

# CONSTITUTIONAL PROTECTION OF THE ENVIRONMENT AND FUTURE GENERATIONS IN CERTAIN CENTRAL EUROPEAN COUNTRIES



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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*.<sup>1</sup>

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,<sup>2</sup> the Czech Republic,<sup>3</sup> Slovakia, and Hungary<sup>4</sup>), certain Southern Slavic countries (Slovenia, Croatia,<sup>5</sup> and Serbia<sup>6</sup>) and Romania,<sup>7</sup> 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.

regulations are not irrelevant for Serbia. However, it is important to note that there are no international or European Union<sup>8</sup> 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*,<sup>9</sup> 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

<sup>8</sup> See Csák and Gyurán, 2008, pp. 559–576.

<sup>9</sup> 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.<sup>10</sup>

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## 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

<sup>10</sup> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> , 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> , 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,<sup>11</sup> and the constitution also specifically mentions ‘natural resources’ and ‘parts of nature’ and recognizes ‘goods of ecological importance’.<sup>12</sup> The Czech Constitutional Court defines the environment (a) as a ‘public good (value)’<sup>13</sup> and a ‘natural wealth’<sup>14</sup>. The Polish Constitutional Court has already dealt with the definition of the environment in its own interpreting the Constitution,<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> Certain environmental elements are mentioned in the practice of the Hungarian Constitutional Court.<sup>18</sup>

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 <i>expressis verbis</i> for their special protection.
Czech Republic	Although the Czech constitutional order recognizes the category of natural resources and provides for their protection <i>expressis verbis</i> in Article 7 of the Czech Constitution in the narrow sense (i.e., constitution <i>sensu stricto</i> ), 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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,<sup>19</sup> Slovenia,<sup>20</sup> Serbia,<sup>21</sup> Hungary,<sup>22</sup> Slovakia,<sup>23</sup> and Romania.<sup>24</sup> 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*.”<sup>25</sup> The Hungarian Fundamental Law<sup>26</sup> also states that natural resources are the “*common heritage of the nation*.”<sup>27</sup>

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,<sup>28</sup> Hungarian,<sup>29</sup> and Slovakian<sup>30</sup> Constitutions and, to some extent, the Slovenian<sup>31</sup> and Croatian<sup>32</sup> Constitutions), *forests or forest lands* (the Serbian,<sup>33</sup> Hungarian,<sup>34</sup> and Slovakian<sup>35</sup> Constitutions and, to some extent, the Croatian<sup>36</sup> Constitution), *water* (the Hungarian,<sup>37</sup> Slovakian,<sup>38</sup> and Croatian<sup>39</sup> Constitutions and, to some extent, the Slovenian<sup>40</sup> Constitution; for certain water resources, to some extent, the Romanian<sup>41</sup> 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<sup>42</sup> and Hungarian<sup>43</sup> Constitutions; to some extent, the Croatian<sup>44</sup> and Slovenian<sup>45</sup> Constitutions). In the Croatian<sup>46</sup> Constitution and, to a certain extent, the Romanian<sup>47</sup> Constitution, *the sea, the coast and islands, the air-space, and mineral resources* are also considered natural resources. In addition, the Croatian Constitution also includes *islands* as a natural resource.<sup>48</sup> 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.<sup>49</sup> In a sense, the *mountain areas and hill areas* are included in the Slovenian Constitution.<sup>50</sup> In addition to the above, it is important to note that the Slovenian Constitution designates and protects '*natural heritage*', '*natural sites*',<sup>51</sup> 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.<sup>52</sup>

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<sup>53</sup> and the Slovak,<sup>54</sup> Hungarian,<sup>55</sup> Slovenian,<sup>56</sup> and Romanian<sup>57</sup> 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,<sup>58</sup> Croatian,<sup>59</sup> and Slovenian<sup>60</sup> 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<sup>61</sup> and the Slovak<sup>62</sup> Constitution) by declaring *state ownership* of certain natural resources (the Slovak<sup>63</sup> and Romanian<sup>64</sup> Constitutions), the protection, maintenance, and conservation of natural resources *for the benefit of future generations* (the Hungarian Fundamental Law<sup>65</sup>), and the conservation of natural resources *as one of the objectives of the management of national assets* (Hungarian Fundamental Law<sup>66</sup>).

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.<sup>67</sup>

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.<sup>68</sup>

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,<sup>69</sup> Hungarian,<sup>70</sup> Polish,<sup>71</sup> and Slovak<sup>72</sup> 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.<sup>73</sup> According to the Polish Constitution<sup>74</sup> and the related case law of the Constitutional Court,<sup>75</sup> the concept of future generations includes generations yet to be born.<sup>76</sup> The case law of the Polish Constitutional Court<sup>77</sup> leaves room for interpretation of the category of future generations at both the individual and community levels.<sup>78</sup>

The countries that mention future generations in their constitutions relate them to the following issues: *responsibility* (the Czech<sup>79</sup> and Hungarian<sup>80</sup> 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<sup>81</sup> and Slovak<sup>82</sup> Constitutions), *financial sustainability* of the budget (the Hungarian<sup>83</sup> Fundamental Law), ecological *security* (the Polish<sup>84</sup> Constitution), passing on *heritage* that also contains elements of value between generations (the Polish<sup>85</sup> Constitution), and that the purpose of *healthcare* as a state function is, among other things, to protect future generations (the Slovak<sup>86</sup> 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' <i>expressis verbis</i> , 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,<sup>87</sup> Polish,<sup>88</sup> and Serbian<sup>89</sup> Constitutions.

Sustainable development and sustainability are associated with the following issues: the *budget* and public debt (the Hungarian<sup>90</sup> and Polish<sup>91</sup> Constitutions), as a *function of the State* in the definition of competences (the Serbian<sup>92</sup> Constitution), the role of the State in *foreign affairs* (the Hungarian<sup>93</sup> Fundamental Law), the *protection of the natural environment by the State* (the Polish<sup>94</sup> Constitution), the management of *natural resources* (the Slovak<sup>95</sup> and Slovenian<sup>96</sup> Constitutions), *regional development* (the Serbian<sup>97</sup> Constitution), and the functioning of the *economy* (the Slovak Constitution<sup>98</sup>).

Both the Polish<sup>99</sup> and the Hungarian<sup>100</sup> 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.<sup>101</sup> The Croatian Constitutional Court has set sustainable development as a goal in its case law.<sup>102</sup>

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.<sup>103</sup> The Polish Constitution<sup>104</sup> and the case law of the Polish Constitutional Court<sup>105</sup> show that financial sustainability is part of Polish constitutional law. The Polish Constitutional Court<sup>106</sup> 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.

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## 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.<sup>107</sup> 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,<sup>108</sup> while the recent practice of improving the law also confirms this,<sup>109</sup> for example, when the burden of proof is placed on the State by invoking the precautionary principle.<sup>110</sup> 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."<sup>111</sup> 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."<sup>112</sup> 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.<sup>113</sup>

In Poland, in addition to the Constitutional Court, the Supreme Administrative Court<sup>114</sup> and the Supreme Court<sup>115</sup> 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.<sup>116</sup> 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.<sup>117</sup> The role of the Slovenian Supreme Court is also significant.<sup>118</sup>

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 <i>expressis verbis</i> 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,<sup>119</sup> 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.<sup>120</sup> In other countries, such as the Czech Republic, Slovakia,<sup>121</sup> Poland,<sup>122</sup> 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<sup>123</sup>).

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, <i>Andrzej Duda</i> , 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 <i>Vaclav Havel's</i> role in the adoption of Article 7, the eco-article, of the Czech Constitution is undeniable (Constitution <i>sensu stricto</i> ).
Slovakia	The current Slovak head of state, <i>Zuzana Čaputová</i> , 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, <i>László Sólyom</i> considered the establishment of a green ombudsman institution in Hungary to be one of his important tasks as head of state (he succeeded); <i>János Áder</i> 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 <i>Borut Pahor</i> , 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, <i>Klaus Johannis</i> , 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,<sup>124</sup> Hungarian,<sup>125</sup> Serbian,<sup>126</sup> Slovak,<sup>127</sup> Slovenian,<sup>128</sup> and Romanian<sup>129</sup> Constitutions. The Romanian Constitution provides for the ‘right to a healthy, well-preserved and balanced environment’.<sup>130</sup> The Czech<sup>131</sup> and Slovak<sup>132</sup> Constitutions mention the ‘right to a favorable environment’. According to Czech literature,<sup>133</sup> the ‘right to a favorable environment’ in the Czech Constitution is synonymous with the ‘right to a healthy environment’. The Slovak literature,<sup>134</sup> 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,<sup>135</sup> 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.<sup>136</sup> The ‘right to a healthy life’ in the Croatian Constitution is not the same,<sup>137</sup> as the identity with the right to a healthy environment is not clear,<sup>138</sup> 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,<sup>139</sup> but according to the Constitutional Court, a ‘healthy environment’ is a constitutional value.<sup>140</sup>

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<sup>141</sup> 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<sup>142</sup> and in the legal literature.<sup>143</sup> 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*.<sup>144</sup> In the Slovak literature, the right to a favorable environment has been labeled ‘impotent’ because of its weaknesses.<sup>145</sup>

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.<sup>146</sup> 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.<sup>147</sup>

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	<p>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.</p> <p>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.</p>
Czech Republic	<p>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.</p> <p>In some cases, the Czech Constitutional Court has dealt with the right of petition and the right of association with regard to environmental protection.</p>
Slovakia	<p>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.</p> <p>In some cases, the Slovak Constitutional Court has addressed the right to health with regard to the protection of future generations.</p>
Hungary	<p>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’.</p> <p>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.</p> <p>The Hungarian Constitutional Court has also addressed the relationship between the right to a fair trial and environmental protection.</p>

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,<sup>148</sup> Slovakia,<sup>149</sup> Poland,<sup>150</sup> and Serbia.<sup>151</sup> The link between the right to health and environmental protection is specified in the Hungarian<sup>152</sup> and Polish<sup>153</sup> Constitutions. The Slovenian Constitution has created a *sui generis* fundamental right by adopting the *right to drinking water*.<sup>154</sup> In our view, the *right to a healthy life* in the Croatian Constitution,<sup>155</sup> 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,<sup>156</sup> Serbian,<sup>157</sup> Croatian,<sup>158</sup> and Polish<sup>159</sup> 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<sup>160</sup> and Romanian<sup>161</sup> Constitutional Courts have analyzed the relationship. The relationship was analyzed by the Czech Constitutional Court<sup>162</sup> in relation to the *right of petition* and by the Hungarian<sup>163</sup> Constitutional Court in relation to the *right to remedy*. The Czech<sup>164</sup> Constitutional Court found a link between the *right of association* and environmental protection. According to the Hungarian Constitutional Court,<sup>165</sup> the right to a healthy environment is part of the objective and institution-protecting aspect of the *right to life*. The Polish<sup>166</sup> 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*<sup>167</sup> 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.<sup>168</sup> The Slovenian Constitutional Court has interpreted the relationship between the right to a healthy living environment and the *right to inviolability of the home*<sup>169</sup> as well as the right to free economic initiative.<sup>170</sup> The Romanian Constitutional Court addressed the relationship between environmental protection and human dignity in the context of animal protection.<sup>171</sup> This court pointed out that a natural environment is an important precondition for exercising the right to healthcare.<sup>172</sup>

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## 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, <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> for the various functions of property, including the environmental function, in the right to property.
Croatia	The Croatian Constitution <i>expressis verbis</i> 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 <i>expressis verbis</i> 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 <i>expressis verbis</i> 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.<sup>173</sup> Restrictions may also be imposed *on certain fundamental rights*, such as the *right to property* (in the case of the Slovak,<sup>174</sup> Croatian,<sup>175</sup> Slovenian,<sup>176</sup> and Romanian<sup>177</sup> Constitutions) and the *freedom of entrepreneurship* (in the Croatian<sup>178</sup> and Serbian<sup>179</sup> 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,<sup>180</sup> Hungarian,<sup>181</sup> Polish,<sup>182</sup> and Romanian<sup>183</sup> Constitutional Courts), the *freedom of entrepreneurship* (in the case law of the Polish Constitutional Court<sup>184</sup>), the *freedom of movement and residence* (in the case law of the Czech Constitutional Court<sup>185</sup>), the *right to self-government* (in the case law of the Czech Constitutional Court<sup>186</sup>), and the *right to economic freedom* (in the case law of the Romanian Constitutional Court<sup>187</sup>).

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## 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.<sup>188</sup> 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,<sup>189</sup> for example, defines the operation of *agriculture free of genetically modified organisms*<sup>190</sup> and the *provision of access to drinking water* as such. The Slovak Constitution specifies several aspects of the prudent use of natural resources.<sup>191</sup>

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<sup>192</sup> and, more broadly, on other actors,<sup>193</sup> 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.<sup>194</sup> In the Croatian literature, this is interpreted to include legal persons, including, where appropriate, large international companies.<sup>195</sup> The Serbian Constitution also states that ‘everyone’ has a duty to protect, preserve, and develop the environment.<sup>196</sup> Under the Slovenian Constitution, ‘everyone’ has a duty to protect natural values.<sup>197</sup> The Romanian Constitution provides for the obligation of ‘natural and legal persons’ to protect and develop the environment.<sup>198</sup> 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’.<sup>199</sup> 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<sup>200</sup> and the Slovak Constitution,<sup>201</sup> ‘anyone’ in the Hungarian Fundamental Law,<sup>202</sup> ‘everyone’ in the Polish Constitution,<sup>203</sup> and ‘person’ in the Slovenian Constitution.<sup>204</sup> Based on the case law of the Polish Constitutional Court,<sup>205</sup> the Polish literature<sup>206</sup> and the Czech literature<sup>207</sup> 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’.<sup>208</sup>

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,<sup>209</sup> partly from the Slovenian Constitution,<sup>210</sup> and, controversially, from the Hungarian Fundamental Law.<sup>211</sup> The Romanian Constitutional Court has already dealt with the ‘polluter pays principle’ in its case law and has upheld its application in specific cases.<sup>212</sup>

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## 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.<sup>213</sup> 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.<sup>214</sup> Under the Serbian Constitution, certain natural resources are state assets.<sup>215</sup> 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.<sup>216</sup>

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## 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 <i>expressis verbis</i> 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	<p>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’.</p> <p>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.</p>
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.<sup>217</sup> In our view, if a constitution or constitutional practice attaches importance to Christian values and/or Christian heritage,<sup>218</sup> 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<sup>219</sup> and the Polish Constitution.<sup>220</sup> The case law of the Hungarian Constitutional Court has already linked the issues of Christian heritage and environmental protection.<sup>221</sup>

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."*<sup>222</sup> 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."*<sup>223</sup> 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<sup>224</sup> and Hungarian Fundamental Law<sup>225</sup>), the encouragement and support of having children, motherhood, and parenthood (in the Croatian Constitution,<sup>226</sup> the Czech Charter,<sup>227</sup> and the Slovak,<sup>228</sup> Polish,<sup>229</sup> Hungarian,<sup>230</sup> Serbian,<sup>231</sup> Slovenian,<sup>232</sup> 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 Krajnýák, 2022.

222 Point 69 of Decision No. 16/2015. (VI. 5.) of the Hungarian Constitutional Court.

223 The parallel reasoning of judge *Katja Sugman 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<sup>233</sup> Constitutions). The Serbian<sup>234</sup> and Slovenian<sup>235</sup> 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
<b>Croatia</b>	1.9	1.6	1.4	1.5	1.5
<b>Czech Republic</b>	2.1	1.9	1.1	1.5	1.7
<b>Hungary</b>	1.9	1.9	1.3	1.3	1.6
<b>Poland</b>	2.3	2.1	1.4	1.4	1.4
<b>Romania</b>	2.4	1.8	1.3	1.6	1.6
<b>Serbia</b>	2.1	1.8	1.5	1.4	1.5
<b>Slovakia</b>	2.3	2.1	1.3	1.4	1.6
<b>Slovenia</b>	2.1	1.5	1.3	1.6	1.6

The table was prepared by *Enikő Krajnyák*; source of data: World Bank.<sup>236</sup>

The question for future generations is who falls into this category. As this category does not necessarily include only the unborn generations,<sup>237</sup> 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.<sup>238</sup> The Hungarian Fundamental Law,<sup>239</sup> 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 preceding 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.<sup>240</sup>

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## 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	<p>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).</p> <p>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.</p> <p>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.</p>
Czech Republic	<p>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.</p>
Slovakia	<p>Constitutional provisions relating to the cross-border transport of water and other natural resources in the Slovak Constitution.</p>
Hungary	<p>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.</p> <p>The Hungarian Fundamental Law’s concept of ‘national common heritage’ is a category that includes natural resources and biodiversity.</p> <p>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.</p> <p>The sui generis deputy ombudsman for future generations in the Hungarian Fundamental Law.</p> <p>Financial sustainability in public finances and budgets for future generations.</p>
Slovenia	<p>The Slovenian Constitution’s provisions on the right to water are unique in the region.</p> <p>In the Slovenian Constitution, natural resources in general and certain types of natural resources are regulated in detail.</p>

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) <i>expressis verbis</i> 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: <ul style="list-style-type: none"> <li>(a) to demonstrate responsibility to <i>future generations</i> (especially those yet unborn)</li> <li>(b) the specific identification and priority protection of certain elements of <i>natural resources</i>, including water and forests</li> <li>(c) the establishment of certain constitutional principles to <i>reinforce financial sustainability</i>, 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</li> </ul>
Slovakia	The following proposals were made in relation to the Slovak Constitution: <ul style="list-style-type: none"> <li>(a) the provisions of the Slovak Constitution on cross-border water transport could be simplified</li> <li>(b) the Slovak Constitution should stipulate that the State should prioritize or support the use of waste for energy rather than waste disposal</li> </ul>
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 <i>sui generis</i> Green Ombudsman.
Croatia	The following proposals were made regarding the Croatian Constitution: <ul style="list-style-type: none"> <li>(a) instead of the right to a healthy life, the right to a healthy environment should be included <i>expressis verbis</i> in the Constitution</li> <li>(b) enshrining the right to water in the Constitution</li> <li>(c) the enshrinement in the Constitution of sustainable development as a guiding principle for the State</li> <li>(d) the creation of a <i>sui generis</i> Green Ombudsman</li> </ul> The organization of environmental law training for judges was also suggested.
Serbia	The following proposals were made regarding the Serbian Constitution: <ul style="list-style-type: none"> <li>(a) mentioning future generations in the text of the Constitution</li> <li>(b) the creation of a <i>sui generis</i> Green Ombudsman</li> </ul>

Country	Constitutional feature
Romania	The following proposals were made regarding the Romanian Constitution: (a) to include in the text of the Constitution, <i>expressis verbis</i> , 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-triad 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,<sup>241</sup> 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

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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<sup>242</sup> 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.<sup>243</sup> 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.

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