

Jelena VUČKOVIĆ*
Constitutional legal protection of ecological values in the Republic of Serbia**

Abstract

The constitutional legal protection of ecological values in the Republic of Serbia is regulated through a complex and multi-layered protection of the right to a healthy environment. It is first seen in the constitutional guarantees and declarative emphasis on the developed ecological values and the principles that have been translated into constitutional human rights. The practice of the Constitutional Court of the Republic of Serbia with respect to environmental protection is modest for the educational constitutional formulation that reduces ecological values to an abstract and general right to a healthy environment that cannot be adequately protected.

Keywords: ecological principles or values, right to a healthy environment, constitutional appeal, normative control of laws and other general acts of the Constitutional Court.

1. Introduction

The right to a healthy environment is guaranteed by Article 74 of the Constitution of the Republic of Serbia. To protect the environment, numerous laws have been adopted that regulate its various elements and aspects. As environmental protection requires a comprehensive approach, these laws exist in varied legal disciplines and contain various qualifications of violation of ecological rights, such as misdemeanors, criminal offenses,¹ and civil offenses,² including sanctions (criminal offenses, misdemeanor sanctions, and compensation) for all forms of unlawful conduct. Special measures exist for protecting ecological values in administrative law.³

The protection of basic ecological values achieves the protection of public and individual interests. Therefore, the ultimate goal of environmental protection is reducing environmental risk to an acceptable level, following the laws established by the limit values.⁴

The protection of the right to a healthy environment – the highest legal act in the Republic of Serbia – indicates that this is one of the most important human rights. It is a basic and universal right that belongs to everyone. To achieve this unhindered, it is the duty and responsibility of the government to preserve and improve the environment.

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* associate professor, Faculty of Law, University of Kragujevac, email: jelena.vuckovic@vspep.edu.rs

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¹ Faure 2017, 321.

² Mišćević & Dudás 2021, 55–69.

³ Lilić 2010, 34; Masyitoh 2020, 1–15.

⁴ Joldžić 1997, 97.



2. Ecological values, principles, and rights

The content and importance of ecological values is a doctrinal issue with important practical significance in the field of law. Ecological values are linked to the fundamentals that determine people's behavior in the natural environment. They must establish a balance that people live in harmony with the environment and respect the use of natural resources, thus preserving, protecting, and maintaining the environment, ecosystems, and living things. Hence, ecological values form a catalog of ecological ethics.

Ecological values facilitate harmony with the environment. This contributes to the protection and strengthening of the quality of life on the planet in a balanced manner, which should be the supreme ecological value. The application of ecological values plays an important role in the development of human beings to achieve the transformation of the present society toward a more balanced world, thus ensuring a better quality of life. Ecological values allow us to take care of the space that we inhabit and, thus, achieve truly sustainable development. These values comprise actions and behaviors that benefit the environment.

Ecological values include love and respect for the environment, environmental initiative and participation, natural identity, ecological responsibility, ecological honesty, and environmental awareness. Ecological love is based on the care, preservation, and respect of the planet and each of its elements. Ecological respect allows people to accept, recognize, and value the qualities and rights of all living beings. Our environment must be in harmony with nature. Environmental participation means that values can be achieved through the active participation of every citizen. Cooperation and participation in campaigns for ecological benefit is the most important task. Responsibility implies that we learn to take both individual and collective responsibility for the degradation of nature. All our actions bring consequences, which may harm us indirectly.⁵ With respect to achieving these goals and ecological values, the law has an important role and task.

In addition to ecological values, we can distinguish the basic principles of environmental law that are contained in international documents and national legislation regulating environmental protection matters. In the Republic of Serbia, the Law on Environmental Protection defines 11 general principles of environmental law: (1) Principle of integrality; (2) Principle of prevention and precaution; (3) Principle of preservation of natural values; (4) Principle of sustainable development; (5) Principle of responsibility of the polluter and his legal successor; (6) Principle of 'polluter pays'; (7) Principle of 'user pays'; (8) Principle of subsidiary liability; (9) Principle of application of incentive measures; (10) Principle of information and public participation; (11) Principle of protection of the right to a healthy environment and access to justice.⁶

Additionally, in certain areas of environmental protection, we find several special principles of importance for the application of special laws. In comparative law, we find other principles, elucidated as follows: (1) Principle of access and equal participation in

⁵ What are the Ecological and Environmental Values?

⁶ Art. 9. Environmental Protection Act, (Official Gazette of RS, No. 135/2004, 36/2009, Other Law, 72/2009, Other Law, 43/2011, Decision us, 14/2016, 76/2018, 95/2018, other law and 95/2018, other law).

the distribution of natural resources;⁷ (2) Principle of intergenerational equality; (3) Principle of solidarity within generations.⁸

These stand out from the principle of sustainable development and adapt to the needs of the development of protection in climate change.⁹ The principle of accountability and transparency in decision-making in environmental matters more closely defines the principle of public participation in decision-making and that of protecting the right to a healthy environment.¹⁰

The principles of environmental law refer to all special environmental protection procedures, which ensure the equal application of basic attitudes on ecological values in all areas of environmental protection. Bearing in mind the abundance of sources of environmental law and frequent use of legal standards, the principles of environmental law form the basis for interpreting the law and applying environmental laws in specific cases.

Ecological values and principles have gradually been translated into concrete environmental rights. Environmental rights were initially challenged in the doctrine of the character of human rights, considering them as the goals and values that states should strive for.¹¹ Environmental rights belong to the rights of the third generation, which refer to the collective rights of a society or people, such as the right to sustainable development, peace, or a healthy environment. Through them, new problems are recognized that threaten the right to life of all people, and they can also be labeled as rights of solidarity whose realization is not only conditioned by positive or negative duties, but also by the behavior of each individual.¹²

Ecological rights protect human life and the life of flora and fauna, which are threatened by human activity and an unhealthy environment.¹³ A special value of environmental rights is that they relate to the right to life and combine other rights that are a condition of human survival, such as the right to drinking water and healthy food, clean air and unpolluted land, and protection from noise.

Environmental rights, in addition to the right to life, include the right to a healthy environment, the protection of physical and moral integrity, inviolability of life, freedom of thought and choice, information, and health protection.¹⁴

Environmental legal protection is based on two basic approaches – namely, establishing the environment and its protection in the form of an individual right to a healthy environment, and widely placing collective responsibility as a general obligation of individuals and public authorities to protect the environment.¹⁵

⁷ Heffron et al. 2018, 382–388.

⁸ Orlović 2014, 161-175.

⁹ Milligan & Macrory 2018, 23–37.

¹⁰ Morgera 2020, 11–20.

¹¹ Stojanović 2017, 129.

¹² Nastić 2011, 210.

¹³ Orlović 2014, 163.

¹⁴ Rabasović 1986, 151.

¹⁵ Porena 2010, 299; Cvetić 2013, 121; Nikolić 2019, 72.

The environment can be truly protected if people are convinced that preserving the environment is the only way to ensure their survival. This forms the basis of the anthropocentric viewpoint, which focuses primarily on preventing and ‘treating’ only those environmental problems that directly concern human beings. The ecocentric approach holds that nature must defend itself against environmental pollution. This results in obligations for the state and all individuals to protect the environment and refrain from implementing measures that may disturb the ecological balance.

3. Constitutional guarantees of environmental values in comparative constitutional systems

In today’s comparative constitutionality, about 30 constitutional documents contain no provisions guaranteeing environmental values.¹⁶ The reasons for the absence of constitutional guarantees of environmental rights are different. In some cases, these are constitutions adopted before the global environmental policy, or they are the first generation of constitutions that are primarily focused on key political institutions.¹⁷

However, an increasing number of countries are guaranteeing environmental protection with different approaches.¹⁸ Certain constitutions provide environmental protection by linking it with a certain quality of the natural environment, the degree of harmony of the environment with nature, or with the right to a healthy environment and introduce the right of nature to ‘existence, flowering, renewal, and development.’¹⁹ The Constitution of The Republic of France contains the Charter of Environmental Protection, which contains the basic ecological values that enjoy protection and rights that play a fundamental role in environmental protection, namely, the right of access to environmental information, the right to public participation in decision-making, and the right to access justice.²⁰ The German Constitution obliges the state to establish a legal system that provides adequate protection to basic ecological values, taking into account the protection of the rights and interests of future generations, and protects the natural foundations of life and wildlife. Both of these major constitutions have a broad approach because they start from the ecological values guaranteed by the Constitution, considering that environmental rights are more of a legislative matter.

¹⁶ Some constitutions that do not contain provisions governing the right to a healthy environment are those of the United States (1787), Argentina (1853), Luxembourg (1868), Australia (1900), Liechtenstein (1921), Lebanon (1926), the Republic of Ireland (1937), Iceland (1944), Japan (1946), Canada (1867), Denmark (1953), Kuwait (1962), and Pakistan (1973). If a constitution does not contain a constitutional guarantee on the environment, it does not necessarily mean that this protection is not achieved in practice. The quality of legislation and good practices of state authorities depends on the protection of the environment.

¹⁷ Mikić 2012, 213–214.

¹⁸ United Nations Environment Programme (UNEP) 2019, 16 and 142–143; Feris 2008, 29.

¹⁹ In the first case, the Constitution of the Republic of the Philippines (1987), Article 2, Part 16, is characteristic, and in the second, the Constitutional Law of the Kingdom of Sweden (1974) Sveriges Riksdag, Part I, Article 2. Drenovak-Ivanović et al. 2020, 42.

²⁰ The Constitution of France, the Charter of Environmental Rights, Charte de l’environnement de 2004, Article 1. Marrani 2009, 52.

The constitutional guarantee of the right to the environment starts from the idea that human rights and the human ecological environment are inseparable. The inclusion of environmental rights in the corpus of constitutionally protected rights makes this right judicially protected. Constitutional guaranteeing this right means recognizing new ecological values that can have a positive effect on the protection of human rights. In addition, there are real difficulties in the constitutional legal protection of environmental rights due to their nature.

Environmental rights are guaranteed in the socio-economic rights or connection with a group of human rights. The constitutional guarantees of these rights are reflected in general and principled provisions, and the law is referred to as an act that closely regulates the manner of realization and protection of these rights, the conditions under which they are acquired, and the entities to which the law is guaranteed. Hence, environmental rights are considered legal instead of constitutional rights. However, it must be understood that environmental rights are guaranteed by the Constitution and, as an obligation, primarily by the state, in addition to other public legal collectivities (such as local self-governments).

4. Constitutional guarantee of the right to a healthy environment in the Republic of Serbia

The beginnings of constitutional legal guarantees and environmental protection are found in the Constitutional Amendment to the Constitution of the Socialist Federative Republic of Yugoslavia (SFRY) from 1963. It established the federation's obligation to "*protect the environment from dangers to the life and health of people that endanger the entire country.*"²¹ The Constitution of Serbia (2006) contains a provision (Article 74) that forms the basis of constitutional legal protection and several provisions governing certain other rights, which indirectly relate to environmental protection. According to Article 74, everyone has the right to timely and complete information on the state of the environment, which includes the right to both active and passive information.²² The responsibility for the protection and improvement of the environment applies to everyone, especially the Republic of Serbia and the autonomous province.

The Constitution contains provisions for the limitation of certain rights when necessary to achieve environmental protection. Thus, the freedom of entrepreneurship may be restricted by law, if necessary for the protection of the environment, natural resources, or human health and safety.²³ This is supported by the constitutional provision

²¹ Amendment XXX, Official Gazette of SFRY, No. 29/1971, Article 2, Point 9.

²² Constitution of the Republic of Serbia, Official Gazette of rs, No. 98/06, Article 51. Using the legally neutral subtitle 'healthy environment,' the Constitution has defined as an object of environmental rights, and according to its personal validity, the right to a healthy environment has been established as a human right.

²³ Constitution of the Republic of Serbia, Article 83, Stanza 2. One of the decisions of the Constitutional Court stated that the restriction of freedom of entrepreneurship may be done only within the limits of the law, and the adoption of a decree introducing a stricter restriction to protect nature exceeds constitutional and legal powers. Decision of the Constitutional Court of Serbia, IUo-49/2009, of March 29, 2012. Another decision noted that restricting entrepreneurship by banning the construction of nuclear power plants is not unconstitutional. This is because the

for the use and disposal of agricultural, forest, and urban construction land in private ownership, which may be restricted by law to avoid the risk of environmental damage.²⁴

In the constitutional system of Serbia, the right to a healthy environment is a basic individual right because the Constitution of Serbia has included it in its catalog of basic and general human rights. The constitutional regulation of the right to a healthy life is reproached that it is *“determined in such a way as to narrow the field of the legal protection of the environment because it is established in the function of human health.”*²⁵

4.1. The right to a healthy environment as a universal right

The right to a healthy environment has been established as a universal human right. This stems from the constitutional norm that *“everyone has the right to a healthy environment”* and from the fact that this article is in the section establishing human rights and freedoms.²⁶ The phrase, ‘man has a right,’ aims to emphasize the value and significance of this right; to give him a universal dimension.²⁷

As the right to a healthy environment is a universal human right, it is directly applied, which means that the law is not a necessary mediator for the application of the constitutional norm in practice. The direct application of human and minority rights is guaranteed by Article 18 of the Constitution. Article 10 of the Constitution mentions that the law may prescribe the manner of exercising these constitutional rights only if it is expressly provided for by the Constitution or if it is necessary for the exercise of a particular right due to its nature, whereby the law must not affect the essence of the guaranteed right.

Owing to the general formulation and nature of the right to a healthy environment, it follows that legal regulation is necessary because the environment is a broad concept that contains inherent elements, such as water, air, soil, plants, animals, and other living and inanimate worlds. This reduces the effectiveness of the constitutional legal protection of such a formulated environmental law.

4.2. Right to be informed regarding the state of the environment

By constitutionally guaranteeing the right to timely and complete information on the state of the environment, the procedure of ‘processualization of environmental law’

law that introduces the ban was adopted to protect the environment, which does not prohibit further research and development of experts in the field, which can lead to the formation of conditions that guarantee the safety of the construction of nuclear power plants and adequate risk management for years. Decision of the Constitutional Court of Serbia, IUz-1575/2010, of July 8, 2011.

²⁴ Constitution of the Republic of Serbia, Article 88, Paragraph 2. Decisions of the Constitutional Court No. UŽ-1198/2008 from March 3, 2011, UŽ-1424/2008 from March 31, 2011, UŽ-2945/2013 from December 23, 2015, and UŽ-7702/2013 from December 7, 2017, 62. Decisions of the Constitutional Court No. UŽ-7702/2013 from December 7, 2017. Bulletin of the Constitutional Court for 2017, Belgrade 2019, pp. 612–629.

²⁵ Šogorov-Vučković 2018, 406.

²⁶ Ibid.

²⁷ Rabasović 1986, 151.

has been established. The right of access to environmental information and the obligation of the authorities to inform the public about the state of the environment is reinforced by Article 51. Article 10 of the Constitution guarantees the right to truthful, complete, and timely notification on issues of public importance.²⁸

4.3. Liability and obligation to protect the environment

The obligation of the state to protect the environment is prescribed by a general and principled constitutional provision. The content of this constitutional provision is not specifically defined in the Constitution nor does the Constitution delegate the issue to the legislator for closer regulation. The obligation of the state, thus, formulated is a kind of proclamation, which has found its place in the constitution as the highest legal act. This has its significance; nevertheless, it has no immediate practical consequences because non-compliance with this obligation is not sanctioned.²⁹

The obligation of citizens to protect the environment is “*a duty primarily in an ethical sense,*” except when by their behavior; that is, by doing or not doing, they are committing certain ecological offenses. Preserving and improving the environment is the primary duty of the state; however, it must be elaborated and specified in the law; otherwise, it remains a ‘dead’ duty. This constitutional duty of each person shall protect and improve the environment, as referred to in Paragraph 3 of Article 74. Thus, the Constitution of Serbia can be linked to the “*idea of sustainable development.*”³⁰

4.4. Restrictions on other rights to protect the environment

The importance of the environment is conditioned by certain other constitutional provisions that are the basis for its protection. One such provision establishes the possibility of limiting one of the basic principles of economic order – the freedom of entrepreneurship. Entrepreneurship may be restricted by law for the protection of human health, the environment, and natural resources, and for the safety of the Republic

²⁸ Drenovak-Ivanović 2018, 226–242. These articles are reserved only on the right of access to environmental information and the obligation to actively inform the public, according to the first pillar of the Aarhus Convention. Bearing in mind the importance of the Aarhus Convention, the other pillars of the Convention should be covered by constitutional legal protection. The Aarhus Convention is an international agreement that introduces the concept of the right to an adequate environment at the European level and regulates, in detail, the most important elements of that right, the so-called three pillars – the right to environmental information, the right to public participation in the field of environmental protection, and the right to access justice. Komnenić 2012, 161. The Republic of Serbia ratified the Aarhus Convention in 2009. Law on Ratification of the Convention on Access to Information, Public Participation in Decision-Making and the Right to Legal Protection in Environmental Matters (Official Gazette of the Republic of Serbia – International Treaties, No. 38/09).

²⁹ Pajvančić 2011b, 201. This defined responsibility justifiably suffers criticism, bearing in mind that local communities, cities, and municipalities are omitted from this context, especially since environmental problems, at the beginning, always have a local character, that is, they erupt in a narrower area and later expand and require state intervention; the autonomous province.

³⁰ Drenovak-Ivanović 2018, 226.

of Serbia (Article 83, Paragraph 2). The law, based on the Constitution, may limit forms of use and disposal, that is, prescribe conditions for the use and disposal of agricultural land, forest land, and city construction land in private ownership, though the freedom of use and disposal is guaranteed (Article 88, Paragraph 1). Legislative intervention, in this sense, is possible to eliminate the risk of environmental damage or prevent violations of the rights and interests of other persons based on the law (Article 88, Paragraph 2).

In these situations, the constitutional norm leaves the discretionary authority to the legislator, whereby 'it can', nevertheless, not have to restrict entrepreneurship or freedom of land disposal. Even if restrictions are established, they can be excluded. For example, in the case of forest land, "*if required by the general interest established by a special law or by an act of the Government.*"³¹

5. Constitutional judicial protection of the right to a healthy environment in the Republic of Serbia

The protection of human rights before the Constitutional Court is a specific form of protection. This type of protection of human rights can be exercised in parallel with the judicial protection of rights. As the guardian of the constitution, the Constitutional Court decides on the protection of constitutionality and legality, which is an indirect yet significant aspect of the protection of human rights. In addition, by relying on the general constitutional principle on the immediate application of constitutional provisions on human rights, the Constitutional Court has the jurisdiction to decide on the protection of constitutional human rights. Both groups of competencies of the Constitutional Court are a reason for the citizens to be guaranteed the opportunity to apply to the Constitutional Court and establish legal instruments that serve this purpose.³²

One form of protection of human rights before the Constitutional Court is in general and can be considered the primary form of protection before the Constitutional Court. This type of protection is exercised through the basic jurisdiction of the Court in the procedure of control of constitutionality and legality. It is an indirect form of protection of human rights before the Constitutional Court since the protection of rights is indirectly reflected in the position of the individual whose right has been violated. In some constitutional systems, this is the only form of constitutional protection of human rights.

Another form of protection of human rights before the Constitutional Court is the direct constitutional protection of human rights guaranteed by the Constitution. The value subject to the direct protection afforded by the Constitutional Court is the specific human right of the violated individual. A legal instrument at the disposal of anyone whose constitutional right is violated is a constitutional appeal. Under the constitutionally prescribed conditions, citizens can directly address the Constitutional Court when they have violated a freedom or right by an act of public authority.

³¹ Cvetić 2013, 119. Article 10, Paragraph 1, Point 2 of the Law on Forests (Official Gazette of RS, No. 30/2010, 93/2012, 89/2015 and 95/2018 (other law).

³² Drenovak-Ivanović 2018, 228.

The constitutional ranking of the right to a healthy environment is particularly important in protecting this right. In this regard, the provisions of Article 22 of the Constitution stipulate that anyone who has been violated or denied a human or minority right guaranteed by the Constitution has the right to judicial protection and the right to the elimination of harmful consequences caused by the violation. The constitutional rank of this right, moreover, provides him with protection upon constitutional appeal.³³

5.1. Normative control of laws and other general legal acts

The primary function of the Constitutional Court is to exercise control of the legislative power and other holders of normative activity, thus, ensuring the constitutionality of the law and preventing the abuse and exceeding of the powers of the legislative authorities.³⁴

The Constitution of the Republic of Serbia established the jurisdiction of the Constitutional Court to control the constitutionality and legality of the normative acts.³⁵

When it comes to the normative control of the law, as one of the competencies of the Constitutional Court at the time of the existence of the Federal Republic of Yugoslavia (FRY) (1992–2006), we can name two laws in the field of environmental protection whose compliance with the Constitution (Constitution of the FRY) was assessed by the then Constitutional Court:

The Law on the Prohibition of The Construction of Nuclear Power Plants in the Federal Republic of Yugoslavia (Official Gazette of the FRY, No. 12/95 and Official Gazette of RS, No. 85/05) where the Constitutional Court assessed that the disputed law was adopted to protect the environment from nuclear risk and the harmful effects of ionizing radiation, which could occur during the operation of nuclear power plants, that is, in the production, use, and disposal of radioactive nuclear material, which is the objective of the protective provision stipulated in Article 74. The Law on Determining the Jurisdiction of the Autonomous Province of Vojvodina (Official Gazette of RS, No. 99/09), where the Constitutional Court rejected the proposal for determining the unconstitutionality of the provision of Article 25, Point 5, of this law, which stipulates that the Autonomous Province of Vojvodina regulates, improves, and provides environmental protection for its territory, which led to the transfer of the entire area of environmental protection to the original jurisdiction of the Autonomous Province.

The Constitutional Court has witnessed cases assessing the constitutionality and legality of the general legal acts of lower legal force than laws relating to environmental protection. These are the Statute of the Autonomous Province of Vojvodina (Official Gazette of the APV, No. 17/09), Regulation on the Protection of Nature Park 'Šargan-Mokra Gora' (Official Gazette of the RS, No. 52/05, 105/05 and 81/08), and others.

³³ Nastić 2011, 221.

³⁴ Stojanović 2014, 75.

³⁵ Stojanović 2018, 35.

The subject of the Constitutional Court's assessment was the decisions on compensation for the protection and improvement of the environment of local self-government units. The Constitutional Court has determined the unconstitutionality of the provisions of the Statute of the Autonomous Province of Vojvodina³⁶ and the Decree on the Protection of the Nature Park Šargan-Mokra Gora.³⁷ Regarding the Decisions on compensation for protecting and improving the environment, the Serbian practice knows cases that were inconsistent with the established Constitution and laws,³⁸ along with when decisions on rejecting the initiative were made.³⁹

5.2. Constitutional appeal

The Constitution stipulates that a constitutional complaint may be filed against individual acts or actions of state bodies or organizations entrusted with public powers, which violate or deny human or minority rights and freedoms guaranteed by the Constitution if they are exhausted or no other legal remedies are provided for their protection (Article 170 of the Constitution of The Republic of Serbia).⁴⁰ Hence, specialized constitutional legal protection of human rights is established.⁴¹

³⁶ Decision of the Constitutional Court IUO-360/2009 of December 5, 2013.

³⁷ Decision of the Constitutional Court IUO-49/2009 of March 29, 2012.

³⁸ The Constitutional Court found neither the Decision on compensation for the protection and improvement of the environment of the Municipality of Ćuprija nor the Decision on compensation for the protection and improvement of the environment of the Municipality of Mionica were in accordance with the Constitution and law. For the adoption of a decision IUO-1256/2010 of December 20, 2012, it took the Constitutional Court two years and one year for the IUO-338/2013 decision of March 20, 2014.

³⁹ An initiative was submitted to the Constitutional Court to initiate proceedings for the assessment of the constitutionality and legality of the Decision on compensation for environmental protection and improvement (Official Gazette of the Municipality of Bor, No. 6/10 and 12/10). A request was submitted along with the initiative to suspend the execution of an individual act, which was rejected. Two years after the submission of the initiative, the Constitutional Court issued a decision rejecting the proceedings for the assessment of the constitutionality and legality of the Decision on compensation for environmental protection and improvement. In the second case, two identical initiatives were submitted to the Constitutional Court to initiate proceedings to assess the constitutionality and legality of Article 2 of the Constitution. Decision on compensation for environmental protection and improvement (Official Gazette of the Municipality of Vrbas, No. 25/09, 1/10, 4/10, 16/10, and 13/11) and Article 2 Regulation on determining activities whose performance affects the environment (Official Gazette of RS, No. 109/09 and 8/10). The Constitutional Court issued a decision rejecting the proceedings for the assessment of the constitutionality and legality of Article 100 of the Constitution. Article 2, Point 3, Decision on compensation for environmental protection and improvement, and Article 2. Regulation on determining the activity whose performance affects the environment and the requirement for suspension of the execution of an individual act or action undertaken on the basis of the Decision.

⁴⁰ Pajvančić 2011a, 50.

⁴¹ However, although the Constitution has established an instrument that serves to protect human rights before the Constitutional Court, it did not explicitly establish the jurisdiction of the Constitutional Court (Article 167) to decide directly on the protection of human and minority

The Law on the Constitutional Court (Article 82) determines against which acts and actions a constitutional appeal is allowed, with the additional stipulation that a constitutional appeal may be filed in case of violation or denial of human or minority rights and freedoms if the right to their judicial protection is excluded by law.⁴²

The Constitutional Court has taken the position that a constitutional appeal protects all human and minority rights and freedoms, individual and collective, guaranteed by the Constitution, irrespective of their systematic place in the Constitution and whether they are explicitly incorporated into the Constitution or are implemented in the constitutional legal system by confirmed international treaties.⁴³

For a right to be eligible for immediate constitutional judicial protection, it is necessary that this right is inextricably linked to the human person and has a special value and significance for him/her. It is this character that has the right to a healthy environment as a right of solidarity.

A constitutional complaint is an exceptional subsidiary, the supplementary and auxiliary legal remedy for the protection of rights and freedoms, and can be applied only when another remedy is used (or proves ineffective or impossible to use) or if no other form of protection is provided. The Constitutional Court's protection of human rights is aimed at determining the existence of unconstitutionality in a particular case.⁴⁴

We highlight several characteristic decisions of the Constitutional Court regarding the submitted constitutional appeals wherein the applicant is called for a violation of the right to a healthy environment referred to in Article 74 of the Constitution. In addition, the violation of several other rights, among which the most common is the right to a trial within a reasonable time, is referred to in Article 32, Paragraph 1 of the Constitution of the Republic of Serbia. In most cases, the Constitutional Court issued decisions on the adoption of a constitutional appeal, however, only in part related to the violation of the right to a trial within a reasonable time. Nevertheless, we have a modest decision from the Constitutional Court, which adopted a constitutional appeal for violating the right to a healthy environment.

5.2.1. Constitutional appeal Už-1198/2008 of March 3, 2011.

The individual legal acts against which the constitutional appeal was filed are the judgment of the Municipal Court in Čačak P. 179/98 of December 3, 2007, and the verdict of the District Court in Čačak Gž. 741/08 of July 9, 2008.

rights. Pajvančić 2009, 218.

⁴² Law on the Constitutional Court (Official Gazette of RS, No. 109/2007, 99/2011, 18/2013-Decision US, 103/2015 and 40/2015 (other law)

⁴³ Positions of the Constitutional Court in the procedure of examination and decision on constitutional appeal, Su. No. I-8/11/09, of April 2, 2009.

⁴⁴ From the individual's perspective, this statement holds no special significance. Therefore, it is important to have the power of the Constitutional Court to directly influence the restoration of a violated or threatened fundamental right. Pejić 2008, 268.

The submitter of the constitutional complaint claims in his allegations that his right to a trial within a reasonable time in the proceedings before the Municipal Court in Čačak was violated. These included the right to a fair trial, equal protection of rights and legal remedies, peaceful enjoyment of property, legal aid, a healthy environment, the principle of equality of all forms of ownership, use of urban construction land, and the principles of judicial decision, as guaranteed by the provisions of Article 32, Paragraphs 1, 36, 58, 67, 74, 86, 88, and 145. The applicant invoked the violation of the rights referred to in Article 6, Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol 11, Article 1 of the Convention.

When considering the constitutional appeal, the Constitutional Court stated in its explanation that the appeal did not state constitutional legal reasons that would indicate a violation of the right to a healthy environment. The Constitutional Court issued a decision rejecting the constitutional appeal in this part as unfounded; however, the constitutional appeal was adopted only in the part relating to the violated right of the applicant to a fair trial, guaranteed by the provision of Article 32, Paragraph 1 of the Constitution of the Republic of Serbia.⁴⁵

5.2.2. Constitutional complaint UŽ-1424/2008 of March 31, 2011.

The subject of the constitutional appeal is the judgment of the Municipal Court in Novi Sad P. 7383/96 of April 18, 2006, and the judgment of the District Court in Novi Sad Gž. 3947/06 of October 16, 2008. The applicant of the constitutional appeal stated that her right to a fair trial, referred to in Article 32, Paragraph 1, and the violation of the right to a trial within a reasonable time and the right to a healthy environment, referred to in Article 74 of the Constitution, were violated. The constitutional complaint stated that the complainant filed a lawsuit against 'Elektro Vojvodina' due to the proximity of the substation and electrical cables, which impaired its health.

This constitutional appeal was rejected as unfounded in the part in which the applicant referred to the violation of the right to a healthy environment. The Constitutional Court agreed with the first and second-instance courts that the plaintiff did not prove a sufficient degree of probability of harm to her health and quality of life by non-ionizing radiation as a result of inadequate precautionary measures by the defendant.

The Constitutional Court adopted the appeal in part relating to the violated right of the applicant of the constitutional appeal to the trial within a reasonable time because nine and a half years passed from the filing of the lawsuit to the date of the contested first instance verdict and 20 hearings were scheduled of which 11 were held.⁴⁶

5.2.3. Constitutional appeal UŽ-2945/2013 of December 12, 2015.

In this case, the applicant lodges a constitutional appeal against the judgment of the First Basic Court in Belgrade in case P. 16/10 of June 18, 2012 (formerly the case of the First Municipal Court in Belgrade P. 2833/97) and the judgment of the Court of

⁴⁵ Decision of the Constitutional Court UŽ-1198/2008 of March 3 2011.

⁴⁶ Decision of the Constitutional Court UŽ-1424/2008 of March 31 2011.

Appeal in Belgrade Gž. 8109/12 of April 17, 2013. The applicant claims that her right to a fair trial, referred to in Article 32, Paragraph 1, the right to property, referred to in Article 58, Paragraph 1, and the right to a healthy environment, referred to in Article 74 of the Constitution of the Republic of Serbia were violated.

The Constitutional Court assessed that the applicant of the constitutional appeal, regarding the violation of the right to a healthy environment, was not satisfied. Article 10 of the Constitution did not state constitutional legal reasons for the claim of violation of the aforementioned constitutional right. The mere existence of a septic tank in someone's yard would not be enough to justify the violation of the right to a healthy environment. However, the constitutional appeal was adopted in part relating to the right to trial within a reasonable time, guaranteed by the provision of Article 32, Paragraph 1 of the Constitution of the Republic of Serbia.

5.2.4. Constitutional complaint Už-7702/2013 of December 7, 2017.

The Decision of the Constitutional Court No. 7702/2013, regarding the declared collective constitutional appeal is a rare decision of the Constitutional Court in which an appeal was adopted and established that Paragraph 2 of the sentence of the judgment of the Appellate Court in Novi Sad, Gž. 3677/12 of June 20, 2013, violated the right of the applicants to a fair trial, guaranteed by Article 32, Paragraph 1 of the Constitution of the Republic of Serbia regarding the right to a healthy environment referred to in Article 74 of the Constitution of the Republic of Serbia.⁴⁷

6. Conclusion

The Constitution, as a legal act of the highest legal force, provides the initial and last protection of the right to a healthy environment in a legal system. Initially, in terms of the constitutional guarantee of this right, the right to a healthy environment was in the document of the greatest legal force. Based on the Constitution, the legislator regulates this right closely. The Constitution established the Constitutional Court as the guardian of the Constitution. It represents the last protection for the assessment of the constitutionality and legality of general legal acts and the protection of human rights – the right to a healthy environment.

The Constitutional Court of Serbia, in the procedure of assessing the constitutionality and legality of general legal acts, in most cases, decides based on the initiative to proceed or reject initiatives for establishing the unconstitutionality of most laws. When it comes to bylaws' general acts, the Constitutional Court more often finds inconsistency with the Constitution and the law.

In the constitutional appeal procedure, the Constitutional Court found, in an extremely small number of cases, a violation of the right to a healthy environment in connection with the right to a fair trial. Legal acts that violated the right to a healthy environment are court rulings because the courts rendered their judgments in disputes that lasted ten years or more, thus, enabling the violation of the right to a healthy environment with their passive behavior. Hence, the practice of the Constitutional Court

⁴⁷ Drenovak-Ivanović 2020, 41.

is more than modest. In addition, in several proceedings on constitutional appeals, the Constitutional Court adopted appeals for reasons other than the violation of the right to a healthy environment. Therefore, it is necessary to analyze the reasons for such modest constitutional case law.

In addition to the fact that the appellants did not sufficiently reflect this reason for the Constitutional Court to accept it and several subjective factors on the side of the appellants, including judges of the Constitutional Court (inexperienced judges and judges resorting to safe and proven judicial practices), it is necessary to point out an objective normative reason – the general constitutional formulation of the right to a healthy environment prevents the established factual situation from being safely brought under a constitutional ‘environmental’ norm. Therefore, the factual situation can be easily and safely subsumed under another constitutional norm, which regulates a specific case more closely.

De Lege Ferenda must enshrine a whole set of environmental rights into the Constitution of Serbia, contributing to legal environmental protection. This brings us back to the beginning of the analysis of environmental values, which must be, theoretically, more clearly defined and formulated in a constitutional text as a more concrete constitutional environmental human right to be more usable in case law. Doctrinally, we must revisit the ecological values, specify them, and retranslate them into clear and concrete constitutional environmental rights. Therefore, we propose a broader approach where environmental values must be reformulated into clear constitutional environmental rights. This reformation aims for efficiency in the constitutional legal protection of environmental rights instead of an abstract right to a healthy environment. The fundamental premise and highest principle is that the environment must be understood, treated as a value for itself, and be provided with the highest protection because by disrupting it, we place our survival at risk.

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