

CHAPTER IX

SLOVAK REPUBLIC: CONSTITUTION AND THE PROTECTION OF ENVIRONMENT AND NATURAL RESOURCES



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The objective of this paper is to illustrate the approach of certain Slovak administrative authorities and of the Constitutional Court of the Slovak Republic toward environmental protection, the protection of natural resources, and the connection between family and parenthood protection and the protection of future generations and sustainable development. The paper adopts the traditional methods of scientific research, which include analysis, induction, deduction, generalization, and analogy. The key questions that the paper tackles include the issue of how the Slovak legislation and constitutional protection respond to the relation of human society and environment. In this relationship, human seems to try to convince nature of his superiority and supremacy, and nature seems to persistently prove its autonomy and independence to humans. Scientific research has already shown that nature is capable of independent existence without man. It also shows that man needs nature to survive and to have a certain quality of life. Research has compared parts of nature significantly affected by humans with parts of nature relatively unaffected by humans, coming to the conclusion that nature—or the natural part of the environment—has an elaborate system of balance and stability, and the more a person intervenes in this system (mainly with the aim of satisfying his own economic and social needs), the more they disrupt the established stability and destabilize said system. This paper aims to add some value and contribute to environmental protection.

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1. The constitutional framework for environmental protection

Article 4 of the Constitution of the Slovak Republic (hereinafter referred to as the “Constitution”) addresses environmental protection.¹ Therefore, in the context of the mentioned article, one can speak about the principle of sustainable development anchored in the Article 4 sec. 1 of the Constitution and the constitutional value of water resources, which is expressed in Article 4 sec. 2 of the Constitution. In addition to the abovementioned provision, Article 44 of the Constitution establishes the right to a favorable environment.² Moreover, Article 45 ensures the right to information about the state of the environment.³ The Constitution also anchors a special provision connected with property right expressed within Article 20 sec. 3. This provision can be understood as a limit to the performance of property⁴ and limits the owner in the performance of the property right in such way that would harm cultural heritage⁵ or the environment.

1 Under the mentioned provision *“(1) Mineral resources, caves, groundwater, natural healing resources and watercourses are owned by the Slovak Republic. The Slovak Republic protects and enhances these resources, gently and effectively uses mineral wealth and natural heritage for the benefit of its citizens and future generations. ... (2) The transport of water taken from water bodies located in the territory of the Slovak Republic across the borders of the Slovak Republic by means of transport or pipelines is prohibited; the prohibition does not apply to water for personal consumption, drinking water packaged in consumer packaging in the territory of the Slovak Republic and natural mineral water packaged in consumer packaging in the territory of the Slovak Republic and to the provision of humanitarian aid and emergency assistance. Details of the conditions for the transport of water for personal consumption and water for the provision of humanitarian aid and emergency assistance shall be laid down by law.”*

2 Under the mentioned article: *“(1) Everyone has the right to a favorable environment. ... (2) Everyone has a duty to protect and enhance the environment and cultural heritage. (3) No one may, beyond the law, endanger or damage the environment, natural resources and cultural monuments. ... (4) The state takes care of the careful use of natural resources, the protection of agricultural and forest land, the ecological balance and the effective care of the environment and ensures the protection of designated species of wild plants and wildlife. ... (5) Agricultural land and forest land as non-renewable natural resources enjoy special protection by the state and society. ... (6) Details of the rights and obligations under paragraphs 1 to 5 shall be laid down by law.”*

3 Under the Article 45 of the Constitution: *“Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of that state.”*

4 Under the Article 20 sec. 3 of the Constitution, *“Property is binding. It may not be abused to the detriment of the rights of others or contrary to the general interests protected by law. The exercise of property right must not harm human health, nature, cultural monuments and the environment to the extent required by law.”*

5 According to the case law of the Slovak courts the impact of Art. 20 sec. 3 of the Constitution of the Slovak Republic is that, if the subject of ownership is real estate in the monument territory, its owner is limited in the exercise of ownership rights in accordance with the Monument Fund Protection Act and is obliged to fulfill the obligations under the Monument Fund Protection Act. (See the Judgement of the Supreme court of the Slovak Republic of October 24th, 2018, no. 7Sžk/8/2017). Therefore, the building does not have to be declared a cultural monument, but it can still be subject to the regime of monument protection. In addition to cultural monuments, according to the Monument Fund Protection Act, areas with a concentration of cultural monuments in a comprehensive preserved historical

Then, Article 43 sec. 2 of the Constitution stipulates that *“the right of access to cultural wealth is guaranteed under the conditions laid down by law.”*⁶ All the above-mentioned provisions of the Constitution create the constitutional framework of environmental protection in the Slovak Republic. This legislation created a space for the adoption of a specific act on the protection of the environment in the Slovak Republic.

In the mentioned context, the Slovak legislation contains the general act protecting the environment designated Act no.17/1992 Coll. on the environment (hereinafter referred to as “the Act on environment”), which established the principles of environmental protection transposing the principles of international environmental law. Specific separate laws address the protection of the environment’s individual components, such as waters, air, forests, nature, and landscape. The Act on environment is also important because it established basic principles and rules on liability for environmental matters in civil law. Article 27 of the Act on environment establishes the liability for the breach of the environmental legislation.⁷ The general legislation protecting cultural monuments is expressed within Act. No 49/2002 Coll. on the protection of monument fund (hereinafter referred to as the Monument Fund Protection Act).⁸

settlement structure or areas with a concentration of topographically defined archaeological sites and localities are also protected. For buildings that are not cultural monuments but are in a protected area, conditions and restrictions apply. These measures are defined in the principles of protection of the monument fund developed for the area. These criteria create the conditions of constitutionality in the restriction of property rights. The public interest in the protection of cultural heritage is therefore undoubtedly given in such localities. (See the Judgement of the Supreme Court of the Slovak Republic of August 7, 2019, no. 3Sžk/24/2019). According to the Constitution of the Slovak Republic, ownership is binding; it may not be abused to the detriment of the rights of others or contrary to the general interests protected by law. The property owner has a duty to the basic protection of the monument area and the obligation to ensure, among other things, the preservation of monument values in the area and their good technical, operational, and aesthetic condition through his cooperation with state administration bodies and local government bodies. (See the Judgement of the Supreme court of the Slovak Republic of September 24, 2014, no. 7Sžo/1/2013).

6 According to the Slovak case law, the protection of the monument fund must be considered public interest, which is based on the preservation of the monumental value, also consisting of the land’s development. The protection of this public interest must be ensured in accordance with other public interests, including the protection of life and health (see the Judgement of the Supreme court of the Slovak Republic of July 28, 2011, no. 8Sžo/203/2010).

7 According to Article 27 sec. 1 of this Act: *“Anyone who has caused ecological damage or other illegal actions to the ecological stability is obliged to restore the natural functions of the disturbed ecosystem or its part. If this is not possible or for serious reasons effective, he is obliged to compensate the environmental damage in another way (substitute performance); if this is not possible, he is obliged to compensate this damage financially. Concurrence of these compensations is not excluded. The method of calculating environmental damage and other details shall be laid down in a special regulation.”* Section 3 of this Article states that *“For the environmental damage, the general rules on liability and compensation shall apply, unless sections 1 to 3 provide otherwise.”* This means that the general provisions of the Civil Code (Act no. 40/1964 Coll.) expressed in Article 415 and the following shall apply.

8 According to the Supreme Court of the Slovak Republic, the increased protection of cultural heritage is in the public interest. Therefore, it is necessary to adopt such solutions and legal tools so that nonconceptual interventions in the monument fund do not recur now or in the future and monuments and ensembles do not gradually disappear (see the Judgement of the Supreme court of the Slovak Republic of April 30, 2012, no. 5Sžp/17/2011).

To complete this scheme, we must mention that also the Criminal Code (Act no. 300/2005 Coll.) contains a special part related to crimes against the environment. The subject matters of these crimes are expressed in Chapter Six of the Special Part of the Criminal Code. The first subject matter is a general one called “*Danger and damage to the environment*”, which is expressed in Article 300 of the Criminal Code. Then, other special subject matters are connected with the protection of special environmental components or with the prohibition of special activities. These subject matters include, for example, Article 302 sec. 1 (Unauthorized waste management)⁹ or Article 303 sec. 1 (Violations of water and air protection) of the Criminal Code.¹⁰ What is common to all the mentioned provisions of criminal protection of environment in Slovakia? All these subject matters refer to environmental legislation; therefore, criminal liability is connected with the duties and prohibitions expressed in environmental legal regulations. However, there is also a general definition of environmental damage established by Article 124 sec. 3 of the Criminal Code.¹¹

However, no constitutional provision exists regarding the definition of environment; the term or concept of environment is defined in Article 2 of the Act on environment.¹² The discussion on the content of this definition resulted in the opinion that the Slovak legal definition of environment is more ecocentric than anthropocentric because it is oriented on favorable conditions for the existence of all organisms. Nevertheless, it is important to mention that Article 44 sec. 3 of the Constitution establishes a general prohibition to damage the environment above the extent set by the law, which means that the state, natural persons, and legal entities (e.g., private companies) must follow this prohibition. This fact also represents the balance between property rights and economic liberties on one hand and the environment’s constitutional value on the other one.

9 Under the mentioned provision, “*Anyone who manages waste on a small scale in contrary to the generally binding legal regulations shall be punished by imprisonment for up to two years.*”

10 Under the mentioned provision, “*Anyone who acts contrary to the generally binding legislation for the protection of water and air and causes a deterioration in the quality of surface water or groundwater or air by: a) putting another person at risk of serious injury or death; or b) causing a risk of significant damage, shall be punished by imprisonment for a term of six months to three years.*”

11 Under the mentioned provision, “*In the case of environmental crimes, damage means the sum up of environmental damage and property damage, while property damage also includes the costs of restoring the environment. In the case of an offense of unauthorized waste management under the Article 302, the scope of the offense means the price at which the waste is usually collected, transported, exported, imported, recovered, disposed of or landfilled at the time and place of the offense and the price for removing the waste from the place which it is not intended to be stored at.*”

12 Under the mentioned Article, “*The environment is everything that creates the natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. Its components are mainly air, water, rocks, soil, organisms.*”

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

2.1. The National Council of Slovak Republic

First, the legislative sphere of the Slovak legal system must be addressed. The parliament does not play a significant role in shaping environmental protection other than through legislation; however, in the Slovak Republic, the parliament is also responsible for adopting so-called “resolutions”, such as the Resolution of the National Council of the Slovak Republic of February 28, 2001, no. 91/2001. Through this resolution, the parliament adopted the Declaration of the National Council of the Slovak Republic on the protection of cultural heritage (hereinafter referred to as “Declaration”). The mentioned Declaration has been adopted for the purpose of supporting the principles enshrined in international treaties, conventions, and recommendations of international organizations for the protection of cultural heritage—in particular, documents by UNESCO and the Council of Europe. It shall also develop everyone’s rights and obligations to protect cultural heritage and evaluate the public’s relationship with cultural and historical values according to Art. 44 of the Constitution of the Slovak Republic. The preservation of cultural heritage is important for future generations, and therefore, it must be protected.¹³

The institutes of parliamentary control of the public administration include the Committee of the National Council of the Slovak Republic for Agriculture and the Environment. As the initiative and control body of the National Council of the Slovak Republic, it focuses its activities primarily on (a) draft laws and other recommendations to the National Council in matters falling within its competence; (b) the monitoring of how laws are enforced and whether regulations issued to enforce them align with them; (c) cooperation with state and public administration bodies and the professional public; (d) fundamental issues of development of the Slovak Republic connected with the environment and agriculture—in particular the implementation of the Government’s Program Statement, the draft state budget and its implementation, and the state final account.

The committee’s competence includes agriculture, forestry and water management, geodesy, cartography and land register, rural development, environment, and nature protection. The committee also discusses opinions on drafts of legally binding acts and other acts of the European Union. In doing so, it uses

¹³ See the Resolution of the Constitutional court of the Slovak Republic of September 21, 2016, no. PL. ÚS. 9/2016.

suggestions and analyses submitted proactively by representatives of professional circles.¹⁴

2.2. Judicial performance of state powers in the field of environmental protection

The authority of the Constitutional Court of the Slovak Republic is relevant to the field of judicial performance of state powers. Currently, 87 decisions of the Constitutional Court of the Slovak Republic have been directly connected with Article 44 of the Constitution (the right to a favorable environment) since 1993. However, it is noticeable that the Constitutional Court of the Slovak Republic—when ruling on this article—is rather cautious and reserved as there are issues connected with the legal standing of legal persons with regard to the performance of the right to a favorable environment. The Court holds that this right belongs primarily to the natural persons; thus, it is almost legally impossible to file a constitutional complaint related to the right to a favorable environment for a legal person or a municipality.¹⁵ Article 127a of the Constitution anchors the constitutional municipal complaint for the municipalities to be used; however, this institute is being used extremely rarely. The Administrative Judicial Code (Act no. 162/2015 Coll.) establishes the right of the legal persons representing the public the right to file the administrative judicial action connected with right to a favorable environment to the administrative courts. In our opinion, this fact opens the gateway for these types of legal persons to also file constitutional complaints, if the judicial protection before the administrative courts fails.¹⁶ For a legal person (entity) representing the public is therefore necessary to bind the content of Article 46 with Article 44 of the Constitution. We must mention that changes in the legislation mainly expressed within the Administrative Judicial Code are mostly connected with relevant case law of the CJ EU. The Case of the Brown Bear decided by the CJ EU (C-240/09) and the Case of the Pezinok Landfill also decided by the CJ EU (C-416/10) are related to the procedural environmental rights and to the application of the Aarhus Convention within the Slovak legislation. This case had an outstanding importance in domestic law with regard to the legal standing of legal persons in the area of environmental justice. In addition, the recent

14 See the Committee of the National Council of the Slovak Republic for Agriculture and the Environment. Basic information about the committee [Online]. Available at <https://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=158> (Accessed: February 27, 2022).

15 See the Resolution of the Constitutional court of the Slovak Republic no. III. ÚS 93/08 of April 1, 2008. See also the Resolution of the Constitutional court of the Slovak Republic no. III. ÚS 95/08 of April 1, 2008 and the Resolution of the Constitutional court of the Slovak Republic no. III. ÚS 100/08 of April 1, 2008.

16 Under the Article 46 sec. 1 and 2 of the Constitution, “(1) Everyone can claim their right in an independent and impartial court and in cases established by law in another body of the Slovak Republic. ... (2) Whoever claims to have been deprived of his rights by a decision of a public authority may apply to a court to review the legality of such a decision unless the law provides otherwise. However, review of decisions concerning fundamental rights and freedoms must not be excluded from the jurisdiction of the court.”

case of Constitutional Court no. I. ÚS 380/2019-83 showed that it is possible for the public concerned represented by a civic association to file a successful constitutional complaint; this case is related to the protection of the Brown Bear.

In the case of the Recycling Fund,¹⁷ the parliament adopted Act no. 223/2001 Coll. on waste, creating the Recycling Fund to perform public tasks and collect public financial benefits to provide financing in the field of environmental care. The highest body of this fund was to be the board of directors. According to the legislation at the time, two thirds of its members were to be appointed by the Minister of Economy of the Slovak Republic on the proposal of a representative association of employers (i.e., private association of persons). The group of parliament's representatives objected that the Minister of Economy of the Slovak Republic was to be bound by the proposals of the employers' association under this act; thus, the legislation created a situation in which a private association had to decide on public tasks and the collection of public benefits to provide care in the field of creation and protection. Members of the National Council of the Slovak Republic argued that the state could not get rid of its obligation to care for the environment by transferring it to a private entity without maintaining effective control. However, the Constitutional Court did not find a contradiction with Art. 44 of the Constitution, and it came to conclusion that the Recycling Fund of the Slovak Republic is also subject to the laws of the Slovak Republic and therefore to the principle of lawfulness. However, a different opinion was presented by Judge Ladislav Orosz, who expressed the legal opinion that the regulation of Art. 1 sec. 1 of the Constitution of the Slovak Republic, which naturally incorporates the principle of the substantive rule of law, includes, inter alia, the principle of protection of the public interest. For this reason, it is the state's duty to prevent private interests from penetrating into the public interest. The principle of proportionality should primarily serve to achieve this goal; therefore, in this view, the structure of the fund did not guarantee the performance of tasks related to the protection of health and the environment in the public interest.

As for relevant case law of ordinary courts or the Supreme Court in relation with environmental protection, one can mention, for example, the case connected with the CJEU decisions in the cases of the Brown Bear (e.g., the decision of the Supreme Court of the Slovak Republic no. 6Sžk/12/2020 of June 16, 2021) and Pezinok Landfill (e.g., the decision of the Supreme Court of the Slovak Republic no. 1 Sžp/1/2010 of May 14, 2013).

The Constitutional Court of the Slovak Republic has recently defined the legal interest in the legal management of waste and the implementation of waste management. The Constitution of the Slovak Republic does not explicitly mention or define the concept of waste. However, the case law of the Constitutional Court of the Slovak Republic points to the existence of a public interest in waste management and the implementation of obligations related to waste management. It links this interest

17 The Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 3/03-189 of January 28, 2009.

primarily with the right to environmental protection and the right to a favorable environment under Art. 44 of the Constitution of the Slovak Republic. The existence of waste legislation is linked by the case law of the Constitutional Court of the Slovak Republic with the need to reflect current trends that are characteristic of the globalized society of the twenty-first century, in which context the Constitutional Court of the Slovak Republic speaks of the emblematic character of the mentioned trends. However, this does not indicate a continuous increase in the production and manufacture of goods, which is inextricably linked to our consumer society and leads to a geometric increase in the amount of waste, but a gradual promotion of the need for a global concept of ecological ethics. In this context, the Constitutional Court of the Slovak Republic speaks of the existence of ecological ethics, which is based on evolutionary fundamentals and assumes that humanity can abandon the anthropocentric approach toward nature and expand its ethical circle to organic and inorganic nature. The idea in question is to accept a moral obligation to take an active part in protecting and conserving nature. This is not a novelty, but according to the Constitutional Court of the Slovak Republic, it is more of a normative transformation of the generally accepted interest in environmental protection. Simply put, the Constitutional Court of the Slovak Republic finds the foundations of public interest in the existence of waste legislation in Art. 44 of the Constitution of the Slovak Republic, which enshrine the right to a favorable environment and the obligations of the state and other entities in environmental protection. The public interest in waste management and the implementation of waste management find their normative anchoring in the provisions of the Constitution of the Slovak Republic on the right to environmental protection and are subsequently reflected in the meaning, purpose, and content of the Waste Act. According to case law, the very definition of waste management is therefore a reflection of the constitutional value on environmental protection and the realization of ecological ethics of the twenty-first century.¹⁸ According to case law and doctrine, the constitutional regulation of the right to environmental protection affects three areas: the right to a favorable environment, the right to information about the environment, and the constitutional regulation as the provision of obligations of the state—but also of other entities—in environmental protection.¹⁹

2.3. The President of the Slovak Republic

Another body or person who plays an important practical role in environmental protection—albeit not their constitutional task—is the President of the Slovak Republic. The current president was involved in the abovementioned Case of the Pezínok Landfill, and she also engages actively in environmental issues, even though it is not her primary obligation. The President of the Slovak Republic also spoke at the

18 See the Decision of the Constitutional Court of the Slovak Republic of April 25, 2018, no. PL. ÚS 51/2015-94.

19 See Majerčák, 2011, p. 9. See also Stejskal, 2008.

UN Climate Change Conference in Glasgow on November 2, 2021; according to her, countries have one shared goal, namely to save the planet, and thus shall act accordingly. She stated that the conference in Glasgow was critical, and her activities also serve the protection of future generations; therefore, she encouraged doubling down on common efforts to cut emissions and mitigate the impact of the climate crisis and warned that, otherwise, the future outcome shall be the irreversible devastation of our world and its habitats. In the mentioned conference, the president emphasized that the young generation is seriously worried about climate change and knows that we are running out of time. In such sense, the President of the Slovak Republic actively enforces the promotion of the principle of sustainable development, especially in the field of green industry, emissions, and buildings.²⁰ Moreover, on the 30th anniversary of the founding of the Bratislava plant of Volkswagen Slovakia, she visited the mentioned factory, meeting the company's management and its employees and becoming acquainted with the plant's production. She reminded that the automobile industry represents a third of Slovak industrial production and half of its exports. According to the president, the direction and future of the automobile industry also largely determines the success of the Slovak economy; therefore, it is important to actively work to ensure that Slovak factories remain competitive and succeed in producing new models with the latest green technologies.²¹ On May 20, 2020, the President of the Slovak Republic supported biodiversity by celebrating World Bee Day, on which she decided to install beehives in the Presidential Garden as part of the City Bees project. She noted the importance of bees and their benefits for biodiversity and pointed out that bees and other pollinators help plants that serve as food and shelter for other animals reproduce. The production of a considerable portion of food consumed by humans also depends on the activities of pollinators. The global decline of bees and other pollinators due to climate change and the interference in nature is therefore a warning for the protection of biodiversity as well as humankind. Pollinators can survive without people, but not the other way around. The city is also a place for bees.²²

Another activity of the President of the Slovak Republic in the field of future generations protection is reflected within her speech on World Earth Day, which, she argues, reminds us of the great impact of our activities on the planet and the environment in which we live. She emphasized that it was during the current pandemic that nature became a refuge to which we turned for encouragement as we became even more aware of our vulnerability and close connection with nature. However,

20 See "Glasgow Conference is make-or-break moment for our planet" [Online]. Available at <https://www.prezident.sk/en/article/konferencia-v-glasgowe-je-pre-nasu-planetu-rozhodujuca/>. (Accessed: May 30, 2022).

21 See "The automobile industry must remain competitive in the future" [Online]. Available at <https://www.prezident.sk/article/automobilovy-sektor-musi-zostat-konkurencieschopny-aj-v-buducnosti/> (Accessed: May 30, 2022).

22 See "Bee decline is a warning for us all" [Online]. Available at <https://www.prezident.sk/en/article/ubytok-vciel-je-pre-nas-varovanim/> (Accessed: May 30, 2022).

during hikes in our forests, we encountered not only nature's beauty but also examples of human recklessness. According to the President of the Slovak Republic, while progressing on the path out of the crisis and toward economic recovery, it is also important to strive to ensure that the transformation that awaits will be green, innovative, and not merely a return to the status quo in relation to nature. However, this is not only about countries' commitments; the President of the Slovak Republic believes that the obligation under Art. 44 sec. 2 and 3 of the Constitution influences every individual and community. Therefore, everyone should participate as, 10 to 20 years from now, our current actions toward the planet will be judged by the next generation.²³

Finally, the project of the climate-neutral office of the President of the Slovak Republic by 2030 is worth mentioning. The Office of the President of the Slovak Republic perceives the climate crisis as one of great challenges of present times; therefore, it fully assumes liability for its share in meeting the climate commitments of Slovakia and the EU. The Presidential Office, which set out to become the first climate neutral public institution in Slovakia by 2030, annually evaluates its carbon footprint based on the calculations of the Environmental Policy Institute's carbon footprint calculator. The Office of the President of the Slovak Republic is reducing transportation emissions by renovating its fleet; vehicles with combustion engines are gradually being phased out and replaced by electric and hybrid vehicles. It also has installed four charging stations and added new bicycle racks. The office has also conducted a special-purpose energy audit for palaces used by the President of the Slovak Republic. These audits identified a set of measures with the potential of reducing CO₂ emissions created by the consumption of energy in these buildings by two thirds. Energy efficiency and renewable energy resources are the crucial areas.²⁴

The mentioned approach of the current President of the Slovak Republic represents mainly policy in the field of environmental protection and climatic neutrality. As for her legal approach toward environmental protection, it is important to mention the Judgment of the Court of Justice of the EU of 15 January 15, 2013, no. C - 416/10. In this case, the CJ EU ruled on the case of Pezinok Landfill. The current President of the Slovak Republic acted then as an active member of public concerned in the mentioned case. Thus, the legal approach of the current President of the Slovak Republic is mainly oriented toward the promotion of procedural environmental rights arising from the Aarhus Convention, and to emphasizing the role of the public and the importance of the civic society within environmental protection.

23 See "Earth Day Reminds Us of How Much We Affect Our Planet" [Online]. Available at <https://www.prezident.sk/en/article/den-zeme-nam-pripomina-ako-velmi-ovplyvnujeme-planetu/> (Accessed: May 30, 2022).

24 "Climate neutral office of the President of the Slovak Republic by 2030" [Online]. Available at <https://www.prezident.sk/en/page/green-office/> (Accessed: May 30, 2022).

2.4. Administrative authorities in the field of environmental protection in Slovakia

As for the institutional protection of the environment in the sphere of governmental administration in the Slovak Republic, the main authority belongs to the Ministry of Environment of the Slovak Republic, whose powers and authority are expressed within the Great Competence Act (the Act no. 575/2001 Coll. on the organization of government activities and the organization of the central state administration). Then, there is also the Slovak Environmental Inspectorate—a specialized supervisory authority providing for the state supervision and imposing fines on the matters concerning environment protection and conducting municipal administration in the field of integrated pollution prevention and control. It was established in 1991 by merging two autonomous bodies, the State Water Management Inspectorate and the State Technical Air Protection Inspectorate. Current spheres of its activity include integrated pollution prevention and control, waste management, water protection, air protection, nature and landscape protection, and biosafety. The inspectorate supervises how legal persons, natural persons, entrepreneurs, and municipalities follow environmental legal provisions; it also imposes fines and introduces corrective measures, if a breach of the environmental legal provisions by the monitored subjects is observed. Then it controls the imposed correction measures. The inspectorate issues integrated permits. Finally, it also resolves complaints, notices, and inputs from public, organizations, other institutions of the state, and municipal administration.²⁵

2.5. The Public Defender of Rights

In the field of fundamental rights protection, the Public Defender of Rights also plays an important role. Under Art. 151a of the Constitution, the Public Defender of Rights is an independent body of the Slovak Republic, which, to the extent and in the manner prescribed by law, protects the fundamental rights and freedoms of natural and legal persons in proceedings before public administration bodies and other public authorities if their actions, decisions, or inactions are contrary to the legal order. In cases provided by law, the Public Defender of Rights may be involved in the liability imposition of persons acting in public authorities, if those persons have infringed a fundamental right or freedom of natural and legal persons. All public authorities shall provide necessary cooperation to the Public Defender of Rights.

For example, in 2016, the Public Defender of Rights performed a survey focused mainly on finding out whether the public authorities in the Slovak Republic deciding on the location, construction, and operation of small water powerplants thoroughly assessed the submitted proposals from the point of view of nature and landscape protection. The Public Defender of Rights analyzed whether everyone's right to a

²⁵ See “Slovak Environmental Inspectorate. About us.” [Online]. Available at <https://www.sizp.sk/slovak-environmental-inspectorate/about-us> (Accessed: February 27, 2022).

favorable environment has been protected and whether the right to environmental information and the right to other legal protection have been kept. The Public Defender of Rights also examined whether the rights arising from international treaties by which the Slovak Republic is bound (e.g., the Aarhus Convention) were respected in the permitting processes. The survey presented a conclusion that the public authorities within the mentioned permitting processes broke the participants' fundamental environmental rights (mainly represented by the public concerned), and it also recommended the adoption of legal measures protecting the environmental rights of natural and legal persons.²⁶

The Office of Public Defender of Rights in the Slovak Republic also highlighted the problems of enforcing the right to water and safe, hygienic environmental conditions. According to § 23 sec. 1 of Act no. 564/2001 Coll. on the Public Defender of Rights, as amended,

Each year in the first quarter, the Public Defender of Rights submits to the National Council an activity report setting out his knowledge of the respect of fundamental rights and freedoms of natural persons and legal persons by public authorities and his proposals and recommendations for remedy of the shortcomings identified.

According to the conclusions of the Public Defender of Rights of November 2016, the Slovak Republic has not developed solutions to fulfill its obligation to ensure access to drinking, safe, and affordable water for all through local governments. In 2016, the Office of the Public Defender of Rights conducted a survey in Roma settlements and municipalities throughout Slovakia—but especially in the Košice and Prešov regions, whose population is also of Roma nationality—on the protection and observance of everyone's fundamental right to access drinking water. The Constitution of the Slovak Republic does not contain a fundamental right on access to drinking water. However, the Public Defender of Rights found the legal basis for the protection of this right within the extensive interpretation of several other fundamental rights provided by the Constitution of the Slovak Republic, namely the right to life (Article 15), human dignity (Article 19), to health (Article 40), and to a favorable environment (Article 44). The twenty towns and villages included Sečovce, Dobšiná, Jelšava, Vtáčkovce, Ostrovany, Svinia, Jarovnice, Chminianske Jakubovany, Letanovce, Hranovnica, Huncovce, Stará Ľubovňa, Hodejov, Rimavská Sobota, Žiar nad Hronom, Horná Lehota, Jelka, Selice, and Hurbanovo Golden Ears. The survey was based on findings by the local inspectorate and obtained by a structured interview with local self-government representatives.²⁷ The Public Defender of

26 See "Report on the protection of the right to the environment within the proceedings of public authorities permitting the construction of small water powerplants" [Online]. Available at <https://www.ziverieky.sk/assets/Uploads/9a173e044a/Sprava-vodne-elektrarne.pdf> (Accessed: February 27, 2022).

27 Report on the Survey of Fundamental Rights and Freedoms. Access to drinking water and information on ensuring fire protection in Roma settlements [Online]. Available at http://www.vop.gov.sk/files/Pristup_k_vode.pdf (Accessed: May 30, 2022).

Rights, therefore, stated that the Slovak Republic did not implement its obligations in this area, arising from the international conventions. If the state had continued at the current pace, it would have fulfilled its commitment to creating the conditions for everyone to have access to drinking, safe, and affordable water in 2035 at the earliest. She also pointed out that no single state body would comprehensively address this issue. In addition, in this case, the Public Defender of Rights proposed to the National Council of the Slovak Republic the adoption of the specific act on drinking water.²⁸ On the one hand, this initiative looked highly appropriate and positive; on the other hand, in my opinion, it cannot be said with certainty that the Slovak Republic needs a separate law on drinking water as existing laws regulate this issue; nor can it be uncritically accepted that the creation of a new independent body dealing only with water would resolve the situation in this area. Drinking water is defined by the Art. 7 of Act no. 364/2004 Coll. on Waters and on the Amendment to the Act of the Slovak National Council no. 372/1990 Coll. on offenses as amended (Water Act). In my opinion, it can therefore be stated that, in terms of legislative measures, our legislation pursues the setting of World Health Organization (WHO) standards in the area of access to drinking water and sanitation services. In this respect, I do not agree with the intention of the Office of the Public Defender of Rights of the Slovak Republic on the need to develop a separate law on drinking water as drinking water management is only part or one of the types of water management in general. Water is first and foremost a natural resource, and legislation seeks to take this into account. Nevertheless, what is true are the gaps in application practice and the gaps in the actual achievement of the legislatively set requirements for the implementation of access to water and sanitation services. Therefore, it is more likely to argue that water supply and sanitation services should rather be considered as public services and should not be conducted primarily for profit but for the economic, political, and social sustainability of the exercise of the right of access to water.

3. Basis of fundamental rights

As for the content of the Constitution, it explicitly mentions the right to a favorable environment described at the beginning of this chapter. Why does the Constitution use the expression “favorable” instead of “healthy”? The provisions on the care for the environment and cultural heritage express that the Slovak Republic also places emphasis on this aspect of the lives of its inhabitants.²⁹ A favorable environment

²⁸ See Dubovcová, 2016.

²⁹ See “Explanatory Memorandum to the Government Draft of the Constitution of the Slovak Republic” [Online]. Available at <https://www.nrsr.sk/dl/Browser/Document?documentId=75408> (Accessed: February 28, 2022).

is a basic condition for the existence of life; however, the case law of the Slovak courts also uses the concept of the right to a healthy environment.³⁰ In this context also linked to the protection of life and health,³¹ however, the term “favorable” also means connection to personality rights in the field of civil law. Under the Article 11 of the Civil Code (the Act no.40/1964 Coll.), “*A natural person has the right to the protection of his or her personality, in particular life and health, civil honor and human dignity, as well as privacy, his or her name and expressions of a personal nature.*” The Slovak legislation uses the term “favorable” because such environment is connected not only to good health and life condition but also to the private surroundings of a certain human. Such surroundings may also be represented by the private sphere of gardening and the local quality of the environment directly connected with human personality. In such sense, the term “favorable” is more precise.³²

As for the content of the right to a favorable environment, this right has often been called an “impotent” right in the Slovak legal practice. The Constitution does not explain what is understood as favorable; the content of the term is understood through the duties of the state and of the natural and legal persons expressed in other sections of Article 44 of the Constitution. The case law of the Constitutional Court declares, on one hand, that all the fundamental rights established by the Constitution are equal;³³ on the other hand, it shows that the right to a favorable environment is relatively “weak” when it collides with property.³⁴ However, rights like right to privacy (private life),³⁵ right to judicial protection, and right to public participation can be interpreted extensively in an environmental context.³⁶ In the sense of the right to a fair trial connected to the environmental protection, the issues of the holders (entities) of the right to a favorable environment ought to be mentioned. Several complaints and decisions of the Constitutional Court of the Slovak Republic are related to the issue of holders of the right to a favorable environment. In the past, the case law of the Constitutional Court of the Slovak Republic rejected the fact that a legal person could also be the holder of the right to a favorable environment, and thus its subject. In its decisions, the Constitutional Court of the Slovak Republic

30 Mainly in the field of the Act no. 50/1976 Coll. on spatial planning and building regulations (Building Act) the case law of the Slovak courts emphasizes the issue of the right to a healthy environment. According to the case law, compliance with the legal conditions for the issue of a building permit is therefore subject to an assessment of the public interest in the protection and rational use of the land and of the promotion of a healthy human environment. (See the Judgement of the Supreme Court of the Slovak Republic of October 24, 2018, no. 7Sžk/35/2017).

31 Then, the Constitution also mentions the right to health protection. Under the Article 40 of the Constitution, “*Everyone has the right to protection of health. Under health insurance, citizens have the right to free health care and medical supplies under the conditions laid down by law.*”

32 Cf. Průchová, 2016, pp. 201–216.

33 Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 7/96.

34 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 223/09 of May 27, 2010.

35 Jankuv, 2009, p. 94.

36 Finding of the Constitutional Court of the Slovak Republic no.I. ÚS 380/2019 of July 13, 2021. Finding of the Constitutional Court of the Slovak Republic no.I. ÚS 529/2019 of January 19, 2021.

strictly insisted that the holder of this right is always only a natural person. A legal person can never be the subject of this right as it does not have the capacity to be the holder of the right to a favorable environment.³⁷ Therefore, the Constitutional Court of the Slovak Republic has created a doctrine according to which the legal norms are created by the people. Given that the people create legal norms, the subject of the right to a favorable environment is, therefore, always only a natural person and never a legal one. Another reason for this doctrine is the fact that the state and level of the environment determine the quality of human life and not the quality of existence of the legal entities.³⁸ It must be said that the Constitution itself somehow “leads” to this opinion because, according to Art. 2 par. 1 of the Constitution, “*State power comes from citizens who exercise it through their elected representatives or directly.*” On the other hand, this doctrine did not consider Art. 18 par. 2 letter a) of Act no. 40/1964 Coll. Civil Code, according to which “*legal persons are: ... a) associations of natural or legal persons, ...*” in the context of Art. 1 par. 1 of the Constitution.

This is caused mainly by the judicial activities of the ECHR (*Lopez Ostra c. Spain*) and by the abovementioned decisions of the CJ EU. When ruling on the right to a favorable environment, the Constitutional Court respects all principles of international environmental law that have been laid down by the conference on sustainable development in Rio de Janeiro in 1992 (principle of sustainable development, precautionary principle, principle of prevention) as well as the principles developed by the ACCC through the Aarhus Convention.

In the mentioned context, the Constitution mentions liability in relation with the environment, through duties established for the Slovak Republic and for other entities (natural persons and legal persons). However, it is necessary for the statutory legislation to establish the basic rules for legal liability related to the environment (civil, administrative, and criminal). The protection of the environment is, therefore, also perceived as an obligation for citizens; again, Article 44 mentioned above stipulates that the environmental protection is a general obligation. However, a certain amount of pollution is permitted within the limits laid down by the law. In such sense, the liability of other actors (private and public companies, multinational corporations) also appears in the Constitution in relation with the environment. The case law of the Supreme Court of the Slovak Republic presents an approach by which the public interest in environmental protection as a basic precondition for the existence of a human being is extraordinary; therefore, the legal order of the Slovak Republic pays increased attention and, in case of conflict of this public interest, exercises these rights. This is particularly evident in the event of a conflict between the public interest in environmental protection and private rights, such as property rights, the content of which (Article 20) and increased protection in administrative justice (Article 46 (2), second sentence) are enshrined directly in the Constitution of

37 The Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 93/08 of April 1, 2008.

38 The Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 100/08 of April 1, 2008.

the Slovak Republic.³⁹ Companies and businesses are bound by Article 20 sec. 3 of the Constitution. The mentioned provision represents a limit to the performance of property right (i.e., also a limit to business activities), which may be understood as a misuse of property in an environmental context. The Constitution does not explicitly set out the “polluter/user pays” principle; however, this can be found within Act no. 17/1992 Coll. on the environment. According to Article 31 of Act no. 17/1992 Coll., *“natural or legal persons shall pay taxes, fees, levies and other charges for the pollution of the environment or its components and for the economic use of natural resources, if special regulations provide so.”*

3.1. Protecting the environment by enshrining rights related to political freedoms

The Constitution of the Slovak Republic (hereinafter referred to as “the Constitution”) is protecting the right to a favorable environment directly within Art. 44 but also indirectly through the right to information set out in Art. 26 of the Constitution.⁴⁰ Traditionally, the right to information is understood as an instrument of democratization of state administration and local self-government entities, and it helps to apply the principles of transparency and publicity. In general, the legal science considers the abovementioned principles as manifestations of the so-called good administration.⁴¹ The constitutional right to seek, receive, and share information is not restricted in relation to its addressees; it belongs to everyone (i.e., to any natural or legal person). According to the case law of the Constitutional Court of the Slovak Republic, the personal scope of the fundamental right to information is therefore given to everyone. The right to seek and receive information must be understood as a procedure aimed at obtaining, receiving, and processing information.⁴² The constitutional obligation to provide information to every holder of public power arises from Art. 26 par. 5 of the Constitution. However, this obligation is limited because it does not bind everyone but only public authorities in connection with their activities. Other entities that are not part of public authorities do not have a constitutional obligation

39 Judgement of the Supreme Court of the Slovak Republic no. 3Sžp 2/2008 of December 4, 2008.

40 Under the Art. 26 of the Constitution, *“(1) Freedom of expression and the right to information are guaranteed. ... (2) Everyone has the right to express his or her views orally, in writing, in print, in images or otherwise, and to seek, receive and impart ideas and information freely, regardless of national frontiers. The publication of the press is not subject to an authorization procedure. Business in the field of radio and television may be subject to state permission. The conditions shall be established by law. ... (3) Censorship is prohibited. ... (4) Freedom of expression and the right to seek and impart information may be restricted by law in the democratic society necessary for the protection of the rights and freedoms of others, the security of the state, public order, public health and morality. ... (5) Public authorities are obliged to provide information on their activities in an adequate manner in the state language. The conditions and manner of implementation shall be established by law.”*

41 See: Bartoň, Dienstbier, Horáková, Peterková, Pouperová, Sládeček, 2009, pp. 318–319.

42 See: Finding of the Constitutional Court of the Slovak Republic file no. IV. ÚS 256/07 of January 31, 2008.

to provide information to everyone. The Constitutional Court of the Slovak Republic emphasizes that the modern state is a highly complex body and that the subjects of power manifest themselves in many ways. From this point of view, it is often difficult to assess the diverse situations in requests for information as the Freedom of Information Act is relatively laconic in this respect; however, this does not change the sensitivity to a possible non-transparency of power.⁴³ The court sees the restrictions on the right to disseminate and provide information through measures that are necessary in a democratic society to protect the rights and freedoms of others, the security of the state, public order, and the protection of public health and morals.⁴⁴ The legislation of Art. 26 of the Constitution is general; it does not directly mention the protection of environment as the reason to disseminate information or to restrict the right to information. However, Art. 26 par. 4 of the Constitution mentions state security as the reason to restrict the right to information. Security is a constitutional value under the special Constitutional Act no. 227/2002 Coll. on state security in time of war, state of war, exceptional state, and state of emergency.⁴⁵ Environmental protection creates an integral part of the constitutional value of state security, and it may also become a reason to restrict the dissemination of information under the constitutional regulation of the right to information.⁴⁶

Although Art. 26 of the Constitution does not directly mention environmental protection, Art. 45 establishes a special right to information about the state of the environment. Under the mentioned provision, *“everyone has the right to timely and complete information about the state of the environment and the causes and consequences of that state.”* The Constitutional Court of the Slovak Republic states that the right to information on the environment is a fundamental right of a material nature, which

43 See: Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 1/09 of January 19, 2011.

44 See: Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 22/06 of October 1, 2008.

45 The term “state security” is defined by the Art. 1 par. 3 of the above mentioned special constitutional act. Under the mentioned provision: *“Security is a state in which the peace and security of the state, its democratic order and sovereignty, the territorial integrity and inviolability of the state’s borders, fundamental rights and freedoms are preserved and the lives and health of persons, property and the environment are protected.”*

46 This opinion also meets the requirements of the *Recommendation of the Committee of Ministers of the Council of Europe No. (2002) 2 on access to official documents*, which, in its introduction, emphasizes the need for the easy availability of information on matters of public interest. On the other hand, this Recommendation also considers restrictions on access to this information due to the national security, defense, international relations, public security, and nature protection. However, all these restrictions must also consider the requirements of the principles of proportionality, objectivity, and impartiality. Similarly, the Council of Europe Convention on Access to Official Documents adopted on June 18, 2009 in Tromsø, Norway, considers the transparency of public administration as the key element of good administration and the indicator of a democratic and pluralistic society open to citizens’ participation in matters of public interest. However, the Convention also enables to restrict access to information for the reasons set out in Art. 3. Therefore, this provision considers the protection of environment as the ground for legitimate restrictions on access to information. Again, this restriction is possible only when respecting the principle of lawfulness.

can be claimed only within the limits of the laws that exercise this right (Article 51 par. 1 of the Constitution).⁴⁷ Therefore, within the constitutional complaint, the complainant must describe specific facts that would indicate a possible connection between the alleged interference with the right to information and the actions of the public authority. If the public authority provides the natural person or legal person with environmental information during the whole proceeding, then its actions do not establish a breach of the right to information on the state of the environment.⁴⁸

3.2. Right to a fair trial in environmental matters

In addition the right to information and the right to information on the state of the environment, the Constitution also sets out the right to a fair trial within Art. 48 of the Constitution, under which

(1) No one can be taken away from his legal judge. The jurisdiction of the court shall be established by law. ... (2) Everyone has the right to have his case heard in public without undue delay and in his presence and to be able to comment on any evidence taken. The public can be excluded only in cases provided by law.

However, this article does not mention environmental protection. The relationship between the right to a fair trial and the right to a favorable environment finds the Constitutional Court of the Slovak Republic in the legal position of the public concerned under the Aarhus Convention. It is the representation of public interest in environmental protection that puts the public—which is the specific position of a general “*environmental advocate*”—and the public interest associated with it vis-à-vis the public authorities. The Constitutional Court of the Slovak Republic derives the mentioned position of the public concerned from the purpose of the Aarhus Convention. Under Article 1 of the mentioned Convention, its goal is to contribute to the protection of the right of every person, a member of this and future generations, to live in an environment that is adequate for preserving their health and achieving well-being.⁴⁹

In a state governed by the rule of law, laws are not in conflict, and the legal system is comprehensive and compact. If the legal entities are formed by natural persons or associate natural persons, the doctrine derived from Art. 2 par. 1 of the Constitution of the Slovak Republic is not comprehensive. Therefore, in the past, it was problematic for the legal entities (especially NGOs) to access courts for environmental matters. This fact changed after the Judgment of CJEU no. C-240/09 of March

47 Under Art. 51 par. 1 of the Constitution, “*To claim the rights referred to in Art. 35, 36, 37 par. 4, Art. 38 to 42 and Art. 44 to 46 of this Constitution is possible only within the limits of the laws that implement these provisions.*”

48 The Resolution of the Constitutional Court of the Slovak Republic no. I. ÚS 590/2016 of September 21, 2016.

49 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19, 2021.

8, 2011, also known as the Brown Bear decision. This was related to the question of whether it was possible to recognize Art. 9 par. 3 of the Aarhus Convention, which had become part of community law and could be recognized as having a direct effect within the meaning of the settled case law. The outcome of the mentioned judgment of the CJEU was the obligation of the Slovak Republic to interpret the rights established to legal entities representing the public favorably; in other words, these entities had the right to access the court in environmental matters to challenge the decisions of administrative authorities, the unlawfulness of which lies in its effect on the environment. The mentioned CJEU decision is primarily connected with access to the general court of law. However, if the obligation of the Slovak Republic is to provide the legal entities (NGOs) also with an effective right to a judicial protection under Art. 46 of the Constitution⁵⁰ and with an effective right to a fair trial under Art. 48, then it is possible to conclude that these entities shall also have access to an individual constitutional protection. In addition, special legislation establishes the right to a favorable environment. Art. 24 par. 2 of the Act no. 24/2006 Coll. on Environmental Impact Assessment and on Amendments to Certain Acts (hereinafter referred to as the “EIA Act”) established the right of the public concerned to a favorable environment. The provision may be connected with Art. 42 of Act no. 162/2015 Coll. the Judicial Administrative Code (hereinafter referred to as “the Judicial Administrative Code”). Under Art. 42 of the Judicial Administrative Code, *“if the public concerned has the right under a special regulation to participate in administrative proceedings in environmental matters, it is also entitled to file an administrative action or participate in the proceedings on the administrative action.”* In such case, it is not possible to deny an individual constitutional protection to NGOs, if an NGO bounds the breach of the right to a favorable environment with the right to a judicial protection and the right to a fair trial.⁵¹

3.3. Political participatory rights and freedoms linked with environmental protection

As for other political freedoms (e.g., participatory rights), which could be directly or indirectly linked with environmental matters, one can speak about the right to participate in public affairs under Art. 30 of the Constitution. Under this article,

50 Under Art. 46 of the Constitution, *“(1) Everyone may claim their right to an independent and impartial court and, in the case provided for by law, to another body of the Slovak Republic. ... (2) Whoever claims that his rights have been curtailed by a decision of a public administration body may apply to a court to review the legality of that decision, unless the law provides otherwise. However, review of decisions concerning fundamental rights and freedoms must not be excluded from the jurisdiction of the court. ... (3) Everyone has the right to compensation for damage caused by an illegal decision of a court, another state public administration body or an incorrect official procedure. ... (4) Conditions and details of judicial and other legal protection of the founding law.”*

51 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19, 2021.

(1) Citizens have the right to participate in the administration of public affairs directly or by free choice of their representatives. Foreigners with permanent residence in the territory of the Slovak Republic have the right to vote and be elected to the municipal self-government bodies and to the self-government bodies of higher territorial units.... (2) Elections must be held within time limits not exceeding the regular election period established by law. ... (3) The right to vote is universal, equal and direct and is exercised by secret ballot. The conditions for exercising the right to vote shall be laid down by law. ... (4) Citizens have access to elected and other public offices under the same conditions.

The content of this right can also be explained in the sense of the abovementioned CJEU Pezinok Landfill decision.

Participatory rights in field of Slovak environmental legislation are mainly established by the *UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, adopted in Aarhus on June 25th, 1998* (hereinafter only the “Aarhus Convention”). The Aarhus Convention follows the enshrinement of procedural environmental rights within principle no. 10 of the *1992 Declaration on Sustainable Development adopted at the Rio de Janeiro Conference*, according to which environmental issues are best addressed with the participation of all citizens concerned and at the relevant level. The Declaration, therefore, enshrined the following procedural environmental rights: (a) procedural right to environmental information (access to information on the state of the environment held by public authorities, including information on hazardous materials and activities at the local level); (b) the right to participate in the decision-making process (wide availability of information); and (c) access to justice in environmental matters (effective access to administrative proceedings and the right to compensation and effective remedy).

According to its Art. 3, the aim of the Aarhus Convention is to guarantee the right of access to information, public participation in decision making, and access to justice in the field of environmental protection. To fulfill this objective, each party to the Convention shall take the necessary legislative, administrative, and other measures—including measures to comply with the provisions of this Convention as well as proper implementing measures.⁵² In such approach, the doctrine of the Slovak jurisprudence sees a solution to the relation of international environmental law and national legislation. The Aarhus Convention enriches the area of international environmental law through procedural environmental rights;⁵³ its specificity is that the EU is also a party to it. The European Community acceded to the Aarhus Convention as the EU’s legal predecessor, and the international treaties to which the EU accedes become part of EU law and are in the hierarchy of sources of law between primary

52 See Decision of ACCC in case of Kazakhstan no. ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, of March 11, 2005.

53 See Jankuv, 2001, p. 43.

law and secondary law. Such contracts should then be used in the circumstances of a Member State in such a way that the protection of the rights deriving from them is not inefficient and does not cause inequality in the exercise of rights under national law compared with the rights guaranteed by EU law. The condition is that the EU adopts a specific instrument to implement those treaties, such as a directive or regulation.⁵⁴

This fact means that the public administration of the Member State of the EU has an obligation to cooperate with the public in the process of permission of certain projects, plans, and programs in the field of environmental protection. An example of waste management can be mentioned: approximately within 3 months at the turn of the years 2005 and 2006, two panels of the Constitutional Court of the Slovak Republic decided on the matter of participation according to Art. 74 sec. 4 of Act no. 223/2001 Coll. on waste and on the amendment of certain laws as amended (hereinafter referred to as the “former Waste Act”). It must be said that the mentioned decisions—although contradictory—can still be used to interpret Art. 97 sec. 1 of Act no. 79/2015 Coll. on waste and on the amendment of certain laws as amended (Hereinafter referred to as “the Waste Act”) because the wording of said provision does not differ significantly from the wording of Art. 74 sec. 4 of the former Waste Act. The essence of these decisions was the application of the conditions of participation in granting consent under the former Waste Act, while applying the legal conditions for the establishment of participation under Art. 14 of Act no. 71/1967 Coll. on administrative proceedings (Administrative Code Procedural) as amended (hereinafter referred to as the “Administrative Code Procedural”).⁵⁵ In both cases, the complainants sought the recognition of the status of a participant in the administrative proceedings conducted pursuant to Art. 81 sec. 3 and 4 of the former Waste Act, in which the consents for the operation of a landfill disposal facility were reviewed. The dispute over the admission of participation in both cases depended on the assessment of whether the concept of participation under Art. 14 of the Administrative Code Procedural is defined in a general way, thus giving preference to special legal regulations to specify who is a party to the proceedings. In the *Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 359/05-22 of December 14, 2005*, the Court chose a restrictive interpretation of the right to a favorable environment according to Art. 44 of the Constitution and explained the participation enshrined in Art. 74 par. 4 of the former Waste Act; thus, it did not grant the complainant legal protection when seeking to participate in the procedure under cited provision of the law. On the contrary, in the *Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 154/05-64, of February 28, 2006*, the Court deviated from

54 See Judgement of the CJ EU no. C-240/09 of March 8, 2011.

55 Under the mentioned act, “(1) The party to the proceedings is the person whose rights, legally protected interests or obligations are to be held or whose rights, legally protected interests or obligations may be directly affected by the decision; also a party who claims that he may be directly affected by a decision in his rights, legally protected interests or obligations shall be a party to the proceedings, until the moment that contrary is proved. ... (2) A party to the proceedings is also a person to whom a special legislation grants such a status.”

the abovementioned argumentation and interpreted the content of participation according to the former Waste Act more extensively and systematically in the context of the Administrative Code Procedural. In this decision, the Constitutional Court of the Slovak Republic said that participation regulated by waste legislation must be interpreted in the context of the Administrative Code Procedural. A contrary interpretation may constitute an infringement of the right to a fair trial under the Art. 46 sec. 2 of the Constitution and deny the essence of the right to a favorable environment.

This extensive approach has been confirmed by the latter case law of the Slovak courts. The essence of the abovementioned case law is that the non-recognition of the legal status of a party to an individual or to the public in a permitting proceeding relating to a landfill constitutes a “*harsh*” interference with the right to a favorable environment, regardless of the existence of the definition of environment under Act no. 17/1992 Coll. The case law approaches the environment as a complex and legally indivisible matter that is publicly available to every individual without the possibility of being excluded from its benefits—“*The subjective right of an individual to a favorable environment cannot be viewed in any other way than the effort of mankind to maintain a favorable state of the environment for the future generations.*” Therefore, the right of the public to engage in the process of finding the most sensible variants of human activities or the product of these activities—which, in this respect, will not worsen the achieved state of the environment—must be assessed as highly related and linked to the environment. To achieve highly effective public involvement in this process, the state must carefully ensure the transmission of information describing not only the proposed options but also their impact on the state of the environment from and to the public. This obligation also includes the requirement of gaining comments and proposals from the public concerned in environmental matters.⁵⁶ Therefore, the case law declares that the legislation has strengthened the legal position of the public in relation to public administration decisions in field of environmental matters. The purpose of this regulation is to strengthen the position of the public, which is to be informed about the legal act that has legal consequences for local self-government, community, or society as a whole. Under the influence of European case law, the legislature tightened the legal requirements for the publication of documents. The purpose of this legislation is to increase the likelihood that public participants will learn about the content of the legal acts and will be able to defend their interests on that basis.⁵⁷

The abovementioned ideas can be supported by the opinion of the Constitutional Court of the Slovak Republic for the adoption of environmental legislation. The court finds that Article 8 of the Aarhus Convention gives legal basis for the liability of

56 See the Judgement of the Supreme court of the Slovak Republic of May 14, 2013, no. 1 Sžp 1/2010.

57 See the Judgement of the Supreme court of the Slovak Republic of April 30, 2012, no. 5 Sžp 9/2012.

public administration for finding necessary means for effective public participation in the preparation of generally binding regulations.⁵⁸

Therefore, in my opinion, at the level of constitutional law, the legal status of the public as a party in the environmental permitting proceedings is derived from the constitutional requirement enshrined in Art. 44 sec. 2 of the Constitution of the Slovak Republic. According to this provision, “*everyone is obliged to protect and enhance the environment and cultural heritage.*” The role of the public and its activity in judicial and administrative proceedings is thus perceived not only as a constitutionally guaranteed right but also as a constitutional obligation to protect the environment. In this way, the public is exercising its fundamental rights to environmental information; therefore, it is necessary to consider that the purpose of this individual fundamental right is to share co-liability—for maintaining a favorable level of the environment and also participating in controlling the steps that may influence this state of the environment, not only now but also in the future. This point of view can also be supported by the CJ EU case law, according to which the essence of the legal protection provided to the public in environmental matters relates to the requirement of the legislation to provide the public concerned with effective opportunities to take part in the proceeding and at the appropriate time. This guarantee is interpreted by the CJ EU in the context of the Aarhus Convention.⁵⁹ The purpose of the legal position of the public concerned in environmental matters is also the protection of future generations. The right to take an active part in environmental matters is therefore protecting the future environment.⁶⁰

58 Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 352/2015, of July 14, 2015.

59 The legal status of the party to the proceedings in the mentioned sense is a manifestation of the right to participate in the administration of public affairs. In the area of landfill permitting, the *Judgment of the Court of Justice of the EU of 15 January 15th, 2013, no. C - 416/10* anchors the essence of the abovementioned environmental rights. The case law of the Slovak courts essentially follows its requirements. In that case, the CJ EU examined whether EU law required the public concerned to have access to a zoning decision on the location of a landfill from the beginning of the permitting proceeding. The Court also considered the question of whether the refusal to make the environmental information accessible to the public could be justified by recourse to business secrets protecting the information contained therein or. Then, it also considered that whether the decision was not made available could be remedied by giving the public concerned access to that decision during the second instance administrative proceedings. It is also important to answer the question of whether the operation of landfill represents a landfill that can store more than 10 tons of waste per day or has a total capacity of more than 25,000 tons of waste. The case law of the CJ EU accepts the conclusion that EU law emphasizes the participation of the public concerned in the permitting proceeding and that it also provides such participation as mandatory. This approach also includes the obligation of the public administration to inform the public. Therefore, the public concerned has the right to obtain the relevant information as well as the date and place where this information will be made available to the public. The rules on public participation must be interpreted in light of the provisions of the Aarhus Convention, with which EU law must be “*properly aligned.*” (See the Judgement of the CJ EU of May 12, 2011, in case of *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, no. C-115/09, Zb. s. I-3673, point 41).

60 See the Finding of the Constitutional Court of the Slovak Republic of February 28, 2005, no. I. ÚS 154/05.

4. Protection of natural resources, natural wealth and heritage, and the protection of future generations

The protection of natural resources does *expressis verbis* appear in Art. 44 sec. 3, 4, and 5 the Constitution. In these provisions, the Constitution of the Slovak Republic establishes the obligation not to damage natural resources above the limits laid down by law. It also highlights the state's primary obligation to protect and enhance natural resources and expresses the special protection of the forest and agricultural land. The content of the term "natural resources" can also be interpreted through that of Article 4 of the Constitution.⁶¹ Therefore, the term "natural resources" also includes "*mineral resources, caves, groundwater, natural healing resources and watercourses*". In addition, the protection of natural resources under Art. 44 of the Constitution should be mentioned. Therefore, the list of "natural resources" under Art. 4 of the Constitution is not exhaustive because Art. 44 includes forests, plants, and animals in this category. The respect toward natural resources finds the Constitutional Court of the Slovak Republic when expressing the balance between the property rights and economic liberties on one hand and the protection of natural resources on the other.⁶²

The Constitution does not define the term "future generations".⁶³ The Constitutional Court of the Slovak Republic used the term in the context of Art. 1 of the Aarhus Convention, under which,

in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

In the event that the public concerned suspects that the state, resp. its bodies in a specific case, act in violation of the constitutional requirements under Art. 44 par.

61 "*(1) Mineral resources, caves, groundwater, natural healing resources and watercourses are owned by the Slovak Republic. The Slovak Republic protects and enhances this wealth, gently and efficiently uses mineral wealth and natural heritage for the benefit of its citizens and future generations.*"

62 Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 22/06 of October 1, 2008.

63 According to the case law of Slovak courts, in matters of environmental protection, it is necessary to take into greater account the protection of the Slovak natural resources. Any exemptions granted, consent permitted, or minimal intervention into the Slovak natural resources must be sufficiently justified. Interventions that do not consider the possibility of a negative impact on the biota of protected areas and meet human requirements ultimately erase the differences between the different levels of nature protection in Slovakia, which, for this reason, lose their meaning. Both the right to the environment and the property right (right to the investment resp. the right to use the land) are protected by the Slovak legislation. However, none of these rights is an absolute right. The case law states that, if these rights collide, their conflict must be resolved using the principle of fair balance (See the Judgment of the Supreme court of the Slovak Republic of June 20, 2017, no. 10Sžo/76/2015).

4 of the Constitution (*careful use of natural resources*), it can apply to an independent court, which will subject the state proceedings to judicial review. The institute of the public concerned in environmental issues represents one of the control mechanisms within the framework of environmental protection when, through Art. 44 par. 2 of the Constitution (*obligation of everyone to protect the environment*), it ensures the fulfillment of Art. 44 par. 4 of the Constitution and, at the same time, the protection of everyone's subjective right to a favorable environment according to Art. 44 par. 1 of the Constitution. The role of the public concerned is to seek the protection of the right to a favorable environment in relation to all (i.e., also to future generations) since it represents the public interest on environmental protection.⁶⁴ However, the mentioned approach of the Constitutional Court of the Slovak Republic cannot be understood as a method of defining the concept of future generations. The obligations arising from Art. 4 par. 1 of the Constitution can be understood as the material components of the principle of sustainable development. The Constitution does not directly name Art. 4 as the principle of sustainable development. However, if Art. 6 of the Act no.17/1992 Coll. on the environment, which defines sustainable development,⁶⁵ is applied, it can be concluded that the content of Art. 4 of the Constitution expresses the requirements of the principle of sustainable development. The position of the future generations here is connected with their ability to satisfy their basic needs, while not reducing the diversity of nature and preserving the natural functions of ecosystems.

5. Constitutional protection of marriage and parenthood

This part of the Slovak chapter is oriented toward other values relevant for the protection of the environment in the Constitution of the Slovak Republic. As for other relevant provisions and values that might be relevant for the protection of the interest of future generations and of the environment, the protection of marriage and family ought to be mentioned. According to Art. 41 of the Constitution of the Slovak Republic

(1) Marriage is a unique bond between a man and a woman. The Slovak Republic comprehensively protects the marriage and helps its good. Marriage, parenthood and the family are protected by law. Special protection for children and adolescents is guaranteed. ... (2) A pregnant women are guaranteed special care, protection in working relationships and adequate working conditions. ... (3) Children born in or

64 Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19, 2021.

65 Under Art. 6 of Act no. 17/1992 Coll. on the environment, "*Sustainable development of society is development that preserves the ability of current and future generations to meet their basic needs, while not reducing the diversity of nature and preserving the natural functions of ecosystems.*"

out of wedlock have the same rights. ... (4) The care and upbringing of children is the right of parents; children have the right to parental education and care. Parents' rights can be restricted and minors can be separated from their parents against the parents' will only by a court decision on the basis of the law. ... (5) Parents who take care of children have the right to state assistance. ... (6) Details of the rights under paragraphs 1 to 5 shall be established by law.

The Constitutional Court of the Slovak Republic argues that the Constitution expresses—and thus also protects—many objective values such as marriage, parenthood, family (Art. 41 sec. 1.), health (Art. 40), nature (Art. 20 sec. 3), the environment (e.g., Art. 20 sec. 3, Art. 44) or morality (Art. 24 sec. 4). The Constitution guarantees protection to objective values in various forms and with different intensity that are explicitly expressed in the Constitution, such as freedom, equality, or human dignity, as basic constitutional values. In other words, these values are general constitutional principles and the most general rules of conduct, which, in a concentrated form, express the most general objectives of the legal system and together form the system of fundamental values on which the state's constitutional order is based. At the same time, by a concrete manifestation of these fundamental values, the Constitution recognizes the intensity of the protection in the form of fundamental rights or fundamental freedoms. This means that specific manifestations of these basic values are formulated in the form of subjective claims of natural persons or legal entities against the state. The intensity of the protection of fundamental rights is also granted by the Constitution to other objective values, such as health or the environment, even if *“only within the limits of the laws implementing those provisions”*. The Constitution of the Slovak Republic also provides an exceptionally high level of protection to other mentioned values (nature, morality), when it considers their protection to be a legitimate reason to restrict certain fundamental rights or freedoms, such as property rights or freedom of movement and residence. The Constitution of the Slovak Republic also protects marriage, parenthood, and the family by a special legislation. The obligation of the state to protect the value of unborn human life (*nascitura*) can undoubtedly be deduced from the diction of Art. 15 sec. 1 of the second sentence of the Constitution of the Slovak Republic,⁶⁶ but the text clearly shows, compared to other objective values mentioned, the commitment (*“worthy of protection”*) as well as the different degree of intensity of its constitutional protection. The constitutional imperative for the protection of unborn human life has its autonomous content, and its final specification belongs—in case of doubt—to the role of an authorized *“interpreter”* of the constitutional text, which is the Constitutional Court of the Slovak Republic. Just as the Constitutional Court cannot decide on behalf of the legislator as to when an unborn human life has existed, so it can and must decide on the content and effects of the constitutional duty to protect unborn human life. The legal nature of this value explicitly expressed

66 *“Human life is worthy of protection even before birth.”*

in the Constitution establishes an imperative aimed at all public authorities. It is therefore necessary to interpret the meaning of this provision in comparison with the classical fundamental right. The state's obligation to ensure the protection of a fundamental right, which is a positive aspect of the concept of fundamental rights, is, of course, not identical to the state's obligation to ensure the protection of a constitutionally guaranteed value. Therefore, the rule connected with the existence of fundamental rights is "*where there is right, there is also legal protection*", even by the judiciary.⁶⁷ However, as for the existence of constitutional values, the constitutional and legal protection is weaker.⁶⁸

As for the institutional framework of the family in the Slovak legal system, it does not recognize the term "mate" or "fiancé" as such relationship is only factual and does not have a legal relevance according to the Slovak legislation. On the other hand, the concept of "husband" or "wife" is relatively clearly defined in the legal system and defines a person who has married another person under the Family Code or under Canon Law. Given the above structure, the content of individual terms and their clear legal distinction, it cannot be stated that, in the broadest admissible sense, the term "husband or wife (spouse)" also includes that of "companion, mate, or close person"—a loose interpretation is out of the question. Therefore, it is up to the legislator to link special rights with marriage and family.⁶⁹ The link between constitutional protection and parenthood and protection of future generations in the case law of the Constitutional Court of the Slovak Republic is evident in the constitutional provisions protecting health. The protected constitutional values in Art. 40 of the Constitution are primarily health and access to health care, which are to be achieved by financing through a jointly conceived health insurance system under the conditions established by law. The state is bound by the obligation to establish a system of jointly based health insurance, to maintain it, and to ensure that the provision of health care financed through this system is not based on economically equivalent consideration (price) of the insured in favor of the health care provider. In this respect, Art. 40 of the Constitution can be considered an institutional guarantee and a commitment by the state. The purpose of health care as a state duty is also the protection of future generations.⁷⁰

The Slovak doctrine presents an opinion by which the constitutional concept of economic, social, and cultural constitutional rights and constitutional values can pose a serious problem, mainly because of their hierarchically understood status in relation to personal and political rights. While civil and political rights can be restricted only by the Constitution, economic, social, and cultural rights can be limited by the

67 See the Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 58/07.

68 See the Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 12/01 of December 4, 2007.

69 See the Resolution of the Constitutional Court of the Slovak Republic no. II. ÚS 481/2021 of October 14, 2021.

70 See the Finding of the Constitutional Court of the Slovak Republic of November 15, 2017, no. PL. ÚS 49/2015.

laws that implement them. The second chapter of the Constitution, entitled “Fundamental rights and freedoms”, includes two groups of rights with different ways of content and accessibility. The provision of Art. 51 sec. 1 of the Constitution has established a principle by which laws can restrict human rights. Under the doctrine of the Slovak constitutional law, this provision has created an unpleasant finding that human rights can also be defined by laws.⁷¹ Therefore, the very value of human rights is devalued by accepting that there are also “legal” human rights.⁷² The constitutional way of enshrining economic, social, and cultural rights in the Slovak Republic is that the definition of these rights is left to the legislator, while the Constitution contains the calculation (framework) of these rights, including procedures for the legislator to enshrine the legal conditions for their implementation. This way of anchoring is traditionally justified by the fact that economic, social, and cultural rights are significantly dependent on the success of the state’s economic and social development.⁷³ Undoubtedly, the extent and real exercise of economic, social, and cultural rights is influenced by the state’s economic power; however, at the same time, in line with the modern constitutionalism, the constitutional regulation for this category of human rights is unquestionable—especially in terms of values, which are protected to ensure human dignity and the quality of human life.⁷⁴ An increasing number of ideas promote the same importance and same value of these rights in relation to the other fundamental rights enshrined in the Constitution.⁷⁵ Jurisprudence argues in favor of this thesis on the basis of the construction of the obligations of states arising from human rights norms. These obligations are divided into three groups: respect, protection, and fulfillment of human rights.⁷⁶ The obligation to respect requires the state to refrain from any behavior (negative obligation); on the contrary, the obligation to protect and fulfill requires active action by the state; in other words, it calls on the state to take legislative, administrative, and other measures to ensure that human rights are exercised as far as possible. Based on a previous Slovak analysis of individual constitutional rights, it is possible to come to a generalization according to which the corresponding obligations of all three groups can be proved for all human rights.⁷⁷

In other words, considering the abovementioned facts, it is necessary to apply and interpret the Constitution of the Slovak Republic from a complex and coherent point of view. The Constitution of the Slovak Republic protects marriage, parenthood, but also the working conditions of pregnant women. In the sense of life, health, and dignity protection, then I argue that these values can be understood as specifying environmental protection and natural resources for future generations.

71 See Somorová, no date [Online]. Available at <https://www.judikaty.info/document/article/2256/> (Accessed: April 30, 2022).

72 Barany, 2007, pp. 51–70.

73 Čič, et al., 1997, p. 24.

74 See Somorová, no date.

75 Drgonec, 1999, pp. 174–175.

76 Doc. UN no. E / CN. 4 / Sub. 2/1987 / 23m 7, July 1987

77 Drgonec, 1999, pp. 174–175.

The Constitution of the Slovak Republic does not specify the concept of future generation; however, this concept can be understood through the constitutional protection of marriage, parenthood, and pregnant women as well as through the constitutional will to protect an unborn life. The protection of parenthood and family can be understood through the doctrine of the Constitutional Court of the Republic, which states that the protection of marriage, parenthood, and family is provided in Slovakia through legal norms of family law, civil law, tax law, and also criminal law. All this legislation is based on the material essence of the meaning and purpose of marriage and family as they have been respected for centuries in the European cultural space.⁷⁸ Children and parents are protected from illegal interventions into family relations, and only a court of law can legally interfere with certain family conditions.⁷⁹ Parental rights and obligations belong to both parents; if the parents are married, it is assumed that they perform them in principle on the basis of mutual agreement and in the interest of the minor child.⁸⁰ From the abovementioned decisions, it is possible to deduce that the Constitutional Court of the Slovak Republic holds an interpretative approach that respects the autonomy of the family and its position as a fundamental unit of the Slovak society. This approach is important mainly because of the sustainability of the Slovak society and its generational restoration connected with the continual transfer of standard social values.

6. Financial sustainability

The constitutional aspects toward sustainability are regulated within Art. 55 and 55a of the Constitution of the Slovak Republic. These provisions appear as rules of public finances. Under Art. 55 of the Constitution of the Slovak Republic,

(1) The economy of the Slovak Republic is based on the principles of a socially and ecologically oriented market economy. ... (2) The Slovak Republic protects and promotes competition. Details will be provided by law.” Under Art. 55a of the Constitution of the Slovak Republic, “The Slovak Republic protects the long-term sustainability of its economy, which is based on the transparency and efficiency of public spending. In support of the objectives set out in the previous sentence, the Constitutional Act regulates the rules of budgetary responsibility, the rules of budgetary transparency and the powers of the Council on budgetary responsibility.

78 See the Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 47/97 of October 28, 1997.

79 See the Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 26/05 of July 6, 2006. Finding of the Constitutional court of the Slovak Republic no. PL. ÚS 14/05 of October 18th, 2006.

80 See the Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 10/20 of January 14, 2020.

Therefore, it can be concluded that sustainability in an economic sense can be perceived also through the protection of natural resources and elements of the environment, in the context of Art 4. Under the mentioned provision, *“Mineral resources, caves, groundwaters, natural healing resources and watercourses are owned by the Slovak Republic. The Slovak Republic protects and enhances this wealth, gently and efficiently uses mineral wealth and natural heritage for the benefit of its citizens and future generations.”* The abovementioned articles 55 and 55a of the Constitution can be understood in the sense or meaning that the sustainability of the economy shall be understood as a principle also governing environmental protection and the protection of natural resources.

In addition, Art. 44 sec. 4 and 5 can be included into this concept. Under these provisions, *“(4) The state shall maintain the careful use of natural resources, the protection of agricultural and forest land, the ecological balance and the effective care of the environment. It shall also ensure the protection of designated species of wild plants and wildlife. ... (5) Agricultural land and forest land as non-renewable natural resources enjoy special protection by the state and society.”* The protection of forest land and agricultural land has been introduced into the Constitution of the Slovak Republic through Constitutional Act. no. 137/2017 Coll. amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended. The legislature has explained the purpose of this legislation in the explanatory memorandum to this constitutional act. The land is undoubtedly a natural resource of the state and also an important commodity of strategic importance—an irreplaceable component of the environment and all living ecosystems. It is also a limiting factor for the sustainable development of regions and society. Undoubtedly, there is a public interest on its protection (regulation of the acquisition of property rights); therefore, it is understood as a unique and non-renewable natural resource. It helps to provide food security in the Slovak Republic and forms part of the state’s sovereignty. The mentioned reasons have caused its promotion to a constitutional value.⁸¹ Speaking of the protection of the interest of future generations, it does not appear among the constitutional rules of public finances. The protection of the interest of future generations is directly expressed only within Art. 4 (1) of the Constitution, which sets out the framework for the principle of sustainable development in an environmental meaning. However, in the context of the abovementioned articles 55 and 55a of the Constitution, the protection of the interest of future generations can also be understood as a principle belonging to the constitutional rules of public finances.

As for the practice of Constitutional Court of the Slovak Republic in relation to Art. 55 of the Constitution of the Slovak Republic, it is possible to mention the Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 13/97, of July 1, 1998. Under this decision, Art. 55 of the Constitution formulates the principles of economic policy of the Slovak Republic; these include the support and protection of the competitive economic

81 The explanatory memorandum to Constitutional Act no. 137/2017 Coll. amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended [Online]. Available at <https://www.najpravo.sk/dovodove-spravy/rok-2017/137-2017-z-z.html> (Accessed: May 2, 2022).

environment and the creation of legal means and guarantees against the restriction of competition, which the law considers illegal. The principles of economic policy belong to the basic constitutional principles, and through them, the constitutional protection of legal entities is guaranteed in the Slovak Republic. The basic constitutional principles in the rule of law determine the activities of all state bodies and the process of drafting and content of legal regulations because the norms set out in the Constitution in the rule of law are not only of political or declarative significance. The National Council of the Slovak Republic may adopt any number of laws that contain legal norms relating exclusively or partially to the protection and promotion of competition. In accordance with the promise of the Constitution of the Slovak Republic to protect and promote the competition, the National Council of the Slovak Republic can adopt legal norms for the protection and promotion of competition in laws on taxes, prices, and several other laws in which competition can be protected and promoted. The practice of the Constitutional Court of the Slovak Republic distinguishes between freedom to engage in business and the protection of competition within the national economy. The public interest in restricting competition cannot be equated with, or confused with, that justifying a restriction on the exercise of the right to engage in business and other gainful activities. The public interest in restricting competition cannot be presumed, but it must be proven. Within this finding, the Constitutional Court of the Slovak Republic has indicated that the protection of competition cannot take precedence over all other public interests; for example, the protection of health through health insurance and pension insurance is among the social relationships that can be excluded from competition in the public interest. This fact should be given by the purpose of health and pension insurance and its legal nature as both health and pension insurance can, to some extent, be assessed as a service in the public interest aimed at exercising an individual's constitutional rights. The state shall ensure the provision of this service as a debtor who fulfills its obligation to all persons, by allowing them to exercise their constitutionally guaranteed right to adequate material security in old age and incapacity for work, as well as in the event of loss of the breadwinner (Article 39 (1)), resp. the right to free health care based on health insurance (Article 40). Health and pension insurance companies in basic health and pension insurance are only intermediaries in fulfilling the state's obligation to the individual.

7. The protection of national assets and budgetary responsibility

Article 4 of the Constitution of the Slovak Republic defines, in an environmental sense, the objects that are exclusive property of the state alongside a special legislation contained in Act no. 278/1993 Coll. on State Property Management. As for local self-government, two special legislative acts ought to be mentioned, namely the

Act of the National Council of the Slovak Republic no. 138/1991 Coll. on municipal property and Act no. 446/2001 Coll. on the Property of Higher Territorial Units. The entities in the field of local self-government also play an important role in providing drinking water to inhabitants and businesses. They are often shareholders of water distribution companies under Act no. 442/2002 Coll. on public water supplies and sewers; this fact complies with the constitutional requirements of Article 20 sec. 2 of the Constitution of the Slovak Republic.⁸²

As for the protection of national assets, this term does appear in the abovementioned Art. 55a of the Constitution of the Slovak Republic. To explain the content of this concept, it is necessary to also include the legislation on the special Constitutional Act no. 493/2011 Coll. on budgetary responsibility. Under Art. 2 (Definitions) of this act,

For the purposes of this Constitutional Act, it is understood ... e) net wealth of the Slovak Republic, the sum of equity of public administration entities, equity of the National Bank of Slovakia, equity of state administration enterprises and local government enterprises, adjusted for implicit liabilities and contingent liabilities, other assets and other liabilities.

The explanatory memorandum to this constitutional act explains that the purpose of this legislation was to introduce the concept of the Slovak Republic's wealth into its fiscal policy. Therefore, it was necessary to define the concept of net wealth, which, in the future, shall also indicate the quality of governance and administration of the Slovak Republic.⁸³

These provisions can be linked with future generations, environmental protection, and sustainable development through Art. 7 of the special Constitutional Act no. 493/2011 Coll. on budgetary responsibility. Within the mentioned article, the special constitutional act sets out the rules of the long-term sustainability indicator and public costs limit. This indicator includes (a) the value of the structural primary balance; (b) demographic forecasts published by Eurostat; (c) the European Commission's Committee on Macroeconomic Forecasts and Long-Term Macroeconomic Forecasts; (d) long-term forecasts of age-sensitive costs calculated by the European Commission; (e) long-term capital revenue forecasts calculated by the European Commission; (f) implicit liabilities and contingent liabilities; and (g) other indicators affecting long-term sustainability.

82 Under this provision, *“The law shall establish which other property, in addition to the property listed in Art. 4 of this Constitution, necessary for ensuring the needs of society, the food security of the state, the development of the national economy and the public interest, may only be owned by the state, municipality, specified legal entities or specified natural persons. The law can also stipulate that certain things can only be owned by citizens or legal entities with their seat in the Slovak Republic.”*

83 The explanatory memorandum to Constitutional Act no. 493/2011 Coll. on budgetary responsibility [Online]. Available at <https://www.najpravo.sk/dovodove-spravy/rok-2011/493-2011-z-z.html> (Accessed: May 2, 2022).

Under the explanatory memorandum to this constitutional act, the mentioned provision contains a calculation of all factors that are considered in determining the long-term sustainability indicator; before doing so, the Slovak Council for budgetary responsibility shall publish on its website the calculation methodology and the facts on which it will base its calculation. The introduction of expenditure limits is the most appropriate fiscal rule to ensure the long-term sustainability of the Slovak Republic's economy and acceptable indebtedness. Expenditure ceilings offer a clear and transparent view of compliance with the rules, and their advantage is that their evaluation can be ensured relatively effectively by the council. The procedure for determining expenditure limits shall be established by law.⁸⁴

8. Good practices

Under Art. 44 sec. 4 of the Constitution of the Slovak Republic, *“The state takes care of the careful use of natural resources, the protection of agricultural and forest land, the ecological balance and the effective care of the environment, and ensures the protection of designated species of wild plants and wildlife.”*

The term “good practices” in the field of environmental law can be connected to the abovementioned constitutional request to the state to take effective care of the environment. As an example of good practice at the constitutional level of environmental protection, Art. 4 sec 2. of the Constitution of the Slovak Republic prohibits the export of water outside the state territory through a pipeline or through a water tank. This legislation has been challenged at the Constitutional Court of the Slovak Republic; according to the complainants, this amendment to the Constitution of the Slovak Republic was supposed to represent a contradiction with the requirements of EU water management expressed mainly in the Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community's action in the field of water policy. The challenged legislation has been assessed by the Constitutional Court of the Slovak Republic also in terms of Art. 34 and 36 of the Treaty on the Functioning of the EU. The Court also refused to analyze the compliance of the constitutional amendment with the Constitution of the Slovak Republic because the legislation had been challenged by an individual constitutional compliant. Moreover, it proclaimed that the legislation analyzed did not contravene the right to a favorable environment. On the contrary, such legislation promoted environmental protection and the protection of natural resources of the Slovak Republic. In this context, the Constitutional Court of the Slovak Republic pointed to its

84 The explanatory memorandum to Constitutional Act no. 493/2011 Coll. on budgetary responsibility [Online]. Available at <https://www.najpravo.sk/dovodove-spravy/rok-2011/493-2011-z-z.html> (Accessed: May 2, 2022).

previous jurisprudence, in which it already stated that the content of the state's positive obligation in relation to the rights and freedoms of the citizen is the obligation to take measures to protect the rights granted to the citizen in the Constitution. At the same time, the state also has positive obligations that result from the interest in the effective protection of rights. Such a special category of positive obligations of the state includes ensuring the effective protection of rights guaranteed by international treaties through the existence of a certain (law-regulated) process.⁸⁵

Another example of good practice at the constitutional level of environmental protection can be found within the already mentioned activities of the Public Defender of Rights. The benefits of this authority are unquestionable in the field of access to drinking water and sanitation services and also in the area of protection of biodiversity. The role of the Public Defender of Rights is primarily to protect individual rights in relation to public authorities. However, previous experience shows that the Public Defender of Rights has quite the potential in providing legal protection to natural persons and legal entities (such as fishery associations), when it comes to defending the environment, natural resources, or biodiversity.

9. De lege ferenda

In Art. 4 sec. 2, the Constitution of the Slovak Republic establishes the protection of waters. Under the mentioned provision,

The transport of water taken from water bodies located in the territory of the Slovak Republic across the borders of the Slovak Republic by means of transport or pipelines is prohibited. The prohibition does not apply to water for personal consumption, drinking water packaged in consumer packaging in the territory of the Slovak Republic and natural mineral water packaged in consumer packaging in the territory of the Slovak Republic and to the provision of humanitarian aid and emergency assistance. Details of the conditions for the transport of water for personal consumption and water for the provision of humanitarian aid and emergency assistance shall be laid down by law.

Almost the same legislation is part of Act no. 364/2004 Coll. on waters. From my point of view, it would be more transparent if the Constitution stated that *“The transport of water taken from water bodies located in the territory of the Slovak Republic across the borders of the Slovak Republic by means of transport or pipelines is prohibited. Details shall be laid down by law.”* Currently, the constitutional legislation is too complicated and technical, while it should be more principled and general.

⁸⁵ The Resolution of the Constitutional Court of the Slovak Republic no. III. 352/2015 of July 14, 2015.

It is also necessary to mention the area of the right to information on the state of the environment under Art. 45 of the Constitution. Nowadays, information on the presumed environmental burdens cannot be accessed by the public and is not disclosed under the conditions established by the Geological Act. At the beginning of this month, the representatives of the National Council of the Slovak Republic have accepted the Amendment to the Geological Act within the first reading, although this situation has not yet been finalized. The amendment will prevent the classification of publicly funded final reports but also the final reports of business-funded surveys, insofar as they contain knowledge of deteriorating environmental quality. The draft amendment to the act does not allow private companies to conceal survey results that confirm soil and water contamination. According to the Ministry of the Environment of the Slovak Republic, the state will have effective mechanisms to prevent the secrecy of the results on environmental pollution. The draft amendment increases to inform municipalities and cities. In this regard, it introduces the obligation to inform the client of the final report from the geological survey or from the remediation of the environmental burden about the serious risk to human health and the environment, identified and verified in their cadastral area. However, the Ministry does not speak about establishing this obligation also to the registry of environmental burdens. Currently, the presumed environmental burdens create a classified part of the registry of environmental burdens.

Another area of problematic issues in the field of environmental law is waste management. In Slovakia, the goals of the hierarchy of waste management are quite problematic in practice, and the respect for these objectives and principles is quite difficult to fulfill. In the Slovak Republic, it is common practice for the biggest part of waste management to be represented by landfills and waste disposal. Currently, only two plants are oriented toward the energetic use of waste (waste to energy approach), and the practice does not respect the value of recycling, which is higher than the energetic use of waste. All these issues would practically create a good constitutional principle if the Constitution prescribed a rule by which the state should prevent waste disposal and also support the energetic use of waste, respecting the climatic goals of the Slovak Republic and the recycling economy.

Bibliography

- Barany, E. (2007) *Terms of good law*. Žilina: Eurokódex.
- Bartoň, M., Dienstbier, F., Horáková, M., Peterková, M., Pouperová, O., Sládeček, V. (2009) *Kontrolní mechanismy fungování veřejné správy [Control mechanisms of the functioning of public administration]*. Olomouc: Faculty of Law of the Palacký University in Olomouc and Periplum publishing house.
- Čič, M. (1997) *Commentary on the Constitution of the Slovak Republic*. Martin: Matica Slovenská.
- Drgonec, J. (1999) *Fundamental Rights and Freedoms. Constitution of the Slovak Republic*. Volume 2. Bratislava: MANZ.
- Dubovcová, J. (2016) *The state does not guarantee access to drinking water*. Top Stories. Conservative Journal. November 16th, 2016 [Online]. Available at: <http://www.hlavnespravy.sk/dubovcova-stat-nezabezpecuje-pristup-k-pitnej-vode-pre-vsetkych/860376> (Accessed: 2 May 2022).
- Jankuv, J. (2001) *Environmentalizácia medzinárodného práva verejného a jej vplyv na právo Európskej únie a právny poriadok Slovenskej republiky [Environmentalization of international public law and its impact on the law of the European Union and the legal order of the Slovak Republic]*. Prague: Leges.
- Jankuv, J. (2009) *Ludské právo na životné prostredie a jeho ochrana podľa Európskeho dohovoru o ochrane ľudských práv a základných slobôd, Rada Európy a ochrana životného prostredia [The human right to the environment and its protection according to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe and environmental protection]*. Proceedings from the international scientific conference held on September 11th, 2008 (VEGA Project No. 1/0387/08), Typi Universitatis Tyrnaviensis, publishing house of Trnava University in Trnava, joint workplace of TU and SAV, Trnava.
- Majerčák, T. (2011) 'Ústavnoprávny rozmer práva na priaznivé životné prostredie' ['Constitutional extent of the Right to a favorable environment'] in Perduková, V., Koľová, S. (eds.) *Ochrana životného prostredia v podmienkach územnej samosprávy: Zborník príspevkov z vedeckej konferencie [Protection of the environment in the conditions of local self-government: Proceedings of a scientific conference]*. Košice: University of Pavel Jozef Šafárik Košice, pp. 7–16.
- Průchová, I. (2016) 'Environmentální spolky, opatření obecné povahy a práva ve vztahu k příznivému životnímu prostředí – vývoj, současný stav a perspektivy' ['Environmental associations, measures of a general nature and rights in relation to a favorable environment – development, current status and perspectives'] in Müllerová, H., Damohorský, M., Blahož, J., Franková, M., Tomoszková, V., Jančářová, I., Vomáčka, V., Průchová, I., Bejčková, P., Doležalová, H., Maslen, M. (eds.) *Právo na příznivé životní prostředí: Nové interpretační přístupy [The right to a favorable environment: New interpretive approaches]*. Prague: Institute of State and Law AV ČR, pp. 201–214.
- Somorová, Ľ. (no date) *The Constitutional regulation of fundamental rights and freedoms* [Online]. Available at: <https://www.judikaty.info/document/article/2256/> (Accessed: 30 April 2022).
- Stejskal, V. (2008) 'Legal liability in the area of environmental protection and Act on prevention and remedying of environmental damage' in *Czech and European environmental law*. Yearbook. 2008, vol. 3, pp. 40–44.

Legal Sources

Act no. 17/1992 Coll. on the environment.

Act no. 50/1976 Coll. on Spatial Planning and Building Regulations (Building Act).

Constitution of the Slovak Republic.

Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.

Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.

Decision of ACCC in case of Kazakhstan no. ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, of March 11th, 2005.

Decision of the Constitutional Court of the Slovak Republic of April 25th, 2018, no. PL. ÚS 51/2015-94.

Doc. UN no. E / CN. 4 / Sub. 2/1987 / 23m 7, July 1987.

Explanatory Memorandum to Constitutional Act no. 137/2017 Coll. amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended [Online]. Available at: <https://www.najpravo.sk/dovodove-spravy/rok-2017/137-2017-z-z.html> (Accessed: 2 May 2022).

Explanatory Memorandum to Constitutional Act no. 493/2011 Coll. on the budgetary responsibility [Online]. Available at: <https://www.najpravo.sk/dovodove-spravy/rok-2011/493-2011-z-z.html> (Accessed: 2 May 2022).

Explanatory Memorandum to the Government Draft of the Constitution of the Slovak Republic [Online]. Available at: <https://www.nrsr.sk/dl/Browser/Document?documentId=75408> (Accessed: 28 February 2022).

Finding of the Constitutional Court of the Slovak Republic file no. IV. ÚS 256/07 of January 31st, 2008.

Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 1/09 of January 19th, 2011.

Finding of the Constitutional Court of the Slovak Republic file no. PL. ÚS 22/06 of October 1st, 2008.

Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 223/09 of May 27th, 2010.

Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.

Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 352/2015, of July 14th, 2015.

Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 58/07.

Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 47/97 of October 28th, 1997.

Finding of the Constitutional Court of the Slovak Republic no. III. ÚS 10/20 of January 14th, 2020.

Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 3/03-189 of January 28th, 2009.

Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 7/96.

Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 22/06 of October 1st, 2008.

Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 12/01 of December 4th, 2007.

Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 26/05 of July 6th, 2006.

Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 14/05 of October 18th, 2006.

- Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 380/2019 of July 13th, 2021.
- Finding of the Constitutional Court of the Slovak Republic no. I. ÚS 529/2019 of January 19th, 2021.
- Finding of the Constitutional Court of the Slovak Republic of February 28th, 2005, no. I. ÚS 154/05.
- Finding of the Constitutional Court of the Slovak Republic of November 15th, 2017, no. PL. ÚS 49/2015.
- Judgement of the CJ EU no. C-240/09 of March 8th, 2011.
- Judgement of the CJ EU of May 12th, 2011, in case of Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, no. C-115/09, Zb. s. I-3673.
- Judgement of the Supreme Court of the Slovak Republic no. 3 Sžp 2/2008 of December 4th, 2008.
- Judgement of the Supreme Court of the Slovak Republic of April 30th, 2012, no. 5 Sžp/17/2011.
- Judgement of the Supreme Court of the Slovak Republic of April 30th, 2012, no. 5 Sžp 9/2012.
- Judgement of the Supreme Court of the Slovak Republic of August 7th, 2019, no. 3 Sžk/24/2019.
- Judgement of the Supreme Court of the Slovak Republic of July 28th, 2011, no. 8 Sžo/203/2010.
- Judgement of the Supreme Court of the Slovak Republic of June 20th, 2017, no. 10 Sžo/76/2015.
- Judgement of the Supreme Court of the Slovak Republic of May 14th, 2013, no. 1 Sžp 1/2010.
- Judgement of the Supreme Court of the Slovak Republic of October 24th, 2018, no. 7 Sžk/8/2017.
- Judgement of the Supreme Court of the Slovak Republic of September 24th, 2014, no. 7 Sžo/1/2013.
- Judgment of the Court of Justice of the EU of 15 January 15th, 2013, no. C – 416/10.
- Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 93/08 of April 1st, 2008.
- Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 95/08 of April 1st, 2008.
- Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 100/08 of April 1st, 2008.
- Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 93/08 of April 1st, 2008.
- Resolution of the Constitutional Court of the Slovak Republic no. III. ÚS 100/08 of April 1st, 2008.
- Resolution of the Constitutional Court of the Slovak Republic no. I. ÚS 590/2016 of September 21st, 2016.
- Resolution of the Constitutional Court of the Slovak Republic no. II. ÚS 481/2021 of October 14th, 2021.
- Resolution of the Constitutional Court of the Slovak Republic no. III. 352/2015 of July 14th, 2015.
- Resolution of the Constitutional Court of the Slovak Republic of September 21st, 2016, no. PL. ÚS. 9/2016.

Online Sources

- Bee decline is a warning for us all [Online]. Available at: <https://www.prezident.sk/en/article/ubytok-vciel-je-pre-nas-varovanim/> (Accessed: 30 May 2022).
- Climate neutral office of the President of the Slovak Republic by 2030 [Online]. Available at: <https://www.prezident.sk/en/page/green-office/> (Accessed: 30 May 2022).

- Committee of the National Council of the Slovak Republic for Agriculture and the Environment. Basic information about the committee [Online]. Available at: <https://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=158> (Accessed: 27 February 2022).
- Earth Day Reminds Us of How Much We Affect Our Planet [Online]. Available at: <https://www.prezident.sk/en/article/den-zeme-nam-pripomina-ako-velmi-ovplyvnujeme-planetu/> (Accessed: 30 May 2022).
- Glasgow Conference is make-or-break moment for our planet [Online]. Available at: <https://www.prezident.sk/en/article/konferencia-v-glasgowe-je-pre-nasu-planetu-rozhodujuca/> (Accessed: 30 May 2022).
- Report on the protection of the right to the environment within the proceedings of public authorities permitting the construction of small water powerplants [Online]. Available at: <https://www.ziverieky.sk/assets/Uploads/9a173e044a/Sprava-vodne-elektrarne.pdf> (Accessed: 27 February 2022).
- Report on the Survey of Fundamental Rights and Freedoms. Access to drinking water and information on ensuring fire protection in Roma settlements [Online]. Available at: http://www.vop.gov.sk/files/Pristup_k_vode.pdf (Accessed: 30 May 2022).
- Slovak Environmental Inspectorate. About us. [Online]. Available at: <https://www.sizp.sk/slovak-environmental-inspectorate/about-us> (Accessed: 27 February 2022).
- The automobile industry must remain competitive in the future [Online]. Available at: <https://www.prezident.sk/article/automobilovy-sektor-musi-zostat-konkurencieschopny-aj-v-buducnosti/> (Accessed: 30 May 2022).