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Right to a (Healthy) Environment – How to Come Closer to the Implementation? Good Examples from the Practice of the Hungarian Constitutional Court*

Prawo do (zdrowego) środowiska – jak je lepiej zrealizować? Pozytywne przykłady z praktyki węgierskiego Trybunału Konstytucyjnego

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ABSTRACT

The paper discusses how the right to a healthy environment and the supportive principles could enter into the practice of the Constitutional Court in Hungary over the past 30 years. Beginning with a short survey of the legislative development is presented, following with the discussion of the constitutional interpretation, which commenced with the principle of non-regression, together with the necessity-proportionality test, and the need to give flesh to the bones of constitutional rights – explicitly, institutionalize them – could come parallel with these principles. Later the precautionary approach and the interests of future generations – even a public trust doctrine – could be incorporated in the Court practice. Needless to say, that while the theoretical and constitutional grounds are vital, what really matters are the institutional consequences and practical implementation. Still, if the scene is clear, the subsequent steps might be easier.

Keywords: right to healthy environment; non-derogation/retrogression; precautionary principle; necessity-proportionality test; interests of future generations; Hungarian Constitutional Court

INTRODUCTION

In 2020, the UN Special Rapporteur on human rights and the environment articulated: "10. (…) There are 110 States where this right enjoys constitutional protection. Constitutional protection for human rights is essential, because the constitution represents the highest and strongest law in a domestic legal system. Furthermore, the constitution plays an important cultural role, reflecting a society's values and aspirations".[1] A recent UN policy paper on future generations included: „10. (…) By some estimates, nearly half of all written constitutions now contain references to future generations".[2]

Apparently, the framework for environmental human rights is expanding, at least on paper. Many constitutions contain direct references to it, and many go even further towards the protection of future generations. However, there is a significant gap between the rule and the actual implementation of the same. Constitutional rights can only be visibly enforced if they constitute a subjective right, while the other fundamental rights require some intermediate instrument or institution, such as a constitutional court or a similar independent high level legal forum, authorized for the interpretation of constitutional wording and having the authority to take actions – at least annulling a legal regulation.

[1] United Nations, General Assembly, *Right to a Healthy Environment: Good Practices. Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/43/53, 30.12.2019, https://documents.un.org/doc/undoc/gen/g19/355/14/pdf/g1935514.pdf (access: 10.11.2024).

[2] United Nations, General Assembly, *Our Common Agenda Policy Brief 1: To Think and Act for Future Generations*, A/77/CRP.1, 7.2.2023, https://digitallibrary.un.org/record/4004913/files/A_77_CRP.1-EN.pdf (access: 10.11.2024).

A lot depends on the content and the will of constitutional supervision, either having a formal, narrow understanding or trying to put some flash on the – legal – bones. It might be remarkable to declare that a country is an "ecological" state,[3] but what is the outcome? This and similar other types of messages shall be explained, interpreted, the terms explained, and the obligations articulated. Also there are great differences between the various interpretative institutions and their innovative capacity. In our assessment, the evolving practice of the Hungarian Constitutional Court[4] (HCC) over the past three decades is a good example, as it has been improved from the non-retrogression principle and the necessity to institutionalize the implementation of constitutional rights in 1994, through the inclusion of precautionary approach till demarcating the future generations interests and spelling out even the public trust concept for their protection.

The inclusion of an environmental human right in the constitution and the proper implementation of it by an authorized institution is only the beginning of the narrative. While the theoretical basis, as established by the law, is vital, what really matters are the institutional consequences and the practical implementation.

The examination of the HCC activities is divided in two main periods: the period following the 1989 Hungarian Constitution and after the entry into force of the Fundamental Law in 2012. Our focus is the right to a healthy environment and how it is rooted in the work of the HCC, with a special focus on the non-derogation/non-retrogression principle, the proportionality principle, the prevention and the precautionary principle, together with the constitutional interpretation of the interests of future generations, with a summary at the end.

A SURVEY OF THE EMERGENCE OF THE RIGHT TO ENVIRONMENT IN HUNGARY

The messages of the first UN Conference on the Human Environment in 1972[5] could help to improve domestic environmental legislation, while former socialist countries did not attend it. Our Environmental Act, the Act II of 1976,[6] proved to be a summation of the most important legal instruments. The right to environment

[3] See Article 1 of the 2007 Montenegro's Constitution.

[4] For an analysis of the overall practice of the HCC – with only one environmental case mentioned – see F. Gardos-Orosz, K. Zakariás (eds.), *The Main Lines of the Jurisprudence of the Hungarian Constitutional Court: 30 Case Studies from the 30 years of the Constitutional Court (1990 to 2020)*, Baden-Baden 2022.

[5] United Nations, *UN Conference on the Human Environment*, 5–16.6.1972, Stockholm, https://www.un.org/en/conferences/environment/stockholm1972 (access: 10.11.2024).

[6] UNAP, Act II of 1976 on the Protection of the Human Environment, 1976, https://leap.unep.org/countries/hu/national-legislation/act-ii-1976-protection-human-environment (access: 10.11.2024).

as a potential human right appeared in this act (Article 2 (2)), but has never been implemented or even explained, since it was the first reference to such a right in Hungary and even the statement itself was unique.

Later, in 1989, the original 1949 Constitution was amended[7] to set the scene[8] for the political change and, among other things, mentioning the right to environment in two different articles: Article 18 a direct right to a "healthy" environment, while Article 70/D (2) mentions environmental protection as an instrument – plus healthy working conditions, management of health care system and ensuring regular physical activity – for safeguarding the right of the highest possible level of physical and mental health and not as a stand-alone right.

If we analyse Article 18, we might conclude that this article underlines the significance of state activity, the subject of the right is "everybody", which might be taken as a clear reference to interdependency in the field of environment, as well as at international level; moreover, the wording is general or even vague.

Due to this general phrasing – noticing also that it would be hard to define this right more precisely without losing some likely crucial contextual elements – Article 18 obviously had to be interpreted foremost, in order to be employed. The only authorized interpreter of a constitutional provision is the newly established Constitutional Court. The first and most important of the several similar cases, providing a clear explanation to the concept of the right was decision No. 28/1994 (V. 20.).

The most significant element of latest development of human rights system in Hungary is the new Constitution (adopted on 25 April 2011), labelled as the Fundamental Law.[9] This indicates a conceptual "system change", having a conservative, Christian, somewhat nationalistic idea behind, going back to past successes of Hungarian history, trying to neglect the half-century-long socialist era.[10] Nevertheless, the new Constitution covers many more direct and indirect environmental and future generation references than ever before.

Even the preamble (National Avowal) contains environmental elements, embodied into a larger context, using three ideas, essential from the point of view of the environment:

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[7] See Wikisource, *Constitution of the Republic of Hungary (1989)*, https://en.wikisource.org/wiki/Constitution_of_the_Republic_of_Hungary_(1989) (access: 10.11.2024).

[8] For details of Hungarian constitutional legal development, see, e.g., F. Hörcher, T. Lorman (eds.), *A History of the Hungarian Constitution: Law, Government and Political Culture in Central Europe*, London 2018; G. Halmai, *The Reform of Constitutional Law in Hungary after the Transition*, "Legal Studies" 1998, vol. 18(2).

[9] The whole official text is available at https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178 (access: 10.11.2024).

[10] See, e.g., A.Zs. Varga, A. Patyi, B. Schanda (eds.), *The Basic (Fundamental) Law of Hungary: A Commentary of the New Hungarian Constitution*, Dublin 2015. From another perspective, see G. Halmai, *The Fundamental Law of Hungary and the European Constitutional Values*, "DPCE online" 2019, vol. 39(2).

- national assets or national heritage, extended to the whole Carpathian basin, similar to the concepts of the "common heritage of mankind"[11] or "common concern of humanity"[12] under international law;
- the direct reference to the living conditions of future generations;
- human dignity, which may best be protected together with the natural environment and environmental protection in a wider context.

The "Foundation" covers the most important general requirements and statements. From our specific perspective, Article P is a very compound summary of the "heritage concept" in a broad context, referring to future generations again: "Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations". This article provides a list of elements of common heritage, without being exclusive, thus tolerating the extension of the list. A vital question here is the focus on obligations and not only the mere reference to rights.[13] Article Q (1) is very similar to Article 3 (5) of the Treaty of European Union, combining "international commitments and cooperation with sustainability".

"Freedom and Responsibility" is the real human rights chapter, with two particular environmental articles, reminding us of the provisions of the previous Constitution. These similarities are going to be essential from the point of view of the continuity of constitutional interpretation. Article XX (1): "Every person shall have the right to physical and mental health". In para. 2 some underlying conditions are listed. Article XXI is the specific article on environmental rights, the para. 1 of which – mostly together with Article P – has been the major legal basis for interpretation by the HCC: "(1) Hungary shall recognize and endorse the right of everyone to a healthy environment". Para. 2 is a narrow understanding of polluter pays principle,[14] which misses any reference to prevention and precaution, while para. 3 is a mistaken reference to a kind of general prohibition of transboundary movement of wastes.[15]

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[11] See, e.g., J. Brunnée, *Common Areas, Common Heritage, and Common Concern*, [in:] *The Oxford Handbook of International Environmental Law*, eds. D. Bodansky, J. Brunnée, E. Hey, Oxford 2008.

[12] *Ibidem*, pp. 552–553.

[13] This special emphasis on obligations or duties is very similar to the explanatory memorandum of the relevant document of the Parliamentary Assembly of the Council of Europe, Part B: Explanatory memorandum by Mr José Mendes Bota, Rapporteur. See Parliamentary Assembly, Drafting an Additional Protocol to the European Convention on Human Rights Concerning the Right to a Healthy Environment, 11.9.2009, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12279&lang=en (access: 10.11.2024).

[14] "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".

[15] "The transport of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited". "Disposal" is the correct English term, but in Hungarian "placement" is written, which is far from being legally correct. Neither "pollutant waste" is a legally accurate version.

Beside the direct environmental references, we should also mention Article II on human dignity, as well as Article XIII on property with a significant statement: "Property shall entail social responsibility". In the chapter on the State mention should be made on Article 30 on the Commissioner for Fundamental Rights and its deputy, being responsible for defending the interests of future generations, a globally unique position,[16] and Article 38 on the property of the State and local governments, as being national assets, the management and protection of which shall take into consideration the needs of future generations.

THE HUNGARIAN CONSTITUTIONAL COURT AND THE RIGHT TO ENVIRONMENT – AN OVERVIEW

The HCC, established in 1990, initially emphasized that the entirety of the subjective rights which give effect to the recognition and enforcement of the right to a healthy environment can only be determined by legislation and, in its own field, by judicial practice, and not by the interpretation of the Constitution, but soon they changed their mind.

The first was a decision of 1994 on the privatisation of nature reserves, where the HCC indicated that Article 18 of the Constitution is a specific fundamental right whose institutional protection is crucial. Accordingly, the implementation of the fundamental right is primarily a state responsibility, performing its duty through legislation and operating its institutional system.[17] The prohibition to lower the level of available protection had been formulated by the HCC in those early days (non-derogation/retrogression). Emphasizing the pivotal role of preventive tools, underlined that the state has no freedom to allow the deterioration of environment or even the risk of deterioration should be avoided. Soon it was emphasized again that the level of protection of the built environment provided by law could not be reduced even by legally arbitrary decisions of public authorities.[18]

It was also an important milestone when the HCC acknowledged the irreversibility of damage caused to nature and stressed the objective criteria to protect it, which was also laid down in international norms. In contrast to the level of social and cultural rights, the prohibition of the economically and socially driven qualitative and quantitative variabilities of the level of protection was underlined.[19]

[16] For the history of this institution, see G. Bándi, *The Hungarian Ombudsman for Future Generations*, "P.A. Persona e Amministrazione: Ricerche Giuridiche sull'Amministrazione e l'Economia" 2022, vol. 9(2).

[17] Decision of the HCC No. 28/1994 (V. 20.) AB. See the full text in English at https://huncon-court.hu/uploads/sites/3/1994/05/28_1994-ab_eng.pdf (access: 10.11.2014).

[18] Decision of the HCC No. 1007/B/1994/12 AB.

[19] Decision of the HCC No. 48/1997 (X. 6.) AB.

They argued also that for an effective right to environment, the state should deviate from preventive protection rules towards protection by means of sanctions, while also maintaining the level of protection achieved. This requirement could only be disregarded in cases of unavoidable necessity and only in a proportionate manner.[20]

Later the HCC indicated that the content of the fundamental right to property must be understood in conjunction with its effective (constitutional) public and private regulatory restrictions.[21] In its subsequent practice, the HCC extended the right to a healthy environment declared in its 1995 decision to the protection of the built environment.[22] In line with the above, the HCC pointed out that the state should fulfil the objective duty of institutional protection relating to the right to life only in harmony with its other objective duties (the right to health and the right to a healthy environment).[23]

In 2000, the HCC challenged the omission of the procedural aspects of the right to the environment, stressing the responsibility of the legislature.[24] Examining the constitutional boundaries of the right to a healthy environment in 2007, the limit of non-derogation could be clarified in a way, that once the state already guaranteed a higher level of protection by law, any limitation later, requires sufficiently serious constitutional justifications,[25] as the protection of another fundamental right or the pursuit of a constitutional objective, plus all this might only be done in a proportionate manner.

Following the Fundamental Law in 2011, the harmonization of the previous decisions with the new legal environment proved to be a key issue. The HCC declared that the applicability of the previous decisions should always be examined on a case-by-case basis. As recognized by the HCC that the text of the Fundamental Law is mostly identical with the text of the former Constitution as regards the right to a healthy environment; the findings made in previous decisions may easily be considered conclusive in interpreting the right to a healthy environment,[26] using arguments, legal principles and constitutional context developed in previous decisions.[27]

The application of Article XXI of the Fundamental Law and Article P are mutually dependent. On the one hand, Article P (1) sets out the objective of the state, which is to be achieved by guaranteeing and enforcing the fundamental right of Article XXI (1). Likewise, one of the institutional safeguards of the fundamental right to a healthy environment is the constitutional responsibility stipulated in

[20] Decision of the HCC No. 28/1994 (V. 20.) AB, ABH 1994, [140–141].
[21] Decision of the HCC No. ABH 1993, 373, 380.
[22] Decision of the HCC No. 27/1995 (V. 15.) AB.
[23] Decision of the HCC No. 48/1998 (XI. 23.) AB.
[24] Decision of the HCC No. 30/2000 (X. 11.) AB.
[25] Decision of the HCC No. 106/2007 (XII. 20.) AB.
[26] Decision of the HCC No. 3068/2013 (III. 14.) AB [46].
[27] Decision of the HCC No. 13/2013 (VI. 17.) AB.

Article P. This correlation explains why the two provisions are very often referred to simultaneously in HCC decisions.

In 2015,[28] the HCC summarized all those views which had been presented earlier than 2011 in connection with the right to environment, beginning with the institutional protection up to the non-retrogression principle. Consequently, the HCC approved that the level of protection has not only be preserved, but also extended. In 2016,[29] the HCC for the first time acknowledged also noise protection as a part of the environmental right, and a year later this extension could also cover the cultural heritage,[30] where the duties of the state are connected with its carrying capacity.

The principle of non-derogation was expanded in 2017,[31] applying this specific control of state operations in environmental protection both to substantive and procedural elements, furthermore to the public administration system.

The HCC first issued a comprehensive standing on the protection of biodiversity and ecosystems in 2017,[32] taking biodiversity as a condition for human life and health and of basic material needs, in a holistic approach. Natura 2000 sites and ecological corridors serve as the essential basis for the maintenance of ecosystems. No wonder why precautionary principle could come to the scene as a paramount issue, obliging the legislator to avoid causing irreparable environmental degradation or irreversible damage by its legislation. The HCC also stressed that the degree of institutional protection of the right to the environment is not arbitrary, and that the mere risk of actual deterioration of the state of environment is contrary to the Fundamental Law. The moral background and the natural law have also been stressed in this decision.

In 2018, the above interpretation was even more elaborated, beside the duty of the legislator to prove that a proposed regulation does not constitute a derogation or does not cause irreversible damage, even the theoretical possibility of such damage should be avoided.[33] Precautionary principle could receive an individual constitutional standing. Later the non-derogation principle could be interpreted in depth, in a noise protection case.[34]

The HCC could delineate its playground, appealing in connection with the reorganization of environment administration that the structure and organization of the

[28] Decision of the HCC No. 16/2015 (VI. 5.) AB [51]. See the full text in English athttps://hunconcourt.hu/uploads/sites/3/2015/06/16_2015_ab_eng.pdf (access: 10.11.2024).

[29] Decision of the HCC No. 3114/2016 (VI. 10.) AB.

[30] Decision of the HCC No. 3104/2017 (V. 8.) AB.

[31] Decision of the HCC No. 3223/2017 (IX. 25.) AB.

[32] Decision of the HCC No. 28/2017 (X. 25.) AB. See the full text in English at https://hunconcourt.hu/uploads/sites/3/2022/08/28_2017-ab_eng-1.pdf (access: 10.11.2024).

[33] Decision of the HCC No. 13/2018 (IX. 4.) AB. See the full text in English at https://hunconcourt.hu/uploads/sites/3/2019/12/13_2018_eng_final.pdf (access: 10.11.2024).

[34] Decision of the HCC No. 17/2018 (X. 10.) AB. See the full text in English at https://hunconcourt.hu/uploads/sites/3/2018/10/17_2018_ab_eng.pdf (access: 10.11.2024).

public authority system is the sole responsibility of the government, nevertheless, the environmental protection and nature conservation interests should always be articulated[35] in the decisions.

Parallel to the above decision the HCC clearly confirmed that access to drinking water is a king of human right concept, "an objective, institutional duty of the state to guarantee the access to drinking water".[36]

The forest management legislation was the core question in a decision which summarizes and develops many aspects of the protection of future generations, of the national heritage, of the precautionary principle and long-term thinking, while all the other major ideas and principles – non-derogation, proportionality – have also been incorporated in this outstanding decision.[37] The concept of the public trust for the first time was benefitted in connection with national heritage and future generations.

In 2022, the HCC in a specific compensation case[38] examined the polluter pays principle in detail, agreeing (Reasoning [89]) that environmental pollution is not necessarily the consequence of an active operation, but similarly of an omission. The state here might have a special responsibility also as an owner and as a public actor. Similarly connected with public administration, but at the local level the HCC decided: "[31] (…) the local legislator did change the legal environment for a past operation in a way, which retrogressively influenced the legal relationship, namely the conditions of the permit".[39]

In a recent case connected with the Lake Balaton the HCC non-derogation was clarified further: "[46] (…) the point of reference is the level of protection, adopted by the law earlier and not the original, intact state of environment (…). The prohibition on non-derogation is not automatic but is connected with its function".[40]

The HCC decisions consolidated and clarified the content of the fundamental constitutional right to a healthy environment and the level of protection previously achieved, while emphasizing also the importance of balance and harmony between economic development and environmental interests. The principle of non-derogation is now a well-established and consolidated principle, which is applied frequently and effectively. The principle of prevention was introduced at the outset, alongside the principle of non-derogation – or more precisely the justification of derogation on constitutional grounds – and later the precautionary principle could be incorporated to the interpretation. It is an indisputable value of the Fundamental Law to further

[35] Decision of the HCC No. 4/2019 (III. 7.) AB.
[36] Decision of the HCC No. 3196/2020 (VI. 11.) AB.
[37] Decision of the HCC No. 14/2020 (VII. 6.) AB.
[38] Decision of the HCC No. 5/2022 (IV. 14.) AB.
[39] Decision of the HCC No. 8/2022 (V. 25.) AB.
[40] Decision of the HCC No. 16/2022 (VII. 14.) AB.

develop the environmental approach, and it remains the task of the HCC to interpret these provisions in present circumstances and to develop further their content.

NON-DEROGATION/RETROGRESSION

The non-derogation (non-retrogression) principle was the first constitutional standard, used by the HCC already in 1994 and which is unwaveringly still in use.[41] The HCC could use the term "non-derogation" – meaning that "the law should be interpreted to uphold, and not diminish, other existing rights", but non-retrogression or regression is mostly accepted, still they are equal in essence.

This principle is closely connected to the interpretation of human dignity, right to life or similar other rights which characterize the legal status of human beings. Retrogression from the actual status of human person is not acceptable, while the opposite – to expend this status – is welcome. "Non-derogation" may be interpreted as follows: "The principle of non-derogation holds that there is a core of fundamental rights that may not be infringed or limited, even in an emergency. Although it is often conceded in many constitutions, as it is in international human rights instruments, that the state may derogate from its obligations in an emergency, it is also acknowledged that certain essential protections and rights cannot be derogated from (i.e. those protections/obligations are non-derogable). First instance, the right against torture is generally regarded as a principle of *ius cogens* (…)".[42]

In one of the several preparatory papers of the Rio+20 Conference, one might read: "One example for a principle which expands the frontiers of environmental law is the Principle of Non-Regression. More common in the field of human rights law, this principle is understood as requiring that norms which have already been adopted by states may not be revised in ways which would imply going backwards on the previous standard of protection".[43] A similar recent illustration of the principle is in the Global Pact for the Environment project launched in 2018.[44] Among the several conditions of the "Right to an Ecologically Sound Environment" as stipulated in Article 1 of the Pact, one is non-retrogression in Article 17.

[41] See also K. Sulyok, *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" 2021.

[42] M.V. Tushnet, T. Fleiner, C. Saunders (eds.), *Routledge Handbook of Constitutional Law*, London 2012, p. 91.

[43] World Congress on Justice, Governance and Law for Environmental Sustainability, Second Preparatory Meeting, Buenos Aires, Argentina, 23–24 April 2012, Issue Brief no. 3.

[44] See Group of Experts, Draft Global Pact for the Environment, https://globalpactenvironment.org/uploads/EN.pdf (access: 10.11.2024).

Thirty years ago, when the HCC agreed to suggest the strict minimum, this principle has offered the most convenient device. In the case law of HCC the state activity is in the focus, therefore it is highly difficult to specify the direct obligations how to act, it is easier to prescribe what should not be done.

The very first decision on environmental rights[45] highlighted that the level of protection in the field of environment and nature conservation should not be restricted, only of other constitutional values or fundamental rights are concerned. This meant the necessity to balance similar levels of interests. The decision stressed that the level of protection is not at the discretion of the state as this constitutes the foundations of human life and any harm to the environment is usually irreparable. The minimum level of protection: "The state does not have the freedom to tolerate neither the degradation, nor the risk of degradation of the state of environment". Any necessary limitations must be proportionate with the purpose. The best approach to satisfy this aspiration is to use preventive measures (points 134, 140–141).

Later, the HCC explained the non-retrogression further: "(…) the state should not step back from the already given level of protection only in case if otherwise the limitation of a fundamental right makes it possible (…). Derogation from this obligation may only be possible in a situation of necessity and only in a proportionate mode".[46] Identically, the state should not step backward to liability-based protection from preventive measures.

In one other decision, the necessity/proportionality test was taken as a core issue: "3.2. (…) A significant constitutional justification might only be the protection of another fundamental right or the implementation of another constitutional objective (…)".[47] Thus, the limitation of the right to environment might only be possible under exceptionally reasonable conditions, using the proportionality test.

The HCC, based on the Fundamental Law,[48] referred to the lack of guarantees which ensure that the level of protection of nature conservation provisions would not be curtailed (110). Even the risk of derogation would not be possible. The already available level of protection should not be reduced but should rather be extended. What is even more important, the HCC clearly upgraded the level of the principle, stating: "[20] (…) the principle of non-derogation is now considered to originate directly from the Fundamental Law (…)". The same decision also connected the interest of future generations and non-derogation as a constitutional principle: "[28] (…) Non-derogation, as a complementary duty of the state environmental

[45] Decision of the HCC No. 28/1994 (V. 20.) AB.
[46] Decision of the HCC No. 48/1997 (X. 6.) AB.
[47] Decision of the HCC No. 106/2007 (XII. 20.) AB.
[48] Decision of the HCC No. 16/2015 (VI. 5.) AB.

legislation, should equally refer to the substantive, procedural and institutional-organizational regulations of environmental protection".[49]

The HCC differentiated between the actors within the general constitutional obligation to protect the environment: "[30] (…) Whereas natural and legal persons cannot be expected, beyond knowledge of and compliance with the legal provisions in force, to adapt their conduct to an abstract objective not specified by the legislator in a general and enforceable manner, the State may be expected to define clearly the legal obligations which both the State and private parties must comply with, i.a. in order to ensure effective protection of the values specifically mentioned in Article P (1) of the Fundamental Law".

In a case connected with water management legislation,[50] the HCC provided an overview of the principle, concluding: "[20] (…) the precautionary principle and the principle of prevention should be taken into account by the legislator, as the failure to protect the nature and the environment may induce irreversible processes". And: "[21] (…) the State should justify stepping back from the level of environmental protection already achieved, also with account to the precautionary principle, by comparing it to the enforcement of another fundamental right, with respect to necessity and proportionality".

The conclusion is: "[62] (…) the State shall secure that the condition of the environment does not deteriorate due to a specific measure. (…) does not qualify as a step-back, and thus does not cause any damage – an irreversible one, as the case may be – and does not provide an opportunity in principle for such a damage".

And no specific reasons or derogation/retrogression were not mentioned by the legislator: "[67] (…) by not indicating any other fundamental right or constitutional interest being commensurate and acceptable in the particular case according to Article I (3) of the Fundamental Law, and neither has the Constitutional Court found any such right or interest". And: "[72] (…) from the aspect of the effective protection of the environment, the preventive principle embodied in advance permissions by the authorities should enjoy priority over the polluter pays principle that offers a chance for subsequent sanctions, but which is applicable for preventing only the causing of further damages".

Our last and most recent example[51] is about forest legislation of 2017, being a substantial restriction of the level of nature conservation interests of forest, due to economic – forestry – reasons. The HCC examined – [51] – whether is there a chance for justifying the retrogression according to para. 3 of Article I of the Fundamental Law: "[154] (…) the Constitutional Court affirms that the regulations should be taken as definite retrogression as compared with the previous level of protection, in order to promote the economic interests of forest management".

[49] Decision of the HCC No. 28/2017 (X. 25.) AB.
[50] Decision of the HCC No. 13/2018 (IX. 4.) AB.
[51] Decision of the HCC No. 14/2020 (VII. 6.) AB.

PROPORTIONALITY

Proportionality as a principle and legal requirement is widely used as a kind of resource for constitutional control over government activities, also it is present in many other fields of law as a general legal principle. In our study, it is mostly connected with non-derogation. A perfect summary of the principle: "When a court requires that a coercive or intrusive state action be 'narrowly tailored' to serve a 'compelling state interest', it enforces the principle that state power must be proportional to the interest that allegedly justifies the power".[52] And some go back even to Aristotle,[53] saying: "I argue that the concept of proportionality, though evolving in and through law, has shown remarkable continuity over several centuries, even millennia". And later: "From police and administrative law, the principle then evolved into one of constitutional law arising as the dominant method of global legal convergence today".

In European law proportionality is a balance over the growing influence of Union institutions: "[223] It should be borne in mind that the general principle of proportionality requires that measures adopted by Community institutions must not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; that, where there is a choice between several appropriate measures, recourse must be had to the least onerous; and that the disadvantages caused must not be disproportionate to the aims pursued".[54]

Likewise, the HCC employs proportionality in many areas, but primarily in the field of environmental rights, taking it as a kind of objective criteria for the evaluation of state activities. A strong and general underpinning for proportionality has been provided for by Article I (3) of the Fundamental Law, as follows: "A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right". This is reflected in many decisions of the HCC, comparing environmental rights to other provisions of the Fundamental Law.[55]

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[52] A. Ristroph, *Proportionality as a Principle of Limited Government*, "Duke Law Journal" 2005, vol. 55, p. 293.

[53] E. Engle, *The History of the General Principle of Proportionality: An Overview*, "Dartmouth Law Journal" 2012, vol. 10(1), p. 2 and 10.

[54] Judgment of the Court of First Instance of 9 September 2008, case T-75/06, *Bayer CropScience AG et al. v Commission of the European Communities*, ECLI:EU:T:2008:317.

[55] Such as the decision of the HCC No. 13/2018 (IX. 4.) AB. A detailed analysis might be looked at in G. Kecskés, *The Hungarian Constitutional Court's Decision on the Protection of Groundwater: Decision No. 13/2018. (IX. 4.) AB of the Constitutional Court of Hungary*, "Hungarian Yearbook of International Law and European Law" 2020.

The environmental right as a fundamental right should have a specific priority from the very beginning: "Derogation from this obligation may only be possible in a situation of necessity and only in a proportionate mode".[56] And as it has been underlined above: "(…) the state should not step back from the already given level of protection only in case if otherwise the limitation of a fundamental right would allow (…)".[57]

The threshold of applying proportionality in connection with non-derogation at all has also been mentioned: "A significant constitutional justification might only be the protection of another fundamental right or the implementation of another constitutional objective (…)".[58] Accordingly, one fundamental right shall be balanced with another fundamental right, if proportionality is to be examined at the constitutional level. And here one must add the exceptional value of the environmental assets: "[35] (…) The preservation of diversity of species is not only essential because they might be utilized by human activities or might be understood as exploitable resources, but they are also valuable and deserve protection in their own [right]".[59]

In the groundwater case,[60] the necessity of keeping the permit system alive was one major question: "[68] 8.6. (…) any regulation aimed at the modification of the permission system applicable to using the stocks of sub-surface waters should present particularly strong reasons against this obligation, resulting from Article P (1) and Article XXI (1) of the Fundamental Law, that may justify the necessity and the proportionality of changing the permission system, in accordance with Article I (3) of the Fundamental Law". And an even stronger sentence of the decision: "[69] (…) It follows from Article P (1) of the Fundamental Law that the State may only manage sub-surface waters, as a natural resource that form part of the nation's common heritage, in a manner that guarantees the sustainable fulfilment of the demands for water-use not only in the present, but in the future as well". This must be the strict minimum, when proportionality comes to the scene.

In the context of forest legislation,[61] the likely substantial shrinking of forest areas has been a major environmental concern.[62] Proportionality has also been taken as a crucial issue, in both directions – supporting and questioning environmental concerns. The HCC fixed the minimum standard for likely limitation of environmental interests: "If the public interest objective, deriving from the defence purpose is undoubtedly necessary". While on the other hand – concerning the limitations due

[56] Decision of the HCC No. 28/1994. (V. 20.) AB.
[57] Decision of the HCC No. 48/1997 (X. 6.) AB.
[58] Decision of the HCC No. 106/2007 (XII. 20.) AB.
[59] Decision of the HCC No. 28/2017 (X. 25.) AB.
[60] Decision of the HCC No. 13/2018 (IX. 4.) AB.
[61] See also A. Pánovics, *The Hungarian Constitutional Court's Decision on the Protection of Forests: Decision No. 14/2020. (VII. 6.) AB of the Constitutional Court of Hungary*, "Hungarian Yearbook of International Law and European Law" 2021.
[62] Decision of the HCC No. 14/2020 (VII. 6.) AB.

to forestry reasons – the HCC clearly expressed: "[173] (…) The regulation which stipulates in some cases unavoidably a priority for the private interests of forestry over the limitations due to the public interests of nature protection on the same forestry management, does not meet the requirements, consequently its proportionality may not be justified on the basis of Article I (3) of the Fundamental Law".

PREVENTION – PRECAUTION

Both principles require action to be taken to protect the environment at an early stage. Instead of repairing damages after they have occurred, the goal is to prevent those damages from occurring at all. Both are landmark principles of international and domestic environmental law. The main difference is that prevention addresses actual risks whilst precaution deals with scientific uncertainty. Risks with mostly certain scientific proof come under the principle of prevention, where it is possible to establish the causal link between the initial event and its adverse effects, and easier to calculate the probability of their occurrence.[63] The prevention principle was already one of the eleven objectives and principles listed in the first EEC Environmental Action Programme in 1973.[64]

The HCC provided an interpretation of the principle of prevention in its first decision,[65] asserting that in order to protect the right to a healthy environment, the application of legal measures based on the principle of prevention takes precedence and the state does not enjoy the freedom to allow the environment to deteriorate or to allow the risk of deterioration.[66]

With the Fundamental Law (2012), the precautionary principle, next to prevention, has an important place. For example, to avoid irreversible processes, the principles of precaution and prevention should be taken into account when drafting legislation to protect the environment.[67]

At an international level, the precautionary principle was first acknowledged in the World Charter for Nature,[68] adopted by the UN General Assembly in 1982

[63] N. de Sadeleer, *The Principles of Prevention and Precaution in International Law: Two Heads of the Same Coin?*, [in:] *Research Handbook on International Environmental Law*, eds. M. Fitzmaurice, D. Ong, P. Merkouris, Cheltenham 2010, p. 152.

[64] Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment (OJ C 112/1, 20.12.1973).

[65] Decision of the HCC No. 28/1994 (V. 20.) AB.

[66] *Ibidem*, [140–141].

[67] Decision of the HCC No. 3223/2017 (IX. 25.) AB [27–28].

[68] United Nations, General Assembly, World Charter for Nature, A/RES/37/7, 28.10.1982, https://ejcj.orfaleacenter.ucsb.edu/wp-content/uploads/2018/03/1982.-UN-World-Charter-for-Nature-1982.pdf (access: 10.11.2024).

in Article 11 (b), stipulating than in case of likely significant risk, where potential adverse effects are not fully understood, the activities should not proceed. The principle was enshrined at the 1992 Rio Declaration[69] in principle 15: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capability. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation". Other conventions, such as the Convention of Biological Diversity refer to the precautionary principle.[70] This principle has a growing importance equally in international and domestic level, "the precautionary principle is fast becoming a fundamental principle of international environmental law".[71] The principle is one of the major pillars of EC/EU environmental policy, prescribed in para. 2 of Article 192 TFEU, while the definition is missing, leaving room for interpretation, but institutions as well as Member States are obliged to apply the principle.[72]

The precautionary principle is relevant only in case of a potential significant risk, which cannot be fully demonstrated or quantified, due to the insufficient or less precise nature of the scientific data.

The case law of the Court of Justice of the European Union (CJEU) has had a great impact on further development of the precautionary principle in the EU law, even before mentioned by the Treaty with a milestone case C-174/82 *Sandoz*,[73] and later *Pfizer*[74] or *BSE* case.[75] In *Pfizer*, the underlying reasons were: "[146] The precautionary principle can therefore apply only in situations in which there is a risk, notably to human health, which, although it is not founded on mere hypotheses that have not been scientifically confirmed, has not yet been fully demonstrated". The

[69] United Nations, General Assembly, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14.6.1992, Annex I: Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. I), 12.8.1992, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (access: 10.11.2024).

[70] On 28 January 2000, at the Conference of the Parties to the Convention on Biological Diversity, the Protocol on Biosafety concerning the safe transfer, handling and use of living modified organisms resulting from modern biotechnology confirmed the key function of the Precautionary Principle.

[71] N. de Sadeleer, *op. cit*.

[72] Judgment of the Court of 7 September 2004, case C-127/02, *Waddenvereniging and Vogelsbeschermingvereniging*, ECLI:EU:C:2004:482.

[73] Judgment of the Court of 14 July 1983, case 174/82, *Criminal proceedings v Sandoz BV*, ECLI:EU:C:1983:213.

[74] Judgment of the Court of First Instance of 11 September 2002, case T-13/99, *Pfizer Animal Health v Council of the European Union*, ECLI:EU:T:2002:209.

[75] Judgment of the Court of 5 May 1998, case C-157/96, *The Queen v Ministry of Agriculture, Fisheries and Food and Commissioners of Customs & Excise, ex parte National Farmers' Union and Others*, ECLI:EU:C:1998:191; judgment of the Court 5 May 1998, case C-180/96, *United Kingdom v Commission*, ECLI:EU:C:1998:192.

BSE case also clarified the requirements: "[99] Where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent". Since then, it has been used both in relation to measures of the EU institutions or to measures of Member States, in derogation of the rules on free movement.[76]

In the practice of the HCC, two parallel decisions must be mentioned. In the case referring to precautionary principle for the first time the Court claimed: "[49] (…) according to the generally acknowledged precautionary principle of environmental law the state must ensure that the deterioration of the state environment does not occur as a result of a specific measure".[77] It was also helpful that the Act LIII of 1995 on the Protection of the Environment also mentioned precautionary principle among the basic principles of environmental protection.[78]

In 2018, the HCC clarified more precisely the meaning and role of the principle:[79] "[14] (…) The fact that the Fundamental Law explicitly mentions in Article P (1) the obligation of preserving for the future generations the common heritage of the nation, raises a general expectation regarding the legislation that in the course of adopting the laws, not only the individual and common needs of the present generations should be weighed, but also securing the living conditions for future generations should be taken into account, and the assessment of the expected effects of individual decisions should be based on the current state of science, in accordance with the precautionary and preventive principles". Consequently, the general message does not only focus on legislation itself, but covers individual decisions, too.

The HCC also made a clear distinction between prevention and precaution: "[20] (…) on the basis of the precautionary principle, when a regulation or measure may affect the state of the environment, the legislator should verify that the regulation is not a step-back and this way it does not cause any irreversible damage as the

[76] In all cases there was indeed no scientific certainty as to the existence or extent of a risk to human health. Typically, these cases are connected with vitamin or otherwise enriched foodstuffs (judgment of the Court of 23 September 2003, case C-192/01, *Commission of the European Communities v Kingdom of Denmark*, ECLI:EU:C:2003:492), novel foods (judgment of the Court of 9 September 2003, case C-236/01, *Monsanto Agricoltura Italia and Others*, ECLI:EU:C:2003:431), labelling requirements applicable to foods and food ingredients consisting of, or derived from, GMOs (judgment of the Court of 26 May 2005, case C-132/03, *Codacons and Federconsumatori*, ECLI:EU:C:2005:310) and again, the BSE (judgment of the Court (Third Chamber) of 12 January 2006, case C-504/04, *Agrarproduktion Staebelow*, ECLI:EU:C:2006:30).

[77] Decision of the HCC No. 27/2017 (X. 25.) AB.

[78] As clarified in Article 3 (30), "precaution: the decision and action necessary to mitigate environmental risks, to prevent or reduce future damage to the environment". It is declared as a fundamental principle of environmental protection in Article 6 (2): "environmental practices must be carried out in accordance with the precautionary principle (…)".

[79] Decision of the HCC No. 13/2018 (IX. 4.) AB.

case may be, and it does not even provide any ground in principle for causing such damage. (…) the legislator shall be constitutionally bound to weigh and to take into account in the decision-making the risks that may occur with a great probability of for sure. On the other hand, the preventive principle means an obligation to act at the source of the potential pollution but even before the pollution takes place: it should guarantee the prevention of the occurrence of processes that may damage the environment".

It is extremely important that these decisions are setting obligations imposed on the state, as it is the direct authority of the HCC. More importantly, the decisions today consider the precautionary principle as concluded directly from the Fundamental Law. The decision of forest management[80] reinforced all the above, also underlying that the scope of the principle covers the state, the public administration and also anyone.

THE INTERESTS OF FUTURE GENERATIONS

The 1972 Stockholm Declaration[81] already revealed most of the constituents of the subsequent UN global environmental conferences, among others the interest of future generations in Principle 2. Twenty years later, Principle 3 of the Rio Declaration[82] summarizing sustainable development stated: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". Five years after Rio, UNESCO issued a declaration on the responsibilities of the present generations to future generations.[83]

E.B. Weiss, the most prominent scholar on the subject of future generations,[84] classified three major principles in connection with intergenerational equity, namely (a) to conserve options and the diversity of choice – "Future generations are entitled to diversity comparable to that which has been enjoyed by previous generations"; (b) to maintain the quality comparable to that which has been enjoyed by previ-

[80] Decision of the HCC No. 14/2020 (VII. 6.) AB.

[81] UNAP, *Environmental Law Guidelines and Principles: Stockholm Declaration*, 16.6.1972, https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf (access: 10.11.2024).

[82] United Nations, General Assembly, *Report of the United Nations Conference on Environment and Development…*

[83] UNESCO, *Declaration on the Responsibilities of the Present Generations Towards Future Generations*, 12.11.1997, https://en.unesco.org/about-us/legal-affairs/declaration-responsibilities-present-generations-towards-future-generations (access: 10.11.2024).

[84] E.B. Weiss, *In Fairness to Future Generations and Sustainable Development*, "American University International Law Review" 1992, vol. 8(1), pp. 22–23. The major publication of the same author in this respect is *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (New York 1989).

ous generations; (c) and equitable access, e.g. access to potable water supplies. Although decades have passed, the situation is still far from being satisfactory, as it was discussed by international organization.[85]

In the 1989 Constitution and its interpretations did not mention future generations literally, while the major messages could be applied later also in connection with the interests of future generations. Still the first decision of the HCC in 1994 could by some means mention the problem, without going into any details: "However, legal responsibilities toward 'nature' and 'present and future mankind' can be determined without resorting to figurative language and legal constructs of such manner".

It was the first decision[86] of the HCC on environmental rights after the adoption of Fundamental Law, which mentioned future generations first, and in reasoning [92] underlines, based on Article P a threefold obligation: protection, maintenance and preservation of environmental resources for future generations. These obligations still needed some clarification, which came two years later:[87] "[39] (…) for among the general range of duties the state has a primary role to play, as it is the direct and principal responsibility of the state to implement a harmonized system of institutional guarantees, to create the system of such institutions, also to make the necessary corrections". This reference is a follow-up of the concept of institutional protection, being a paramount message of the 1994 decision. The same decision also extended – in Reasoning [40] – the *ratione materiae* of the non-derogation principle to national monuments as well, as the most valuable parts of the built environment. Thus, in the past few years, the HCC developed a uniquely strong concept of the constitutional protection for the common heritage of the nation and future generations.

Afterwards[88] the HCC began to interpret the three-fold obligation towards future generations, using the phraseology of international law, while developing a new concept of hypothetical heritage: "[31] All this can be seen as a specific commitment in relation to the 'common concern of humankind' existing in international law". The decision could also utilize the messages of legal scholars – such as Weiss – in translating the messages into a constitutional language: "[33] Article P (1) of the Fundamental Law imposes three main obligations on the current generation: a preserving choice, preserving quality and ensuring accessibility. The preservation of choice is based on the consideration that the living conditions of future generations can best be safeguarded if the natural heritage that has been handed down is able

[85] UNHCR, *Report: General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, 30.10.2018.

[86] Decision of the HCC No. 16/2015 (VI. 5.) AB.

[87] Decision of the HCC No. 3104/2017 (V. 8.) AB.

[88] Decision of the HCC No. 28/2017 (X. 25.) AB.

to give future generations the freedom of choice to solve their problems, rather than the decisions of the present setting future generations on a forced course. The requirement to preserve quality means that we must strive to ensure that the natural environment is passed on to future generations in at least the same state as it was handed down to us by past generations. And the requirement of access to natural resources means that present generations have free access to available resources as long as they respect the equitable interests of future generations". It is also an important message regarding the decision to urge us towards long-term thinking: "[34] The legislator can only meet these principled expectations if it takes a long-term view, across governmental cycles, when making decisions".

Next to the reference of contemporary legal scholarly works the HCC was also keen to apply a moral groundwork for the new concepts, referring in the Reasoning [36] the Encyclical letter of Pope Francis, *Laudato Si'*, in connection with the values of biodiversity.[89]

In the groundwater protection decision[90] the interests of future generations have clearly been tied to the protection of national assets. "[54] It means that the State as an exclusive owner may only manage sub-surface waters (including providing for the possibility of using the waters) by considering not only the common needs of the present generations, but the needs of the future generations as well, together with regarding the natural resources as regulatory subjects that represent intrinsic value worth protecting". The consequence: "[71] (…) present generations may freely access the resources available as long as they pay respect to the equitable interests of future generations".

Finally, the decision on forest legislation[91] applied a new doctrine in connection with future generation rights, stating "[22] para. 1 of Article P of the Fundamental Law is based upon the constitutional framing on public trust concept, related to environmental and nature conservation values, the essence of which is that the state, as being the fiduciary of future generations as beneficiaries, shall manage the natural and cultural treasures assigned to it as material assets to be protected on their own and should only tolerate the use and utilization of these treasures to the extent which does not jeopardise the long-term subsistence of them. The state, when managing these treasures and developing related legal rules shall equally take into consideration the interests of current and future generations".

[89] The Holy Father Francis, *Encyclical Letter Laudato Si': On Care for Our Common Home*, https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (access: 10.11.2024).

[90] Decision of the HCC No. 13/2018 (IX. 4.) AB.

[91] Decision of the HCC No. 14/2020 (VII. 6.) AB.

CONCLUSIONS

The HCC began the interpretation of the right to a healthy environment thirty years ago. We may distinguish two phases in this process: before and after the entering into force of the Fundamental Law. What had been accepted in the first phase, could be used also in the second, due to the similar language of constitutional provisions. Consequently, the second phase is perhaps a new era, but beside it, a clear development and further elaboration of interpretation prospects at the same time, due to the improvement of the accessible legal arguments.

Thus, the initial messages could persist, whereas new elements have also been added. This is mostly precise for the non-derogation principle, together with the proportionality test, the inevitability of the preventive approach and the duty of the state to design the institutions and the legal environment. In the second phase, among others, the precautionary approach and the interests of future generations could complement the whole vision.

In the present paper we could identically examine the constitutional development of the right to a healthy environment and the progress of the interpretation evolution of the HCC. The strict minimum, the non-retrogression/derogation principle does not tolerate any weakening of already accomplished level of protection, only in case of protecting the interests of one other fundamental right or constitutional value and also in that case the proportionality-necessity test should be used. Precautionary principle is a bit more innovative and prospective, while the respect of the interests of future generations might also be taken as a kind of summation and message about the values to be guaranteed. In its interpretation procedure the HCC employed the works of legal scholars, the different international documents or even the newest development trends in the field of environmental law, in order to advance a even more sophisticated level interpretation.

It must be underlined that the HCC might only control legislation from a constitutional perspective. The most effective instrument in this process is to set aside the unconstitutional laws, in order to achieve that the most effective instruments and decent level of legal regulation shall be used. The messages of the HCC might help a lot in this respect, as it is not conceivable simply to disregards such considerations, so they may somehow prevail directly or indirectly. The narrative of the HCC is a respectable component in the growing number of innovative examples of judicial activism, which might be taken as an engine of the broadening of the scope of environmental adjudication and strengthening its likely impact on legislation in all the levels of governance.

REFERENCES

Literature

Bándi G., *The Hungarian Ombudsman for Future Generations*, "P.A. Persona e Amministrazione: Ricerche Giuridiche sull'Amministrazione e l'Economia" 2022, vol. 9(2).

Brunnée J., *Common Areas, Common Heritage, and Common Concern*, [in:] *The Oxford Handbook of International Environmental Law*, eds. D. Bodansky, J. Brunnée, E. Hey, Oxford 2008, **DOI: https://doi.org/10.1093/oxfordhb/9780199552153.013.0023**.

Engle E., *The History of the General Principle of Proportionality: An Overview*, "Dartmouth Law Journal" 2012, vol. 10(1).

Gardos-Orosz F., Zakariás K. (eds.), *The Main Lines of the Jurisprudence of the Hungarian Constitutional Court: 30 Case Studies from the 30 years of the Constitutional Court (1990 to 2020)*, Baden-Baden 2022, **DOI: https://doi.org/10.5771/9783748929826**.

Halmai G., *The Fundamental Law of Hungary and the European Constitutional Values*, "DPCE online" 2019, vol. 39(2).

Halmai G., *The Reform of Constitutional Law in Hungary after the Transition*, "Legal Studies" 1998, vol. 18(2), **DOI: https://doi.org/10.1111/j.1748-121X.1998.tb00012.x**.

Hörcher F., Lorman T. (eds.), *A History of the Hungarian Constitution: Law, Government and Political Culture in Central Europe*, London 2018.

Kecskés G., *The Hungarian Constitutional Court's Decision on the Protection of Groundwater: Decision No. 13/2018. (IX. 4.) AB of the Constitutional Court of Hungary*, "Hungarian Yearbook of International Law and European Law" 2020, **DOI: https://doi.org/10.5553/HYIEL/266627012020008001022**.

Pánovics A., *The Hungarian Constitutional Court's Decision on the Protection of Forests: Decision No. 14/2020. (VII. 6.) AB of the Constitutional Court of Hungary*, "Hungarian Yearbook of International Law and European Law" 2021, **DOI: https://doi.org/10.5553/HYIEL/266627012021009001021**.

Ristroph A., *Proportionality as a Principle of Limited Government*, "Duke Law Journal" 2005, vol. 55.

Sadeleer N. de, *The Principles of Prevention and Precaution in International Law: Two Heads of the Same Coin?*, [in:] *Research Handbook on International Environmental Law*, eds. M. Fitzmaurice, D. Ong, P. Merkouris, Cheltenham 2010, **DOI: https://doi.org/10.4337/9781849807265.00017**.

Sulyok K., *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" 2021, **DOI: https://doi.org/10.5553/HYIEL/266627012021009001020**.

Tushnet M.V., Fleiner T., Saunders C. (eds.), *Routledge Handbook of Constitutional Law*, London 2012, **DOI: https://doi.org/10.4324/9780203072578**.

Varga A.Zs., Patyi A., Schanda B. (eds.), *The Basic (Fundamental) Law of Hungary: A Commentary of the New Hungarian Constitution*, Dublin 2015.

Weiss E.B., *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, New York 1989.

Weiss E.B., *In Fairness to Future Generations and Sustainable Development*, "American University International Law Review" 1992, vol. 8(1).

Online sources

Group of Experts, Draft Global Pact for the Environment, https://globalpactenvironment.org/uploads/EN.pdf (access: 10.11.2024).

Parliamentary Assembly, Drafting an Additional Protocol to the European Convention on Human Rights Concerning the Right to a Healthy Environment, 11.9.2009, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12279&lang=en (access: 10.11.2024).

The Holy Father Francis, *Encyclical Letter Laudato Si': On Care for Our Common Home*, https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (access: 10.11.2024).

UNAP, Act II of 1976 on the Protection of the Human Environment, 1976, https://leap.unep.org/countries/hu/national-legislation/act-ii-1976-protection-human-environment (access: 10.11.2024).

UNAP, *Environmental Law Guidelines and Principles: Stockholm Declaration*, 16.6.1972, https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf (access: 10.11.2024).

UNESCO, *Declaration on the Responsibilities of the Present Generations Towards Future Generations*, 12.11.1997, https://en.unesco.org/about-us/legal-affairs/declaration-responsibilities-present-generations-towards-future-generations (access: 10.11.2024).

United Nations, *UN Conference on the Human Environment*, 5–16.6.1972, Stockholm, https://www.un.org/en/conferences/environment/stockholm1972 (access: 10.11.2024).

United Nations, General Assembly, *Our Common Agenda Policy Brief 1: To Think and Act for Future Generations*, A/77/CRP.1, 7.2.2023, https://digitallibrary.un.org/record/4004913/files/A_77_CRP.1-EN.pdf (access: 10.11.2024).

United Nations, General Assembly, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14.6.1992, Annex I: Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. I), 12.8.1992, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (access: 10.11.2024).

United Nations, General Assembly, *Right to a Healthy Environment: Good Practices. Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/43/53, 30.12.2019, https://documents.un.org/doc/undoc/gen/g19/355/14/pdf/g1935514.pdf (access: 10.11.2024).

United Nations, General Assembly, World Charter for Nature, A/RES/37/7, 28.10.1982, https://ejcj.orfaleacenter.ucsb.edu/wp-content/uploads/2018/03/1982.-UN-World-Charter-for-Nature-1982.pdf (access: 10.11.2024).

Wikisource, *Constitution of the Republic of Hungary (1989)*, https://en.wikisource.org/wiki/Constitution_of_the_Republic_of_Hungary_(1989) (access: 10.11.2024).

Miscellaneous

UNHCR, *Report: General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, 30.10.2018.

World Congress on Justice, Governance and Law for Environmental Sustainability, Second Preparatory Meeting, Buenos Aires, Argentina, 23–24 April 2012, Issue Brief no. 3.

Legal acts

Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment (OJ C 112/1, 20.12.1973).

Fundamental Law of Hungary (25 April 2011).

Case law

Decision of the HCC No. 1007/B/1994/12 AB.
Decision of the HCC No. 28/1994 (V. 20.) AB.
Decision of the HCC No. 27/1995 (V. 15.) AB.
Decision of the HCC No. 48/1997 (X. 6.) AB.
Decision of the HCC No. 48/1998 (XI. 23.) AB.
Decision of the HCC No. 30/2000 (X. 11.) AB.
Decision of the HCC No. 106/2007 (XII. 20.) AB.
Decision of the HCC No. 3068/2013 (III. 14.) AB.
Decision of the HCC No. 13/2013 (VI. 17.) AB.
Decision of the HCC No. 16/2015 (VI. 5.) AB.
Decision of the HCC No. 3114/2016 (VI. 10.) AB.
Decision of the HCC No. 3104/2017 (V. 8.) AB.
Decision of the HCC No. 3223/2017 (IX. 25.) AB.
Decision of the HCC No. 28/2017 (X. 25.) AB.
Decision of the HCC No. 13/2018 (IX. 4.) AB.
Decision of the HCC No. 17/2018 (X. 10.) AB.
Decision of the HCC No. 4/2019 (III. 7.) AB.
Decision of the HCC No. 3196/2020 (VI. 11.) AB.
Decision of the HCC No. 14/2020 (VII. 6.) AB.
Decision of the HCC No. 5/2022 (IV. 14.) AB.
Decision of the HCC No. 8/2022 (V. 25.) AB.
Decision of the HCC No. 16/2022 (VII. 14.) AB.

Judgment of the Court of 14 July 1983, case 174/82, *Criminal proceedings v Sandoz BV*, ECLI:EU:C:1983:213.

Judgment of the Court of 5 May 1998, case C-157/96, *The Queen v Ministry of Agriculture, Fisheries and Food and Commissioners of Customs & Excise, ex parte National Farmers' Union and Others*, ECLI:EU:C:1998:191.

Judgment of the Court 5 May 1998, case C-180/96, United *Kingdom v Commission*, ECLI:EU:C:1998:192.

Judgment of the Court of First Instance of 11 September 2002, case T-13/99, *Pfizer Animal Health v Council of the European Union*, ECLI:EU:T:2002:209.

Judgment of the Court of 9 September 2003, case C-236/01, *Monsanto Agricoltura Italia and Others*, ECLI:EU:C:2003:431.

Judgment of the Court of 23 September 2003, case C-192/01, *Commission of the European Communities v Kingdom of Denmark*, ECLI:EU:C:2003:492.

Judgment of the Court of 7 September 2004, case C-127/02, *Waddenvereniging and Vogelsbeschermingvereniging*, ECLI:EU:C:2004:482.

Judgment of the Court of 26 May 2005, case C-132/03, *Codacons and Federconsumatori*, ECLI:EU:C:2005:310.

Judgment of the Court (Third Chamber) of 12 January 2006, case C-504/04, *Agrarproduktion Staebelow*, ECLI:EU:C:2006:30.

Judgment of the Court of First Instance of 9 September 2008, case T-75/06, *Bayer CropScience AG et al. v Commission of the European Communities*, ECLI:EU:T:2008:317.

ABSTRAKT

W opracowaniu omówiono sposób, w jaki prawo do zdrowego środowiska oraz wspierające je zasady weszły do praktyki węgierskiego Trybunału Konstytucyjnego w okresie ostatnich 30 lat. Artykuł rozpoczyna się od krótkiego przeglądu rozwoju ustawodawstwa, obejmującego omówienie wykładni konstytucyjnej, począwszy od zasady niecofania się, wraz z testem konieczności i proporcjonalności, oraz równolegle z nimi potrzeby nadania życia prawom konstytucyjnym, a mianowicie ich zinstytucjonalizowania. Następnie mogło zostać włączone do praktyki sądowej podejście ostrożnościowe oraz interes przyszłych pokoleń, a nawet doktryna zaufania publicznego. Mimo że podstawy teoretyczne i konstytucyjne są niezbędne, to w istocie bardziej liczą się konsekwencje instytucjonalne i realizacja w praktyce. Jeśli warunki te są jasne, może to ułatwić dalsze działania.

Słowa kluczowe: prawo do zdrowego środowiska; zakaz uchylania/powrotu do dawnego stanu prawnego; zasada ostrożnościowa; test konieczności i proporcjonalności; interes przyszłych pokoleń; węgierski Trybunał Konstytucyjny