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The Role of Civil Law in Environmental Protection: Liability, Damages, and Remedies from the Perspective of Slovakia[1]

Abstract

The article examines how Slovak civil law can be mobilised as an instrument of environmental protection, distinct from but complementary to administrative and criminal enforcement. The article analyses the provisions of the Slovak Civil Code which can be invoked in a case of environmental damage. The analysis is also focused on the draft of the new Civil Code that is at present in legislative preparative work, and the current legislative state is compared with the new proposal. Procedurally, Slovakia's representative-actions regime for consumers offers a workable chassis for aggregating environmentally linked harms (qualified entities, notice/opt-in, court-managed implementation) and can be adapted to restorative outcomes in environmental cases. The article closes with de lege ferenda thoughts for courts and legislators to align private-law remedies with ecological recovery and environmental justice.

Keywords: Environmental harm, environmental civil liability (Slovakia), collective redress, Environmental Liability Directive, recodification of private law

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1. Introduction

A growing body of comparative EU-oriented scholarship rejects the once dominant assumption that private law and environmental law are inherently at odds. Howarth captures both the historical friction and the contemporary shift: "The relationship between environmental law and private law has long been controversial and unhappy,"[2] yet "the balance of the debate has shifted again towards recognizing the importance of private law in the development of environmental controls."[3] His typology 'private law as environmental law' vs 'environmental law in private law' is methodologically useful for the Slovak debate.[4] We adopt this typology in Chapter 4 to elaborate on the Slovak collective redress mechanism in the context of environmental protection and, in general, to show on Slovak terrain how core civil-law institutions (preventive duty, fault liability and heightened responsibility for especially hazardous operations) can function as environmental law, and how environmental-protection aims can be internalised in private law through restoration-oriented remedies and collective redress.

To situate the Slovak discussion, comparative soft-law accounts portray civil liability as a complement to public regulation and trace Europe's long pivot towards prevention and remediation instruments rather than mere *ex post* pecuniary redress.[5] This shift is mirrored in regional scholarship, which builds a mixed enforcement model: Serbian analyses, for example, expressly position civil actions alongside administrative and criminal instruments and underline the value of pre-emptive lawsuits capable of stopping harmful activities before damage occurs.[6] Any civil-law strategy must therefore be embedded in the broader enforcement ecology. Empirical and doctrinal studies emphasise the limits of a penal-only approach, such as low prosecution rates, modest fines and weak deterrence, and make the case for proportionate civil and administrative measures that internalise environmental costs while reserving criminal law for aggravated misconduct.[7] Finally, courts are not passive transmission belts; they are a judicial practice that shapes access to justice, manages expertise and proof in diffuse harm and calibrates remedies in ways that advance distributive, procedural and recognition justice within environmental disputes.[8] This comparative framework explains why the article treats Slovak civil-law tools not as residual after public law, but as co-equal instruments oriented to prevention and restoration.

2 | Howarth 2019, 1.
3 | Pontin 2013.
4 | Howarth 2019, 1.
5 | Ludeña & Abella 2010, 59–60.
6 | Milošević, Madžgalj & Novaković 2025, 65.
7 | Watson 2005, 3–5.
8 | Preston 2023, 1–2, 14–15, 17–18.

Slovak civil law contains tools – often overlooked – that can be mobilised directly for environmental protection. This article advances two core claims. *De lege lata*, Slovak civil law, through Sections 415, 420 and 432 of Act No. 40/1964 Coll. the Slovak Civil Code, as amended (hereinafter referred to as the 'CC'), already accommodates environmental protection logics. Prevention as a conduct-duty, represents fault liability attuned to risk and foreseeability and a strict liability for especially hazardous operations, unconstrained by the presence or absence of administrative permits. *De lege ferenda*, the draft Civil Code's damages part, provides doctrinal tools, such as restoration-first at the injured party's election, comparability in non-pecuniary awards, judicial estimation where measurement is impracticable and calibrated moderation that can be operationalised specifically for environmental claims. The EU framework, including the Environmental Liability Directive's (hereinafter referred to as the 'Environmental Liability Directive')[9] prevention/remediation logic, reinforces a design in which private-law remedies supplement public enforcement to internalise environmental externalities.

The further parts of this article employ doctrinal analysis of Slovak law and the forthcoming civil-code reform and integrates comparative insights (with a focus on Serbia and selected common-law contrasts) to illustrate options for causation, standing and remedies.

The structure proceeds as follows. After the introduction (Chapter 1), Chapter 2 maps the Slovak civil-law foundations for environmental harm (prevention, fault, heightened liability). Chapter 3 assesses the draft damages regime for environmental claims within the new (re)codification process of private law in Slovakia. Chapter 4 examines collective protection and access-to-justice instruments pertinent to environmental mass harm in Slovakia. The conclusion synthesises findings and proposes targeted *de lege ferenda* steps for a more coherent and EU-consistent civil-law response to environmental harm.

2. Types of civil liability for environmental harm

Doctrinally, the general preventive duty in Section 415 CC articulates an objective standard of conduct also oriented to nature and environmental media. Its breach leads into fault-based liability under Section 420 CC, while the special-danger regime of Section 432 CC allocates losses from inherently hazardous operations, irrespective of permitting status. Building on these pillars, the draft Civil Code on damages (Sections 813–821) embeds a restoration-sensitive architecture: a monetary default paired with a claimant's option for specific reparation,

9 | Directive 2004/35/EC (2004) on environmental liability with regard to the prevention and remedying of environmental damage, Official Journal of the European Union L 143, 30.04.2004, 56–75.

function-focused valuation (cost-to-cure), judicial estimation under uncertainty, calibrated moderation and the comparability of non-pecuniary awards.

The general preventive duty in Section 415 CC already articulates an obligation of conduct *vis-à-vis* nature: "Everyone is obliged to act so as to prevent harm to health, property, nature and the environment." Read together with the fault-based liability under Section 420 CC and the strict liability architecture for 'especially hazardous operation' in Section 432 CC, this framework delineates a private-law pathway to deter and remedy ecological harm. The general preventive duty fixes an objective standard of care aimed at preventing risks to health, property, nature and the environment, and a breach of Section 415 CC routes into Section 420 liability; the duties of care expand with control over sources of danger and may crystallise into a duty to act where circumstances warrant it.[10]

Furthermore, strict liability under Section 432 CC supplies an additional anchor for activities whose nature creates uncontrolled risks to the surroundings, including risks to environmental media and biodiversity. It emphasises both the open-textured, context-sensitive definition of especially hazardous operation and the irrelevance of administrative permission to civil liability in the sense under which permitting status cannot prejudice victims.[11] The elasticity of Section 432 CC enables courts to recognise contemporary environmental hazard profiles from the handling of hazardous chemicals to high-risk energy infrastructures as contexts justifying heightened responsibility.

Against this domestic backdrop, the forthcoming reform of Slovak private law proposes a damages architecture deliberately compatible with environmental protection needs. The draft's Fourth Section on Damages codifies a restoration-sensitive default: "Pecuniary damage shall be compensated in money. If appropriate in the circumstances, the injured party may claim compensation in another suitable manner."[12] The Explanatory Report confirms both European alignment and claimant choice, together with a proportionality filter. It also clarifies that courts may determine loss where precise quantification is impracticable: "If the amount of damage cannot be determined precisely, the court shall determine the amount of damage according to the circumstances of the case."[13] For non-pecuniary harm, the draft and its report build a hierarchy and a comparability principle to stabilise awards across like cases.[14]

10 | Csach 2019, 1431.
11 | Novotná 2019, 1570.
12 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 813.
13 | Ministry of Justice of the Slovak Republic n.d., Draft Civil Code, Fourth Section – Damages, Section 817; Explanatory Report to the Fourth Section – Damages.
14 | Ministry of Justice of the Slovak Republic n.d., Draft Civil Code, Fourth Section – Damages, Section 814.

2.1. General preventive duty (section 415 CC) as a normative bridge to environmental protection

"The essence of the precautionary principle is that the best way to protect the environment should be based on prevention rather than cure as it might be cheaper to prevent environmental damage in advance than to restore damaged environment."[15]

For environmental disputes, the general preventive duty in Section 415 CC is best understood as an objective standard of care whose content scales with the foreseeability and controllability of ecological risks. It functions as a conduct-directing norm that attaches in proportion to a party's relation to the source of danger. Federal-era case-law, in a classic decision of the Supreme Court of the Czech Republic handed down within the Czechoslovak federation and still followed by Slovak courts, made clear that where that relation is sufficiently intense and the danger becomes concrete, the preventive duty may evolve into a true duty to intervene. Once the actor is informed of a specific risk, it can be reasonable and expected to eliminate it or at least to warn those affected, as in the classic decision on a landowner who, having been notified of the hazardous state of vegetation on his land, was obliged either to remove the danger or to warn about it.[16]

This scaling is consistent with the German notion of *Verkehrssicherungspflichten* in the sense that the actor who opens or manages a sphere of risk for others must organise it so that third parties are not exposed to unreasonable dangers, through baseline measures such as adequate maintenance, illumination, monitoring and hazard removal.[17] The doctrine does not demand omniscience. Czech case-law illustrates the boundary line: a trail or facility manager does not bear a duty of permanent, continuous inspection and instantaneous remediation of every defect across the entire network. The duty is one of reasonable prevention calibrated to the nature, scale and use of the place.[18] At the same time, the addressees of the general preventive duty are not limited to private operators. Slovak constitutional case-law conceptualises Section 415 CC as binding 'everyone' – natural persons and legal entities, but also public authorities.[19] Thereby, it integrates administrative and regulatory actors into the architecture of preventive responsibilities. Transposed to environmental disputes, this yields an operator-centred norm of vigilance: entities handling hazardous substances or running emission-prone installations must anticipate and control foreseeable ecological risks *ex ante*, rather than externalising them to neighbours or the public purse. An instructive comparative illustration is Hungary, where the 2011 Fundamental Law couples an explicit right to a healthy

15 | Hayajneh 2004, 22.
16 | The Supreme Court of the Czech Republic, File No. 1 Cz 3/91 (R 9/1992).
17 | Brüggemeier 2006, 128–129.
18 | The Supreme Court of the Czech Republic, File No. 25 Cdo 618/2001.
19 | The Constitutional Court of the Slovak Republic, File No. II. ÚS 431/2013.

environment with institutional guarantees, such as the Advocate of Future Generations, and a strong constitutional doctrine on non-regression and precaution, showing how intergenerational environmental interests can be embedded at the constitutional level rather than left to ordinary legislation.[20]

This is exactly the sense in which private law can function as environmental law, and it aligns with comparative private-law scholarship that rejects a binary opposition between public environmental law and private law and instead treats private-law duties of care as part of the overall control architecture for environmental risk. Howarth's survey of systems notes both the historical friction and the recent "shift" towards recognising private law's role in environmental controls, while mapping the variety of techniques by which private law and environmental law interact.[21] Ultimately, courts are not passive conduits. Contemporary judicial writing emphasises their role in shaping access to justice, managing expert proof in diffuse-harm cases and calibrating remedies in ways that advance procedural, distributive and recognition justice in environmental disputes.[22] In this regard, preventive duty in Section 415 CC is a doctrinal bridge, as it acts as a civil-law tool for risky conduct obligations in environmental contexts, integrates naturally with heightened liability, where appropriate, and supports remedial practice oriented on abatement and restoration rather than bare monetisation.

2.2. Fault-based liability in environmental litigation (section 420 CC) – who can claim damage and burden of proof

Section 420 CC establishes the general delictual regime on a fault basis. In structure, it is orthodox, as it involves a requirement of wrongfulness, damage, causation and a fault. Once the first three are proven, fault is presumed, and the defendant must exculpate by showing the absence of culpability. This is not an 'environmental' rule as such; yet it travels well into ecological disputes because it accommodates open-textured standards and fact-intensive proof. In particular, wrongfulness may be grounded in the general preventive duty of Section 415 CC whenever no specific regulatory rule is available, in the sense that breaches of Section 415 CC act as a route into Section 420 CC wrongfulness, and then applies the ordinary presumption of fault.[23] Slovak case-law under Section 420 CC also illustrates how environmental fact-finding must be granular as the courts reconstruct the baseline condition of the affected resource and its surroundings, identify the contemporaneous activities in the relevant locale, examine natural and technical pathways (for instance hydrology in groundwater cases) and follow the trajectory of measured contamination values before drawing causal inferences.

20 | Szilágyi 2021, 132–135.
21 | Howarth 2019, 1–2.
22 | Gauna 2012, 34–38.
23 | Dulak 2019, 1446.

Following this, it has been indicated in real Slovak case-law, in cases of pollution of groundwater flowing into a well used by a private individual, that it is necessary to distinguish between damage caused by the deterioration of water quality and damage that may have occurred to the well itself and to the equipment for pumping and distributing the water (within the meaning of Section 420 CC). The legal relationship arising from liability for the deterioration of groundwater quality is a relationship between the person responsible for that deterioration and the authorised consumer drawing water from the specific water source, who suffered damage due to the deterioration of water quality. When assessing active standing in a dispute over compensation for the deterioration of groundwater quality in a well, one cannot, without having more, proceed solely from the ownership of the real property associated with the use of the well. In addition to compensation for damage caused by the deterioration of water quality, the authorised water consumer may also suffer loss corresponding to the pecuniary harm incurred by having to spend higher costs to draw water from an alternative source (e.g. from a municipal hydrant or from a tanker located at a greater distance); such loss is to be assessed under Section 420 CC.[24] This is an evidential discipline rather than a relaxation of causation standards.

Two further features matter for ecological disputes. First is the relationship between Section 420 CC and special regimes: where a special head (including Section 432 CC on especially hazardous operations) applies, the claimant need not prove fault – proof of the harmful event replaces proof of culpability.[25] The practical consequence is a calibrated duality, where an ordinary negligence amounts for routine risks, and a strict responsibility regime applies where the activity itself is the risk vector. Second is organisational attribution. Section 420 para. 2 CC recognises enterprise-level responsibility for acts of auxiliaries performed in the course of a venture. The reasoning of the text extends attribution beyond formal privity, where there is a functional nexus (local, temporal, material) to the enterprise's tasks.[26] This functional reading is mirrored in Supreme Court case-law, which treats interferences committed by individuals used by a legal entity to carry out its activities, where such a local, temporal and material nexus exists, as acts of the legal entity itself.[27] In environmental practice, where operators commonly outsource construction, waste handling, monitoring or transport, this channelling of liability to the risk controller prevents evasion through subcontracting and aligns with comparative critiques of 'outsourcing as compliance theatre'. Comparative private-law frameworks converge on the same point, to the point where the entity that creates and organises the risk must internalise the costs of its materialisation.[28]

24 | The Supreme Court of the Czech Socialist Republic, File No. 1 Cz 45/85 (R 37/1988).
25 | Dulak 2019, 1445.
26 | The Supreme Court of the Czech Republic, File No. 25 Cdo 1855/2012.
27 | The Supreme Court of the Slovak Republic, File No. 3 Cdo 228/2012.
28 | Krstinić, Bingulac & Dragojlović 2017, 1163, 1168.

English nuisance and Ryland's v. Fletcher illustrate this intuition in a different doctrinal register. Under them, in cases when dangerous things escape from a defendant's sphere, responsibility follows without proof of negligence, qualified by foreseeability and 'non-natural use'.[29]

The content of the duty of care under Section 420 CC is not static but is shaped by the foreseeability of harm in light of the risk-creating activity. Here, the continental doctrine on *Verkehrssicherungspflichten*, mentioned in the previous subchapter, is instructive, because anyone who opens a space or facility to public use must secure it against reasonably foreseeable hazards, through design, maintenance and warnings.[30] Transposed to environmental settings, this supports a differentiated standard for operators of installations with diffuse-emission potential (odour, noise, particulates) or with acute externalities (hazardous substances, tailings, pipelines): the more systemic and more foreseeable the risk, the denser the precautions and the more robust the monitoring that a diligent operator must show.

2.3. Strict liability for especially hazardous operation (section 432 CC) and environmental risk with a focus on defences and limitations

Section 432 CC is best understood as a risk-allocation device. It assigns losses generated by activities whose inherent operation surpasses acceptable safety thresholds to the party who organises and controls those activities. Slovak legislation deliberately leaves 'especially hazardous operation' open-textured and context-sensitive, which is precisely what makes the provision fit for contemporary environmental hazards whose profiles change with technology, geography and time.[31] This elasticity permits courts to treat installations handling hazardous substances, energy infrastructures or hydrotechnical works as falling within Section 432 CC when their operational envelope exposes the surroundings, including environmental media and biodiversity, to atypical, non-reciprocal risks. The same materials emphasise that administrative permissions do not immunise the operator against civil liability in the sense that permitting status is neutral for the purposes of Section 432 CC, because the point of the rule is the protection of third parties from activity-intrinsic dangers. Finally, the literature acknowledges *ad hoc* classification, where the transient configurations (maintenance outages, abnormal operations, accident conditions) may temporarily elevate an otherwise ordinary operation into the 'especially hazardous' category.[32]

Two doctrinal filters follow from this architecture. First, the classification must be more than a label, since it demands a reasoned showing that the nature of the operation (substances used, energy involved, process characteristics) generates a

29 | Case *Rylands v Fletcher* (1866) Law Reports 1, Exchequer Chamber 265.
30 | See more at subchapter 2.1. of this article or Brüggemeier 2006, 128–129.
31 | Novotná 2019, 1570.
32 | Ibid., 1568.

level of risk that society does not expect others to bear without compensation. In exactly this vein it should be cautioned that not every case of dust or fumes qualifies, and courts should confine Section 432 CC to harms traceable to the qualifying features the norm has in view. Secondly, because Section 432 CC is a *lex specialis vis-à-vis* fault (Section 420 CC) when damage is connected to the special danger, the evidential focus shifts. Plaintiffs establish the harmful event and the nexus to the operation; questions of negligence recede.

Comparative materials vindicate both the policy and the design choices embedded in Section 432 CC.[33] The Lugano Convention crystallises a pan-European instinct toward strict responsibility for 'dangerous activities', locating liability in "the operator at the time or during the period when he was exercising control of that activity", and framing recognised defences narrowly (force majeure-type events, deliberate third-party interference despite sufficient preventive measures, compliance with a specific authority order).[34] The Council of Europe's analytical report on climate-change liability explains the historical logic: strict liability emerged to correct the mismatch between private profit and socialised industrial risk and to place losses "on those whom it was most reasonable to hold responsible".[35] In EU law, the Environmental Liability Directive carries the same prevention ethos but leaves important lacunae, such as authority-driven choice of remedial measures, thresholds of significance and limited reach over diffuse pollution. This is, in our opinion, why national private law risk-oriented regimes must remain available alongside public administration.

Furthermore, attribution under Section 432 CC should be read functionally. What matters is control over the risk-creating activity, not formal privity. Slovak civil law already recognises enterprise-level responsibility for acts performed 'in the course of' an undertaking, and environmental operations commonly involve contractors for construction, waste handling, monitoring and logistics. EU materials on the Environmental Liability Directive likewise anticipate recourse by operators against truly responsible third parties, but they also recognise that Member States may widen the circle of liable actors (including non-business entities) where domestic policy demands it.[36] The upshot for Section 432 CC practice is straightforward, and one shall begin with the operator who controls the hazard; further, one shall entertain contribution or recourse downstream where facts justify it, and, lastly, one shall not let corporate structure or contract chains defeat the protective purpose of the rule.

33 | For a detailed account of how the polluter pays principle has been introduced, stretched towards restoration and only partially enforced in Hungarian agricultural and environmental law (including objective liability for environmentally dangerous activities and environmental charges); see Bobvos et al. 2006, 29–54.
34 | Ludeña & Abella 2010, 95.
35 | Council of Europe 2021, 11.
36 | Tran & Vu 2021, 286–287.

The provision's permit-neutrality deserves emphasis in environmental litigation. Slovak commentary is explicit that compliance with administrative authorisations neither precludes nor diminishes civil responsibility under Section 432 CC. The two tracks are complementary and serve distinct functions.[37]

Finally, defences under Section 432 CC should be read sparingly, in line with the provision's logic and European comparators. The Lugano template and Environmental Liability Directive discourse both confine exculpation to exceptional events (war, insurrection or 'inevitable and irresistible' natural phenomena), deliberate third-party acts despite adequate precautions and compliance with specific official orders.[38] This is the right calibration for ecological harm because it keeps the burden on those who profit from high-hazard activities to organise for safety, insure and provide for remediation and compensate when the activity's characteristic risks materialise. In short, Section 432 is not an exotic adjunct to Slovak tort law, but we see it as a modern instrument for internalising environmental externalities where the activity, not merely human error, is the risk vector.

2.4. Causation in environmental cases

Causation in environmental cases is the perennial difficulty. Slovak practice emphasises painstaking reconstruction rather than doctrinal shortcuts[39] and requires that the breach be a direct, non-interrupted cause of the harm in order to ground liability.[40] But comparative sources show why evidential pragmatism is sometimes necessary. Environmental harms often involve multiple sources, latency and scientific uncertainty. English courts, confronting mesothelioma causation, accepted a 'material increase in risk' as sufficient where scientific identification of a single causal exposure was impossible. The analysis is context-specific and exceptional, but it illustrates a policy lever for hard evidential settings.[41] Continental debates likewise explore burden-shifting or rebuttable presumptions in multi-source pollution, precisely to avoid making diffuse harms practically non-actionable. In that sense, some countries understand that the traditional burden of proof in environmental damage cases presents a complicated challenge to the plaintiff, and accordingly they enact special rules to ease this burden.[42] Any Slovak development in this direction would sit comfortably within the Section 420 CC architecture (which already presumes fault once wrongfulness, damage and

37 | Novotná 2019, 1570.
38 | Ludeña & Abella 2010, 95.
39 | The Supreme Court of the Slovak Socialist Republic, File No. 3 Cz 31/79 (R 5/1981).
40 | The Supreme Court of the Slovak Republic, File No. 2 Cdo 292/2006; The Supreme Court of the Slovak Republic, File No. 5 Cdo 126/2009.
41 | Case *Fairchild v Glenhaven Funeral Services Ltd* (2002) 3 All England Law Reports 305.
42 | See more at Hayajneh 2004, 198 et seq.

causal link are shown) and would complement the Section 432 strict-type allocation for especially hazardous operations.

Finally, within this subchapter, we would like to deal with enterprise liability and internal governance. Environmental risk today is often organisational: failures in contractor selection and supervision, gaps in safety management systems or paper-compliance in monitoring can be the real engines of harm. Comparative enforcement literature shows the limits of a penal-only response (low prosecution rates, modest fines) and argues for civil or administrative mechanisms that ensure internalisation of environmental costs at the level where risk is organised.[43] Scholarly analyses of civil-versus-criminal tracks in environmental protection in Central and South-Eastern Europe reach the same conclusion: civil liability must shoulder a preventive function alongside compensation, and courts should be prepared to order specific measures (abatement, remediation) rather than default to money alone.[44] Slovak constitutional case-law at the same time reads the Civil Code concept of 'damages' broadly, as encompassing both material and non-material harms, including health and integrity impacts,[45] which is crucial in environmental disputes where loss often consists in impaired living conditions, amenity and well-being rather than immediate market loss. In practical terms, the law must therefore internalise organisational risk, just as we suggested, so that the acts of auxiliaries in the course of a venture, negligent selection or supervision of contractors, and systemic failures in safety management should be attributed to the principal so that outsourcing does not become an evasion device.[46] This is consistent with Section 420 para. 2 CC logic, coherent with already mentioned *Verkehrssicherungspflichten* and consonant with the comparative movement towards restoration-oriented civil remedies.[47]

3. Future Perspectives – forthcoming reform – draft Civil Code rules on damages for environmental claims

3.1. Restoration logic, valuation under uncertainty and non-pecuniary calibration for environmental harms

The Fourth Section on Damages in the Slovak draft Civil Code (hereinafter referred to as the 'DCC') is built around a clear remedial hierarchy with a deliberate aperture for restoration. Monetary compensation remains the default, but the statute empowers the injured party to elect specific reparation where 'appropriate

43 | Watson 2005, 3–6.
44 | Milošević, Madžgalj & Novaković 2025, 56–60.
45 | The Constitutional Court of the Slovak Republic, File No. II. ÚS 695/2017.
46 | Krstinić, Bingulac & Dragojlović 2017, 1163, 1168.
47 | Novotná 2019, 1568.

in the circumstances', a formulation that is capacious enough to cover orders to remove contamination, rehabilitate affected media or otherwise return environmental resources to functionality.[48] The appropriateness of the circumstances is a broad concept that requires assessing all relevant aspects of the specific case, including the feasibility and proportionality of such a form of compensation. The injured party may not, for example, demand an alternative form of compensation if it would not be reasonably practicable. The Explanatory Report is explicit that this opening for in-kind relief operates through a proportionality filter aligned with prevailing European approaches and that the choice of non-monetary mode belongs to the claimant.[49] In environmental disputes where the ecological 'end-state' is recovery rather than cash, the pairing of a statutory permission for specific reparation and an articulated proportionality test is not merely decorative. It is the doctrinal hinge that allows courts to order a cure where money is plainly second best.

Two further features of Section 813 DCC matter in practice. First, the draft codifies in Section 813 para. 2 and para. 3 DCC the traditional patrimonial heads (loss and lost profit) and, crucially for pollution cases, a 'debt-as-damage' track that captures regulatory clean-up liabilities imposed on victims; thus, where damage consists in the creation of a debt, the victim may require the author to discharge the liability or to provide resources to meet it. The Explanatory Report underlines that this is an election of the injured party. This mechanism sits comfortably with EU thinking that environmental protection requires not only compensation but effective 'decontamination and restoration', supported by access to justice and financial-security instruments.[50] Second, Section 815 DCC explicitly yokes market value to 'cost-to-cure', directing courts to assess damage to things by reference both to their ordinary value and to what must be reasonably expended to restore or replace function. The Explanatory Report to that Section confirms that the functional benchmark, not merely nominal value, should steer quantification. In environmental litigation, where protective works, crops or equipment are impaired by emissions or accidents, the cost-to-cure axis avoids under-compensation and better aligns award with actual remediation needs.

The draft also addresses the chronic epistemic difficulty of valuing environmental loss. Section 817 DCC authorises judicial estimation where the quantum cannot be determined precisely or only at disproportionate effort. The Explanatory Report states the policy plainly as the provision exists "to enable the injured party to obtain compensation even in cases where the amount of damage cannot be determined precisely at all or only with disproportionate difficulty". For diffuse

48 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 813.

49 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 813; *Explanatory Report to the Fourth Section – Damages*.

50 | Commission of the European Communities 2000, 3.

pollution, complex natural baselines or time-lag harms, this rule prevents the evidential tail from wagging the remedial dog. It is consistent with EU environmental liability thinking that place restoration and remediation on the baseline condition at the centre of environmental private law rather than mere *ex post* money awards.[51]

Non-pecuniary harm is re-systematised around ordered satisfaction and comparability. Section 814 DCC provides for appropriate satisfaction, in money only if other modes (e.g. an apology, corrective statements) would not suffice, and adds a comparability directive, under which "in similar cases, comparable sums are awarded". This will stabilise outcomes across similar harms. The Explanatory Report's rationale to the pertinent section is legal certainty and predictability. For neighbourhood-scale nuisance and amenity loss, that guidance promises more even-handed treatment of similarly affected communities. It also resonates with environmental-justice scholarship that criticises remedial pathways which, in practice, deliver thin or uneven outcomes for over-burdened populations and argues for frameworks that converge remedy design with lived community impacts.[52] In Gauna's words, civil-rights-style pathways have too often yielded 'virtually non-existent' remedial action, prompting a search for models that can actually deliver change on the ground.[53] The draft's comparability rule in Section 814 para. 2 DCC is one such stabiliser.

Furthermore, it is noteworthy to mention the judicial moderation in Section 818 DCC, pursuant to which "the court may reduce damages in exceptional cases especially if full compensation would be grossly unfair or clearly disproportionate to the wrongdoer. In doing so, it will usually consider the degree of fault, the legal nature of the liability and the circumstances in which the harm occurred. However, no reduction is allowed if the harm was caused intentionally, or if it was caused by a breach of due care by someone acting in a professional capacity." The Explanatory Report emphasises these negative predicates for moderation. In environmentally risky industries, this signals that skimping on professional diligence will not be rewarded by down-rating awards. Finally, Section 820 DCC introduces a small general clause for non-pecuniary loss in aggravated cases, allowing awards (including to indirectly affected persons) where circumstances involving especially intentional causation justify it. The Explanatory Report confirms that reflex harms may be captured here. This is structurally relevant where intentional wrongdoing produces community-wide affronts alongside material degradation.

Placed against the European framework, the draft's grammar of monetary default and restoration option, cost-to-cure, judicial estimation under uncertainty and comparability of non-pecuniary awards is orthodox and fit for purpose. EU

51 | Hayajneh 2004, 183–184.
52 | Gauna 2012, 58.
53 | Ibid., 45.

materials stress that effective environmental protection must secure restoration (not just compensation) and that, in implementation, public authorities choose and supervise remedial measures, particularly under Art. 4 (5) of the Environmental Liability Directive, with diffuse pollution covered where causal responsibility can be established.[54] In turn, the civil side should be capable of mirroring that restoration logic when disputes reach private law. The Slovak draft's damages architecture operationalises that shift, as it gives courts the tools to deliver ecologically rational relief while maintaining proportionality and predictability.

3.2. Operationalising the DCC in environmental cases

The Damages title of the DCC is only as good as the adjudicatory method that animates it. In environmental disputes, three method questions recur: (1) when to privilege restoration and how to structure it, (2) how to handle proof and causation where the science is contested or data sparse, and (3) how to align private-law relief with the broader enforcement mix without diluting deterrence.

As regards the first point, European thinking treats compensation as necessary but insufficient if the ecological baseline remains degraded. We shall emphasise again that effective protection requires 'effective decontamination and restoration'[55] and that access to justice should support these outcomes.[56,57] These dovetail with the DCC's architecture in this sense: when restoration is appropriate in the circumstances, courts should not hesitate to order restoration rather than cash. This resonates with the Slovak public-law debate as captured by Michalovič and Jenčo, who in their analysis of effective environmental remediation underline the centrality of restorative principles and effective remediation tools in environmental enforcement.[58] The practical import for Slovak courts is to design private-law orders that deliver the public-law end-state (ecological recovery) rather than an abstract monetary equivalent.

As to the second point, environmental harm often resists precise quantification or monocausal attribution. Section 817 DCC's valuation under uncertainty is a natural adjunct, since it authorises judges to value loss where exact measurement would be disproportionate or impracticable, preserving the integrity of remedy when science sets hard limits. By contrast, the Environmental Liability Directive hews to orthodox causation weighing liability by reference to traditional proof requirements for biodiversity damage and, despite proposals in the Commission's White Paper to ease the evidential burden, that suggestion was not ultimately taken

54 | Cf. Ludeña & Abella 2010, 94.
55 | Tran & Vu 2021, 294–295.
56 | European Commission, *Commission Notice on Access to Justice in Environmental Matters*, 2017/C 275/01.
57 | Eliantonio & Richelle 2024, 262–264.
58 | Michalovič & Jenčo 2022, 17–18.

up in the Directive.[59] Read together, these two points justify the DCC's evidential pragmatism – if the Environmental Liability Directive leaves causation largely to classical doctrines, national private law must furnish workable techniques to value and redress harm under uncertainty. Section 817 performs exactly that gap-filling function, allowing courts to translate incomplete scientific knowledge into legally cognisable awards without diluting the causal inquiry itself.

As to the third point, experience cautions against relying on criminal law alone. Proportionate civil/administrative penalties are a much more potent economic deterrent than a criminal conviction and a modest fine, while at the same time they can complement, but not replace, more traditional criminal sentences.[60] The DCC's moderation clause aligns with this mix: do not blunt the price signal where culpability is high or risk is professionally managed.

The success of the DCC's innovations, including remedial grammar, finally depends on judicial craft. Courts shape access, proof management and remedial responsiveness. As Preston puts it, they "play a vital role in achieving sustainable development and access to justice promoting environmental justice."[61]

4. Challenges and shortcomings – collective environmental protection and access to justice in Slovakia (doctrinal bases and procedural design)

Slovakia now operates a modern, court-managed mechanism for the protection of collective consumer interests, effective since 25 July 2023 under Act No. 261/2023 Coll. Act on Representative Actions for the Protection of Consumers' Collective Interests (hereinafter referred to as the 'Representative Actions Act'). The design responds to three persistent obstacles in mass-harm settings. These are the high coordination costs for dispersed claimants, information asymmetries and the mismatch between individual litigation and systemic breaches. In legislative terms, the mechanism is purposive, as it aims at effective protection of collective consumer interests, ensuring compliance with EU and national consumer-protection rules by traders and removing barriers consumers face when enforcing rights individually.

The architecture is bifurcated. First, there is a remedial track ('*konanie o vydanie nápravného opatrenia*' pursuant to Section 14 et seq. of the pertinent act) that culminates in particular measures benefitting those who opt in. Second, an abstract control track enabling judicial review of terms, practices or statutory

59 | Hayajneh 2004, 199.
60 | Watson 2005, 6.
61 | Preston 2023, 1

breaches irrespective of a specific dispute and even without the participation of consumers pursuant to Section 23 et seq. of the pertinent act. This duality matters in environmental contexts because the first track is capable of delivering individualised material redress (including repair, replacement, refund, disgorgement), while the second track targets the legality of standardised practices with diffuse environmental externalities (e.g. misleading 'green' claims or contractual terms that frustrate compliance with environmental product standards).

Legitimacy and case-initiation are centralised through qualified entities rather than individual consumers. A registered entity ('*oprávnená osoba*') files the action in the court designated by the statute. Before filing, it must publish a notice of intent on its website and in the Commercial Gazette, naming the trader, describing the facts and alleged breaches and proposing the remedial measure sought (Section 15 of the pertinent act). Consumers then decide whether the action concerns them and whether to participate. Participation proceeds through a notary chosen by the qualified entity, who maintains the roll of participating consumers. The statute and implementing regulation specify the contents of the consumer's application, offer form templates and allow late opt-in until the close of evidence at first instance. Consumers may also withdraw consent up to that point (Section 16 of the pertinent act). The cost signals are calibrated to lower barriers[62] payable to the designated notary, and no further court fees or costs for participating consumers, save for exceptional cost-shifting where a participant's negligence or fault caused expenses.[63]

The remedial track is activated only where numerosity is present, since the action proceeds if at least 20 injured consumers enrol within the notice period (Section 17 para. 2 of the Representative Actions Act). Otherwise, the court must discontinue the case. This threshold is modest enough to capture clustered mass harm and, in environmental settings, would be routinely satisfied in localised pollution, odour, noise or greenwashing cases affecting many purchasers or users.

Once the court reaches the merits and grants the action, it issues a judgment that (1) specifies the remedial measure(s) the trader must implement and (2) is accompanied by an annex listing the participating consumers and their entitlements. At the same time, it shall, in the operative part of the judgment, specify the corrective measure, state the number of registered consumers, designate the appointed notary as the place of performance and determine the amount of the remuneration of the qualified entity. Otherwise, it shall dismiss the action (Section 17 para. 5 of the Representative Actions Act).

Execution is not left to atomised follow-on suits: the designated notary implements the decision without delay once the judgment is final and funds are placed

62 | An application fee of 20 EUR + VAT (and 10 EUR + VAT for withdrawal).

63 | Section 3 of the Decree No. 289/2023 Coll. implementing certain provisions of Act No. 261/2023 Coll. on Representative Actions for the Protection of Consumers' Collective Interests and on Amendments and Supplements to Certain Acts.

in notarial escrow, paying out after deducting the success fee of the qualified entity (Section 17 para. 6 of the Representative Actions Act). Importantly, the remedial outcome does not prejudice other remedies available to participating consumers that are outside the scope of the action. From an environmental-law perspective, this is a critical safeguard, since where the collective measure secures, say, product-related redress (refunds, replacements, corrective advertising), it leaves unaffected public-law clean-up duties and private tort claims for broader ecological damage.

Although enacted for consumer protection, the Slovak model might offer an immediately intelligible procedural chassis for environmental mass harm brought in private law. The notice-and-opt-in infrastructure, centralised beneficiary list, notarial implementation and defendant-funded communications are precisely the tools one needs to aggregate small-value individual harms that are environmentally linked (e.g. households exposed to odour or dust, users misled by green claims, local purchasers affected by a defective environmental performance of goods). The remedial catalogue consisting of compensation for damage, repair or replacement of the product, a reduction of the purchase price, a refund of the purchase price paid, restitution of unjust enrichment or another similar remedial measure aimed at redress is inherently restoration-friendly and can be adapted to order function-oriented cures (repair, replacement, disgorgement of compliance savings) while coordinating with public remedial programmes. In judicial management terms, the statute mandates pre-trial case management, which might be particularly valuable in disputes saturated with expert evidence, monitoring data, hydrology or exposure modelling (Section 17 para. 3 of the Representative Actions Act).

In the context of EU law, we can say EU access to justice remains fragmented. As Eliantonio and Richelle note, there is no horizontal EU instrument transposing Art. 9(3) of the Aarhus Convention,[64] with access provisions instead "being incorporated directly into several pieces of 'sectoral' legislation",[65] so that the "emerging picture cannot be regarded as fulfilling the objective of ensuring the 'wide access to justice' promise of the Aarhus Convention."[66] In this light, a Slovak collective pathway that is procedurally based on the representative-actions regime and substantively on civil-law duties seems like a rather complete system enabling restorative remedies (including in-kind remediation) for group harms.

As regards the place of collective civil actions within the enforcement ecology, we have already noted in the previous subchapter that criminal law alone is not

64 | Pursuant to this Article: "In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."
65 | Eliantonio & Richelle 2024, 261.
66 | Ibid., 274.

an adequate primary route for routine environmental infringements. UK evidence shows, "it seems clear that most environmental offenders – the vast majority, in fact – are not prosecuted."[67] Civil or administrative fines are a much more potent economic deterrent which can complement more traditional criminal sentences. Moreover, a credible civil collective mechanism lowers the entry costs of enforcement and produces deterrence through predictable remedial consequences.

For environmental claims tied to consumer markets (greenwashing, unsafe or non-compliant products, systemic breaches producing environmental externalities), the present statute is already usable. A tort-based claim seeking ecological restoration would instead have to rely on general Civil Code liability provisions, namely the preventive duty in Section 415 CC, general liability in Section 420 CC, or strict liability for inherently hazardous operations under Section 432 CC. In short, Slovakia already has the procedural framework in place. On the other hand, aligning it with environmental substance would bring private enforcement closer to what comparative literature urges – civil liability as a complement to regulation, oriented on repair and attentive to justice in process and outcome.

5. Conclusion

This article has argued that Slovak civil law already contains a workable architecture for environmental protection and that the ongoing recodification can make that architecture both more coherent and more effective. This finding aligns with Michalovič and Maslen's conclusion that environmental law in Slovakia is increasingly meeting the criteria of an independent branch of law whose effectiveness depends on the availability of precisely such preventive and restorative private-law instruments.[68]

As a matter of *de lege lata*, Section 415 CC provides a general conduct duty that squarely encompasses even the natural environment; Section 420 CC supplies a flexible fault-based frame capable of absorbing environmental standards and granular causation analysis, and Section 432 CC assigns the costs of abnormally dangerous activities to those who organise and control them, irrespective of permitting status. Taken together, these provisions enable courts to deter risky conduct *ex ante* and to channel losses *ex post* without needing to reinvent private law for ecological disputes.

The Draft Civil Code strengthens this base by giving courts a remedial grammar that fits environmental harms. A monetary default paired with a genuine option for specific reparation makes restoration thinkable as the first best outcome rather than an afterthought. Judicial estimation under uncertainty prevents

67 | Watson 2005, 3.
68 | Michalovič & Maslen 2024, 21–23.

proof difficulties from defeating meritorious claims in settings of diffuse pollution, latency or incomplete science. And the calibration of non-pecuniary awards through comparability promises greater consistency in the neighbourhood-scale nuisance and amenity cases.

As regards procedure, Slovakia's new representative-actions regime for consumers offers a ready template to aggregate environmentally linked harms at low transaction cost: registered (qualified) entities, an opt-in system, vast remedies and centralised implementation via a notary. Transposed thoughtfully, this chassis can support restorative outcomes in private law with its repairs, remediation plans, disgorgement of compliance savings and corrective information, while coordinating with administrative sanctions and leaving space for criminal law where culpability is aggravated. In the EU framework, where access to justice remains scattered across sectoral instruments and public enforcement must often prioritise prevention and remediation under the Environmental Liability Directive, robust civil institutes complement the administrative and criminal tools quite adequately.

Several *de lege ferenda* can be mentioned, though. First, operational guidance should clarify when restoration is 'appropriate in the circumstances' (under Section 813 DCC) including feasibility, proportionality and coordination with public remedial measures, so that courts can confidently order a cure where money is second best. Second, representative actions should be opened to qualified environmental NGOs alongside consumer bodies to safeguard class interests. Third, courts should be encouraged to use comparative tables or guideline ranges to anchor non-pecuniary awards in like environmental cases, reinforcing predictability without rigid tariffing.

Last but not least, if environmental protection aims at preventing harm and restoring what is harmed, private law must be able to impose exacting standards of care, to internalise the costs of risky activity and to deliver remedies that actually repair the world outside the courtroom. This intergenerational orientation resonates with comparative constitutional practice, which increasingly frames environmental protection as a three-fold obligation towards future generations – to conserve options, quality and access – underpinned by a non-regression principle and a broad understanding of precaution.[69] With the analysed Draft Civil Code's tools and with a collective procedure adapted to environmental mass harm, we believe the Slovak law is close to that destination.

69 | Bándi 2020, 18.

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