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Water Protection Litigation in Slovenia

Abstract

This article explores the possibilities for the private enforcement of the constitutional right to drinking water in Slovenia, enshrined in Article 70.a of the Constitution. Through an analysis of constitutional, civil, and administrative legal frameworks, it identifies both the structural availability and the practical limitations of existing mechanisms. While Slovenia offers several legal avenues for water-related litigation, their effectiveness is often hampered by procedural barriers, evidentiary challenges, and the absence of coherent implementing legislation. Particular attention is given to the role of the Constitutional Court and the underutilized potential of administrative remedies based on the Environmental Protection Act. Civil litigation, though possible in cases of identifiable harm, remains constrained by the inherent limits of tort law. The article argues that for Article 70.a to have meaningful legal effect, legislative reform and more active judicial engagement are essential.

Keywords: Drinking Water, Environmental Litigation, Constitutional Law, Slovenia, Private Enforcement

1. Introduction

Water is the basis of all human life. Throughout history, access to clean and reliable water sources has determined the rise and fall of civilizations. One of the many impressive examples of the importance of water is the Khmer civilization, which flourished in what is now Cambodia and built the hydraulic city of Angkor with the temple of Angkor Wat at its centre. The sudden demise of this civilization in the 15th century has long puzzled archaeologists and historians, but recent research has revealed that the city was most likely abandoned due to the collapse of its irrigation system. As the system became more complex, it became increasingly

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difficult to maintain. A series of severe droughts and subsequent floods, combined with poor maintenance causing siltation, led to the collapse of the system and the flooding and abandonment of the city.[2] The fate of Angkor is a reminder that even the most advanced civilizations can falter when water systems fail. In our time, ensuring access to clean and reliable water is not only a matter of public health and economic development, but also a fundamental requirement for the long-term survival of modern society.

Recognizing the essential role of water, the Slovenian Parliament took a significant step in 2016 when it passed a constitutional law adding a new Article 70.a to the Constitution of the Republic of Slovenia (hereinafter the Constitution).[3] The article in question enshrines the right to drinking water as a constitutional right. However, for this constitutional right to have any real meaning, it must also be effectively implemented and protected throughout the legal system. At present, the sectoral regulation of drinking water remains only partially aligned with the constitutional provision, which means that the direct and effective enforcement of the right to drinking water is not yet fully ensured.[4] The aim of this article, however, is not to provide an in-depth analysis of the content and impact of the relevant constitutional law, as this has already been done elsewhere.[5] Rather, the focus is on examining the possibilities of private enforcement of the right to drinking water in Slovenia within the framework of civil, administrative and constitutional law. Private enforcement in this context refers to the ability of individuals to seek redress to directly protect or secure their right to drinking water. This paper will examine whether and to what extent individuals in Slovenia can effectively enforce this constitutional right through legal action and what challenges or opportunities may arise in practice. The analysis is based on a review of relevant case law and legal acts and aims to shed light on the practical realities and challenges of private enforcement today. Ultimately, effective private enforcement mechanisms are critical to ensuring that constitutional rights are not merely symbolic, but have real impact in the lives of individuals.

This research is novel, as no comprehensive analysis of the possibilities for private enforcement of the right to drinking water in Slovenia has yet been carried out, and this issue is becoming ever more significant within broader debates about environmental and climate litigation. The first section of this paper introduces key concepts that are important for understanding the analysis that follows. The second section examines the possibilities for water litigation before the Slovenian Constitutional Court (hereinafter Constitutional Court). The third section turns to administrative law and examines the possibilities of protecting drinking water rights within the administrative law system. The fourth section deals with civil law procedures

2 | For more, see: National Geographic 2017; Penny et al. 2018. Also see: Buckley et al. 2010.
3 | Official Gazette of the Republic of Slovenia, no. 33/91-I as amended.
4 | Štemberger Brizani 2024, 50.
5 | See, for example: Sancin & Juhart 2023; Rakar, Tičar & Sever 2020.

and remedies and examines the role of tort law in the enforcement of these rights. The paper concludes with a summary of the findings and a critical assessment of the prospects for private enforcement of the right to drinking water in Slovenia.

2. Setting the scene

2.1. Environmental litigation and water litigation

"The protection of the environment has traditionally been carried out by public authorities through public enforcement."[6] In recent decades, however, private enforcement of environmental standards has gained considerably in importance. Environmental lawsuits are by no means a new phenomenon. As early as the 1960s, especially in the United States of America, litigation was recognized and deliberately used as a strategic tool for enforcing environmental protection goals.[7] Courts were identified as critical arenas for forcing regulatory action and enforcing environmental rights, often achieving policy changes that would otherwise have been unattainable through political means. Recent empirical research has further underscored the importance of environmental litigation. A comprehensive study by Brown University, which analyzed more than 25,000 civil lawsuits and 4,000 federal court decisions from 1988 to 2022, shows that environmental lawsuits have functioned as a remarkably effective mechanism for advancing environmental protection in the United States of America. However, the study found that lawsuits have disproportionately focused on environmental cases in western states, while issues more common in densely populated eastern regions, such as toxic pollution, access to clean drinking water, and sewage treatment, have received comparatively less judicial attention.[8]

In Europe, on the other hand, the use of litigation as a means of pursuing environmental and climate goals has only gained remarkable momentum in the last ten years. An important turning point was the Urgenda judgment of the District Court of The Hague in 2015,[9] which was later confirmed by the Dutch Supreme Court in 2019.[10] For the first time in the world, a court ordered a national government to take stronger action on climate change, citing the government's human rights obligations and duty of due diligence.[11] Subsequent landmark cases have further increased the reach and ambition of environmental litigation. In Milieudefensie v Shell, the District Court of The Hague broke new ground by requiring Dutch Royal

6 | Schumann Barragan 2024, 75.
7 | Hays 1986, 971; Martin 1972.
8 | Brown University 2024.
9 | Decision of the Hague District Court no. C/09/00456689.
10 | Decision of the Supreme Court of the Netherlands no.19/00135.
11 | For more see: Leijten 2019, 114–117.

Shell, a large multinational corporation, to reduce its greenhouse gas emissions, thereby extending the legal responsibility for climate change mitigation to the private sector.[12] Although the Court of Appeals later modified some aspects of the original judgment, it nevertheless upheld the principle that Shell is obliged to make meaningful efforts to reduce its emissions and contribute to global climate goals.[13,14] The case of Lliuya v. RWE, brought by a Peruvian farmer against the German energy company RWE, attempted to break new legal ground on the issue of corporate responsibility for transboundary climate impacts. The plaintiff, Luciano Lliuya, argued that RWE was responsible for approximately 0.47 percent of global carbon emissions and should therefore be held liable for a proportionate share of the costs associated with the rising water level of a glacial lake threatening his hometown. Although the Hamm Higher Regional Court ultimately dismissed the claim[15] on the grounds that the plaintiff had not suffered any direct damage at the time, the court recognized an important legal principle: companies can, in principle, be held accountable for environmental damage in other countries if this is attributable to their emissions.[16] The recognition of cross-border responsibility is reflected in human rights-based environmental cases. In the KlimaSeniorinnen case, the European Court of Human Rights (hereinafter ECtHR) ruled that inadequate state measures against climate change constitute a violation of rights protected by the European Convention on Human Rights (hereinafter ECHR).[17, 18] Important environmental cases before the ECtHR also include Öneryildiz v. Turkey,[19] which concerned a methane explosion at a rubbish tip in Ümraniye that killed nine of the applicant's relatives. The ECtHR held Turkey responsible for failing to prevent known risks and ensure accountability, finding violations of the right to life, property rights, and the right to an effective remedy. Another landmark case is López Ostra v. Spain,[20] where the applicant lived next to a waste-treatment plant causing severe pollution. The ECtHR found a violation of the right to respect for home and private life because the State failed to protect her from harmful environmental conditions. Stressing that serious pollution can impair private and family life, the ECtHR awarded compensation and confirmed State responsibility for regulating private activities. This case is particularly significant for linking environmental protection with human rights. In Hungary, Decision 28/1994 of the Constitutional

12 | Decision of the Hague District Court no. C/09/571932.
13 | Decision of the Hague Court of Appeals no. 200.302.332/01.
14 | For more, see: Johannsen 2025.
15 | Decision of the Higher Regional Court in Hamm no. 5 U 15/17.
16 | Verfassungsblog 2025.
17 | European Convention of Human Rights, as amended by Protocols 3, 5, and 8 and supplemented by Protocol 2, and its Protocols 1, 4, 6, 7, 9, 10, and 11, Official Gazette of the Republic of Slovenia – International Treaties, No 7/94.
18 | Decision of the ECtHR no. 53600/20.
19 | Decision of the ECtHR no. 48939/99.
20 | Decision of the ECtHR no. 16798/90.

Court is particularly relevant.[21] The case concerned a challenge a legal act which reduced the scope of state-managed protected areas. The petitioner argued that this violated the right to a healthy environment. The Court upheld the challenge, holding that once the State establishes a certain level of environmental protection, it cannot be reduced unless strictly necessary to realize other constitutional rights, and even then only proportionately. As the reduction was unjustified and not accompanied by stricter rules for private landowners, the Act was annulled.[22]

In the European context, the most prominent and influential environmental lawsuits in recent years have focused on climate protection measures. These cases have generally involved challenging the adequacy of government climate policy and imposing obligations on the largest emitters. However, the field of environmental litigation is much broader and includes court cases dealing with a variety of environmental harms, including pollution, habitat destruction, unsustainable land use and threats to biodiversity. Climate litigation, on the other hand, forms its own subgroup that focuses specifically on climate change-related claims. These cases usually deal with greenhouse gas emissions, climate adaptation measures or liability for climate-related damage. In other words, while all climate litigation falls within the scope of environmental litigation, not all environmental litigation relates to climate issues.

This article will focus on another important subset of environmental litigation: Water litigation. Water litigation encompasses lawsuits that seek to protect water resources. For the purposes of this analysis, a particular emphasis will be placed on litigation involving fresh drinking water, i.e. litigation that seeks to ensure the availability, purity, and safety of water for human consumption. However, it should be recognized that the concept of water litigation can also extend to cases involving saltwater resources, such as efforts to prevent marine pollution, protect coastal and marine ecosystems, or address transboundary impacts on seas and oceans.

2.2. Access to water as a fundamental right

In recent decades, the right to drinking water has developed into a fundamental human right in international law. A milestone in this development was the adoption of General Comment No. 15 by the UN Committee on Economic, Social and Cultural Rights in 2002, which provides a comprehensive and authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR).[23] The General Comment states that the right to

21 | Decision of the Hungarian Constitutional Court no. 28/1994.
22 | For more on environmental law and water regulation in Hungary, see: Bandi 2020; Szilágyi 2013; Szilágyi, 2016, Szilágyi 2018.
23 | International Covenant on Economic, Social and Cultural Rights, UN General Assembly, 16 December 1966, 2200 A (XXI), Official Gazette of the Republic of Slovenia, no 35/92 – International Treaties, no. 9/92.

water is inextricably linked to other rights protected by the ICESCR, in particular the right to an adequate standard of living and the right to the highest attainable standard of health. General Comment No. 15 establishes that states must guarantee everyone access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. At European level, the ECtHR has increasingly recognized the essential nature of access to safe drinking water. Although the ECHR does not contain an explicit right to water, the ECtHR has interpreted access to water as falling within the scope of protection of Article 8, which guarantees the right to respect for private and family life, and in certain cases under Article 2, which protects the right to life. The case law of the ECtHR in this area has developed mainly through cases concerning environmental damage that affects the quality and availability of water. For example, in the case of Tătar v. Romania,[24] the ECtHR dealt with water pollution caused by the release of cyanide, while in the cases of Dzemyuk v. Ukraine[25] and Solyanik v. Russia,[26] it examined the impact of pollution from cemeteries on drinking water sources. In such cases, the ECtHR has affirmed that states have a positive obligation to protect individuals from serious health risks arising from the contamination or deprivation of water. However, constitutional recognition of the right to water at national level remains the exception rather than the rule. Very few countries have chosen to explicitly enshrine this right in their constitutions. Slovenia is one of just four countries in the world, together with Slovakia, Uruguay, and South Africa, to provide explicit constitutional protection for the right to drinking water.[27]

3. Water litigation before the Slovenian Constitutional Court

Private enforcement of the right to drinking water before the Constitutional Court can take different forms and can be based on different provisions of the Constitution.

24 | Decision of the ECtHR no. 67021/01.
25 | Decision of the ECtHR no. 42488/02.
26 | Decision of the ECtHR no. 47987/15.
27 | It is important to note that water is also regulated at the EU level through two key directives. The Water Framework Directive (Official Journal of the European Union L 327) establishes a comprehensive framework for the protection and sustainable management of all water bodies, including rivers, lakes, groundwater, and coastal waters, with the overarching aim of achieving "good status" across the Union through integrated river basin management. Complementing this, the Drinking Water Directive (Official Journal of the European Union L 435) guarantees that water intended for human consumption is safe, clean, and accessible by setting strict quality standards, requiring regular monitoring, and obliging Member States to ensure access for all citizens, including vulnerable groups.

3.1. Procedural issues

The two relevant procedures in which private parties can gain access to the Constitutional Court are the constitutional complaint procedure and the constitutionality and legality review procedure. The basics of both procedures are laid down in the Constitution, while the Constitutional Court Act[28] contains their more detailed description. In general, the constitutional complaint procedure can be initiated by an individual or a legal entity that believes its constitutional rights have been violated by an individual legal act (e.g. a court judgment) issued by state authorities, local community authorities, or bearers of public authority. It is important to note that – with very few exceptions – all available legal remedies must have been exhausted. In order for the Constitutional Court to rule on a constitutional complaint *in meritum*, the petitioning party must demonstrate a legal interest, i.e. it "must show, with a degree of probability, that a favorable decision on their request would bring them a specific benefit (an improvement of their legal position) that it could not achieve otherwise."[29] Another possibility for a private party to gain access to the Constitutional Court in connection with water litigation is the constitutionality and legality review procedure. In this procedure, the Constitutional Court examines whether the contested legal act complies with a higher-ranking legal act. For example, it examines the constitutional conformity of laws and ordinances with the constitution and the conformity of ordinances with laws. Private parties initiating conformity proceedings must demonstrate a legal interest – a requirement that is often difficult to fulfil in practice. According to established case law, the legal interest must be direct and concrete. The applicant must prove that the contested act directly affects his rights, legal interests or legal position or that a positive decision on his application would lead to a change in his legal position.[30] In addition, the initiation of a constitutional or legality review is generally dependent on the submission of a constitutional complaint. An exception to this rule exists if the contested legal act has a direct effect, i.e. if its implementation does not require the adoption of an implementing law or a special procedure for the adoption of an individual legal act.[31] In conclusion, it is evident that high standards must be met to successfully initiate these procedures before the Constitutional Court.

3.2. Substantive issues

A number of constitutional provisions can serve as a basis for water litigation before the Constitutional Court. The most notable of these is the right to drinking water, which is enshrined in Article 70.a of the Constitution. However,

28 | Official Gazette of the Republic of Slovenia, nos. 64/07, 109/12, 23/20, 92/21 and 22/25.
29 | Decision of the Constitutional Court no. Up-1840/07.
30 | Nerad 2019, 455.
31 | Ibid., 458–460.

the protection of water can also be invoked under other constitutional rights, including the right to life (Article 17 of the Constitution), personal dignity (Article 21 of the Constitution) and the right to a healthy living environment (Article 72 of the Constitution). In addition, all international treaties that are directly applicable under Article 8 of the Constitution can serve as grounds for the protection of water before the Constitutional Court.[32] Water protection litigation before the Constitutional Court is rare, but there are some examples, in particular judgment no. 2023 U-I-416/19-32.[33] The case concerned the alleged unconstitutionality of several provisions of the Water Act,[34] the Plant Protection Products Act[35] and the Ordinance on the Water Protection Area for the Ljubljana Field Aquifer.[36] The contested regulations prohibited the use of pesticides only in the immediate water catchment area, while in the remaining part of the strictest water protection area their use was merely restricted. Significantly, the Constitutional Court emphasized that the protection of drinking water is essential not only for the current population, but also for future generations. Applying the precautionary principle, the Constitutional Court emphasized that potential long-term damage cannot be ignored, as the right to drinking water extends to all future generations. Finally, the Constitutional Court found that it is contrary to the principle of legality to leave essential aspects of water protection in the most strictly protected areas to secondary legislation.

A comparative analysis of constitutional cases on environmental protection offers valuable and interesting insights into the development of the understanding of the position of the environment in the field of constitutional law. The decision of the German Federal Constitutional Court in the Neubauer case[37] is a key example of climate change litigation. While the ruling does not explicitly deal with water protection, its reasoning can be applied to such issues. In this judgment, the German Federal Constitutional Court found that the right to life and physical integrity imposes positive obligations on the state to protect individuals from environmental harm. These obligations are linked to the state's duty to protect the environment, which, although not a fundamental right, creates legally enforceable positive obligations.[38] This means that if the State fails to fulfill these obligations, individuals have the right to seek judicial enforcement. The decision is particularly relevant in the Slovenian context, as German constitutional case law has a strong influence on the case law of the Slovenian Constitutional Court.

32 | Glavaš 2019, 29; Sancin et al. 2015, 61–67.
33 | Decision of the Constitutional Court no. U-I-416/19-32.
34 | Official Gazette of the Republic of Slovenia, nos. 67/02, 2/04.
35 | Official Gazette of the Republic of Slovenia, nos. 83/12, 35/23.
36 | Official Gazette of the Republic of Slovenia, nos. 43/15, 181/21, 60/22 and 35/23.
37 | Decision of the German Federal Constitutional Court nos. 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20.
38 | Schumann Barragan 2024, 83–84.

4. Water protection in civil litigation

4.1. Reach and limits of civil litigation in environmental cases

Civil litigation in environmental matters encompasses a wide range of claims, including claims for compensation for damages already incurred, as well as claims for unfair or deceptive practices and false or misleading advertising, commonly referred to as greenwashing.[39] These actions can be brought against both private companies and public authorities. In civil law jurisdictions, civil litigation is fundamentally designed to protect individuals from interference with their legally protected interests. In order to bring a civil action for damages, the plaintiff must therefore prove that he suffered legally recognized damage. If such damage is established, the plaintiff can demand either restitution in integrum or monetary compensation in the amount of the actual damage incurred. This is in contrast to the approach in common law jurisdictions, where the concept of punitive damages is well established. Courts can award damages that significantly exceed the actual harm suffered, not only to compensate the plaintiff but also to punish the offender for particularly egregious, malicious or socially harmful behaviour. Such compensation payments have a dual function: retribution for the wrongdoer and general deterrence for society as a whole.[40]

If no legally recognized damages to the individual are shown, no civil claim may be pursued.[41] This limitation was evident in the Lliuya v. RWE case mentioned above. There, the court dismissed the plaintiff's appeal on the grounds that he had not yet suffered legally recognized damage. The decision supports the conclusion that pure environmental damage, i.e. damage to the environment that has not (yet) manifested itself as harm to an identifiable person, cannot, in principle, be pursued in civil proceedings. For example, a chemical spill that contaminates a remote river without directly affecting a person's health or property would generally not give rise to a civil action because there is no injured party with standing to sue. However, if the same pollution intrudes into an aquifer that is used for drinking water supply and this causes health problems for local residents, a civil action might be possible because a concrete and identifiable harm has occurred. However, there are some exceptions to this general principle. In countries such as France, Portugal, the Netherlands and Italy, legislation allows non-governmental organizations to

39 | Greenwashing denotes the practice of conveying a false impression or disseminating misleading information about the environmental performance of a company's products, services, or operations. Typically, it involves marketing or public relations strategies aimed at presenting an image of environmental responsibility without substantive efforts to reduce ecological harm. See: Spaniol et al. 2024, 3.
40 | Varl 2016, 236.
41 | Schuman Barragan 2024, 87.

claim compensation for pure environmental damage.[42] Another notable example is Spain, where the recently enacted Law on the Rights of the Mar Menor[43] gives the Bay of the Mar Menor the status of a legal entity and allows any individual to bring a claim on its behalf. These developments represent a departure from the traditional principles of civil liability and are tailored to improve environmental protection by widening the circle of actors with legal standing.

For civil liability to arise, a causal link must be established between the actions of the responsible party and the damage suffered by the plaintiff. Most civil law systems follow the theory of adequate causation, which states that only the consequences that are objectively foreseeable and typical (i.e. adequate) results of a particular action can serve as legally relevant causes of liability. A person is therefore only liable for damages that were not only factually caused by their conduct, but are also reasonably foreseeable and not the result of extraordinary or highly unusual coincidences.[44] In environmental cases, however, it can be particularly difficult to establish a causal link between the defendant's conduct and the damage in question. This is because environmental damage often takes time to become apparent and can result from multiple sources whose individual contributions are difficult to isolate and quantify.[45] For example, water pollution may result from industrial waste from a factory, agricultural runoff or inadequate waste treatment, all of which potentially contribute to the end result. Legal theory and case law have developed various tools to address these evidentiary challenges. One such approach is the all-or-nothing test formulated by Shavell,[46] under which the defendant is held fully liable if it is more likely than not that its conduct caused the harm. If this proof is not provided, the defendant is not liable at all. This rigid approach does not allow for a middle ground, even in cases involving multiple tortfeasors or where there is scientific uncertainty as to causation.[47] Some legal systems also make use of a reversed burden of proof[48] or impose solidary liability to facilitate the establishment of responsibility in complex environmental harm cases.[49]

Civil liability faces significant inherent limitations when used as a tool in environmental litigation, particularly due to strict requirements such as the demonstration of individualized harm and clear causation. As a result, legal developments have increasingly shifted to alternative avenues, in particular the protection of fundamental rights and increased corporate accountability for breaches of due

42 | Fasoli 2017, 30–37.
43 | Official Gazette of the Kingdom of Spain, no. 237, pp. 135131–135135.
44 | Opinion of the Supreme Court of the Republic of Slovenia no. 2/1998.
45 | Tanko 2022, 23.
46 | Shavell 1985, 588.
47 | Tanko 2022, 23.
48 | See the article 6 of the German Umwelthaftungsgesetz (German Federal Law Gazette no. I S. 2634 as amended in no. I S. 2421).
49 | Tanko 2022, 24.

diligence.[50] However, I believe that despite these legal and practical obstacles, civil liability should not be dismissed as irrelevant in the context of water protection. Where actual damage can be established and directly attributed to the responsible polluter, civil actions remain a valuable tool not only to obtain compensation but also to promote accountability. Even if the chances of success are limited, pursuing civil actions can strategically raise public awareness and create incentives for regulatory action.

4.2. Actions for damages

Despite the procedural specificities discussed above, civil actions for damages remain possible in cases of water pollution, provided that the pollution results in legally recognized damage to a person. According to Article 132 of the Obligations Code,[51] such damage may take the form of diminution of property, loss of profit, or non-material damage, including physical or psychological suffering, fear, or injury to the reputation of a legal person.

In cases of water pollution, the most likely type of actual harm is damage to health, which can have both material and non-material consequences. For example, a person who works as a mechanic and is chronically exposed to contaminated drinking water may develop neurological symptoms that affect his motor skills and ability to concentrate, ultimately preventing him from continuing his professional activity. In such a case, the person suffers material damage, such as loss of employment, loss of income and the burden of medical expenses. At the same time, non-material damage may arise from reduced quality of life, chronic discomfort, psychological distress, and loss of autonomy. In these types of situation, the person affected can claim compensation for both the material and non-material damage caused by the pollution. Material damage can also be caused by other forms of water pollution, even if no actual damage to health occurs. For example, the death of fish intended for sale has a direct impact on the economic interests of fish farmers, who suffer a loss of stock and income. Similarly, the contamination of irrigation water used in fruit plantations can reduce crop yields and affect the quality of the fruit. In both cases, the pollution causes a measurable financial loss, which constitutes material damage under Slovenian tort law. As far as non-material damage is concerned, the basis for compensation can include various forms of suffering, such as physical pain, emotional distress resulting from a reduction in living conditions, fear, or the death or serious disability of a close family member.[52] According to Article 179 of the Obligations Code, the amount of compensation for non-material damage must be reasonable and proportionate to the actual damage

50 | Schumann Barragan 2024, 84.
51 | Official Gazette of the Republic of Slovenia, no. 97/07.
52 | Jadek Pensa 2003, 1023–1024.

suffered. In other words, the damages awarded must correspond to both the degree of suffering and the broader social context.[53] Slovenian courts have dealt with environmental cases in which claimants have sought non-material damages, arguing that pollution has affected their quality of life and caused emotional suffering.[54] A major procedural obstacle in Slovenian tort law, which applies to all cases of environmental damage, is the high standard of proof, which approaches certainty. While this is usually unproblematic in classic tort scenarios, e.g. if a company fails to secure a construction site and a passer-by falls into an open ditch and breaks a leg, this poses a major challenge in environmental litigation. In such cases, causation is regularly complex and diffuse and determining it is often difficult. As Tanko rightly points out, "in cases of environmental harm, proof of a standard of certainty seems unachievable, if not practically impossible, since it is often unclear whether, and to what extent, a particular factor caused the environmental damage. Often, multiple factors act simultaneously, making it difficult to determine their relative impact."[55]

In addition to compensation, the injured party can also demand the removal of the damaging effect on the basis of Article 133 of the Obligations Code and Article 99 of the Law of Property Code.[56] For example, a court can order a polluting factory to cease harmful emissions or otherwise mitigate the ongoing environmental damage. Importantly, in cases where damage arises from an activity that is carried out with state authorization and is considered to be in the public interest, recent case law of the Supreme Court of Slovenia has recognized the direct applicability of Article 26 of the Constitution.[57] This provision states that "everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as a bearer of public authority."[58] Accordingly, even if the polluting activity is not carried out by the state itself, the state can be held liable under the Obligations Code if the damage results from an activity in the public interest that it has authorized. This interpretation considerably expands the literal meaning of Article 26 of the Constitution.

Furthermore, it is important to note a clear trend across Europe towards the introduction of civil liability regimes for damages resulting from non-compliance with human rights and environmental due diligence obligations. A notable example is the Corporate Sustainability Due Diligence Directive,[59] which introduces civil

53 | Ibid., 1037.
54 | Decision of the High Court in Ljubljana, no. I Cp 1008/2021.
55 | Tanko 2022, 23.
56 | Official Gazette of the Republic of Slovenia, nos. 87/02, 91/13, and 23/20.
57 | Decisions of the Supreme Court of the Republic of Slovenia nos. II Ips 126/2019 and II Ips 129/2019.
58 | See also: Tanko 2022, 10.
59 | Official Journal of the European Union L 2024/1760.

liability for companies that fail to comply with their human rights and environmental due diligence obligations.[60] Article 29 of the Directive establishes a fault-based liability framework. Claimants must prove three essential requirements: actual damage to a natural or legal person associated with a protected legal interest; a negligent or intentional breach of due diligence obligations under Articles 10 and 11; and a causal link between the breach and the damage. However, the scope of the Directive in environmental cases remains somewhat limited, as pure environmental damage is generally excluded unless it directly affects a person. Nevertheless, the Directive allows Member States some discretion in its implementation and they are encouraged to go beyond the minimum standards, in particular by including liability for pure environmental damage.[61] Although full implementation at European Union level is still pending, this new framework represents a significant step towards strengthening the legal possibilities to hold companies accountable for environmentally harmful practices.

4.3. Collective actions

The Collective Actions Act[62] allows collective actions in certain cases of environmental harm, including pollution or other degradation of drinking water. However, it is important to emphasize that collective actions in the Slovenian legal system should not be equated with class actions as they are known in other jurisdictions, particularly in the United States of America. In a class action, one or more persons sue on behalf of a larger group of people with similar legal claims. A well-known example is the Volkswagen Dieselgate case, in which it was revealed that the company had used software to manipulate emissions test results for its diesel vehicles. Volkswagen eventually agreed to a $14.7 billion settlement to compensate consumers and buy back or repair the effected cars.[63] In contrast, collective actions are defined more narrowly in Slovenia. According to Article 3, paragraph 1 of the Collective Action Act, they are actions "by which a qualified entity claims redress for a disadvantage for the benefit of all injured parties in a mass tort case, regardless of the legal qualification of the claim." Therefore, such actions cannot be brought by an individual. According to Article 4, paragraph 1, only certain entities can act as plaintiffs, namely, legal persons governed by private law that operate on a non-profit basis and whose core activities are directly related to the rights allegedly violated, as well as the State Attorney's Office. A recent example of a collective action lawsuit in this context is the lawsuit filed against Apple by the non-governmental organization Kolektiv 99. The organization alleged that Apple

60 | Schumann Baragann 2024, 85.
61 | Verfassungsblog 2024.
62 | Official Gazette of the Republic of Slovenia, nos. 55/17 and 133/23.
63 | European Parliamentary Research Service 2016, 3.

had deliberately slowed down the operating system of certain iPhone models, thereby depriving users of important functions.[64]

Under Article 2 of the Collective Actions Act, collective actions may also be brought in relation to "claims related to liability for damage due to causing an environmental accident, as laid down by the Act governing environmental protection." The relevant legislation here is the Environment Protection Act,[65] which defines an environmental accident in Article 4 as "any uncontrolled or unforeseen event caused by an activity affecting the environment resulting in an immediate or delayed, direct or indirect, threat to human life or health or to the quality of the environment, as well as an ecological accident." Accordingly, if a water supply is contaminated as a result of such an event, collective actions can be asserted. Although there is not yet a definitive example in Slovenian case law of a class action arising from a water-related environmental accident, a notable real-life incident illustrates the legal potential. In 2017, a major fire broke out at the Kemis waste treatment plant in Vrhnika, resulting in an uncontrolled release of hazardous substances into the nearby Tojnica stream. This incident led to a significant fish kill and caused public concern about the safety of drinking water.[66] Subsequent annual monitoring showed that the pollution had been remedied, although the municipality of Vrhnika reported irregularities in the implementation of the monitoring.[67] Although this case did not lead to a collective action, it shows in which scenarios collective actions can be used to protect environmental and public health interests.

5. Water litigation before administrative courts

Administrative procedures are among the most important preventive mechanisms for protecting drinking water. For example, the authorities can refuse to issue building permits for construction projects that pose a potential risk of water contamination. "Depending on the powers granted to it, the administration will monitor or sanction non-compliance with environmental regulations."[68] Beyond administrative supervision, however, there also are some possibilities for judicial protection through Administrative Courts. In Slovenia, administrative jurisdiction is exercised by a specialized Administrative Court, which is institutionally separate from ordinary courts. It is important to distinguish between administrative decision-making, which is carried out in the first instance by the executive authorities,

64 | Tax-Fin-Lex 2025.
65 | Official Gazette of the Republic of Slovenia, nos. 44/22, 18/23 – ZDU-1O, 78/23 – ZUNPEOVE, 23/24, and 21/25 – ZOPVOOV.
66 | MMC RTVSLO 2017.
67 | MMC RTVSLO 2020.
68 | Schumann Barragan 2024, 75.

and administrative judicial review, which is carried out by the Administrative Court as a form of ex-post control. This chapter focuses on the latter, in particular on the extent to which individuals and civil society actors have access to legal remedies when administrative decisions affect environmental interests, including water protection. Comparative experience shows that other legal systems have adopted different institutional approaches. In Sweden and Finland, for example, specialized water courts serve as primary forums for the resolution of water-related disputes. These courts combine technical and legal expertise and provide a more focused venue for dealing with issues of water use, pollution and protection.[69]

At European Union level, the Environmental Liability Directive[70] has created a uniform framework for the prevention and remediation of environmental damage based on the polluter-pays principle. This principle, enshrined in Article 191(2) of the Treaty on the Functioning of the European Union[71] and operationalized through the Environmental Liability Directive, requires polluters to bear the costs of preventing, mitigating, and remedying environmental harm. It promotes accountability and incentivizes responsible environmental behaviour by ensuring that these costs are not externalized to the public. The principle promotes accountability and encourages proactive environmental stewardship by internalizing the costs of pollution.[72] Although the Environmental Liability Directive does not encompass all categories of environmental harm, it explicitly includes damage to water, along with harm to protected species, natural habitats, and soil. With respect to remediation, the Directive prioritizes the restoration of the environment to its baseline condition. Alternative remedial measures may be imposed only when such restoration is not feasible. The Directive also distinguishes between fault-based liability, the general rule, and strict liability, which applies to a defined set of hazardous activities.[73]

Slovenia has transposed the Environmental Liability Directive primarily through the Environmental Protection Act,[74] which regulates liability for environmental damage in Articles 161 to 179 under the chapter "Liability for the Prevention and Remediation of Environmental Damage." According to paragraph 1 of Article 168, a civil initiative or any legal or natural person whose legal interests are affected, or are likely to be affected, by environmental damage, is entitled to notify the Ministry of the Environment of a specific instance of environmental harm and demand state action. This provision also enables preventive action, meaning that legal standing is not limited to cases where harm has already materialized. In

69 | Hollo, Vihervuori & Kuusiniemi 2010, 53.
70 | Official Journal of the European Union L 143.
71 | Official Journal of the European Union C 326.
72 | Petrašević & Poretti 2022, 4–7.
73 | See: Tanko 2022, 11–14.
74 | Official Gazette of the Republic of Slovenia no. 44/22, 18/23 – ZDU-1O, 78/23 – ZUNPEOVE, 23/24 and 21/25 – ZOPVOOV.

addition, in accordance with paragraphs 7 to 9 of Article 168 of the Environmental Protection Act, any legal or natural person whose legal interests are or are likely to be affected by environmental damage, as well as certain non-governmental organizations, are granted the status of interested parties in proceedings concerning the adoption of a decision on the remediation of environmental damage. This status is also conferred on landowners or possessors of property necessary for the implementation of the measures prescribed in such a decision. These parties are entitled to challenge the decision, including a determination that no environmental damage has occurred, by initiating an action before the Administrative Court in accordance with the Administrative Dispute Act. An additional legal remedy is available under Article 231 of the Environment Protection Act, which allows any natural person, non-government organization, or civil initiative to submit a prohibitory claim seeking to halt or prevent excessive environmental interference by a planned activity. Significantly, the claimant does not need to demonstrate personal harm or risk thereof; it is sufficient to show that the environment itself is endangered. While this remedy permits the suspension or prohibition of harmful activities, it does not include claims for compensatory damages.[75] The Environment Protection Act mirrors the Directive's dual model of liability (fault-based and strict), without expanding the scope of activities that trigger strict liability.

To summarize, the Slovenian legal framework allows for preventive and remedial administrative and judicial measures to protect water and the environment in a broad sense. Importantly, standing is not limited to parties who have suffered personal harm; damage to the environment as such is sufficient. However, the range of available legal actions remains relatively narrow, and there is no relevant case law to date. Whether this framework will be used more actively in the future depends on whether awareness and institutional support for the enforcement of environmental rights increases.

6. Conclusion and final remarks

This article examined the legal options available in Slovenia for the private enforcement of the constitutional right to drinking water enshrined in Article 70.a of the Constitution. Based on an examination of constitutional, civil and administrative procedures, the analysis has shown that, although the Slovenian legal system formally provides for several ways to protect this right, in practice they are inconsistently effective and accessible. The possibility of a constitutional complaint proves to be a particularly promising avenue, especially given the fundamental status of the right to drinking water within the Slovenian constitutional order. The Constitutional Court's interpretation in the 2023 decision on the Ljubljana Field

75 | Tanko 2022, 17.

Aquifer shows a willingness to read Article 70.a in conjunction with other constitutional principles such as the precautionary principle and the protection of future generations. However, access to the Constitutional Court is restricted by strict procedural requirements. Individuals must demonstrate a direct and concrete legal interest and, in most cases, exhaust all ordinary legal remedies first. These thresholds significantly restrict the circle of potential applicants and limit the real enforceability of the constitutional right to water. Administrative proceedings offer a different form of protection, in particular through the preventive and corrective mechanisms provided by the Environmental Protection Act. Here, standing is not limited to individuals who have suffered personal harm, but also extends to civil initiatives and non-governmental organizations seeking to protect the environment itself. The Environmental Liability Directive, which has been transposed into Slovenian law, strengthens this framework by codifying the polluter pays principle and allowing intervention before the damage has fully occurred. However, despite its potential, the administrative justice system is still underutilized in the context of water protection. There is no case law and institutional practice has yet to adopt the preventive logic provided for in the legislation. In contrast, civil litigation is characterized by structural limitations that are difficult to overcome. In line with the civil law tradition, Slovenian tort law requires the plaintiff to prove individual damage and to establish a direct causal link between the defendant's conduct and the damage. Because of these requirements, civil claims are ill-suited to address diffuse, long-term or collective damage to water resources. Although civil liability remains relevant in cases of identifiable harm, such as health damage resulting from contaminated drinking water, this avenue is limited by high evidentiary thresholds and the lack of mechanisms to recognize pure environmental harm as compensable. Collective actions, introduced by the Collective Actions Act, offer some improvement by allowing qualified entities to litigate on behalf of multiple injured parties, but they are still very narrow in scope and have yet to be used in significant environmental or water-related cases.

It is particularly important to emphasize that all of these legal avenues, constitutional, administrative and civil, were already available prior to the adoption of Article 70.a. Even before the passing of the constitutional law, water-related claims could be made on the basis of other constitutional rights, such as the right to life (Article 17), personal dignity (Article 21) and the right to a healthy living environment (Article 72). Article 8 of the Constitution also allowed for the direct application of relevant international treaties, such as the ECHR. In this sense, Article 70.a has not fundamentally changed the legal possibilities for the protection of water, but rather strengthened the existing protective measures by adding an additional constitutional layer. Its contribution to date has therefore been primarily declarative rather than transformative.

Despite these shortcomings, the Slovenian legal framework for water litigation is not without potential. By enshrining the right to drinking water in the

Constitution, Slovenia belongs to a small group of states that have elevated this right to the highest level of legal protection. This normative basis provides fertile ground for further developments, both through legislative measures and judicial interpretation. Foreign case law, in particular that of the ECtHR and the constitutional and civil courts in Germany and the Netherlands, has shown that water can be protected not only as an environmental good, but also as a human right. This evolving comparative jurisprudence provides useful interpretative guidance to Slovenian courts, in particular to the Constitutional Court, which has both the competence and the constitutional mandate to give life to Article 70.a. Nevertheless, the most urgent challenge lies not in judicial interpretation, but in the lack of comprehensive implementing legislation. For Article 70.a to be fully effective, it needs to be operationalized through concrete legal norms that set standards for water quality, access, affordability and institutional accountability. Currently, sectoral laws regulating water management, environmental protection and land use remain fragmented and are not systematically aligned with Article 70.a. The gap between constitutional entitlement and legal reality makes the right to water vulnerable to administrative discretion and political inconsistencies.

To summarize, the state of affairs in Slovenia can be described as structurally adequate but substantively incomplete. The legal system offers several ways to protect water, but the practical enforceability of the right to drinking water depends on further legal developments. A coherent and proactive strategy is needed to ensure that Article 70.a is not just a symbolic declaration but a real and enforceable guarantee. This strategy must include a greater willingness of the judiciary to apply human rights principles in environmental cases. As global pressure on water resources increases, Slovenia has the opportunity and responsibility to ensure that its constitutional commitment to the right to drinking water is not only respected in principle, but also implemented in practice.

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