

CROATIA: CONSTITUTIONAL PROTECTION OF THE RIGHT TO A HEALTHY LIFE – DO WE NEED MORE TO SAFEGUARD THE ENVIRONMENT AND FUTURE GENERATIONS?



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1. Introduction

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

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

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

The constitutional framework must first be explored. The Constitution of the Republic of Croatia³ contains several provisions that are important regarding the protection of future generations and of the environment. Constitutional provisions, which are the basis for shaping the framework and content of environmental law in the Republic of Croatia, determine (a) the right to a healthy life; (b) the obligation of the State to ensure a healthy environment; (c) the commitment of all, within the scope of their power and activities, to pay special attention to the protection of human health, nature, and the human environment; (d) the provision of special protection to all things and goods of special ecological significance that are of interest for the Republic of Croatia; (e) the possibility of restricting entrepreneurial freedoms and property rights for the protection of nature, the environment, and human health.⁴

First, Article 69⁵ prescribes that everyone has the right to a healthy life⁶ and that the State is obliged to ensure the conditions for a healthy environment. Moreover, this Article of the Constitution prescribes that everyone is obliged, within the scope

1 Medvedović and Ofak, 2011, p. 70.

2 Medvedović and Ofak, 2011, p. 71.

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

4 Ofak, 2020, p. 39.

5 “Everyone shall have the right to a healthy life.

The State shall ensure conditions for a healthy environment.

Everyone shall, within the scope of their powers and activities, pay special attention to the protection of human health, nature and the human environment.”

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

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

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

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

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

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

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

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

7 Ofak, 2021, p. 89.

8 Medvedović, 2015, p. 42, Ofak, 2020, p. 75.

9 Ofak, 2020, p. 30.

10 Official Gazette, no. 80/13, 153/13, 78/2015, 12/18, 118/18.

11 Ofak, 2020, p. 30.

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

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

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

¹² Omejec, 2003, p. 68.

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

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

¹⁴ Official Gazette, no. 85/20.

¹⁵ Ofak 2020, p. 71.

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

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

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

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

16 Proso, 2015, p. 718.

17 Official Gazette nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018.

18 Proso, 2015, p. 718.

19 Ofak, 2020, p. 329.

20 Ofak, 2020, p. 63.

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

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

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

21 Ofak, 2020, p. 118

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

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

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

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

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

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

The Environmental Protection and Energy Efficiency Fund is a state body that must be mentioned. Its activities²⁶ comprise the tasks related to financing the prepa-

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

25 Ofak, 2020, p. 65.

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

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

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

The judiciary also should be mentioned as an important actor with regard to environmental protection. The Constitutional Court has an important role in environmental protection as it resolves individual cases as well as questions of the constitutionality (and legality) of laws and bylaws. Individual environmental cases arrive before the Constitutional Court through filing a constitutional complaint. However, the analysis²⁷ showed that, thus far, there was only one case in 2007²⁸ in which the Constitutional Court interpreted the right to a healthy life in an environmental context. This does not mean that environmental cases do not appear before the Constitutional Court at all but, rather, that the applicants do not invoke a violation of the right to a healthy environment and instead invoke violations of other constitutional rights, primarily a violation of the right to a fair trial (Article 29 para. 1 of the Constitution). In conclusion, the case law of protecting the constitutional right to a healthy environment in Croatia has yet to be developed, and future research should explore the reasons why the practice of environmental and climate change litigation, which prevails in other European countries, has not arisen yet in Croatia.

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

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

27 Ofak, 2021.

28 U-III/3643/2006, from May 23, 2007.

29 Ofak, 2020, p. 340.

30 Rev-x 295/2018- 2 from April 9, 2019.

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

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

Another important actor who should be mentioned is the Commissioner for Access to Information. This is an independent body established by the Access to Information Act³⁴ in 2013. According to the law, this body protects, observes, and

31 Ofak, 2020, p. 343.

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

32 Recommendation 117 in the Report for 2021 [Online]. Available at: <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2021-godinu/?wpdmdl=13454&refresh=6283d5dc774f1652809053> (Accessed: 20 April 2022).

33 *Ibid.*

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

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

3. Basis of fundamental rights

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

35 Bačić, 2008, p. 727.

36 Bačić, 2008, p. 730.

37 Bačić, 2008, p. 732.

38 Bačić, 2008, p. 732.

39 Bačić, 2008, p. 741.

3.1. *Right to a healthy life*

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

40 Bačić P., 2008, p. 815.

41 Bačić, 2008, p. 742.

42 Official Gazette, no. 8/74.

43 Ofak, 2021, p. 85.

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

44 Ofak, 2021, p. 86.

45 Ofak, 2021, 86, Omejec, 2003, pp. 52–62, Bačić 2008, pp. 727–743, Rajko 2007, pp. 22–27.

Bačić P. states that the Croatian Constitution does not envisage direct enforceability of the right to a healthy environment, but this right is marked as a desirable state goal. Bačić P., 2008, p. 816.

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

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

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

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

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

These goods can be classified into two groups according to their natural and other features, especially the ability to be the objects of ownership and other real

46 Ofak 2020, p. 40.

47 Ofak, 2020, p. 40.

48 Ofak, 2021, p. 89.

49 Ofak, 2020, p. 40.

50 Proso, 2015, p. 708.

rights: 1) certain parts of nature (physical things) cannot be the object of ownership and other real (property) rights because their natural characteristics do not allow them to belong to any natural or legal person, and 2) all other things except those belonging to the category of common goods may be the object of real (property) rights, which means that they are things in terms of law on real (property) rights. This also applies to goods and things listed in Article 52 of the Constitution that do not belong to common goods. These goods and things are specific in the sense that they can be declared by law as goods of interest to the Republic of Croatia within the limits of authority provided by Article 52 of the Constitution.⁵¹ It must be stressed that the Constitution allows for the curtailment of certain constitutional rights in the name of preservation of the environment. Namely, Article 50 para. 2 of the Constitution prescribes that free enterprise and proprietary rights may be exceptionally restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature, and the human environment and human health. Free enterprise is set up by Article 49 of the Constitution as the foundation of the economic system of the Republic of Croatia, and property is protected by Article 48. This is possible because the Constitution, despite that it guarantees ownership, also provides that property entails obligations. Holders of a proprietary right and its users should contribute to the common good (Article 48 para. 1).⁵² As Ofak rightfully states, it would be impossible to achieve environmental requirements if we insisted on the right to ownership as an absolute right. Therefore, Article 50 para. 2 of the Constitution discusses the protective function of property and entrepreneurship, which is inherent in the public interest of the community as a whole or in part. The Constitution does not guarantee compensation for such restrictions.⁵³

3.3. Access to information, public participation, and justice

It is important to note that the environment can and should also be protected by certain rights, which can be related to political freedoms. Therefore, the so-called “access rights” must be mentioned in this regard. “The rights of access to information, public participation and justice (“access rights”) are human rights framed within the category of civil and political rights. They are governed by the International Covenant on Civil and Political Rights (articles 19, 25 and 2.3 and 14, respectively) and States are therefore obligated to respect and guarantee the provisions on these rights immediately and on an equal and non-discriminatory basis (article 2).”⁵⁴ It is clear that these rights are primarily civil and political rights, particularly the right to access to information. However, their use can significantly help in protecting the environment. This is why access rights are said to be essential to

51 Ofak, 2020, p. 41.

52 Ofak, 2020, pp. 42–43.

53 Ofak, 2021, p. 92.

54 Barrio, 2016, p. 21.

guaranteeing the enjoyment of a safe, clean, healthy, and sustainable environment.⁵⁵ It is important to mention that Croatia signed and ratified the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (the Aarhus Convention), which entered into force in Croatia on June 25, 2007. Because of this, some amendments had to be made in the Croatian legislature. For example, the EPA was amended to allow for associations to challenge administrative decisions in front of the administrative courts.⁵⁶ In accordance with the Constitution, the Convention thus became part of the Croatian internal legal system, and its provisions are implemented directly. Indeed, the provisions of the Convention have a stronger legal force than the national law.⁵⁷ Therefore, if there is a collision between the provisions of this Convention and national legal acts, administrative authorities and courts are obliged to act in accordance with the provisions of the Convention. It was, indeed, sometimes directly implemented in the administrative court's case law to nullify administrative decisions.⁵⁸

Reviewing the Constitution reveals that all of the aforementioned access rights are enshrined therein. The right to access to information is set out in Article 38 para. 4, which reads as follows:

The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law.

The constitutional right to access to information is further prescribed by the Right to Access to Information Act, which prescribes that information is available to every domestic and foreign physical and legal person in accordance with the conditions and limitations set by this act (Article 6). Information is broadly defined as every piece of data in the possession of a public body authority and is created with regard for the competence of said body. This right is applicable in all environmental matters and is further prescribed by the EPA (Article 17). Namely, "Pursuant to the principle of access to information and public participation (Article 17), the public has the right of access to environmental information held by public authorities, persons supervised by public authorities and persons holding information for

55 Knox, 2013, para. 29.

56 Ofak, 2020, p. 35. Another survey conducted by Ofak showed that there have not been many examples of the direct application of the Aarhus Convention by the courts in SEE countries. In situations in which the Aarhus Convention could be applied, the courts would rather apply the rules of domestic legislation that are relevant to the merits of the case or the provisions of EU directives that regulate access to information, public participation in decision making, and access to justice in environmental matters. In addition, in many environmental cases, the Aarhus Convention is applicable because it does not contain any substantive rules regarding the right to a healthy environment. See Ofak, 2015.

57 Medvedović and Ofak, 2011, p. 71.

58 Ofak, 2016 [Online]. Available at: <https://aarhus.zelena-istra.hr/sites/aarhus.zelena-istra.hr/files/Ofak%20II%20-%20Dobra%20sudska%20praksa%20u%20Hrvatskoj.pdf> (Accessed: 15 May 2022).

public authorities. The public has the right to be duly informed on environmental polluting, including the right to information on dangerous substances and activities, information on measures undertaken and, in this connection, the right to access to information on state of the environment. The public has the right to participate in the procedures for: determining starting points, developing and adopting strategies, plans and programs and in developing and adopting regulations and general acts (generally applicable acts) relating to environmental protection. The public has the right to participate in procedures being carried out at the request of the project holder and the operator, in conformity with the EPA. The right of access to information and public participation shall be exercised by the public in the manner stipulated by the EPA and by regulations adopted on the basis thereof, as well as in accordance with special regulations.”⁵⁹

The EPA further prescribes this right in environmental matters in Article 19, which prescribes the principle of the right to access to justice. This principle “requires that any person (citizen or other natural and legal persons, their groups, associations and organizations) who considers that his request for environmental information has been ignored, wrongfully refused, whether in part or in full, or inadequately answered, has the right to protect his rights before a court of law, in accordance with a special regulation on access to information. There is a second aspect to the principle of the right of access to justice with the aim of protecting the right to a healthy life and sustainable environment and for protecting the environment and its individual components as well as protection against the harmful effects of pressures on the environment. A person who has sufficient legal interest and a person who due to the location of the project and/or due to the nature and/or impact of the project can prove permanent impairment of his right shall have the right to challenge the procedural and substantive legality of decisions, acts or omissions of public authorities before the competent body and/or competent court, in accordance with the law.”⁶⁰

The right to justice, or the right to access to a court, is also enshrined in the Constitution in Article 29, which reads as follows: “*Everyone shall be entitled to have his/her rights and obligations, or suspicion or accusation of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law.*”

This right is also enshrined in Articles 18 and 19 para. 2 of the Constitution, which reads as follows:

The right to appeal against individual legal acts made in first-instance proceedings by courts or other authorised bodies shall be guaranteed.

By way of exception, the right to appeal may be denied in cases specified by law if other forms of legal protection are ensured.

Judicial review of individual acts made by administrative authorities and other bodies vested with public authority shall be guaranteed.

59 Ofak, 2020, pp. 34–35.

60 Ofak, 2020, p. 35.

3.4. Case law of the Constitutional Court in environmental matters

There is no direct link to environmental matters regarding the aforementioned constitutional provisions. In other words, the Constitution does not explicitly prescribe that the right to access to information or the right to access to a court applies to environmental matters. This link is made through legislature and the practice of the Constitutional Court.

The practice of the Constitutional Court also connected constitutional rights to access to information and the right to a fair trial. This is the case despite that there are few decisions of the Constitutional Court on environmental matters. For example, it is a well-established practice of the Constitutional Court that the right to a fair trial is a set of procedural guarantees by which fair procedure is ensured.⁶¹ Its position in a democratic society is so important that there cannot be any justification for restrictive interpretation of this guarantee. Environmental cases in Croatia do appear before the Constitutional Court. However, they predominantly concern the assessment of the conformity of laws to the Constitution or of other regulations to the Constitution and law.⁶² Individual environmental cases arrive before the Constitutional Court through the filing of a constitutional complaint; however, the applicants invoke not a violation of the right to a healthy environment but, rather, violations of other constitutional rights, mainly of the right to a fair trial.⁶³ According to her research, Ofak states that there is only one case in 2006 (decided in 2007) in which the Constitutional Court interpreted the right to a healthy life in an environmental context.⁶⁴ There was also one case⁶⁵ in 2004 in which the Constitutional Court rejected an application in which the applicants claimed that the disputed acts (judgment of the Administrative Court of the Republic of Croatia from 2001 by which the lawsuit of the applicants against the decision of the ministry from 2000 was rejected) violated the constitutional guarantees prescribed by Article 69 paras. 1 and 2 of the Constitution. The Constitutional Court found that this was not the case but did somewhat elaborate its position regarding the protection of the constitutional right to a healthy life and environment. The Court stated the following:

According to the Constitution, the state is obliged to take every measure to ensure conditions for a healthy life and environment. These measures require, before all else, bringing adequate acts by which organization, means and conditions according to the protection of environment is carried out in the purpose of sustainable development and acts by which unfavorable effects on environment and health of people would be reduced to a minimum. Environmental Protection Act ("Official Gazette", no. 82/94) and bylaws brought according to this Act this constitutional task is ensured. In the

61 U-III-3538/2017 from April 18, 2019; U-III-2466/2017 from October 23, 2019; U-III-1910/2019 from April 15, 2021.

62 Ofak, 2021, p. 96.

63 Ofak, 2021, p. 97.

64 U-III/3643/2006 from May 23, 2007.

65 U-III-69/2002, July 8, 2004.

concrete case using measures for protecting the environment, determined in the disputed decision of the Ministry of environmental protection and spatial development, by which the proposed construction is adapted and harmonized with the possibilities of the environment, and by which pollution or unfavorable effect on human health is reduced, implementation of acts and standards is ensured, and by doing so also the protection of the constitutional right to a healthy life and environment.

As previously noted, in other cases, the applicants claimed that their right to a fair trial was violated. For instance, in the case⁶⁶ of the association the Croatian Society for the Protection of Birds and Nature (*Hrvatsko društvo za zaštitu ptica i prirode*) against the judgement of the High Administrative Court of the Republic of Croatia, the applicant claimed that the judgement violated its constitutional rights guaranteed by Articles 18, 19 para. 2, 29 para. 1, and 52 of the Constitution. Namely, the applicant objected to the study on the influence on the environment of a construction proposal. The ministry rejected these claims. Subsequently, the applicant lodged a lawsuit against this decision of the Ministry before the High Administrative Court. The Court rejected the lawsuit as ill-founded. The applicant claimed that such a decision of the High Administrative Court created a situation in which it was denied the essence of the right to court. Additionally, the applicant claimed that the decision violated Article 52 of the Constitution as this provision affords special protection to water, land, etc. However, the Constitutional Court rejected the application and found that the ministry and the High Administrative Court did not violate the aforementioned constitutional provisions. In another case,⁶⁷ the association Green Action (*Zelena akcija*) against the judgement of the Administrative Court in Rijeka, the applicant claimed that the contested judgement violated Articles 18, 19, 29 para. 1, 115 para. 3, 128, and 129a of the Constitution. The competent ministry issued a decision regarding combined conditions of environmental protection in 2012 by which the planned construction was deemed acceptable. The applicant issued a lawsuit against the decision before the Administrative Court in Rijeka, which the Court rejected. Subsequently, the applicant filed an application in which it claimed that their “right to an explained decision of a judicial body”, “right to an effective legal remedy”, and the “right to appeal against an individual legal act brought in a first instance procedure” were violated. The Constitutional Court rejected the application.

3.5. Right to association

In addition to the aforementioned rights, the protection of the environment can also be linked to the constitutional right to association prescribed by Article 43 of the Constitution, which reads as follows:

Everyone shall be guaranteed the right to freedom of association for the purposes of the protection of common interests or the promotion of social, economic, political, national,

66 U-III/1114/2014 from April 27, 2016, U-III-1115/2014 from May 11, 2016.

67 U-III/5942/2013 from June 18, 2019.

cultural and other convictions and aims. For this purpose, anyone may freely form trade unions and other associations, join them or leave them, in accordance with law.

Namely, that the EPA prescribes that among the actors in environmental protection with the duty to ensure sustainable development and environmental protection are citizens as individuals, their groups, as well as associations (Article 34). Associations are also entitled the right to suggest, by way of petition, that there is a need to initiate an administrative procedure *ex officio* to protect public interest. In the environmental domain, this primarily pertains to the petitions of citizens, groups of citizens, and associations informing competent authorities that there is a danger to people's health and the environment.⁶⁸ If a citizen, a group of citizens, or an association is unsatisfied with the authorities' reaction to a petition, they are entitled the right of access to the judiciary in case they are dissatisfied with the inspection work.⁶⁹

It also worth mentioning that, pursuant to Article 167 para. 2 of the EPA, an association has sufficient legal interest if it fulfills the following requirements: (1) if it is registered in accordance with special regulations governing associations and if environmental protection, including the protection of human health and of the rational use of natural resources, is set out as a goal in its statute; and (2) if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest) and if it can prove that in that period, it actively participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute.

Such an association has the right to file an appeal with the Ministry or file a lawsuit before the competent court for the purpose of challenging the procedural and/or substantive legality of decisions, actions, or omissions.⁷⁰

4. Regulation of issues regarding responsibility

The Croatian Constitution guarantees the right to a healthy environment (life) as a right of everyone in Croatia. However, to achieve such a right, someone must be responsible for enabling everyone to enjoy this right. Therefore, the Constitution places on the State the responsibility to ensure the conditions for a healthy environment (Article 69 para. 2). Moreover, everyone is obliged to accord particular attention to the protection of human health, nature, and the human environment

68 See also Ofak, 2020, p. 334.

69 Medvedović and Ofak, 2011, p. 82.

70 Ofak, 2020, pp. 335-356. If an association does not meet the stated requirements, it is not assumed to belong to the public concerned. This does not prevent the association from proving its legal interest in a procedure; rather, such an interest is merely not assumed. *Ibid.*

(Article 69 para. 3). It is necessary to determine what it means that the State is obliged to ensure conditions for a healthy environment what it means that everyone is obliged to accord particular attention to the protection of environment. Who is everyone, and what is everyone obliged to do? Ofak states that these norms are not directly applicable, as they represent political proclamation and non-legal obligation rather than specifically binding legal rule. Their content, scope, and methods of application are left entirely to the will of the legislature, and their feasibility depends on the extent of legislation.⁷¹ This is clearly the case. However, the Constitution gives special weight to the protection of the environment when stipulating that everyone is obliged to accord particular attention, within the scope of their power and activities, to the protection of the environment. We must ask ourselves, “Does this obligation stand only for physical persons or for legal persons (private and public companies, multinational corporations, etc.)?” Because of the wording “their” power and activities, it could be construed that this obligation is valid only for physical persons. However, this would not be in accord with the spirit of the provision taken into account in Article 3 of the Constitution (environmental protection as one of the highest values of the constitutional order). Medvedović also states that the expression “everyone” should be understood as all state bodies, bodies of local and regional self-government, legal persons with public authority, institutions, companies, artisans, associations, religious communities, and other associations and individuals, domestic and foreign.⁷² Therefore, it must be concluded that all citizens, including all legal persons (private or public), are obliged to pay special attention to the protection of the environment. The Constitution does not set out any rules regarding the “polluter/user pays” principle; however, this principle is prescribed in the EPA (Article 16), according to which the polluter bears the costs created by pollution.

It should also be noted that the Croatian legal system regulates the misdemeanor and criminal liability of legal persons (entities). For legal entities, stricter penalties are imposed by legislation (than for natural persons), particularly regarding misdemeanor penalties for environmental violations.

5. High protection of natural resources

The significance of environmental protection for Croatian society and constitutional order is highlighted in the Declaration on the Protection of the Environment in the Republic of Croatia, which Parliament passed in June 1992. This Declaration states that the Republic of Croatia is determined to persevere in building a legal system aligned with international contracts and standards of the European and

⁷¹ Ofak, 2020, p. 74.

⁷² Medvedović, 2015, p. 42.

world community by which the permanent, systematic, and effective environmental protection will be assured in full.⁷³

The protection of natural resources appears *expressis verbis* in the Constitution, as Article 52 para. 1 establishes resources of interest to the Republic of Croatia. The provision reads as follows:

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

Article 52 para. 2. prescribes further obligation for the State if it declares any resource to be a resource of interest to the State. It reads as follows:

The manner in which any resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.

Therefore, the State provides special protection to certain things and goods: (a) the sea, seashore, islands, waters, air space, mineral resources, and other natural goods; (b) land, forests, flora and fauna, and other components of nature; and (c) real estate and goods of particular cultural, historical, economic, or ecological significance.⁷⁴

As Omejec explains, these goods can be classified into two groups according to their natural and other features, particularly their ability to be the objects of ownership and other real rights. The first group includes certain parts of nature (physical things) that cannot be the object of ownership and other real (property) rights because their natural characteristics do not allow them to belong to any natural or legal person. These include atmospheric air, sea, and water in its natural course as well as the seashore, which has characteristic of the common good recognized by the customary law. These things – common goods – serve everyone, and no one can dispose of them on any grounds in terms of private law. Although they represent things in the natural, physical sense, they cannot be the object of real rights because they are not considered things in terms of law on real (property) rights. If and when there is power in relation to them, that power is public rather than private. Therefore, it is understandable that the Republic of Croatia takes care of and provides special protection to such things because the State is a holder of public authority (although not the owner of these things).⁷⁵ All other things, except those belonging to the category of common goods, can be the object of real (property)

73 Medvedović, 2015, p. 42.

74 Ofak, 2020, p. 41.

75 See Omejec, 2003, pp. 62-63, Ofak, 2021, p. 93.

rights, which means that they are things listed in Article 52 of the Constitution that do not belong to common goods. These goods and things are specific in a sense that they can be declared by law to be goods of interest to the State.⁷⁶ This suggests that there is a distinction among natural goods, components of nature, and real estate and “goods of significance” for the State. Among natural goods, the sea, seashore, islands, waters, air space, and mineral resources are highlighted, and among components of nature, land, forests, flora, and fauna are highlighted. All of these things and goods enjoy special protection from the State as they can be declared by law to be goods of interest to the Republic of Croatia within the limits of the authority provided by Article 52 of the Constitution.⁷⁷ If they are declared as such, the State is obliged to prescribe by law (a) special protection of such things and goods, (b) the manner in which any resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, and (c) compensation for any restrictions as may be imposed thereon.

The Constitutional Court employed Article 52 when deciding on the (un)constitutionality of several laws. For example, when deciding⁷⁸ on the constitutionality of the act legalizing illegal buildings,⁷⁹ there was a provision (Article 6 para. 2 line 1) prohibiting the legalization of an illegal building if it is situated within an archeological find or zone, spatial boundaries of a real estate cultural good or cultural-historical whole, etc. The applicant claimed that this provision violated Articles 14 para. 2 and 19 para. 1 of the Constitution (i.e., the principle of legality). The Constitutional Court stated that the legislator is always obliged to respect the request set by the Constitution and especially those derived from the rule of law and by which fundamental constitutional goods and values are protected. By determining the area(s) in which legalization is impossible as was done by the contested provision, the legislator achieved its role in protecting the natural goods and cultural wealth determined by Article 52 of the Constitution. Interestingly, the Treatment of Illegal Constructed Buildings Act was challenged before the Constitutional Court in a separate case.⁸⁰ The applicant who submitted the proposal for the assessment of the conformity of the Act on the Treatment of Illegally Constructed Buildings with the Constitution claimed that the Act was, in its very basis, a source of inequality of citizens before the law because it was designed to privilege illegal builders. The Constitutional Court did acknowledge that illegally constructed buildings were a living and well-known fact and a mass phenomenon in Croatia, which could rightly be said to endanger and devalue its territory in many ways – its land, coast, and forests; its natural, cultural, and historical values; and the human environment.⁸¹ However, the Constitutional Court has taken the position that the challenged Act

76 Ofak, 2020, p. 42.

77 Ofak, 2020, p. 41.

78 U-I-6004/2012, November 4, 2014.

79 Treatment of Illegal Constructed Buildings Act, OG nos. 86/12, 143/13.

80 U-I/4597/2012 from November 4, 2014.

81 See Ofak, 2021, p. 90.

can be considered acceptable from a constitutional perspective. Its goals were undoubtedly legitimate – they perceived the legalization of illegal construction as a “lesser evil” than the mass demolition of illegally constructed buildings and were, from that point of view, economically and socially justified and, as such, in line with the interests of the State and society as a whole.⁸²

Somewhat different was a case⁸³ on the (un)constitutionality of the act regulating the rebuilding of walls in Dubrovnik. In this case, the applicant, the Society of Friends of Dubrovnik Antique (*Društvo prijatelja dubrovačke starine*), claimed that the Amendments of the Rebuilding of Endangered Monument Whole of Dubrovnik Act⁸⁴ was unconstitutional regarding many provisions of the Constitution (Articles 3, 4, 5, 14, 16, 18, 29 para. 1, 48 para. 1, 50, 52, 69 para 3., and 90 paras. 4 and 114). The government claimed that it is entitled, according to Article 52 para. 2. of the Constitution, to determine the manner for governing and maintaining walls in Dubrovnik. The Constitutional Court agreed, but also stated that the right of the State derived from Article 52 para. 2 of the Constitution is not absolute as the lawmaker is obliged to uphold fundamental values on which the constitutional setup is based. Therefore, it can be said that “conservation of nature and the human environment as the highest values of the constitutional order may be applicable in the procedures of abstract constitutional control of legal norms.”⁸⁵

As previously stated, the Constitution determines natural resources; however, it also determines components of nature. Both goods can be specified by law to be of interest to the State. Among natural resources, the Constitution specifically mentions the sea, seashore, islands, waters, air space, and mineral resources. Among components of nature, it specifically mentions land, forests, flora, and fauna. According to Ofak, all of these goods can be classified into two groups according to their natural and other features, particularly the ability to be the objects of ownership and other real rights, that is, certain parts of nature that cannot be the object of ownership and other real (property) rights because their natural characteristics do not allow them to belong to any natural or legal person (*res inexhausti usus; res communes omnium* = common goods). All other things, except those belonging to the category of common goods, can be the object of real (property) rights, which means that they are things in terms of law on real (property) rights. This also applies to goods and things listed in Article 52 of the Constitution that do not belong to common goods.^{86 87}

82 See Ofak, 2021, p. 90.

83 U-I-897/2014 from July 18, 2014.

84 OG no. 19/14.

85 Ofak, 2021, p. 89.

86 Ofak, 2020, p. 41-42.

87 In this regard, Article 2 paras. 2 and 3 of the Constitution can be mentioned, and it reads as follows:
*“The sovereignty of the Republic of Croatia encompasses its land, rivers, lakes, canals, internal maritime waters, territorial sea, and all air space above these.
 The Republic of Croatia, in accordance with international law, shall exercise sovereign rights and jurisdiction over the maritime zones and seabed of the Adriatic Sea outside its state territory up to the borders of neighbouring countries.”*

6. Reference to future generations and sustainable development

The Constitution does not mention “future generations” in any way. There is only one constitutional provision that mentions the need for “improving the environment” – Article 129a para. 1, which reads as follows:

Units of local self-government shall administer affairs of a local nature by which the needs of citizens are directly fulfilled, and in particular affairs related to the organisation of localities and housing, zoning and urban planning, public utilities, child care, social welfare, primary health services, early and primary education, culture, physical education and sports, technical culture, consumer protection, protection and improvement of the environment (highlighted by the author), fire protection and civil defence.

The Constitution does not contain any *expressis verbis* reference to sustainable development. However, the purpose of Article 69 is to achieve three important objectives of environmental policy expressed in the principles of quality of life, duties toward future generations, and sustainable development.⁸⁸ Moreover, in the Parliamentary Declaration on the Protection of the Environment in the Republic of Croatia from 1992, economic sustainable development based on sustainable agriculture and forestry, maritime and tourism, and economy and industry based on ecologically permissible technologies is highlighted as the commitment of the State.⁸⁹

Therefore, a need to protect the environment for future generations can be seen in Croatian legislature. For example, the EPA prescribes the principle of preserving the value of natural goods, biodiversity, and landscape (Article 11). In this principle, it is prescribed that all natural goods and landscape values are to be used in a manner so as not to diminish their value for future generations. In Article 6 para. 2, the Water Act⁹⁰ prescribes that waters are governed by the principle of unity of the water system and the principle of sustainable development by which the needs of the present generation are fulfilled, without jeopardizing the right and possibility of future generations to achieve the same. This Act has the role of protecting the water bodies that are specifically identified as water intended for human consumption or reserved for this purpose in the future (Article 100). One of the principles of waste management is also to predict future waste occurrence (addendum VI to the Waste Management Act⁹¹). Waste should be managed in a manner that ensures that the waste remaining after treatment, which is disposed of by landfilling, poses no threat to future generations.⁹² The need to care for

88 Ofak, 2020, p. 40.

89 Medvedović, 2015, p. 42.

90 OG nos. 66/19, 84/21.

91 OG no. 84/21.

92 Ofak, 2020, p. 188.

future generations is also mentioned in the Spatial Planning Act (Article 10 para. 2).⁹³ Moreover, measures for protection against light pollution must not endanger the components of the environment or the quality of life of present and future generations and must not be in conflict with regulations in the field of occupational safety and health (Article 7 of the Act on the Protection against Light Pollution⁹⁴). The polluter pays principle also serves as a tool for preventing the occurrence of future pollution. Therefore, although the reference to the needs of future generations is not *expressis verbis* mentioned in the Constitution, the legislator clearly has the needs of future generations in mind.

The Constitution does not contain any *expressis verbis* reference to sustainable development. However, as previously mentioned, the purpose of Article 69 of the Constitution is to achieve three important objectives of environmental policy expressed in the principles of quality of life, duties toward future generations, and sustainable development. The provisions of Article 69 paras. 2 and 3 of the Constitution establish certain constitutional obligations addressed to the State (para. 2) and everyone (para. 3), while the provision of Article 69 para. 1 relates to the establishment of certain rights addressed to everyone.⁹⁵ As the Constitutional Court stated in 2004,⁹⁶ *“the state is obliged to take every measure to ensure conditions for a healthy life and environment. These measures require, before all else, bringing adequate acts by which organization, means and conditions according to the protection of environment is carried out in the purpose of sustainable development and acts by which unfavorable effects on environment and health of people would be reduced to a minimum.”*

Article 49 para. 3 of the Constitution should possibly also be mentioned as it prescribes that the State shall encourage the economic progress and social prosperity of its citizens and care for the economic development of all regions. This provision is aimed at highlighting the obligation of the State to create equal opportunities for all and for equal development of the entire country, which can be linked to the care of the State for future generations. Croatia chose to accept the guidelines of the sustainable development of the environment by which economic growth and social justice are simultaneously assured as well as the conditions for the protection of natural resources.⁹⁷

As previously mentioned regarding the care for future generations, the need to achieve sustainable development is broadly prescribed in different laws. For example, the EPA contains 83 references to sustainable development, the environment, etc.⁹⁸

93 OG nos. 153/13, 65/17, 114/18, 39/19, 98/19.

94 OG no. 14/19.

95 Ofak, 2020, p. 40.

96 U-III-69/2002 from July 8, 2004.

97 Proso, 2015, p. 705.

98 The EPA defines sustainable development as the development of society, which, as fundamental criteria, includes environmental, economic, and sociocultural sustainability aimed at improving the quality of life and meeting the needs of the present generation while respecting the same ability to meet the needs of future generations; it was also intended to enable the long-term conservation of environmental quality, geodiversity, biodiversity, and landscape (Article 4 para. 1 point 33). It further prescribes that by protecting the environment, the rational use of natural goods and energy is ensured to provide a basis for the concept of sustainable development (Article 3 para. 1). One

Sustainable development is also supported by the circular management of space and buildings by preserving existing resources through arranging and revitalizing space and reusing buildings to create additional long-term value and to enable efficient resource management (Article 10 of the Spatial Planning Act).⁹⁹

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

The Croatian Constitution contains several provisions that may be relevant or connected to the protection of the interest of future generations and of the environment. First, as previously mentioned, Article 3 of the Constitution contains fundamental constitutional values of the constitutional order of the Republic of Croatia, among which the protection of nature and the environment is listed. Although it does not contain human rights and fundamental freedoms, it is important for courts and judges when deciding on cases related to the protection of the environment. Furthermore, Article 35 of the Constitution guarantees respect for and legal protection of each person's private and family life, dignity, and reputation. In the Constitutional Court's practice, it was established that Article 35 guarantees respect for everyone's family life with the basic purpose of this constitutional guarantee to protect individuals from uncalled-for interference by the State in their right to an undisturbed family life.¹⁰⁰ Negative and positive obligations of the State are derived from this. Negative obligations encompass the State's obligation to abstain from interference into family life of individuals, except in cases prescribed by law. However, positive obligations of the State are determined by the fact that the constitutional term "respect" of family life is

of the principal goals for protecting the environment is to achieve the conditions for sustainable development (Article 7). This Act also prescribes, as a legal principle, the principle of sustainable development (Article 9), which prescribes that all public powers are obliged to promote sustainable development and that all must cooperate to achieve it (Article 15, cooperation principle).

⁹⁹ Ofak, 2020, p. 307–308. According to the principle of the spatial sustainability of development and building excellence when adopting strategies, programs, plans, regulations, and other general acts and during their implementation, the State and the units of local and regional self-government shall stimulate the economic and social development of a society, with the objective of achieving sustainable development and building excellence. The aim of this principle is to meet the needs of today's generation while respecting equal opportunities and meeting the needs of future generations as well as to prevent the prevalence of the interest of individual activities to the detriment of harmonized development, nature, environmental protection, cultural goods, and the needs of other space users. Spatial planning shall support sustainable development on the basis of monitoring, analysis, and evaluation of the development of individual activities and spatial sensitivity to ensure the quality of the living and working environment, uniformity of standards for the development of each area, and efficient management of energy, land, and natural resources and to preserve the spatial identity and provide long-term protection of space as the basis for the common good.

¹⁰⁰ U-III-1969/2011 from December 18, 2014.

indeterminate. Therefore, one must always take into account that the interpretation of the State's obligation to "respect" family life can be different on a case-by-case basis because of the opinion of the Constitutional Court that the State has a wide margin of appreciation when regulating this issue and when deciding which activities and measures are to be taken when achieving the constitutional guarantee in Article 35, acknowledging the existing possibilities of the society and its individuals as well.¹⁰¹ This constitutional provision must be linked to the provisions of Articles 61 and 62 of the Constitution. Namely, in Article 61 para. 1, the obligation of the State to protect family is prescribed. Article 62 reads as follows: "*The state shall protect maternity, children and young people, and shall create social, cultural, educational, material and other conditions promoting the exercise of the right to a decent life.*"

In the contemporary Constitutional Court's practice, the obligation of the State to protect children and young people is usually directed toward the protection of the best interests of the child.¹⁰² However, regarding the protection of maternity, one decision¹⁰³ should be mentioned. In this decision, the Constitutional Court determined that Article 6 on the Act on the maternity leave of mothers who are self-employed and unemployed mothers was not in accordance with the Constitution from April 3, 1996, to December 31, 2008. The reason for this nonconformity with Constitution was that it created inequality in the eyes of the law for parents who adopted their children because it was stipulated that adoptive parents have the same rights, but rules for the adoption of a child older than one year were not stipulated. Therefore, in practice, mothers who claimed their right to maternity leave could not acquire this right if they adopted a child more than one year old and were self-employed. This is the only example found in the practice of the Constitutional Court linked to the violation of the obligation of the State to protect maternity. It can also be linked to the protection of future generations as it promotes adoption as a mean of parenthood, which enables children without parents and/or children whose parents abandoned them or from whom they had been taken to grow in a safe environment. Furthermore, if more people are ready to adopt, there is a better chance that more women will opt to give the baby up for adoption rather than for abortion.¹⁰⁴ The extent of this provision does not meet the extent of provisions of other constitutions that encourage the commitment to have children¹⁰⁵;

101 U-III/243/2013 from May 11, 2016, U-III-2956/2016 from September 28, 2016, U-III-1674/2017 from July 13, 2017.

102 See, inter alia, U-III/2984/2016 from September 21, 2016, and the decisions cited above. It should be noted that regarding this provision, in most situations, the cases were about parental rights regarding children.

103 U-I-65181/2009 from June 13, 2009.

104 See, for example, Bitler and Zavodny, 2002, pp. 25-33. There are different views on the matter as many researchers have shown that adoption is the least preferred choice for women in their decision-making process. See, inter alia, Porter, 2012, Sisson et al., 2017.

105 See Article 63 para. 2 of the Constitution of the Republic of Serbia (*Ustav Republike Srbije*), Official Gazette, (*Službeni glasnik RS*), nos. 98/2006, 115/2021, Article L para. 2 of the Constitution of Hungary (English version available at: https://www.constituteproject.org/constitution/Hungary_2013.pdf?lang=en. Accessed: 12 April 2022).

however, it may be more pro-childbearing than the provisions¹⁰⁶ that only set out the freedom of choice regarding childbearing. It does not explicitly promote becoming a mother, but the last Strategy of Sustainable Development (2009–2020) shows that one of the key challenges is stimulating the growth of the population of the Republic of Croatia. Therefore, the State could view this provision as a mean to say that its constitutional obligation is to promote childbearing.

The practice of the Constitutional Court regarding Articles 61 and 62 of the Constitution, in connection with Article 35, primarily addresses private, internal relations in families, especially regarding the exercise of parental rights. However, the scope of both articles, especially Article 62, should be viewed more broadly. Namely, it is the obligation of the State to create social, cultural, educational, material, and other conditions promoting the exercise of the right to a decent life and to create conditions that will promote the achievement of the right to a decent life. To do so, it is necessary to include, among “other conditions”, the right to a healthy environment and a healthy life in order for everyone, especially young people (young generations), to have a decent life. It is self-evident that decent life is impossible without a healthy environment.

In addition, Article 63 prescribes the protection of children and of older parents by their children and reads as follows:

Parents shall bear responsibility for the upbringing, support and education of their children, and they shall have the right and freedom to make independent decisions concerning the upbringing of their children.

Parents shall be responsible for ensuring the right of their children to the full and harmonious development of their personalities.

Children with physical and mental disabilities and socially neglected children shall be entitled to special care, education and welfare.

Children shall be obliged to take care of their elderly and infirm parents.

The state shall devote special care to orphans and minors neglected by their parents.

This provision is important for the protection of future generations and the environment because it includes the responsibility of parents for the support and education of their children. This obligation is known for all people who are themselves not yet parents and/or grandparents. Generally, the “future generation” means unborn children, but I believe that this provision can also be interpreted to include unborn generations. Therefore, the Constitution requires that parents (or grandparents) support the future generation(s).¹⁰⁷ The education of children today should

106 See Article 55 of the Constitution of the Republic of Slovenia (Ustava Republike Slovenije), Official Gazette (Uradni list RS), nos. 33/1991-I, 42/1997 – UZS68, 66/2000 – UZ80, 24/2003 – UZ3a, 47, 68, 69/2004 – UZ14, 69/2004 – UZ43, 69/2004 – UZ50, 68/2006 – UZ121,140,143, 47/2013 – UZ148, 47/2013 – UZ90,97,99, 75/16 – UZ70a, 92/2021 – UZ62a. This Article also prescribes that the State creates the conditions to enable parents to decide on having children.

107 This is also the obligation of grandparents as is prescribed by the Family Act (see Article 281, Article 283 para. 3, Article 288 para 2, OG nos. 103/15, 98/19).

include that on sustainable development, the protection of the environment, etc. Moreover, the obligation of parents (or grandparents) to provide for the upbringing and support of their children represents the care of the State for future generations. This obligation represents the responsibility of both parents, who are obligated to ensure these rights for the child.¹⁰⁸ Article 64 of the Constitution should also be mentioned as it prescribes a general duty to protect children and infirm persons.

8. Financial sustainability

Public finances are crucial for executing state roles defined by the Constitution. Therefore, their mid- and long-term sustainability is necessary for social and economic prosperity.¹⁰⁹ However, sustainability as such does not appear in the Constitution as an aspect among the rules of public finances. The Constitution contains only one provision regarding state financing – Article 91, which reads as follows:

State revenues and expenses shall be established in the state budget. The Croatian Parliament shall enact the state budget by a majority vote of all Members of Parliament. Any law whose implementation requires financial resources shall provide for the sources thereof.

The only other constitutional provision that relates to state finances and can be partially linked to the interest of future generations is Article 51, which reads as follows: *“Everyone shall participate in the defrayment of public expenses, in accordance with their economic capacity. The tax system shall be based upon the principles of equality and equity.”*

It is clear that the entire community participates in creating budget funds, and those funds are being spent (among other things) to create conditions for the protection of the environment and for the protection and development of future generations (by building schools, roads, other infrastructure, etc.). The Constitution prescribes that all physical and legal persons are obliged to participate in the creation of budget funds,¹¹⁰ in accordance with their economic capacity and that the tax system is based on the principles of equality and equity. This principle of tax equality and equity represents a special form of the general principle of proportionality (Article 16 of the Constitution).¹¹¹

When discussing local finances, Article 131 of the Constitution should be mentioned as it contains portions that can be linked to financial stability; it reads as

108 U-III-4505/2019 from June 2, 2021.

109 Report on the work of the Commission for fiscal policy for 2020 (*Izvjешće o radu Povjerenstva za fiskalnu politiku za 2020. godinu*), 2020, 2. Available at: https://www.sabor.hr/sites/default/files/uploads/inline-files/FISKALNA_IZVJ_RAD_2020.pdf (Accessed: 22 May 2022).

110 U-I-2282/2014 from November 3, 2020.

111 U-I-411/2019 from March 29, 2022.

follows: “Units of local and regional self-government shall be entitled to their own revenues and to dispose of them freely in the performance of the tasks under their remit. Revenues of local and regional units of self-government shall be proportional to their powers as envisaged by the Constitution and law. The state shall provide financial assistance to weaker units of local and regional selfgovernment in compliance with law.”

Para. 2 of this Article shows that the Constitution prescribes the principle of proportionate revenue of local and regional units of self-government with regard to their power (scope of jurisdiction). In other words, their revenue must be such as to allow for sustainable budgets of local and regional units of self-government, with the obligation of the state budget to provide financial assistance to weaker such units in accordance¹¹² with the law. Their power should not be such that their execution would require more assets than are available.

However, financial sustainability is regulated by the Financial Accountability Act from 2018,¹¹³ the purpose of which is to limit spending, the budget deficit, and public debt; to strengthen accountability for legal, dedicated, and purposeful use of budget funds; and to strengthen the system of control and surveillance to ensure fiscal accountability (Article 1). Furthermore, this Act assures the ensuring and keeping of fiscal accountability, transparency, and mid-term and long-term sustainability of public finances. This goal is to be achieved by establishing, applying, and strengthening fiscal rules and rules for ensuring fiscal accountability (Article 3). This Act applies to the state budget, local and regional budgets, and all budgets of the users of the aforementioned budgets (Article 4 para. 1). It limits the growth of expenses of the state budget by prohibiting it from exceeding the referent potential rate of GDP growth (Article 7) by prohibiting the share of public debt in the GDP from exceeding the referent value of 60% (Article 8). To assist Parliament and the government, this Act establishes a special Commission for fiscal policy (composed of seven members,¹¹⁴ with the president as a professional). This Commission is named by Parliament at the proposal of its Committee for Finances and State Budget. Unlike some countries,¹¹⁵ Croatia did not opt to establish a constitutional ban on excessive public debt, instead establishing this limit by law. Croatia chose the Maastricht limit for adopting the euro (as doing so by 2023 is a Croatian national goal). However, the public debt in 2021 amounted to 82.4% of the GDP.¹¹⁶ It is notable that we do not meet this criterion from 2011.¹¹⁷

112 See, especially, Šinković, 2019, pp. 223–250.

113 OG no. 111/2018. The first such act dates from 2010, the Financial Accountability Act, OG nos. 139/2010, 19/2014.

114 The six non-professional members are representatives of the State Audit Office, the Economic Institute of Zagreb, the Institute for Public Finances, the Croatian People’s Bank, faculties of economics, and law faculties (for faculties, only from the universities in Zagreb, Split, Osijek, and Rijeka).

115 Germany established the Schuldenbremse in 2009 in their Constitution (Article 109 para. 2 of the Grundgesetz), Hungary also set a limit for the maximum public debt of 50% of the GDP in its Constitution.

116 <https://www.hnb.hr/-/dug-opce-drzave-na-kraju-rujna-2021-smanjen-na-82-4-bdp-a> (Accessed: 25 April 2022)

117 <https://www.hgk.hr/documents/aktualna-tema-odrzivost-javnog-duga-svibanj-201557b6f4884c777.pdf> (Accessed: 25 April 2022).

9. The protection of national assets

There are two provisions that can be linked to the protection of national assets other than natural resources. One is Article 68 para. 3, which prescribes the obligation of the State to protect scientific, cultural, and artistic assets as national spiritual values. The other is Article 121a para. 1, which establishes the State Attorney's Office as an autonomous and independent judicial body empowered and duty-bound, inter alia, to protect the property of the Republic of Croatia.

10. Other uniquenesses and peculiarities of the Croatian Constitution, constitutional regulation, and constitutional jurisdiction

Article 49 para. 3 should also be mentioned as it prescribes that the State shall encourage the economic progress and social prosperity of its citizens and care for the economic development of all regions. This provision is aimed at highlighting the obligation of the State to create equal opportunities for all and for equal development of the whole country, which can be linked to the care of the State for future generations.

11. *De lege ferenda* proposals

As was previously shown, the Croatian Constitution is inadequately orientated toward environmental protection and the protection of future generations through sustainable development. It does not contain the "polluter pays" principle as, for instance, the Slovenian¹¹⁸ Constitution does. Furthermore, there is doubt as to whether the right to a healthy life means, in reality, "the right to a healthy environment" although it is the opinion of Croatian legal theory that it does. The State is obliged only to "create the conditions for" a healthy environment. However, despite this, the Croatian legislature contains rather extensive "environmentally friendly" principles in many laws, as was previously mentioned.

There are proposals that would undoubtedly improve the protection of the environment in the Republic of Croatia. First, it would be beneficial if Article 69 were to be amended such that the right to a healthy life is replaced by "the right to a healthy environment" to ensure that the right to a healthy environment is a constitutional

¹¹⁸ See Article 72 para 3.

right. Moreover, the “original” wording from the 1990 Constitution should be used in the manner that the State is obliged to guarantee the right to a healthy environment. Second, as was mentioned in the legal theory,¹¹⁹ Croatia should consider including the right to water as a fundamental right in the Constitution, similar to Slovenia. Some authors feel that this should be done as it would represent a firm and lasting basis of a guarantee to limit the privatization of water services in the Republic of Croatia as a fundamental choice in managing water services.¹²⁰ Another author feels that such commitment is implemented in our legal system in full by the relevant Act (the Waters Act), especially when considering that the service of the public supply of water is reserved only for public suppliers and that this service is not eligible for concessions.¹²¹ However, even with this in mind, when considering the (failed) proposals of legislative changes and attempts of yet more privatization in Croatia’s reform plans, the introduction of the right to water into the Constitution does not seem to be a bad idea. Third, it would be beneficial, although this principle is implemented in various laws, to explicitly mention sustainable development as the firm orientation of the State in the Constitution. Fourth, the role of ombudsman in environmental protection was mentioned. The Constitution enables the enactment of a special ombudsman (or, as the Constitution stipulates, “other commissioners of the Croatian Parliament responsible for the promotion and protection of human rights and fundamental freedoms”), and Croatia already has three special ombudsmen – for equality of genders, for disabled persons, and for children. It may be time to consider a special ombudsman for the protection of the environment similar to the one in Hungary,¹²² whose role it would be to act as a special body with the task to protect, observe, and promote the protection of the environment. Within their scope of work, they could be responsible for the monitoring of laws regarding their alignment with the constitutional right to a healthy environment and the obligation of the State to ensure conditions for such an environment, have the power to instigate legal remedies against environmental acts (permits, etc.), and help prepare environmental policies, strategies, etc. Fifth, the State should observe the ombudsman’s recommendation and organize substantial education for judges regarding environmental matters as general knowledge on environmental law is poor among Croatian practitioners and even scholars.

119 Sarvan, 2016, Staničić, 2018, pp. 34–36.

120 Sarvan, 2016, p. 411.

121 Staničić, 2018, p. 36.

122 Article P of Hungary’s Constitution provides that “*Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.*” In 2007, Parliament created a special Ombudsman for Future Generations, which was grouped with other ombudsmen in 2012 under the Commissioner for Fundamental Rights. The Ombudsman for Future Generations holds the status of a Deputy Commissioner and reports to Parliament annually. <http://environmentalrightsdatabase.org/hungarys-ombudsman-for-future-generations/> (Accessed: 20 May 2022).

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