/04.

Decree on the water fee, Official Gazette of the Republic of Slovenia, Nos. 103/02, 122/07 and 3/21.

Environmental Protection Act (ZVO-1) (Official Gazette of the Republic of Slovenia, Nos. UPB, 49/06 – ZMetD, 66/06 – CC decision, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108 / 09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15, 30/16, 61/17 – GZ, 21/18 – ZNOrg, 84/18 – ZIURKOE and 158/20).

Environmental Protection Act (ZVO-2) (Official Gazette of the Republic of Slovenia, No. 44/22).

Foreign Affairs act (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 113/03, 20/06 – ZNOMCMO, 76/08, 108/09, 80/10 – ZUTD, 31/15 in 30/18 – ZKZaš).

Game and Hunting Act (Official Gazette of the Republic of Slovenia, No. 16/04, 120/06 – CC decision, 17/08, 46/14 – ZON-C, 31/18, 65/20, 97/20 – corr. and 44/22).

Human Rights Ombudsman Act, Official Gazette of the Republic of Slovenia, No. 69/17.

Local Self-Government Act, Official Gazette of the Republic of Slovenia, Nos. 94/07 – Official Consolidated Text, 76/08, 79/09, 51/10, 40/12 – ZUJF, 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A and 80/20 – ZIUOOPE.

Mining Act (Official Gazette of the Republic of Slovenia, No. 14/14 – official consolidated text, 61/17 – GZ and 54/22).

Nature Conservation Act (Official Gazette of the Republic of Slovenia, Nos. 96/04 – UPB, 61/06 – ZDru-1, 8/10 – ZSKZ-B, 46/14, 21/18 – ZNOrg, 31/18, 82/20 and 3/22 – ZDeb).

Public Information Access Act, Official Gazette of the Republic of Slovenia, No. 51/06, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – decisions of the Constitutional Court, Nos. 102/15 in 7/18).

Resolution on long-term climate strategy of Slovenia up to 2050 (ReDPS50), Official Gazette of the Republic of Slovenia, No. 119/2021.

Spatial Planning Act (Official Gazette of the Republic of Slovenia, Nos. 33/07, 70/08 – ZVO-1B, 108/09, 80/10 – ZUPUDPP, 43/11 – ZKZ-C, 57/12, 57/12 – ZUPUDPP-A, 109/12, 76/14 – odl. US, 14/15 – ZUUJFO, 61/17 – ZUreP-2 in 199/21 – ZUreP-3).

The Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a).

Water Act, Official Gazette of the Republic of Slovenia, Nos. 67/02, 2/04 – ZZdrI-A, 41/04 – ZVO-1, 57/08, 57/12, 100/13, 40/14, 56/15 and 65/20.

Chapter XI

Constitutional Protection of the Environment and Future Generations in Certain Central European Countries

János Ede Szilágyi

This paper is based on the eight national chapters of the book titled *Constitutional protection of the environment and future generations – Legislation and practice in certain Central European countries.*[1]

The *Central European Professors' Network* research, funded by the *Central European Academy*, looked at the specificities of certain Central and Eastern European countries, specifically the Visegrad countries (Poland,[2] the Czech Republic,[3] Slovakia, and Hungary[4]), certain Southern Slavic countries (Slovenia, Croatia,[5] and Serbia[6]) and Romania,[7] in terms of constitutional protection of the environment and future generations. These countries, with the exception of Serbia, are Member States of the European Union, but Serbia is also a candidate country for EU membership, which means that the EU's sustainability and environmental objectives and related

1 The Romanian parts of this academic paper are based on Benke, 2022, the Slovenian parts on Juhart and Sancin, 2022, the Polish parts on Majchrzak, 2022, the Slovakian parts on Maslen, 2022, the Czech parts on Radvan, 2022, the Serbian part on Savčić, 2022, and the Croatian parts on Staničić, 2022a. For Hungarian legislation, Szilágyi, 2019, Szilágyi 2021a, and Szilágyi 2021b were important research precedents; in addition, Krajnyák 2022 forms the basis for the Hungarian parts of the chapter.

2 C.f. Habuda, 2019, pp. 107–121; Rakoczy, 2021, pp. 121–129.

3 C.f. Židek, 2021, pp. 145–160.

4 C.f. Fodor, 2006; Bándi, 2020b, pp. 7–22; Bándi, 2020c, pp. 49–66; Szilágyi, 2019, pp. 88–112; Szilágyi, 2021b, pp. 130–144; Orosz et al., 2021, pp. 99–120; Hojnyák, 2021, pp. 39–54; Paulovics and Jámbor, 2022, pp. 98–111; Szilágyi, 2021a, pp. 211–214.

5 C.f. Ofak, 2021, pp. 85–98.

6 C.f. Miščević and Dudás, 2021, pp. 55–69.

7 C.f. Kokoly, 2022, pp. 58–78.

János Ede Szilágyi (2022) Constitutional Protection of the Environment and Future Generations in Certain Central European Countries. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 479–526. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_12

regulations are not irrelevant for Serbia. However, it is important to note that there are no international or European Union[8] rules that determine the constitutional rules that a sovereign country should adopt to protect the environment or future generations, that is, individual countries have a great deal of freedom in the development of their constitutions and related constitutional case law. All of the commitments that they have made in their constitutions and that they follow in the development of their constitutional practice should be assessed in consideration of this freedom. It is important to stress that if a country has few provisions in its constitution on the protection of the environment or future generations, this does not mean that a country does not guarantee a high level of environmental protection. Likewise, the frequent mention of the environment and future generations in a constitution is not in itself a guarantee of a high level of protection.

Regarding the specificities of each country, it is important to note that Czech constitutional law consists of a so-called constitution in the narrow sense and a complementary charter of fundamental rights. The Constitution of the Czech Republic, that is, the country's constitution *sensu stricto*, does not contain fundamental rights and freedoms, but these are set out in a separate document called the Charter of Fundamental Rights and Freedoms (often referred to as the 'Charter'). The two together form the so-called Czech constitutional order, which can be understood as the Czech Constitution in a broad sense (i.e., constitution sensu lato). Unless referred to otherwise in the specific expression, in this study, the Czech Constitution is understood as a constitutional order consisting of two documents, as a constitution sensu lato, or as a constitution in the broader sense.

The criteria for the research, i.e., the comparison, are predefined. Some elements of the comparative criteria were based on the criteria of a Hungarian law professor, *László Fodor*,[9] who carried out a comparison of constitutional law on the subject of environmental protection about a decade and a half ago. However, we have added additional criteria to those he examined, and based on them, the most important comparison criteria and questions are outlined here. (a) First, we looked at who in the country concerned are the key players in that country's constitutional system who ensure or help ensure the protection of the environment and future generations. Here, we were particularly interested to explore how, in addition to the classical major branches of power—typically national parliaments, governmental and administrative bodies, and ordinary courts—other institutions of importance to the constitutional order of a country, such as constitutional courts, ombudsmen, presidents of republics, or other institutions specifically created for this purpose and possibly specified in the constitution, influence the relevant case law of a country. (b) The next aspect of the comparison was fundamental rights, namely which fundamental rights in the constitution or in constitutional practice contribute to the protection of the environment or future generations and how. (c) A further aspect of

8 See Csák and Gyurán, 2008, pp. 559–576.
9 See Fodor, 2006, pp. 37–40; Fodor, 2014, pp. 103–105.

the comparison was the environmental responsibility issues in the respective constitution and in constitutional practice. An important question here was whether, in addition to the responsibility of citizens or other domestic legal persons and the State, the constitution and constitutional practice also cover the responsibility of international actors. (d) Another perspective is whether political freedoms, especially those of an informational or participatory nature, have a *sui generis* legal institution in the constitution or in constitutional case law that is specifically linked to environmental protection. (e) The *expressis verbis* protection of natural resources in the constitution or in constitutional practice was a further point of comparison. (f) The *expressis verbis* specification of future generations in the constitution or in constitutional practice, or, if this category is so specified, the nature of the protection afforded to them was also a point of comparison. (g) Likewise, the *expressis verbis* mentioning and protection of sustainable development and sustainability was also an aspect that was explored. (h) A particular type of sustainability, financial sustainability, which is *expressis verbis* the protection of the environment or future generations, was identified as a specific aspect to be examined. (i) The comparative criterion in relation to national assets has become whether, in this context, the constitution or constitutional practice *expressis verbis* includes the protection of the environment or future generations. (j) The next aspect of the comparison was whether there might be other values in the constitution or in constitutional practice that have not been previously characterized and that might be relevant to the protection of the environment or future generations. (k) Finally, I was also interested to know whether, in addition to the above, there might be other legal institutions in the constitution or constitutional practice of the country concerned that still *expressis verbis* serve to protect the environment or future generations.[10]

1. Conceptual issues in the Constitution and constitutional practice

Our research gave priority to the issue of whether the constituent or other body empowered to interpret the constitution considers it important to create a specific concept of constitutional law in relation to fundamental phenomena such as the environment, natural resources, future generations, and sustainable development. There are also a number of international, EU and national *hard* and *soft laws* on these phenomena, but the constituent body or a body interpreting the constitution of a

10 Among the criteria to be examined, a bonus question was whether a country's constitution contains any specific provision on climate protection and, in addition, whether a country's legal system has any institution for a so-called 'climate emergency'. However, given that this has not been specifically highlighted by the researchers, we have not addressed it in this analysis.

given country does not necessarily have to adopt these concepts of soft and hard law, and other approaches may also be applied in national constitutional law. Indeed, we believe that a specific definition of these fundamental issues could open up new dimensions of constitutional protection. The related features of the constitutional law of each country are summarized in Tables 1 to 4 and their explanations.

Table 1 – The definition of the environment in the constitution

Country	Constitutional feature
Poland	The Polish Constitution *expressis verbis* refers to the 'environment' and 'healthy environment', and although the constitution itself does not contain a specific concept of the environment, the case law of the Polish Constitutional Court does refer to it, stating that the concept of the environment in constitutional law does not necessarily have to be the same as the concept of the environment at the statutory, that is, sub-constitutional, level.
Czech Republic	The Czech constitutional order *expressis verbis* refers to the environment. While the constitutional level itself does not contain a specific definition of the environment, the case law of the Czech Constitutional Court already states that the environment is a 'public good (value)' and a form of 'natural wealth'.
Slovakia	The Slovak Constitution *expressis verbis* mentions the environment but does not contain a specific concept of the environment, nor has the Slovak Constitutional Court developed a similar category.
Hungary	The Hungarian Fundamental Law refers to the environment *expressis verbis* but does not contain a specific concept of the environment. In contrast, the case law of the Hungarian Constitutional Court already mentions certain environmental elements (land, water, air, living environment; later also the built environment).
Slovenia	The Slovenian Constitution refers to the environment *expressis verbis*, in some places accompanied by the adjectives 'living' or 'healthy living'. Furthermore, the Slovenian Constitution does not contain a specific concept of the environment.
Croatia	The Croatian Constitution considers the protection of the environment and nature to be among the 'highest constitutional values' of the Croatian constitutional order. Only the Croatian Constitution contains a concept of the environment.
Serbia	The Serbian Constitution expressis verbis mentions the environment but does not contain a specific concept of the environment, nor has the Serbian Constitutional Court developed a similar category.
Romania	The Romanian Constitution refers to the environment expressis verbis, in some places with the adjectives 'healthy', 'well preserved', and 'balanced'. The Romanian Constitutional Court has also not developed a similar category.

The Croatian Constitution is the only constitution to contain a concept of the 'environment' beyond the *expressis verbis* naming of the environment. The protection of the environment itself appears as one of the highest 'values' of the Croatian constitutional order, which helps interpret the constitution,[11] and the constitution also specifically mentions 'natural resources' and 'parts of nature' and recognizes 'goods of ecological importance'.[12] The Czech Constitutional Court defines the environment (a) as a 'public good (value)'[13] and a 'natural wealth'[14.] The Polish Constitutional Court has already dealt with the definition of the environment in its own interpreting the Constitution,[15] stating that the constitutional concept of the environment is autonomous and cannot be assessed solely on the basis of legal terminology. This is not contradicted by the fact that in the case law of the Polish Constitutional Court, there are also examples of cases in which it has based its judgment on an approach closer to the statutory concept of the environment.[16] In a later ruling, however, the Polish Constitutional Court ruled that the Polish Constitution's concept of the environment does not include farm animals; only wild animals and wildlife are part of the environment.[17] Certain environmental elements are mentioned in the practice of the Hungarian Constitutional Court.[18]

Table 2 – The definition of the natural resources in the constitution

Country	Constitutional feature
Poland	The Polish Constitution does not contain a specific concept of natural resources, nor does it provide *expressis verbis* for their special protection.
Czech Republic	Although the Czech constitutional order recognizes the category of natural resources and provides for their protection *expressis verbis* in Article 7 of the Czech Constitution in the narrow sense (i.e., constitution sensu stricto), it does not contain a specific, detailed, or partial concept of natural resources.

11 Article 3 of the Croatian Constitution.

12 "Special protection is given to the sea, the coast and islands, water resources, airspace, minerals and other *natural resources*, as well as land, forests, fauna and flora, *other parts of nature*, real estate and *specific assets of cultural, historical, economic or ecological importance*, which are classified by law as being in the interests of the Republic of Croatia." Article 52 of the Croatian Constitution.

13 Decision No. III. ÚS 70/97 of 10.7.1997 of the Czech Constitutional Court

14 Decision No. IV. ÚS 652/06 of 21.11.2007 of the Czech Constitutional Court

15 Decision No. Kp 2/09 of 13.05.2009 of the Polish Constitutional Court.

16 Decision No. Kp 2/09 of 13.05.2009 of the Polish Constitutional Court.

17 Decision No. K 52/13 of 10.12.2014 of the Polish Constitutional Court. The literature notes that cultural heritage does not fall within the objective scope of the concept of the environment in the constitution; Majchrzak, 2022.

18 Paragraphs 69, 72, 82–83 of Decision No. 16/2015. (VI. 5.) of the Hungarian Constitutional Court.

Country	Constitutional feature
Slovakia	The Slovak Constitution defines the category of 'natural resources' and gives *expressis verbis* protection to natural resources. The Slovak Constitution contains a concept of natural resources by naming certain types of natural resources. It provides additional specific protection for certain types of natural resources, such as water, agricultural land, and forest land.
Hungary	The Hungarian Fundamental Law mentions certain natural resources (arable land, forests, water) by way of example and gives *expressis verbis* protection to natural resources in several respects. According to the Hungarian Fundamental Law, natural resources are the 'common heritage of the nation'.
Slovenia	The Slovenian Constitution recognizes the category of natural resources and provides *expressis verbis* protection for natural resources. It gives special protection to the use and exploitation of 'waters', 'land', and 'agricultural land'. The Slovenian Constitution defines water resources as 'public goods managed by the state', and water for the supply of the population cannot be treated merely as a 'market commodity'. The Slovenian Constitution protects 'animals' from torture and guarantees separate developments for people living in 'mountain areas' and 'hills'. In addition, the Slovenian Constitution defines and protects 'natural heritage' and 'natural sites' as well as 'natural wealth' as separate categories.
Croatia	The Croatian Constitution designates certain natural resources (sea, seashore and islands, waters, air space, mineral wealth, and other) and gives *expressis verbis* protection to natural resources. It distinguishes between natural resources and 'parts of nature', in the latter case referring to land, forests, fauna, and flora by way of example.
Serbia	The Serbian Constitution recognizes the category of natural resources and names certain natural resources, such as agricultural and forest land; it also provides *expressis verbis* protection for such resources.
Romania	The Romanian Constitution recognizes the category of natural resources and allows the exploitation of such resources in accordance with the national interest. The Romanian Constitution also identifies certain natural resources, such as mineral resources, the airspace, water resources that can be used for power production, beaches, the territorial sea, and the natural resources of the economic zone and the continental shelf and makes these natural resources exclusive public property.

Almost all constitutions mention the protection of natural resources *expressis verbis*, except for the Polish Constitution.

The concept of natural resources appears in the constitutions of some nations in an exemplary manner or by specific designation of certain types, such as in the

constitutions of Croatia,[19] Slovenia,[20] Serbia,[21] Hungary,[22] Slovakia,[23] and Romania.[24] The Slovenian Constitution states that water resources are "*public goods managed by the state*" and that waters for the supply of the population cannot be treated merely as a "*market commodity*."[25] The Hungarian Fundamental Law[26] also states that natural resources are the "*common heritage of the nation*."[27]

The types of natural resources well reflect national specificities by determining which natural resources a given constitution specifies and which are given special protection. Some of the natural resources named in the constitutions of the countries covered by the research are *arable land or agricultural land* (the Serbian,[28] Hungarian,[29] and Slovakian[30] Constitutions and, to some extent, the Slovenian[31] and Croatian[32] Constitutions), *forests or forest lands* (the Serbian,[33] Hungarian,[34] and Slovakian[35] Constitutions and, to some extent, the Croatian[36] Constitution), *water* (the Hungarian,[37] Slovakian,[38] and Croatian[39] Constitutions and, to some extent, the Slovenian[40] Constitution; for certain water resources, to some extent, the Romanian[41] Constitution),

19 Article 52 of the Croatian Constitution.
20 Article 70 of the Slovenian Constitution protects natural resources in general, Article 70a protects water, Article 71 protects land and agricultural land, Article 72 protects animals. Article 73 of the Slovenian Constitution guarantees the protection of another category, the so-called natural heritage and natural sites.
21 Articles 88 and 97 of the Serbian Constitution.
22 Paragraph (1) of Article P) of the Hungarian Fundamental Law.
23 Articles 4 and 44 of the Slovak Constitution.
24 Paragraph (3) of Article 136 of the Romanian Constitution.
25 Article 70a of the Slovenian Constitution.
26 The Hungarian Fundamental Law is the youngest among the constitutions analyzed. It had strong environmental features from the moment of its adoption; on this see Raisz, 2012, pp. 47-51.
27 Paragraph (1) of Article P) of the Hungarian Fundamental Law.
28 Article 88 of the Serbian Constitution.
29 Article P) of the Hungarian Fundamental Law.
30 Paragraphs (4)-(5) of Article 44 of the Slovak Constitution.
31 Article 71 of the Slovenian Constitution. The Slovenian Constitution does not explicitly mention land and agricultural land as natural resources, but the logic of the Constitution and the nature of the subject matter of the regulation make it worth mentioning them here.
32 According to Article 52 of the Croatian Constitution, it is not a natural resource, but part of nature.
33 Article 88 of the Serbian Constitution.
34 Article P) of the Hungarian Fundamental Law.
35 Paragraphs (4)-(5) of Article 44 of the Slovak Constitution.
36 According to Article 52 of the Croatian Constitution, it is not a natural resource, but part of nature.
37 Paragraph (1) of Article P) of the Hungarian Fundamental Law.
38 Article 4 of the Slovak Constitution.
39 Article 52 of the Croatian Constitution.
40 By naming water resources in Article 70a of the Slovenian Constitution. The Slovenian Constitution does not explicitly mention water resources as natural resources, but the logic of the Constitution and the nature of the subject matter of the regulation suggest that it is worth mentioning here.
41 Water resources for electricity generation are defined in Paragraph (3) of Article 136 of the Romanian Constitution. The Romanian Constitution does not explicitly mention these water resources as natural resources, but the logic of the Constitution and the nature of the subject matter of the regulation suggest that it is worth mentioning here.

and *flora and fauna* (the Serbian[42] and Hungarian[43] Constitutions; to some extent, the Croatian[44] and Slovenian[45] Constitutions). In the Croatian[46] Constitution and, to a certain extent, the Romanian[47] Constitution, *the sea, the coast and islands, the airspace, and mineral resources* are also considered natural resources. In addition, the Croatian Constitution also includes *islands* as a natural resource.[48] In the Romanian Constitution, in addition to the above, *natural resources belonging to the 'economic zone'* and the *continental shelf* are also considered natural resources.[49] In a sense, the *mountain areas and hill areas* are included in the Slovenian Constitution.[50] In addition to the above, it is important to note that the Slovenian Constitution designates and protects *'natural heritage', 'natural sites',*[51] and *'natural wealth'* as separate categories. In analyzing the relationship between the latter category and natural resources, the Slovenian literature points out that the recognition that all natural resources are limited leads to the conclusion that all natural resources are also natural wealth.[52]

In particular, the following provisions are regulated in relation to natural resources: *the prudent use of natural resources as a public function* (the Czech constitutional order[53] and the Slovak,[54] Hungarian,[55] Slovenian,[56] and Romanian[57] Constitutions), the reduction of environmental damage and the risk of such damage, or for other purposes *by providing for the possibility of restricting their use* (the Serbian,[58] Croatian,[59] and Slovenian[60] Constitutions), and *responsibility rules* for their protection

42 Article 97 of the Serbian Constitution.
43 Paragraph (1) of Article P) of the Hungarian Fundamental Law.
44 According to Article 52 of the Croatian Constitution, it is not a natural resource but part of nature.
45 By identifying animals in Article 72 of the Slovenian Constitution. The Slovenian Constitution does not explicitly mention animals as natural resources, but due to the nature of the subject matter of the regulation, we believe that it is worth mentioning them here.
46 Article 52 of the Croatian Constitution.
47 In Paragraph (3) of Article 136 of the Romanian Constitution. The Romanian Constitution does not explicitly mention these as natural resources, but the logic of the Constitution and the nature of the subject matter of the regulation suggest that it is worth mentioning here.
48 Article 52 of the Croatian Constitution.
49 In Paragraph (3) of Article 136 of the Romanian Constitution. The Romanian Constitution does not explicitly mention these as natural resources, but the logic of the Constitution and the nature of the subject matter of the regulation suggest that it is worth mentioning here.
50 Article 71 of the Slovenian Constitution does not explicitly mention mountain and hill areas as natural resources, but due to the nature of the subject matter of the regulation, we believe that it is worth mentioning them here.
51 Article 73 of the Slovenian Constitution.
52 Juhart and Sancin, 2022.
53 Article 7 of the Czech Constitution (Constitution sensu stricto). For its interpretation, see Decision No. Pl. ÚS 30/15-1 of 15.03.2016 of the Czech Constitutional Court.
54 Paragraph (1)-(2) of Article 4 and Paragraph (4) of Article 44 of the Slovak Constitution.
55 The Preamble of the Hungarian Fundamental Law.
56 Examples for water resources in Article 70a of the Slovenian Constitution.
57 In Paragraph (2d) of Article 135 of the Romanian Constitution.
58 Article 88 of the Serbian Constitution for land and forests.
59 Article 52 of the Croatian Constitution.
60 Articles 70, 70a, and 71 of the Slovenian Constitution.

(the Czech constitutional order[61] and the Slovak[62] Constitution) by declaring *state ownership* of certain natural resources (the Slovak[63] and Romanian[64] Constitutions), the protection, maintenance, and conservation of natural resources *for the benefit of future generations* (the Hungarian Fundamental Law[65]), and the conservation of natural resources *as one of the objectives of the management of national assets* (Hungarian Fundamental Law[66]).

The Slovenian Constitution contains a number of provisions on water that are worth mentioning: water resources are public goods managed by the State; water resources shall be used in a prioritized and sustainable manner for the supply of drinking water and domestic water to the population and, in this respect, cannot be considered a market commodity; and the supply of drinking water and domestic water to the population is provided by the State directly through local communities of municipalities on a non-profit basis.[67]

In the case of mountain and hill areas, the Slovenian Constitution actually aims to protect the population living there; namely, the State promotes the economic, cultural, and social advancement of people living in mountain and hill areas.[68]

Table 3 – The constitutional definition of future generations

Country	Constitutional feature
Poland	The Polish Constitution mentions future generations, typically in terms of guaranteeing them ecological security and passing on the value-heritage of the Polish people. Present generations must ensure ecological security for future generations, and all of these and other cultural aspects of Poland's heritage are passed on. The practice of the Polish Constitutional Court refers to the Rio Document of 1992, and there is also a community approach to future generations.
Czech Republic	Future generations are mentioned in the Preamble of the Czech constitutional order, specifically in the Charter, although their concept is not defined either in the Charter or in the practice of the Constitutional Court. Essentially, they are mentioned in relation to responsibility issues.
Slovakia	The Slovak Constitution mentions future generations, typically in relation to the protection and prudent use of natural resources. There is no specific Slovak constitutional definition of future generations.

61 Article 35 of the Charter.
62 Paragraphs (2)–(3) of Article 44 of the Slovak Constitution.
63 Paragraph (1) of Article 4 of the Slovak Constitution.
64 Paragraph (3) of Article 136 of the Romanian Constitution.
65 The Preamble and Paragraph (1) of Article P) of the Hungarian Fundamental Law.
66 Paragraph (1) of Article 38 of the Hungarian Fundamental Law.
67 Article 70a of the Slovenian Constitution.
68 Article 71 of the Slovenian Constitution.

Country	Constitutional feature
Hungary	In the Hungarian Fundamental Law, future generations are mentioned, and 'future Hungarians' are also referred to as a special sub-category. In the Hungarian Fundamental Law, the protection of the interests of future generations is reflected in the careful use of natural resources and national assets. In this context, it is important to protect, preserve, and conserve them. The reasoning of the Fundamental Law regulates the financial sustainability of the budget with regard to the responsibility for future generations.
Slovenia	The Slovenian Constitution does not mention future generations. The Slovenian Constitutional Court refers to future generations (Rm-2/02).
Croatia	The Croatian Constitution does not mention future generations.
Serbia	The Serbian Constitution does not mention future generations.
Romania	The Romanian Constitution does not mention future generations.

Future generations are mentioned in the Czech,[69] Hungarian,[70] Polish,[71] and Slovak[72] Constitutions. In the Hungarian Fundamental Law, 'Hungarians of the future' are also mentioned, creating a subcategory that also attaches importance to the passing down of culture through generations. The passing down of culture through generations is also guaranteed under the Polish Constitution and the case law of the Constitutional Court.[73] According to the Polish Constitution[74] and the related case law of the Constitutional Court,[75] the concept of future generations includes generations yet to be born.[76] The case law of the Polish Constitutional Court[77] leaves room for interpretation of the category of future generations at both the individual and community levels.[78]

The countries that mention future generations in their constitutions relate them to the following issues: *responsibility* (the Czech[79] and Hungarian[80] Constitutions),

69 The Preamble of the Charter.
70 The Preamble of the Hungarian Fundamental Law and Paragraph (1) of Article P), Paragraph (3) of Article 30, and Paragraph (1) of Article 38 of the Hungarian Fundamental Law.
71 Preamble of the Polish Constitution and Paragraph (1) of Article 74 of the Polish Constitution.
72 Paragraph (1) of Article 4 of the Slovak Constitution.
73 Preamble of the Polish Constitution and Decision No. Kp 1/17 of 25.05.2016 of the Polish Constitutional Court; see Majchrzak, 2022.
74 Paragraph (1) of Article 74 of the Polish Constitution names existing and future generations separately.
75 Decision No. K 23/05 of 6.6.2006 of the Polish Constitutional Court.
76 Majchrzak, 2022.
77 Decision No. Kp 2/09 of 13.05.2009 of the Polish Constitutional Court.
78 Majchrzak, 2022.
79 The Preamble of the Charter.
80 The Preamble of the Hungarian Fundamental Law.

special protection of *natural resources* (possible use; the Hungarian[81] and Slovak[82] Constitutions), *financial sustainability* of the budget (the Hungarian[83] Fundamental Law), ecological *security* (the Polish[84] Constitution), passing on *heritage* that also contains elements of value between generations (the Polish[85] Constitution), and that the purpose of *healthcare* as a state function is, among other things, to protect future generations (the Slovak[86] Constitution).

Table 4 – The constitutional definition of sustainable development or sustainability

Country	Constitutional feature
Poland	Sustainable development is mentioned in the Polish Constitution. The case law of the Polish Constitutional Court defines the constitutional concept of sustainable development. Sustainable development is also defined in the case law of the Constitutional Court as a systemic principle that goes beyond the State's obligation to protect the environment. Financial sustainability is part of Polish constitutional law based on the Constitution and the case law of the Constitutional Court.
Czech Republic	Sustainable development and financial sustainability are not mentioned in the Czech constitutional order or in the case law of the Constitutional Court.
Slovakia	Although the Slovak Constitution does not mention 'sustainable development' *expressis verbis*, it does include certain sustainability provisions in relation to the functioning of the economy.
Hungary	Sustainable development is also included in the Hungarian Fundamental Law as a state responsibility in relation to budgetary issues and foreign affairs. The Hungarian Constitutional Court adopts its own definition of sustainable development by referring to a resolution of the Hungarian Parliament. The Hungarian Fundamental Law contains provisions on financial sustainability.
Slovenia	Sustainable development is not mentioned in the Slovenian Constitution, but the use of water resources in a 'sustainable manner' is. The Slovenian Constitutional Court has referred to the principle of sustainable development in its case law (U-I-40/06, Rm-2/02).

81 Paragraph (1) of Article P) of the Hungarian Fundamental Law.
82 Paragraph (1) of Article 4 of the Slovak Constitution.
83 The reasoning provided to Article 36 of the Hungarian Fundamental Law.
84 Paragraph (1) of Article 74 of the Polish Constitution.
85 Preamble of the Polish Constitution and Decision No. Kp 1/17 of 25.05.2016 of the Polish Constitutional Court; see Majchrzak, 2022.
86 Decision No. Pl. ÚS 49/2015. of 14.11.2017 of the Slovakian Constitutional Court

Country	Constitutional feature
Croatia	The Croatian Constitution does not mention sustainable development. The Croatian Constitutional Court does, however, refer to sustainable development in its case law.
Serbia	The Serbian Constitution mentions sustainable development, notably for regional development and state functions.
Romania	The Romanian Constitution does not mention sustainable development. Sustainability, however, is reflected in the case law of the Romanian Constitutional Court (No. 80/2014, No. 295/2022).

Sustainable development is mentioned *expressis verbis* in the Hungarian,[87] Polish,[88] and Serbian[89] Constitutions.

Sustainable development and sustainability are associated with the following issues: the *budget* and public debt (the Hungarian[90] and Polish[91] Constitutions), as a *function of the State* in the definition of competences (the Serbian[92] Constitution), the role of the State in *foreign affairs* (the Hungarian[93] Fundamental Law), the *protection of the natural environment by the State* (the Polish[94] Constitution), the management of *natural resources* (the Slovak[95] and Slovenian[96] Constitutions), *regional development* (the Serbian[97] Constitution), and the functioning of the *economy* (the Slovak Constitution[98]).

Both the Polish[99] and the Hungarian[100] Constitutional Courts have provided for the concept of sustainable development in their case law in such a way that, in

87 Articles N), Q), and XVII of the Hungarian Fundamental Law.
88 Article 5 of the Polish Constitution
89 Articles 94 and 97 of the Serbian Constitution.
90 Articles N) and 36 of the Hungarian Fundamental Law.
91 The Preamble of the Polish Constitution, Paragraph (5) of Article 216, Paragraph (1) of Article 220 of the Polish Constitution, and Decision No. K 43/12 of 07.05.2014 of the Polish Constitutional Court.
92 Article 97 of the Serbian Constitution.
93 Article Q) of the Hungarian Fundamental Law.
94 Article 5 of the Polish Constitution
95 With the joint interpretation of Articles 4, 44, 55, and 55a of the Slovak Constitution. See the explanation of Constitutional Law No. 137/2017 amending the Slovak Constitution, No. 460/1992; see Maslen, 2022.
96 Article 70a of the Slovenian Constitution for water resources.
97 Article 94 of the Serbian Constitution.
98 Articles 55 and 55a of the Slovak Constitution.
99 Decision No. Kp 2/09 of 13.05.2009 of the Polish Constitutional Court. According to the Polish Constitutional Court, the constitutional principle of sustainable development goes beyond the mere reference to ecological security but is a systemic principle of the Constitution; Decision No. K 23/05 of 06.06.2006 of the Polish Constitutional Court; cf. Decision No. 17/12 of 28.11.2013 of the Polish Constitutional Court.
100 Point 77 of Decision No. 16/2015. (VI. 5.) of the Hungarian Constitutional Court.

our view, they have taken the opportunity to define the framework of this concept in light of their own national specificities. According to the case law of the Polish Constitutional Court, the *principle* of sustainable development is not a constitutional value but, rather, *a way* of applying constitutional values in a balanced way.[101] The Croatian Constitutional Court has set sustainable development as a goal in its case law.[102]

Our research has specifically addressed the issue of *'financial sustainability'*. By *'financial sustainability'*, we refer to the constitutional provisions on the level of public debt that are explicitly designed to ensure that future generations are not financially disadvantaged. This can be read *expressis verbis* in the Hungarian Fundamental Law.[103] The Polish Constitution[104] and the case law of the Polish Constitutional Court[105] show that financial sustainability is part of Polish constitutional law. The Polish Constitutional Court[106] has also referred to the principle of sustainable development in relation to the regulation of the financing of municipalities, which, in our view, can also be considered as a matter of financial sustainability.

2. The role of state bodies in protecting the environment and future generations

Our research has placed particular emphasis on the role of certain state bodies, such as constitutional courts, ombudsmen, and presidents of republics, in protecting the environment and future generations; see Tables 5–7 for a summary.

101 Decision No. K 23/05 of 6.6.2006 of the Polish Constitutional Court. In the case law of the Polish Supreme Administrative Court, sustainable development is an important principle for both legislation and administrative law enforcement; see also Majchrzak, 2022.

102 Decision No. U-III-69/2002 of 08.07.2004 of the Croatian Constitutional Court.

103 Articles N) and 36 of the Hungarian Fundamental Law.

104 The Preamble of the Polish Constitution and Paragraph (5) of Article 216 and Paragraph (1) of Article 220 of the Polish Constitution. For an interpretation, see: Majchrzak, 2022.

105 Decision No. K 43/12 of 7.5.2014 of the Polish Constitutional Court and Decision No. K 1/12 of 12.12.2012 of the Polish Constitutional Court. See also Majchrzak, 2022.

106 See, for example, Decision No. K 21/01 of 09.04.2002 of the Polish Constitutional Court and Decision No. K 14/11 of 31.01.2013 of the Polish Constitutional Court. See also Majchrzak, 2022.

Table 5 – The role of constitutional courts in environmental protection

Country	Constitutional feature
Poland	The Polish Constitutional Court, as a court of law, has repeatedly dealt with environmental issues. The main issues examined in the case law of the Constitutional Court are (a) the existence of individual rights in relation to environmental protection, (b) the concept of ecological security, (c) the content of the tasks related to environmental protection, and (d) the importance of the principle of sustainable development.
Czech Republic	The Czech Constitutional Court has addressed environmental issues on several occasions. The relevant case law of the Czech Constitutional Court can be considered significant. In addition to the typical function of a court of law, the Czech Constitutional Court also displays certain characteristics of a court of fact when dealing with environmental issues.
Slovakia	The Slovak Constitutional Court has dealt with environmental issues in a relatively large number of cases, but the Slovak literature suggests that in these cases the Constitutional Court has been rather cautious and restrained.
Hungary	The practice of the Hungarian Constitutional Court is of great importance for the protection of the environment and future generations. The Hungarian Constitutional Court is also a typical court of law, but it has certain characteristics of a court of fact when it comes to environmental cases. The Hungarian Constitutional Court has established a significant and strict case law, particularly in relation to the right to a healthy environment and constitutional provisions on natural resources, the characteristic cornerstones of which are the non-derogation principle and the precautionary principle.
Slovenia	The Slovenian Constitutional Court has addressed environmental issues on several occasions. The relevant case law of the Slovenian Constitutional Court can be considered significant. For example, the Constitutional Court has dealt with the polluter pays principle and the precautionary principle.
Croatia	In the case law of the Croatian Constitutional Court, environmental issues are less prominent.
Serbia	The related case law of the Serbian Constitutional Court can be considered more modest, focusing mainly on the right to a healthy environment.
Romania	The case law of the Romanian Constitutional Court is constantly evolving and has become more consistent, especially since 2014. It has begun to give normative content to the right to a healthy environment and applies the proportionality test to conflicts with other rights.

Constitutional courts have a key role in interpreting the constitution of the country concerned. As far as the constitutional aspects of the protection of the environment and future generations are concerned, the degree of activity of constitutional courts in this area varies from country to country. Hungary, Poland, and the Czech Republic, for example, seem to have very active constitutional courts, and Romania seems to have seen development since 2014.[107] In each country, the constitutional court is typically a court of law. This is also true for Hungary, but it also seems that certain characteristics of a court of fact also appear in environmental cases. This has been observed even in the early stages of the Hungarian Constitutional Court's operation,[108] while the recent practice of improving the law also confirms this,[109] for example, when the burden of proof is placed on the State by invoking the precautionary principle.[110] Thus, "it follows from the precautionary principle that, where a regulation or measure may affect the state of the environment, the legislator must demonstrate that the regulation does not constitute a step backwards and thus does not cause, or even create the theoretical possibility of, irreversible damage."[111] The justification and assessment of all these situations, that is, "when weighing up the likely effects of individual decisions […] the state of the art in science must be taken into account."[112] Although the Romanian Constitution and the case law of the Constitutional Court do not *expressis verbis* state the precautionary principle, the literature suggests that the Romanian Constitutional Court has recently been very careful in its approach to environmental cases in the spirit of the precautionary principle.[113]

In Poland, in addition to the Constitutional Court, the Supreme Administrative Court[114] and the Supreme Court[115] have also made decisions that are of great importance for the constitutional dimensions of environmental protection. The Supreme Administrative Court in the Czech Republic also has decisions that are relevant to constitutional law.[116] The ordinary courts, such as the Supreme Court of Cassation,

107 Benke, 2022.

108 This was pointed out earlier by László Fodor: "*The Constitutional Court basically decides on questions of law, but some of the decisions on environmental protection […] have turned the body into a court of fact, since it has not only provided solutions to the legislation under review, but also to the situations and conflicts that have arisen. An interesting feature of constitutional court proceedings is that in some environmental cases, this panel also conducts a technical or factual evidentiary hearing. This solution can be considered partly successful […], while in some cases it has led to errors or questionable elements in the reasoning.*" Fodor, 2006, p. 162.

109 Szilágyi, 2021b, p. 132.

110 Szilágyi, 2019, pp. 106–108.

111 Point 20 of Decision No. 13/2018 (IX.4) of the Hungarian Constitutional Court.

112 Point 14 of Decision No. 13/2018 (IX.4) of the Hungarian Constitutional Court.

113 Decision No. 295/2022 of 10.6.2022 of the Romanian Constitutional Court; see Benke, 2022.

114 Judgment No IV SA/Wa 1304/14 of 10.02.2015 of the Supreme Administrative Court of Poland, which contains important findings on the right to the environment in addition to the individual right to ecological security. See Majchrzak, 2022.

115 Decision No III CZP 27/20 of 28.05.2021 of the Polish Supreme Court, according to which the right to live in a clean environment is not a personal but a common good. See Majchrzak, 2022.

116 Radvan, 2022.

play an important role in Serbia as well in such cases.[117] The role of the Slovenian Supreme Court is also significant.[118]

Table 6 – The role of ombudsmen in environmental protection

Country	Constitutional feature
Poland	In Poland, the Ombudsman, who is also specified in the Constitution, can act not only in relation to public sector actors but also in relation to social and professional organizations, cooperatives, and associations with legal personality if they exercise public authority. In their case law, the Polish Ombudsman has confirmed that Polish law provides for an individual right to use the 'environment'.
Czech Republic	In the Czech Republic, the general ombudsman, the so-called Public Defender of Rights, has acted in numerous cases with environmental relevance and has developed a strong practice.
Slovakia	In Slovakia, the general ombudsman, the so-called Public Defender of Rights, as specified in the Constitution, has acted in a number of cases with environmental relevance and has developed a notable practice.
Hungary	The Hungarian Fundamental Law established the Deputy Commissioner for the Protection of the Interests of Future Generations, also known as the Advocate of Future Generations, as an *expressis verbis* deputy to the Commissioner for Fundamental Rights. Their activities are essentially related to the protection of the environment and cultural heritage, which they carry out in the interests of future generations. Although its tools remain in the realm of raising awareness, informing, persuading, proposing, shaping opinions, and cooperating, the Ombudsman for Future Generations has had and continues to have a major impact on shaping the case law not only at home but also internationally.
Slovenia	The Slovenian Constitution itself provides for an ombudsman institution and also states that a specific ombudsman institution may be created for specific areas. The general ombudsman, namely the Ombudsman for Human Rights and Fundamental Freedoms, regularly deals with complaints relating to the environment. In addition to them, the Information Commissioner is also mandated to act on environmental information.

117 Savčić, 2022.
118 Juhart and Sancin, 2022.

Country	Constitutional feature
Croatia	The institution of the Commissioner is also provided for in the Croatian Constitution. In Croatia, two Commissioners should be highlighted in relation to the environment. Both of them can also act in environmental matters. One of them is the general ombudsman, the so-called Commissioner of the Croatian Parliament, who has acted in numerous cases with environmental relevance and has developed a notable practice. Another Commissioner worth mentioning is the Commissioner for Access to Information.
Serbia	In Serbia, the two statutory commissioners, which are not specifically mentioned in the Constitution, should be noted. Both can also act in environmental matters. One is the Protector of Citizens, the Ombudsman, and the other is the Commissioner for Information of Public Importance and Data Protection.
Romania	The Romanian Constitution itself provides for an ombudsman institution and also states that separate deputy commissioners may be created for specific areas. The general ombudsman, the so-called Advocate of the People, regularly acts on matters relating to the environment.

In the case of the ombudsmen, the deputy ombudsman for the interests of future generations is a *sui generis* ombudsman, named *expressis verbis* in the Hungarian Fundamental Law,[119] who acts in the interests of future generations and the environment while, at the same time, developing strong case law on the relevant provisions of the Hungarian Fundamental Law.[120] In other countries, such as the Czech Republic, Slovakia,[121] Poland,[122] Serbia, Croatia, Slovenia, and Romania, ombudsmen specializing in general or other matters have extended their competence to environmental matters and have developed a substantial practice in this respect. The competence of the relevant ombudsmen typically covers the activities of public sector actors (national, regional, and local; there are some differences, for example, in Poland[123]).

119 Article 30 of the Hungarian Fundamental Law.

120 Debisso and Szabó, 2021, pp. 338–358.

121 Its practice in relation to the right to water is noteworthy; for criticism of it, see Maslen, 2022.

122 Noteworthy is the recognition by the Polish Ombudsman of the 'individual right to use the environment', as the Ombudsman stated that it is a right for everyone (i.e., not just citizens) and that it is only for natural persons. See the Procedural Letter of Ombudsman in the case with reference number III CA 1548/18, 30.11.2018; quoted in Majchrzak, 2022.

123 Majchrzak, 2022.

Table 7 – The role of heads of state in environmental protection

Country	Constitutional feature
Poland	The current head of state, *Andrzej Duda*, is considered active in the field of environmental policy. The Council on Environment, Energy, and Natural Resources, which he established in 2021, also analyzes legal issues.
Czech Republic	Thus far, Czech heads of state have been more reticent to take up environmental issues, although President *Vaclav Havel*'s role in the adoption of Article 7, the eco-article, of the Czech Constitution is undeniable (Constitution sensu stricto).
Slovakia	The current Slovak head of state, *Zuzana Čaputová*, is considered active in regard to environmental policy.
Hungary	Several Hungarian heads of state have been very active, both in regard to environmental policy and in regard to constitutional issues related to environmental protection. Regarding the latter, *László Sólyom* considered the establishment of a green ombudsman institution in Hungary to be one of his important tasks as head of state (he succeeded); *János Áder* took several important pieces of legislation on environmental protection to the Constitutional Court (he succeeded as well).
Slovenia	Such activities by the head of state are less prominent in the Slovenian structure, but the Standing Consultative Council on Climate Policy, established in 2019 by President *Borut Pahor*, is worth mentioning.
Croatia	In the Croatian structure, such activities of the head of state are less pronounced.
Serbia	In the Serbian structure, such activities of the head of state are less pronounced.
Romania	The current Romanian head of state, *Klaus Johannis*, is considered to be active in terms of environmental policy.

In some countries, heads of state can be seen as active in environmental protection, and in Hungary, for example, the head of state has taken key environmental decisions to the Constitutional Court, sometimes proposing a new type of constitutional interpretation.

3. Fundamental rights: The right to a healthy environment

The inclusion of the right to a healthy environment *expressis verbis* in a country's constitution reflects a strong state commitment both to protecting the interests of future generations and to protecting the environment; see Table 8 for a summary.

Table 8 – The right to a healthy environment

Country	Constitutional feature
Poland	The Polish Constitution does not include the right to a healthy environment. Based on the case law of the Polish Constitutional Court, however, natural environment and healthy environment are constitutional values.
Czech Republic	The Czech constitutional order, specifically Article 35 of the Charter, ensures the 'right to a favorable environment'.
Slovakia	The Slovak Constitution ensures the 'right to a favorable environment'.
Hungary	The Hungarian Fundamental Law ensures the right to a healthy environment. The case law of the Hungarian Constitutional Court is exemplary in this respect, especially with regard to the development of the law in relation to the non-derogation principle and the precautionary principle. Based on the case law of the Hungarian Constitutional Court, the right to a healthy environment is not merely a declaratory right but a real, strict right. The practice of the Ombudsman for Future Generations is also very valuable from an environmental perspective. The Hungarian Fundamental Law also regulates responsibility issues in relation to the right to a healthy environment, and in connection with this right, it regulates the prohibition of the importation of 'polluting' waste into the territory of Hungary.
Slovenia	The Slovenian Constitution provides for the right of everyone to a 'healthy living environment'.
Croatia	The 'right to a healthy life' in the Croatian Constitution is not the same as the right to life and cannot be clearly identified with the right to a healthy environment. The case law of the Croatian Constitutional Court is considered important in environmental cases, but the right to healthy life is rarely explicitly invoked; instead, cases are typically resolved by reference to other fundamental rights.
Serbia	The Serbian Constitution ensures the right to a healthy environment.
Romania	The Romanian Constitution guarantees the right to a 'healthy, well-preserved, and balanced environment'. The State provides the legal framework for the exercise of this right.

The right to a healthy environment appears *expressis verbis* in the constitutions of several countries, including the Czech,[124] Hungarian,[125] Serbian,[126] Slovak,[127] Slovenian,[128] and Romanian[129] Constitutions. The Romanian Constitution provides for the 'right to a healthy, well-preserved and balanced environment'.[130] The Czech[131] and Slovak[132] Constitutions mention the 'right to a favorable environment'. According to Czech literature,[133] the 'right to a favorable environment' in the Czech Constitution is synonymous with the 'right to a healthy environment'. The Slovak literature,[134] however, points out that, despite the similarities, the two rights do not fully overlap. In the Slovenian Constitution, the right to a 'healthy living environment' is mentioned,[135] which the experts also consider to be equivalent to the right to a healthy environment; the adjective 'living' in the name of the right is not considered to play a special role.[136] The 'right to a healthy life' in the Croatian Constitution is not the same,[137] as the identity with the right to a healthy environment is not clear,[138] and for the sake of clarity, we would like to note that the category of the 'right to a healthy life' in the Croatian Constitution is not the same as the category of the 'right to life' or that of the 'right to health' in the Croatian Constitution. The Polish Constitution does not include the right to a healthy environment,[139] but according to the Constitutional Court, a 'healthy environment' is a constitutional value.[140]

In some countries, such as the Czech Republic, Slovakia, Hungary, and Poland, the case law of the Constitutional Court can be considered significant in interpreting the right to a healthy environment.

Moreover, in some countries, such as Hungary and the Czech Republic, ombudsman practice can be considered significant in interpreting the right to a healthy environment.

124 Article 35 of the Charter.
125 Paragraph (1) of Article XXI of the Hungarian Fundamental Law.
126 Article 74 of the Serbian Constitution.
127 Paragraph (1) of Article 44 of the Slovak Constitution.
128 Article 72 of the Slovenian Constitution.
129 Paragraphs (1)–(2) of Article 35 of the Romanian Constitution.
130 Paragraph (1) of Article 35 of the Romanian Constitution.
131 Article 35 of the Charter.
132 Paragraph (1) of Article 44 of the Slovak Constitution.
133 Radvan, 2022.
134 Maslen, 2022. Cf. the 2018 judgment of the Slovak Supreme Court, which also uses the concept of the right to a healthy environment: Judgment of the Supreme Court of the Slovak Republic of October 24, 2018, no. 7Sžk/35/2017; quoted in Maslen, 2022.
135 Article 72 of the Slovenian Constitution. For its interpretation, see Decision No. U-I-98/04 of 09.11.2006 of the Slovenian Constitutional Court.
136 Juhart and Sancin, 2022.
137 Article 69 of the Croatian Constitution.
138 Ofak, 2021, pp. 86–87 and 95–96; Staničić, 2022a.
139 See Habuda, 2019, pp. 108 and 111–112.
140 Decision No. Kp 2/09 of 13.05.2009 of the Polish Constitutional Court. See also Majchrzak, 2022.

The Czech Constitutional Court[141] does not require a proportionality test in the application of the right to a favorable environment but, rather, a so-called *rationality test*, in which the legislator makes a law in the context of adapting a right to a favorable environment with relative content to a specific situation.

The relation between *legal persons* and *the right to a favorable environment*, namely whether legal persons are entitled to this right, has been addressed substantively by the Slovak Constitutional Court[142] and in the legal literature.[143] The Slovak Constitutional Court has also dealt substantively with the relationship between the right to a favorable environment and the *public interest* and *ecological ethics*.[144] In the Slovak literature, the right to a favorable environment has been labeled 'impotent' because of its weaknesses.[145]

The Hungarian Constitutional Court has developed legal principles that can be regarded as 'strict', such as the 'non-derogation principle' and the 'precautionary principle', based on the right to a healthy environment and, in certain respects, on other constitutional provisions. In the case of both principles, it can be said that their violation may, in certain circumstances, establish a conflict between a piece of legislation and a constitutional provision. The *non-derogation principle* is intended to guarantee that an environmental level that has already been reached cannot be changed.[146] The *precautionary principle* is a principle known in international law, EU law, and national law, but the precautionary principle developed by the Hungarian Constitutional Court has gained a special meaning and legal consequence in the case law of the Hungarian Constitutional Court.[147]

141 Decision No. Pl. ÚS 22/17-2 of 26.1.2021 of the Czech Constitutional Court.

142 See Decisions No. III. ÚS 93/08, III. ÚS 100/08, and I. ÚS 380/2019-83 of the Slovak Constitutional Court.

143 Radvan, 2022.

144 Decision No. Pl. ÚS 51/2015-94 of the Slovakian Constitutional Court.

145 Maslen, 2022.

146 *The "enforcement of the right to the environment constitutionally requires that the state, as long as legal protection is necessary at all, may only withdraw from the level of protection achieved under conditions where a restriction of a fundamental right would be appropriate. The enforcement of the right to the environment, while maintaining the level of protection achieved, also requires that the state does not regress from preventive protection rules to protection by sanctions. This requirement may only be derogated from in cases of unavoidable necessity and only proportionally*"; Points 80 and 109 of Decision No. 16/2015 (VI. 5.) of the Hungarian Constitutional Court.

147 Szilágyi, 2019, pp. 88–112; Olajos, 2018, pp. 157–189; Bándi, 2020c, pp. 49–66; Szabó, 2020, pp. 67–83; Hohmann and Pánovics, 2019, pp. 305–309; Horváth, 2021, pp. 259–266; Hojnyák, 2021, pp. 49–52; Olajos and Mercz, 2022, pp. 79–97.

4. Other fundamental rights related to the protection of the environment

In addition to the right to a healthy environment, other fundamental rights can contribute to the protection of the environment. The *expressis verbis* link between the environment and these fundamental rights may be mentioned both in the constitution of the country concerned and by its constitutional court; see Table 9 for a summary.

Table 9 – Other fundamental rights to protect the environment

Country	Constitutional feature
Poland	Under the Polish Constitution, everyone has the right to be informed regarding the quality and protection of the environment. In the Polish Constitution, the duty of public authorities to prevent the negative health consequences of environmental degradation is mentioned in relation to the right of individuals to the protection of their health. The Polish Constitutional Court has dealt with the right to a fair trial and the right to property in certain cases relating to the environment.
Czech Republic	The Czech constitutional order, in particular, Article 35 of the Charter, guarantees the right to 'timely and complete information on the state of the environment and natural resources'. However, the Czech Constitutional Court has no relevant case law on this right. In some cases, the Czech Constitutional Court has dealt with the right of petition and the right of association with regard to environmental protection.
Slovakia	The Slovak Constitution ensures the 'right to timely and complete information on the state of the environment'. In relation to this right, the Slovak Constitutional Court also has some case law. In some cases, the Slovak Constitutional Court has addressed the right to health with regard to the protection of future generations.
Hungary	In the Hungarian Fundamental Law, environmental protection is seen as a duty of the State to uphold the right to health. It is also in the context of upholding this right that the Hungarian Fundamental Law provides for the concept of 'agriculture free from genetically modified organisms'. The Hungarian Constitutional Court has also addressed the relationship between the right to life and the right to a healthy environment, noting that the latter is part of the objective and institution-protecting aspect of the right to life, which defines the State's obligation to maintain the natural foundations of human life as a separate constitutional right. The Hungarian Constitutional Court has also addressed the relationship between the right to a fair trial and environmental protection.

Country	Constitutional feature
Slovenia	The Slovenian Constitution provides for the 'right to drinking water' for everyone. The Slovenian Constitutional Court has addressed the relationship between the right to health and the right to a healthy living environment.
Croatia	In some cases, the Croatian Constitutional Court has addressed the right to a fair trial with regard to environmental protection.
Serbia	The Serbian Constitution ensures the 'right to timely and complete information on the environment'. The Serbian Constitutional Court has addressed the relationship between environmental protection and the right to information and the right to a fair trial.
Romania	The case law of the Romanian Constitutional Court has dealt with the relationship between environmental protection and human dignity (namely the protection of animals), access to justice, and the right to information.

The constitutions of the countries concerned *expressis verbis* specify the link between environmental protection and the following fundamental rights. The *right to information* is explicitly linked to environmental protection in several countries, including the Czech Republic,[148] Slovakia,[149] Poland,[150] and Serbia.[151] The link between the right to health and environmental protection is specified in the Hungarian[152] and Polish[153] Constitutions. The Slovenian Constitution has created a *sui generis* fundamental right by adopting the *right to drinking water*.[154] In our view, the *right to a healthy life* in the Croatian Constitution,[155] mentioned earlier, can be interpreted as a specific fundamental right.

Constitutional courts in the countries covered by the research can also create a link between a fundamental right and the protection of the environment through their interpretation of the law. The constitutional courts concerned have established an explicit link for several fundamental rights. The Hungarian,[156] Serbian,[157] Croatian,[158] and Polish[159] Constitutional Courts referred to the link between the

148 Article 35 of the Charter.
149 Article 45 of the Slovak Constitution.
150 Paragraph (3) of Article 74 of the Polish Constitution.
151 Article 74 of the Serbian Constitution.
152 Article XX of the Hungarian Fundamental Law.
153 Article 68 of the Polish Constitution
154 Article 70a of the Slovenian Constitution.
155 Article 69 of the Croatian Constitution.
156 Points 81–86 of Decision No. 4/2019. (III. 7.) of the Hungarian Constitutional Court.
157 Decision No. Už-7702/2013 of 07.12.2017 of the Serbian Constitutional Court.
158 Decision No. U-III/1114/2014 of 27.4.2016 of the Croatian Constitutional Court; Decision No. U-III/1115/2014 of 11.05.2016 of the Croatian Constitutional Court.
159 Majchrzak, 2022.

environment and the right to a fair trial. In relation to the (general) *right to information*, the Serbian[160] and Romanian[161] Constitutional Courts have analyzed the relationship. The relationship was analyzed by the Czech Constitutional Court[162] in relation to the *right of petition* and by the Hungarian[163] Constitutional Court in relation to the *right to remedy*. The Czech[164] Constitutional Court found a link between the *right of association* and environmental protection. According to the Hungarian Constitutional Court,[165] the right to a healthy environment is part of the objective and institution-protecting aspect of the *right to life*. The Polish[166] Constitutional Court mentions such an explicit connection in the context of the right to property. The Slovak Constitutional Court has established a direct link between the *right to health*[167] and the protection of future generations. The Slovenian Constitutional Court has interpreted the *right to health* in parallel with the right to a healthy living environment.[168] The Slovenian Constitutional Court has interpreted the relationship between the right to a healthy living environment and the *right to inviolability of the home*[169] as well as the right to free economic initiative.[170] The Romanian Constitutional Court addressed the relationship between environmental protection and human dignity in the context of animal protection.[171] This court pointed out that a natural environment is an important precondition for exercising the right to healthcare.[172]

5. Restriction of fundamental rights on the grounds of environmental protection

A specific case of the relationship between the environment and fundamental rights is that in which a fundamental right can be restricted on the grounds of environmental protection; see Table 10 for a summary.

160 Decision No. Iuo-1256/2010 of 20.12.2012 of the Serbian Constitutional Court.
161 Decision No. 7/2001 of 05.03.2001 of the Romanian Constitutional Court.
162 Decision No. III. ÚS 298/12-1 of 13.12.2012 of the Czech Constitutional Court.
163 Points 81–86 of Decision No. 4/2019. (III. 7.) of the Hungarian Constitutional Court.
164 Decision No. Pl. ÚS 22/17-2 of 26.1.2021 of the Czech Constitutional Court.
165 Point 85 of Decision No. 16/2015. (VI. 5) of the Hungarian Constitutional Court.
166 Majchrzak, 2022.
167 Decision No. Pl. ÚS 49/2015. of 15.11.2017 of the Slovakian Constitutional Court
168 Decision No. U-I-218/07 of 26.3.2009 of the Slovenian Constitutional Court.
169 Decision No. U-I-40/12 of 11.4.2013 of the Slovenian Constitutional Court.
170 Decision No. U-I-30/95 of 21.12.1995 of the Slovenian Constitutional Court.
171 Decision No. 1/2012 of 23.01.2012 and Decision No. 511/2017 of 04.10.2017 of the Romanian Constitutional Court. See also Benke, 2022.
172 Decision Bo. 295/2022 of 10.06.2022 of the Romanian Constitutional Court.

Table 10 – Restriction of fundamental rights on grounds of environmental protection

Country	Constitutional feature
Poland	The Polish Constitution allows, *expressis verbis* and in general terms, that is, not only for specific fundamental rights, the restriction of the exercise of a constitutional freedom or right in order to protect the natural environment. The Polish Constitutional Court has examined the possibility of restricting the right to free economic initiative and the right to property in the context of environmental protection.
Czech Republic	The Czech Constitutional Court has ruled, for example, in its Decision No. Pl. ÚS 18/17-1, that the right to property, freedom of movement, and the right to self-government may be restricted for environmental reasons.
Slovakia	The Slovak Constitution *expressis verbis* specifies the protection of nature or the environment as a limit to the exercise of the right to property.
Hungary	According to a decision of the Hungarian Constitutional Court, the exercise of the right to property may be restricted in the interest of environmental protection.
Slovenia	The Slovenian Constitution provides *expressis verbis* for the various functions of property, including the environmental function, in the right to property.
Croatia	The Croatian Constitution *expressis verbis* specifies the protection of the environment and nature as a limit to the freedom of entrepreneurship and the right to property.
Serbia	The Serbian Constitution *expressis verbis* specifies the protection of the environment and natural wealth as a limit to the exercise of the freedom of entrepreneurship.
Romania	The Romanian Constitution provides *expressis verbis* that the right to property implies the fulfillment of obligations related to environmental protection. In its case law, the Romanian Constitutional Court has also justified the possibility of limiting the right to property in environmental matters by applying the proportionality test in a specific case. The Romanian Constitutional Court found that the right to economic freedom could be restricted on the grounds of the right to a healthy environment.

The possibility of restricting fundamental rights on the grounds of environmental interests in a country's constitution or in the case law of a constitutional court can take several forms.

The declaration of the possibility of restriction may be made in the constitution itself *in a general way*, that is, in relation to essentially all fundamental rights, as is

the case in the Polish Constitution.[173] Restrictions may also be imposed *on certain fundamental rights*, such as the *right to property* (in the case of the Slovak,[174] Croatian,[175] Slovenian,[176] and Romanian[177] Constitutions) and the *freedom of entrepreneurship* (in the Croatian[178] and Serbian[179] Constitutions).

A constitutional court may also declare that a fundamental right may be restricted by reference to the environment. This was the case with the *right to property* (in the case laws of the Czech,[180] Hungarian,[181] Polish,[182] and Romanian[183] Constitutional Courts), the *freedom of entrepreneurship* (in the case law of the Polish Constitutional Court[184]), the *freedom of movement and residence* (in the case law of the Czech Constitutional Court[185]), the *right to self-government* (in the case law of the Czech Constitutional Court[186]), and the *right to economic freedom* (in the case law of the Romanian Constitutional Court[187]).

6. Protection of the environment as a duty and obligation

There may be different actors who are obliged to protect the environment. This can take the form of a state responsibility, going beyond the upholding of fundamental rights, a citizens' responsibility, or an obligation toward others. In the latter context, this research has focused on the question of whether such an obligation applies, for example, to transnational corporations, which often have capabilities and opportunities to shape the environment that go far beyond those of states. For a summary, see Table 11.

173 Paragraph (3) of Article 31 of the Polish Constitution.
174 Paragraph (3) of Article 20 of the Slovak Constitution.
175 Article 50 of the Croatian Constitution.
176 Article 67 of the Slovenian Constitution.
177 Paragraph (7) of Article 44 of the Romanian Constitution.
178 Article 50 of the Croatian Constitution.
179 Article 83 of the Serbian Constitution.
180 Decision No. Pl. ÚS 34/03 of 13.12.2006 of the Czech Constitutional Court.
181 Paragraphs 81–82 of Decision No. 16/2015 (VI. 5) of the Hungarian Constitutional Court.
182 Decision No. Kp 1/09 of 13.10.2010 of the Polish Constitutional Court.
183 Decision No. 824/2008 of 05.08.2008 of the Romanian Constitutional Court; Decision Bo. 1416/2008 of 10.02.2009 of the Romanian Constitutional Court. For other related decisions, see Benke, 2022.
184 Decision No. Kp 1/09 of 13.10.2010 of the Polish Constitutional Court.
185 Decision No. Pl. ÚS 18/17-1 of 25.9.2018 of the Czech Constitutional Court.
186 Decision No. Pl. ÚS 18/17-1 of 25.9.2018 of the Czech Constitutional Court.
187 Decision Bo. 313/2018 of 29.6.2018 of the Romanian Constitutional Court; Decision No. 29/2016 of 16.03.2016 of the Romanian Constitutional Court.

Table 11 – Protecting the environment as a duty and or obligation

Country	Constitutional feature
Poland	In the Polish Constitution, the obligation to protect the environment is delegated to three levels: the State, public law bodies or public authorities, and 'everyone'. Thus, (a) according to the Polish Constitution, the State must protect the natural environment. (b) Public law bodies or public authorities should (b1) prevent negative health consequences of environmental degradation, (b2) pursue policies that ensure ecological security, (b3) protect the environment, and (b4) support citizens in protecting and improving the quality of the environment. (c) Everyone should protect the quality of the environment.
Czech Republic	Article 7 of the Czech Constitution, in the narrow sense (constitution sensu stricto), defines the prudent management of natural resources and the protection of natural wealth as a state duty The Preamble of the Czech Constitution, in a narrow sense (constitution sensu stricto), defines the protection and development of national wealth as the responsibility of citizens.
Slovakia	The Slovak Constitution establishes the prudent use of natural resources, the protection and development of certain types of natural resources, and the prudent use of natural heritage as a state task. Under the Slovak Constitution, 'everyone' has a duty to protect and improve the environment.
Hungary	The Preamble of the Hungarian Fundamental Law imposes a duty on the members of the Hungarian nation to protect the living conditions of future generations through the careful use of our natural resources. According to Article P) of the Hungarian Fundamental Law, the protection, maintenance, and conservation of natural resources and biodiversity for future generations is the duty of 'everyone' in addition to the State. According to the interpretation of the Constitutional Court, this category of everyone includes, among others, 'civil society' and 'citizens' as well as 'natural persons' and 'legal persons'.
Slovenia	Under the Slovenian Constitution, the State must preserve 'natural wealth' and ensure a healthy living environment. Under the Slovenian Constitution, both the State and 'local communities' are obliged to support the conservation of natural heritage. Under the Slovenian Constitution, 'everyone' has a duty to protect natural values.
Croatia	According to the Croatian Constitution, the Croatian State must ensure the conditions for a 'healthy environment', local governments have responsibilities for the protection and improvement of the environment, and everyone has a duty to pay attention to the protection of nature and the human environment.

Country	Constitutional feature
Serbia	The Serbian Constitution assigns environmental protection tasks to several actors. (a) The State shall ensure a system enabling sustainable development, protection, and development of the environment, fauna, and flora. (b) The autonomous provinces shall regulate, within the limits of the law, the provincial issues of environmental protection. (c) The municipalities shall, within the limits of the law, perform the environmental tasks that concern them. (d) In addition, 'everyone' shall protect, preserve, and develop the environment.
Romania	The Romanian Constitution establishes the obligation for both natural and legal persons to protect and improve the environment. According to the Romanian Constitution, the Romanian State shall ensure the preservation and protection of the environment and the preservation of ecological balance. In a case, the Romanian Constitutional Court linked the obligation of the Romanian State under the Constitution with the right to a healthy environment (No. 54/2022).

Essentially, the constitutions of all of these countries include the protection of the environment, or some aspect of it, as a state responsibility.[188] In the countries where the constitution provides for the right to a healthy environment, it also imposes an extra duty on the State to do this. The constitutions of some countries also regulate other state functions relevant to environmental protection. The Hungarian Fundamental Law,[189] for example, defines the operation of *agriculture free of genetically modified organisms*[190] and the *provision of access to drinking water* as such. The Slovak Constitution specifies several aspects of the prudent use of natural resources.[191]

Essentially, the constitutions and constitutional case law of all of these countries formulate the protection of the environment, or some aspect of it, as an obligation on their citizens[192] and, more broadly, on other actors,[193] including, where appropriate, international companies. Under the Croatian Constitution, 'everyone' has a

188 Paragraph (2) of Article XX of the Hungarian Fundamental Law; Point (e) of Paragraph (2) of Article 135 of the Romanian Constitution; Article 72 of the Slovenian Constitution; Article 70 of the Croatian Constitution; Articles 74 and 97 of the Serbian Constitution; Articles 5 and 74 of the Polish Constitution; the Preamble and Article 7 of the Czech Constitution (constitution sensu stricto); Articles 4 and 44 of the Slovak Constitution.

189 Article XX of the Hungarian Fundamental Law.

190 See Szilágyi, Raisz and Kocsis, 2017, pp. 167–175.

191 Paragraph (1) of Article 4 and Paragraphs (4)–(5) of Article 44 of the Slovak Constitution.

192 The Preamble of the Czech Constitution (constitution sensu stricto).

193 Paragraph (2) of Article 44 of the Slovak Constitution; Article 86 of the Polish Constitution; the Preamble and Paragraph (1) of Article P) of the Hungarian Fundamental Law; the Serbian Constitution establishes duties for 'everyone' in Article 74, for autonomous provinces in Paragraph (2) of Article 183, and for municipalities in Paragraphs (1) and (6) of Article 190; Article 69 of the Croatian Constitution; for example, Article 73 of the Slovenian Constitution provides for obligations in relation to everyone, local communities and the State alike. Paragraph (3) of Article 35 of the Romanian Constitution.

duty to pay attention to the protection of nature and the human environment.[194] In the Croatian literature, this is interpreted to include legal persons, including, where appropriate, large international companies.[195] The Serbian Constitution also states that 'everyone' has a duty to protect, preserve, and develop the environment.[196] Under the Slovenian Constitution, 'everyone' has a duty to protect natural values.[197] The Romanian Constitution provides for the obligation of 'natural and legal persons' to protect and develop the environment.[198] In the context of the protection and conservation of natural resources and biodiversity, the Hungarian Fundamental Law speaks of the obligation of 'everyone'; by 'everyone', the Hungarian Constitutional Court means 'civil society and every single citizen' as well as, according to the parallel reasoning of the Constitutional Court decision, 'natural and legal persons'.[199] In our view, this category includes a broad group of legal persons, both domestic and foreign, as well as large international corporations.

7. Liability issues related to environmental protection

Liability issues also appear in the constitutions of several of these countries; see Table 12 for a summary.

Table 12 – Liability issues related to environmental protection

Country	Constitutional feature
Poland	Under the Polish Constitution, everyone must take responsibility for causing environmental degradation.
Czech Republic	Under Article 35 of the Czech Charter, no one may, in the exercise of their rights, endanger or cause damage to the environment, natural resources, or natural species.
Slovakia	Under the Slovak Constitution, no one may endanger or damage the environment or natural resources.

194 Article 69 of the Croatian Constitution. The Croatian Constitution also assigns tasks of environmental protection and the improvement of the environment to local governments; Article 135 of the Croatian Constitution.
195 Staničić, 2022a.
196 Article 74 of the Serbian Constitution.
197 Article 73 of the Slovenian Constitution.
198 Paragraph (3) of Article 35 of the Romanian Constitution.
199 Points 92 and 148 of Decision No. 16/2015. (VI. 5) of the Hungarian Constitutional Court.

Country	Constitutional feature
Hungary	According to the Hungarian Fundamental Law, whoever causes damage to the environment is obliged to restore it or to bear the cost of restoration.
Slovenia	Under the Slovenian Constitution, a person who has caused damage to the living environment is liable to pay compensation. The Slovenian Constitutional Court has dealt with the polluter pays principle in its case law.
Croatia	The Croatian Constitution does not contain any explicit rules on environmental liability.
Serbia	The Serbian Constitution does not contain any explicit rules on environmental liability.
Romania	The Romanian Constitution does not contain any explicit rules on environmental liability. In its case law, however, the Constitutional Court has already covered certain issues of environmental liability, such as the 'polluter pays principle' as well as the principle of 'pay for what you throw away' and the principle of 'extended producer responsibility'.

With the exception of the Serbian, Croatian, and Romanian Constitutions, liability or compensation for environmental damage is included in the constitutions of several of these countries. In these, the subject of the obligation has been defined in different ways, but typically in fairly general terms. 'No one' is mentioned in the Czech Charter [200] and the Slovak Constitution,[201] 'anyone' in the Hungarian Fundamental Law,[202] 'everyone' in the Polish Constitution,[203] and 'person' in the Slovenian Constitution.[204] Based on the case law of the Polish Constitutional Court,[205] the Polish literature[206] and the Czech literature[207] broadly interpret the scope of liability under the Constitution to include domestic natural and legal persons, foreign natural and legal persons, and international (multinational corporations), private, and public sector entities. Although the Romanian Constitution does not contain, *expressis verbis*, rules on environmental liability, the Romanian Constitutional Court has already dealt with certain environmental

200 Article 35 of the Charter.
201 Paragraph (3) of Article 44 of the Slovak Constitution.
202 Paragraph (2) of Article XXI of the Hungarian Fundamental Law.
203 Article 86 of the Polish Constitution
204 Article 72 of the Slovenian Constitution.
205 Decision No. K 13/18 of 10.9.2020 of the Polish Constitutional Court.
206 Majchrzak, 2022.
207 Radvan, 2022.

liability issues in its case law, such as 'pay for what you throw away' and 'extended producer responsibility'.[208]

The *polluter (user) pays principle* also appears in the constitutions and constitutional practices of some of these countries. According to the Polish literature, this principle can be clearly derived from the Polish Constitution,[209] partly from the Slovenian Constitution,[210] and, controversially, from the Hungarian Fundamental Law.[211] The Romanian Constitutional Court has already dealt with the 'polluter pays principle' in its case law and has upheld its application in specific cases.[212]

8. Protecting national assets in relation to the environment and future generations

The constitutions of several countries contain provisions on national assets, with different content from country to country. The category of national assets refers to the assets of the State as well as regional and local governments. In some cases, the relevant constitutional provisions and practices of the countries concerned also show a link between the protection of national assets and the interests of the environment and future generations; see Table 13 for a summary.

208 Decision No. 897/2020 of 01.04.2021 of the Romanian Constitutional Court; Decision No. 95/2021 of 30.6.2021 of the Romanian Constitutional Court. For an analysis of this issue, see also Benke, 2022.

209 Majchrzak, 2022.

210 See Decision No. U-I-344/96 of 1.4.1999 and U-I-215/11 of 10.1.2013 of the Slovenian Constitutional Court; Juhart and Sancin, 2022.

211 Point 149 of Decision No. 16/2015 (VI. 5.) of the Hungarian Constitutional Court contains a parallel reasoning of Imre Juhász, a judge of the Constitutional Court, who says that "the polluter pays principle has also been elevated to the level of the Fundamental Law" by the provisions of Paragraph (2) of Article XXI of the Fundamental Law. A similar position was previously expressed by the Parliamentary Commissioner for Future Generations, who existed before the Advocate of Future Generations, in Points 8 and 11 of his Position No. 258/2011 on the State's responsibility under the environment and sustainability provisions of the new Fundamental Law. In contrast, according to Professor Bándi, the relevant provision of the Fundamental Law only "refers to a narrow conception of the polluter pays principle" (Bándi, 2020b, p. 16), and according to Professor Fodor, this "rule merely refers to the framework of environmental responsibility" (Fodor, 2014, p. 114). In our view, Paragraph (2) of Article XXI of the Fundamental Law is "a formulation of the principle of responsibility" (Szilágyi, 2021b, p. 137). Regarding the background of Paragraph (2) of Article XXI, see also Fülöp, 2012, p. 82.

212 Decision No. 485/2017 of 03.10.2017 of the Romanian Constitutional Court; Decision No. 802/2009 of 23.6.2009 of the Romanian Constitutional Court; Decision No. 487/2014 of 11.12.2014 of the Romanian Constitutional Court. For an analysis of this issue, see also Benke, 2022.

Table 13 – National assets in a constitutional context and their relation to the environment or future generations

Country	Constitutional feature
Poland	The Polish Constitution defines the categories of state treasury assets, state assets, and local government assets. On the basis of the case law of the Polish Constitutional Court, no expressis verbis link can be established between the above-mentioned elements of national assets and the protection of the environment or future generations.
Czech Republic	The Czech constitutional order recognizes and specifies the assets of the State, regional governments, and local governments. The constitutional order does not link these categories expressis verbis to the protection of the environment or the interests of future generations.
Slovakia	The Slovak Constitution designates certain environmental elements (caves, groundwater, etc.) as state assets and states that they shall be protected for the benefit of future generations.
Hungary	The Hungarian Fundamental Law recognizes the category of 'national assets', meaning the property of the state and local governments. The management and protection of national assets aims, among other things, to conserve natural resources and take into account the needs of future generations. The special protection of national assets is ensured by several rules in the Hungarian Fundamental Law.
Slovenia	The Slovenian Constitution recognizes the category of 'national assets', stating that specific rights to use national assets may be acquired under conditions laid down by law. Beyond this, no specific provision is made for the constitutional category of national assets.
Croatia	The Croatian Constitution is rather terse in this respect: it provides for the protection of state assets. Beyond this, no specific provision is made for the constitutional category of national assets.
Serbia	The Serbian Constitution recognizes the category of 'public assets', the types of which are 'state assets', 'assets of the autonomous provinces', and 'local government assets'. State assets also include natural resources.
Romania	The Romanian Constitution recognizes the category of 'public property,' which can be linked to the state and territorial administrative units and which, according to the way it is defined, is close in content to the category of public assets. Under the Romanian Constitution, public property is not transferable, and certain natural resources are public property.

Constitutions in some countries establish a link between national assets and the protection of the environment and the interests of future generations on several issues. According to the Hungarian Fundamental Law, the management and protection of national assets owned by the state and local governments aims, among other things, to conserve natural resources and to take into account the needs of future generations.[213] According to the Slovak Constitution, mineral resources, caves, groundwater, natural healing springs, and watercourses are the property of the Slovak Republic and must be protected, developed, and (carefully) utilized by the Slovak State in the interests of future generations.[214] Under the Serbian Constitution, certain natural resources are state assets.[215] The Romanian Constitution places certain natural resources, such as mineral resources, airspace, waters used for electricity generation, coastlines, areas of the sea belonging to the State, natural resources belonging to the economic zone, and the continental shelf, under exclusive public ownership.[216]

9. The relationship of values not yet mentioned in the constitution and constitutional practice to environmental protection and the protection of the interests of future generations

An important aspect of the research was whether the constitutions and constitutional practices of the countries in question contain, or could contain, other constitutional values that could have an impact on the protection of the environment and future generations. In the context of the research, two values, in particular, have shown potential for connection. One of these relates to Christian values and heritage and the other to family policy and child protection; see Table 14 for a summary.

Table 14 – Other constitutional values and the protection of the environment and future generations

Country	Constitutional feature
Poland	The Preamble of the Polish Constitution *expressis verbis* mentions Christian heritage as the root of Polish culture. In the Polish Constitution, parenthood and families are protected by law, and children are guaranteed special protection. The Polish Constitution contains provisions to encourage and support childbearing.

213 Paragraph (1) of Article 38 of the Hungarian Fundamental Law.
214 Paragraph (1) of Article 4 of the Slovak Constitution.
215 Article 87 of the Serbian Constitution.
216 Paragraphs (2)–(4) of Article 136 of the Romanian Constitution.

Country	Constitutional feature
Czech Republic	Under the Charter, parenthood and families are protected by law, and children are guaranteed special protection.
Slovakia	Under the Slovak Constitution, parenthood and families are protected by law, and children are guaranteed special protection. According to the Slovak Constitution, human life should be protected even before birth.
Hungary	The Hungarian Fundamental Law refers to Christianity at various points, such as the country as part of a 'Christian Europe', the 'role of Christianity in preserving the nation', the State's duty to 'protect Christian culture', and the State's duty to educate children according to 'Christian values'. The Hungarian Fundamental Law supports having children, protects families, and gives special protection to children. The costs of bringing up children are taken into account when calculating the contribution to the common needs of those who have children. Under the Hungarian Fundamental Law, the life of the unborn child is protected from conception.
Slovenia	In the Slovenian Constitution, parenthood and families are protected by the State, and children are guaranteed special protection. While the Slovenian Constitution supports having children, it also states that everyone has the right to decide whether to have children.
Croatia	The Croatian Constitution supports motherhood and guarantees special protection for children.
Serbia	The Serbian Constitution supports having children, protects families, and gives special protection to children. While the Serbian Constitution supports having children, it also states that everyone has the right to decide whether to have children.
Romania	The Romanian Constitution supports motherhood, protects families, and prioritizes the protection of children.

There is a clear link between Christian values and Christian culture as well as between environmental protection and the protection of the interests of future generations, and Christian churches are also addressing these issues seriously in their contemporary teachings.[217] In our view, if a constitution or constitutional practice attaches importance to Christian values and/or Christian heritage,[218] then existing environmental laws can be further developed taking these Christian approaches into consideration, and new laws can be developed on this value basis. In this

217 Bándi, 2020a, pp. 9–33; Bándi, 2021, pp. 227–249. Cf. Bányai, 2019, pp. 298–323.

218 C.f. e.g., Đukić, 2022, pp. 57–74; Schanda, 2022, pp. 195–202; Staničić, 2022b, pp. 203–220; Varga, 2022, pp. 221–240.

respect, the constitutions and constitutional case law of some countries pay serious attention to Christian values and Christian culture and regulate them as values to be protected and promoted. This is the case, for example, in the Hungarian Fundamental Law[219] and the Polish Constitution.[220] The case law of the Hungarian Constitutional Court has already linked the issues of Christian heritage and environmental protection.[221]

The link between the growth of the world's population and environmental protection has already been pointed out by the Hungarian Constitutional Court: "*the comprehensive environmental approach, thinking and values in the present sense have only been in existence since the 1970s. The reasons for this are: the population explosion […] and consumption growth*."[222] This issue has similarly appeared in the case law of the Slovenian Constitutional Court: *"I am convinced that in the future, with population growth, the increasing pollution of whole areas of the world, pressure from immigration, etc., the battle for definitions in this area will be fought again, and the need to protect space and nature in the public interest will become ever greater.*"[223] Given that one of the characteristics of the Central European region is the drastic decline in the fertility rate (see Table 15), the key question is how the constitutions and constitutional case law of the countries concerned view the reproduction issues of the society of the nation or country concerned, that is, whether there is any position on the institutions involved in this context. Such institutions may include the protection of unborn human life (as in the Slovak Constitution[224] and Hungarian Fundamental Law[225]), the encouragement and support of having children, motherhood, and parenthood (in the Croatian Constitution,[226] the Czech Charter,[227] and the Slovak,[228] Polish,[229] Hungarian,[230] Serbian,[231] Slovenian,[232] and

219 The Preamble, Paragraph (4) of Article R) and Paragraph (1) of Article XVI of the Hungarian Fundamental Law. For an analysis of this, see Csink, 2021, pp. 78-83.

220 The Preamble of the Polish Constitution. For an analysis of this, see Sobczyk, 2021, pp. 103–112.

221 In Paragraph 36 of Decision No. 28/2017. (X. 25.) of the Hungarian Constitutional Court, reference is made to both Pope Francis' *'Laudato si'* encyclical and the ecological vision and initiatives of Ecumenical Patriarch Bartholomew in the context of biodiversity conservation. See also Krajnyák, 2022.

222 Point 69 of Decision No. 16/2015. (VI. 5.) of the Hungarian Constitutional Court.

223 The parallel reasoning of judge *Katja Šugman Stubbs*; Decision No. U-I-6/17 of 20.6.2019 of the Slovenian Constitutional Court. Cited by Juhart and Sancin, 2022.

224 Paragraph (1) of Article 15 of the Slovak Constitution.

225 Article II of the Hungarian Fundamental Law.

226 Article 62 of the Croatian Constitution.

227 Article 32 of the Charter.

228 Paragraphs (1)–(2) of Article 41 of the Slovak Constitution.

229 Article 18, Paragraph (3) of Article 68, and Paragraph (2) of Article 71 of the Polish Constitution.

230 Paragraph (2) of Article L) and Paragraph (2) of Article XXX of the Hungarian Fundamental Law.

231 Article 63 of the Serbian Constitution.

232 Articles 53 and 55 of the Slovenian Constitution.

Romanian[233] Constitutions). The Serbian[234] and Slovenian[235] approaches are very specific to the region, as they support having children while at the same time emphasizing expressly the individual freedom to have or not to have children. In my view, the fact that the region is still suffering population loss despite the support for having children also has interesting implications for the sustainability of the planet.

Table 15 – Fertility rate *(the average number of children that women of childbearing age give birth to in the given country)*

	1980	1990	2000	2010	2020
Croatia	1.9	1.6	1.4	1.5	1.5
Czech Republic	2.1	1.9	1.1	1.5	1.7
Hungary	1.9	1.9	1.3	1.3	1.6
Poland	2.3	2.1	1.4	1.4	1.4
Romania	2.4	1.8	1.3	1.6	1.6
Serbia	2.1	1.8	1.5	1.4	1.5
Slovakia	2.3	2.1	1.3	1.4	1.6
Slovenia	2.1	1.5	1.3	1.6	1.6

The table was prepared by *Enikő Krajnyák*; source of data: World Bank.[236]

The question for future generations is who falls into this category. As this category does not necessarily include only the unborn generations,[237] it may be important to consider the position of the constitutions and constitutional practices of the countries concerned. The question here is whether or not, for example, generations that have already been born (e.g., current generations of children) can fall into this category. The question may be raised as to whether interpreting the category of future generations together with generations already born might carry some additional protection, for example, for generations not yet born. However, the constitutions and constitutional case law of the countries concerned are rather laconic when it comes to defining the concept of future generations. The Slovak Constitution's provision that human life deserves protection before birth is of particular

233 Paragraph (2) of Article 47 of the Romanian Constitution.
234 Article 63 of the Serbian Constitution.
235 Article 55 of the Slovenian Constitution.
236 See 01.08.2022 at https://data.worldbank.org/indicator/SP.DYN.TFRT.IN
237 See Müllerová, 2021, p. 564 (cited in Radvan, 2022, p. xxx); Radvan, 2022, p. xxx.; Cf. Majchrzak, 2022, Krajnyák, 2022.

importance in this respect.[238] The Hungarian Fundamental Law,[239] which protects the life of the fetus from conception, is similar. Originally, the legislator did not create all of these rules to interpret the concept of 'future generations', but we believe that these provisions are now relevant for the interpretation of this concept. In the context of future generations, some constitutions also include a *subcategory of cultural transmission*, such as 'future Hungarians', which may also add new dimensions to the interpretation of the concept of future generations and warrant further reflection.

It may be an interesting and valuable question to examine whether there are any specific constitutional provisions relevant to environmental protection in relation to the generations of children, *'transitional generations'* in the sense of sustainability, that form the transition between future generations and present generations. As humanity is increasingly running out of time, and as the formerly unborn are now enriching the group of the born, with a significant deterioration in living conditions, we believe that it may be worthwhile to further consider the possibilities offered by constitutional law in relation to these transitional generations, namely whether some form of legal compensation should not be provided for this *'losing or lost generation'*. An interesting episode during the drafting of the Hungarian Fundamental Law was when during the so-called national consultation preceeding the adoption of the new constitution, the Hungarian population faced an interesting question: whether it would like to protect the interests of future generations through different means, namely via giving parents the possibility to exercise their underage children's right to vote. Although refused by a large majority, the idea itself clearly shows that this region is in permanent search for innovative legal solutions when it comes to the interests of future generations.[240]

10. Good practices

The research has identified good practices in several of the countries studied, which could serve as examples not only for legislators in other countries in the same region but also for decision-makers outside the region. These good practices are summarized by country in Table 16.

238 Paragraph (1) of Article 15 of the Slovak Constitution.
239 Article II of the Hungarian Fundamental Law.
240 Raisz, 2012, p. 43.

Table 16 – Good practices in Central European countries on the constitutional protection of the environment and the interests of future generations

Country	Constitutional feature
Poland	The Polish Constitution generally allows for the restriction of the exercise of a constitutional freedom or right in order to protect the natural environment (subject to certain conditions). The Polish Constitutional Court's case law may be exemplary in several aspects: it has an independent approach to future generations and the concept of sustainable development, it has made valuable legal developments in the field of financial sustainability, etc. In Poland, the Ombudsman, who is also specified in the Constitution, can act not only in relation to public sector actors but also in relation to social and professional organizations, cooperatives, and associations with legal personality but only if they exercise some form of public authority.
Czech Republic	In Czech law, the case law of the Czech Constitutional Court and the Czech Ombudsman on environmental protection should be highlighted. Among other things, the Czech Constitutional Court has played an important role in explaining the constitutional category of the 'environment', in detailing the content of the 'right to a favorable environment', and in striking the right balance between environmental and other interests.
Slovakia	Constitutional provisions relating to the cross-border transport of water and other natural resources in the Slovak Constitution.
Hungary	The following provisions of the Hungarian Fundamental Law state duties in relation to the right to health: the concept of 'GMO-free agriculture' and ensuring access to healthy food and drinking water. The Hungarian Fundamental Law's concept of 'national common heritage' is a category that includes natural resources and biodiversity. The case law of the Hungarian Constitutional Court, which has been active again in recent years, and which, in some elements, has the character of a court of fact in relation to environmental cases and the strict principles it has developed, such as the 'non-derogation principle' and the 'precautionary principle', the violation of which may establish the unconstitutionality of a law. The sui generis deputy ombudsman for future generations in the Hungarian Fundamental Law. Financial sustainability in public finances and budgets for future generations.
Slovenia	The Slovenian Constitution's provisions on the right to water are unique in the region. In the Slovenian Constitution, natural resources in general and certain types of natural resources are regulated in detail.

Country	Constitutional feature
Croatia	The competence of the Commissioner of the Croatian Parliament and the Commissioner for Access to Information in environmental matters.
Serbia	The competence of the so-called Protector of Citizens and the Commissioner for Information of Public Importance and Data Protection in environmental matters.
Romania	The practice of the general ombudsman, namely the so-called Advocate of the People, is promising in environment-related matters.

In general, I would like to highlight the good practices outlined below.

(a) Legislators have a great deal of freedom in the formulation of the *terms, concepts, and legal institutions* of each constitution in the field of environmental protection and the protection of the interests of future generations. Some Central European countries appear to have taken advantage of this freedom and begun to shape their constitutional legislation and case law in their own image (for example, by defining identity issues for future generations) and based on their own national values and interests in the context of protecting the environment and the interests of future generations.

(b) Some countries have introduced *financial sustainability* into their constitutions or constitutional practices, that is, provisions that seek to ensure that the interests of future generations are also taken into account in relation to a country's public finances and debt; for example, a designated body may reject a proposed budget if it is not financially sustainable *expressis verbis* in the interest of future generations.

(c) Constitutional courts can play a particularly important role at the institutional level. In some countries, constitutional courts appear to have a serious and strong position in this area. In this regard, some constitutional courts have not only established a strict conceptual case law, for example, based on the *non-derogation principle* or a hardline *precautionary principle*, but have also started to adopt attitudes that are typical not of constitutional courts but, rather, of *courts of fact* in environmental cases.

(d) At the institutional level, a softer player is the *ombudsman*. In the region, there are examples of sui generis green ombudsmen and general ombudsmen who can also act on issues relating to the environment and future generations. In our view, their case law is a real treasure, which would require much more serious analysis and exploration than has been the case thus far, both by academics and by decisionmakers. We also see examples in which, in the spirit of extending responsibility, individual ombudsmen can act not only toward public sector actors but also *toward the private sector*.

(e) The *right to a healthy environment* plays a central role in the region in protecting both the environment and future generations. The tendency is for this right to claim an increasingly prominent place in the constitutional system itself, owing in no small part to the case law of the Constitutional Court and the Ombudsman mentioned above.

(f) It can also be seen that other fundamental rights in the region have begun to *develop in a "green" direction*, though the legislator did not initially take into account their possible environmental role.

(g) The *greening of the State as an institution* has also begun in the region. We do not claim that this greening has reached a sufficient level, given the huge environmental challenges, but the process is underway and must be taken further, and the State must be reformed further, which is not easy in the face of a series of crises.

(h) Environmental protection was initially state-heavy. However, the constitutions and constitutional practices of the region have increasingly involved citizens and other actors from the countries concerned as *responsibility has been extended*.

(g) It is now possible for the constitutions and constitutional practices of the countries concerned to define themselves in relation to the *large international corporations* that play a major role in shaping the environment in the spirit of shared responsibility.

(h) The specific values contained in the constitutions of the Central European countries allow for a new interpretation of the framework of existing constitutional law in relation to the protection of the environment from which specific environmental institutions can develop.

(i) The protection and conservation of *natural resources* is clearly a high priority in some national constitutions. The constitutions of the Central European countries reflect national specificities in the area of *natural resources*, which we consider to be a positive aspect.

11. De lege ferenda proposals

Participants in the research were given a specific task to formulate potential development proposals for their own countries, the most important of which are summarized in Table 17.

Table 17 – De lege ferenda proposals

Country	Constitutional feature
Poland	Aspects of the Polish Constitution that might be worth considering: (a) expressis verbis mention of the right to a healthy environment in the text of the Constitution (b) the placement of the principle of sustainable development in the text of the Polish Constitution in a different place (e.g., in Article 2 of the Constitution) than at present to make clearer its systemic nature, that is, that it should not be understood in the context of environmental protection alone (c) the inclusion of the protection of the country's natural resources as special public goods in the text of the Constitution (d) to more explicitly guarantee public participation in environmental protection procedures by rewording Paragraph (4) of Article 74 of the Constitution

Country	Constitutional feature
Czech Republic	In the context of the Czech Constitution and constitutional practice, the following proposals concerning the Constitutional Order have been made: (a) to demonstrate responsibility to *future generations* (especially those yet unborn) (b) the specific identification and priority protection of certain elements of *natural resources*, including water and forests (c) the establishment of certain constitutional principles to *reinforce financial sustainability*, such as (c1) the principle of financial participation in public goods, (c2) the principle of a reduced contribution for raising children, (c3) the principle of ability to pay, and (c4) the polluter pays principle
Slovakia	The following proposals were made in relation to the Slovak Constitution: (a) the provisions of the Slovak Constitution on cross-border water transport could be simplified (b) the Slovak Constitution should stipulate that the State should prioritize or support the use of waste for energy rather than waste disposal
Hungary	In the context of the rules of the Hungarian Fundamental Law, the principle of responsibility should be further developed by, among other things, defining more precisely the scope of liability and regulating the polluter pays principle in a broad sense. Rethinking the constitutional requirement to restrict the import of waste A possible direction for the further development of the Hungarian Fundamental Law could be the declaration of participation in environmental decision-making processes in the text of the Fundamental Law itself.
Slovenia	The following proposals were made regarding the Slovenian Constitution: (a) mentioning future generations in connection with the right to a healthy living environment and (b) the creation of a *sui generis* Green Ombudsman.
Croatia	The following proposals were made regarding the Croatian Constitution: (a) instead of the right to a healthy life, the right to a healthy environment should be included *expressis verbis* in the Constitution (b) enshrining the right to water in the Constitution (c) the enshrinement in the Constitution of sustainable development as a guiding principle for the State (d) the creation of a sui generis Green Ombudsman The organization of environmental law training for judges was also suggested.
Serbia	The following proposals were made regarding the Serbian Constitution: (a) mentioning future generations in the text of the Constitution (b) the creation of a *sui generis* Green Ombudsman

Country	Constitutional feature
Romania	The following proposals were made regarding the Romanian Constitution: (a) to include in the text of the Constitution, *expressis verbis*, three principles relating to the right to a healthy environment: the principle of sustainable development, the non-derogation principle, and the precautionary principle (b) reflecting the interests of future generations and their protection in the text of the Constitution in relation to natural resources and finance

In addition to what was written in the above good practices, in this portion of the chapter, I am focusing on the ideas through which I think it would be worthwhile to further consider constitutional law institutions and constitutional practice that serve to protect the environment and the interests of future generations.

In connection with the formation of these thought groups, I am aware of numerous issues to be resolved, but three main issues, as an 'eco-*trias* of the organization and operation of state', stand out among them. (a) One of these issues is related to the growth of the Earth's population, namely, what type of concept, detailed at the constitutional level, a country regulates concerning its population. (b) A second issue is related to how the nation-state, as an actor with special responsibility, can renew its own structure at the constitutional level to ensure the proper protection of future generations and the environment at the appropriate level. (c) The third issue concerns the environmental responsibility of *international actors*, especially multinational companies. Due to their size and power, these international actors often have a greater influence in regard to shaping the environment than national actors,[241] and due to their power, they are often able to extract themselves from the control of states. The abuses of environmental protection by certain international actors or their disadvantageous and harmful practices from the perspective of environmental protection as well as the measures that can be taken in relation to them are unreasonably suppressed in today's environmental policy discourses, and from the perspective of legal regulation, they seem to be untouchable issues. Moreover, this problem area affects the Central European countries more simply because of their size, which means that dealing with these powerful international actors is more challenging for them than for larger states. In an interesting way, the conclusion is often drawn from this situation that in this century, nation-states are no longer capable of solving the emerging environmental challenges and that a better solution would be for international actors, who are more difficult to control democratically, to be in charge instead. However, the direction of the solution could also be to properly manage and control certain environmentally harmful systems of certain international players.

In relation to constitutional law developments, my starting point was that there are no international or European Union regulators that would determine what type

241 Bándi, 2022.

of constitutional rules a sovereign country should enact to protect the environment and future generations. In other words, individual countries have a great deal of freedom in creating their constitutions as well as their constitutional jurisprudence. In my view, there is a great deal of room for maneuvering in relation to a country's constitutional regulation and constitutional practice, what they mean by the *'environment,' 'natural resources', 'future generation'*, and, in relation to the latter category, future generations, how they interpret their *'interests'* and *'needs'*. The unique definition of all of these would create an opportunity for a state and certain of its organs (parliament, constitutional court) to develop these concepts in accordance with their national characteristics. For example, they can decide which natural resource types are particularly important for the given country in relation to the natural resource category, and they can define different protection levels and tools for these types. Similarly, in relation to the category of future generations, they can take a position on whether the relationship between the generations merely means the transmission of environmental services of the same quality from generation to generation or whether they also emphasize the passing on of values, which can also be important from the point of view of the proper relationship between the environment and society.

The category of future generations can be of great importance for another reason. In light of today's environmental challenges, how a country imagines the *reproduction* of its own society, its community with a common identity, has become an important aspect. Considering their fertility rates, it seems that Central European societies show a similar (declining) pattern in this area. In our view, a clear position on this issue can be important, which can be closely connected at the constitutional level with family subsidies, support for becoming a parent, and other similar issues.

Considering that the deterioration of the environmental condition has continued in several regards in recent decades, a question can be raised in relation to the basic environmental categories: is it not timely that the concept and approach of *'resilience'* should now be given a more definite place in constitutional regulation and constitutional practice?

Reinterpreting the powers and competence of given state actors may also open up additional opportunities. In the present research, we examined all of these questions in connection with three actors in particular – constitutional courts, ombudsmen, and state presidents – but the practice of other, new actors can also be included in this scope, such as a budget council that blocks the adoption of a country's budget in the case of the possibility of harming the interests of future generations. In this regard, supplementing the functioning of constitutional courts, which typically function as courts of law, with certain features of *courts of fact* in environmental protection cases contains particularly valuable development opportunities. Similarly, the creation of a *green ombudsman* institution or the greening of the already existing general ombudsman institution can be a valuable development direction. It would be important that the ombudsman's activity in the field of environmental protection matters is not limited to the state and state actors but that it can also cover the

systems of *international and foreign actors* and the practices of these international and foreign actors in a given state.

It may be worthwhile to reinterpret the system of relations in connection with constitutional regulation or constitutional practice in the case of some *fundamental rights* related to the protection of the environment and future generations.

In connection with the reinterpretation of this system of relations, and beyond that, in the development of classical constitutional environmental protection institutions, it may be worthwhile to include *other constitutional values* of the given constitution and constitutional practice. For example, in the case of countries whose constitutions and constitutional practices include Christian heritage as a constitutional value, the inclusion of Christian heritage in the development of environmental protection institutions is particularly promising, as it is clear[242] that in the Christian approach, the relationship to the environment as a created world is of great importance.

Connecting the *financial (budgetary) sustainability* of a country expressis verbis with the protection of the interests of future generations is a good development opportunity, as is the fact that the quantifiable elements of environmental values and services can be included in this financial calculation.

The various crises of recent years – currently, the ongoing global COVID epidemic and the deepening energy crisis in Europe as a result of the war that broke out in Ukraine in 2022 – have drawn attention to the reconsideration of *special legal order (emergency power)* situations at the constitutional level.[243] In this regard, it would be important for the legislator to also take into account crisis situations arising from environmental problems.

In addition to, rather than in violation of, the 'polluter pays principle', it would be important if a type of *'system operator pays principle'* were more decisively regulated and enforced in the case of – often but not exclusively international – actors operating commercial and economic systems that are unfavorable from the perspective of environmental protection.

The solution included in certain constitutions, that is, the limitation of the freedom of entrepreneurship with reference to the protection of the environment, may be further considered in relation to other countries as well, especially in relation to multinational and foreign actors. It would also be important for national authorities to be able to act effectively in connection with *multinational and foreign actors* that violate national environmental protection regulations and, for example, to effectively enforce the sanctions and fines imposed in their case, where appropriate, through Central European regional cooperation.

242 Bándi, 2022.
243 Nagy and Horváth (eds.), 2022.

Bibliography

Bándi, Gy. (2020a) 'A Teremtés védelme és az emberi jogok' ['Protecting Creation and Human Rights'], *Acta Humana*, 8(4), pp. 9–33; https://doi.org/10.32566/ah.2020.4.1

Bándi, Gy. (2020b) 'Interests of Future Generations, Environmental Protection and the Fundamental Law', *Journal of Agricultural and Environmental Law*, 15(29), pp. 7–22; https://doi.org/10.21029/JAEL.2020.29.7

Bándi, Gy. (2020c) 'The Case of the Hungarian Constitutional Court with Environmental Principles – From Non-Derogation to the Precautionary Approach', *Hungarian Yearbook of International Law and European Law*, 7(1), pp. 49–66; https://doi.org/10.5553/HYIEL/266627012019007001003

Bándi, Gy. (2021) 'The Protection of Creation and Human Rights' in Koltay, A. (ed.) *Christianity and Human Rights*. Budapest: Ludovika Egyetemi Kiadó, pp. 227–249.

Bándi, Gy. (2022) 'Sustainable Development, the Interests of Future Generations and Moral and Legal Implications' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 17–71; https://doi.org/10.54237/profnet.2022.jeszcpefg_2

Bányai, O. (2019) 'The Foundation of an Upcoming Civilization Able to Reach its Fulfilment within the Ecological Limits of the Earth: The Eternal Order', *World Futures*, 75(5–6), pp. 298–323; https://doi.org/10.1080/02604027.2019.1591812

Benke, K. (2022) 'Romania: A Constitution with Essential Standards and Developing Practice of the Constitutional Actors' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 309–358; https://doi.org/10.54237/profnet.2022.jeszcpefg_8

Csák, Cs., Gyurán I. (2008) 'The Provisions of Environment Policy of the European Community', *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica*, 26(2), pp. 559–576.

Csink, L. (2021) 'The Legal Regulation of Religious Symbols in the Public Sphere in Hungary' in Sobczyk, P. (ed.) *Religious Symbols in the Public Sphere*. Budapest-Miskolc: Ferenc Mádl Institute of Comparative Law-Central European Academic Publishing, pp. 73–102; https://doi.org/10.54237/profnet.2021.psrs

Debisso, K., Szabó, M. (2021) 'An Institution for a Sustainable Future: The Hungarian Ombudsman for Future Generations', *Hungarian Yearbook of International Law and European Law*, 9(1), pp. 338–358; https://doi.org/10.553/HYIEL/266627012021009001019

Đukić, D. (2022) 'Christian Values in the Constitutions of Serbia and Greece', *Central European Journal of Comparative Law*, 3(1), pp. 57–74; https://doi.org/10.47078/2022.1.57-74

Fodor, L. (2006) *Környezetvédelem az Alkotmányban [Protection of the Environment in the Constitution]*. Budapest: Gondolat Kiadó – Debreceni Egyetem ÁJK.

Fodor, L. (2014) *Környezetjog [Environmental Law]*. Debrecen: Debreceni Egyetemi Kiadó.

Fülöp, S. (2012) 'Az egészséges környezethez való jog és a jövő nemzedékek érdekeinek védelme az Alaptörvényben' ['The right to a healthy environment and the protection of the interests of future generations in the Fundamental Law'] in Csák, Cs. (ed.) *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében [Legal studies in the matter of sustainable natural resources]*. Miskolc: Miskolci Egyetem, pp. 76–87.

Habuda, A. (2019) 'The Right to the Environment in the Republic of Poland', *Studia Prawnoustrojowe*, 2019(44), pp. 107–121; https://doi.org/10.31648/sp.4898

Hohmann, B., Pánovics, A. (2019) 'Vízvédelem és elővigyázatosság' ['Water protection and precaution'], *Jura*, 25(1), pp. 305–309.

Hojnyák, D. (2021) 'Current tendencies of the development of the right to a healthy environment in Hungary in the light of the practice of the Constitutional Court in recent years', *Journal of Agricultural and Environmental Law*, 16(31), pp. 39–54; https://doi.org/10.21029/JAEL.2021.31.39

Horváth, G. (2021) 'Még egy ok az elővigyázatosságra!' ['One more reason for precaution!'] in Tahyné Kovács, Á. (ed.) *Vox generationum futurarum*. Budapest: Pázmány Press, pp. 259–266.

Juhart, M., Sancin, V. (2022) 'Slovenia: An Example of a Constitution Guaranteeing High-Level Protection of Natural Resources and Sui Generis Right to Drinking Water' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 439–478; https://doi.org/10.54237/profnet.2022.jeszcpefg_11

Kokoly, Zs. (2022) 'Constitutional principles of environmental law in Romania: enshrinement in the Constitution and jurisprudence of the Constitutional Court', *Journal of Agricultural and Environmental Law*, 17(32), pp. 58–78; https://doi.org/10.21029/JAEL.2022.32.58

Krajnyák, E. (2022) 'Hungary: A Progressive Approach to the Protection of the Environment and Future Generations in a Traditional Constitution' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 203–248; https://doi.org/10.54237/profnet.2022.jeszcpefg_6

Majchrzak, B. (2022) 'Poland: One of the Most Protected Values of the Constitution and its Limited Conceptualization in the Practice of the Constitutional Court' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 249–308; https://doi.org/10.54237/profnet.2022.jeszcpefg_7

Maslen, M. (2022) 'Slovak Republic: Constitution and the Protection of Environment and Natural Resources' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 399–437; https://doi.org/10.54237/profnet.2022.jeszcpefg_10

Miščević, N., Attila Dudás, A. (2021) 'The "Environmental Lawsuit" as an Instrument of Preventive Protection of the Constitutional Right to Healthy Environment in the Law of the Republic of Serbia', *Journal of Agricultural and Environmental Law*, 16(31), pp. 55–69; https://doi.org/10.21029/JAEL.2021.31.55

Müllerová, H. (2021) 'Klimatická změna a snahy o rozšiřování lidských práv v čase a prostoru' ['Climate Change and Efforts to Expand Human Rights across Time and Space'], *Právník*, 160(7), pp. 549–564.

Nagy, Z., Horváth, A. (eds.) (2022) *Emergency Powers in Central and Eastern Europe*. Budapest – Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing; https://doi.org/10.47079/2022.znah.epicaee.1

Ofak, L. (2021) 'The approach of the Constitutional Court of the Republic of Croatia towards the protection of the right to a healthy environment', *Journal of Agricultural and Environmental Law*, 16(31), pp. 85–98; https://doi.org/10.21029/JAEL.2021.31.85

Olajos, I. (2018) 'The special asset management right of nature conservation areas, the principal of the prohibition of regression and the conflict with the ownership right in connection with the management of state-owned areas', *Journal of Agricultural and Environmental Law*, 13(25), pp. 157–189; https://doi.org/10.21029/JAEL.2018.25.157

Olajos, I., Mercz, M. (2022) 'The use of precautionary principle and the non-refoulement principle in public law', *Journal of Agricultural and Environmental Law*, 17(32), pp. 79–97; https://doi.org/10.21029/JAEL.2022.32.79

Orosz, F., Suri, N., Hrecska-Kovács, R., Szőke, P. (2021) 'Constitutional protection of the environment with particular regard to the Hungarian, German, Italian and Belgian constitutional regulation', *Journal of Agricultural and Environmental Law,* 16(31), pp. 99–120; https://doi.org/10.21029/JAEL.2021.31.99

Paulovics, A., Jámbor, A. (2022) 'The Right to a Healthy Environment in the Hungarian Constitution', *Journal of Agricultural and Environmental Law,* 17(32), pp. 98–111; https://doi.org/10.21029/JAEL.2022.32.98

Radvan, M. (2022) 'Czech Republic: Limited Constitutional Regulation of Environmental Protection Complemented by the Case Law of the Constitutional Court' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 161–202; https://doi.org/10.54237/profnet.2022.jeszcpefg_5

Raisz, A. (2012) 'A Constitution's Environment, Environment in the Constitution – Process and background of the New Hungarian Constitution', *Revue Est Europa*, 10(special edition 1), pp. 37–70 [Online]. Available at: https://www.est-europa.univ-pau.fr/images/archives/2012-Hongrie/aniko-raisz.pdf (Accessed: 21 August 2022).

Rakoczy, B. (2021) 'Constitutionalisation of Environmental Protection in Poland', *Journal of Agricultural and Environmental Law*, 16(31), pp. 121–129; https://doi.org/10.21029/JAEL.2021.31.121

Savčić, S. (2022) 'Serbia: Constitutional Framework for Environmental Protection: Value in Regulation, Silence in Realization' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*. Budapest – Miskolc: Central European Academic Publishing, pp. 359–397; https://doi.org/10.54237/profnet.2022.jeszcpefg_9

Schanda, B. (2022) 'The Christian Roots of Hungary's Fundamental Law', *Central European Journal of Comparative Law*, 3(1), pp. 195–202; https://doi.org/10.47078/2022.1.195-202

Sobczyk, P. (2021) 'The Legal Regulation of Religious Symbols in the Public Sphere in Poland' in Sobczyk, P. (ed.) *Religious Symbols in the Public Sphere*. Budapest-Miskolc: Ferenc Mádl Institute of Comparative Law-Central European Academic Publishing, pp. 103–140; https://doi.org/10.54237/profnet.2021.psrs_4

Staničić, F. (2022a) 'Croatia: Constitutional Protection of the Right to a Healthy Life – Do We Need More in Order to Safeguard the Environment and Future Generations?' in Szilágyi, J.E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries***.** Budapest – Miskolc: Central European Academic Publishing, pp. 127–160; https://doi.org/10.54237/profnet.2022.jeszcpefg_4

Staničić, F. (2022b) 'Christian Values in the Constitutions of Croatia and Slovenia', *Central European Journal of Comparative Law,* 3(1), pp. 203–220; https://doi.org/10.47078/2022.1.203-220 (Accessed: 21 August 2022).

Szabó, M. (2020) 'The Precautionary Principle in the Fundamental Law of Hungary: Judicial Activism or an Inherent Fundamental Principle?', *Hungarian Yearbook of International Law and European Law*, 7(1), pp. 67–83; https://doi.org/10.5553/HYIEL/266627012019007001004

Szilágyi, J.E. (2019) 'The precautionary principle's 'strong concept' in the case law of the constitutional court of Hungary', *Lex et Scientia*, 26(2), pp. 88–112 [Online]. Available at: http://lexetscientia.univnt.ro/download/2019_XXVI_2_7_LESIJ.pdf (Accessed: 21 August 2022).

Szilágyi, J.E. (2021a) 'Some Values and Guarantees in the Ten-Year-Old Hungarian Constitution, With a Look at the Constitutional Arrangements of the Countries Founding the European Integration', *Central European Journal of Comparative Law*, 2(2), pp. 197–219; https://doi.org/10.47078/2021.2.197-219

Szilágyi, J.E. (2021b) 'The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues', *Journal of Agricultural and Environmental Law*, 16(31), pp. 130–144; https://doi.org/10.21029/JAEL.2021.31.130

Szilágyi, J.E., Raisz, A., Kocsis, B.E. (2017) 'New dimensions of the Hungarian agricultural law in respect of food sovereignty', *Journal of Agricultural and Environmental Law*, 12(22), pp. 160–180; https://doi.org/10.21029/JAEL.2017.22.160

Varga, A. (2022) 'Christian Values and the Protection of the Family in the Romanian Constitution and the Case Law of the Romanian Constitutional Court', *Central European Journal of Comparative Law*, 3(1), pp. 221–240; https://doi.org/10.47078/2022.1.221-240

Židek, D. (2021) 'Environmental protection in the Constitution of the Czech Republic', *Journal of Agricultural and Environmental Law*, 16(31), pp. 145–160; https://doi.org/10.21029/JAEL.2021.31.145

Other titles in the book series
Studies of the Central European Professors' Network

2021

Tímea Barzó, Barnabás Lenkovics (eds.): *Family Protection From a Legal Perspective*

Zoltán J. Tóth (ed.): *Constitutional Reasoning and Constitutional Interpretation*

Paweł Sobczyk (ed.): *Religious Symbols in the Public Sphere*

Marcin Wielec (ed.): *The Impact of Digital Platforms and Social Media on the Freedom of Expression and Pluralism*

2022

Paweł Sobczyk (ed.): *Content of the Right to Parental Responsibility*

Zoltán J. Tóth (ed.): *Constitutional and Legal Protection of State and National Symbols in Central Europe*

Design, layout
IDEA PLUS (Elemér Könczey, Botond Fazakas)
Kolozsvár / Cluj-Napoca (Romania)

Printed and bound by
AK NYOMDA
Martonvásár (Hungary)