

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.jeszcepgf_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 criteria² 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 international⁵ 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 freedoms⁹) *expressis verbis* ensuring the protection of the environment in the given legal system¹⁰ 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 Színek 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>