Chapter VIII

Serbia: Constitutional Framework for Environmental Protection: Value in Regulation, Silence in Realization

Sanja Savčić

1. Introduction

1.1. Constitutional framework

The definition of the term "healthy environment" is not provided in the Constitution. Moreover, the Law on Environmental Protection[1] provides a definition of "environment" but not of a "healthy environment".

In attempting to focus our research on this topic, a theoretical definition can be utilized instead. Therefore, a "healthy environment" can be considered a set of physical, biological, social, cultural, and other conditions with an impact on qualitative human life as well as the sustainability of biological diversity.[2] From this perspective, protection of the environment should include all natural value, such as water, air, and biological diversity, as well as added value made by human beings (e.g., buildings intended for the maintenance of natural wealth and cultural heritage).[3] Broad legislative actions are required to cover all or, at a minimum, the major aspects of a healthy environment.

1 Official Gazette of Republic of Serbia, No.135/2004, Art. 3 para. 1, ad 2, 3.
2 Lilić and Drenovak Ivanović, 2014, pp. 15–16.
3 Drenovak Ivanović, 2021, p. 17.

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Environmental protection has been recognized as a task of the highest level of law. In this sense, the Constitution has three types of provisions that are of importance in this matter.

The first type is the provision on the right to a healthy environment.[4] The second type is provisions that treat a healthy environment as a reason for the restriction of some other rights.[5] Finally, the determination of competence for the issue of environmental protection is provided by the Constitution as well. Accordingly, the Republic of Serbia shall organize and provide for sustainable development, a system of protection and improvement of environment, the protection and improvement of flora and fauna, production, trade and transport of arms, and poisonous, inflammable, explosive, radioactive and other hazardous substances.[6] Autonomous provinces shall, in accordance with the Law, regulate the matters of provincial interest in the field of agriculture, water economy, forestry, hunting, fishery, tourism, catering, spas and health resorts, and environmental protection.[7]

The municipality shall, through its bodies and in accordance with the Law, be responsible for environmental protection, protection against natural and other disasters, protect cultural heritage of the municipal interest,[8] and protect, improve, and use agricultural land.[9]

1.2. Laws on the protection of the environment in the Republic of Serbia

Considering the provisions on competence for the matters of a healthy environment, identifying a great number of laws and bylaws related to this task is not unexpected.[10] The most important are the Law on Environmental Protection, the Law on Environmental Impact Assessment, the Law on Integrated Pollution Prevention and Control, the Law on Strategic Environmental Assessment,[11] and the recently adopted Law on Climate Changes.[12] In addition, there are numerous laws on environmental protection in specific tasks (water, industry, climate changes, etc.).[13]

4 The Constitution of the Republic of Serbia, Official Gazette of the RS No. 98/2006, Art. 74.
5 Constitution, Art. 83.
6 Constitution, Art. 97 para. 1, ad 9.
7 Constitution, Art. 183 para. 2, ad 2.
8 Constitution, Art. 190 para. 1, ad 6.
9 Constitution, Art. 190 para. 1, ad 7.
10 According to the official data, there are 17 laws and over 270 bylaws included in the field of the environmental protection [Online]. Available at: https://www.ekologija.gov.rs/sites/default/files/inline-files/List_of_regulations.pdf (Accessed: 10 February 2022).
11 All of them are published in the Official Gazette of the Republic of Serbia, No.135/2004.
12 Official Gazette of the Republic of Serbia, No. 26/2021.
13 The Law on the Environmental Protection Fund, the Law on Nature Protection, the Law on National Parks, the Law on the Protection and Sustainable Use of Fish Stock, the Law on Chemicals, the Law on the Prohibition of Development, Production, Storagem and Use of Chemical Weapons and Their Destruction, the Law on Biocidal Products, the Law on Waste Management, the Law on Packaging and Packaging Waste, the Law on the Transport of Hazardous Materials, the Law on Trade in Explosive Materials, the Law on Air Protection, the Law on Environmental Noise Protection, the Law on

The common feature of these laws is the fact that provisions regulate measures in different areas of the environment, which need to be undertaken to keep or improve a healthy environment. Apart from this, each law included in this Environment package provides for offenses and fines for not applying certain measures.

In accordance with constitutional provisions on competence, autonomous provinces and municipalities manage environmental matters as well.

1.3. Crimes related to the environment

The Criminal Code[14] contains a particular chapter 24 on criminal offenses against the environment, which include environmental pollution (Art 260), failure to take environmental protection measures (Art. 261), illegal construction and commissioning of facilities and plants that pollute the environment (Art. 262), damage to facilities and devices for environmental protection (Art. 263), environmental damage (Art. 264), destruction, damage, and taking abroad and bringing into Serbia a protected natural asset (Art. 265), import of dangerous substances into Serbia and illegal processing, disposal, and storage of dangerous substances (Art. 266), illegal construction of nuclear buildings (Art. 267), violation of the right to information on the state of the environment (Art. 268), killing and abusing animals (Art. 269), the transmission of infectious diseases in animals and plants (Art. 270), unscrupulous veterinary care (Art. 271), the production of harmful agents for the treatment of animals (Art. 272), contamination of food and water for food, such as feeding animals (Art. 273), forest devastation (Art. 274), forest theft (Art. 275), illegal hunting (Art. 276), and illegal fishing (Art. 277).

Judging from the range of incrimination, it could be concluded that criminal protection is of greater importance than it is in practice. One reason for this is that criminal law should be the last point in the system of environmental protection. If criminal procedure is invoked, that means that the environment was endangered or already damaged. However, criminal law has another function apart from punishment (special prevention): general prevention. In other words, punishment is aimed at discouraging others from wrongdoing. However, in this sense, Serbian criminal law lacks efficiency in environmental matters. The reason may be found in its particularly pronounced fragmentary nature and subsidiarity. In addition, terms used in the descriptions of the offenses are broad and imprecise, which may influence the complications in attempting to prove intent to commit the crime and hence minimize the punishment, if any.[15]

Emergency Situations, the Law on Ionizing Protection Radiation and Nuclear Safety, and the Law on Protection Against Non-Ionizing Radiation. All of these are published in the Official Gazette of the Republic of Serbia, No. 36/09.

14 Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 – corec., 107/2005 – corec., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

15 Samardžić, 2011, p. 756.

1.4. Liability for environmental matters in civil law

Offenses and crimes related to the environment have special and general prevention as their major function. Therefore, the aim of providing fines for unlawful actions is protecting the public interest.

In contrast, civil law, by nature, protects private interests. In this sense, civil law liability can emerge in any case in which personal rights are endangered or harmed.[16] In the context of the environment, if a natural or legal person cause the damage by their action, they are obliged to compensate for it or to undertake a certain action to repair damage. This follows the general principle settled in the Law on Obligations: Everyone is bound to refrain from an act that may cause damage to another.[17] According to the Law on Obligations, injury or loss occurring in relation to a dangerous object of property or a dangerous activity shall be treated as originating from such object or activity unless it is proven that it was not the cause of injury or loss.[18] The owner of a dangerous object of property shall be liable for injury or loss caused by it, while in the case of injury or loss caused by a dangerous activity, the person performing it shall be liable.[19]

The civil law protection of the environment could be achieved through property rights as well.[20] Namely, the owner of real estate has the obligation to refrain from actions that make it difficult to use other real estate or cause significant damage. If the real estate causes a condition that makes it difficult for others to use their real estate, the owner is obliged to remove those causes.[21] This action (negatory claim) has limited application because it is effective only in relation to objects of real estate that are close to each other (usually neighboring). In other words, ecological damage is beyond the scope of this provision. This does not mean that there is no civil liability for that type of harmful emission. Moreover, in this respect, the Law on Obligations provides that everyone may demand from another to eliminate a source of danger threatening considerable damage to them or to an unspecified number of persons as well as to refrain from an activity causing disturbance or danger of loss, should the ensuing disturbance or loss be impossible to prevent via adequate measures. On the request of an interested person, the court shall order the taking of adequate measures to prevent the emergence of damage or disturbance or to eliminate the source of danger – at the expense of the holder of the source of danger, should they themselves fail to act accordingly. Should loss occur in the course of an activity undertaken in the interest of the general public and otherwise permitted by

16 Pajtić, 2015, pp. 1669–1679.
17 Art. 16, Prohibition of Causing Damage
18 Art 173.
19 Art 174.
20 Pajtić Bojan, 2011, 249–264.
21 Law on Fundamentals of Property Relations, *Official Gazette of the Social Federal Republic of Yugoslavia*, No. 6/80 i 36/90, *Official Gazette of Federal Republic of Yugoslavia*, No. 29/96 and *Official Gazette of the Republic of Serbia*, No. 115/2005, Art. 5.

a competent agency, the only recovery to be demanded shall concern loss exceeding normal limits. However, in such a case, it shall also be possible to demand taking socially justified measures to prevent the emergence of or reduce damage.[22]

Due to its preventive nature, this lawsuit (known as "environmental" or "ecological") has great potential in regard to environmental protection. Compared to previously explained negatory claims, the major reason is that the claim holder can be any interested person. That means that lawsuits can be brought not only by persons threatened by considerable damage but any third party if the considerable damage threatens an indefinite circle of persons (*actio popularis*).[23] It entitles a substantial number of organizations and even governmental bodies to take action in preventive care for the environment, in particular those in charge of doing so. However, the reality is quite different. In practice, it has been very rarely been used despite that it has existed in the Serbian legal system since 1978, and when it has, it was primarily to protect personal interests.[24] There are a number of reasons for this. First, *actio popularis* differs from other civil law actions (which can be filed only when a subjective right or a legally protected interest of a concrete person has been violated[25]); hence, it remains invisible to those it may concern. Second, judicial procedures take a great deal of time and expense; thus, for many entities, they remain unaffordable.

The adoption of the Law on Environmental Protection did not improve the situation despite that the rules on liability for damage are settled more precisely.[26] Namely, the polluter who causes pollution of the environment is responsible for damage according to the rules of strict liability. This means that they have an obligation to compensate for damage regardless of their fault, which is more comfortable for an injured party. Further, a polluter whose construction or activity poses a high degree of danger to human health and the environment must be insured against liability in the event of damage caused to third parties as a result of an accident. This obligatory insurance is a type of socialization of the risk and places damaged persons in a better position as the possibility of compensation is enhanced by the fact that there is more than one debtor. A claim for damages can be submitted directly to the polluter or to an insurer, or financial guarantor of the polluter due to whom the accident occurred if such an insurer or financial guarantor exists. If more than one polluter is responsible for the damage caused to the environment, and the share of individual polluters cannot be determined, the costs shall be borne according to the rules of joint and several liability. The initiation of a procedure for compensation for damage is statute-barred for three years from the time when the injured party gained knowledge of the damage and the tortfeasor. This claim becomes unenforceable 20 years after the damage occurred. Proceedings before the court for damages are an

22 Law on Contracts and Torts, Art. 156.
23 Miščević and Dudaš, 2021, p. 60; Dudás, 2015, pp. 27–43
24 Pajtić, 2021, p. 1069.
25 Salma, 2014, pp. 895–915.
26 Law on Environmental Protection, Art. 102–108.

urgent matter. The Republic of Serbia reserves the right to compensation if there are no other persons who have that right. In such a case, compensation is income in the public budget and is directed toward environmental protection purposes.

1.5. Administrative framework for the protection of the environment

Within the competence of administrative authorities, particular regulations and inspection supervision are important.[27]

Among a great number of laws and bylaws regulating environmental protection in the administrative branch, the Law on Environmental Impact Assessment should be singled out[28].

This law regulates the impact assessment procedure for projects that may have significant effects on the environment, the content of the study of environmental impact assessment, the participation of interested bodies and organizations and public, cross-border notification for projects that may have significant effects on the environment in another country, monitoring, and other issues of importance for environmental impact assessment.[29] Impact assessment is performed for projects in the fields of industry, mining, energy, transport, tourism, agriculture, forestry, water management, waste management, and utilities as well as for projects planned on the protected natural resources and in the protected environment of immovable cultural property.[30] The Government of the Republic of Serbia shall prescribe 1) a list of projects for which an impact assessment is mandatory and 2) a list of projects for which an impact assessment may be required. The holder of a project for which an impact assessment is obligatory or a project for which the need for an impact assessment has been determined cannot initiate, such as the construction and execution of, the project without the consent of the competent authority for the impact assessment study.

The procedure has three phases: deciding on the need for impact assessment for projects referred, determining the scope and content of the impact assessment study, and deciding on consenting to the impact assessment study. During the procedure, the competent body has to inform stake holders and the public regarding the facts and experts' opinions. Moreover, all of the documentation that the holder of the project prepared in order to initiate the procedure has to be exposed to the public. Aside from everyone's constitutional right to be informed on environmental matters, the practical application of these provisions could lead to opposite and, therefore, unwitting consequences. Namely, documentation is usually substantial, consisting of hundreds of pages, and is supported by different experts' opinions. For this reason, it is difficult to imagine that one (except the competent body) would focus on the available material. Even in such a case, the terminology of a project (and experts' evaluation) is generally incomprehensible for the majority of people.

27 Milkov, 2013, pp. 61–73, Milkov, 2015, pp. 1441–1458.
28 Official Gazette of the Republic of Serbia, No. 135/2004 and 36/2009.
29 Law on Environmental Impact Assessment, Art. 1.
30 Law on Environmental Impact Assessment, Art 3 para. 3.

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

Considering the legislative function of Parliament, the Parliament of the Republic of Serbia has a significant role in shaping the rules on environmental protection. In addition, there is an Environmental Protection Committee, which is a working body of Parliament. Within its competences, the Committee follows the work of the Government and other bodies and authorities whose work supervised by the National Assembly in accordance with the Constitution and the law. The Committee considers the reports of the bodies, organizations, and authorities submitted to Parliament under the law.[31]

According to the Law on Ministries, the Ministry of Environmental Protection performs state administration tasks regarding the environmental protection.[32] Due to the scope and complexity of laws and bylaws in the field of environmental protection, the Ministry of Environment Protection is divided into several internal units, which are established to perform activities within its scope.[33] Under the laws in the field of environmental protection, some tasks are entrusted to the Autonomous Province and local self-government units as well.

31 The composition, purview, and manner of operation of the committees is regulated by Articles 46 through 67 of the National Assembly Rules of Procedure [Online]. Available at: www.poslovnik.rs. (Accessed: 20 February 2022).

32 Official Gazette of RS" No. 128/2020, Art 6. The competence of this Ministry includes the basics of environmental protection, the system of environmental protection and improvement, national parks, inspection supervision in the field of protection environment, application of the results of scientific and technological research and development research in the field of environment, implementation of the Convention on Public Participation, Access to Information and the Right to Legal Protection in the Field of Environment, nature protection, air protection, protection of the ozone layer, climate change, transboundary air and water pollution, protection of water from pollution to prevent the deterioration of surface and groundwater quality, the determination of environmental protection conditions in spatial planning and construction, protection against major chemical accidents and participation in response to chemical accidents, protection against noise and vibration, protection against ionizing and non-ionizing radiation, the management of chemicals and biocidal products, the implementation of the Chemical Weapons Convention in accordance with the law, waste management except radioactive waste, creating conditions for access and implementation projects within the scope of that ministry that are financed from the pre-accession funds of the European Union, donations and other forms of development assistance, approval of the transboundary movement of waste and protected plant and animal species, and other activities determined by law.

33 The Sector for Financial Management and Control, Sector for Environmental Management, Sector for Nature Protection and Climate Change, Sector for Strategic Planning, Projects, International Cooperation, and European Integration, Sector for Waste Management and Wastewater, and Sector for Environmental Monitoring and Precaution. Furthermore, inspectional supervision includes tasks to be performed by the state administration.

The Ministry of Environmental Protection contains the Environmental Protection Agency, which performs professional activities regarding the development, supervision, and care of the environment.[34]

Apart from the aforementioned bodies having competence in environmental protection, there are two independent entities that could, among other activities, take action in regard to that aim. The first is the Protector of Citizens (Ombudsman) and the second is the Commissioner for Information of Public Importance and Personal Data Protection. Both institutions are established through laws rather than the Constitution,[35] but their role can be considered significant.

In this respect, the Protector of Citizens is responsible for initiating the procedure against administrative decisions, activities, or passive positions regarding the environmental protection, mediates and gives advice and opinions related to the environment, proposes laws and provides opinions on draft laws and other regulations in the field of environmental protection.[36] They are an intermediary between citizens and state authorities, mainly in an administrative regard. In this sense, the Protector of citizens is "the first line" for receiving citizen complaints regarding the acts of authorities that could be considered risky or dangerous for human rights. Afterward, the Protector notices the entity on determined misconduct and offers recommendations for particular measures that should be undertaken. For instance, in a recent case, the Protector of Citizens determined that the Ministry of the Protector of Citizens has inefficiencies in regard to the field of air protection by failing to work to the detriment of citizens' rights to a healthy environment because it did not monitor in a timely manner the actions of local self-government units in connection with the application of the Law on Air Protection, to which it is authorized according to those local self-government units that have not fulfilled the prescribed obligation to adopt air quality plans and short-term action plans and to provide recommendations on

34 The Environmental Protection Agency, as a body within the Ministry of Environmental Protection, which has the status of a legal entity, performs professional activities related to the development, harmonization, and management of the national information system for environmental protection (monitoring of the state of environmental factors through environmental indicators, a register of pollutants, etc.); implementation of state monitoring of air and water quality, including implementation of prescribed and harmonized programs for the control of air, surface water, and groundwater quality of the first issue, and Precipitation Management of the National Laboratory Collection and consolidation of environmental data; their processing and preparation of reports on the state of the environment and the implementation of environmental protection policy; the development of procedures for processing environmental data as well as their assessment; keeping data on best available techniques and practices and their application in the field of environmental protection; cooperation with the European Environment Agency (EEA) and the European Information and Observation Network (EIONET), and other matters specified by law [Online]. Available at: http://www.sepa.gov.rs/index.php?menu=100&id=4&akcija=showAll. (Accessed: 16 February 2022).

35 The Law on the Protector of Citizens, *Official Gazette of Republic of Serbia,* No. 79/2005 and 54/2007, the Law on Free Access to Information of Public Interest, *Official Gazette of Republic of Serbia,* No. 120/2004, 54/2007, 104/2009, 36/2010, and 105/2021.

36 The Law on the Protector of Citizens, Art. 17–23.

further actions.[37] The Regular Annual Report of the Protector of Citizens for 2021 stated that less than 1% of the complaints were environmental matters.[38] It would not be appropriate to conclude that the reason for this low participation among the total number of the Protector's cases reflects a good condition in the field of environmental protection; rather, citizens are not familiar with the Protector's competence in this matter.

Because the Constitution envisages the right of everyone to be informed on environmental tasks, the Commissioner for Information of Public Importance and Personal Data protection has an important role in that respect, particularly having in mind their competence to monitor compliance with the obligations of government bodies established by this Law and to inform the public and the National Assembly thereof and initiate the enactment or amendment of regulations to implement and improve the right of access to information of public importance.[39] Unlike the Protector of Citizens, the Commissioner for Information of Public Importance is empowered to make decisions in particular administrative procedures and, hence, to order particular actions regarding the relevant information. From this position, the Commissioner has the power to provide information on environmental conditions or on measures related to the environment, which are necessary for the effective protection of the human right to a healthy environment. Recently, the Commissioner stated that Ministry of Environmental Protection is obliged to respond to citizens despite that this body does not have evidence regarding particular environmental facts, at least in terms of the entity proceeding relevant information.[40]

Taking into account that the right to a healthy environment is provided by the Constitution, the role of the Constitutional court should be considered as well. In that sense, it is necessary to discuss the competence of the Court. Namely, the Constitutional Court is an autonomous and independent state body that protects constitutionality and legality as well as human and minority rights and freedoms.[41] With respect to environmental matters, both powers are significant. Its primary power is to protect constitutionality and legality, that is, to assess whether general legal acts are in accordance with the Constitutional Act and laws. Decisions in this procedure are final, enforceable, and generally binding (*erga omnes*). Because a procedure can be initiated by authorized petitioners or on self-initiative, when the general act on

37 The Protector of Citizens, 3115-22/20, dated November 18, 2020 [Online]. Available at: www.ombudsman.rs, (Accessed: 1 May 2022). See also: Recommendations of the Protector of Citizens No. 3115-1098/20, No. 13-22-1751/17 [Online]. Available at: www.ombudsman.rs. (Accessed: 10 May 2022).

38 Regular Annual Report of the Protector of Citizens for 2021 [Online]. Available at: https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji. (Accessed: 12 May 2022).

39 Law on Free Access to Information of Public Interest, Art. 35 para. 1 ad 1 and 2.

40 Commissioner for Information of Public Importance, Decision No. 071-01-762/2021-03, dated October 4, 2021 [Online]. Available at: https://praksa.poverenik.rs/predmet/detalji/F40F7103-54F9-4FFD-B8C6-87E3FF7D6D28. (Accessed: 25 May 2022).

41 Constitution, Art. 166.

environmental issues is perceived as unconstitutional and unlawful, Parliament is given an instructive time limit to make law compatible with the Constitution.[42]

Regarding the protection of human and minority rights, a more effective approach may be the constitutional complaint. Namely, when all available legal remedies are exhausted, citizens can submit such a complaint. As this remedy is perceived as the last means to eliminate the injustice caused to citizen by the act of authorities, it can be considered exceptional rather than a rule.[43] In addition, decisions on constitutional complaints have an *inter partes* effect. Consequently, when the right to a healthy environment is infringed upon by authorities' acts, every involved and interested person can submit a constitutional complaint. The decision of the Constitutional Court is of non-derogation power.

Therefore, the role of the Constitutional Court in shaping environmental protection may be significant. However, according to the available decisions, it is not as apparent in practice. Procedures for the protection of constitutionality and legality dominate the procedure in relation to the right to a healthy environment as such.[44] The reason for this modest role of the Constitutional Court may be the fact that there are many entities and means of environmental protection before the cases enter the competence of the Constitutional Court.

It appears that the ordinary courts have many more cases relating to environmental protection. In this sense, the approach of the courts during the interpretation of the relevant provisions regarding environmental tasks and, in particular, the criteria for jeopardizing and violating the right to a healthy environment are noteworthy. This is particularly the case when civil law rules on liability arise. For example, the Supreme Court of Cassation confirmed the decision of the second instance court on the termination of a contract on the sale of an apartment because unpleasant odors were spreading in the apartment. Namely, the building was made using formwork oil. However, in this particular case, there was a chemical incident due to a mistake in the procedure with subcontractors in one batch. Although decontamination was performed, the court decided to terminate the contract on the sale of the apartment. According to the court, from the perspective of the experts, this is a safe space, and when the fear of health consequences of exposure to phenol, that is, organic pollutants that prosecutors suffer for their own health and the health of their children as a form of stress and safe living, is taken into account, it can be treated as a life-threatening space, particularly bearing in mind that the plaintiff was medically verified to have depression and anxiety disorder in connection with the event in question. Therefore, it is clear that an apartment in which unpleasant odors spread

42 Orlović, 2022, pp. 141–161, 142.

43 Orlović, 2022, p. 142.

44 Decision No. IУо-338/2013, Decision No. IУо-1176/2010, Decision No. IУо- 1256/2010, Decision No. IУо-1537/2010, Decision No. IУо-49/2009, Decision No. IУз-1575/2010. In deciding on the initiative, the Court's primary task is to determine whether the disputed act was put forth for public discussion.

does not meet the basic preconditions of respecting home and enjoying family life, even if the level of emission is within the administrative allowance.[45]

3. Basis of fundamental rights

3.1. The right to a healthy environment and other human rights

The Constitution contains a provision (Art. 74) that is the legal basis for the protection of environment.

Healthy Environment – Everyone shall have the right to a healthy environment and the right to timely and complete information regarding the state of environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of the environment. Everyone shall be obliged to preserve and improve the environment.

The fact that the provisions on the protection of the environment are placed in Section II, titled Human and Minority Rights and Freedoms, suggests that this right is one of the fundamental individual rights. Moreover, separating provisions envisaging the right to a healthy environment from those referring to the obligation to maintain it needs to be realized in the meaning that the Constitution provides guarantees for this right, independent of the question of whether the duty of care is obeyed.

Moreover, some of the constitutional provisions consider a healthy environment to be a reason for the limitation of other constitutional rights. Thus, entrepreneurship may be restricted by the Law for the purpose of the protection of people's health, the environment and natural goods, and the security of the Republic of Serbia.[46] Similarly, according to the Constitution, the Law may restrict the models of utilization and management of agricultural land, forest land, and municipal building land on private assets to eliminate the danger of causing damage to the environment or preventing the violation of the rights and legally justified interests of other persons.[47]

Though the right to a healthy environment is explicitly prescribed by the Constitution, it is included in the content of some other rights as well. Namely, pursuant to Art. 60 (para. 4), everyone shall have the right to the respect (…) of their safe and healthy working conditions. Furthermore, women as well as young and disabled persons shall be provided with special (…) working conditions in accordance with the law (Art. 60 para. 5).

45 Judgment of the Supreme Court of Cassation, No. Rev. 5730/2018, dated July 10, 2019.
46 Constitution, Art. 83.
47 Constitution, Art. 88.

Regarding the right to health, the Constitution contains a provision on healthcare.[48] The Republic of Serbia shall assist in the development of health and physical culture, which, in a certain meaning, includes environmental protection measures.

Regarding cultural heritage, the Constitution specifies that everyone shall be obliged to protect natural rarities and scientific, cultural, and historical heritage as well as goods of public interest in accordance with the law. The Republic of Serbia, autonomous provinces, and local self-government units shall be held particularly accountable for the protection of heritage.[49]

3.2. Protecting the environment via rights relating to political freedoms

Although the Constitution contains provisions that expressly provide the right to a healthy environment, protection of the environment can be achieved by other rights in relation to political freedoms as well. The reasons are twofold. On one hand, although a healthy environment is everyone's right, it is a public interest as well. From that point of view, political freedoms are grounds for participation in making decision on important issues related to the environment. At the same time, exercising political freedoms, individuals, in a certain way, control the authorities.

Bearing this in mind, the right to information is of particular relevance. Namely, in Art. 51 of the Constitution provides that everyone shall have the right to be informed accurately, fully, and in a timely manner regarding issues of public importance. The media is obliged to respect this right. Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers in accordance with the law.

This provision may be of direct relevance to environmental matters as these matters are of public importance. Moreover, the Constitution envisages "the right of everyone to timely and full information about the state of environment" as an integral part of the right to a healthy environment (Art. 74). In addition, this constitutional provision is entirely consistent with the ratified United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Arhus Convention).[50]

With respect to environmental matters, the Constitutional Court often argues regarding the right to be informed. For instance, in decision No. Iuo – 1256/2010, it determined that the Decision on Compensation for the Protection of the Environment of certain municipalities is not in accordance with the Constitution and the law because the municipal authorities did not organize a public hearing in the

48 Constitution, Art. 68.

49 The Constitution Act, Art. 89. For this task, the Law on Planning and Construction is important (*Official Gazette of the Republic of Serbia*, No. 72/2009, 81/2009. (…) 52/2021.).

50 The Law on Confirming the Convention on the Availability of Information, Public Participation in Decision-Making, and the Right to Legal Protection in Environmental Issues, *Official Gazette of the Republic of Serbia*, No. 38/2009.

procedure for determining the proposal of the disputed decision. Namely, an initiative was submitted to the Constitutional Court to initiate proceedings in order to assess the constitutionality and legality of the Decision on Compensation for Environmental Protection and Improvement, which was passed by the Municipal Assembly. The initiator claimed that the disputed Decision was not in accordance with the Constitution and the law because the proposer of this act did not hold a public debate before the decision was made. The response of the bearer of the act states that sessions of the expert working body of the Municipal Assembly were held on several occasions, and representatives of the only legitimate association of small business organizations and entrepreneurs in the municipality were invited and participated in the form of public debate, and suggestions regarding the draft of the disputed decision were given. They informed their members on these occasions before making the decision at the session of the Municipal Assembly. The decision-maker points out that, considering that the disputed decision covers only a small number of economic entities from the territory of the municipality, a wider public debate was not organized; rather, only one with the representatives of economic entities to which the decision applies was held. The response further states that the authorized proposer of the challenged decision needs to inform the public and to open discussion, prior to its adoption. In the conducted procedure, the Constitutional Court further found that the omission of the public hearing during the adoption of this decision also violated the constitutional right to information under Art. 51 para. 1 of the Constitution.

In direct relation to the right to information is the freedom of the media. According to Art. 50, and of particular importance to environmental matters, everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner prescribed by law. The indicated provision regulates not only the freedom of the newspapers but other means of providing information to the public as well.[51] Taking into an account that communication and the exchange of information are moved from a physical to a digital form, which makes the circulation of information faster and easier, the freedom of the media is of relevance for environmental matters. Freedom of the media can be said to support the right to a healthy environment as the right to be informed on environment matters is an integral part of this right.[52] This is more accurate if we consider that censorship should not be applied.[53] Exceptions that a competent court could employ to prevent the dissemination of information do not target environmental matters.[54]

The freedom of association is guaranteed by the Constitution in Art. 55. According to this article, freedom of political, union, and any other form of association shall be guaranteed as shall the right to stay out of any association. Regarding environmental matters, this freedom enables citizens to congregate around common

51 Orlović, 2019, p. 127.
52 Constitution, Art. 74 para. 1.
53 Constitution, Art. 50 para. 3.
54 Constitution, Art. 50 para. 3.

interests, which could be directed to activities on improving and maintaining a healthy environment. Freedom of assembly can be understood in a similar manner.[55] Freedom of association and freedom of assembly have been used frequently during recent years to stress citizens' attitude toward projects related to environmental matters. In doing so, associations committed to a healthy environment, included an NVO-organized series of protests to halt investments in lithium mining, which resulted in the president's intervention and the government canceling the project. Moreover, the number of civil associations increased after Cluster 4 and Chapter 27 in the accession negotiations with the European Union opened.[56]

In addition, the right to participate in the management of public affairs is guaranteed to all citizens and supposes that they shall have the right to take part in the management of public affairs and assume public service and functions under equal conditions.[57] The right to petition is particularly important for environmental matters.[58] Namely, everyone shall have the right to put forward petitions and other proposals alone or together with others to state bodies, entities exercising public powers, bodies of autonomous provinces, and local self-government units as well as to receive a reply from them if they so request.[59]

Finally, as the right to a healthy environment is recognized as a human right, meaning that everyone has the right to seek its protection, the right to a fair trial strengthens the protection of the environment as well. According to Art. 32 of Constitution, everyone shall have the right to a fair trial, which refers to the right to a public hearing before an independent and impartial tribunal established by law within a reasonable time that shall pronounce judgment on their rights and obligations as well as grounds for suspicion resulting in initiated procedures and accusations brought against them. Regarding the right to a fair trial, there are not many available cases that reference to environmental matters as such but, rather, to a

55 Constitution, Art. 54.

56 One practical implication of this support is a program of support for civil society regarding environmental protection and the sustainable development of communities, named "Strong Green," in which associations work together to develop and implement green project ideas that will improve the quality of life in the community [Online]. Available at: https://www.energetskiportal.rs/program-podrske-snazno-zeleno-konkurs-za-organizacije-civilnog-drustva/. (Accessed: 28 May 2022).

57 Constitution, Art. 53. This right is not explicitly reserved for those who are citizens of the Republic of Serbia. Orlović, 2019, p. 129.

58 Constitution, Art. 56.

59 The Rules of Procedure of the National Assembly stipulate that the committees of the National Assembly, as its working bodies, consider initiatives, petitions, and proposals within their scope. After considering the submitted initiatives, petitions, and proposals, the committee informs the submitter of the initiative, petitions, and proposals in writing regarding its position. In the event that the board submits the initiative, petition, or proposal to another body as the competent authority, it will inform its submitter. Rules of the Procedure of the National Assembly, Art. 44 para. 1 ad 8 [Online]. Available at: http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-(consolidated-text)/entire-document---rules-of-procedure.1424.html. (Accessed: 20 March 2022).

particular demand or wrongdoing that is the subject of the trial.[60] However, among the rare cases, there is one in the case laws of the Constitutional Court. Namely, in its decision, the Constitutional Court emphasized that a "failure to consider issues that are crucial for assessing the merits of a claim in the context of the right to a healthy environment has led to a violation of the right to a reasoned court decision, as an element of the right to a fair trial from Art. 32 (para. 1) of the Constitution, in connection with the right to a healthy environment from Art. 74 of the Constitution."[61]

All of the mentioned political freedoms formed the legal base for the implementation of the Arhus Convention, which was ratified in 2009, three years after the enactment of the Constitution. Though the ratified Convention could be directly applied, many laws have been adopted or amended to ensure the consistency of the legal protection of the environment with the international and, in particular, European framework.

From this perspective, the contribution of the Convention can be viewed from the point of view of strengthening the position of citizens and associations dealing with issues of environmental importance, introducing a certain order in the rules relating to the protection of certain environmental rights and internationalization of procedural aspects of the protection of the right to a healthy environment from Art. 74 of the Constitution of the Republic of Serbia.

A significant contribution of the Convention would be the easier transposition and application of horizontal EU legislation in the field of environment in the process of Serbia's European integration.[62] However, in the enforcement process, several obstacles can be recognized. Among them, it is worth focusing on the fact that general level of social awareness of the need to protect the environment and the level of environmental culture in the Republic of Serbia are not sufficiently high. Associations in Serbia generally have problems with financing as the State does not support them sufficiently and does not treat them as equal actors in the political process. During the public debate, the position was expressed that associations do not have sufficient support; that is, it is usually limited to short-term support and campaigns and not to support for the systematic strengthening of the non-governmental sector in the field of the environment. One of the obstacles is the insufficiently developed awareness among state bodies, especially at the level of local self-government, regarding the need and necessity of partnership with the civil sector in developing environmental awareness

60 For instance, in Judgment No. Rev 5077/2019, the Supreme Cassation Court had to determine whether the concentration of unpleasant odors poses a risk of long-term air pollution and whether there is a risk to the health of the surrounding population as well as whether the measures provided by the owner of the facility are suitable to prevent and eliminate adverse environmental effects on site and in the vicinity.

61 Decision of the Constitutional Court No. Už-7702/2013, from 07.12.2017, Bulletin of the Constitutional Court for 2017, Belgrade 2019, 612-629, 629. Detailed analysis of the Decision in: Miščević and Dudaš, 2021, pp. 65–67.

62 Draft of IV National Report on the Enforcement of the Aarhus Convention, from 2020 [Online]. Available at: https://www.ekologija.gov.rs/sites/default/files/izvestaji/4.%20Izve%C5%A1taj%20o%20sprovo%C4%91enju%20Arhuske%20konvencije%20fin..pdf. (Accessed: 20 May 2022), p. 112.

and solving environmental problems. Finally, reporting on sustainable development processes and the environment is not sufficiently represented in the media.[63]

For the purpose of implementing this Convention, five Arhus centers were established with the goal of supporting citizens in understanding and exercising their rights as provided by the Convention as well as to assist authorities in implementing the Convention. Regrettably, their contribution is rather modest as only a few are active. Rather than these citizen-friendly centers, there are more than 30 websites with different types of information on environmental matters, which might be counterproductive as individuals must search a great deal to find what they need.

4. Regulation of issues regarding responsibility and duty

The Constitution in Art. 74 (para. 3) provides that everyone shall be obliged to preserve and improve the environment, but the Republic of Serbia and autonomous provinces are accountable for the protection of the environment (Art. 74 para. 2). Apart from this provision, the Constitution does not contain precise rules on responsibility and accountability. These issues are the subject matter of particular laws. The rules of low-level regulations are presented here to illustrate the state of the legal system in relation to environmental protection in Serbia.

4.1. The Constitutional Court and the duty to care regarding the right to a healthy environment

When environmental protection encroaches on other rights and freedoms recognized by the highest legal act, the Constitution needs to address the possibility of restrictions. This is the case with the freedom of entrepreneurship, which could be restricted if it works against a healthy environment.[64]

With respect to this, the Constitutional Court declined to discuss the constitutionality and legality of the Law on the Prohibition of the Construction of Nuclear Power Buildings in the Federal Republic of Yugoslavia.[65] According to the explanation in the Constitutional Court decision, the disputed Law does not distort free competition by creating or abusing a monopoly or dominant position on the market, as the initiator claimed, because the restriction on the use of nuclear energy is regulated to protect the environment from possible nuclear incidents, which is a constitutional obligation of the Republic of Serbia.[66]

63 Ibid, p. 24.
64 Constitution, Art. 83.
65 Official Gazette of the FRY, No. 12/95, and " Official Gazette of the RS, No. 85/05.
66 Decision of Constitutional Court, No. ИУз-1575/2010.

4.2. The duty of care regarding a healthy environment in laws

In addition to the aforementioned, responsibility is regulated by numerous laws and bylaws within all legal areas. Even these regulations cover different sectors of the economy and life, and the Law on Environmental Protection can be regarded as the general law because it contains principles of environmental protection, the "polluter pays" and "user pays" principles being among them.[67]

In accordance with Art. 9 para. 1 ad 6, the polluter pays a fee for environmental pollution when their activities cause or may cause a burden on the environment or if they produce, use, or place on the market raw materials, semi-finished products, or products containing substances harmful to the environment. In accordance with the regulations, the polluter bears all costs related to measures to prevent and reduce pollution, which include the costs of environmental risks and those of eliminating the damage caused to the environment. Additionally, everyone who uses natural values is obliged to pay a realistic price for their use and reclamation of space ("user pays" principle, Art. 9 para. 1 ad 7). In respect to the latter, the fee for the use of natural values is of the greatest importance. It is in accordance with the Law on Environmental Protection paid by the user of natural values, who also bears the costs of rehabilitation and degradation of the given natural space. The funds collected through this fee are part of the revenue of the budget of the Republic as well as the budget of autonomous provinces, namely the unit of local self-government, depending on the type of fee and legal regulations, which are regulated by special laws. All of these fees are destined revenues, which means that their purpose is determined in advance, and they are used to protect and improve the environment. The goal of compensation as an economic instrument of environmental protection is to promote the reduction of the burden on the environment on the basis of respect for the principles of "polluter pays" and "user pays"[68]

The principle of responsibility of the polluter and their legal successor is of direct relevance to the matters of responsibility. Namely, a provision of Art. 9 para. 1 ad 5 provides that a legal or natural person whose illegal or incorrect activities lead to environmental pollution is liable in accordance with the law. The polluter is also responsible for the pollution of the environment in the event of liquidation or bankruptcy of the company or other legal entities in accordance with the law. The polluter or their legal successor is obliged to eliminate the cause of pollution and the consequences of direct or indirect environmental pollution. Changes in the ownership

67 Law on Environmental Protection, Art. 9 para. 1 ad 6 and 7. Others are the principle of integrity, the principle of the prevention and precaution, the principle of the preservation of natural values, the principle of sustainable development, the principle of responsibility of the polluter and his legal successor, the subsidiary liability principle, the principle of the application of incentive measures, the principle of information and public participation, and the principle of protection of the right to a healthy environment and access to justice. For details: Pajtić, Radovanović and Dudaš, 2017, pp. 131–139.

68 Stojanović, 2017, p. 43.

of companies and other legal entities or other forms of change of ownership must include an assessment of the state of the environment and determination of responsibility for environmental pollution as well as the settlement of debts (burdens) of the previous owner for pollution and/or damage to the environment. However, in cases in which the polluter is unknown as well as when the damage occurs due to environmental pollution from sources outside the territory of the Republic of Serbia, state authorities, within their financial capabilities, eliminate the consequences of environmental pollution and reduce damage (Art. 9 para. 1 ad 8).

Revenue collected by the application of the mentioned principles is included in the budget and is applied to environmental protection.

5. High protection of natural resources

The idea of "natural" is presented in the Constitution through several provisions that mention it *expressis verbis*.

The first such provision is found in Art. 83 para. 2 and stipulates that entrepreneurship may be restricted by the Law for the purpose of the protection of people's health, the environment and natural goods, and the security of the Republic of Serbia. In addition, in Art. 85 para. 2, which regulates the proprietary rights of foreigners, the Constitution provides concession right for natural resources and goods as well as other rights stipulated by the law.[69]

Of crucial importance is a provision of Art. 87 that regulates state assets. According to this provision, natural resources, goods that are stipulated by the law as goods of public interest, and assets used by the bodies of the Republic of Serbia are state assets. Natural and legal entities may obtain specific rights to particular goods in public use under the terms and in a manner stipulated by the law, but the utilization of natural resources must be carried out under the terms and in a manner stipulated by the law. This is also the case for regulated assets of autonomous provinces and local self-government units in terms of the methods of their utilization and management.

According to Art. 89, everyone is obliged to protect natural rarities and scientific, cultural, and historical heritage as well as goods of public interest in accordance with the law.

The Constitution does not provide definitions of these natural matters. Operating with different "natural" terms, the cited provisions open the question as to whether the differentiation is of legal importance. To answer this question, it is necessary to consult relevant provisions of the laws that stipulate natural resources and goods as *sedes materiae*.

69 According to Art 85 para. 1, foreign natural and legal entities may obtain real estate property in accordance with the law or an international contract.

It is worth first mentioning the Law on the Protection of Nature.[70] In its Art. 4 para. 1 ad 59, nature is determined as the unity of the geosphere and biosphere, exposed to atmospheric changes and various influences and includes natural goods and natural values that are expressed by biological, geological, and landscape diversity. Hence, the legal framework of nature protection preserves nature as a value as such, regardless of the conservation of the environment. This value is expressed on the basis of the welfare it produces for human life. Laws and bylaws do not protect nature in an absolute manner in its intact condition but, rather, through particular categories that represent an integral part of the environment and that ensure the realization of the human right to life and development in a healthy environment and a balanced relationship between economic development and the environment.[71]

In the definition offered in the Law on the Protection of Nature, natural values are parts of nature that deserve special protection due to their sensitivity, endangerment, or rarity for the preservation of biological, geological, and morphological and landscape diversity, natural processes, and ecosystem services or for scientific, cultural, educational, health, and other public interest (Art. 4 para. 1 ad 60). The Law on Environmental Protection provides in Art. 3 para. 1 ad 3 that natural values include air, water, land, forests, geological resources, flora, and fauna. It appears that this definition is much broader than the previous one as it is not restricted to the parts that deserves special protection.

The Law on Environmental Protection regulates only natural goods that could be considered applicable for protection. With respect to this, provision of Art. 3 para. 1 ad 4 defines a protected natural good as a preserved part of nature with special values and characteristics (geodiversity, biodiversity, landscapes, etc.) that has everlasting ecological, scientific, cultural, educational, health-recreational, tourist, and other significance and, therefore, as a good of general interest, enjoys special protection. The Law on the Protection of Nature specifies natural goods through three categories: protected areas, protected wild species, and movable protected natural documents.[72] Protected areas are areas that have pronounced geological, biological, ecosystem, and/or landscape diversity and are, therefore, declared protected areas of general interest by an act of protection (Art. 4 para. 1 ad 26). Protected species are wild species that are protected by international treaties and/or this law (Art. 4 para. 1 ad 25). Finally, movable protected natural documents are parts of geological, paleontological, and biological heritage that are of exceptional scientific and educational importance (Art. 4 para. 1 ad 53). The term "natural rarities" mentioned in Art. 89 of the Constitution is not further elaborated in special laws, but its meaning can be understood from the provisions related to special protected natural goods. Protection of natural rarities includes species of wild plants and animals the survival in natural

70 Law on Protection of Nature, Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 91/2010 – correction, 14/2016, 95/2018, 71/2021.

71 Pursuant to Art. 1 of Law on Protection of Nature.

72 Law on Protection of Nature, Art. 4 para. 1 ad 27.

habitats of which is endangered to such an extent that they belong to species that will soon become extinct without special protection measures (endangered species) or for which there is a danger of their extinction (vulnerable species). Protection is provided throughout the Republic in a certain area or part of the area in accordance with the decision of the body competent to determine whether these species are endangered or vulnerable according to the degree of endangerment.[73]

Apart from the explicit mention of "natural" in cited provisions, the Constitution refers to separate components of natural resources as well. This is the case with the stipulated possibility to restrict utilization and management of land and municipal building on private assets when utilization and management endangers or violates the rights and legally based interests of other persons (Art. 88 para. 2). As the right to healthy environment, which include natural resources, is guaranteed by the Constitution, restriction can undoubtedly be justified by the necessity to protect this right of others. The Constitution does not extend the application of this provision to the forests or water. However, the previously mentioned provision of Art. 87 on state assets is regulated in detail primarily by the Law on Public Assets as well as by numerous *lex specialis* laws (Law on Forests,[74] Law on Waters,[75] Law on Agriculture Land,[76] Law on Public–Private Partnership and Concession[77]).

Turning back to the constitutional provisions, it is worth mentioning the provisions on the competences of the Republic of Serbia and the autonomous provinces. Accordingly, the Republic of Serbia organizes and provides for the protection and improvement of flora and fauna,[78] while autonomous provinces are competent to regulate matters of provincial interest in the fields of agriculture, water economy, forestry, hunting, fishery, tourism, catering, spas and health resorts, environmental protection, etc.[79]

6. Reference to future generations

"Future generations" are not *expressis verbis* mentioned in the Constitution. There is no explicit provision on obligations "for present to future generations", but provisions in Art. 74 para. 2 and 3 *("Everyone, especially the Republic of Serbia and*

73 Regulation on the Protection of Natural Rarities, Official Gazette of the Republic of Serbia, No. *50/93 and 93/93.*

74 Official Gazette of the Republic of Serbia, No. *30/2010, 93/2012, 89/2015, and 95/2018.*

75 Official Gazette of the Republic of Serbia, No. *30/2010, 93/2012, 89/2015, and 95/2018.*

76 Official Gazette of the Republic of Serbia, No. *62/2006, 65/2008, 41/2009, 112/2015, 80/2017, and 95/2018.*

77 Official Gazette of the Republic of Serbia, No.*88/2011, 15/2016 i 104/2016.*

78 Constitution, Art. 97 para. 1 ad 9.

79 Constitution, Art. 183 para. 2 ad 2.

autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.") and Art. 89 *("Everyone shall be obliged to protect natural rarities and scientific, cultural and historical heritage, as well as goods of public interest in accordance with the Law. The Republic of Serbia, autonomous provinces and local selfgovernment units shall be held particularly accountable for the protection of heritage.")* have exactly that teleological meaning.

If other laws related to environmental matters are taken into account, "future generations" can be identified as a principal value of the regulations. The Law on the Protection of Nature explicitly mentions "future generations". Namely, according to Art. 4 para. 1 ad 43, the sustainable use of natural resources and/or other resources is the use of components of biodiversity or geodiversity in a way and to an extent that does not lead to long-term reduction of biodiversity or geodiversity, maintaining their potential to meet the needs and aspirations of present and future generations. Although this provision is among the rare ones explicitly mentioning "future generations", determining the term "sustainable use" by usefulness to "future generations" places "future generations" in the focus of sustainability as such. In other words, when doubting whether an action or regulation is sustainable, whether it is going to be of use in the future is of relevance.

7. Reference to sustainable development

The great challenge today is to find a compromise between nature and mankind. Living conditions, population growth, increasing use of limited resources, and numerous environmental problems have confronted every modern state with the issue of sustainable development and the need to act globally to preserve the planet in order to enable life for future generations.[80] Specifically, the aim is to promote development that will not endanger living conditions for a long period, that is, to arrange sustainable development.

Sustainable development must be realized as a complex, multidimensional concept. Although it is a commitment of the Republic of Serbia, the Constitution mentions it *expressis verbis* only in the provisions on the competence of the Republic of Serbia. According to Art. 94, *Balanced development*, the Republic of Serbia shall take care of balance and sustainable regional development in accordance with the law. In addition, Art. 97 para. 1 ad 9 regulates that the Republic of Serbia shall organize and provide for sustainable development, a system for the protection and improvement of the environment, the protection and improvement of flora and fauna, production, and the trade and transport of arms and poisonous, inflammable, explosive, radioactive, and other hazardous substances.

80 Nikolić, 2009, p. 16.

Considering the importance and complexity of sustainable development, the competence of the state authorities is not unexpected, despite that provinces and local municipalities have a number of delegated competences regarding environmental matters.[81] Moreover, mentioning sustainable development in the context of environmental protection directly placed the core of sustainability in the framework of the protection of the environment and, in particular, natural values. To provide a framework for environmental protection, the Law on Environmental Protection explicitly prescribes the principle of sustainable development[82] and provides its meaning. In this respect, sustainable development should be understood as a harmonized system of technical-technological, economic, and social activities in overall development in which the natural and created values of the Republic of Serbia should be used in the principles of economy and reasonableness to preserve and improve environmental quality for present and future generations. More precisely, sustainable development is achieved by making and implementing decisions ensuring the harmonization of the interests of environmental protection and the interests of economic development. In other words, the principle of sustainable development could be considered an expression of the necessity to set a permanent and consistent system of balanced and simultaneously economic prosperity and environmental protection.[83] In theory, this balance is qualified as dynamic, having in mind the intensive progress of society.[84] Accordingly, living in harmony with nature and with one another is the logical essence of sustainability. If it is understood as the aim, sustainable development must be realized as a fundamental concept of development, which should overcome the influence of institutional and group interests [85] and take future generations into account.

8. Other values relevant to the protection of the environment in the Constitution

In addition to the provisions revealed in the previous sections, there are several other provisions that may be relevant for the protection of the interest of future generations and of the environment. It is not that obvious that the provisions are of relevance for these matters, but many of them could lead to such results.

81 Regarding environmental matters of autonomous provinces, Constitution Act of RS, Art. 183 para. 2 ad 2, and competence of local self-government units regarding the environment, Art. 190 para. 1 ad 6 and 7.
82 Law on Environmental Protection, Art. 9 para. 1 ad 4.
83 Drenovak-Ivanović, 2021., p. 39.
84 Nikolić, 2009, p. 50.
85 Mebratu, 1998, pp. 515–518.

It is worth mentioning the provisions on the special protection of children. Art. 66 para. 4 of the Constitution stipulates that children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals. Even absent the direct link to "future generations", special protection of youth has an explanation that can refer to this matter. Namely, this type of state intervention in labor relationships is due to the need to protect the most sensitive groups because of the consequences that working conditions could have on them. In the long term, by protecting the young population, their lifespan is extended, diseases, especially those caused by a harmful environment, can be avoided, etc. In this sense, the preservation of children may have an impact on their ability to reproduce as well as on the health of their offspring.

The case of provisions on other matters is similar. Care regarding present generations implicitly involves the protection of future generations, especially because the latter cannot be placed in precise age boundaries. The first step in building a bridge between "now" and "tomorrow" is putting unborn humans in present thoughts, especially in respect to their birth. In this sense, apprehension regarding future generations can be recognized in particular measures related to the encouragement of a commitment to have children. Namely, Art. 63 para. 2 of the Constitution stipulates that the Republic of Serbia shall encourage parents to decide to have children and assist them in this matter, though everyone has the freedom to decide whether they will procreate.[86] Naturally, the Constitution does not specify which type of encouragement the Republic of Serbia should provide for, but numerous of laws regulate different aspect of procreation as well as life conditions. For example, the Ministry of the Health approved an unlimited number of attempts for artificial fertilization free of charge insomuch as medical reasons allow it, according to the rules of the Law on Biomedical Assisted Fertilization.[87] This measure arose from the fact that many couples who are not able to have children face financial problems when they decide to procreate through the process of biomedical assisted fertilization. Starting in 2006, the legal regulations on *in vitro* fertilization have changed several times. The Health Insurance Fund of the Republic of Serbia had previously paid for only one attempt.[88] Afterward, funding for two attempts was provided, and the conditions that a woman has to achieve to apply for public funds were set at a lower level than in the previous regulations.[89] Additionally,

86 Constitution, Art. 63 para. 1.

87 Law on Biomedical Assisted Fertilization, *Official Gazette*, No. 40/2017 and 113/2017.

88 Bjelica, 2017, p. 236.

89 In February 2022, the RHIF issued a new instruction on the treatment of infertility with biomedically assisted fertilization, reducing the number of conditions that couples must meet to undergo this procedure at the expense of the State [Online]. Available at: https://www.rfzo.rs/download/vto/Uputstvo%20za%20sprovodjenje%20lecenja%20neplodnosti%20postupcima%20biomedicinski%20potpomognutog%20oplodjenja%20(BMPO)28022022.pdf?fbclid=IwAR02SJAH4jvtNXIqRwjH82RWYJAgCbgB7W71CsNkvPaAy6xSv5ab0mFnuTc. (Accessed: 12 May 2022).

the age limit for women was increased from 38 to 40, then to 42, and, in 2022, to 45. This is of similar importance as the financial support because couples today have prolonged their procreation beyond the recommended reproduction age. The dominant, though not the only, reason for this is the economic realities of young couples, mostly those with university education, because their will to create a family is accompanied by the will to provide proper economic conditions for their children. Hence, most of them, after a long period of education, wait for a good, well paid, and long-term job. With this in mind, over the last year, the Republic of Serbia accepted several measures of an economic nature to support procreation and future generations. The most important is the financial support in the amount of EUR 20,000 for the purpose of constructing or buying a flat or house for mothers who give birth to a child as of January 1, 2022, regardless of whether it is the first child and whether she is married.[90]

Additional concerns of future generations could, at some point, be recognized in the provision of special protection of the family, mother, single parent, and child (Art. 66). Namely, these categories shall enjoy special protection in accordance with the law. In particular, during pregnancy and after childbirth, special support is provided to mothers. This is regulated in more detail in the Law on Labor,[91] which forbids the termination of a labor contract during this period and obliges the employer to create appropriate work conditions when necessary.[92]

It is worth noting that religion, with its teaching and beliefs, can also have great influence on important social elements, such as the environment. Although it is not legally binding, for a major portion of the population, the rules and attitude of the church authorities can shape their own behavior and approach to environmental matters as well as to "future generations".

Regarding the Christian culture, the Constitution does not mention it as a particular value. According to Art. 11, the Republic of Serbia is a secular state. Moreover, it is very difficult to say that a Christian culture is absent or unrecognizable in ecological matters. The impact of the Christian attitude is existent in such matters, as is the case with religion as such. Theological minds, speaking from an Orthodox viewpoint, are involved in a global battle for the environment. Reiterating that harmony between Heaven and Earth, as it should be between man and creation, is always an important theme in Judeo-Christian scriptures and traditions,[93] the Orthodox Church involved Christian beliefs in identifying and

90 Law on Financial Support for Families with Children, *Official Gazette of the Republic of Serbia*, No. 113/2017, 50/2018, 46/2021 – US, 51/2021 – US, 53/2021 – decision of CC, 66/2021 i 130/2021, Art. 25a.

91 Law on Labor, *Official Gazette of the Republic of Serbia*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 i 95/2018.

92 Law on Labor, Art. 89–100.

93 Гледиште Архиепископа Димитрија на еколошка питања, Archbishop Dimitrije's View on Environmental Issues [Online]. Available at: http://www.spc.rs/sr/pravoslavno_bogoslovlje_ekologija_na_delu. (Accessed: 12 May 2022).

resolving ecological problems. Accordingly, ecology is the environment in which human salvation is comprehended. The ecological aspects and behavior of believers must be in accordance with their faith in the Triune God, as the Creator, Lord, and Savior of man and the world. Today, the environmental crisis is due to spiritual and ethical causes. Mankind is who causes imbalance in the environment due to wrongdoing regarding their social and natural surroundings, insatiable greed, and selfishness leading to the unreasonable exploitation of natural resources.[94] Hence, mankind must realize the transience of his existence. People must have in mind the fact that future generations should be able to have their inalienable right to the natural goods entrusted to humans by the God.[95] For that reason, humans need to return to their natural values. Churches and denominations that cooperate with the World Council of Churches have begun to reconsider their teachings and practices, their worship, and their activities when it comes to man's attitude toward the natural world from a macro ecological point of view.[96] The Orthodox Church, leading with Ecumenical Patriarch of Constantinople Bartholomew, has a highly intensive activity on awakening orthodox believers regarding environmental matters.[97] In relation to this, the Parliament of the Serbian Orthodox Church paid special attention to the sanctuary of marriage and family and established a special committee at the Holy Synod dealing with that issue as well as a committee for bioethics and ecology.[98]

Returning to the constitutional framework, religious matters can be considered state interference in a particular situation in indirect manner. According to the Art. 43 para. 4, freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, the morals of democratic society, the freedoms and rights guaranteed by the Constitution, or public safety and order or to prevent the inciting of religious, national, and racial hatred. Further, the Constitutional Court may ban a religious community only if its activities infringe upon the right to life, the right to mental and physical health, the rights of children, the right to personal and family integrity, or public safety and order or if it incites religious, national, or racial intolerance (Art. 44 para. 3).

94 *Епископ крушевачки Давид Перовић, Свештена екологија у окрињу Православне цркве, Црквене студије*, (Bishop of Kruševac David Perović, Sacred Ecology Under the Auspices of the Orthodox Church, Church Studies), 14/2017, pp. 209–219, 209.

95 Ibid.

96 Проф.др Илија Икономиду: Православно гледиште на еколошку кризу, Prof. Dr. Ilija Ikonomidu: Orthodox View of the Ecological Crisis [Online]. Available at: https://www.eparhijazt.com/sr/news/predanje/2756.prof-dr-ilija-ikonomidu-pravoslavno-glediste-na-ekolosku-krizu.html (Accessed: 12 May 2022).

97 [Online]. Available at: https://mitropolija.com/2015/06/15/patrijarh-vaseljenski-vartolomej-domacinje-drugog-samita-na-halki-bogoslovlje-ekologija-i-rijec/. (Accessed: 12 May 2022).

98 Press release of the Holy Synod of Bishops of 10 May 2018 [Online]. Available at: http://www.spc.rs/sr/saopshtenje_za_javnost_svetog_arhijerejskog_sabora_srpske. (Accessed: 20 May 2022). More in theological literature: Episkop David (Perović), 2016, pp. 3-13.

9. Financial sustainability

9.1. Sustainability as an aspect among the rules of public finances

Part Three, Economic System and Public Finances, regulates assets as well as market and public finances. Under that meaning, Arts. 83 para. 2, 87, 88, 89, and 94 are relevant to the sustainability and environmental protection.

The aforementioned *Freedom of entrepreneurship*[99] can be restricted for the purpose of people's health, environment, and natural goods and security. This is the precise reason that the restrictions indicated in a very clear manner that concern the environment are prioritized over economic interests.

In addition to this directly expressed relation between economic freedoms and the right to a healthy environment, as one segment of sustainability as such, there are several provisions of the relevant laws relating to sustainability as an aspect among the rules of public finances.

9.2. Summary of the act-level regulation of public finances

Of primary importance is the rule on public debt. According to the provision of Art. 27e para. 2 of the Law on the Budget System,[100] the General Fiscal Rules determine the target medium-term fiscal deficit as well as the maximum debt-to-GDP ratio to ensure the long-term sustainability of fiscal policy in the Republic of Serbia. The term "sustainability" in the context of public finances means providing and controlling public finances on a level that ensures the solvency of the state for future generations. In view of that, general government debt (public debt) must not exceed 45% of the GDP (Art. 27e para. 4 ad 2). Though it is regulated explicitly in the law, public debt increased to more than 56.9 % in 2021. In such a case, the Government is obliged to submit to the National Assembly, together with the budget for the coming year, a program to reduce the debt in relation to the GDP (Art. 27e para. 12).

As the protection of the environment is a commitment of the state authorities, the sustainability of public finance demands balance between income and expenses in environmental matters. From that perspective, financial instruments are aimed at providing public finances on one hand and incentives for private businesses to harmonize their activities with environmental protection policy on the other.[101] Art. 18 para. 1 and 2 of the Law on the Budget System provides that fees may be introduced for the use of goods that are determined by a special law to be natural resources,

99 Constitution, Art. 83(2).

100 Law on the Budget System, *Official Gazette of the Republic of Serbia*, No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – corr. 108/2013, 142/2014, 68/2015, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019, 72/2019, 149/2020 and 118/2021.

101 Cvjetković, 2014, p. 386.

namely, goods of general interest and goods in general use.[102] All of the provided fees are included in the Green Fund, which was established in 2016,[103] in accordance with the Law on Environmental Protection.

Namely, the aim of the Green Fund is to record funds intended for financing the preparation, implementation, and development of programs, projects, and other activities in the fields of conservation, sustainable use, and the protection and improvement of environmental change. This fund finances landfill remediation, waste treatment, and recycling. It also serves to support the introduction of new, cleaner technologies as well as the infrastructure required to improve the environment. Education and training programs can also be financed from this fund. Therefore, any activity aimed at improving environmental protection and promoting sustainable development and a green economy should be financed from this fund. The idea was that according to the polluter principle, everyone, whether an individual or an entrepreneur, violating the law related to environmental protection and in some way endangering the environment must pay a certain amount of money prescribed by law, and that money will be placed in the Green Fund. The fund can also be financed from eco-taxes, donations, loans, and other public revenue.[104]

In addition to the matters within the exclusive competence of the Republic of Serbia, the issue of the protection of environment is, in major part, delegated to the region's authorities. To undertake necessary actions regarding everyone's constitutional rights, local governments and other authorities need a certain amount of financing, including from the state budget. Taking sustainable development into account, as a framework for action, state budget should be created through financial sustainability. Moreover, financial sustainability is an inseparable part of sustainability, together with ecological sustainability and social responsibility.[105]

However, although it may be inferred from the context of mentioned regulations, there is no doubt that an explicit reference to financial sustainability would contribute to improving the clear understanding and, therefore, the application of the cited provisions as well as the measures undertaken and bringing legal act on that matter within particular commitment.

102 The person liable to pay the fee, the basis for payment of the fee, the amount of the fee, the manner of determining and paying the fee, and the affiliation of the fee are regulated by a special law proposed and implemented by the ministry in charge of finance. The usual fees in Serbia are a fee for the use of natural values (Law on Environmental Protection, Art. 84), compensation for environmental pollution (Law on Environmental Protection, Art. 85), a fee for the use of a fishing area, a fee for the use of a protected area, a fee for the collection, use, and trade of species of wild flora, fauna, and fungi, a fee for the protection and improvement of the environment, compensation for products that become special waste streams after use, a fee for packaging or packaged products that become packaging waste after use, and a fee for water pollution (Law on fees for the use of public goods, Official Gazette of the Republic of Serbia, No. 95/2018, 49/2019, 86/2019, 156/2020, 15/2021).

103 Decision on the establishment of the Green Fund of the Republic of Serbia: 91 / 2016-17, 78 / 2017-24, Official Gazette of the Republic of Serbia, No. 91/2016.

104 Law on Environmental Protection, Art. 90–100.

105 Milošević 2011, p. 122.

9.3. Sustainability as a principle

Sustainability can be considered as a principle even though it is not explicitly defined in that manner and there is no explicit reference to it. However, considering the importance of this matter for the public interest and state commitments, sustainability can be said to be a value that should be retained. This commitment is present in numerous measures undertaken by state, autonomous provinces, and local self-governmental authorities, as these entities are in charge of issuing acts and taking measures to maintain sustainability.

9.3.1. Summary of the act-level regulation of sustainability

Sustainable management of natural values and the protection of the environment are achieved in accordance with the Law on Environmental Protection and a special law. With respect to this, sustainability as a principle is recognized in all laws that regulate particular natural values (e.g., water, forests)

The Law on Water provides that the management of waters must take place in such a manner that the needs of current generations are met in a way that does not jeopardize the ability of future generations to meet their needs; that is, water usage must be ensured based on long-term protection of available water resources, quantity, and quality (Art. 25 para. 1 ad 1). This provision explicitly takes into consideration future generations.

Regarding the protection of forests, a special law promotes sustainability as the aim of the legal protection of the forests (Art. 3, Law on Forests).

Forest management in the forest areas of the Republic of Serbia is based on the principles of sustainable management, which ensures sustainability of yield, sustainability of production, sustainability of income, and ultimately, sustainability as a balance of use and production while preserving and improving the sustainability of biodiversity (Art. 3).[106]

106 Regarding sustainability in energy, the capacity of the Republic of Serbia in that matters should be analyzed. Namely, Serbia has great potential in terms of renewable energy sources (solar, wind, water, geothermal, biomass). Renewable energy sources are exploited with the aim of producing electricity, heat, and mechanical energy, and their significant sustainable feature is environmental friendliness, with reduced CO2 emissions in the energy production process. The most significant potential of renewable energy sources in Serbia is the energy from biomass, estimated at 3.405 million tenge (tons of oil equivalent), and in the total potential of RES biomass particulates with 60.3%. Currently, the highest level of energy use from renewable sources in Serbia is from hydropower, for which the total gross potential of water flowing in watercourses in the territory of the Republic of Serbia is about 25,000 GWh (gigawatt hours) per year. https://www.energetskiportal.rs/obnovljivi-izvori-energije/, May 29, 2022. Real efficiency could be reached with the support of state or local authorities. For instance, the City Administration for Environmental Protection of Novi Sad has announced a public call for the participation of citizens in the implementation of the energy rehabilitation measure through the installation of solar panels for the production of electricity for their own needs in family houses for 2022. https://environovisad.rs/javni-konkursi/30, May 29, 2022. This example is one of the numerous similar projects within the competent Ministry.

Considering the proclaimed support for citizens to procreate, the approach of the State to demographic sustainability is clearly *pro* natality. Moreover, as many citizens leave the country primarily for economic reasons, procreation is not merely a matter of sustainability but also a matter of national existence. In addition to the support to reproduction as such, the government delivered measures that impact other values. In this context, a measure announced by the government should be mentioned, according to which young couples receive non-refundable funds for the purchase of a rural house with a garden in the territory of the Republic of Serbia for 2022.[107] This is a means to preserve rural areas, in particular, those where agriculture is the dominant form of production, but also a means to preserve urban areas as the danger of overpopulation increases.

9.4. Future generations among the constitutional rules of public finances

"Future generations" are not *expressis verbis* mentioned in the Constitution. Art. 74 para. 2 and 3 *("Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.")* and Art. 89 *("Everyone shall be obliged to protect natural rarities and scientific, cultural and historical heritage, as well as goods of public interest in accordance with the Law. The Republic of Serbia, autonomous provinces and local self-governments units shall be held particularly accountable for the protection of heritage.")* can be interpreted as meaning that the Constitution recognizes the future generation as a protected category. Stipulating the accountability of the state and of local governments for these particular values, the Constitution, at the same time, introduces authorities to account for this obligation during the making of the budget.

The strongest proof of the state's care regarding "future generations" is the restriction of public debt.

10. The protection of national assets

10.1. Protection of national assets in the Constitution

State assets, according to Art. 87, include natural resources, goods that are designated by Law as goods of public interest, and assets used by the bodies of the Republic of Serbia as well as other things and rights according to the law. The Constitution provides protection through the provisions on the protection of property and

107 Decree on determining the grant program for the purchase of a rural house with a garden in the territory of the Republic of Serbia for 2022, Official Gazette of the Republic of Serbia, No. 9/2022.

its equality (Art. 86). Special protection is stipulated in Art 89 regarding heritage (natural rarities and scientific, cultural, and historical heritage as well as goods of public interest in accordance with the law).

By providing state assets in the form of natural resources and goods of public interests, the Republic of Serbia expresses the interest to control the use of these categories to retain, as much as possible, their substantial form. The same reasons are behind the provision on land as the Constitution stipulates that the law may restrict the utilization and management of agricultural land, forest, and municipal building land, which are private assets, if that utilization and management could cause damage to the environment.[108]

Despite that it is not explicitly mentioned, the fact that the Republic of Serbia is held particularly accountable for the protection of heritage is explained by the need to preserve these values not only for present but for future generations. This provision confirms respect for values produced and saved by our precedents and, at the same time, expresses the commitment to receive respect from young and unborn generations.

10.2. 'National assets' according to the Constitution

The Constitution guarantees the equality of all types of assets, which means private assets, assets of cooperatives, and public assets.[109] Regarding public assets, the Constitution stipulates that public assets include state assets, assets of autonomous provinces, and assets of local self-government units.

According to Art. 87, public assets include natural resources, goods stipulated by the law as goods of public interest, and assets used by the bodies of the Republic of Serbia as well as other things and rights according to the law. Further, the Law on Public Assets[110] regulates which goods and rights are under the regime of public property. Accordingly, among those mentioned in Art. 87, the Law stipulates rights such as patent, trademark, and other industrial property. Regarding natural resources, the Law on Public Assets provides that the use of those resources is to be regulated by special laws.

Considering that the range of public assets is broad and its nature divergent, it is almost impossible to imagine that state or regional authorities could successfully manage and use all goods or rights included in the term of public assets. Moreover, history has demonstrated the weaknesses of broad competence in respect to the use and management of the public assets. In an economic sense, it would be expensive and the accomplishment slow. Setting aside the concept of social assets, which was the leading form during the almost half a century after the Second World War, the

108 Constitution, Art. 88 para. 2.
109 Constitution, Art. 86 para. 1.
110 Law on Public Assets, *Official Gazette of the Republic of Serbia*, No. 72/2011, 88/2013, 105/2014, 104/2016, 108/2016, 113/2017, 95/2018 i 153/2020.

economy was based on the principle of a competitive market. In this business environment, contribution of private (as opposed to public) entities to the use and management of goods that are under the regime of public assets could be of benefit for all interested parties. Consequently, the Constitution stipulates that natural and legal entities may obtain particular rights on particular goods in public use under the terms and in a manner provided by the law.[111]

In that sense, the Law on Public Assets provides that the legal regime of construction land, agricultural land, water land, forests, and forest land in public ownership is to be regulated by a special law (Art. 8). According to Art. 9, titled "Natural Resources", waters, watercourses and their sources, mineral resources, groundwater resources, geothermal and other geological resources and reserves of mineral raw materials, and other goods determined by a special law to be natural resources are owned by the Republic of Serbia. The manner and conditions of the exploitation and management of natural resources are regulated by a special law. Agricultural and construction land, forests and forest land, and port land may not be alienated from public property unless otherwise provided by law (Art. 12 para. 2 of the Law on Real Estate[112]). However, regarding agricultural land, even in the case that the land is not property of the State, transferring ownership to foreigners is not permitted.[113] An exception is granted to citizens of EU member states in accordance with the Stabilization and Association Agreement Between the European Union and Their Member States and Serbia.[114]

Citizens of EU member states are allowed to obtain ownership of agriculture land under certain conditions, but not more than 2ha.[115] This restriction provides not only control over natural goods of the public interest but the ability to guard vital national values, even sovereignty in certain meanings, as it services the food

111 Constitution Act, Art. 87 para. 2.

112 Official Gazette of the Republic of Serbia, No. *93/2014, 121/2014 and 6/2015*.

113 Law on Agriculture Land, Art. 1 para. 4.

114 Official Gazette of the Republic of Serbia – International Agreements, No. 83/2008.

115 According to Art. 72đ, privately owned agricultural land may be acquired by an EU citizen if 1) they have been permanently residing in the local self-government unit in which the agricultural land is traded for at least ten years, 2) they cultivate the agricultural land that is the subject of a legal transaction with or without compensation for at least three years, 3) they have a registered agricultural farm in active status as the holder of a family agricultural farm in accordance with the law governing agriculture and rural development without interruption for at least ten years, and 4) they own machinery and equipment for agricultural production. The subject of the legal transaction referred to in paragraph 1 of this Article may be privately owned agricultural land if 1) it is not agricultural land that has been determined as construction land in accordance with a special law, 2) it does not belong to the category of protected natural resources, and 3) it does not belong to or border a military facility or military complex and is not located in protection zones around military facilities, military complexes, and military infrastructure facilities, nor does it belong to or border the territory of the Ground Security Zone. The subject of legal business referred to in paragraph 1 of this Article may not be privately owned agricultural land located at a distance of up to 10 km from the border of the Republic of Serbia. See Dudás, 2021, pp. 59–73; Baturan and Dudás, 2019, pp. 63–71.

and health of citizens.[116] As regards other real estate, reciprocity is required for the transfer of private ownership. For public assets, the most common legal framework of use is concession or lease. A concession or the right of use, that is, exploitation, can be acquired on natural wealth in accordance with a special law.[117]

Utilization and management of the land, according to Art. 88 of the Constitution, may be restricted for the purpose of environmental protection regardless of whether it is under private or public ownership. For this reason, some of the actual global problems are included in the legal framework of the utility and management of agriculture land. Among others, special attention is paid to GMO products. No modified living organism or product from a genetically modified organism may be placed on the market, that is, cultivated for commercial purposes in the territory of the Republic of Serbia. A genetically modified organism is not considered to be an agricultural product of plant origin that quantitatively contains up to 0.9% of impurities of genetically modified organisms and impurities originating from genetically modified organisms. Seed and reproductive material are not considered to be genetically modified organisms if they quantitatively contain up to 0.1% of impurities of the genetically modified organism and impurities originating from the genetically modified organism.[118]

The position in connection to other national values is similar. In addition to the forests of national assets, the State regulates utility and management in private ownership. According to Art. 7 of the Law on Forests, the owner or user of forests is obliged to implement forest protection measures, to protect forests and forest lands from degradation and erosion, to implement forest management plans, and to implement other measures prescribed by this Law as well as regulations adopted on the basis of this Law. The use of waters is also regulated based on principles of planning and supervising.[119]

10.3. Link to future generations/environmental protection/sustainable development?

The underlying idea, the *ratio legis* of legal protection, of all previously mentioned values is to preserve it for the future. In that sense, the use of public assets should be rational and performed with special care. There is no better way to achieve it than to delegate this task, which is particularly important and of public interest, to the highest level of authority. There are several reasons for this. First, it is worthwhile to highlight the fact that all goods and other values included in the term of public assets are not made by humans but given by nature or our ancestors. The

116 János Ede Szilágyi, 2017, p. 1067.
117 Law on Public Assets, Art. 3 para. 3.
118 Law on Genetic Modified Organisms, Official Gazette of the Republic of Serbia, No. 41/2009, Art. 2 and 3.
119 Law on Waters, Art. 29.

present generation owes due care to save them for future generations, which is at the core of sustainability. Undoubtedly, it is of public interest. Governments are chosen by the will of the citizens, which will be, much more than previously in history, shaped by the attitude and political programs in relation to the use, management, and improvement of nature, national, cultural, and civil engineering heritage. This is common for all levels of public authorities.

Regarding environmental protection, it is hard to qualify it below the public interest because the environment as such has no defined borders. Moreover, a healthy environment can be considered as the precondition for some other freedoms and rights, such as the right to health. Giving the power to the authorities to take care of goods included among the public assets, which are of relevance for a healthy environment as a human right, private entities do not abandon the right itself. Their voice, and care on this matter, will be heard through elections. With this in mind, it is predictable that the competent public entities would perform this task in the public interest.

11. Good practices and *de lege ferenda* proposals

11.1. Good practices

Taking into account the constitutional provisions on environmental protection and future generations as well as the position of stakeholders interested in these matters, it seems prudent to analyze the rules on the right to propose legal reform as well. Namely, the Constitution specifies that the Protector of Citizens (Ombudsman) shall have a right to propose laws falling within their competence (Art. 107, para. 2). As citizens have easy communication with this entity, the Ombudsman has the best view of the worries of citizens as well as proposals for actual problems.

The fact that the right to be informed is included in the right to a healthy environment makes this right much closer to citizens' control, as they could be involved in important decisions based solely on the information they have. On the other hand, each citizen feels responsibility for the protection of the environment.

A great range of measures have been introduced to support motherhood. Some have already been mentioned, but there are others. For instance, according to the Law on financial support of families with children, the parental allowance for the first child born January 1, 2022, or later is determined in the amount of 300,000.00 dinars and is paid once. The parental allowance for the second child born July 1, 2018, or later is determined in the amount of 240,000.00 dinars and is paid in 24 equal monthly installments of 10,000.00 dinars. The parental allowance for the third child born July 1, 2018, or later is determined in the amount of 1,440,000.00 dinars and is paid in 120 equal monthly installments of 12,000.00 dinars. The parental

allowance for the fourth child born July 1, 2018, or later is determined in the amount of 2,160,000.00 dinars and is paid in 120 equal monthly installments of 18,000.00 dinars (Art. 23, para. 1, 2, 3, and 4).

11.2. De lege ferenda

Researching the constitutional framework for environmental protection and future generations in Serbia revealed not only the fact that the legal system of Serbia can respond to the demand for the preservation of natural and human resources but also the fact that more could be done regarding these matters.

The Serbian Constitution does not explicitly mention future generations, even it is possible to conclude that the *ratio legis* of a numerous provisions are exactly the protection of the interests of the future generations. For a better understanding of the concept and to set a guideline for the decisionmakers, an explicit provision on future generations as a principle would contribute to the certainty of the very complex legislative activity in this matter. This would result in a higher level of attention on what would be the best solution for tomorrow, not only for the present.

During the process of the preparation of the Law on the Efficient Use of Energy, it was proposed that tax, customs, and other relief may be granted for legal and natural persons who apply technologies or products or place on the market products that contribute to more efficient use of energy under the conditions specified in the law and other regulations governing taxes, duties, and other charges. Unfortunately, the enacted text of the Law does not contain such a rule. Though some of the particular laws stipulate similar benefits, it would be much better for their implementation and their impact on business activities concerning efficiency if there were a general principle of the protection of future generations.

Finally, considering the complex system of environmental protection, the great number of relevant regulations, the obligation of making information on environmental matters available to the public, and the right of everyone to participate in the decision making, it appears that the Ombudsman has a great deal to do. This could lead to inadequate efficiency of the Ombudsman's work, the projected task of which is to protect the interests of the citizens. For that reason, and in particular, due to the fact that the Ombudsman has the right to propose laws falling within their competence, it would have a greater impact on efficient environmental protection if a separate Ombudsman for the Environment were to be instituted.

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