

Enikő KRAJNYÁK*

Protection of the Environment in National Constitutional Law in Light of the Jurisdiction of the ECtHR – A Hungarian Perspective

ABSTRACT: *The article gives a comparative analysis of the protection of the environment in the European human rights framework and at the constitutional level through the example of Hungary. The contribution analyses two judgements of the ECtHR in connection with the country and presents the Hungarian constitutional framework for the protection of the environment. The starting point of the analysis is the fact that the different levels of regulations – international and national – tend to focus on different aspects of protection, yet they significantly influence each other. The presentation of the two Hungarian cases is particularly topical in light of the fact that the Fundamental Law of Hungary, which introduced several unique provisions for the protection of the environment, was adopted between the finalisation of the two judgements.*

KEYWORDS: *right to a healthy environment, right to respect for private and family life, right to a fair trial, ECHR, Fundamental Law of Hungary*

1. Introduction

The protection of the environment, regardless of the level of regulation, shall be the centre of concern for legislators both at the national and international levels, given that the environment provides living circumstances for all living beings on the planet; therefore, its maintenance and preservation are crucial for the survival of all species. Although international and national laws offer similar solutions, for instance, the protection of the environment through human rights, they tend to focus on the different aspects of these approaches. International human rights law builds on the nexus between the first and second generations of human rights and inherent

* Ph.D. Candidate at the Ferenc Deák Doctoral School of the University of Miskolc and Researcher at the Central European Academy, Budapest. <https://orcid.org/0009-0003-2457-9491>.

environmental aspects, whereas the majority of national constitutions formulate a substantive right to a healthy or favourable environment. Furthermore, goals and principles are declared at both international and national levels, however, their content, role, and interpretation may differ, which could be explained by the diverse tools that are at the disposal of the international community of States and within the relations between the State and its citizens.

The Hungarian perspective is worth examining for several reasons. First, the European Court of Human Rights (hereinafter the ECtHR) delivered two major cases from its greening case law, contributing to a deeper understanding of the seemingly non-environmental provisions of the European Convention on Human Rights (hereinafter the ECHR). Second, the Hungarian constitutional framework, which provides various unique solutions not only for the protection of the environment but also for future generations, was established after the occurrence of the facts of the cases and during the finalisation of the two decisions. The Fundamental Law substantially changed the constitutional framework for the protection of the environment and introduced several concepts which could serve as examples for other national constitutions. In addition, an examination of the judgements delivered in connection with the country in the context of the new constitutional framework offers a comprehensive perspective on the complementarity of national and international levels of environmental protection.

2. Theoretical Approaches to Environmental Protection in Human Rights Law

2.1. Environment and Human Rights in International Law

International environmental law has by now become an independent field of public international law with increasing importance. The interlinkages with human rights law form an inherent part of the legal protection of the environment, however, there is no consensus on the precise legal place of the environment in the human rights discourse at a global level. Currently, there are several approaches towards environmental protection within human rights law. First, the 1992 Rio Declaration established the procedural rights-based approach to the protection of the environment, i.e. the use of procedural rights to address environmental issues.¹ The 1998 Aarhus Convention and the 2018 Escazú Agreement could be regarded as the implementation

¹ These rights are access to information, public participation and effective access to judicial and administrative proceedings in environmental matters. See: Principle 10 of the Rio Declaration on Environment and Development, 1992. See also: Shelton, 1992.

of Principle 10 of the Rio Declaration in the European and Latin-American continents, respectively, guaranteeing access to information, public participation, and justice in environmental matters.

Second, environmental aspects appear in the interpretation of certain substantive human rights as a precondition for their enjoyment, implying that the state of the environment can affect the realisation of rights,² such as the right to life or the right to respect for private and family life. In other cases, particularly in relation to property rights, environmental considerations may precede enjoyment of rights. Apart from using human rights as tools to address environmental issues, either procedurally or substantively, a new approach has been developed in recent decades that aims to elaborate a new substantive right to a healthy environment.³ Considering that international environmental law was developed after the adoption of international human rights documents, such a right was not included in any binding document that would ensure its enforceability. Nevertheless, the adoption of a resolution by the United Nations General Assembly on 28 July 2022⁴ that recognises the right to a clean, healthy, and sustainable environment is certainly forward-looking and may serve as a catalyst for action in the field.

2.2. The Protection of the Environment in the European Human Rights Framework

The cornerstone of the European human rights framework, the ECHR does not provide any specific right for the protection of the environment, nor does it refer to the environment. However, the ECtHR has developed its case law in environmental matters through the interpretation of certain human rights guaranteed by the ECHR, which is often referred to as the ‘greening’ of the ECHR⁵ resulting from the Court’s approach to the Convention as a ‘living instrument’.⁶ Owing to the extensive and evolutive interpretation of human rights, environmental aspects play a crucial role in the adjudication of cases and enable flexibility in understanding these rights.

The interlinks between the protection of human rights and the environment could be observed in the case laws of several human rights guaranteed by the Convention.⁷ First, the protection of the environment serves as a precondition for the enjoyment of the right to life (Article 2),⁸ the prohibition of inhuman or degrading treatment

2 Boyle, 2012, pp. 617–618; Shelton, 2006, pp. 130–131.

3 Birnie, Boyle and Redgwell, 2009, pp. 277–278.

4 See: UN GA Resolution A/76/L.75.

5 Hajjar Leib, 2011, pp. 71–80.

6 See: Letsas, 2013.

7 For an overview of the environmental case law of the ECtHR, see: Raisz and Krajnyák, 2022.

8 See: *Öneryıldız v. Turkey*; *Budayeva and Others v. Russia*; *Özel and Others v. Turkey*.

(Article 3),⁹ the right to liberty and security (Article 5),¹⁰ freedom of expression (Article 10),¹¹ and the right to respect for private and family life (Article 8),¹² meaning that the degradation of the state of the environment could result in the violation of these substantive rights. Second, procedural rights, such as the right to a fair trial (Article 6)¹³ and the right to an effective remedy (Article 13),¹⁴ which provide robust support for the right to access to justice in environmental matters, as laid down in the Aarhus Convention, are often used as tools to address environmental issues. Finally, the protection of the environment could also constitute a legitimate aim of general interest for interference with the protection of property (Article 1 of Protocol No. 1 of the Convention).¹⁵ This implies that interference with property rights may be justified by the public interest, such as protecting natural sites or managing forests. However, environmental protection in this context is interpreted in a restrictive sense, which limits environmental reasoning per se.

3. Applicability of Articles 6 and 8 of the ECHR in Environmental Matters

3.1. *The Right to a Fair Trial and its Environmental Implications*

In the framework of Article 6, the ECHR declares that ‘*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*’. The case law of the right to a fair trial is extensive in the Court’s practice: it is divided into civil and criminal limbs, both of which encompass (a) the right of access to court; (b) the institutional requirements of a tribunal, including establishment by law, independence, and impartiality; and (c) procedural requirements, such

9 See: *Florea v. Romania*; *Elefteriadis v. Romania*.

10 See: *Mangouras v. Spain*.

11 See: *Steel and Morris v. the United Kingdom*; *Vides Aizsardzības Klubs v. Latvia*; *Rovshan Hajiyev v. Azerbaijan*; *Bumbeş v. Romania*.

12 See: *Guerra and Others v. Italy*; *Roche v. the United Kingdom*; *Vilnes and Others v. Norway*; *Brincat and Others v. Malta*; *Lopez Ostra v. Spain*; *Taşkın and Others v. Turkey*; *Fadeyeva v. Russia*; *Giacomelli v. Italy*; *Tătar v. Romania*; *Dubetska and Others v. Ukraine*; *Cordella and Others v. Italy*; *Mileva and Others v. Bulgaria*; *Yevgeniy Dmitriyev v. Russia*; *Grimkovskaya v. Ukraine*; *Kapa and Others v. Poland*; *Dzemyuk v. Ukraine*; *Solyanik v. Russia*; *Brânduse v. Romania*; *Di Sarno and Others v. Italy*; *Kotov and Others v. Russia*.

13 See: *L’Erablière A.S.B.L. v. Belgium*; *Howald Moor and Others v. Switzerland*; *Karin Andersson and Others v. Sweden*; *Apanasewicz v. Poland*; *Bursa Barosu Başkanlığı and Others v. Turkey*.

14 See: *Öneryildiz v. Turkey*; *Cordella and Others v. Italy*; *Di Sarno and Others v. Italy*

15 See: *Papastavrou and Others v. Greece*; *N.A. and Others v. Turkey*; *Turgut and Others v. Turkey*; *Dimitar Yordanov v. Bulgaria*; *National Movement Ekoglasnost v. Bulgaria*.

as fairness, public hearing, and a reasonable time requirement.¹⁶ Article 6 is primarily applied in cases relating to the enforcement of judicial decisions, access to courts to challenge measures affecting the environment, access to documents, and access to information in environmental matters.

The role of the ECtHR is outstanding in guaranteeing procedural rights of individuals in environmental matters, despite the fact that the Convention itself does not expressly refer to environmental aspects. However, the Aarhus Convention, even though it incorporates procedural environmental rights, does not provide a judicial framework for the enforcement of these rights. While there is no direct legal relationship between the two conventions, it is noteworthy that several judgements referred to the Aarhus Convention in their reasoning¹⁷ and therefore interpreted Article 6 of the ECHR in light of the requirements laid down in the Aarhus Convention. The consideration of the aspects enshrined in the latter convention, or even of the fact that a State is a party to it, certainly enables the channelling of an environmental approach to the interpretation of the right to a fair trial in the ECtHR's practice. However, the human rights framework also has its limits, which are particularly indicated by the limited access of environmental non-governmental organisations to judicial proceedings: under the Aarhus Convention, such organisations undoubtedly have standing before a court,¹⁸ whereas within the framework of the ECHR, environmental associations have access to a tribunal under specific circumstances, such as when the association was a party to domestic proceedings,¹⁹ or when the violation does not stem from an environmental disturbance that can only be felt by natural persons (such as health considerations under Article 8).²⁰

Particular importance shall be placed on the understanding of the 'reasonable time' requirement, as it was a decisive element in both Hungarian cases examined in this study. By the term 'reasonable time', the Court generally understands administering justice without delays which may jeopardise its effectiveness and credibility,²¹ so that the courts are able to guarantee everyone's right to a final decision on disputes

16 See: Guide on Article 6 (civil limb), 2022, and Guide on Article 6 (criminal limb).

17 See, for instance, *Tătar v. Romania*, 118; *Grimkovskaya v. Ukraine*, 69; *Di Sarno and Others v. Italy*, 107; *Taşkın and Others v. Turkey*, 99. *The literature indicates that the reference to the Aarhus Convention in a case concerning Turkey that has not ratified the Convention may raise the question of whether the Convention has become part of international customary law. However, in Okyay and Others v. Turkey, the Court failed to mention the Aarhus principles, which suggests caution for considering the Aarhus Convention as customary law. Nonetheless, the mention of the Convention as applicable law to a non-party may imply that these norms are consistent with the emerging principles of law with more universal application. See: Duvic-Paoli, 2012; Eicke, 2022.*

18 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 1998, Article 9.

19 *Gorraiz Lizarraga and Others v. Spain*, 36.

20 *Greenpeace E.V. and Others v. Germany*.

21 *H. v. France*, 58; *Katte Klitsche de la Grange v. Italy*, 61.

concerning civil rights and obligations within such a time frame. The reasonableness of the length of the proceedings shall be assessed on a case-by-case basis in light of the specific circumstances, with special regard to the complexity of the case, the applicant's conduct, the conduct of the competent authorities, and what is at stake in the dispute, as laid down in *Frydlender v. France*.²² One may conclude that this requirement is particularly relevant in environmental cases, as the degradation of the environment tends to worsen over time and a timely judicial response could end harmful practices. However, one may also observe that Article 6 could be used for adjudicating environmental matters in exceptional cases, and thus applicants tend to allege the violation of Article 8 when referring to Article 6 in environmental cases.²³

3.2. The Right to Respect for Private and Family Life in an Environmental Legal Context

The right to respect for private and family life is guaranteed under Article 8 of the Convention. According to the provision, the scope of the application extends to private and family life, home, and correspondence, and thus, to the sphere of personal or private interest. Moreover, the Convention provides that there shall be no interference by a public authority with the exercise of this right, with the exception of cases,

'[i]n accordance with the law and to the extent that is necessary in a democratic society in interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

A wide range of environmental cases fall under the scope of Article 8, primarily noise pollution, industrial emissions, and waste management, considering that the right to respect for private and family life implies respect for the quality of private life and enjoyment of the amenities of one's home, which are impacted by the degradation of the environment. However, such degradation only constitutes a violation of Article 8 if it directly and seriously affects one's private and family life and home, because, as mentioned above, the Convention is not an environmental legal document; thus, it does not guarantee environmental protection per se.²⁴

²² *Frydlender v. France*, 43. See also: *Kyrtatos v. Greece*, 41.

²³ Kecskés, 2021, pp. 214–215.

²⁴ Guide on Article 8, pp. 46–47.

The ECtHR developed an extensive interpretation of Article 8 in environmental cases and has a well-established practice of determining what constitutes a violation of the right to private and family life. To assess whether the complaint violates Article 8, the Court applies a two-stage test. First, it shall be determined whether the complaint falls within the scope of application of Article 8, thus, whether it affects 'private life', 'family life', 'home' or 'correspondence' in light of specific circumstances.²⁵ The violation of 'home' and 'private life' is frequently alleged in environmental cases, considering that environmental problems are localised and tend to affect the surrounding area more, which are often inhabited places, where peoples' homes are situated. After determining whether the complaint falls within the remittances under Article 8, the second stage examines whether there has been interference with the above concepts. In this regard, apart from imposing a negative obligation on the State – interpreting this right from a liberal perspective and requiring the State to impinge only in well-founded circumstances – the Court may also find a violation of this article in case the State fails to implement positive measures to guarantee the right.²⁶

The adjudication of issues related to noise pollution is at the centre of concern of this study, because the two highlighted Hungarian cases fall under this category and the Court has a well-established case law and interpretation of these issues, even within the environment-related case law of Article 8. The inclusion of noise pollution within the framework of Article 8 was established in *Powell and Rayner v. the United Kingdom* and *Hatton and others v. the United Kingdom*. In both cases, the applicants argued that the noise generated by Heathrow Airport violated their rights under the ECHR. In both cases, the State had to strike a fair balance between public and private interests: the economic interest of the State related to the functioning of airports, and the private interest of the inhabitants to effectively enjoy their homes which were situated in the vicinity of the airport. Although 10 years had passed between the delivery of the two judgements, the Court found no violation of Article 8 in any of the cases, holding that the State did not overstep its margin of appreciation by failing to strike a fair balance between the rights of the individuals and the conflicting interests of the community as a whole. On the other hand, the Court found a violation of Article 13, given that the judicial review was not an effective remedy in relation to the rights under Article 8.²⁷

25 Roagna, 2012, pp. 10–11.

26 Connelly, 1986, p. 570.

27 See: *Powell and Rayner v. the United Kingdom*; 37–46; *Hatton and Others v. the United Kingdom*, 84–104.

4. Environmental Jurisdiction of the ECtHR on the Example of Two Hungarian Cases

The cases *Deés v. Hungary* and *Bor v. Hungary* produced fundamental outcomes for the interpretation of noise pollution arising from road and railway traffic, thus counterbalancing the interpretation of conflicting public and private interests.²⁸ As presented below, the Court adjudicated in favour of the private interest in these cases, which is contrary to the aforementioned cases concerning air traffic and aircraft noise. Therefore, the analysis of these cases serves to introduce Hungarian environmental case law in the practice of the ECtHR, and demonstrate its important role in the interpretation of Article 8 regarding the protection of the environment.

In *Deés v. Hungary*, the applicant complained about an increasing volume of cross-town traffic passing through the street on which his house was situated. The road was used as an alternative route for the neighbouring privately owned motorway M5 to avoid the high toll charge that had been introduced for the usage of the motorway. To counter this situation, several mitigation measures were adopted, including the construction of three bypass roads, a speed limit at night, the introduction of traffic lights at nearby intersections, and the prohibition of access of vehicles weighing over 6 tons. The measures implemented did not appear to produce an effective solution for the environmental harm suffered by the inhabitants of the area. The applicant, supported by the opinion of a private expert, complained that the noise and pollution originating from the exhaust fumes produced on the motorway caused damage to the walls of his house and brought an action before the first instance court. The application was dismissed and challenged before the second instance in which the expert opinion confirmed that the level of noise outside the applicant's house was above the statutory limits. Despite this, the court found no causal link between the measures adopted by the authorities and the damage to the house, and thus concluded that the respondent managed to strike a fair balance between the interests of road users and inhabitants, stating that the measures adopted were proportionate and sufficient to protect the applicant's interests.²⁹

Before the ECtHR, the applicant alleged the violation of Articles 8 and 6, arguing that the noise, vibration, pollution and odour caused by the heavy road traffic nearby rendered his home virtually uninhabitable and that the measures adopted by the Hungarian authorities were insufficient and breached the 'reasonable time' criteria. In the framework of Article 8, the ECtHR relied on the findings of *Moreno Gómez v. Spain*, in which the Court stated that a violation of the right to respect for private and

²⁸ Kecskés, 2011, p. 2.

²⁹ *Deés v. Hungary*, 5–14.

family life may be found when the case concerns interference by public authorities with the right, as well as when they fail to act to stop third-party breaches of the right in question.³⁰ In this regard, the Court reiterated that breaches to the right to respect the home are not confined to concrete breaches but may also include those that are diffused, such as noise, emissions, smells, or other similar forms of interference, as in the given case, resulting in a breach preventing a person from enjoying the amenities of his home. The Court further considered that the noise pressure was significantly above statutory levels, and failure to respond by appropriate State measures may amount to a violation of Article 8. The extensivity of the noise levels was proven by an expert opinion in the domestic proceedings, which was acknowledged by the Hungarian court. However, contrary to the domestic court's decision, the link between the insufficiency of the measures adopted and excessive noise disturbance was held by the ECtHR. Accordingly, the Court pronounced a violation of the right to respect for private and family life in the given case.

Furthermore, the Court considered the length of the proceedings in light of Article 6, that is, the 'reasonable time' requirement. Considering that the two levels of jurisdiction at the domestic level lasted six years and nine months, and the lack of any fact or convincing argument from the Government that would explain the necessity of such lengthy proceedings, the Court held the violation of the right to a fair trial in the failure to meet the 'reasonable time' requirement.³¹

The importance of *Deés v. Hungary* is manifold. First, it is notable for being the first environment-related application in the case law of the ECtHR in relation to Hungary. Second, the case proved that the Court may also find a violation of Article 8, not for the lack of positive measures by the State, but for the inadequacy and inefficacy of the measures adopted. Third, the case provides a counterbalance for decisions related to aircraft noise. Similar to the aforementioned cases of *Powell and Rayner* and *Hatton*, *Deés* also dealt with some type of nuisance related to traffic, in which the State had to strike a fair balance between public and private interests. However, in comparison with these applications, *Deés* was successful in the sense that the Court pronounced the violation of Article 8 and placed more weight on private interests, that is, the interests of the inhabitants. The probable reason underlying the different approaches to finding the balance between the two groups of cases is related to concrete establishments (such as the Heathrow Airport) or to a cross-country network of traffic roads, while the provision of rapid means of travel and communication is of vital importance to the economic well-being of the country. For commercial, industrial, and touristic reasons, the economic impact of traffic roads may not be as significant and tangible.³²

30 Moreno Gómez v. Spain, 53–56.

31 *Deés v. Hungary*, 25–27.

32 Fodor, 2011, pp. 90–93.

Regarding heavy railway noise, the Court's approach to adjudicating the balance between public and private interests is similar to that in the case of road traffic noise; namely, the Court placed more weight on the private interests of the inhabitants. In *Bor v. Hungary*, the applicant complained about the impossibility of enforcing the competent authority's obligation to keep the noise levels under control near his home in an effective and timely manner.³³ The applicant's house was situated across a railway station in front of the train's starting position. According to the applicant, owing to the replacement of steam engines with diesel engines, the noise level in the neighbourhood significantly increased, which led to excessive and unbearable noise, hindering the enjoyment of the amenities of his home. Moreover, the applicant argued that the railway company failed to take the necessary measures to keep its noise emissions under control, which could have been achieved by constructing a noise barrier wall, modernising the railway station, preheating the engines in another place, and avoiding the use of certain engines. The claims were accepted before the domestic court, which confirmed that the noise level had exceeded the limit and ordered the railway company to construct a noise barrier wall. On appeal, the second-instance court dispensed with the obligation to build the protection wall, considering it unnecessary to prohibit noise pollution and ordered the railway company to pay compensation for the loss of value of the applicant's house. Despite the fact that, similar to the case of *Deés*, several noise-mitigating measures were implemented, such as a reduction in the number of trains passing through the station, minimisation of the stay of freight trains, and renovation of engines, the applicant argued that the noise continued to exceed the statutory limits and thus violated Articles 8 and 6 of the Convention.³⁴

Consonant with the argumentation in *Deés*, the ECtHR noted that the State has a positive obligation under Article 8 to strike a fair balance between the interest of the applicant in having a quiet living environment and the conflicting interests of others and the community as a whole in having rail transport, and emphasised that the mere existence of a sanction system, as in the given case, does not constitute a sufficient solution for noise disturbance if it is not applied in a timely and effective manner. Considering the failure of the domestic courts to determine any enforceable measures to guarantee the applicant the enjoyment of his home and the disproportionate length of the proceedings – 15 years and 7 months of the two levels of jurisdiction – the Court held a breach of both the right to respect for home and the right to a fair trial.

These applications from Hungary drew attention to two severe problems: (a) the length of the proceedings and (b) the fact that environmental aspects were often marginalised in the implementation of the laws.³⁵ The length of the proceedings is often

33 *Bor v. Hungary*, 5–17.

34 *Bor v. Hungary*, 28–31.

35 Fodor, 2011, p. 90.

challenged before the ECtHR in connection with Hungary, which, in environmental cases, has outstanding importance in providing timely solutions for pollution and draws attention to the necessity of the proper implementation of the Aarhus Convention, which also provides the obligation to ensure access to justice in environmental matters through fair, equitable, *timely* and not prohibitively expensive.³⁶ Although the Aarhus Convention was not mentioned by the Court, and as indicated above, it does not have a direct legal link with the ECHR, the effective implementation of environmental measures should also be analysed in the context of the rights and principles laid down in Aarhus, within the framework of the European Convention. Furthermore, as for the problem of marginalising environmental problems, it shall be mentioned that the Hungarian framework for environmental protection significantly improved since the adoption of the two decisions, particularly owing to the adoption of the new Fundamental Law in 2011.³⁷

5. Protection of the Environment at the Constitutional Level

5.1. Different Approaches to Environmental Protection in the Constitutions – an Overview

As discussed above, the current international human rights framework does not provide a self-standing human right to a healthy environment for two major reasons. First, the role of environmental law strengthened after the establishment of the international human rights framework. The 1972 Stockholm Conference on the Human Environment³⁸ – the first world conference on the environment – was organised several decades after the adoption of the major human rights treaties at global or regional levels; thus, in the absence of a concrete international environmental legal framework, such aspects could not be emphasised in the elaboration of human rights.³⁹ The second reason could be the lack of consensus regarding the recognition of the substantive right to a healthy environment. Resolution A/76/L.75 passed at the General Assembly on 28 July 2022 was adopted with 161 votes in favour, zero against, and eight abstentions.⁴⁰ Abstaining States have fundamentally different

36 Aarhus Convention, Article 9 (4).

37 For an in-depth analysis on the drafting and adoption of the Fundamental Law considering the provisions relating to the environment, see: Raisz, 2012.

38 The Stockholm Declaration on the Human Environment, 1972 adopted at the Conference recognises '*the right to freedom, equality and adequate conditions of life, in an environment of a quality [...]*'. See: Principle 1 of the Stockholm Declaration.

39 See: Weiss, 2011, pp. 15–17.

40 See: UN Press, 2022.

understandings of the human rights discourse, which may hinder the recognition of such a right at the global level.⁴¹

Although environmental protection requires supranational cooperation, individual States may contribute significantly to a higher level of protection through legislation and jurisdiction. The fundamental legal framework of national constitutions was elaborated on the basis of the international framework, thus, after the adoption of such key human rights treaties, and many constitutions were adopted after the establishment of the international environmental legal framework or were amended in light of its latest developments. Furthermore, consensus on the position of the country's approach to environmental protection is clearly less complicated to reach than consensus at the global level, as indicated by the fact that more than 100 States have incorporated it into their constitutions.⁴² In addition to indicating States' commitment to environmental protection, constitutional provisions may serve as a starting point for the development of a constitutional courts' jurisprudence through the interpretation of such provisions.⁴³

National constitutions may incorporate similar approaches to environmental protection as the international human rights framework; however, the importance of these approaches may differ at the national or international level. First, in contrast to the international human rights framework, the self-standing right to a healthy environment forms an inherent part of the fundamental legal framework provided by national constitutions. The constitutions adopted after the aforementioned 1972 Stockholm Declaration, were certainly inspired by the adoption of the Declaration: the 1976 Constitution of Portugal, followed by the 1978 Constitution of Spain declared the right to a healthy environment for the first time at the constitutional level.⁴⁴ In the absence of an international consensus on this right, particularly considering the time of adoption of the constitutions, States have considerable freedom in determining the phrasing and content of this right.⁴⁵ The aforementioned Portuguese Constitution guarantees the 'right to a healthy

41 The problem of the lack of a common understanding on the content and scope for the right to a clean, healthy and sustainable environment also emerged in connection with the antecedent of the above Resolution, with Resolution 48/13, adopted by the Human Rights Council on 8 October 2021. For instance, the Russian Federation impugned the quality of the Human Rights Council to promote the right to a healthy environment. In addition, China considers human rights protection as essentially an internal affair, rather than a global one, which approach certainly poses challenges to the effective implementation of this right. See: Tang and Spijkers, 2022, pp. 90–92.

42 Boyd, 2019, p. 33.

43 Boyd, 2011, pp. 171–172.

44 Aragão, 2019, p. 248.

45 It shall be noted that the concept of the right to a clean, healthy and sustainable environment was formulated in the years 2021–2022. Therefore, the constitutions may operate with different denominations – e.g. the right to a healthy/favourable/sustainable/etc. environment.

and ecologically balanced human living environment',⁴⁶ the Spanish Constitution refers to the 'right to enjoy an environment suitable for personal development',⁴⁷ and further alternative formulations include rights to a 'clean', 'safe', 'favourable' or 'wholesome' environment.⁴⁸

Similar to the practice of the ECtHR, which, in the absence of an explicit right relating to the environment, developed its case law in environmental matters in the framework of other human rights recognised under the Convention, domestic (supreme or constitutional) courts may also rule that such a right is implicitly guaranteed in other constitutional provisions and thus forms an inherent part of the interpretation of those rights. The right to a healthy environment may be an essential element of other fundamental rights; thus, it is an enforceable, constitutional right even if the constitution does not explicitly provide for it. For instance, among the countries whose constitutions do not expressly recognise the right to a healthy environment, the Indian jurisdiction could serve as the best example: the Supreme Court mentioned the 'right of the people to live in a healthy environment with minimal disturbance of the ecological balance',⁴⁹ and further pronounced that the right to live includes 'the right to the enjoyment of pollution-free water and air for full enjoyment of life'.⁵⁰

In addition to the explicit or implicit recognition of an environment-related substantive right, constitutions may also include procedural environmental rights. The three pillars of the Aarhus Convention – access to information, public participation in the decision-making, and access to justice in environmental matters – constitute a solid foundation for such constitutional provisions. The 1996 Constitution of Ukraine was the first constitution to implement procedural environmental rights, namely the right of free access to information about the environmental situation.⁵¹ Although the right to access to information in environmental matters is certainly the most common pillar of the Aarhus Convention, the right to participate in the public

46 See Article 66 (1) of the Constitution of the Portuguese Republic: 'Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it'. Cf. Art. 50 of the Constitution of Costa Rica: 'All persons have the right to a healthy and ecologically balanced environment [...]'

47 See Article 45 (1) of the Constitution of Spain: 'Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it'.

48 Boyd, 2019, pp. 32–33.

49 Rural Litigation and Entitlement Kendra v. Uttar Pradesh, AIR 1985 SC 652; AIR 1987 SC 359.

50 Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

51 May, 2013, p. 34; Art. 50 of the Constitution of Ukraine: '[...] Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret'. See also: Rezie, 1999, p. 179.

decision-making process and access to justice in environmental matters could also be found in some constitutions.⁵²

Compared with the protection of the environment in international law, the human rights framework may not provide the only solution for better enforcement of protective measures. Constitutions, similar to major international environmental legal instruments,⁵³ express States' commitments to protect or conserve the environment, which are formulated as a duty of the State, government, or citizens. The subject matter of such obligations may include responsibility for future generations, the promotion of sustainable development, and financial sustainability. Further miscellaneous provisions may address specific issues that reflect the environmental characteristics of a given country. Such provisions encompass, for instance, the constitutional recognition of the rights of nature in the constitutions of Bolivia and Ecuador; the prohibition of the importation of toxic and hazardous waste in the constitutions of Benin, Chad, the Democratic Republic of the Congo, and Niger; and the prohibition of nuclear testing or the deployment of nuclear weapons within the territories of the countries in the constitutions of Micronesia and Palau.⁵⁴

5.2. The Hungarian Constitutional Framework for the Protection of the Environment

The Fundamental Law of Hungary was adopted on 25 April 2011 and entered into force on 1 January 2012. In light of this, it is noteworthy that the *Deés* judgement was delivered on 2 February 2011⁵⁵ and the *Bor* judgement was delivered on 18 September 2013.⁵⁶ These facts should be considered when analysing the newly adopted constitutional provisions in a broader context. However, the author does not claim that there would be any direct link between the ongoing procedure at the ECtHR and the adoption of the Fundamental Law, but rather suggests that a judgement of an international court shall be interpreted not only in light of the legal framework in force at the time, but also in light of whether and – if so – how these frameworks have changed since the time of the delivery of such judgements. Therefore, the uniqueness of the environment-related provisions of the Fundamental Law and

52 For example, Article 7 of the French Charter for the Environment provides '*the right [...] to have access to information pertaining to the environment in the possession of public bodies and to participate in the public decision-taking process likely to affect the environment*'. See also: May, 2013, pp. 34–36.

53 See, for instance, the Rio Declaration, the Kyoto Protocol, and the Paris Agreement.

54 Boyd, 2013, pp. 17–20.

55 See: *Deés v. Hungary*, Judgement, Final, 09/02/2011.

56 See: *Bor v. Hungary*, Judgement, Final 18/09/2013.

their interpretation may serve as a topical example for understanding the connection between the protection of the environment in international and national law.

Article XXI of the Fundamental Law guarantees the substantive right to a healthy environment.⁵⁷ This right was the only environmental provision that was included in the former constitutional framework: the constitutional amendment of 1989 introduced this right in Article 18 of the Constitution.⁵⁸ The Constitutional Court of Hungary thoroughly interpreted this right in Decision No. 28/1994 (V.20). According to it, the right to a healthy environment is a third-generation fundamental right, with the *differentia specifica* of having a stronger objective and institutional side which is underpinned by the State's obligation to recognise and endorse a framework for the protection of the environment. Moreover, the right is special from the perspective of its scope of subjects; considering the unidentifiable nature of the right, all humans shall be entitled to it. Contrary to social rights, in the case of which the subjects could be concretised, these subjects – similar to animals, plants, or 'unborn generations' – may not stand up for their rights.⁵⁹ Consequently, the right to a healthy environment may not be interpreted in such a manner that individuals can directly establish a claim before the court demanding environmental conditions that would correspond to their subjective perception.⁶⁰

The Constitutional Court enhanced its former findings on the right to a healthy environment after the adoption of the Fundamental Law and enhanced them with further principles, such as the principle of non-derogation and the precautionary principle. The principle of non-derogation poses limitations to State actions in the context of the protection of the environment as a State task and establishes the prohibition of derogation from the previously achieved level of protection in substantial, procedural, and institutional norms.⁶¹ Second, the Constitutional Court added the precautionary principle to the interpretation of the right to a healthy environment. This principle may be applicable either jointly with or independently of the non-derogation principle. In the first case, the legislator is required to verify that the proposed regulation, which may affect the state of the environment, is not

57 Article XXI of the Fundamental Law reads as follows: '(1) Hungary shall recognize and endorse the right of everyone to a healthy environment. (2) Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration, as provided for by an Act. (3) The transport of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited'.

58 It is noteworthy that the right to live in a dignified environment first appeared in Act II of 1976 on the protection of the human environment (Article 2 (2)), however, since the right was not enshrined in the Constitution at the time, it was not implemented into practice. Nevertheless, the regulation was certainly progressive as it was based on the philosophy of the Stockholm Conference. See: Bándi, 2011, p. 72.

59 Decision No. 28/1994 (V.20.) III.

60 Fodor, 2015, pp. 104–105.

61 Decision No. 28/1994 (V.20.) IV.1.; Decision No. 16/2015 (VI.5.) [109].

a step back and does not cause irreversible damage. The independent application of the precautionary principle may apply to cases not previously regulated, however, continue to influence the condition of the environment.⁶²

In addition to declaring a substantive right to a healthy environment, the Hungarian constitutional framework recognises the environmental dimension of other fundamental rights. First, Article XX (2) provides that the effective application of the right to physical and mental health should be guaranteed through agriculture free of genetically modified organisms, ensuring access to healthy food and drinking water, safety at work, healthcare provision, as well as by ensuring the protection of the environment.⁶³ These requirements are defined as State tasks, which can also be regarded as preconditions for the enjoyment of the right to health. Second, the Fundamental Law may provide an implicit link between environmental protection and other fundamental rights pronounced by the Constitutional Court. In the framework of interpreting the right to a healthy environment in the aforementioned Decision No. 28/1994 (V.20), the Court stated that the right to a healthy environment had the strongest link to the right to life among the constitutional rights; namely, the right to the environment was understood as part of the institutional side of the right to life, and the State's obligation to maintain the natural conditions for human life was thus phrased as an independent constitutional right.⁶⁴ Further, the Constitutional Court recognised the environmental aspect of the right to a fair trial under Article XXVIII (1) of the Fundamental Law.⁶⁵ However, despite numerous attempts to include procedural environmental rights in the constitutional text, particularly the right to participate in the decision-making process in environmental matters,⁶⁶ such provisions were not adopted in the final version of the Fundamental Law.

Furthermore, as in the practice of the ECtHR, the environment and fundamental (or human) rights could also be observed from the perspective of the restriction of certain rights for environmental reasons at the constitutional level. According to Article XIII of the Fundamental Law, the right to property may be subject to

62 Decision No. 13/2018 (IX.4.) [20]. On the interpretation of the precautionary principle in the Hungarian law, see: Szilágyi, 2018.

63 Article XX (2) of the Fundamental Law reads as follows: '(1) Everyone shall have the right to physical and mental health. (2) Hungary shall promote the effective application of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment'.

64 Decision No. 28/1994 (V.20.) III. 3. a).

65 See: Decision No. 4/2019 (III.7.) [66].

66 The former Ombudsman for Future Generations expressed his opinion in connection with the draft of the Fundamental Law, and suggested the incorporation of the right to participate in the environmental decision-making process. See: A jövő nemzedékek országgyűlési biztosának javaslatai az új alkotmány koncepciójának kidolgozásához, 2010.

restrictions for reasons of public interest, including the right to a healthy environment as a public task.⁶⁷

As one may conclude, Hungarian constitutional law incorporates different approaches to the protection of the environment within the framework of fundamental rights. First, and most importantly, the Fundamental Law guarantees the right to a healthy environment, which is the cornerstone of the protection of the environment in human rights law domestically and internationally. As indicated above, endeavours to elaborate an independent and substantive right to a healthy environment at a global level face numerous challenges; thus, the introduction of this right in national constitutions plays a crucial role in guaranteeing a higher level of environmental protection in practice. Owing to the extensive interpretation of the Constitutional Court, the right to a healthy environment has normative content that implies active State behaviour in ensuring environmental protection. The protection of the environment is strongly connected to other fundamental rights, such as, the right to physical and mental health, and the right to property. In addition, corresponding to the procedural rights-based approach established in international environmental law, the Constitutional Court acknowledged the prevalence of environmental aspects in the interpretation of the right to a fair trial.

5.3. Protection of the Environment as a State Task and Other Related Provisions

Apart from the fundamental rights framework, the protection of the environment appears in various contexts of state responsibility. First, the protection of the environment explicitly appears as a state task for promoting the effective application of the right to physical and mental health. GMO-free agriculture, as well as ensuring healthy food and drinking water, which are implicitly connected to environmental protection, are also state tasks that aim to ensure the proper implementation of the right to health.⁶⁸

Furthermore, responsibility for future generations is declared by the Preamble, particularly Articles P and 38. The Preamble acknowledges the responsibility for future generations and thus the obligation to protect the living conditions of future generations by making prudent use of material, intellectual, and natural resources, thereby providing a solid foundation for the interpretation of the provisions regarding

67 Article XIII of the Fundamental Law reads as follows: *'(1) Everyone shall have the right to property and inheritance. Property shall entail social responsibility. (2) Property may only be expropriated exceptionally, in the public interest and in those cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.'*

68 For further information on the interpretation of the GMO-free agriculture in the Fundamental Law, see: Szilágyi, Raisz, and Kocsis, 2017, pp. 167–175.; Raisz, 2022, pp. 192–194.

the protection of future generations. Article P (1), which is notable for the protection of natural resources, provides that *'it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations'*. Thus, future generations appear as beneficiaries of this obligation, while, in contrast to the right to a healthy environment, in cases where the obligation of the State is more accentuated, present generations have a triple obligation in light of this provision.⁶⁹ Article P (1) was interpreted by the Constitutional Court in Decisions No. 16/2015 (VI.5.) and No. 28/2017 (X.25.), which adopted the internationally accepted theory of intergenerational equity and introduced it to the Hungarian constitutional law. According to this theory, the protection of the environment is amended with the obligation of maintenance, which could be interpreted as the maintenance of the previous level of protection, and as the harmonization of environmental protection and sustainable development. Furthermore, the obligation of preservation translates into preserving the possibilities of choice, quality, and access.⁷⁰ Regarding Article P, the Constitutional Court further pronounced the constitutional manifestation of the public trust doctrine, conferring fiduciary duties on the State to act as a trustee over the natural heritage of the nation for the benefit of future generations, to the extent that it does not jeopardise the long-term existence of natural and cultural assets that are worthy of being protected on account of their inherent values.⁷¹

Additionally, the Constitutional Court found that the protection of future generations could be deduced from the Preamble, Article P and Article 38 (1), which provides that *'the management and protection of national assets shall aim at [...] preserving natural resources, as well as at taking into account the needs of future generations'*. Thus, Article 38 (1) is founded on the importance of material, i.e. financial resources for upcoming generations which was also reflected in the Preamble. Such a perspective is prevalent in the rules concerning public funds. Article 36 (4) provides that the central budget may not be adopted if government debt exceeds half of the total gross domestic product. These rules implicitly protect the interests of future generations by aiming to avoid indebtedness which would pose an intolerable burden on them by prioritising the current needs of interest.⁷² Present generations thereby express their responsibility towards the next generations in the financial field.

In addition to the protection of the environment as a state task, the Fundamental Law provides various miscellaneous provisions on this issue. For instance, Article XXI (2) declares responsibility for damage caused to the environment, and Article

69 Decision No. 28/1994 (V.20.) [III.3.].

70 Decision No. 16/2015 (VI.5.), [92]; Decision No. 28/2017 (X.25.) [33]. For an in-depth analysis of the interpretation of the latter decision, see: Szabó, 2019.

71 Decision No. 14/2020 (VII.6.) [22]. For an in-depth scientific analysis on the application of the public trust doctrine in this decision, see: Sulyok, 2021.

72 Explanatory Memorandum of Article 36 of the Fundamental Law.

XXI (3) prohibits the transport of pollutant waste into the territory of Hungary for the purpose of disposal.⁷³ The first provision incorporates – thus, does not declare in its entirety – the polluter-pays principle, which would require reference to prevention or precaution.⁷⁴ The second provision is the expression of the public will about a concrete case: the illegal waste import from Germany in 2006 to Hungary.⁷⁵ Furthermore, the Fundamental Law declares certain value choices which could be indirectly linked to the protection of the environment or future generations, such as the protection of Christian culture (Article R(4))⁷⁶ and the commitment to have children (Article L (2)).⁷⁷ Christian theory considers the values of the environment and human responsibility for its protection as part of human dignity. Numerous religious leaders expressed concerns about the sustainability of the planet and the created world, including Pope John Paul II, Benedict XVI, Pope Francis, and Bartholomew of Constantinople.⁷⁸ The affirmations of the Encyclical Letter *Laudato Si'* issued by Pope Francis and the ecological views of Bartholomew were explicitly referred to by the Constitutional Court in Decision No. 28/2017 (X.25).⁷⁹ Additionally, the State's strong support for bearing children is intertwined with the responsibility towards future generations. According to the constitutional provision, family is the basis of the survival of the nation, which, similar to what is reflected in the Preamble,⁸⁰ indicates the legislator's commitment to the protection of future Hungarians.

Based on the above, one may conclude that the Hungarian Fundamental Law encompasses a comprehensive approach to environmental protection and that it constitutes an inherent part of the fundamental rights framework (through declaring a substantive right to a healthy environment and other related fundamental rights); the protection of the environment also appears as an obligation for the State and everyone by the protection of natural resources and the needs and interests of future generations. Furthermore, the Fundamental Law declares several unique provisions specific to Hungarian legislation, including the protection of Christian culture and the commitment to bear children.

73 See above.

74 Bándi, 2020a, p. 16.

75 Horváth, 2013, p. 231.; Csák, 2014, p. 34.

76 Article R (4) of the Fundamental Law reads as follows: *'The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State'*.

77 Article L (2) of the Fundamental Law reads as follows: *'Hungary shall support the commitment to have children'*.

78 Bándi, 2013, p. 84. For a detailed analysis on the moral considerations of environmental protection, see: Bándi, 2006; Bándi, 2020b.

79 Decision No. 28/2017 (X.25.) [36].

80 See the Preamble of the Fundamental Law: *'We believe that our children and grandchildren will make Hungary great again with their talent, persistence and moral strength'*.
'[The Fundamental Law] shall be an alliance among Hungarians of the past, present and future'.

6. Concluding Remarks

By analysing two judgements of the ECtHR concerning Hungary and providing an overview of the recent constitutional changes in Hungary, the author aimed to present the complexity of the legal protection of the environment and the necessity of a complementary understanding of the regulation and jurisdiction of the national and international levels. As presented above, national and international laws operate with similar concepts for environmental protection, however, emphasis is placed on different aspects at these levels.

The Hungarian Constitution, along with the majority of national constitutions in the world, recognises the independent right to a healthy environment and the environmental perspective of other fundamental rights, particularly the right to physical and mental health. Furthermore, the ECHR does not provide any *expressis verbis* formulation for the protection of the environment, yet environmental aspects were deduced from the articles of the Convention in the case law of the ECtHR in various contexts. This was the case in connection with heavy traffic noise that constituted the merits of the cases in *Deés v. Hungary* and *Bor v. Hungary*: the Court adjudicated on the basis of the right to respect for private and family life under Article 8 of the ECHR. However, had a substantive environment-related right been recognised by the Convention, the two cases would certainly have fallen within the scope of such a right, as it could easily have happened under domestic law. Nevertheless, from a practical perspective, the fact that there is some kind of possibility for seeking remedies for environmental harms under the aegis of the human rights framework seems more important than the *expressis verbis* phrasing of these rights.

The scope of certain substantive human rights and the environmental aspects inherent in them, in comparison with the content and understanding of an independent right to a healthy environment, do not cover the same. In the author's opinion, the recognition of an environment-related human right is more likely to guarantee a higher level of protection (in case it is recognised in a binding document) than what the current system could offer, primarily because it would cover environmental harm that does not interfere with another right. However, in addition to substantive human rights, an equally important aspect of environmental protection is offered by the margin of appreciation of procedural rights, particularly the right to a fair trial. Although constitutions may also provide procedural environmental rights, the Hungarian Fundamental Law does not recognise a direct link between the protection of the environment and the right to a fair trial. As the two case examples have indicated, the ECtHR has a well-established interpretation of the 'reasonable time' criteria, which has particular importance in adjudicating environmental cases, particularly when the environmental aspect is not expressly declared in the right to a fair trial in the domestic system.

In conclusion, regulations and jurisprudence at domestic and international levels remarkably complement each other. Therefore, the strengths of one system could be better understood in the context of how the given issue is regulated and interpreted in another system, and, conversely, the possible development paths may also be inspired by a comparative analysis of the two levels.

Bibliography

- Aragão, A. (2019) 'Environmental Standards in the Portuguese', in Turner, S. J., Shelton, D. L., Razzaque, J. et al. (eds.) *Environmental Rights – The Development of Standards*, Cambridge: Cambridge University Press, pp. 247–264; <https://doi.org/10.1017/9781108612500.011>
- Bándi Gy. (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *Journal of Agricultural and Environmental Law* 15(29), pp. 7–22, <https://doi.org/10.21029/JAEL.2020.29.7>
- Bándi, Gy. (2006) 'Környezetvédelem az életért' ['Environmental protection for the life'], *Iustum Aequum Salutare*, 2(3–4), pp. 32–42.
- Bándi, Gy. (2011) *Környezetjog [Environmental Law]*, Budapest: Szent István Társulat.
- Bándi, Gy. (2013) 'A környezethez való jog értelmezése a fenntartható fejlődési stratégia és az Alaptörvény fényében' ['The interpretation of the right to healthy environment in the light of the Sustainable Development Strategy and the Fundamental Law'], *Acta Humana*, 1(1), pp. 67–92.
- Bándi, Gy. (2020a) Interests of Future Generations, Environmental Protection and the Fundamental Law, *Journal of Agricultural and Environmental Law* 15(29), pp. 7–22, <https://doi.org/10.21029/JAEL.2020.29.7>
- Bándi, Gy. (2020b) 'A Teremtés védelme és az emberi jogok' ['Protecting Creation and Human Rights'], *Acta Humana*, 8(4), pp. 9–33 [Online]. Available at: <https://doi.org/10.32566/ah.2020.4.1> (Accessed: 4 August 2022).
- Birnie, P., Boyle, A., Redgwell, C. (2009) *International Law & the Environment*. Oxford: Oxford University Press.
- Boyd, D. R. (2011) 'The Implicit Constitutional Right to Live in a Healthy Environment', *Review of European Community & International Environmental Law*, 20(2), pp. 171–179.
- Boyd, D. R. (2013) *The Status of Constitutional Protection for the Environment in Other Nations*. Report Paper #4, David Suzuki Foundation.
- Boyd, D. R. (2019) 'The Right to a Healthy and Sustainable Environment', in Aguila, Y., and Viñuales, J. E. (eds.) *A Global Pact for the Environment: Legal Foundations*, Cambridge: C-EENRG, pp. 30–36.
- Boyle, A. (2012) 'Human Rights and the Environment: Where Next?', *The European Journal of International Law*, 23(3), pp. 613–642; <https://doi.org/10.1093/ejil/chs054>
- Connelly, A.M. (1986) 'Problems of Interpretation of Article 8 of the European Convention on Human Rights', *The International and Comparative Law Quarterly*, 35(3), pp. 567–593; <https://doi.org/10.1093/iclqaj/35.3.567>
- Csák, Cs. (2014) 'A „felügyelt szabadság” – avagy az információszolgáltatási kötelezettség terjedelme a határon átnyúló hulladékszállítások esetén' ['The

- “supervised freedom” – or the scope of the obligation to provide information in the case of cross-border waste transports’], *Journal of Agricultural and Environmental Law*, 9(17), pp. 22–38.
- Duvic-Paoli, L. A. (2012) ‘The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence’, *Yearbook of International Environmental Law*, 23(1), pp. 80–105; <https://doi.org/10.1093/yiel/yvt062>
 - Eicke, T. (2022) ‘Climate Change and the Convention: Beyond Admissibility’, *European Convention on Human Rights Law Review*, 3(1), pp. 8–16; <https://doi.org/10.1163/26663236-bja10033>
 - Fodor, L. (2011) ‘Az Emberi Jogok Európai Bíróságának ítélete a zajterhelés csökkentésére tett intézkedésekről és a bírósági eljárás időtartamáról’ [‘Judgment of the European Court of Human Rights on the measures taken to reduce noise pollution and the duration of the court proceedings’], *Jogesetek Magyarázata*, 2011/3, pp. 86–92.
 - Fodor, L. (2015) *Környezetjog [Environmental law]*, Debrecen: Debreceni Egyetem Kiadó.
 - Hajjar Leib, L. (2011) *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives*. Leiden/Boston: Martinus Nijhoff Publishers.
 - Horváth, G. (2013) ‘Az Alaptörvény környezetjogi előírásai’ [‘Environmental provisions of the Fundamental Law’] in Szoboszlai-Kiss, K., Deli, G. (eds.) *Tanulmányok a 70 éves Bihari Mihály tiszteletére [‘Studies in honor of the 70-year old Bihari Mihály’]*, Győr: Universitas-Győr, pp. 222–234.
 - Kecskés, G. (2011) ‘Deés v. Magyarország ügy az Emberi Jogok Európai Bírósága előtt’, *Jogi Iránytű*, 2011/1, pp. 1–2.
 - Kecskés, G. (2021) ‘A környezeti jogok értelmezése az Emberi Jogok Európai Egyezményébe foglalt jogok körében’ [‘Interpretation of Environmental Rights within the Practice of the European Court of Human Rights’], *Acta Humana*, 9(2), pp. 207–220; <http://doi.org/10.32566/ah.2021.2.9>
 - Letsas, G. (2013) ‘The ECHR as a living instrument: its meaning and legitimacy’, in Føllesdal, A., Peters, B., and Ulfstein, G. (eds.) *Constituting Europe: The European Court of Human Rights in a National, European and Global Context*. Cambridge: Cambridge University Press (Studies on Human Rights Conventions), pp. 106–141; doi: 10.1017/CBO9781139169295.005
 - May, James R. (2013) ‘Constitutional Directions in Procedural Environmental Rights’, *Widener Law School Legal Studies Research Paper Series* no. 14–05, pp. 27–58.
 - Raisz, A. (2012) ‘A Constitution’s Environment, Environment in the Constitution – Process and background of the New Hungarian Constitution’, *Revue Est Europa numéro special*, 2012/1, pp. 37–70.
 - Raisz, A. (ed.) (2022) *Környezetjog. Különös rész [Environmental Law. Specific Part]*. Miskolc: Miskolci Egyetemi Kiadó.

- Raisz, A., Krajnyák, E. (2022) 'Protection of the Environment in the European Human Rights Framework: A Central European Perspective', in Szilágyi, J. E. (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*, Budapest/Miskolc: Central European Academic Publishing, pp. 73–125; https://doi.org/10.54237/profnet.2022.jeszepefg_3
- Rezie, R. C. O. (1999) 'The Ukrainian Constitution: Interpretation of the Citizens' Rights Provisions', *Case Western Reserve Journal of International Law*, 31(1), pp. 169–210.
- Roagna, I. (2012) *Protecting the right to respect for private and family life under the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing.
- Shelton, D. (1992) 'What Happened in Rio to Human Rights?', *Yearbook of International Environmental Law*, 3(1), pp. 75–93, <https://doi.org/10.1093/yiel/3.1.75>
- Shelton, D. (2006) 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized', *Denver Journal of International Law & Policy*, 35(1), pp. 129–171.
- Sulyok, K. (2021) 'The Public Trust Doctrine, the Non-Derogation Principle and the Protection of Future Generations. The Hungarian Constitutional Court's Review of the Forest Act', *Hungarian Yearbook of International Law and European Law*, 9(1), pp. 359–375
- Szabó, M. (2019) 'A biológiai sokféleség jogi védelmének jelentősége. Gondolatok a 28/2017 (X.25.) AB határozat nyomán' ['The importance on the legal protection of biodiversity. Thoughts on CC Decision no. 28/2017 (X.25.)'], *Iustum Aequum Salutare*, 15(2), pp. 89–105.
- Szilágyi, J. E. (2018) 'Az elővigyázatosság elve és a magyar alkotmánybírósági gyakorlat – Szellem a palackból, avagy alkotmánybírósági magas labda az alkotmányrevízióhoz' ['The precautionary principle and the jurisdiction of the Hungarian Constitutional Court'], *Miskolci Jogi Szemle*, 13(2), pp. 76–91.
- Szilágyi, J.E., Raisz, A., Kocsis, B.E. (2017) 'New dimensions of the Hungarian agricultural law' in respect of food sovereignty, *Journal of Agricultural and Environmental Law*, 12(22), pp. 160–201; <https://doi.org/10.21029/JAEL.2017.22.160>
- Tang, K., Spijkers, O. (2022) 'The Human Right to a Clean, Healthy and Sustainable Environment', *Chinese Journal of Environmental Law*, 6(1), pp. 87–107; <https://doi.org/10.1163/24686042-12340078>
- Weiss, E. B. (2011) 'The Evolution of International Environmental Law' *Japanese Yearbook of International Law*, 2011/54, pp. 1–27.

Legal Sources

- A jövő nemzedékek országgyűlési biztosának javaslatai az új alkotmány koncepciójának kidolgozásához [Proposal of the Parliamentary Commissioner for Future Generations for the development of the concept of the new Constitution], 2010.
- Charter for the Environment, 2004.
- Constitution of Costa Rica, 1949.
- Constitution of Spain, 1978.
- Constitution of the Portuguese Republic, 1976.
- Constitution of Ukraine, 1996.
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 1998.
- Explanatory Memorandum of Article 36 of the Fundamental Law.
- Guide on Article 6 of the European Convention on Human Rights, Council of Europe (civil limb) (2022).
- Guide on Article 6 of the European Convention on Human Rights, Council of Europe (criminal limb) (2022).
- Guide on Article 8 of the European Convention on Human Rights, Council of Europe (2022).
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997.
- Paris Agreement, 2015.
- Rio Declaration on Environment and Development (1992).
- Stockholm Declaration on the Human Environment (1972).
- United Nations General Assembly Resolution A/76/L.75. The human right to a clean, healthy and sustainable environment (2022).

ECtHR cases

- *Apanasewicz v. Poland*, Application no. 6854/07, Judgment of 3 May 2011.
- *Bor v. Hungary*, Application no. 50474/08, Judgment of 18 June 2013.
- *Brânduse v. Romania*, Application no. 39951/08, Judgment of 27 October 2015.
- *Brincat and Others v. Malta*, Applications nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, Judgment of 14 July 2014.
- *Budayeva and Others v. Russia*, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgment of 20 March 2008.
- *Bumbeş v. Romania*, Application No. 18079/15, Judgment of 3 May 2022.
- *Bursa Barosu Başkanlığı and Others v. Turkey*, Application no. 25680/05, Judgment of 19 June 2018.

- *Cordella and Others v. Italy*, Applications nos. 54414/13 and 54264/15, Judgment of 24 January 2019.
- *Deés v. Hungary*, Application No. 2345/06, Judgment of 9 November 2010.
- *Di Sarno and Others v. Italy*, Application no. 30765/08, Judgment of 10 January 2012.
- *Dimitar Yordanov v. Bulgaria*, Application no. 3401/09, Judgment of 6 September 2018.
- *Dubetska and Others v. Ukraine*, Application no. 30499/03, Judgment of 10 February 2011.
- *Dzemyuk v. Ukraine*, Application no. 42488/02, Judgment of 4 April 2014.
- *Elefteriadis v. Romania*, Application no. 38427/05, Judgment of 25 January 2011.
- *Fadeyeva v. Russia*, Application no. 55723/00, Judgment of 9 June 2005.
- *Florea v. Romania*, Application no. 37186/03, Judgment of 10 December 2015.
- *Frydlender v. France*, Application no. 30979/96, Judgment of 27 June 2000.
- *Giacomelli v. Italy*, Application no. 59909/00, Judgment of 2 November 2006.
- *Gorraiz Lizarraga and Others v. Spain*, Application no. 62543/00, Judgment of 27 April 2004.
- *Greenpeace E.V. and Others v. Germany*, Application no. 18215/06, Judgment of 10 May 2009.
- *Grimkovskaya v. Ukraine*, Application no. 38182/03, Judgment of 21 July 2011.
- *Guerra and Others v. Italy*, Application No. 14967/89, Judgment of 19 February 1998.
- *H. v. France*, Application no. 10073/82, Judgment of 24 October 1989.
- *Howald Moor and Others v. Switzerland*, Applications nos. 52067/10 and 41072/11, Judgment of 11 March 2014.
- *Kapa and Others v. Poland*, Applications Nos. 75031/13 and 3 others, Judgment of 14 October 2021.
- *Karin Andersson and Others v. Sweden*, Application no. 29878/09, Judgment of 25 September 2014.
- *Katte Klitsche de la Grange v. Italy*, Application no. 12539/86, Judgment of 27 October 1994.
- *Kotov and Others v. Russia*, Applications nos. 6142/18, 51015/18, 51020/18 et al., Judgment of 11 October 2022.
- *Kyrtatos v. Greece*, Application No. 41666/98, Judgment of 22 May 2003.
- *L'Erablière A.S.B.L. v. Belgium*, Application No. 9230/07, Judgment of 24 February 2009.
- *Lopez Ostra v. Spain*, Application no. 16798/90, Judgment of 9 December 1994.
- *Mangouras v. Spain*, Application no. 12050/04, Judgment of 28 September 2010.
- *Mileva and Others v. Bulgaria*, Applications Nos. 43449/02 and 21475/04, Judgment of 25 November 2010.
- *N.A. and Others v. Turkey*, Application no. 37451/97, Judgment of 9 January 2007.
- *National Movement Ekoglasnost v. Bulgaria*, Application no. 31678/17, Judgment of 15 December 2020.

- *Okyay and Others v. Turkey*, Application no. 36220/97, Judgment of 12 July 2005.
- *Öneryildiz v. Turkey*, Application No. 48939/99, Judgment of 30 November 2004.
- *Özel and Others v. Turkey*, Application Nos. 4350/05, 15245/05 and 16051/05, Judgment of 17 November 2015.
- *Papastavrou and Others v. Greece*, Application no. 46372/99, Judgment of 10 April 2003.
- *Roche v. the United Kingdom*, Application no. 32555/96, Judgment of 19 October 2005.
- *Rovshan Hajiyev v. Azerbaijan*, Applications nos. 19925/12 and 47532/13, Judgment of 9 December 2021.
- *Solyanik v. Russia*, Application no. 47987/15, Judgment of 10 May 2022.
- *Steel and Morris v. the United Kingdom*, Application no. 68416/01, Judgment of 15 May 2005.
- *Taşkın and Others v. Turkey*, Application no. 46117/99, Judgment of 10 November 2004.
- *Tătar v. Romania*, Application No. 67021/01, Judgment of 27 January 2009.
- *Turgut and Others v. Turkey*, Application no. 4860/09, Judgment of 26 March 2013.
- *Vides Aizsardzības Klubs v. Latvia*, Application no. 57829/00, 27 May 2004.
- *Vilnes and Others v. Norway*, Applications nos. 52806/09 and 22703/10, Judgment of 5 December 2013.
- *Yevgeniy Dmitriyev v. Russia*, Application no. 17840/06, Judgment of 1 December 2000.

Other Court Decisions

- Decision No. 13/2018 (IX.4.) Constitutional Court of Hungary.
- Decision No. 14/2020 (VII.6.) Constitutional Court of Hungary.
- Decision No. 16/2015 (VI.5.) Constitutional Court of Hungary.
- Decision No. 28/1994 (V.20.) Constitutional Court of Hungary.
- Decision No. 28/2017 (X.25.) Constitutional Court of Hungary.
- Decision No. 4/2019 (III.7.) Constitutional Court of Hungary.
- *Rural Litigation and Entitlement Kendra v. Uttar Pradesh*, (1986) INSC 272, 18 Dec 1986.
- *Subhash Kumar v. State of Bihar*, AI 1991 SC 420, 9 January, 1991.

Online Sources

- ‘With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right’, UN Press, 28 July 2022 [Online]. Available at: <https://press.un.org/en/2022/ga12437.doc.htm> (Accessed: 24 January 2023).