Chapter X

Slovenia: An Example of a Constitution Guaranteeing High-Level Protection of Natural Resources and *Sui Generis* Right to Drinking Water

Miha Juhart – Vasilka Sancin

1. Introduction

Environmental protection has a long tradition in Slovenia. It is no coincidence that the first world conference on the environment, held in Stockholm in 1972, was accompanied by the publication of *"The Green Book on the Threat to the Environment in Slovenia",*[1] which presented both the state of the environment and the first guidelines for improving it. The institutional framework, which was not particularly conducive to effective environmental protection, nevertheless allowed sufficient scope and freedom to intensify pressure from environmentally conscious individuals and organizations. The establishment of the Assembly Commission and the Republican Committee (a government department) for Environmental Protection and the adoption of the first environmental regulations in the 1970s as well as the Problem Conference on Ecology, Energy, and Austerity in the mid-1980s succeeded in bringing together a number of efforts and in producing results that lack real comparison with the situation in the countries of the former socialist bloc. The foundations were laid for the rehabilitation of large thermal power plants, the gasification of Slovenia, and more.

1 Peterlin, Novak, Kos, and Slivnik, 1972.

Miha Juhart – Vasilka Sancin (2022) Slovenia: An Example of a Constitution Guaranteeing High-Level Protection of Natural Resources and Sui Generis Right to Drinking Water. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 439–478. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_11

Slovenia was then given its first ecological fund and a dedicated environmental resource to replenish it. The first programming document was also drawn up as a basis for channeling the fund's resources, with priorities identified in the areas of air, water, waste, and soil protection. Good organization and internationally fully comparable forest management have contributed to a remarkably well-preserved forest ecosystem as an important legacy for an independent country. The Slovenian farmer has traditionally cared for the land and has contributed to the fact that Slovenia has achieved independence, democratic change, and change in its political and economic composition with relatively little environmental damage, especially compared to other transition countries.[2]

1.1. Most important environmental legal regulation in Slovenia

The normative framework of environmental protection is an intricate system that can be broken down by several criteria. The Slovenian legal regulation of environmental protection can be divided into constitutional, legislative, and self-governing local-level regulation.

The highest legal source in the Republic of Slovenia is the Constitution of the Republic of Slovenia, which was adopted on December 23, 1991.[3] The Constitution, in the broader sense of the constitutional order of Slovenia, is defined by the totality of all regulations of a constitutional nature. The relevant constitutional system is composed of the Constitution and other regulations (norms, provisions) of a constitutional nature, namely the Fundamental Constitutional Charter and constitutional laws for its implementation, which are hierarchically above laws; constitutional laws for the implementation of the Constitution and its amendments; and other possible constitutional laws adopted by the National Assembly with a different purpose and substance.[4]

Furthermore, according to Article 153 para. 2 of Slovenia's Constitution, "Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general acts must also be in conformity with other ratified treaties."

2 Available at: https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran/!ut/p/z1/jY_BCoJAFEW_xYVb31OxrJ0SGGMRapLNJjSmUVBHximhr09oVZT4dvdyzoUHFDKgbf6oeK4q0eb1mM90cSGr0CNhYGLgBC5Gx_AQk62Prr-E0xdgxQ5GG8vfJ2hjkphA5_j45zyc508AdHqeAOW1KN6vem1huxyoZDcmmTTucqxLpbp-raOOwzAYXAheM-MqGh1_KaXoFWSfJHRNmmbPHTt5mvYCc9LReA!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=C12563A400319AA2C12567E100470F3C&db=kon_akt&mandat=II&tip=doc (Accessed: 1 August 2022).

3 The Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a, and 92/21 – UZ62a).

4 Jambrek in Komentar, 2019 II, p. 38.

This means that in principle, treaties that are binding for Slovenia, including those regulating environmental matters,[5] take precedence over laws, while some categories of treaties[6] are hierarchically positioned under the laws but above regulations and other general acts.

Although the core of the Constitution consists of a chapter on fundamental human rights and freedoms (Chapter II, Articles 14–63), the right to a healthy living environment (Article 72) as the primary constitutional provision relating to the protection of the environment is regulated in Chapter III on economic and social relations. Article 72 provides that "Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law."

Another important constitutional provision contained in the same chapter is relevant to mention, namely Article 70a (Right to Drinking Water),[7] which provides that "Everyone has the right to drinking water. Water resources shall be a public good managed by the state. As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity. The supply of the population with drinking water and water for household use shall be ensured by

5 Slovenia is a State party to all of the main international environmental treaties (full list is available at: https://www.gov.si/drzavni-organi/ministrstva/ministrstvo-za-okolje-in-prostor/zakonodaja/) (Accessed: 1 August 2022), including the Aarhus convention (the Act on the Ratification of the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters [Official Gazette of the Republic of Slovenia – MP, No. 17/04]), the Kyoto Protocol (the Act on the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change [Official Gazette of the Republic of Slovenia – MP, No. 17/02]), and the Paris agreement (the Act on the Ratification of the Paris Agreement [Official Gazette of the Republic of Slovenia – MP, No. 16/16 and 6/17]).

6 These treaties shall be ratified by the Government and according to Article 75, para. 6 of the Foreign Affairs act (Official Gazette of the Republic of Slovenia *[Uradni list RS]*, No. 113/03, 20/06 – ZNOMCMO, 76/08, 108/09, 80/10 – ZUTD, 31/15 in 30/18 – ZKZaš) include treaties that

– regulate matters which, according to internal legal order, fall within the competence of the Government
– are concluded with the aim of implementing the instruments of international organizations that are binding for the Republic of Slovenia
– are concluded with the aim of implementing concluded international treaties
– are concluded by ministries and deal with the exchange of experience and maintenance of contacts with ministries in other countries
– regulate issues associated with diplomatic and consular relations
– involve the implementation of assumed obligations or adopted decisions on the international cooperation of the Republic of Slovenia in the field of defense or internal affairs.

7 Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, which was adopted on November 25, 2016, and entered into force on the same date (Official Gazette of the Republic of Slovenia No. 75/16).

the state directly through self-governing local communities and on a not-for-profit basis." This provision is elaborated further in subchapter 3.3.1.

Given the inclusion of these two articles in Chapter III, it is quintessential that the Constitutional Court doctrine and case law on fundamental rights and freedoms be interpreted more broadly and not limited to those rights and freedoms explicitly listed in a specific chapter.[8] In cases in which the Constitutional Court relied on the preamble, it took into account the broader meaning of human rights. The nomotechnical structure and titles of the chapters contribute to the transparency of the constitutional text and do not have the meaning of legal definitions. It is common that human rights and fundamental freedoms in terms of the possibility to act (*facultas agenda*), which is legally protected when the right is violated or imperiled, are also regulated by the provisions of other chapters of the Constitution. Such reasoning is vital, as it also ensures the protection of the individual with a constitutional complaint due to the violation of fundamental human rights and freedoms before the Constitutional Court.

The concept of the living environment from Article 72 of the Constitution is not specified in detail in either the Constitution or other legal acts. The umbrella law in this area is the Environmental Protection Act (*Zakon o varstvu okolja* – ZVO-2).[9] Environmental protection includes both environmental protection and nature protection.[10] ZVO-2 defines the environment as the part of nature that is or could be affected by human activity as well as nature as the whole of the material world and the structure of interdependent elements and processes interlinked according to natural laws (Article 3 of ZVO-2). In this connection, the principle of sustainable development (Article 4 of ZVO-2) features as a fundamental principle supporting the purposes of this Act.

In addition to the specific act regulating the protection of the environment, now ZVO-2, Slovenia also adopted the Nature Conservation Act (*Zakon o ohranjanju narave* – ZON).[11] Individual issues in this area are regulated by numerous other laws that regulate the protection of individual parts of nature or the environment as well as the use of or special interventions in the environment and space. In environmental protection, bylaws are also important and are adopted primarily by the Ministry of the Environment and Spatial Planning based on authorization under law. Under ZVO-1 (now ZVO-2) alone, more than 100 implementing regulations have been adopted; these regulate specific issues in more detail. The vast majority are technical norms and standards that are crucial for assessing individual practices.

8 Jambrek, in Komentar, 2019 II, p. 16.

9 The Environmental Protection Act (Official Gazette of the Republic of Slovenia, Nos. 44/22), adopted on March 16, 2022. Prior to its adoption the previous Environmental Protection Act (ZVO-1) was amended several times: UPB, 49/06 – ZMetD, 66/06 – CC decision, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108 / 09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15, 30/16, 61/17 – GZ, 21/18 – ZNOrg, 84/18 – ZIURKOE, and 158/20). Hereinafter, the references in the text to this act refer to either ZVO-1 or ZVO-2, as appropriate.

10 Vrbica, 2020, p. 962.

11 Nature Conservation Act (Official Gazette of the Republic of Slovenia, Nos. 96/04 – UPB, 61/06 – ZDru-1, 8/10 – ZSKZ-B, 46/14, 21/18 – ZNOrg, 31/18, 82/20, and 3/22 – ZDeb).

Compensatory protection of the environment is regulated on several levels. The general rule on the prohibition of causing harm is set out in the Code of Obligations (*Obligacijski zakonik* – OZ).[12] Already, the general rules of tort law broadly define the concept of no-fault liability. Every perpetrator shall be liable without fault if the damage originates from a dangerous object or dangerous activity. Environmental damage also has a special place in civil tort law. The provision of Article 133 of the Code of Obligations stipulates a special claim for removing the danger of damage, from which a specific individual or a large number of people are threatened with great damage. The following paragraph defines a particular form of liability for damage from generally beneficial activities that cannot be prohibited. Liability for environmental damage is also regulated in ZVO-2 (Articles 161 to 170 of ZVO-2). Slovenia has thus transposed into its legal system the content of Directive 2004/35/EC of the European Parliament and of the Council of April 21, 2004, on environmental liability with regard to the prevention and remedying of environmental damage.[13][14] The concept of liability irrespective of fault is also established in ZVO-2. However, there currently exists no case-law that would clarify the relationship between liabilities under OZ and ZVO-2.

The Criminal Code (*Kazenski zakonik* – KZ-1)[15] of Slovenia contains several provisions referring to the protection of the environment, particularly in Chapter 32 (Criminal offenses against the environment, space and natural resources), which, for example provides for a prohibition of the burdening and destruction of environment (Article 332), a provision on the pollution of the sea or waters from ships (Article 333), illegal import and export of radioactive substances (Article 334), unlawful acquisition or use of radioactive or other dangerous substances (Article 335), the pollution of drinking water (Article 336), the destruction of forests (Article 340), and various provisions criminalizing certain handling of animals (Articles 342–347).

The Constitution of the Republic of Slovenia also explicitly stipulates the importance of the protection of natural resources and cultural heritage (Article 73). The subjects of protection are thus the values of natural wealth and cultural heritage, which the State is obliged to respect, protect, and implement. The provision establishes the constitutional protection of natural sights, rarities, and cultural monuments. The protection of natural resources and cultural heritage encompasses both the physical and spiritual integrity of human dignity, thus realizing the human right to life.[16] The cultural heritage protection is specially regulated in the Cultural Heritage Protection Act (*Zakon o varstvu kulturne dediščine* – ZVKD-1).[17]

12 Code of Obligations (Official Gazette of the Republic of Slovenia, Nos. 97/07 – official consolidated text, 64/16 – CC decisions and 20/18 – OROZ631).

13 OJ L 143, 30.4.2004.

14 Pihler, 2009, p. 1312.

15 Criminal Code (Official Gazette of the Republic of Slovenia, Nos. 50/12 – official consolidated text, 6/16 – amended, 54/15, 38/16, 27/17, 23/20, 91/20, and 95/21 in 186/21).

16 Letnar Černič in Komentar, 2019 I, p. 582.

17 Cultural Heritage Protection Act (Official Gazette of the Republic of Slovenia, Nos. 16/08, 123/08, 8/11 – ORZVKD39, 90/12, 111/13, 32/16, and 21/18 – ZNOrg).

1.2. Most important administrative framework for the protection of the environment in Slovenia

Following Slovenia's independence, a special ministry was organized within the Government of the Republic of Slovenia with the basic competence of the care for the environment; currently, this ministry is the Ministry of the Environment and Spatial Planning (MOP). The exact boundaries and competencies of ministerial departments are determined by law, the content of which is adjusted with each new government. The main tasks of the Ministry are to ensure a healthy living environment for all of the people of the Republic of Slovenia and to promote and coordinate efforts for achieving sustainable development, which, while ensuring social well-being, is based on the rational and economical use of natural resources.[18]

The Agency of the Republic of Slovenia for Environmental Protection (*Agencija Republike Slovenije za okolje* – ARSO) acts within the Ministry with the task to assist citizens and public authorities in making appropriate environmental decisions. The Agency performs professional, analytical, and administrative tasks in the field of the environment at the national level. Among them, the following should be particularly emphasized[19]: the Agency monitors and analyzes natural phenomena and processes in the environment, such as the weather, water quality and quantity, and air quality; it also addresses issues in the field of climate change, which are also the result of excessive emissions of greenhouse gases into the atmosphere, monitors emissions, records them, and influences their reduction through systemic measures. The Agency monitors the state of the environment and provides quality public environmental data, manages the preservation of natural resources and biodiversity, and ensures the sustainable development of the country. With the data and services provided by the Agency, individuals can make appropriate decisions in various life circumstances, such as when planning a trip, economic investments, farming, overflights, floods, polluted air, or allergic sensitivity.

Another important body within the Ministry is the Inspectorate for the Environment and Spatial Planning.[20] The main task of the Inspectorate is to supervise the implementation of regulations in the field of environment and space, conduct individual procedures, and impose sanctions for violations. Among other things, the Inspectorate is responsible for conducting procedures regarding the implementation of laws and regulations in environmental protection and nature conservation, water management, industrial pollution, and genetically modified organisms.

At the local level, the organization of a special body for environmental protection depends on the decision of each individual local community. The unit of local

18 Available at: https://www.gov.si/drzavni-organi/ministrstva/ministrstvo-za-okolje-in-prostor/o-ministrstvu/ (Accessed: 1 August 2022).

19 Available at: https://www.gov.si/drzavni-organi/organi-v-sestavi/agencija-za-okolje/o-agenciji/ (Accessed: 1 August 2022).

20 Available at: https://www.gov.si/drzavni-organi/organi-v-sestavi/inspektorat-za-okolje-in-prostor/o-inspektoratu/ (Accessed: 1 August 2022).

self-government in Slovenia is the municipality. Municipalities in Slovenia differ significantly in area and population. A special body for environmental protection is formed in larger municipalities, while in smaller ones, these tasks are performed by other bodies. The largest municipality in the country is the City of Ljubljana, which has a special department for environmental protection.[21] The main responsibilities of this department are performing tasks related to ensuring environmental protection and nature conservation, preparing measures, guidelines, and recommendations in the fields of environmental protection and nature conservation, proposing rehabilitation programs and ensuring their implementation and control, providing more detailed or special monitoring of the state of the environment and nature and managing the information system for the protection of the environment and nature, preparing vulnerability studies and threat assessments as well as reports on the state of the environment and nature, assessing the impact of plans and planned environmental interventions, and providing management of protected natural values of local importance.

1.3. Relevant international jurisprudence concerning environmental matters in Slovenia

Slovenia has not (yet) deposited any declaration recognizing the jurisdiction of the International Court of Justice (hereinafter ICJ) as compulsory as per Article 36 para. 2 of the ICJ's Statute.[22] It has also not submitted a written instrument to the Depositary of the United Nations Framework Convention on Climate Change, indicating that, in respect to any dispute concerning the interpretation or application of the Convention, Slovenia recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligatory submission of the dispute to the ICJ; further, it has thus far not concluded any special agreements with other States, on the basis of which "an environmental case" could have been submitted to the ICJ.

Slovenia joined the Council of Europe on May 14, 1993,[23] which makes it important to also consider the case law of the European Court of Human Rights (hereinafter ECtHR). There is currently a case pending before the ECtHR that was brought against 33 Contracting States of the European Convention on Human Rights (hereinafter ECHR), including Slovenia: *Duarte Agostinho and Others v. Portugal and Others* (communicated case) – 39371/20. The case concerns the greenhouse gas emissions from 33 States, which, according the applicants' submission, contribute to global warming and result, inter alia, in heatwaves that are affecting the applicants' living

21 Available at: https://www.ljubljana.si/sl/mestna-obcina/mestna-uprava-mu-mol/oddelki/oddelek-za-varstvo-okolja/ (Accessed: 1 August 2022).

22 Slovenia became a Member State of the UN on May 22, 1992, and thus *ipso facto* also a State party to the Statute of the ICJ.

23 Available at: https://www.coe.int/en/web/portal/slovenia (Accessed: 1 August 2022).

conditions and health. The applicants complain, inter alia, of the failure by these 33 States to comply with their undertakings, in the context of the 2015 Paris Agreement on Climate Change (COP21), to keep the increase in the global average temperature well below 2° C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5° C above those same levels, it being understood that this would substantially reduce the risks and impact of climate change. The applicants submit that the signatory States, including Slovenia, are obliged to take measures to regulate, in an adequate manner, their contributions to climate change. The applicants emphasize the absolute urgency of taking action in favor of the climate and consider that, in this context, it is crucial that the Court recognize the States' shared responsibility and exempt the applicants from the obligation to exhaust the domestic remedies in each member State.[24]

It is additionally important to mention that in March 2020, the ECtHR delivered its judgment in *Hudorovic et al. v. Slovenia* (App. nos. 24816/14 and 25140/14) on the basis of two complaints filed by Roma families who had been living in informal settlements with no access to water, sanitation, sewage, or electricity for decades. This was the first time that the ECtHR had to examine whether the right to access safe drinking water and sanitation is protected by the ECHR (particularly under Article 8). The case attracted a number of third-party interventions (e.g., from the European Roma Rights Centre and the Human Rights Centre of Ghent University). The facts of the case were as follows: The first set of applicants, father and son, who reside in the Roma settlement of Goriča vas in Ribnica Municipality, have no access to clean water; they collect water from the cemetery or a polluted stream and sometimes from other houses nearby. Due to the lack of sanitation services, they have to defecate in areas around their home. The second set of applicants, a family of 14, live at Dobruška vas 41 in the Škocjan Municipality and also lack access to basic infrastructure. A fountain with drinking water is available 1.8 kilometers away from their hut, and although there is a group water-distribution point in their settlement, they are not connected to it. For years, hostile neighbors allegedly did not allow these applicants to lay a pipe. Because Slovenian law forbids all of the applicants from accessing the public water network, which is only open to households with the required building permits, alternative solutions, such as relocation and the use of a co-financed water tank and a diesel generator have been attempted without success. The applicants claimed that lacking water and other basic infrastructure has resulted in hygiene problems, frequent diseases, discomfort, embarrassment, and pain. Moreover, for their children, these living conditions and the ensuing stigmatization have compromised their schooling and social integration. They therefore alleged a violation of the prohibition of inhuman or degrading treatment (Article 3 ECHR) and the right to enjoy their private and family life as well as home (Article 8 ECHR) taken alone and in conjunction with the prohibition of discrimination (Article 14 ECHR).

24 Available at: https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22duarte%22],%22sort%22:[%22kpdate%20Descending%22],%22itemid%22:[%22002-13055%22]} (Accessed: 1 August 2022).

In its judgment, the ECtHR recalled previous case law on environmental and health issues and confirmed that the high risks to health associated with contaminated water constitute an interference with Article 8 rights (§ 113). Without recognizing a "right to water" protected by the ECHR, the Court notably accepted that a "persistent and long-standing" lack of access to safe water may trigger the State positive obligations under Article 8. Ultimately, however, it held that "even assuming that Article 8 is applicable there has been no violation of that provision." On this basis, a possible violation of Articles 3 and 14 of the ECHR were also dismissed. The conclusion mainly relies on (1) the positive measures taken by the respondent State, viewed against its wide discretion in socioeconomic matters and the progressive realization of water and sanitation rights, (2) the social benefits received by the applicants "which could have been used towards improving their living conditions", and (3) the applicants' lack of substantiation and evidence of the adverse effects that lacking access to water and sanitation has had for their dignity and health. Although the judgment does not challenge the restrictions set by Slovenian legislation to access water and sanitation services, it does acknowledge that such legislation could produce disproportionate effects on the members of the Roma community insofar as, similar to the applicants, they live in illegal settlements and rely on social benefits for their subsistence (§ 147). Although in this concrete case, the ECtHR decided that those risks were sufficiently mitigated, the precedent may be of value for future complaints by Roma or other disadvantaged groups living without basic utilities.

Given Slovenia's membership in the EU since 2004, it is also important to mention the jurisprudence of the Court of Justice of the European Union (CJEU) against Slovenia in environmental matters.

Thus far, there have been six cases initiated against Slovenia, mostly due to non-transposition or non-respect of the EU waste management legislation. Thus, in case C-506/17, the Commission initiated proceedings against Slovenia for late transposition of a directive concerning municipal waste landfills (Council Directive 1999/31/EC). The case was closed with a finding that Slovenia breached the Council Directive. In case C-153/16, following a complaint by an individual, the Commission opened an investigation into the alleged improper management of waste, in particular, used car tires, in a gravel pit on the territory of the municipality of Lovrenc na Dravskem polju. The case was closed, with the Commission's lawsuit partially successful. Further, in case C-140/14, the Commission opened an investigation into alleged environmental pollution linked to the "old Cinkarna" site, a large brownfield site near the center of Celje (the fourth-largest city in Slovenia). The site contains brick residue, demolition waste, tar, and other waste, some of which originates from zinc smelting activities. The case was closed with a finding that Slovenia breached relevant EU Directives. In case C-49/10, the Commission initiated proceedings against Slovenia for delayed transposition of Directive 2008/1, resulting in only 12% of waste treatment plants operating with the relevant certificates. The case was closed with a finding that Slovenia failed to fulfill its obligations under Directive 2008/1.

Case C-402/08 was initiated because Slovenia failed to send a notification on the transposition of Directive 2004/35/CE of the European Parliament and of the Council of April 21, 2004, on environmental liability with regard to the prevention and remedying of environmental damage. In response to a question from the Commission, it was clarified that the Directive will be transposed by the Act on Amendments and Additions to the Act on Environmental Protection. The case was closed with a finding that Slovenia failed to fulfill its obligations under Directive 2004/35 and thus failed to ensure compliance with the polluter pays principle.

Finally, in case C-365/10, the Commission informed Slovenia that the PM10 limit values laid down in Council Directive 1999/30/EC of April 22, 1999, relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter, and lead in ambient air have been exceeded in several areas and agglomerations in Slovenia. The case was closed with a finding that Slovenia breached Directive 1999/30.

---

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

2.1. The role of Parliament in shaping environmental protection beyond legislation

The National Assembly of Slovenia[25] in March 2020[26] adopted a National Environment Protection Program with programs of measures until 2030 (ReNPVO20-30), which determines “conservation of nature and a quality environment as values of Slovenian society.”[27] The ReNPVO20-30 states that to achieve Slovenia’s environmental vision of a *Preserved nature and healthy environment in Slovenia and beyond enabling quality of life for present and future generations*, the National Program for Environmental Protection for the period of 2020–2030, it sets out the orientations, objectives, tasks, and actions of environmental stakeholders, namely: (a) long-term environmental protection policies, objectives, targets, and measures; (b) long-term policies, objectives, targets, and measures for the conservation of biodiversity and the protection of natural values (National Nature Conservation Program); (c) the

25 Article 72 para. 1 of the ZVO-2 provides that “the National Assembly of the Republic of Slovenia, on the proposal of the Government, shall adopt a national programme for environmental protection, which shall contain long-term objectives, guidelines and tasks for environmental protection.”

26 Between October 1999 and April 2022, the National Environment Protection Action Program, adopted by the National Assembly in September 1999, guided environmental actions in Slovenia.

27 Available at: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODLO1985 (Accessed: 1 August 2022).

National Water Management Policy (National Water Management Program); (d) measures to achieve the objectives of the Slovenian Development Strategy 2030, which also identifies a preserved and healthy natural environment as one of the strategic orientations for achieving a high quality of life; (e) guidelines for the planning and implementation of policies in other sectors that have an impact on the environment; (f) guidelines and measures for meeting international development commitments (in particular, the 2030 Agenda for Sustainable Development); (g) policies and measures to meet international commitments in the field of environmental protection, nature conservation, and water management.

Furthermore, in February 2020, the Government of Slovenia adopted the Integrated National Energy and Climate Plan of the Republic of Slovenia,[28] a strategic action plan to tackle climate change through 2030, and in July 2021, the National Assembly of Slovenia adopted a Resolution on Slovenia's long-term climate strategy through 2050 (ReDPS50),[29] with the aim of achieving zero net emissions and climate neutrality by 2050.

A special working body of the National Assembly of Slovenia dealing with environmental matters is the Committee on Infrastructure, Environment, and Spatial Planning.

2.2. The role of the Constitutional Court in shaping environmental protection

Several times, in its jurisprudence, the Constitutional Court has tackled environmental matters and, with its interpretation of the relevant constitutional provisions, significantly contributed to the formation of environmental protection in Slovenia. The relevant decisions are analyzed below (see subchapter III).

2.3. Relevant case law of ordinary courts and the Supreme Court in relation to environmental protection

Regarding the protection of the environment, the regular courts in the Slovenian legal system primarily provide compensatory protection for individuals who suffer damage due to harmful effects from the environment. The rules of civil law are very narrow with regard to the possibility for an individual to request the cessation of the impact due to environmental interventions, such as the removal of the source of the impact or the prohibition of performing a certain activity.[30] If harmful factors from one property interfere with the use of neighboring or nearby property across the border, which is normal given the nature and purpose of the property and local conditions, or cause significant damage, it is considered prohibited immission. If

28 Available at: https://www.energetika-portal.si/dokumenti/strateski-razvojni-dokumenti/nacionalni-energetski-in-podnebni-nacrt/ (Accessed: 1 August 2022).

29 Official Gazette of the Republic of Slovenia, No. 119/2021.

30 Možina, 2016, p. 22.

appropriate measures cannot be taken to prevent disruption or damage, the prohibition of such activity or the removal of the source of the damage may be required. Similarly, the prohibitive injunction is also stipulated by the regulations on environmental protection, where its *sedes materiae* is Article 231 of ZVO-2. Under this provision, citizens as individuals or their associations and organizations may file a motion for the court to stop the interference if it causes or could cause excessive pollution of the environment, if it causes or could cause an immediate threat to human life or health, or to prohibit it from initiating an intervention in the environment if it is demonstrated that it is likely to cause such consequences. Despite this provision, the case law still refers to general civil law provisions and does not deal with slightly different conditions on different legal grounds.[31]

Among the main sources of harmful effects on the environment are various industrial and infrastructural activities that are regulated by special regulations on ecological standards and permissible pollution limits (limit emissions performance). Even when an industry is a source of harmful immissions, an activity is not in itself illegal if it has been issued with appropriate operating and other administrative permits and is performed according to the prescribed standards; thus, it cannot simply be prohibited by civil action. Industrial activity, in particular, the operation of public infrastructure, can be a generally beneficial activity, the effects of which the injured parties must suffer.[32] Therefore, it is not possible to file an injunction for a prohibition on activities carried out in the public interest. This follows from Article 133(3) of the Civil Code. It provides that "If damage arises during the performance of generally beneficial activities for which permission has been given by the relevant authority it shall only be possible to demand the reimbursement of damage that exceeds the customary boundaries." In the case of adverse effects from generally beneficial activities, the legal protection of an individual is limited to a claim for compensation for excessive damage but not to the possibility of filing an injunction for an operating prohibition. Although the case law has yet to confirm this, the position that this also applies to the enforcement of a prohibitive injunction on the basis of Article 231 of ZVO-2 is defended. Although this statutory provision has no direct connection to Article 133(3) of the Civil Code, it should not apply to activities performed in the public interest.[33] The case law interprets the legal standard of generally useful activity very broadly. In general, the acceptability of activities in the broader environment is assessed, primarily at the expense of individuals who are heavily affected by the operation: "A generally useful activity in the sense of Article 156(3) of the ZOR [the decision refers to the previously valid law, but it is exactly the same statutory text as Article 133(3) of the currently valid OZ] is any activity that a certain environment recognises as necessary and useful and which serves not only the interests of a limited, predetermined range of

31 Vrbica, 2020, p. 962.
32 Damjan, 2011, p. 245.
33 Ibid.

entities."[34] Moreover, case law has yet to establish any rules on the understanding of the concept of authorization by the competent authority. It would be correct to consider only those permits for which the fact of adverse effect was taken into account in the issue procedure.

The case law developed in regard to road noise damage is very interesting for the development of the protection of individuals from harmful effects from the environment. In Slovenia, truck transit traffic has increased substantially, and the increase has not been followed by the construction of motorways. Before the completion of the motorways, truck traffic ran through some settlements and caused vibrations and noise, especially at night. Due to the previously mentioned Article 133(3) of the Civil Code, local residents did not initiate proceedings to prohibit traffic through the settlement but filed a claim for damages against the state that owns the road. The problem with this claim for damages was the definition of damage. There were no concerns regarding the reimbursement of property damage caused to the buildings due to the vibrations (e.g., cracks in the walls), and the State paid substantiated claims without court proceedings. The question then arose as to whether local residents could also claim non-pecuniary damage due to the uncomfortable feelings caused by transit traffic. Under Slovenian law, the possibility of claiming non-pecuniary damage is limited. The provision of Article 179(1) of the Civil Code, which stipulates that monetary compensation may also be paid for mental distress suffered owing to the violation of personal rights, is essential. In such a case, the court may determine only monetary compensation regardless of the compensation for pecuniary damage, even if there is no pecuniary damage.[35] The question before the court was whether the locals experienced mental distress due to the violation of their personal rights. The Supreme Court of the Republic of Slovenia ruled that "The right to a healthy living environment (Article 72 of the Constitution) is a personal right. If the interference with the individual's right (in this case due to noise that exceeded the permissible noise limit and to which the person was exposed for a long period of time) has already occurred, the victim is entitled to compensation for damages. Under Article 200 of the ZOR [the decision refers to the previously valid law, but it is exactly the same legal text as the Article 179(1) of the currently valid Civil Code), mental pain due to the violation of the right to personality, depending on the degree of pain and its duration, is also legally recognised, where it is not necessary for the interference with personal rights to lead to impairment of health. The concept of mental distress should be interpreted broadly so that it encompasses any psychological discomfort. There is no basis in the law for concluding that only those who suffer consequences in their health due to encroachments on personal rights have the right to compensation."[36] This position has been reaffirmed several times, and on this basis, the State has paid out the awarded compensation to local

34 Judgment of the Supreme Court of the Republic of Slovenia II Ips 473/2001 of May 30, 2002.

35 Jadek Pensa, 2009, p. 1036.

36 Judgment of the Supreme Court II Ips 507/1992 of March 25, 1993.

residents along transit roads.[37] For example, the individuals who suffered the most from noise pollution, as their house was a mere 6 meters away from the road, were awarded compensation in the amount of EUR 5,500 and EUR 5,600, respectively, for the relevant period of 57 months (January 2004 to October 2008).[38]

2.4. The role of the President of the Republic of Slovenia and the Ombudsman for human rights

In 2019, the President of the Republic of Slovenia, who, according to Article 102 of the Constitution, performs a representative function (executive powers being entrusted to the Government), established a permanent consultative committee for climate policy, which issues positions and recommendations and regularly consults with it on matters relating to climate change.[39]

The Constitution also established the institution of Ombudsman for Human Rights and Fundamental Freedoms (Article 159), mandated to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority. The Office of the Ombudsman for the Rights of Citizens was established by the Human Rights Ombudsman Act.[40] The Ombudsman regularly examines petitions in the field of the environment.[41]

A good example of the Ombudsman's activities is the following case concerning access to drinking water.[42] In the spring of 2019, the petitioners informed the Ombudsman of problems in the municipality of Rogaševci regarding their connection to the public water supply network. Their properties are located only a few meters from the pipeline, yet they could not connect to the water supply network. The water supply at their home was inappropriate, as the groundwater is mineral water and thus unsuitable for drinking. The Ombudsman turned to the municipality with several questions. The municipality explained the process of reconstructing the public water supply project. The project, which was completed in 2015, did not enable connection to all households. The municipality stated that it is planning a project to upgrade the water supply network, but it is proceeding slowly due to a lack of financial resources. The municipality's answers did not convince the Ombudsman. If the municipality's funds are not sufficient or if the municipality expects that construction will not be possible in a reasonable time due to limited funds, it is expected to do everything it

37 Judgment of the Supreme Court II Ips 813/2007 of November 29, 2007, Judgment II Ips 409/2009 of February 28, 2010.

38 Možina, 2016, p. 23.

39 See at: https://www.up-rs.si/up-rs/uprs.nsf/objave/053003EDFF3B5143C125837E005219F4?OpenDocument (Accessed: 1 August 2022).

40 Official Gazette of the Republic of Slovenia, No. 69/17.

41 Since May 2012, the Ombudsman has dealt with 40 initiatives concerning environment and spatial planning and has regularly interacted with competent ministries and civil society concerned with the protection of the environment. See: https://www.varuh-rs.si/en/activities/varovanje-pravic-po-podrocjih/environment-and-spatial-planning/ (Accessed: 1 August 2022).

42 Opinion 18.1-11/2019 of December 23, 2019.

can to solve the problem of the supply of drinking water to all residents, who have no influence on the implementation of the investment. They are the only ones directly affected by the long-term actions of the authorities. The municipality initially did not accept the Ombudsman's opinion but later announced that it had found a solution for the petitioners and connected them to the public water supply network on December 6, 2019. The Ombudsman considers the behavior of the municipality to be adequate, despite that the solution was only achieved through his intervention. The initiative of the petitioners was justified, and the Ombudsman concluded that the municipality violated the principle of good governance.

The Constitution also provides (Article 159, para. 2) that "special ombudsmen for the rights of citizens may also be established by law for particular fields." Up to the present, no special ombudsperson for "environmental rights" has been established, but such a development under the mentioned constitutional provision cannot be ruled out in the future.

Further, in cases in which certain environmental information is requested but not provided (in a timely manner) by the relevant organs, the Information Commissioner – an autonomous and independent state body with competences in the field of two fundamental human rights protected by the Constitution of the Republic of Slovenia (the right of access to public information and the right to the protection of personal data) – has a mandate to request such environmental information and is in practice oftentimes acting in this capacity.[43] The annual reports of the Information Commissioner mention some concrete examples of such cases, and the report for 2021[44] exposed four such instances. Among this is also a case[45] in which the Information Commissioner emphasized that due to the provisions of the Aarhus Convention, environmental information is not exempted from free access to public information under the Public Information Access Act.[46] Namely, the applicant has requested to receive a letter from the Public Enterprise Vodovod Kanalizacija Snaga, d.o.o. addressed to the Municipality of Ljubljana on the acquisition of property rights within the narrowest water protection area, together with a table of possible infringements. The authority refused access, citing the exception of the protection of administrative procedure. In the appeal proceedings, the Information Commissioner found that the contested decision (and the requested documents) did not show that (any) administrative procedure had been initiated, nor had the authority demonstrated any prejudice to its implementation, and they therefore upheld the appeal and ruled that the authority should provide the requested information to the applicant. In the appeal procedure, the Information Commissioner also found that the requested information concerned data on emissions into the environment and that the requested document and its

43 See at: https://www.ip-rs.si/ (Accessed: 1 August 2022).

44 See at: https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/LP2021.pdf (Accessed: 1 August 2022).

45 Number of the Information Commissioner's decision is 090-292/2020.

46 Official Gazette of the Republic of Slovenia, No. 51/06, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – decisions of the Constitutional Court, Nos. 102/15 in 7/18.

annex contain the detection of infringements in the water protection areas from agricultural use. Consequently, it decided that the requested information is absolutely freely accessible information of a public nature pursuant to Article 6(3)(2) of the Public Information Access Act (environmental data).

---

3. Basis of fundamental rights

3.1. The right to a healthy living environment in Slovenia's Constitution

The core stipulation of Slovenia's Constitution relating to environmental protection is, as mentioned above, the provision of its Article 72. In paragraph one, it explicitly stipulates that everyone has the right, in accordance with the law, to a healthy living environment. The use of the term "living" in this connection is accidental, and no special meaning is attached to it. More interestingly, the right to a healthy environment is included not in the chapter on fundamental human rights and freedoms but in the chapter on economic and social relations. The doctrine sees the reason for this in the programmatic nature and limited enforceability of this right.[47] Nevertheless, the recent Constitutional Court case law also treats the right to a healthy environment as a fundamental human right and provides legal protection to the individual who invokes it.[48] However, this legal protection is not unconditional, as Article 72(2), which prescribes the tasks of the State, must also be considered. The State shall promote a healthy living environment, and to this end, the conditions and manner in which economic and other activities are pursued shall be established by law. It follows that an individual does not have an unconditional injunction to prohibit certain activities or a motion for the State to carry out certain conduct.[49]

In a high-profile case, a group of individuals demanded that the regular court prohibit the first-instance administrative body and the Ministry of the Environment and Spatial Planning from issuing a building permit, environmental permit, use permit, or any other document that could allow the company to rehabilitate and operate, store, and process hazardous and other wastes. Before that, hazardous waste was dumped and stored at this location, and there was significant pollution of the surroundings and especially the river, where fish died. As no other remedy is available, it was alleged that the recurrence of such an event could only be prevented by prohibiting the administrative authorities from issuing permits, as this alone ensures that the reopening and rehabilitation of the disputed facility are prevented.

47 Grad, Kaučič, and Zagorc, 2020, p. 862.
48 Knez in Komentar, 2019 I, p. 576; Grad, Kaučič, and Zagorc, 2020, p. 862.
49 Jadek Pensa, 2009, p.1332; Pličanič, 2003, p. 109.

The Supreme Court dismissed this lawsuit and stated, "It is wrong for the plaintiff to understand that in an administrative dispute, he can achieve a prohibition of future actions of the administrative body – the possible issuance of administrative permits and consents to a third party. Deciding on preventive measures for remediation and prevention of environmental damage is not within the jurisdiction of the court."[50] Therefore, the constitutional provision does not mean that it is the obligation of the State to provide everyone with a healthy living environment, which would mean the exclusion of all risks arising from human relations with nature: "The substance of the right to a healthy living environment is determined by the legislator by setting the limits of admissibility of interventions in the environment and, therefore, also determining the conditions for the exploitation and use of natural resources. The state shall also ensure a healthy living environment by preserving the diversity and quality of natural resources and by reducing the consumption of natural resources. With its active conduct, the state is obliged to attend to the protection of the public interest and thus also the appropriate normative regulation."[51] According to the Court's majority, the addressee of the right to a healthy living environment is not the environment itself but the individual who is present in the environment at the moment. At least *prima facie,* it is not about protecting future generations.[52] The environment is thus protected indirectly in the sense that the anthropological rather than the ecocentric ontological aspect prevails.[53] However, different views also exist that place the environment as a whole at the forefront and view humans as an integral part of the environment.[54]

It is important that the right to a healthy living environment is considered a fundamental human right in the Slovenian legal system, which is also the basis for its comprehensive legal protection, enforced both at the level of reviewing the constitutionality of laws and other general legal acts and at the level of constitutional appeal if it constitutes interference with the legal position of an individual.

3.2. The right to a healthy living environment in the Constitution and the jurisprudence of the Constitutional Court

The right to a healthy environment (Article 72) of the Constitution can be considered an important hard law framework provision (including the polluter pays principle enshrined in paragraph 3 of Article 72), as while, at a first glance, this article seems to be of a declarative nature, envisaging its content to be further regulated in legislation, the Constitutional Court significantly contributed to its normative development through its relevant jurisprudence in environmental matters.

50 Decision of the Supreme Court I Up 15/2018 of March 21, 2018.

51 Decision of the Constitutional Court U-I-98/04 of November 9, 2006.

52 Knez in Komentar, 2019 I, p. 577.

53 Pličanič, 2003, p. 51.

54 Jadek Pensa, 2009, p. 1333.

For example, in Decision U-I-98/04 of November 9, 2006, the Constitutional Court of Slovenia addressed the question of the compatibility of the Game and Hunting Act with the Constitution, as the Act does not limit the duration of the priority right of previous hunting ground managers to obtain a concession for sustainable game management to the procedure for the first grant of a concession after the entry into force of the Act. It found that Article 72 determines the obligation of the legislator "…to ensure a healthy living environment and, to that end, to determine the conditions and manner in which economic and other activities are to be carried out. The content of the right to a healthy living environment is determined by the legislator by setting the limits of permissibility of interference in the environment…" Moreover, "…The State also ensures a healthy living environment by preserving the diversity and quality of natural goods and by reducing the consumption of natural resources…."

Further, Decision U-I-164/14 of November 16, 2017, considered the issue of the unlawfulness of the Act on Spatial Planning of National Significance,[55] the Water Act,[56] and the Decree on the National Spatial Plan for the Central Training Ground of the Slovenian Armed Forces Postojna,[57] which allegedly interfered with the constitutional position of the Municipality of Postojna by impermissibly interfering with the municipality's original competence to adopt spatial planning acts regulating spatial and environmental aspects of spatial planning interventions. The Court pronounced that "The right to a healthy living environment is protected by standards or norms which ensure that there are no impacts on the environment which are so excessive as to endanger human health, and that emission limit values are one of the most important bases for the exercise of the right to a healthy living environment." Similar pronouncements can be found in Decisions Up-262/97, U-I-87/99, and U-I-80/04.

In Decision U-I-40/06 of October 11, 2006, the Court had to pronounce regarding allegations that ZVO-1 interferes with the property rights of forest owners by providing that game is state property. The Court stated, "Under Article 72(2) of the Constitution, the State has a duty to ensure a healthy living environment. It must promote social development that provides long-term conditions for human health, well-being and quality of life, and the preservation of biodiversity. The purpose of exercising the right to hunt is to ensure a healthy living environment by protecting wild game, which is a natural treasure." It specifically referenced the principle of sustainable development when, in para. 23, it stated, "In the review of proportionality in the narrow sense the Constitutional Court balanced the need to exercise the [broader] hunting right for the preservation of the natural resource against the

55 Since 2007, assumed within the Spatial Planning Act (Official Gazette of the Republic of Slovenia, Nos. 33/07, 70/08 – ZVO-1B, 108/09, 80/10 – ZUPUDPP, 43/11 – ZKZ-C, 57/12, 57/12 – ZUPUDPP-A, 109/12, 76/14 – odl. US, 14/15 – ZUUJFO, 61/17 – ZUreP-2 in 199/21 – ZureP-3).

56 Official Gazette of the Republic of Slovenia, Nos. 67/02, 2/04 – ZzdrI-A, 41/04 – ZVO-1, 57/08, 57/12, 100/13, 40/14, 56/15, and 65/20.

57 Official Gazette of the Republic of Slovenia, Nos. 17/14 and 75/17 – the decision of the Constitutional Court repealed the Decree.

weight of the interference with the right to private property. On the basis of Art. 72.2 of the Constitution, the state is obliged to promote a healthy living environment. It must encourage social development such that it enables the long-term conditions for people's physical and mental well-being, quality of life, and the preservation of biological diversity. The goal of environmental protection is inter alia also to ensure the sustainable use of natural resources. According to the principle of sustainable development determined in Art. 4 of ZVO-1, the state is obliged to encourage such economic and social development of the society which in satisfying the needs of the present generation considers the equal possibilities of satisfying the needs of future generations and enables the long-term preservation of the environment."

Another interesting decision juxtaposing the prohibition of discrimination and the right to health and to a healthy living environment is Decision U-I-218/07 of March 26, 2009, in which the Court had to address the issue of the constitutionality of the ban on smoking in restaurants, which might place smokers in an unequal position. The Court posited that the right to a healthy environment also includes the absence of tobacco smoke because "on the other hand, there is the individual right to health (Article 51 of the Constitution) and the right to a healthy living environment (Article 72 of the Constitution), which require the legislator to take appropriate measures to ensure that they are safeguarded." A similar pronouncement can be found in Decision U-I-141/97.

In Decision U-I-40/12 of April 11, 2013, the Court had to address the supposition that the Act on the Prevention of Restraints of Competition is contrary to the right to inviolability of the home under Article 36 of the Constitution and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court confirmed that "The power of the legislature to determine the conditions and manner of carrying on a commercial activity in order to ensure a healthy living environment (Article 72(2) of the Constitution). In order for the legislator to be able to give effect to all of the above-mentioned constitutional powers, it is not sufficient for it to regulate the exercise of particular economic activities in accordance with those powers, but it must also ensure that those rules are effective in everyday life."

There is also important constitutional jurisprudence on restrictions of the right to free economic initiative to protect the right to healthy environment. In U-I-30/95 of December 21, 1995, in its petition for an assessment of the constitutionality and legality of the contested zoning plan, the Association of Ecologists of Slovenia stated that it is a planned and rough intervention in the spatial area, which, due to its natural values, requires a much more cautious approach, in which a report on the state of the environment is required by ZVO-1. The Court annulled the Decree on adopting the building plan of the small industry zone of Spodnje Gorje, morphological unit "U-B15" – region "1.2. – Bled".

In Rm-2/02 of December 13, 2002, a third of the members of the National Assembly submitted a proposal to the Constitutional Court for an opinion on the compatibility of the Treaty between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the regulation of status and other legal

relations related to the investment in and exploitation and decommissioning of the Krško Nuclear Power Plant (NEK) with the Constitution. The Court found that the obligation of the State to ensure a high level of nuclear safety is derived from Arts. 72.1 and 72.2 of the Constitution (a healthy living environment). In determining the individual aspects of nuclear safety guaranteed by the Constitution, in the context of the discussed matter, the treaties that deal with the field of ensuring nuclear safety, the principle of the compulsory subsidiary actions of the State as one of the fundamental principles in the field of spatial planning, and the fundamental grounds of the statute that regulates nuclear safety had to be considered. The provisions of the Treaty would, according to the Court, be inconsistent with Articles 72.1 and 72.2 of the Constitution if they prevented the State from fulfilling the obligations that it has in ensuring a high level of nuclear safety or if the State were, on the basis of such an obligation, to adopt a regulation that would prevent it from fulfilling these obligations. Irrespective of the Treaty, during the regular operating period of the NEK, Slovenia is obliged to plan nuclear waste management and spent nuclear fuel management and is responsible for ensuring that any solution adopted is in accordance with the highest safety standards, the observance of which is required by the Constitution. Furthermore, the State is not obliged to wait infinitely for the eventual adoption of a joint solution regarding the decommissioning of NEK. It is obliged to fulfill its part of the obligations determined in the Treaty, and after the regular operating period of NEK, as the State on the territory of which NEK is located, it must ensure its decommissioning and, if necessary, adopt all of the necessary measures. Accordingly, Art. 10 of the Treaty is not inconsistent with Arts. 72.1 and 72.2 of the Constitution. In addition, after the eventual entering into force of the Treaty, the Republic of Slovenia, as the State on the territory of which NEK is located, must provide that the means for decommissioning NEK and for the disposal of nuclear waste and spent nuclear fuel will be ensured at all times. Thus, Art. 11 of the Treaty, in which the contracting Parties agreed to how they would distribute the financial burden concerning the decommissioning of NEK and how they would dispose of nuclear waste and spent nuclear fuel, is not inconsistent with Arts. 72.1 and 72.2 of the Constitution. In the event that the safety of NEK operation was endangered, the provision of a deciding vote is built into the decision-making system, which enables a decision to be reached promptly. Furthermore, the regulation of the management of the company, envisaged in Art. 3 of the Treaty, does not prevent the State from executing its competencies regarding the supervision of the operation of NEK and, above all, in regard to ensuring nuclear safety. Accordingly, the Court found that Art. 3 of the Treaty is not inconsistent with Arts. 72.1 and 72.2 of the Constitution. Several times, the Court *expressis verbis* also relied on the principle of no undue burden on future generations (paras. 30, 31, and 37) when emphasizing that in dealing with radioactive waste, "solutions adopted must, in conformity with the principle of prohibition against too excessive burdening of future generations, respect the strictest safety standards."

Further, in U-I-64/14 of October 12, 2017, concerning illegal construction in existing Roma settlements, the Court Stated that "The Government emphasises that

legislation in the field of spatial planning and construction of buildings is primarily intended to protect the public interest, which is expressed in the requirements for the safe use of buildings, a safe and healthy living environment, the rational use of land and the protection of other constitutional values."

In U-I-22/15 of March 27, 2019, the Court stated that "The right to a healthy living environment under Article 72(1) of the Constitution is one of these values, which require the State to take appropriate nuclear and radiation safety measures"; this was further confirmed in a similar decision, U-I-292/97.

It is worth mentioning in particular the separate opinion in the affirmative of Dr Rajko Knez, the judge in Up-133/16 of March 14, 2019, in which the Court defined the immovable property constituting the protected farm as well as the movable property forming part of the estate of the deceased and declared the Appellant the transferee of the immovable property constituting the protected farm. Judge Knez, referring to the sustainable development principle, stated, "At the same time, Article 72(1) enshrines the right to a healthy living environment as a human right. For this to be effective, the environment must be protected, and natural resources conserved, with care taken to strike an appropriate balance between these values and the many interests at stake. In my view, the inheritance of agricultural land also involves not only a clash between the private interests of the heirs and the question of the economic value of the farm, but also a clash between these interests and the interests of farmland conservation – that is to say, a clash between private interests and the public interest."

In U-I-181/16 of November 15, 2018, the Council of State submitted a request for a review of the constitutionality of the Health Care and Health Insurance Act and the Pension and Disability Insurance Act, which provide for compensation for damage caused to the Health Insurance Institution of Slovenia and the Pension and Disability Insurance Institution of Slovenia by their insured persons in certain circumstances. The Court added that "in interpreting the second sentence of Article 74(2) of the Constitution, it is necessary to have regard to Article 72(2) of the Constitution, which obliges the State to ensure a healthy living environment for the individual, of which the working environment is a part."

In U-I-182/16 of September 23, 2021, it was alleged that the amendments introduced, under which the validity of environmental permits is no longer limited in time and under which less stringent emission limit values may exceptionally be set in an environmental permit for installations that are likely to cause pollution on a large scale, are constitutionally controversial. The Court had to consider the level of protection that the constitutional right offers to a healthy environment, the preventative principle in connection to the jurisprudence of the ECHR, access to green information in connection to the Aarhus Convention, and principles of sustainable development and future generations. The Court unequivocally stated that "It is also important to point out that the right to a healthy living environment under Article 72 of the Constitution, which is the right most closely linked in substance to the protection of the environment as such, although it is placed in the chapter on economic

and social relations, enjoys the same protection as the rights set out in the chapter on human rights." This was also confirmed in Decisions Up-88/94 and Up-629/02.

In U-I-195/16 of September 17, 2020, the Court relied on sustainable development, intergenerational fairness, and protection of biodiversity when determining whether the local authority had unilaterally encroached upon existing fisheries and fishery management in contravention of the Fisheries Act and the bylaws adopted thereunder.

In U-I-194/19 of April 9, 2020, on the selective and limited removal from the wild of specimens of the brown bear and wolf species, regulated in parallel by different legal acts adopted at different levels of the normative hierarchy, the Constitutional Court decided, relying on the precautionary principle and the principle of sustainability, that the protection of endangered species is also an integral part of the right to a healthy environment.

In U-I-386/06 of March 13, 2008, on whether the procedure for drafting the Regulation on Amendments and Additions to the Regulation on Protected Wildlife Species and the Regulation on the Taking of Specimens of the Brown Bear Species was carried out in breach of Article 8 of the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, concluded that the Rules are also contrary to Articles 5, 63, 72, and 73 of the Constitution in that the removal of specimens of the brown bear species ("bears") from the wild, which the Rules provide for, depletes natural wealth, and the deliberate killing of animals is not conducive to the harmonious development of civilization that the State is constitutionally required to pursue but, rather, encourages violence and permits the torture of animals.

In its dissenting opinion to Decision U-I-327/20 of January 20, 2020, Judge Dr. Rajko Knez, stated, "More important is the substantive aspect of protecting a healthy living environment (Article 72(1) of the Constitution), which we are obliged (more than ever before) to protect for our posterity, especially given that spatial interventions are generally irreversible."

In U-I-263/95 of March 18, 1998, the Court tackled the rules on the criteria for the establishment of opening hours and stated, "By differentiating the possibility of setting the opening hours of catering establishments, the legislator also guaranteed the right of residents to a healthy living environment (in particular, for example, protection against noise at night), as laid down in Article 72 of the Constitution."

In U-I-130/96 of July 3, 1997, the Court decided that spatial planning must consider the right to a healthy environment.

In U-I-344/96 of April 1, 1999, the Court, albeit rejecting the petition, mentioned the polluter pays principle and decided that "the contested provisions are also not contrary to Article 72 of the Constitution, as they constitute a fulfilment of the provisions of Article 72 State's obligation to "ensure a healthy living environment". This obligation is fulfilled by the State, inter alia, by prescribing measures to prevent or minimise pollution. One of those measures is the payment of a charge for the water, soil and air pollution and the generation of waste, since, on the one hand, the State

thereby encourages polluters to minimise environmental pollution, while on the other hand it provides funds for the remediation of pollution already for the remediation of existing encroachments. Therefore, the introduction of an environmental pollution charge in this way is not contrary to the provisions of Article 72 of the Constitution. Nor does it follow from the provisions of Article 72 of the Constitution that citizens are directly owners of natural resources, as the petitioner claims. Nor is there any constitutional support for the petitioner's assertion that that citizens should have the right to enjoy natural goods free of charge within the limits of their personal use. The conditions, criteria and methods for the enjoyment of natural goods are regulated by law, which may also prescribe in this context certain material obligations relating to their enjoyment or to the burden on them the environment. In the case of water use, these are the water pollution charge and the reimbursement (price) for consumption of water as a natural good. The petition to challenge Article 80 of the Law on Environmental Protection is therefore unfounded and must be rejected."

In U-I-243/98 of September 21, 2000, the Court emphasized that every new construction project can be a threat to the environment, but that is why the government needs to set standards and limitations; similarly, in U-I-315/97, the Court referenced the principle of prevention.

In U-I-255/00 of December 7, 2000, the Court stated that according to Article 4 of ZVO-1, the Association of Landscape Architects is among the entities that the Constitutional Court recognizes as having a legal interest in the protection of the environment.

In a separate opinion affirming Decision U-I-6/17 of June 20, 2019, Judge Dr. Katja Šugman Stubbs stated, "I am convinced that in the future, with population growth, the increasing pollution of whole areas of the world, pressure from immigration, etc., the battle for definitions in this area will be fought again, and the need to protect space and nature in the public interest will become ever greater. The interest of the owner in preserving the use of his land cannot outweigh the public interest in regulating the use of space. Space is not only a finite but also an irreplaceable commodity. All the activity of human beings (and other inhabitants of this spatially limited planet) takes place in this limited space and is dependent on space. The quality of life of all inhabitants depends on the layout of space (green spaces, natural parks, public space as a place for socialising, etc.), but above all the use of space is linked to the survival of humanity (food processing, the forest as the lungs of the planet, access to water resources, the preservation of the ecosystem, etc.). Space is a common good which, because of its vital importance for life, for ecology, for social and, above all, for livelihoods, cannot and must not fall prey to vested private interests; it is a common asset that must be protected by the law of the land. This is why spatial planning will be of particular importance; it is the zoning of space that is one of the essential tasks of spatial planning."

In U-I-215/11, joined with Up-1128/11, of January 10, 2013, the appellant brought an action against the decision of the Environment Agency of the Republic of Slovenia on the assessment of the water refund for 2008. The Court *expressis verbis*

(para. 12) referred to the polluter pays principle and used it as a "value criterion" when it stated that the economic valuation principle, which includes the costs of polluting, protecting, and regulating water,[58] is an implementation of the polluter pays principle set out in Article 10 of ZVO-1 in the field of water management. It further stated that this fundamental principle of environmental protection implies that the polluter, in the concrete case, the user of a public water good, is obliged to bear the costs incurred as a result of the use of the environment and that in interpreting the meaning of the legal regulation, it should be borne in mind that the principle of economic valuation is a fundamental principle of the Water Act (Article 3(4)). It emphasized that the principle is a value criterion that binds both the regulator and the specific users in the application of the statutory provisions and that the statutory text does not require, as the petitioner erroneously suggests, that the amount of the water charge should be based on a precise calculation of the specific costs incurred by each specific water charge payer in the specific use of the public water asset. The court clarifies that the law merely requires that the principle of cost recovery be taken into account as a value criterion in setting and interpreting the criteria for determining the amount of the water charge and that the criteria for determining the level of water compensation must be reasonably related to the purpose of the water refund. In regulating the level of water charges, the legislator has laid down criteria that make it possible to give effect to this fundamental principle in fixing the level of water charges. Any use of a natural good implies a burden on the environment (as per Article 3(6) of ZVO-1). The greater the extent of the use of the natural good, the greater the burden on the environment and the greater the cost of the measures that the public authority must take for the purposes of environmental protection. Therefore, the court concludes, the basic criterion for determining the amount of water compensation is the scope of the water right (Article 124(1) Water Act and Article 5(1) of the decree on the water fee[59]).

In U-I-304/04 of February 17, 2005, by challenging Article 50 of the Chemicals Act, the petitioners sought a ban on the use of pesticides containing imidacloprid on the grounds that they cause the death of bees. The Court concluded that the petitioners' contention that the precautionary principle is established only by the international legal instruments to which they refer in their petition and that, therefore, Article 50 of the Chemicals Act is incompatible with Article 8 of the Constitution because it does not take account of that principle was unfounded.

In U-I-113/00 of October 19, 2000, the petitioners challenged the regulation on the emission of substances into the air from municipal waste incinerators and the regulation on the emission of substances into the air from hazardous waste incinerators. They submitted that the implementation of the contested regulations will dangerously deteriorate the living environment, contrary to Article 72

58 The Water Act (ZV-1A) changed this principle to the principle of reimbursement of costs related to water pollution.

59 Official Gazette of the Republic of Slovenia, Nos. 103/02, 122/07, and 3/21.

of the Constitution, which guarantees the right of everyone to a healthy living environment.

As evident from the above, the right to a healthy living environment is interpreted via the classical approach. The Constitutional Court considers it a standalone fundamental right and does not categorize it only in terms of generations' rights.

In its case law, as also discussed above, the Constitutional Court has applied a number of environmental principles, such as the sustainable development principle, the principle of prevention, the precautionary principle,[60] the concept of environmental impact assessment, and the polluter pays principle.

In cases U-I-81/09 and U-I-174/09 of April 16, 2009, the municipalities of Domžale and Dobrova-Polhov Gradec challenged the Decree on Conditions and Restrictions for Activities and Spatial Interventions in Areas at Risk from Flooding and Related Erosion of Inland Waters and the Sea.[61] It was submitted that, by the contested provisions of the Decree, the State has transferred to local authorities certain State obligations in the field of protection against the harmful effects of water, contrary to the Constitution. The court found no unconstitutionality, while also explicitly referencing – without any further details – the sustainable development principle and the principle of prevention when explaining the obligation to carry out a comprehensive environmental impact assessment.

In case U-I-325/02 of January 22, 2004, the petitioners unsuccessfully challenged the decree on spatial planning conditions, stating that they live in the area of the spatial unit where the investor intends to build a biomass heating plant, which will worsen the living conditions in the area. In its decision-making, the court relied on the principle of prevention when explaining the obligation of environmental impact assessment.

In case U-I-313/04 of February 2, 2006, the petitioners unsuccessfully challenged the decree on the national location plan for the Koper-Izola highway section,[62] which defines the planning area for that section of the highway. They submitted that they have farms (even protected farms) in the area or in its vicinity and that the State will not be able to provide them with the same or similar farms because they do not exist in the wider area. In its decision when explaining the requirement of environmental impact assessment, the court also relied on the principle of prevention and the precautionary principle and stated that ZVO-1 gave special meaning to precaution by separately defining the precautionary principle in Article 8 as a fundamental principle in addition to the principle of prevention in the field of environmental protection. It emphasized that their essence is to direct norms and practices toward the prevention of the harmful consequences of human behavior for the environment.

60 For example, in U-I-140/14, the precautionary principle is explicitly mentioned in a separate concurring opinion.

61 Official Gazette of the Republic of Slovenia, Nos. 89/08 and 49/20.

62 Official Gazette of the Republic of Slovenia, No. 112/04.

3.3. Other fundamental rights related to the environment according to the Constitution

3.3.1. Right to drinking water

In addition to the basic provision of Article 72, the Constitution explicitly mentions the environment or some of its essential elements in some other provisions. As indicated above, a unique feature of the Constitution is its regulation of the right to drinking water (Article 70a). The Constitutional Court tackled water issues in a number of decisions, such as in the abovementioned Decision U-I-164/14, where regarding the provision of the local public service of drinking water supply, the applicant complained that the laws in question do not allow for the provision of substantively adequate minimum information and its assessment on the potential and actual impacts and risks of the planned spatial developments of national significance on the municipal source of drinking water. A separate opinion in the affirmative by Judge Dr. Matej Accetto stated that the position of the Court is, after all, confirmed by a constitutional provision not mentioned in the decision – the new Article 70a of the Constitution on the right to drinking water, which was added to the Constitution by a constitutional law in November 2016. The fact that the decision in the present case does not mention this article of the Constitution is, on the one hand, perhaps understandable: the disputed conduct dates back to 2012 and 2013, and the 18-month deadline for the harmonization of the laws substantively related to Article 70a has not yet expired. However, it is difficult to understand this provision in any other way than as already further underlining the importance of water resources as a constitutionally protected public good, which must now be given even greater weight in such cases of balancing.

Furthermore, in U-I-223/16 of April 23, 2020, the petitioner submitted that the organization of funeral and cemetery services was established as a prerogative of municipalities by the adoption of the Local Self-Government Act[63] and that the contested provision of law disproportionately interferes with the original competences of municipalities, as the Constitution does not expressly provide for the exclusive competences of local self-government, with the exception of the provision on drinking water and the domestic water supply (Article 70a(4) of the Constitution).

In Decision U-I-483/20 of April 1, 2021, concerning a request for a review of the constitutionality of the Act on the Provision of Funds for Investments in the Slovenian Armed Forces for the Years 2021 to 2026,[64] with respect to which the National Assembly prohibited a legislative referendum because allegedly it was a law on urgent measures to ensure the defence of the state and security as determined by

63 Official Gazette of the Republic of Slovenia, Nos. 94/07 – Official Consolidated Text, 76/08, 79/09, 51/10, 40/12 – ZUJF, 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A, and 80/20 – ZIUOOPE.

64 Official Gazette of the Republic of Slovenia, No. 175/20.

the first indent of Article 90(2) of the Constitution. The applicant claimed that Article 90(2) of the Constitution had been infringed upon in the process of the adoption of the Act, as the challenged law is not a law on urgent measures to ensure the defense of the State and security, hence, a referendum on this law should be admissible. Here, the applicant referred, by way of example, to make a point on how the text should be interpreted, to Article 70a of the Constitution, according to which the State "shall ensure" the supply of drinking water to the population and of water for domestic use.

Further, in Decision U-I-226/04 of December 1, 2005, the petitioners challenged the provisions of the Water Act, which regulate the supply of water in areas where the water supply is not provided by the public water supply network. The Constitutional Court stated that Art. 70 of the Constitution does not ensure the petitioners the right to the general use of water for the supply of their households and that the Waters Act does not exclude the general use of water but, on the basis of Art. 70(1) of the Constitution, limits it by determining special rights for its use to achieve environmental protection goals. It stressed that to achieve these goals, payment for the use of natural resources is envisaged and that the emphasized public nature of water law is also reflected in the fact that it is not possible to acquire the right to property on water. It therefore concluded that the petitioners' position that they are the owners of water resources or that these resources are under the ownership of everyone is unsubstantiated. Additionally, in this decision, albeit adopted after the entry into force of Article 70a, this specific provision guaranteeing the right to drinking water was interestingly not mentioned.

There are other relevant decisions of the Constitutional Court concerning drinking water; however, these predate the adoption of Article 70a of the Constitution.[65]

3.3.2. Other relevant constitutional provisions

Regarding the positive obligation on the part of the State to care for the conservation of natural wealth, enshrined in Article 5 of the Constitution, the Constitutional Court adopted a number of important decisions, such as the abovementioned Decisions U-I-98/04 of November 9, 2006, U-I-40/06 of October 11, 2006, Up-395/06 and U-I-64/07 of June 21, 2007, discussed further below, U-I-386/06 of March 13, 2008, and U-I-227/00 of October 10, 2001. In Decision U-I-182/16 of September 23, 2021, also mentioned above, the Court stated that Article 5(1) of the Constitution implies a duty on the part of the State to ensure the preservation of natural wealth and to create opportunities for the harmonious development of civilization and culture and that the State's obligation to ensure a high level of protection of human rights, through which nature and the environment are protected, is also derives from Article 5(1) of the Constitution, which has the particularly important message that it

65 See, for example, Decisions U-I-3/92 of September 17, 1992, U-I-32/95 of June 30, 1995, U-I-221/95 of July 3, 1997, and the above-mentioned Decision U-I-344/96 of April 1, 1999.

imposes positive duties (active conduct) on the State to protect human rights. Other decisions to be mentioned in relation to article 5 are Decision U-I-195/16 of September 17, 2020, U-I-77/93 of July 6, 1995, U-I-314/94 of March 5, 1998, and U-I-62/96 of March 5, 1999. In the latter, the Court, among others, stated that the State and the local community, as the owners of certain natural resources, have a duty of care under the adopted and ratified international treaties to ensure the exploitation of natural resources in the context of sustainable development and, under Article 5 of the Constitution, to ensure the preservation of natural resources.

It is also relevant to mention Article 67 of the Constitution, which determines the substance of the right to property and is linked to a provision in Article 33 that defines the right to private property as a fundamental human right. Article 67 provides that "The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social, and environmental function." This constitutional provision derives from the realization that property must have, in addition to its individualistic function (the exercise of human freedom in the field of property), a function for the entire social community. This realization is defined in theory as the idea of the "social commitment" of property (German: *Sozialgebundenheit*). The social commitment of property means that not only must the handling of a thing or a right remain in the sphere of decisions of the owner or holder of the right, but it must also consider the public interest. The idea of the social commitment of property is legally expressed as a commandment that the owner's right must also serve the exercise of freedom and the personal development of others or the entire social community. By determining the ecological function of property or its exercise in the public interest, the Constitution authorizes the legislator to determine the substance and limits of property rights, whereby the legislator shall also take into account the preservation of natural balance. This is reflected in a series of restrictions on the freedom of property, which means that the owner must suffer something or be required to take certain active action. It should be stressed that such legal restrictions on the freedom of property, although restricting the owner's right, are only a way of enjoying the right to property and not an encroachment on this right. Precisely because of this, the owner is not entitled to compensation as provided for expropriation and other similar encroachments on property rights. The ecological function of property is also highlighted in Article 17 of ZVO-2. It stipulates that the enjoyment of property rights or other rights to use natural resources, to respect the ecological function of property, must ensure the preservation and improvement of the quality of the environment, the preservation of natural values, and biodiversity.

Article 70 of the Constitution, which regulates public goods and natural resources, is further explained in the subchapters below; goods that can be used by anyone for a specific purpose (general use) are considered public goods regardless of who owns the property (e.g., water and coastal land), and the conditions for the utilization of natural resources are regulated by law.

Article 71 of the Constitution regulates the protection of land. Paragraph one provides that "The law shall establish special conditions for land utilisation in order to

ensure its proper use." This constitutional requirement can only be met by spatial and construction legislation, which appropriately includes in its instruments (planning, impact assessment, permitting, monitoring, active land policy measures, etc.) regulatory requirements for environmental protection and natural resource management and cultural heritage conservation. Land use planning as a limited natural resource requires a confrontation of different private and public interests. It requires comprehensive consideration and coordination of economic, social, and environmental aspects of space. In addition to deliberate encroachment on space, including protection against excessive construction, constitutional protection also includes the protection of pedological characteristics (at least to a certain extent) of land, protection against excessive soil pollution, and remediation of degraded areas.[66] Paragraph two stresses the protection of agricultural land, which is also concretized by the Agricultural Land Act (*Zakon o kmetijskih zemljiščih* – ZKZ),[67] stipulating, *inter alia*, the conditions for changing the purpose of agricultural and forest areas into building land. The purposeful use of agricultural land is also stressed in the requirement that the land must be used in accordance with its purpose and to prevent its pollution or other degradation and pollution or other inhibition of plant growth.

As previously indicated in subchapter I.1., Article 73 of the Constitution regulates the protection of natural and cultural heritage. First, the general obligation of protection is defined: "Everyone is obliged in accordance with the law to protect natural sites of special interest, rarities, and cultural monuments." This provision is primarily the grounds for the adoption of regulations penalizing misuse and interference. Paragraph two sets out the obligation of the State and local communities to ensure the preservation of natural and cultural heritage. The provision is programmatic, as it fails to create self-executing state obligations. Therefore, individuals cannot exercise any rights based on it or resort to legal remedies before the courts.[68] The relevant Constitutional Court's jurisprudence concerning Article 73 can be found, for example, in Decisions U-I-81/93 of May 12, 1994, U-I-314/94 of March 5, 1998, Up-395/06, U-I-64/07 of June 21, 2006, U-I-386/06 of May 22, 2008, U-I-182/16 of September 23, 2021, U-I-76/07 of December 6, 2007, and U-I-37/10 of April 18, 2013. In Decision U-I-195/16 of September 17, 2020, the Court observed that notwithstanding the fact that Article 73(2) of the Constitution does not explicitly refer to the law, it is clear that the State can only implement this positive obligation on the basis of appropriate legislation, as the Constitution itself does not precisely define the content and scope of those values the preservation of which is of inestimable importance for the future. It continued to state that both the content and extent of natural wealth and the way in which it is protected today in order to ensure its preservation for future generations are, therefore, by their very nature, left to

66 Pucelj Vidovič in Komentar 2019 I, p. 569.

67 Agricultural Land Act (Official Gazette of the Republic of Slovenia, No. 71/11 – official consolidated text, 58/12, 27/16, 27/17 – ZKme-1D and 79/17).

68 Letnar Černič in Komentar 2019 I, p. 582.

the law. Finally, Article 73 of the Constitution has also been applied many times by general courts in Slovenia.[69]

In relation to the protection of the environment through the invocation of rights related to political freedoms, it is relevant to mention that the Constitution also contains an explicit provision regulating the right to information (Article 39, Freedom of Expression), which, in the relevant portion (para. 2), states, "Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well-founded legal interest under law." Although there is no direct reference to the environment in this provision, the Constitutional Court explicitly recognized that the rights under the Aarhus Convention, including access to environmental information, can be directly applied in Slovenia (see the analysis of constitutional jurisprudence). Further, the fair trial guarantees are included in a number of articles of the Constitution, such as Article 22 (Equal Protection of Rights), Article 23 (Right to Judicial Protection), Article 24 (Public Nature of Court Proceedings), and Article 25 (Right to Legal Remedies). Similarly, as with the right to information, these provisions do not directly mention the environment; however, as the analyzed jurisprudence demonstrates, these rights are also important in cases of "environmental litigation". Furthermore, and perhaps in an indirect manner, the following participatory rights may be relevant for expressing environmental ideas and protests: Article 42 (Right of Assembly and Association), Article 44 (Participation in the Management of Public Affairs), and Article 45 (Right to Petition), which can be relied upon in environmental action.

3.4. Environmental principles in the jurisprudence of general courts in Slovenia

A number of Slovenia's general courts[70] have further specified the normative content of constitutional provisions. For example, in its Decision I Up 221/2019, in which the plaintiff brought an action against the decision of the Inspectorate of the Environment and Spatial Planning of the Republic of Slovenia and which ordered the plaintiff to remove in its entirety an illegally dumped excavation that it had introduced without having obtained an environmental permit for the recovery of waste, the Supreme Court referred to the principle of prevention and

69 The Supreme Court referred to it, for example, in the Decision I Up 134/2011, the Decision X Ips 134/2013 and in the Judgment I Up 101/2003 Further, the Higher Court addressed it in decisions, such as Decision II Cp 2950/2013, Decision I Cp 1931/2013, Decision II Cp 926/2011, Judgment and Decision I Cp 2111/2004, Decision II Cp 3538/2014, Decision II Cp 1866/2015 and Decision I Cp 501/99. Finally, the Administrative Court tackled article 73 in judgments, such as the Judgment I U 502/2013, Judgment I U 2541/2018-26, Judgment I U 102/2018-17 and the Decision IV U 44/2021-7.

70 The court system of the Republic of Slovenia consists of general and specialized courts. General courts operate at four levels: local and district courts (first-instance courts), higher courts, which allow appeals against first-instance courts, and the Supreme Court, which is the highest court in the country. Available at: https://www.gov.si/en/policies/rule-of-law-and-justice/the-judicial-system/ (Accessed: 1 August 2022).

the precautionary principle. In its Judgment X Ips 36/2019, addressing a case in which the Court of First Instance dismissed the action brought by the applicants against the decision of the Inspectorate of the Environment and Spatial Planning of the Republic of Slovenia ordering the first applicant to collect 347 used tires and hand them over to a collector of used tires within two months of notification of the decision, it again referred to the principles of prevention and the precautionary principle. Additionally, in its Judgment Cp 643/2013 concerning the defendant's property, which the defendant occupies for active leisure and gardening purposes and which does not constitute a dwelling and is, therefore, not subject to compulsory collection of municipal waste, the Higher Court Celje stated that the basic act regulating environmental protection is ZVO-1, which provides in Article 1 that this Act regulates the protection of the environment against pollution as a prerequisite for sustainable development and, in this context, lays down the basic principles of environmental protection, environmental protection measures, environmental monitoring, and information on the environment – the sustainable development principle. Further, in its Judgment II Cp 2420/2013 in a dispute over the veracity of information labeling gaming mats as unsafe and the due diligence involved in publishing such information, the Higher Court Ljubljana referred to the precautionary principle. A number of the Administrative Court's judgments also refer to the mentioned environmental principles.[71]

It can be argued on the basis of jurisprudential analysis that a number of principles have a strong normative effect, in particular, the sustainable development principle, the principle of prevention, precautionary principle, and polluter pays principle.

---

4. High protection of natural resources in Slovenia's Constitution

The protection of natural resources appears *expressis verbis* in Slovenia's Constitution. Namely, Article 70 (Public Goods and Natural Resources) provides the following:

> Special rights to use a public good may be acquired, subject to conditions established by law. The conditions under which natural resources may be exploited shall be

71 See, for example, Judgment II U 404/2020-23 (polluter pays principle), Judgment I U 1729/2017-18 (principle of prevention, precautionary principle), Judgment I U 2135/2018-17 (precautionary principle), Judgment III U 115/2009 (principle of prevention, sustainable development principle), Judgment III U 16/2017-46 (polluter pays principle), Judgment I U 1435/2016-38 (sustainable development principle, public participation, access to information).

established by law. The law may provide that natural resources may also be exploited by foreign persons and shall establish the conditions for such exploitation.

Article 70 regulates two different matters, namely public goods and natural wealth. While these are two separate concepts, the commonality is the regulation of the relations concerning the use of these socially important goods by the regulator, which is why they are closely connected to Articles 33 (Right to private property and inheritance), 67 (Property), and 69 (Expropriation).[72] Article 67 is particularly important in this regard, as it allows the regulator to limit the right to property by requiring that "The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function."

The fact that the concept of natural wealth is not clearly defined can be attributed to a change in consciousness. From the realization that all natural resources are limited, we can conclude that every natural resource is also a form of natural wealth.[73] The use of a natural good can only be such that it does not endanger the environment or its part, which has the status of a natural public good, and its natural role is not excluded. Consequently, the legislator must regulate the conditions for the special use of the public good. This represents a restriction of general use, which is not unconditional, as it is necessary to ensure its preservation or improvement. The State can promote the economic and social development of a society that takes into account equal opportunities to meet the needs of future generations and enables the preservation of the environment.[74]

5. Regulation of issues regarding responsibility in Slovenia's Constitution

Slovenia's Constitution does not explicitly mention the responsibility of a State in relation to the environment, but it does stipulate (Article 72 para. 3) that "The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation", which has been used in relevant jurisprudence as explained above. A person who damaged the living environment is any legal or natural person that directly or indirectly, exclusively or simultaneously, pollutes the environment.

72 Pucelj Vidovič in Komentar 2019 I, p. 560.
73 Ibid.
74 Avbelj and Šturm, 2011, pp. 1015–1020.

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

Slovenia's Constitution contains a relatively broad range of fundamental rights and freedoms, many of which can be linked to environmental protection institutions.

The most general provision to which legal protection of the environment can be linked is the provision of Article 2 of the Constitution that Slovenia is a state governed by the rule of law and a social state. Article 5 of the Constitution also builds on this general provision and is one of the general provisions of the constitutional order of the Republic of Slovenia, that is, one of the provisions forming the basis of the constitutional order and is a guiding principle for the interpretation of provisions in further chapters of the Constitution.[75] The provision reads as follows: "In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for the autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. It shall provide for the preservation of the natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia."

At the principle level, the provisions of Article 5 stress the protection of human rights and fundamental freedoms as a special task and responsibility of the State. In this respect, this article is the basis of the catalog of human rights and fundamental freedoms of those constitutional provisions that define individual rights and freedoms. The provision obliges the State not only to "protect" human rights and fundamental freedoms, the rights of autochthonous minority national communities, and the rights of their members but also to "maintain concern" for our autochthonous minorities in neighboring countries and to "maintain concern" for Slovenian emigrants and expatriates. It also commits the State to "provide" for the preservation of natural resources and cultural heritage.[76]

The case law of the Constitutional Court, as discussed above, often refers to Article 5 of the Constitution in decisions related to the environment and nature, especially if general and principled issues of legal protection arise. In its decision U-I-40/06 of October 11, 2006, the Court stated, "The ZVO-1 does not interfere with the property rights of forest owners by providing that game is state property. Under general provisions, Article 5 of the Constitution sets out certain positive obligations of the State, including the preservation of natural wealth. The State has acted in accordance with its powers under Articles 5 and 70 of the Constitution in determining that game is the property of the State and no one else's property. Therefore, the contested legislation did not interfere with the right to private property under Article 33

75 Petrič in Komentar 2019 II, p. 77.

76 Ibid.

of the Constitution. The Constitutional Court did not have to decide in the present case whether a different regulation would also be compatible with the provisions of Articles 5 and 70 of the Constitution. Under Articles 5 and 70 of the Constitution, the legislator is obliged to determine by law the conditions for the exploitation of natural resources, the conditions for the use of land, the conditions and manner of carrying out economic and other activities in order to fulfill the State's concern for a healthy living environment." Furthermore, in its Decision U-I-182/16 of September 23, 2021, the Court stated, "The starting point for regulatory protection of the environment is already to be found in the general provisions of the Constitution. Article 5(1) of the Constitution implies a duty on the part of the State to ensure the preservation of natural wealth and to create opportunities for the harmonious development of civilisation and culture. This duty is derived from several provisions in the chapter on economic and social relations.

At the same time, the State's obligation to ensure a high level of protection of human rights, through which nature and the environment are protected, also derives from Article 5(1) of the Constitution, which has the particularly important message that it imposes positive duties (active conduct) on the State to protect human rights." Finally, in its Decision U-I-227/00 of October 10, 2001, it found that "The contested acts changed the use from manufacturing, warehousing, and terminals to residential and ancillary activities. All the former industrial buildings in the area were to be demolished and a new part of the development was to be built on the vacant land. The petitioners state that, although they do not object to the change of use of the area in question, they contest the procedure for the preparation and adoption of the acts in question. Since space is a natural asset and an irreplaceable asset, the State must ensure that the conditions under which it is used are such as to preserve it from the point of view of environmental protection, as well as from the point of view of its landscape and townscape."

---

7. Financial sustainability

7.1. General

Slovenia's Constitution determines financial sustainability only in connection with the state budget but fails to mention financial sustainability in connection with specific tasks or individual rights. From this perspective, Articles 148 (2) and 148 (3) of the Constitution are important; they stipulate the following: "(2) Revenues and expenditures of the budgets of the state must be balanced in the medium-term without borrowing, or revenues must exceed expenditures. (3) Temporary deviation from this principle is only allowed when exceptional circumstances affect the state."

However, regarding the financial sustainability of the budget, the essential tasks of the budget are stressed, and in particular, the commitment of sufficient resources to pursue various policies, such as rural development and agriculture, together with environmental protection policies, which are intended to create and provide conditions for healthy living and conservation of natural resources.[77]

One also cannot find any special provisions in the Constitution that would regulate in more detail the provision of financial resources for sustainable development or responsibility to future generations. Despite references to sustainable development and future generations in constitutional jurisprudence, as explained above, no further details in relation to financial sustainability have been provided. Unfortunately, this is an area that Slovenia should carefully consider further.

7.2. National assets and national resources

Article 70 of the Constitution, also discussed above, regulates two different matters: national assets and natural resources.

The basic legal consequence arising from the Constitutional Court decisions is the legislator's obligation to regulate legal relations concerning the use of socially important goods; thus, this constitutional provision is closely related to other constitutional provisions governing property rights, their restrictions, nature, and a healthy living environment.

Article 70 (1) is the basis of the legal regulation of national assets. According to their purpose, national assets can be used by anyone under the same conditions (general use). In Roman law, they were referred to as *"res publicae, quae in uso publico habentur"*. The law determines what qualifies as a national asset and prescribes the conditions for their use. The law may stipulate that only the State or the local community has the right of ownership over a certain type of national asset. Most importantly, no one, including the State, has exclusive rights to such assets in the sense of the absoluteness of the right to property. The role of the State is limited to the obligation to ensure that these assets can be used by everyone under the same conditions and that a special right of use can be acquired for national assets under legally determined conditions. National assets cannot be part of legal transactions. Therefore, these goods are intended for general and equal use by citizens, and they and must comply with the regulations under which these goods may be used. This use may be carried out only strictly pursuant to the purpose of the individual thing or asset or in the usual and socially recognized way. The use shall be anonymous and permitted to all persons. However, no one may use the national asset in such a way that their use can exclude all others or make their use more difficult. Roads, waters, and certain land, such as water and coastal lands, are considered to be national assets. Special use is the right of a certain person to use a national asset in a way that is not contained in general use. The right of special use is granted by

77 Arhar in Komentar 2019 II, p. 374.

the body managing the assets for general use. This right cannot be transferred to another or can only be transferred with the consent of the body managing it. In any case, special use is limited. Its substance is determined by an administrative permit, which is sometimes granted indefinitely, sometimes only for a limited time, and sometimes only until revoked. It can also be granted only under certain other conditions if these are specified in the law as such. A typical example is the use of a natural watercourse to operate a mill or similar device. The Constitutional Court in the Decision U-I-226/04 of December 1, 2005, stated, "The petitioners challenge the provisions of the Water Act referred to in the operative part of the judgment, which regulate the supply of water in areas where the water supply is not provided by the public water supply network. They submit that many people are supplied with water from their own water sources and from a network which they have built themselves. The contested provisions of ZV-1 require them to obtain a water right for that water supply, which must be paid for. Otherwise, the contested provisions of ZV-1 provide for a fine and the possibility of being prohibited from using the water. Therefore, under Article 70(1) of the Constitution, the legislator is obliged to regulate the conditions for the special use of public goods. These conditions are adapted to the fact that the special use constitutes an exception to the rule that the use of the public good is open to all on equal terms."

Article 70 (2) refers to the concept of natural resources. The constitutional provision provides only a general framework, which is divided into several special laws. Unfortunately, notion of natural resources is not clearly defined in any particular. Some special laws expressly define individual elements of nature as (natural) resources. Thus, Article 1 (2) of the Game and Hunting Act speaks of the game as a natural resource.[78] Article 4 (1) of the Mining Act provides similarly[79] that mineral raw materials shall be mineral resources owned by the Republic of Slovenia as a natural resource. In other laws, however, one can only infer indirectly that a thing has the property of a natural resource.

The right to property and the manner of management, use, or exploitation of natural resources are regulated by law. Some natural resources are state property. The legislation still explicitly establishes state ownership of game and mineral resources, thus excluding these natural assets from the property rights of the owner of the land on which they are located. Irrespective of property, the legal regime that defines the exploitation or management of a certain natural asset should ensure the preservation of its natural role. In this sense, Article 163 (1) of the former ZVO-1 stipulated that natural resources shall be under the special protection of the state or municipality. Their ecological function was being strengthened as the idea of sustainable use of resources in production and consumption and the concept of the

78 Game and Hunting Act (Official Gazette of the Republic of Slovenia, No. 16/04, 120/06 – CC decision, 17/08, 46/14 – ZON-C, 31/18, 65/20, 97/20 – corr. and 44/22).

79 Mining Act (Official Gazette of the Republic of Slovenia, No. 14/14 – official consolidated text, 61/17 – GZ and 54/22).

circular economy entered into law. Simultaneously, the social regime was often strongly emphasized in the legal regimes of individual types of natural resources (forest, coastal land, water).[80] For some unknown reason, this provision was deleted from the new ZVO-2.

---

8. Conclusions

In Slovenia, the protection of the environment falls under the scope of the protection of fundamental rights, and it is a task of the State, meaning the task of the Government as well as municipalities. As the jurisprudential analysis demonstrated, other fundamental rights may be subject to restrictions with reference to the protection of the environment (e.g., the right to free economic initiative). The Constitutional Court and other courts in Slovenia regularly address environmental matters and, with their interpretation in the case of the former and their application in the case of the latter, of the relevant constitutional provisions contribute in an important way to the tradition of environmental protection in Slovenia.

Although no Constitutional provision explicitly mentions the rights of future generations, the case law demonstrates that these rights do appear in the *dicta* of the Constitutional Court judges. Moreover, as all of the "environmental rights" are, in effect, also, by their purpose, "pro futuro" rights, it is perhaps interesting to mention Article 55 (Freedom of Choice in Childbearing) of the Constitution, which states the following: "Everyone shall be free to decide whether to bear children. The state shall guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children."

Therefore, by placing an obligation on the State to create conditions that enable decision-making for having children, in the future, this could also be progressively interpreted as an obligation to guarantee conditions of a healthy environment the children would be born into.

Finally, given the mentioned Constitutional stipulation in Article 159 para. 2, it would be advisable and in accordance with Slovenia's policy documents and statements to establish a position of a "special ombudsmen for the rights of citizens" in the field of environmental protection.

80 Pucelj Vidovič in Komentar 2019 I, 561; Arhar in Komentar 2019 II, p. 375.

Bibliography

Avbelj, M. (ed.) (2019) *Komentar Ustave Republike Slovenije ['Commentary of the Constitution of the Republic of Slovenia']. Book I and Book II.* Ljubljana: Nova univerza, Evropska pravna fakulteta.

Avbelj, M., Šturm, L. (2011) *Komentar Ustave Republike Slovenije – dopolnitev A ['Commentary of the Constitution of the Republic of Slovenia – Supplement A'].* Kranj: Fakulteta za državne in evropske študije.

Damjan M. (2011) *Množični zahtevki zaradi posegov v zdravo življenjsko okolje ['Mass claims for interference with a healthy living environment'].* Ljubljana: Pravni letopis.

Grad F., Kaučič I., Zagorc S. (2020) *Ustavno pravo ['Constitutional Law'].* Ljubljana: Pravna fakulteta v Ljubljani.

Jadek Pensa D. (2009) 'Pravica do zdravega življenjskega okolja in denarna odškodnina za nepremoženjsko škodo' ['Right to a healthy living environment and financial compensation for non-material damage'], *Podjetje in delo*, 2009/6–7, pp. 1320–1333.

Juhart M., Plavšak N. (eds.) (2003) *Obligacijski zakonik s komentarjem ['Obligations Code with Commentary']. Book 1.* Ljubljana: Gospodarski vestnik.

Karlovšek S. (2016) *Varstvo okolja z instituti civilnega prava ['Environmental protection through civil law'].* Ljubljana: Pravna fakulteta v Ljubljani.

Možina D. (2016) 'Nepremoženjska škoda zaradi posega v pravico do zdravega življenjskega okolja: odškodninska odgovornost države za cestni hrup' ['Non-pecuniary damage for interference with the right to a healthy living environment: the State's liability for road noise'], *Podjetje in delo,* 42(1), pp. 21–47.

Peterlin S., Novak D., Kos M., Slivnik F. (1972) *Zelena knjiga o ogroženosti okolja v Sloveniji ['Green Paper on environmental threats in Slovenia'].* Ljubljana: Prirodoslovno društvo Slovenije, Zavod za spomeniško varstvo SR Slovenije.

Pichler D. (2009) 'Odgovornost za okoljsko škodo po ZVO-1B' ['Liability for environmental damage under the Environmental Protection Act-1B'], *Podjetje in delo*, 35(6–7), pp. 1312–1319.

Pličanič S. (2003) *Temelji ekološkega prava ['Foundations of Environmental Law'].* Ljubljana: Cankarjeva založba.

Pličanič S. (ed.) (2010) *Komentar Zakona o varstvu okolja ['Commentary of the Environmental Protection Act'].* Ljubljana: Inštitut za javno upravo.

Samac A. (2020) 'Pravica do zdravega okolja v Evropski uniji in Sloveniji' ['The right to a healthy environment in the European Union and Slovenia'], *Urbani izziv*, 2020/10, pp. 115–121.

Vrbica Šifkovič S. (2020) 'Varstvo okolja v slovenski pravni praksi' ['Environmental protection in Slovenian legal practice'], *Podjetje in delo*, 46(6–7), pp. 962–969.

Legal Sources

Act on Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Official Gazette of the Republic of Slovenia – MP, No. 17/04).

Act on Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Official Gazette of the Republic of Slovenia – MP, No. 17/02).

Act on Ratification of the Paris Agreement (Official Gazette of the Republic of Slovenia – MP, No. 16/16 and 6/17).

Act on the Provision of Funds for Investments in the Slovenian Armed Forces for the Years 2021 to 2026, Official Gazette of the Republic of Slovenia, No. 175/20.

Agricultural Land Act (Official Gazette of the Republic of Slovenia, No. 71/11 – official consolidated text, 58/12, 27/16, 27/17 – ZKme-1D and 79/17).

Code of Obligations (Official Gazette of the Republic of Slovenia, Nos. 97/07 – official consolidated text, 64/16 – CC decisions and 20/18 – OROZ631).

Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, which was adopted on 25 November 2016 and entered into force on 25 November 2016 (Official Gazette of the Republic of Slovenia No. 75/16).

Criminal Code (Official Gazette of the Republic of Slovenia, Nos. 50/12 – official consolidated text, 6/16 – amended, 54/15, 38/16, 27/17, 23/20, 91/20, 95/21 in 186/21).

Cultural Heritage Protection Act (Official Gazette of the Republic of Slovenia, Nos. 16/08, 123/08, 8/11 – ORZVKD39, 90/12, 111/13, 32/16 and 21/18 – ZNOrg).

Decree on Conditions and Restrictions for Activities and Spatial Interventions in Areas at Risk from Flooding and Related Erosion of Inland Waters and the Sea, Official Gazette of the Republic of Slovenia, Nos. 89/08 and 49/20.

Decree on the national location plan for Koper-Izola highway section, Official Gazette of the Republic of Slovenia, No. 112/04.

Decree on the water fee, Official Gazette of the Republic of Slovenia, Nos. 103/02, 122/07 and 3/21.

Environmental Protection Act (ZVO-1) (Official Gazette of the Republic of Slovenia, Nos. UPB, 49/06 – ZMetD, 66/06 – CC decision, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108 / 09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15, 30/16, 61/17 – GZ, 21/18 – ZNOrg, 84/18 – ZIURKOE and 158/20).

Environmental Protection Act (ZVO-2) (Official Gazette of the Republic of Slovenia, No. 44/22).

Foreign Affairs act (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 113/03, 20/06 – ZNOMCMO, 76/08, 108/09, 80/10 – ZUTD, 31/15 in 30/18 – ZKZaš).

Game and Hunting Act (Official Gazette of the Republic of Slovenia, No. 16/04, 120/06 – CC decision, 17/08, 46/14 – ZON-C, 31/18, 65/20, 97/20 – corr. and 44/22).

Human Rights Ombudsman Act, Official Gazette of the Republic of Slovenia, No. 69/17.

Local Self-Government Act, Official Gazette of the Republic of Slovenia, Nos. 94/07 – Official Consolidated Text, 76/08, 79/09, 51/10, 40/12 – ZUJF, 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A and 80/20 – ZIUOOPE.

Mining Act (Official Gazette of the Republic of Slovenia, No. 14/14 – official consolidated text, 61/17 – GZ and 54/22).

Nature Conservation Act (Official Gazette of the Republic of Slovenia, Nos. 96/04 – UPB, 61/06 – ZDru-1, 8/10 – ZSKZ-B, 46/14, 21/18 – ZNOrg, 31/18, 82/20 and 3/22 – ZDeb).

Public Information Access Act, Official Gazette of the Republic of Slovenia, No. 51/06, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – decisions of the Constitutional Court, Nos. 102/15 in 7/18).

Resolution on long-term climate strategy of Slovenia up to 2050 (ReDPS50), Official Gazette of the Republic of Slovenia, No. 119/2021.

Spatial Planning Act (Official Gazette of the Republic of Slovenia, Nos. 33/07, 70/08 – ZVO-1B, 108/09, 80/10 – ZUPUDPP, 43/11 – ZKZ-C, 57/12, 57/12 – ZUPUDPP-A, 109/12, 76/14 – odl. US, 14/15 – ZUUJFO, 61/17 – ZUreP-2 in 199/21 – ZUreP-3).

The Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a).

Water Act, Official Gazette of the Republic of Slovenia, Nos. 67/02, 2/04 – ZZdrI-A, 41/04 – ZVO-1, 57/08, 57/12, 100/13, 40/14, 56/15 and 65/20.