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Environmental Duties and Liability in the Constitution of Slovakia[1]

Abstract

The article addresses the constitutional protection of the environment in the Slovak Republic, focusing in particular on an analysis of Arts. 44 and 45 of the Constitution of the Slovak Republic and their application in practice. From the perspective of Slovak legal doctrine, this constitutional framework is embedded in a broader development, whereby environmental law is increasingly regarded as a distinct and internally coherent branch of law within the national legal system.[2] Attention is given to the obligations of the state, the obligations of the individual, constitutional liability, as well as to the issues of enforceability of these rights and obligations. The basis for the constitutional analysis lies in the constitutional and statutory regulation of the right to a favourable environment and the right to information on the environment, complemented by a systematic interpretation of the decision-making activity of the Constitutional Court of the Slovak Republic in the context of the principles of the rule of law. The authors place special emphasis on addressing the constitutional dilemma concerning the nature, content and scope of the right to a favourable environment, as regulated and interpreted within the Slovak constitutional system, and its interconnection with other fundamental rights which determine its practical enforceability. The contribution further presents selected examples of good application practice and formulates "de constitutio ferenda" proposals aimed at strengthening the constitutional regulation of environmental protection as a fundamental element of an individual's life within a modern society, with regard to the constitutional regulation of environmental obligations and liability.

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1 | This work was supported by the Slovak Research and Development Agency under Contract no. APVV-23-0645.
2 | Michalovič & Maslen 2024, 2–3.

Lívia TRELLOVÁ – Tomáš STRÉMY: Environmental Duties and Liability in the Constitution of Slovakia. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2026 Vol. XXI No. 40 pp. 35–65

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https://doi.org/10.21029/JAEL.2026.40.35

Keywords: Right to healthy environment, constitutional regulation and enforceability, constitutional duties and obligations, constitutional liability, *de constitutio ferenda* proposals

1. Overview of the position of certain constitutional institutions in the Constitution and in the practice of the Constitutional Court

Historically, given the nature and origin of the right to environmental protection and the circumstances leading to its emergence, such protection cannot be found in the constitutional documents of the Czechoslovak State of 1918–1948. However, the suggestion of a framework for environmental protection in the form of a regulation of the duty of the state to take care of ecology was contained in the Constitution of the Czechoslovak Socialist Republic, Constitutional Act No. 100/1960 Coll., in Art. 15(2): "The state takes care of the development and comprehensive protection of nature and of the preservation of the natural beauty of the homeland, thereby creating ever richer sources of the people's welfare and a suitable environment that would benefit the health of working people and enable their recovery."[3] In the constitutional development after 1989, under the influence of sociopolitical changes, Constitutional Act of the Federal Assembly of the Czechoslovak Federative Republic No. 23/1991 Coll. was drafted and adopted, by which the Charter of Fundamental Rights and Freedoms was introduced. In its third chapter, entitled Economic, Social and Cultural Rights, Art. 35 provides the following:

(1) Everyone has the right to a favourable environment.
(2) Everyone has the right to timely and complete information on the state of the environment and natural resources.
(3) In the exercise of his or her rights, no one may endanger or damage the environment, natural resources, the biodiversity of nature, or cultural monuments beyond the extent established by law.

The Constitutional Act, the Charter of Fundamental Rights and Freedoms, remains valid and effective in the Slovak Republic in accordance with Art. 152(1) of the Constitution of the Slovak Republic: "Constitutional Acts, Acts and other generally binding legal regulations shall remain in force in the Slovak Republic if they do not contradict this Constitution. They may be amended and repealed by the competent authorities of the Slovak Republic." This represents a general reception norm through which legal continuity with the legal order of Czechoslovak statehood,

3 | Trellová 2015, 35.

which still existed at the time of the adoption of the Constitution, is ensured.[4] The material condition for the validity of these regulations is their conformity with the Constitution of the Slovak Republic.

At present, Art. 44 of the Constitution of the Slovak Republic, as amended by Constitutional Acts No. 90/2001 Coll. and No. 137/2017 Coll., ensures a broader scope of environmental protection than the Charter of Fundamental Rights and Freedoms in this sphere.

The constitution-maker incorporated constitutional protection of the environment in the Slovak Republic in the second chapter of the Constitution of the Slovak Republic, i.e. in the regulation of fundamental rights and freedoms, thereby confirming that it constitutes an important component of the value orientation of the state. The constitutional regulation contained in Arts. 44[5] and 45 of the Constitution of the Slovak Republic forms an inseparable part of the principles of a democratic and rule-of-law state (Art. 1(1) of the Constitution of the Slovak Republic) and is inherently linked to the commitments of the Slovak Republic arising from international law. The provision of Art. 44(1) of the Constitution of the Slovak Republic, "Everyone has the right to a favourable environment", is appropriately complemented by the wording of Art. 45 of the Constitution of the Slovak Republic: "Everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of that state." These rights may be restricted only in accordance with the rules set out in Art. 13 of the Constitution of the Slovak Republic. The rights enshrined in Arts. 44 and 45 of the Constitution of the Slovak Republic are guaranteed within the limits established by Art. 51(1) of the Constitution of the Slovak Republic, according to which the rights referred to therein may be claimed only within the scope of laws implementing these provisions. From the interrelation between the second chapter, section six, and Art. 51 of the Constitution of the Slovak Republic, it follows that a fundamental right or freedom granted in this section of the Constitution of the Slovak Republic may be exercised only to the extent laid down by law.

According to modern human rights theory, the right to environmental protection may be classified among third-generation rights.[6] Vasak then identified a 'third generation' of rights, which he called 'solidarity rights', including rights to peace, development, a healthy environment and the right to ownership of the common heritage of mankind.[7] Vasak associated each of these 'generations' with the motto of the French Republic, namely *liberté*, *egalité*, and *fraternité* (solidarity), respectively. In a later essay, Vasak further associated each generation or wave of rights with periods of history, with the first wave said to arise out of the French Revolution, the second wave out of the Russian Revolution of 1917 and the third wave

4 | Orosz et al. 2022, 771.
5 | Constitution of the Slovak Republic, Art. 44 paras. 1–6.
6 | Vasak 1977, 29.
7 | Chalabi 2023, 4.

out of 'the emancipation of colonised and dominated peoples' in the mid-twentieth century.[8]

The complexity of the Slovak constitutional regulation is expressed by the enshrinement of the protection of mineral resources, caves and water – groundwater, natural healing resources and watercourses – contained in Art. 4 of the Constitution of the Slovak Republic, which the constitution-maker extended by Amendments No. 90/2001 Coll. and No. 306/2014 Coll. This represents an explicit constitutional regulation of tangible assets or things in the ownership of the state. The Slovak Republic may directly use the subject matter of its ownership and manage it through its bodies or organisations and derive benefits from this property. Alternatively, it may lease this property and collect rent for such lease, or it may grant its use to a third party, which compensates the Slovak Republic for the use of its property (typically in the form of payments for extracted minerals).[9] The purpose of Art. 4 of the Constitution of the Slovak Republic is not only to regulate the obligations and liability of the state in managing its exclusive ownership in such a way that it is used prudently and efficiently, but above all to constitutionally express the duty of the Slovak Republic to protect and enhance this natural wealth. This is not merely a constitutional declaration without practical implication, but an expression of the state's highest interest in protecting its nature, specifically in the form of defined resources, such as mineral wealth, caves, groundwater, natural healing resources and watercourses. This constitutional norm represents a command not only to protect, prudently utilise and enhance the specific natural wealth and the components of the environment, but also a directive to the legislator to adopt constitutionally compliant legislation in accordance with this command.

1.1. Conceptual issues in the Constitution and constitutional practice

The right of everyone to a favourable environment is formulated in Art. 44(1) of the Constitution of the Slovak Republic. It is complemented by the right to information on the state of the environment, which is regulated in Art. 45 of the Constitution of the Slovak Republic. Likewise, the constitutional right to the protection of cultural heritage (Art. 44) is guaranteed. The inclusion of the right to a favourable environment in the second chapter of the Constitution of the Slovak Republic, section six, entitled The Right to Protection of the Environment and Cultural Heritage, indicates that this is qualitatively and by its nature a different type of right than the economic, social and cultural rights which are regulated in section five of the Constitution of the Slovak Republic. The right to a favourable environment may undoubtedly be classified in the form of the constitutional principle of environmental protection among the principles constituting the essence

8 | Vasak 1984, 837.
9 | Orosz et al. 2021, 56.

of the constitutional principle of the rule of law. As regards its nature, the right to a favourable environment belongs to the so-called solidarity rights, i.e. rights of the third generation of human rights. At the same time, the right to a favourable environment represents a subjective public right. Its specific feature is its general character, which requires concretisation through statutory regulation.[10]

Implicitly, from this regulation of Art. 4, a right to water may be inferred, although it is not expressly stated in the text. Water is a strategic resource and an irreplaceable component of the environment, and its protection and preferential use in the public interest is of fundamental importance in the context of ongoing climate change and the sustainable development of society. For this reason, the Constitution prohibits the use of water abstracted from water bodies located in the territory of the Slovak Republic for the purpose of transporting such abstracted water as a raw material across the Slovak state border by means of transport. Ensuring sufficient water for future generations and the sustainable development of nature and the landscape is the reason for the constitutional prohibition of large-scale water transport outside the territory of the Slovak Republic. The ban on the export of water outside Slovakia does not apply to the export of drinking water and natural mineral water bottled in consumer packaging within the territory of the Slovak Republic, to water for personal consumption or to the provision of humanitarian aid and assistance in emergency situations.

In relation to the right of ownership and its binding effect, the Slovak constitution-maker, in Art. 20(3), explicitly prohibits its abuse to the detriment of the rights of others or in conflict with general interests protected by law. It explicitly provides that the exercise of the right of ownership must not damage human health, nature, cultural monuments or the environment beyond the extent established by law. Restrictions on ownership rights to immovable property may be found in legal regulations governing the protection of individual components of the environment, for example, Act No. 543/2002 Coll. on the Protection of Nature and the Landscape. The constitutionally guaranteed fundamental right to the use of ownership is not superior to the constitutionally guaranteed fundamental right to a favourable environment. These two rights complement each other, and it may be stated that one right creates the boundaries for the exercise of the other.[11] In the case of the regulation contained in Art. 20(3) of the Constitution of the Slovak Republic, it is sufficient that the conduct is negligent for the constitutional prohibition to be violated. Intentional conduct is not required here, since a general institute of abuse of rights is introduced and applied specifically to the abuse of the right of ownership.

The right to a favourable environment is not conferred by statute, since it is guaranteed in the second chapter, section six, of the Constitution of the Slovak

10 | Maslen 2022, 399–437.
11 | Čič M et al. 2012, 153.

Republic as one of the fundamental rights and freedoms (Art. 44(1)). It is not possible to consider the protection of ownership as having priority over the protection of the right to a favourable environment, because all rights regulated in the second chapter of the Constitution of the Slovak Republic have equal legal force and protection, and none of them may be regarded as 'more fundamental than fundamental' merely because it is set out in the section entitled Fundamental Human Rights and thereby inferred to have precedence over another fundamental right. Fundamental rights and freedoms are mutually equal. The concept of a material rule-of-law state excludes the creation of a "hierarchy" of fundamental rights and freedoms in which one fundamental right or freedom would be accorded greater significance than another.[12]

According to the Constitutional Court of the Slovak Republic in case No. PL. ÚS 22/06: "The purpose of the regulation in Art. 20(3), third sentence, of the Constitution of the Slovak Republic is to define the scope and content of the legal status of the owner, to make the exercise of ownership rights conditional upon mandatory considerations which the owner must take into account in relation to other values of public interest. The regulation in Art. 20(3) of the Constitution is generic; it concerns groups of owners. The legal effects of Art. 20(3) of the Constitution, limiting the legal status of the owner, arise with the acquisition of ownership. During the existence of the right of ownership, the owner cannot be exempted from the legal effects of Art. 20(3) of the Constitution. A statute determining the degree of damage to a protected interest need not be adopted, but if such a statute is adopted, the owner cannot be exempted from the duty not to damage human health, nature, cultural monuments and the environment (not even by statute)." By Art. 20(3) of the Constitution of the Slovak Republic, a constitutional requirement is thus established for a fair balance between the scope of the owner's rights defined on the basis of Art. 20(1) of the Constitution and the rights of third parties guaranteed, inter alia, by Art. 44(1) of the Constitution of the Slovak Republic.

According to Art. 44(3) of the Constitution of the Slovak Republic, no one may endanger or damage the environment, natural resources or cultural monuments beyond the extent established by law. From the perspective of Art. 20(3) of the Constitution of the Slovak Republic, this provision may appear redundant; however, Art. 44(3) has a general significance. It does not establish an obligation only in relation to the exercise of the right of ownership. It establishes an obligation not to endanger or damage the environment, natural resources and cultural monuments beyond the extent established by law in the exercise of every fundamental right and freedom. In relation to the environment, the Constitution, through the wording of Art. 44(3), extends its protection also into the sphere of prevention by prohibiting not only damage to the environment, but also endangerment of the environment.

12 | Constitutional Court of the Slovak Republic 2008, 8–9, paras. 34–36.

These prohibitions are at the same time a complementary expression of the duty to protect and enhance the environment, which is laid down in Art. 44(2) of the Constitution of the Slovak Republic.[13]

The fundamental concept with which the constitutional regulation operates, and which is subsequently developed by legislation, is the 'environment'. Under the applicable statutory regulation, i.e. pursuant to Section 2(1) of Act No. 17/1992 Coll. on the Environment, as amended, the environment is understood to mean "everything that creates the natural conditions for the existence of organisms, including humans, and constitutes the prerequisite for their further development. Its components are, in particular, the air, water, rocks, soil, and organisms." On the other hand, to narrow the protection of the environment solely to the statutory definition of the term does not correspond to modern social development. Legal protection of the right to the environment, as understood today, encompasses not only natural resources and objects of nature conservation, but also the landscape in its anthropological significance. Therefore, the sphere of access to cultural heritage, especially in its tangible form, as well as the sphere of public health protection are also part of the environment.[14] Therefore, the constitutional regulation of environmental protection is set more broadly and incorporates the provisions of Arts. 44 and 45 in connection with Arts. 4, 20(3), as well as Art. 40 of the Constitution of the Slovak Republic. In general, it may be said that the establishment of the constitutional framework guaranteeing a favourable environment corresponds to one of the oldest definitions of the term 'environment', presented by Professor S. Wik at the UNESCO conference in 1967, according to which "the environment is that part of the world (the universe) with which man interacts, i.e. which he uses, influences, and to which he adapts."

1.2. The role of state bodies in protecting the environment and future generations

Art. 44(4) of the Constitution of the Slovak Republic explicitly provides that: "The state shall ensure the prudent use of natural resources, the protection of agricultural land and forest land, ecological balance, and effective care for the environment, and shall secure the protection of designated species of wild plants and wild animals." By this provision, the constitution-maker established the duty of public authorities to be active and expressed five areas of state responsibility. Within these five defined areas, the state is expected not only to ensure passive protection against damage to nature, but also to create positive conditions for its preservation and enhancement. The state may ensure the implementation of these tasks through state authorities, whether central or local. It may likewise delegate

13 | Constitutional Court of the Slovak republic 2008, 9–10, paras. 37–39.
14 | Krošlák et al. 2016, 398.

the implementation of these tasks to bodies of territorial self-government or private law entities. Thus, the Constitution of the Slovak Republic defines the duty of the state to ensure tasks within the framework of environmental care, which constitutes the enshrinement of the so-called positive obligation of the state in this field. This obligation serves as a tool of protection for the individual against legislative passivity of the parliament, particularly through Art. 51(1) of the Constitution of the Slovak Republic. The state's positive obligation to secure the rights guaranteed to citizens by the Constitution does not mean an absolute guarantee of outcome, but rather the duty to create legislative and administrative conditions so that these rights may be effectively exercised in practice.[15] At the same time, however, there also exist positive obligations of the state arising from the interest in the effective protection of rights. Such a special category of the state's positive obligations is represented by the duties of the state to ensure effective protection of the rights guaranteed by international treaties through the existence of a certain (legally regulated) process. More specifically, the objective of the state's positive obligation arising from Art. 8 of the Aarhus Convention is, through the legal order of the respective state, to secure the protection of public participation in the preparation of generally binding legal regulations having a significant impact on the environment, i.e. at the initial stage of the entire legislative process – during the preparation and deliberation of a draft law before its submission to the National Council of the Slovak Republic.[16] The Constitutional Court of the Slovak Republic has confirmed that insufficient fulfilment of this positive obligation of the state does not automatically in itself mean a violation of the right in the protection of which the respective duty is to be implemented, i.e. the right to a favourable environment. This is because the public's right corresponds to a substantively identical duty of the state or of the relevant public authorities to protect the rights guaranteed to individuals, and also because only the final result of the legislative process, i.e. the promulgated statute, is binding upon the affected subjects. A violation or restriction of the fundamental right to a favourable environment could arise only on the basis of a statute published in the Collection of Laws of the Slovak Republic, either by a provision of such statute itself or by its application by the competent public authorities (I. ÚS 73/2014).[17] The constitutional duty of the state to protect the environment is so strong that, in justified cases, it may prevail over individual ownership rights, provided that the proportionality of the interference is preserved. The public interest in environmental protection may thus legitimise interventions by the legislator as well as by administrative authorities into the individual sphere.

15 | See Constitutional Court of the Slovak Republic 1996, 5–6; Constitutional Court of the Slovak republic 2003, 6–7.
16 | Constitutional Court of the Slovak Republic 2015, 13–14, paras. 44–47, 10–11, paras. 39–41.
17 | Constitutional Court of the Slovak Republic 2015, 8–9, paras. 30–34.

The state shall ensure the prudent use of natural resources. For the state and its authorities, the Constitution of the Slovak Republic establishes the obligation to create legal instruments and mechanisms that enable the use of natural resources, but only prudently. Prudent use of natural resources means their use in a manner that takes into account the needs and requirements not only of the present generation, but also of future generations. The state further bears responsibility in the form of securing adequate protection of agricultural land and forest land. A fundamental role of the state may be identified in its duty to ensure ecological balance. This is a term used to describe the balance between living organisms, such as humans, plants and animals, and their environment. Another area of state responsibility is effective care for the environment. Such care should not be merely illusory or formal; on the contrary, the system should be structured in such a way that the instruments of the state are capable of intervening in cases of violations of the right to a favourable environment. The state establishes a system of state authorities for ensuring effective care for the environment, in which the central authority of state administration in environmental care is the Ministry of the Environment of the Slovak Republic. Last but not least, within the created system the state must ensure the protection of wild plants and wild animals.

Within the system of environmental protection, the Slovak Environmental Inspectorate, whose competence derives from Act No. 525/2003 Coll. on State Administration of Environmental Care and on Amendments to Certain Acts, serves as the central authority of state supervision. It was established in 1991 by the merger of two separate inspectorates and today oversees compliance with environmental regulations in the fields of air, water, waste, nature and landscape. In the exercise of supervision it is authorised to impose fines, order remedial measures and issue integrated permits. Part of its activity also consists in handling submissions from the public and institutions, thereby strengthening public participation in environmental protection.

1.3. Fundamental rights: The right to a healthy environment

The right to a favourable environment is a subjective right of a public-law nature, i.e. it should be enforceable against the state, which distinguishes it from subjective rights of a private-law character. Its subject (holder) is provided with instruments ensuring such a quality of the environment as to allow him or her to live undisturbed, both in terms of personal and social life.[18] In the Constitution of the Slovak Republic, the right to the environment is granted to everyone. Under the term 'everyone' we may understand not only all natural persons. Nevertheless, despite modern trends, the Constitutional Court of the Slovak Republic has repeatedly confirmed in its case law that "(...) by the nature of certain fundamental rights

18 | Trellová 2015, 39.

and freedoms it follows that legal entities cannot be their holders. This also applies to the designated fundamental right to a favourable environment under Art. 44(1) of the Constitution, whose subject is only a natural person".[19] Similarly, the subject of this right is only a natural person, and "for obvious reasons a legal entity cannot claim it, since the state and quality of the environment clearly determine the quality of human life, that is, the quality of life of a person."[20] The non-recognition of the right to a favourable environment for legal entities may nevertheless be regarded as an interference with their status, since it is precisely the position and activity of legal entities that have a significant impact on the level of favourability of the existing environment.

The attribute 'favourable' environment, used by the constitution-maker, when interpreted linguistically, denotes a 'suitable, satisfactory' environment. All of the mentioned adjectives serve the same purpose – to express, in general, the sum of qualitative and quantitative characteristics of the environment as material reality, the preservation of which is essential for the existence and healthy development of man. For the purposes of law, however, it is not possible to leave their assessment to the subjective notions of particular individuals, but rather it is necessary to determine them in a legally binding manner in valid regulations, on the basis of objective scientific knowledge. Despite the blanket norm in Art. 44(5) of the Constitution of the Slovak Republic, it may be stated that the statutes do not *expressis verbis* establish rights *sui generis* of a substantive-law nature that would express the concrete content of the right to a favourable environment proclaimed by the Constitution of the Slovak Republic.[21]

The right to a favourable environment has a positive-law character, which determines the existence of the state's positive obligation to adopt such legal regulations that will materially fulfil this right as well as create a system of state authorities that will enforce this right, monitor compliance and sanction those who violate it.[22] The constitutional regulation also contains in Art. 44(2) one of the few constitutional duties, namely the duty of everyone to protect and enhance both the environment and cultural heritage. This rare enshrinement of a constitutional duty for everyone in the form of protecting and enhancing the environment and cultural heritage emphasises the constitution-maker's intention to highlight the importance of the environment for the life of the individual and of society, as well as an appeal to create a state in which the protection of the environment will be a genuine all-societal goal, not merely a formal declaration. Contemporary Slovak legal scholarship and practice tend rather to interpret the right to a favourable environment as a constitutional principle, a programmatic norm or as a certain interpretative guideline. The Constitutional Court of the Slovak Republic has thus

19 | Constitutional Court of the Slovak Republic 2008, 23–24, paras. 72–74.
20 | Constitutional Court of the Slovak Republic 2008, 24.
21 | Trellová 2013, 223–229.
22 | Orosz et al. 2021, 566.

far not recognised Art. 44 of the Constitution of the Slovak Republic as a directly enforceable subjective right but has used it primarily as an interpretative guideline when assessing other fundamental rights, above all the right of ownership.[23] Nevertheless, the normative significance of the constitutional protection of the environment cannot be diminished.

No constitutional amendment adopted since 2022 has directly affected the constitutional provisions relating to environmental protection (such as the right to a favourable environment, the protection of nature or sustainable development). The amendments have focused on other areas (including family law and national identity) and have not interfered with the environmental-law dimension of the Constitution. Consequently, no change to environmental rights at the constitutional level has been adopted.

Based on the doctrine of the Constitutional Court of the Slovak Republic and the relevant scholarly literature, it can be concluded that, since 2022, the Court has not delivered any decisions that would explicitly and directly engage with, reinterpret or redefine environmental protection as an autonomous constitutional issue, as the pertinent constitutional case law in this field remains confined to earlier decisions, predominantly from 2019 and prior, with environmental aspects arising only indirectly in connection with other fundamental rights.

1.4. Other fundamental rights related to the protection of the environment

The importance of the right to a favourable environment is increasing in the modern era; therefore, its role is affirmed in the form of a guarantee directly in the constitutional text and in the catalogue of rights and freedoms, both as a positive obligation of the state in the field of environmental protection and as a subjective right of the individual, who in today's world is exposed to the consequences of human activity on the environment that affect or directly worsen the quality of life.[24] The relatively broad formulation of protection in Art. 44 of the Constitution of the Slovak Republic, together with the absence of a legal definition of the term 'favourable environment', creates a constitutional regulation at the level of a certain state objective in this sphere. The possibility of claiming this right only within the limits of statutes means that the right may be invoked only in connection with statutory regulation and most often with reference to the restriction or violation of other constitutional rights and freedoms. Environmental values most frequently come into conflict with ownership rights (Art. 20 of the Constitution of the Slovak Republic).

The right to a favourable environment may find its real fulfilment and application through the implementation of the state's positive obligations. The

23 | Constitutional Court of the Slovak Republic 2009, 29–31.
24 | Constitutional Court of the Slovak Republic 2019, 11–12.

Constitutional Court of the Slovak Republic has clarified in this respect that the content of the state's positive obligation in relation to the rights and freedoms of the citizen is the duty to take measures to protect the rights granted to the citizen by the Constitution, but that part of the positive obligation is not the duty to achieve the result which the citizen demands from the state.[25] At the same time, however, there also exist positive obligations of the state arising from the interest in the effective protection of rights. Such a special category of the state's positive obligations is represented by the duties of the state consisting in ensuring the effective protection of rights guaranteed by international treaties through the existence of a certain (legally regulated) process. Specifically, the objective of the state's positive obligation arising from Art. 8 of the Aarhus Convention[26] is, through the legal order of the respective state, to secure the protection of public participation in the preparation of generally binding legal regulations having a significant impact on the environment. This creates a link between this positive obligation of the state under Art. 44 and the right to information (Arts. 26 and 45 of the Constitution of the Slovak Republic). More specifically, it concerns ensuring an adequate opportunity for the public to comment on the draft of a generally binding legal regulation.

The minimum standard established by the Aarhus Convention for ensuring public participation in the preparation of legal regulations must meet, above all, three criteria:

- provision of a sufficient timeframe for effective public participation,
- publication of the draft or otherwise making it accessible to the public,
- provision of the possibility for the public to submit comments either directly or through representative bodies.

These standards for ensuring public participation in the preparation of legal regulations are regulated in the Slovak Republic only within the framework of the Legislative Rules, which are an internal normative management act of the government. The legislative process itself continues further in the National Council of the Slovak Republic and ends with the promulgation of the adopted statute in the Collection of Laws of the Slovak Republic. The result of the legislative process is a statute regulating not only the rights and duties of the subjects to whom it is addressed but also ensuring their rights or the protection of their rights and legally protected interests. From this it is clear that insufficient fulfilment of this positive

25 | Constitutional Court of the Slovak Republic 1996, 5–6; Constitutional Court of the Slovak Republic 2003, 6–7.

26 | National Council of the Slovak Republic expressed its consent to the Aarhus Convention by Resolution No. 1840 of 23 September 2005, and the full text of the Convention was subsequently promulgated in the Collection of Laws under No. 43/2006 Coll. It follows from the resolution of the National Council (Resolution No. 1840 of 23 September 2005) that, pursuant to Article 7(5) of the Constitution of the Slovak Republic, the Aarhus Convention prevails over statutory law.

obligation of the state does not in itself automatically mean a violation of the right in the protection of which the respective duty is to be implemented, i.e. the right to a favourable environment. This is because the public's right corresponds to a substantively identical duty of the state or of the relevant public authorities to protect the rights guaranteed to individuals, and also because only the final result of the legislative process, i.e. the promulgated statute, is binding upon the affected subjects. A violation or restriction of the fundamental right to a favourable environment could arise only on the basis of a statute published in the Collection of Laws of the Slovak Republic, either by a provision of such statute itself or by its application by the competent public authorities.[27]

Public access to information was also at issue in the case of the Pezinok landfill before the Court of Justice of the European Union. The Court held that the public must have access to the zoning decision concerning the siting of an installation with a significant impact on the environment. The protection of trade secrets cannot be relied upon in order to refuse such access.[28]

A frequently and jointly invoked right is also the right guaranteed by Art. 46(1) of the Constitution of the Slovak Republic, the right to judicial protection in the form of the right of access to a court, which constitutes the entry point to the "procedural guarantees" of human rights protection. The relationship between this substantive right and procedural right is somewhat problematic, since Art. 44(1) has rather a programmatic character and thus does not really and fully represent an independently enforceable subjective right. The greatest problem in practice appears to be the fact that, despite the intention of the constitutional legislator to formulate a subjective right, it may be concluded that its independent practical enforceability is problematic. This corresponds to its broadly conceived programmatic nature. Its wording implies effective assertion of the right in the form of a successful court action, provided that the subjective right of the claimant has been violated. The content of the right to a favourable environment becomes enforceable when it is interconnected with other fundamental rights and freedoms, with protection being realised through the procedural guarantees of Art. 46. In practice, this means that an individual may effectively claim protection of the favourable environment before a court usually when he or she demonstrates an interference with his or her other constitutionally guaranteed rights.

Although the right to a favourable environment is explicitly recognised in the Constitution as a public subjective right, its predominantly programmatic character, as consistently affirmed by the case law of the Constitutional Court of the Slovak Republic, significantly constrains its autonomous judicial enforceability. The protection of this right is largely mediated through implementing legislation and the discretionary decision-making of public authorities, which in practice

27 | Constitutional Court of the Slovak Republic, 2014, 21–23.
28 | See CJ EU 2013, 18.

renders its direct and independent invocation before constitutional adjudicatory bodies particularly problematic.[29]

1.5. Restriction of fundamental rights on the grounds of environmental protection

Environmental protection may constitute a legitimate ground for the restriction of fundamental rights, in particular the right of ownership or the right to conduct business. The basis for assessing the relationship between the protection of ownership and its possible restriction arising from the public interest in nature protection is Art. 20(3) of the Constitution of the Slovak Republic, which is determinative for this relationship. According to this article, the right of ownership cannot be understood as an unlimited right of the owner to exercise ownership at will, but as a right that may be realised only within certain boundaries. These boundaries are clearly defined in such a way that the exercise of ownership must not damage human health, nature, cultural monuments or the environment beyond the extent established by law. The prohibition on endangering nature and the environment beyond the extent established by law has an unequivocal preventive significance, which, in accordance with Art. 20(3) of the Constitution of the Slovak Republic, fundamentally affects the possibilities of exercising the right of ownership. The objective of the constitutional regulation in Art. 20(3) is to define the scope and content of the legal status of the owner and to make the exercise of ownership rights conditional on mandatory considerations which the owner must take into account in relation to other constitutionally designated values of public interest. The regulation in Art. 20(3) of the Constitution of the Slovak Republic is generic; it concerns groups of owners. The legal effects of Art. 20(3) of the Constitution of the Slovak Republic limiting the legal status of the owner arise with the acquisition of ownership. In this way, a requirement of fair balance is established between the scope of the owner's rights defined on the basis of Art. 20(1) of the Constitution of the Slovak Republic and the rights of third parties guaranteed by Art. 44(1) of the Constitution of the Slovak Republic.[30]

In this context, the Constitutional Court of the Slovak Republic refers to the case law of the European Court of Human Rights (hereinafter 'ECtHR'), according to which an interference with the peaceful enjoyment of possessions must nevertheless maintain a fair balance between the needs of the public or general interest of society and the requirements of the protection of the fundamental rights of individuals.[31] The objective of restricting rights must be based on the principle that any measure interfering with the right to peaceful enjoyment of possessions must

29 | Constitutional Court of the Slovak Republic 2021, 14–16.
30 | Constitutional Court of the Slovak Republic 2008, 8–9.
31 | See ECHR 2007, para. 46.

establish a fair balance between the requirement of the general interest of society and the need to respect the fundamental rights of the individual. Balancing and seeking a fair equilibrium also has its place in relation to the protection of constitutionally designated values in the form of the protection of nature and the environment. Such a restriction must respect the principle of proportionality – it must pursue a legitimate aim, be suitable, necessary and proportionate. The application of the proportionality test is a key instrument in balancing individual rights and the public interest in the protection of the environment and nature.

Just as it is possible to restrict other fundamental rights and freedoms in the interest of environmental protection, so it is possible under certain circumstances to restrict the protection of nature. In the Slovak constitutional order, during wartime, fundamental rights and freedoms may be restricted to the necessary extent and for the necessary time depending on the course of events, and duties may be imposed on the entire territory of the Slovak Republic or on part thereof. This also applies to the authorisation to restrict part of the right to a favourable environment protected in Art. 44 of the Constitution of the Slovak Republic in relation to the protection of nature and the landscape, as well as the restriction of the right to timely and complete information on the state of the environment guaranteed in Art. 45 of the Constitution.[32] However, it is not possible to restrict the protection of nature and the landscape, nor the right to timely and complete information on the state of the environment, during a state of war, a state of emergency or a state of crisis.

1.6. Protecting national assets in relation to the environment and future generations

Closely related to the protection of the environment is the regulation in Art. 4 of the Constitution of the Slovak Republic. Here, the constitution-maker regulated those things which were considered so important for the Slovak Republic in this context that it was unequivocally determined that they are in the ownership of the state. In this way, the legislator was deprived *pro futuro* of the possibility to regulate the ownership of these things in any other manner. The basic idea underlying this constitutional regulation is the effort to ensure ecological balance and the preservation of these public goods also for future generations, i.e. the creation of a foundation of intergenerational solidarity in the field of environmental protection. Mineral resources, caves, groundwater, natural healing resources and watercourses are regarded as public goods, intended to serve the needs of society, to ensure the development of the national economy and to pursue the public interest. A more detailed definition of these goods and the rules for dealing with them are regulated by legislation on the basis of available knowledge. The

32 | See National Council of the Slovak Republic 2002, Art. 2 para. 3(u).

importance of water as a natural resource, an irreplaceable component of the environment and a strategic raw material can be seen in the content of Art. 4(2) of the Constitution of the Slovak Republic, where the management of water is regulated in detail.[33] This represents an exceptionally detailed constitutional regulation of water transport, and it is already in the introductory part of the first chapter of the Constitution of the Slovak Republic. By this, the constitution-maker declared its strong interest in preserving this essential component of the environment and of all living ecosystems. At the same time, it pointed out that this is an exhaustible natural resource which deserves a high degree of protection, as it is a determining factor of sustainable development. With water as an irreplaceable strategic resource, the risk of its loss or depletion is relatively high as a consequence of ongoing climate change and its negative impacts on the state of the environment. The Slovak Republic must therefore, in accordance with the narrative declared in Art. 4(1) of the Constitution of the Slovak Republic, protect and enhance this natural wealth as well, for the benefit of its citizens and future generations. The aim is the preferential use of water in the public interest – in the interest of safeguarding human life and health, national security and the development of society and the state.

In Slovak legal doctrine, we also encounter the assertion of B. Balog that, despite the fact that the Constitution of the Slovak Republic does not explicitly regulate a right to water, Art. 4 (2) of the Constitution of the Slovak Republic may be understood as an expression of such a right.[34]

1.7. The relationship of values not yet mentioned (in parts 1.1–1.6 and parts 2.1.–2.2)

The protection of the environment and the environmental values guaranteed in the Slovak Constitution extend into all areas of the functioning of modern society and stand in a dynamic relationship with other constitutional values. The existence of constitutional values and principles is based on their harmonious coexistence. They influence economic development and social policy, and they seek to contribute to achieving the long-term sustainability of the management of the Slovak Republic with regard to the requirement of economic and social justice and solidarity between present and future generations. Within the constitutional system, the concept of sustainable development is thus gradually gaining ground as an interpretative principle, the aim of which is to contribute to reconciliation of the environmental, economic and social dimensions of public policy.

33 | Constitution of the Slovak Republic, Art. 4 para. 2.
34 | Balog 2021, 59.

2. Protection of the environment and future generations as a duty and obligation and the related liability issues

2.1. Protection of the environment and future generations as a duty and obligation

The importance of environmental protection in the Slovak Republic is emphasised by its inclusion among the most significant values within the Slovak constitutional order. The constitution-maker defined the right of everyone to a favourable environment, while at the same time creating, within the Slovak Constitution, a constitutional duty for everyone. The Slovak Republic, as a democratic and rule-of-law state (Arts. 1 and 2(2) of the Constitution of the Slovak Republic), guarantees a catalogue of fundamental rights and duties without making their exercise conditional upon the fulfilment of obligations. The general regulation of the imposition of duties is contained in Art. 13(1) of the Constitution of the Slovak Republic as a universal norm establishing the general criteria and prerequisites for the possible restriction of fundamental rights and freedoms.[35] According to this provision, a clear distinction is evident between duties and the limits of fundamental rights and freedoms, both in substance and in form.[36] Art. 13(1) of the Constitution applies exclusively to the determination of duties restricting fundamental rights and freedoms, where the primary aim is the protection of natural and legal persons against public authority.[37] The explicit enshrinement of a constitutional duty in Art. 44(2): "Everyone shall be obliged to protect and enhance the environment and cultural heritage" is exceptional within the Constitution of the Slovak Republic. In the second chapter of the Constitution, entitled *Fundamental Rights and Freedoms*, we find only three specific constitutional duties: compulsory military service (Art. 25(1)), compulsory school attendance (Art. 42(1)) and the duty to protect and enhance the environment and cultural heritage (Art. 44 (2)). The imposition of a duty in the matter of environmental protection represents a *lex specialis* to Art. 13(1) of the Constitution of the Slovak Republic, meaning that the basic principles contained in that article, both in terms of form and substance, also apply to its implementation. The regulation of the constitutional duty of environmental protection thus documents the constitution-maker's heightened interest in the importance of this issue.

In this way, through its regulation of the right to the protection of a favourable environment, the Constitution of the Slovak Republic not only created a positive obligation of the state but also established the transfer of responsibility to the

35 | Constitutional Court of the Slovak Republic 2014, 7–8.
36 | Art. 13 of the Constitution of the Slovak Republic, Art. 13 paras 1–4.
37 | Constitutional Court of the Slovak Republic 2020, 9–10.

individual in this field. At the same time, this duty is formulated in more detail by setting certain of its limits in Art. 44(3), where it is expressly stipulated that everyone shall be obliged to protect and enhance the environment and not to endanger or damage its wealth, natural resources or cultural monuments beyond the extent established by law. This expresses the conception of environmental protection as a common concern of public authority and civil society – an expression of the principle of ecological solidarity. Ecological solidarity is the moral and positive attitude derived from acknowledging objective social and ecological interdependencies.[38] Ecological solidarity is both solidarity between people regarding the consequences of environmental changes, whether or not they are linked to human activities, and solidarity between humans and non-humans.[39]

Within the constitutional regulation of environmental protection, a kind of four-layered system of protection has thus been created, consisting of qualitatively slightly different levels of guarantees. These are: the subjective public right of the individual to environmental protection; the state's positive obligation in this sphere; the universal duty of everyone to act responsibly towards the environment; and the establishment of a regime of specially protected natural resources and environmental wealth. The model created at the first level is appropriately supplemented by Art. 45 of the Constitution, which guarantees the right to timely and complete information about the state of the environment and about the causes and consequences of this state. In this way, the constitution-maker unequivocally expressed the fact that environmental protection is in practice hardly feasible without access to and knowledge of relevant information about the environment and its condition. The exercise of the right to a favourable environment in relation to the present generation, but above all to future generations, must therefore be linked with access to information about it and also with the possibility for the public to participate in decision-making processes in the environmental sphere.

The Slovak Republic recognises its obligation to preserve a favourable environment for future generations and therefore has an important active role and responsibility in the active protection of the environment and cultural heritage. On the part of the state, this activity belongs among its basic internal functions, consisting in preventing pollution or damage to the environment, or in limiting or removing pollution or damage to the environment. The activity and responsibility of the state concern the protection of the environment as a whole, but also of its components, individual ecosystems and their interconnections. The state establishes a system in which the constitutional duty to protect and enhance the environment is broken down into partial duties, in particular the duty of anyone who uses land or natural resources, designs, carries out or removes structures, to carry

38 | Moyano-Fernández 2022, 77.
39 | Mathevet et al. 2018, 605–623.

out such activities only after assessing their impacts on the environment and the burden on the land. Anyone intending to introduce into production, circulation or consumption technologies, products or substances, or intending to import them, is obliged to ensure that they meet the conditions of environmental protection or are assessed under legislative requirements in terms of their impacts on the environment. Anyone who, through their activities, pollutes or damages the environment or uses natural resources, is obliged at their own expense to ensure monitoring of such effects and to be aware of their possible consequences. Everyone is obliged to protect nature and the landscape against endangerment, damage and destruction and to care for, according to their possibilities, its components and elements for the purpose of their preservation and protection, improvement of the state of the environment and the creation and maintenance of a territorial system of ecological stability.[40]

The constitutional prohibition, expressed for everyone, against endangering and damaging the environment, natural resources and cultural heritage beyond the extent established by law is only a supplement to the constitutional duty to protect and enhance the environment. The material scope covered by this constitutional prohibition consists primarily of the protection of air, water,[41] soil, rocks, organisms, natural resources and cultural monuments. The issue of preserving the environment for future generations, i.e. the explicit expression of intergenerational solidarity, is not expressly contained in the constitutional regulation of Art. 44. However, from the wording of Art. 44(1–4) it can be inferred that the duty to protect the environment is not limited to the present generation. The orientation of the constitution-maker towards future generations may be found implicitly expressed in the constitutional text of Arts. 44 and 45, thereby implicitly adopting the doctrine of sustainable development, which is also developed in the legal acts of the European Union and in international documents to which the Slovak Republic adheres.

Natural resources, as an inherent component of the environment, may be renewable, i.e. have the capacity for partial or complete self-renewal in the process of consumption, or with human contribution they may renew themselves completely or partially. Non-renewable natural resources, however, disappear with consumption. For this reason, constitutional protection was supplemented by Constitutional Act No. 137/2017 Coll., which introduced special protection by the state and society for agricultural land and forest land in Art. 44(5). The establishment of precise rights and duties in relation to these non-renewable natural resources represents a special guarantee of protection, pursuing in particular the interest of future generations in the protection of the environment and thereby in creating and maintaining a territorial system of ecological stability. The protection

40 | Orosz et al. 2021, 56.
41 | Szilágyi 2022, 487.

of agricultural land serves to preserve its properties and functions and to ensure its sustainable use and management, thereby contributing to biodiversity, fertility and its capacity to perform all its functions. Similarly, the objective of protecting forest land is primarily the preservation of its sustainable use for the fulfilment of the functions of forests as a component of the natural environment and as an object of economic use.

The duty to protect and enhance natural wealth in the form of mineral resources, caves, groundwater, natural healing resources and watercourses, as well as the duty to use mineral resources and natural heritage effectively in favour of its citizens and future generations, is explicitly enshrined in Art. 4(1) of the Constitution of the Slovak Republic. Here the position of the Slovak Republic is defined in terms of its duties and responsibilities in the management of its exclusive ownership. The constitutionally defined duty of the state to protect and enhance the subject of its exclusive ownership is set in such a way that, under constitutional regulation, it must be carried out effectively and sustainably, and moreover with regard to the public interest and the interest of future generations. The regulation of Art. 4(1) is not merely a constitutional phrase; on the contrary, it expresses a constitutional instruction of the constitution-maker for all authorities of the Slovak Republic regarding how they must approach the management and disposal of state property. It is also a constitutional instruction to the National Council of the Slovak Republic to adopt such norms regulating the management of mineral resources, caves, groundwater, natural healing resources and watercourses that will, above all, pursue the intergenerational public interest in efficiency and sustainability.

The emphasis on an ecologically oriented market economy as a fundamental principle of the Slovak Republic's economic system is found in Art. 55(1) of the Constitution. The ecological orientation of the Slovak economy confirms the special interest in its sustainability. Current global climate challenges exceed the possibilities of individual states to independently secure the duty to contribute to the sustainability of the natural resources of economic development. However, this does not serve as a justification for neglecting this duty on the part of the Slovak Republic; on the contrary, practice should begin to place greater emphasis on fulfilling this part of the constitutional obligation.

From the perspective of constitutional law theory, it should be emphasised that the constitutional framework of environmental protection does not have an exclusively declaratory character. The principle of the material rule of law determines the duty of the state to act in the interest of environmental protection in the context of guaranteeing the protection of fundamental rights and freedoms. Environmental protection represents a legitimate public interest. The positive obligation of the state in the field of environmental protection takes the form not only of creating a legal framework enabling the real application of constitutionally guaranteed rights and duties, but also of creating a system of public

authorities that will ensure the effective functioning and observance of environmental regulations, as well as the provision of timely and complete information to the public.

The existence of the state's positive obligation in the field of environmental protection was also confirmed by the Constitutional Court of the Slovak Republic: "By adopting the reviewed legislation, the legislator was fulfilling the command of the fundamental law, as well as its positive obligation of environmental protection, when it established rules for waste management with the aim of preventing the creation of waste and limiting its generation, recovering waste through recycling, re-use or the obtaining of secondary raw materials from waste, and, last but not least, disposing of waste in a manner that does not endanger human health and does not damage the environment beyond the established extent."[42]

The state fulfils its positive obligation to protect the environment also, for example, by granting procedural rights to associations and entities that, in the public interest, protect the environment in proceedings before state authorities vested with the power to authorise activities having an impact on the environment. These entities are thus entitled to intervene and to effectively protect and promote, also before the courts, the public interest in environmental protection. Entities protecting the environment in the public interest in proceedings before state authorities will, by virtue of their activities and their mission, otherwise beneficial to the quality of life of individuals in a given environment, always strive to minimise human interference with the environment. Conversely, state authorities must in every single case proceed as required by law – sometimes, due to the strictness of the law, the scope for balancing the various interests at stake and in conflict in a given proceeding (protection of the environment vs. private interests of persons engaging in entrepreneurial, constitutionally protected activity, or private persons exercising their constitutionally protected property rights, etc.) is smaller; at other times, such balancing, having regard to the wording and spirit of the law and the activity to be authorised, is directly required.[43]

2.2. Liability issues related to environmental protection

Protection of the environment in the form of a right or a duty is conceived at the constitutional level not only for the state as the bearer of public authority, but also for the individual. The breach of duties is linked to the imposition of responsibility, which may be applied on several levels.

Constitutional responsibility for breaches of constitutional environmental norms must be understood in the context of the modern state founded on the sovereignty of the people and the resulting responsibility of the holders and

42 | Constitutional Court of the Slovak Republic 2009, 32–33.
43 | Constitutional Court of the Slovak Republic 2019, 13–15.

performers of public authority, the principles of democracy and equality and the guarantees of fundamental rights and freedoms created thereby. Responsibility in constitutional law is not among the typical features of this branch of law, as noted by Ľ. Cibulka.[44] Its essence lies in the breach of constitutional law norms, linked with sanctions. The application of constitutional liability in the environmental sphere is rather specific, since it derives primarily from the direct constitutional duties of the state. If the state fails to reflect its positive obligation in the field of environmental protection, neglects it, for example, by not adopting adequate legislation, this may lead to a violation of the fundamental rights and freedoms of the individual.

The constitutional regulation creates a basis for the fulfilment of the obligation of the present generation, responsible for the state of the environment that it will leave to the next generation of humankind, thereby also fulfilling the principle of sustainable development. This principle also belongs among the principles of international and European environmental law. On this basis, human activity should be directed towards minimising the reduction of the diversity of nature and ecosystems. In practice, it is implemented primarily through environmental policies and strategic documents adopted by the government and the National Council of the Slovak Republic. The derivation of constitutional-political liability towards the government, conditioned on non-compliance with or neglect of commitments in the field of environmental protection, is at present hardly conceivable.

The state ensures the protection of the environment and cultural heritage mainly through administrative law norms, where liability is conditioned on the violation of environmental regulations. For misdemeanours in the field of the environment, the liable subject is a natural person. Such a person commits a misdemeanour if, by breaching a generally binding legal regulation on environmental protection, they worsen the environment. A fine of up to 99 EUR may be imposed. A misdemeanour constitutes a culpable act that violates or endangers an interest of society and is expressly designated as a misdemeanour in Act No. 372/1990 Coll. on Misdemeanours or in another statute, provided it is not another administrative delict punishable under special legislation or a criminal offence. The principal supervisory authority in the field of state administration of environmental protection is the Slovak Environmental Inspectorate, which, by performing state supervision in matters of environmental protection, oversees compliance with legality in individual areas of the environment. It is also authorised to perform state administration in the field of integrated prevention and control of environmental pollution. The principal supervisory authority in the field of monument supervision is the Monument Inspectorate of the Ministry of Culture of the Slovak Republic. Administrative delicts in the field of environmental protection are regulated in

44 | Cibulka et al. 2014, 25.

special legislation (e.g. Act No. 543/2002 Coll. on Nature and Landscape Protection, Act No. 146/2023 Coll. on Air Protection, Act No. 79/2015 Coll. on Waste), with the common denominator being the principle of the "polluter pays principle". This is one of the main principles underpinning the environmental policy of the European Union (EU). The application of this principle means that polluters bear the costs of pollution resulting from their activities, including the costs of measures taken to prevent, control and remedy pollution and the costs it represents for society. Application of this principle is intended to motivate polluters to avoid damaging the environment and bear responsibility for the pollution they cause. The polluter is also the one who bears the costs of remediation, not the taxpayers.[45] From the perspective of a person liable for an administrative delict in the field of environmental protection, it is essential to understand that their conduct will primarily entail financial consequences, associated with a potential obligation to take remedial measures against the unlawful conduct.

Civil liability is applied in particular through the instruments of compensation for damage and non-pecuniary harm. This includes, in particular, cases where interference with the environment or its components causes injury to a person's health or damage to their property. Claims for compensation may be pursued under the general provisions of the Civil Code.

Criminal liability represents the most serious form of legal reaction by the state to anti-social conduct. While administrative and civil sanctions are commonly applied in the field of environmental protection, criminal law serves as a last resort (*ultima ratio*), used in the most serious and most harmful cases of interference with environmental values. The Slovak Republic, which has the right to a favourable environment enshrined in Art. 44 of the Constitution and in Art. 44(2) explicitly imposes the duty to protect and enhance it on everyone, is obliged to create and ensure effective instruments for the protection of these values. This duty constitutes the so-called positive obligation of the state, fulfilled through legislation, including criminal law. Criminal law protection of the environment is therefore a direct consequence of this constitutional imperative, which is reflected in the specific constituent elements of criminal offences as regulated in Act No. 300/2005 Coll., the Criminal Code.

One of the most significant aspects of Slovak regulation of environmental liability is the existence of a dual system, where certain unlawful conduct may be classified either as an administrative delict (misdemeanour) or as a criminal offence. Whether the act will be sanctioned under administrative or criminal law is determined primarily by the degree of its social harmfulness, in particular the extent of the damage or danger caused.

45 | European Court of Auditors 2021, 4.

3. Judicial enforcement

Judicial enforceability of the right to a favourable environment and the right to timely and complete information on the state of the environment and on the causes and consequences of that state is determined by the nature of Arts. 44 and 45 of the Constitution of the Slovak Republic. The Constitutional Court of the Slovak Republic provides protection of constitutionally guaranteed fundamental rights and freedoms within the framework of individual judicial review of constitutionality through a constitutional complaint under Art. 127 of the Constitution of the Slovak Republic. The Constitutional Court of the Slovak Republic has stated: "Fundamental rights guaranteed in Arts. 44 and 45 of the Constitution can only be invoked within the limits of the laws that implement these rights (Art. 51(1) of the Constitution of the Slovak Republic). Their essence is therefore protected by the Constitution (par. 113, PL. ÚS 13/2012), not their detailed democratic implementation (PL. ÚS 24/2019)." In the case of the right to a favourable environment, we encounter the programmatic nature of this provision, which makes its judicial enforceability difficult in practice. The right to a favourable environment is therefore most often enforceable in the case law of the Constitutional Court of the Slovak Republic in connection with other fundamental rights, in particular the right to judicial protection (Art. 46), the right to property (Art. 20) or the right to health protection (Art. 40). The right to information on the environment, which substantively coincides with the right to information guaranteed in Art. 26 of the Constitution of the Slovak Republic, grants the entitled person the right to seek, receive and disseminate information on the state of the environment. For this right under Art. 45 of the Constitution of the Slovak Republic, the fulfilment of the cumulative condition is essential: such constitutionally permitted conduct must relate to information on the state of the environment that is both timely and complete. If the information is timely but incomplete, its quality is contrary to Art. 45 just as if complete information is provided late. Information on the state of the environment can only be considered timely if it can be used in the interest of implementing procedures that will benefit the environment, especially if it concerns information on the negative state of the environment.[46] It may be perceived as a directly enforceable constitutional right; however, the extraordinary constitutional regime in the sense of timely and complete information on the state of the environment is difficult to achieve in today's world of global environmental changes. The enforceability of environmental rights guaranteed in the Constitution of the Slovak Republic can be realised through the instrument of a constitutional complaint, which, however, is a formally limited tool in the context of their content.

46 | Drgonec 2019, 874.

4. Good practices and *de lege ferenda* proposals concerning part 2 of the Article

The right to a favourable environment has its prototype at the supranational level within the framework of Art. 8 of the European Convention on Human Rights (hereinafter the 'Convention'),[47] i.e. within the framework of the right to respect for private and family life. Within this framework, the ECtHR has found a connection between the quality of the environment and the quality of a person's privacy, since the quality of the environment can have a direct impact and influence on private and family life. According to the Court, it is evident that serious environmental pollution may affect an individual's well-being and deprive them of the enjoyment of their home in such a way that it harms their private and family life, even without seriously endangering the health of the person concerned.[48] With regard to violations of the right to a favourable environment under Art. 8 of the Convention, according to J. Svák, these complaints can, in terms of content, be divided into "interferences with the environment", "the State's positive obligations in the protection of the environment", and "the right to information on the environment".[49]

A landmark judgment of the ECtHR from a recent decision may also serve as inspiration for the Slovak constitutional system.[50] The case concerned the Swiss non-profit association *Verein KlimaSeniorinnen Schweiz*, established with the aim of promoting the implementation of effective environmental protection on behalf of its more than 2,000 members, most of whom were elderly women. In 2016, the applicants submitted complaints to the Swiss authorities responsible for environmental protection, pointing to deficiencies in this field and emphasising the Paris Agreement on climate change of 2015. Their submissions were rejected on the grounds that their individual rights had not been directly violated, and also because their complaint did not concern their immediate surroundings, as they were seeking measures aimed at the global reduction of CO_2 emissions. The ECtHR held that the criteria of a high intensity of the applicants' exposure to the adverse effects of climate change and the urgent need to secure individual protection had not been met, meaning that the requirements for 'victim status' under Art. 34 of the Convention were not fulfilled; therefore, it declared their complaint inadmissible. On the other hand, the ECtHR admitted as admissible the individual complaint lodged by the non-profit organisation itself. Although the ECtHR generally does not consider *actio popularis* complaints admissible, it assessed that in relation to complex phenomena such as climate change, collective bodies (e.g. non-profit organisations) may be the only means of effectively protecting the interests of

47 | Federal Ministry of Foreign Affairs 1992.
48 | European Court of Human Rights 1994, 85.
49 | Svák 2021, 298.
50 | European Court of Human Rights 2024.

individuals. The harmful consequences of climate change are a shared problem of all humankind, and the intergenerational sharing of burdens also plays an important role. The voices of individuals who are in a significant representative disadvantage in such cases can only be heard through organisations representing their interests.[51] From the positive-law character of the right to environmental protection arises the need to substantively fill this right with content in such a way that the positive obligation of the Slovak Republic also reflects the most modern trends at the European level. An example is the effective consideration of the form of the State's positive obligation, as was recently done by the ECtHR. The Court identified three types of measures to be addressed in relation to the State's positive obligation to ensure effective protection from the serious adverse effects of climate change, namely measures capable of mitigating the existing and potentially irreversible, future effects of climate change; adaptation measures aimed at alleviating the most severe or imminent consequences of climate change; and procedural safeguards in connection with both types of measures.[52]

At present, the constitutional regulation under Art. 44(1), which guarantees the right of everyone to a favourable environment, has rather a programmatic character, safeguarding only the essence of this fundamental right. Slovak case law has thus far failed to give substantive content to the notion of a 'favourable environment', which is to the detriment of the individual and the enforceability of his or her constitutional rights. Seeking protection of this right by means of a constitutional complaint is therefore quite demanding and carries an uncertain outcome. There is considerable room here for the constituent power, or indeed for the Constitutional Court of the Slovak Republic, to attempt to fill this concept with more concrete entitlements, despite its broad character covering the diverse components of the environment. It is necessary to move beyond the general definition of a 'favourable' environment, where fulfilment depends on interpretation but ultimately aims at ensuring a full and dignified life in health. The quality of environmental protection legislation and the decision-making practice of state authorities in the environmental field are interconnected and predetermine the scope of discretion available to the authorities applying such legislation. The 'favourability' of the environment may be defined through statutory limits that must not be exceeded, since not all activities with a negative environmental impact can be prohibited. The legislator must therefore be more rigorous in setting certain permissible thresholds beyond which the environment cannot be endangered or damaged. At the same time, it is necessary to take into account the scope and value of these permissible thresholds, which are influenced both by the level of human knowledge and by societal conditions, international commitments, the performance of the national economy and other factors. Climate change and the climate

51 | Chládeková 2024, 1–2.
52 | Committee of Ministers 2025, 2–4.

crisis that society currently finds itself in are directly linked to the quality of life and the environment of the individual. It would also be appropriate at the constitutional level to specify more clearly what is meant by the wording "the careful use of natural resources (...)" employed in Art. 44(4) of the Constitution. By "careful use of natural resources" one should understand prudent and rational management or alternative utilisation of natural resources, with the underlying idea that such use must ensure their sustainable renewability. This concept may be regarded as a precursor to the doctrine of 'sustainable development'.[53]

Another problem concerning the effectiveness and enforceability of the right is the subject of the right to a favourable environment under Art. 44(1) of the Constitution of the Slovak Republic. The Constitutional Court of the Slovak Republic has once again confirmed that the bearer of the right to a favourable environment is exclusively a natural person, and not a legal entity.[54] In a more recent decision, the court once again confirmed its case law in this matter and examined the complaint of the civic association Lesoochranárske zoskupenie VLK, i.e. a legal entity, only because the complainant was not asserting its own subjective right, but was acting in the proceedings as an interested public, thereby defending and representing the public interest[55] in environmental protection. Moreover, in this case the complainant did not assert a right under Art. 44(1) of the Constitution of the Slovak Republic but instead invoked a right under Art. 9(3) of the Aarhus Convention in conjunction with Art. 44(2) and (4) of the Constitution of the Slovak Republic.[56] It would be appropriate for the Constitutional Court of the Slovak Republic to move interpretatively towards allowing legal entities to allege a violation of the right under Art. 44(1) of the Constitution of the Slovak Republic. The reason is that legal entities significantly participate in processes that affect the state of the environment and, at the same time, may themselves be affected by that state.

53 | Sládeček et al. 2016, 1264.
54 | Constitutional Court of the Slovak republic 2008, 8.
55 | Constitutional Court of the Slovak Republic 2025, 24–26.
56 | Constitutional Court of the Slovak Republic 2021, (IV. paras. 42–44).

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