

## The Right to a Healthy Environment in the Light of the New Case Law of the Croatian Constitutional Court<sup>2</sup>

### Abstract

*This research paper aims to investigate if notable environmental matters have, in recent years, come before the Constitutional Court of the Republic of Croatia, in light of the increasing number of similar cases brought before the highest courts in European countries (Chapter 1). Previous analyses concerning constitutional adjudication on environmental issues have revealed that the Croatian Constitutional Court has seldom invoked Article 69 of the Constitution of the Republic of Croatia, a provision which enshrines the right to a healthy life (Chapter 2). However, on 18 April 2023, the Constitutional Court rendered a landmark judgment wherein it affirmed that the Croatian Constitution protects the citizens' right to a healthy life and environment. The case involved a dispute over the constitutionality of the Decision on the Order and Dynamics of Landfill Closure. This paper will thoroughly examine and scrutinise this significant constitutional case (Chapter 3). To commence, the analysis shall delineate the magnitude of Croatia's waste management deficiencies—failings which were deemed by the Constitutional Court to violate the principle of legality and the constitutional duty to comply with EU laws (Chapter 3.1). Thereafter, the study shall address the formal inconsistency of the disputed Decision with the Constitution (Chapter 3.2). Subsequent chapters shall demonstrate how the Constitutional Court assessed point III of the contested Decisions as an excessive (and therefore disproportionate) limitation of the fundamental right to a healthy life and environment prescribed in Article 69 of the Constitution (Chapter 3.3) and further, how it encroached upon the constitutionally safeguarded right of citizens to local and regional self-government (Chapter 3.4). The concluding portion of this paper shall recount the process by which the Constitutional Court's decision took place (Chapter 3.5) and shall conclude with reflections upon the prospective influence this decision may exert upon the trajectory of environmental jurisprudence and legislative development within Croatia (Chapter 4).*

**Keywords:** Constitutional Court of the Republic of Croatia, Waste Management, Constitution, Right to a Healthy Life and Environment, Landfills

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# 1. Introduction

In recent years, there has been an increasing number of constitutional cases initiated in EU Member States that deal with the inadequacy of measures taken to mitigate the adverse effects of climate change. Among the most prominent of these is the internationally renowned *Urgenda* case, adjudicated by the Supreme Court of the Netherlands on 20 December 2019.<sup>3</sup> In that landmark ruling, the Court affirmed that the Dutch State had failed to take sufficient action to mitigate climate change and, accordingly, ordered it to reduce greenhouse gas (hereinafter referred to as 'GHG') emissions in the Netherlands by 25% by the year 2020, relative to 1990 levels. This obligation arose from the State's duties pursuant to international human rights norms, specifically Article 2 (the right to life) and Article 8 (the right to respect for private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Similarly, on 24 March 2021, the Federal Constitutional Court of Germany delivered an order in response to four constitutional complaints. It ruled that the German Climate Change Act was partly unconstitutional for not providing a coherent pathway for reducing emissions that aligned with the rights of future generations.<sup>4</sup> Not all such constitutional challenges have met with success. In February 2023, twelve minors ranging in age from five to sixteen years, filed a case before the Austrian Constitutional Court. The petitioners contended that, due to significant legal shortcomings, the Austrian Climate Act failed to reduce GHG emissions effectively and inadequately safeguarded them from the impacts of global warming. In support of their claim, the minors relied upon the constitutional rights of children protected by Federal Constitutional Law on Children's Rights (*Bundesverfassungsgesetz über die Rechte der Kinder* – BVG Kinderrechte), and also referred to the Charter of Fundamental Rights of the European Union. By decision dated 27 June 2023, the Austrian Constitutional Court dismissed the complaint as inadmissible.<sup>5</sup> The Court stated that the complaint's scope was too narrow and noted that the complainants had failed to recognise that the alleged unconstitutionality could not be eliminated by repealing disputed provisions. Furthermore, the requested repeal would, in effect, constitute an inadmissible act of legislation by the Constitutional Court itself, which is prohibited by the principle of separation of powers.<sup>6</sup>

Although addressing distinct legal questions,<sup>7</sup> climate change litigation and environmental case-law alike draw upon the same constitutional provisions when

3 | Hoge Raad, 20.12.2019., 19/00135.

4 | BVerfG, Beschluss des Ersten Senats vom 24. März 2021, 1 BvR 2656/18, Rn. 1–270.

5 | Verfassungsgerichtshof, G 123/2023-12, 27. Juni 2023.

6 | *Ibid.*, paras. 46–55.

7 | For important differences between the legal questions raised by climate change litigation and those environmental cases addressed until now in the case-law of the European Court of Human Rights see case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application No.: 53600/20, Judgement of 9 April 2024, paras. 414–422.

brought before constitutional courts. Both fields are governed by the foundational legal principles and rights enshrined in the Constitution, which provide a common legal framework for addressing these issues. Against this backdrop, this research paper seeks to determine whether constitutional proceedings analogous to those brought in other European jurisdictions have been initiated before the Constitutional Court of the Republic of Croatia (hereinafter either referred to as the ‘CCRC’ or the ‘Constitutional Court’). In pursuit of this aim, this paper draws upon existing research concerning the environmental case law of the CCRC<sup>8</sup> and conduct a comprehensive examination of its most recent landmark decision of 18 April 2023, regarding the unconstitutionality of the Decision on the Order and Dynamics of Landfill Closure.

## 2. Environmental case law of the Constitutional Court until the landmark decision of 18 April 2023

Environmental matters may be brought before the Croatian Constitutional Court through two principal procedural avenues. The first of these is the mechanism of abstract constitutional review of legal norms. Within this framework, the CCRC is empowered to determine the conformity of laws—namely, legislative acts enacted by the Croatian Parliament—with the Constitution, and, where such laws are found to contravene constitutional provisions, to repeal them. In addition to its oversight of primary legislation, the CCRC exercises jurisdiction over sub-legislative normative acts issued by state authorities. It is vested with the authority to determine whether such subordinate legislation accords with both the Constitution and statutory law, and to repeal such acts where they are found to be unconstitutional or unlawful. Pursuant to the Constitutional Act on the Constitutional Court of the Republic of Croatia,<sup>9</sup> both natural and legal persons are entitled to submit a proposal for instituting proceedings to review the constitutionality of laws, as well as the legality and constitutionality of other sub-legislative normative acts. Upon receipt of such a proposal, the CCRC will consider whether to admit it and continue the procedure. Subsequently, the CCRC will notify the applicant about the Constitutional Court’s decision—either to proceed with the matter or to reject the proposal—depending on the circumstances.<sup>10</sup> The second procedural path by which environmental cases may

8 | See Blagojević & Majnarić 2023, 33–55; Staničić 2022, 127–160; Ofak 2021, 85–98; Szilágyi 2022, 479–526. For a comparative outlook of the constitutional protection of the environment see Orosz, Suri, Hrečka-Kovács & Szőke 2021, 99–120. On the importance and impact of the constitutional protection of environmental rights see Boyd 2012, 3–15.

9 | Constitutional Act on the Constitutional Court of the Republic of Croatia, Official Gazette (*Narodne novine*, hereinafter ‘OG’) no. 99/1999, 29/2002, 49/2002 (consolidated text), Article 38, paragraph 1.

10 | *Ibid.*, Article 43.

come before the CCRC is by way of constitutional complaint. Any individual who believes that their human rights or fundamental freedoms, as guaranteed by the Constitution, have been violated by an individual act of a state body or other public authority has the right to file a constitutional complaint before the Court.<sup>11</sup>

The Croatian Constitution<sup>12</sup> contains a range of provisions relating to the environment, which are dispersed throughout its text. The Constitution prescribes the conservation of nature and the human environment as the highest values of the Croatian constitutional order—enumerated alongside freedom, equality, national and gender equality, peace, social justice, respect for human rights, the inviolability of ownership, the rule of law and a democratic multiparty system. These highest values serve as guiding principles for the interpretation of the Constitution.<sup>13</sup> Furthermore, laws can restrict entrepreneurial freedoms and proprietary rights under special circumstances to safeguard the interests and security of Croatia or protect the environment, nature, and human health.<sup>14</sup> The Constitution imposes a positive obligation upon the State to safeguard goods and resources of significant ecological importance. These include, *inter alia*, the sea, the seashore, islands, inland waters, airspace, mineral resources, other natural assets, land, forests, flora and fauna, and other components of the natural world. This category further extends to immovable property and assets of particular cultural, historical, economic or ecological value, which are designated by law as being of interest to the Republic of Croatia.<sup>15</sup> The Constitution states that the legal framework governing such goods of importance to the State shall be determined by legislation and subordinate legislation, thereby establishing the rules for utilising and exploiting goods that are significant to the Republic of Croatia.<sup>16</sup>

The 2001 Amendment to the Croatian Constitution marked a retrogressive shift, as it removed the citizens' constitutional guarantee of a "healthy environment", limiting it to the right of a "healthy life" instead. Under the original text of Article 69 of the 1990 Constitution, the right to a healthy environment was expressly protected in the following terms:

"Everyone shall have the right to a healthy life.

The Republic of Croatia shall ensure the right of citizens to a healthy environment.

11 | *Ibid.*, Article 62.

12 | Constitution of the Republic of Croatia, OG no. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014.

13 | *Ibid.*, Article 3.

14 | *Ibid.*, Article 50, paragraph 2.

15 | *Ibid.*, Article 52, paragraph 1.

16 | *Ibid.*, Article 52, paragraph 2.

Citizens, government, public and economic bodies and associations are obliged to pay special attention to protecting human health, nature and the human environment within the scope of their powers and activities.”<sup>17</sup>

However, the Constitutional Amendment of 2001 marked a significant departure from this position. It revised the State’s obligation from the active guarantee of a right to a healthy environment to the duty of ensuring conditions conducive to such an environment. Thus, since 2001, Article 69 of the Constitution has been worded as follows:

“Everyone shall have the right to a healthy life.

The State shall ensure conditions for a healthy environment.

Everyone is obliged, within the scope of their powers and activities, to pay special attention to protecting human health, nature and the human environment.”<sup>18</sup>

Despite what may be regarded as a retrogressive constitutional development, Croatian legal scholars still viewed the right to a healthy life as a specific constitutional manifestation of the broader right to a healthy environment with constitutional protection. Yet, the CCRC had not rendered a decision reflecting this interpretation until 2023 (see Chapter 3 of this paper).

As evidenced in previous studies, most environmental cases brought before the CCRC involve evaluating the compatibility of laws or regulations with the Constitution and other relevant legislation.<sup>19</sup> The research has established that the protection of nature and the environment constitutes a fundamental constitutional value. On this basis, it has been held that the limitation of property rights and entrepreneurial freedoms may be constitutionally permissible, provided that these limitations are necessary and proportionate in relation to the specific requirements of implementing them in individual situations within a democratic society. The constitutional and legislative framework governing goods deemed to be of interest to the Republic of Croatia includes essential components of the natural world and human environment, thus necessitating their special protection. On the one hand, this imposes a duty upon the State to shield such goods from exploitation or degradation incompatible with constitutional principles. On the other hand, it is within the rights of the State to determine and enforce appropriate legal consequences for the unlawful violations of such goods, having regard to the importance of the interest protected.

One prior study identified only a single instance in which the Constitutional Court adopted a stringent interpretative approach to Article 69 in the context

17 | Constitution of the Republic of Croatia, OG no. 56/1990.

18 | Amendments to the Constitution of the Republic of Croatia, OG no. 28/2001.

19 | Ofak 2021, 96; Blagojević & Majnarić 2023, 41–48; Staničić 2022, 142–143.

of environmental matters.<sup>20</sup> More than fifteen years have since elapsed, during which time environmental protection has assumed ever-greater prominence at both the European and international levels. That same study concluded that, if presented with a suitable case, the Constitutional Court would likely afford protection to the right to a healthy environment under Article 69, given that harm to the environment and exposure to environmental risks can threaten human rights.<sup>21</sup> The following chapter will provide a detailed description and analysis of the joint constitutional cases U-II-845/2019 and U-II-2160/2019, which confirmed this conclusion.

### **3. A landmark decision of the Constitutional Court on protecting the right to a healthy environment**

On 18 April 2023, Constitutional Court rendered a groundbreaking decision,<sup>22</sup> in which it unequivocally affirmed, for the first time, that the Croatian Constitution safeguards the fundamental right of citizens to a healthy environment. The matter before the Constitutional Court concerned the constitutionality of the Decision on the Order and Dynamics of Landfill Closure,<sup>23</sup> adopted by the Minister responsible for environmental protection under the then-applicable Sustainable Waste Management Act.<sup>24</sup> With this Decision, 27 waste disposal sites—having failed to meet the necessary legal standards for health and environmental protection—were ordered to cease operations. The waste previously deposited at these sites was redirected to landfills administered by local self-government units which had duly harmonised their waste disposal practices with the applicable legal framework governing the handling of non-hazardous waste. The Decision was initially intended as an interim measure, to remain in effect only until the completion and operationalisation of regional waste management centres. However, those centres have not been constructed within the projected timeline, and their completion is still far from achieved. As a result, specific local self-government units were required to accept unsorted and unprocessed waste originating from other non-compliant units. This development led to a marked increase in the volume of waste these units were required to accommodate and dispose of. As the projects for waste management centres are still in progress, the ongoing practice of redirecting waste from non-compliant landfills to compliant ones has essentially become a long-term solution.

20 | Ofak 2021, 95–96.

21 | Ibid.

22 | Decision and Ruling of the CCRC, no. U-II-845/2019 and U-II-2160/2019 of 18 April 2023.

23 | Decision on the Order and Dynamics of Landfill Closure, OG no. 3/19 and 17/19.

24 | Sustainable Waste Management Act, OG no. 94/13, 73/17, 14/19, 98/19.

Acting upon on the proposal submitted by the City of Supetar and Bošana d.o.o. (a company for the performance of communal activities founded by the City of Biograd na Moru), the CCRC decided to initiate the procedure for assessing the constitutionality and legality of the Minister's Decision on the Order and Dynamics of Landfill Closure. Following its deliberations, the Constitutional Court determined that point III of the contested Decision violated the constitution and subsequently repealed it.<sup>25</sup> The Court determined that initiating the proceedings was necessary for protecting human rights and fundamental freedoms guaranteed by the Constitution and preserving nature and environmental protection, as one of the highest values underpinning the Croatian constitutional order. In the case at hand, the CCRC acted in light of the positive obligation of the State to create conditions for the effectiveness of the guarantee of healthy life and environment derived from Article 69 of the Constitution. The CCRC also examined the disputed Decision in the light of Article 16 of the Constitution, which mandates adherence to the principle of proportionality whenever restrictions are imposed upon constitutionally protected rights.<sup>26</sup> Finally, the Constitutional Court scrutinised the Decision for its impact upon the constitutionally guaranteed right of citizens to local and regional self-government, as set forth in Article 128 of the Constitution. The following section of this chapter will elucidate the scale and seriousness of Croatia's waste management deficiencies. It will also undertake a detailed examination of the most salient elements of the CCRC's Decision of 18 April 2023.

### **3.1 Croatia's waste disposal challenges – a violation of the principle of legality and the constitutional obligation to fully respect the EU legal order**

Since 2017, the European Commission has issued successive communications highlighting persistent and serious challenges faced by the Republic of Croatia in implementing the requirements of European Union waste legislation. These

25 | The contested Decision, with the aim to implement the measures defined in the Waste Management Plan of the Republic of Croatia 2017 – 2022 (OG no. 3/17), determined the order and dynamics of closing non-hazardous waste landfills by county, the selection of non-hazardous waste landfills where non-hazardous municipal and industrial waste will continue to be disposed of until the disposal capacity is filled and non-hazardous waste landfills where non-hazardous municipal and production waste will continue to be disposed of until the construction and start of operation of waste management centres. Point II of the decisions listed the non-hazardous waste landfills by county that will be closed by 31 December 2018. Point III of the decision stated that the non-hazardous waste landfills where non-hazardous municipal and industrial waste will continue to be disposed of until the start of operation of the waste management centres are listed in the document: Dynamics of closing non-hazardous waste landfills at the territory of the Republic of Croatia and form an integral part of it.

26 | Article 16 of the Constitution reads as follows: „Freedoms and rights may only be restricted by law in order to protect the freedoms and rights of others, the legal order, and public morals and health. Any restriction of freedoms or rights shall be proportionate to the nature of the need for such restriction in each individual case.“

difficulties have been particularly acute in relation to the separate collection of waste, the enhancement of municipal recycling capacities, and the reduction in the amount of waste sent to landfills.<sup>27</sup> The singular significance of the Constitutional Court's Decision of 18 April 2023 is reflected in its thorough analysis of the specific circumstances surrounding Croatia's waste management issues. Given that the European Commission initiated several infringement procedures against Croatia for violations of EU waste law, the Constitutional Court sought the submission of documentation concerning these proceedings from both the Croatian Government and the European Commission's representative office in Zagreb. However, owing to the duty of confidentiality surrounding such materials,<sup>28</sup> the Constitutional Court refrained from publishing the documents in question, merely referencing information already publicly available on the Commission's official website.<sup>29</sup>

In the context of the case at hand, the Constitutional Court placed particular emphasis on deficiencies related to the implementation of Directive 1999/31/EC on the landfill of waste (the Landfill Directive) and Directive 2008/98/EC on waste (the Waste Framework Directive).<sup>30</sup> More specifically, an analysis was conducted on five landfills containing non-hazardous waste across five different counties across the Republic of Croatia. All the visited sites were found to have deficiencies, and it was discovered that municipal waste is being disposed of in landfills without undergoing any preliminary treatment. It further emerged that the counties where the landfills under investigation were situated lacked the necessary infrastructure capacities.<sup>31</sup>

The Constitutional Court, for its part, required the Ministry competent for waste management (namely, the Ministry of Economy and Sustainable Development) to provide detailed and precise information on several matters, including: the stage of construction of regional waste management centres; the remaining available capacity for waste disposal; measures undertaken to rehabilitate, expand and equip operational landfills receiving waste redirected from closed facilities; the existence of any obligation to accept waste that had not undergone prior recovery processes; and the measures being taken to ensure compliance with the waste management hierarchy.<sup>32</sup> While the Constitutional Court acknowledged the comprehensive and precise responses provided by the competent Ministry to

27 | See European Commission, EU Environmental Implementation Review Country Reports for Croatia from 2017, 2019 and 2023.

28 | C-514/11 P and C-605/11 P AJ – LPN, Judgment of 14 November 2013, ECLI:EU:C:2013:738.

29 | European Commission 2021.

30 | Point 20 of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).

31 | See European Commission, Infringement decision, 12 November 2021.

32 | Pursuant to the Article 6, paragraph 1 of the Waste Management Act, all acts, decisions, plans, or programs adopted on the basis of this Act must align with the following priority order of waste management: (1) preventing the generation of waste, (2) preparation for reuse, (3) recycling, (4) other recovery procedures, e.g. energy recovery and (5) disposal.



these inquiries,<sup>33</sup> it identified certain deficiencies in the Ministry's observations that point to the unconstitutionality and illegality of how waste is disposed of in landfills in Croatia.

In its submission to the CCRC, the Ministry asserted that waste may be disposed of at landfills without prior processing or recovery. More precisely, the Ministry advanced the position that there exists no legal obligation to ensure that waste redirected from local self-government units—whose non-compliant landfills have been closed—is appropriately treated or recovered prior to its disposal at landfills located within neighbouring self-government units. The Constitutional Court unequivocally rejected this assertion, holding it to be “manifestly contrary to the Waste Management Act”.<sup>34</sup> As such, it represents a violation of the principle of legality enshrined in Article 5 of the Constitution, as well as a violation of the constitutional obligation imposed by Article 141c to give due effect to the *acquis communautaire* and the legal order of the European Union.<sup>35</sup>

Furthermore, the CCRC determined that the Ministry lacked substantive knowledge concerning the measures—if any—undertaken by local self-government units to guarantee that only the essential quantity of municipal waste is deposited at the landfills of neighbouring local self-government units in accordance with the waste hierarchy and obligations from the Waste Management Act and the Waste Framework Directive.<sup>36</sup>

The Constitutional Court further held that the absence of any binding measures applicable to those local self-government units from which waste is redirected constitutes a critical failing. Specifically, no mechanism had been implemented to compel such units to adopt waste minimisation practices aimed at reducing the overall quantity of municipal waste destined for disposal.<sup>37</sup>

The CCRC took note of the State's continued failure to achieve any of the set waste management goals.<sup>38</sup> As of the year 2020, 56% of municipal waste was deposited in landfills, while the proportion of separately collected waste stood at 41%. However, part of the separately collected waste still ended up in landfills. Moreover, not all local self-government units had implemented separate collection

33 | See point 18.3 of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).

34 | *Ibid.*, point 20.1.

35 | *Ibid.* Article 141c of the Constitution reads as follows: “The exercise of the rights ensuing from the European Union *acquis communautaire* shall be made equal to the exercise of rights under the Croatian legal order. All the legal acts and decisions accepted by the Republic of Croatia in European Union institutions shall be applied in the Republic of Croatia in accordance with the European Union *acquis communautaire*. Croatian courts shall protect individual rights based on the European Union *acquis communautaire*. State bodies, bodies of local and regional self-government and legal persons vested with public authority shall apply European Union law directly.”

36 | Point 20.3 of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).

37 | *Ibid.*, point 20.4. The Constitutional Court criticized the Ministry for not considering the measure of mandatory introduction of recycling yards, composting facilities, etc. as a possible measure to prevent the generation of municipal waste for disposal.

38 | Points 20.6.–20.7 of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).

of valuable forms of waste fractions derived from municipal waste. In 2020, the practice of separate collection of valuable types of waste from municipal waste was observed in 92% of these units. Biodegradable municipal waste constituted an estimated 63.3% of the total municipal waste disposed of by landfilling.<sup>39</sup>

Finally, the Constitutional Court ascertained that the Waste Management Plan in the Republic of Croatia for the period 2007 to 2015 envisaged the establishment of 11 waste management centres, intended for the treatment and disposal of mixed municipal waste and other non-recyclable forms of waste. The deadline for fulfilling this measure has been extended in the upcoming planning period of 2023–2029. As of the time of the Court's deliberation, only two of the proposed centres had become operational, while a third was undergoing trial operations. Construction of a fourth centre was in progress, but no definitive timeline for its completion and commissioning had been determined. The remaining seven planned centres are still in the process of acquiring project documentation. The Constitutional Court observed that, should these planned centres fail to become operational in the near future, the existing landfill sites would reach their saturation point within the forthcoming decade. Accordingly, the CCRC observed that the persistent non-implementation of the plans and measures provided for in the Waste Management Plan and the repeated failure to operationalise the centres at the scheduled time gave rise to a credible and acute risk of serious disruption to waste management in Croatia.<sup>40</sup>

### **3.2 Formal inconsistency of the Decision on the Order and Dynamics of Landfill Closure with the Constitution**

In the matter under review, the subject of the Constitutional Court's scrutiny was the Decision on the order and dynamics of landfill closure, a sub-legislative act enacted with the purpose of implementing statutory provisions. Where a sub-legislative act is subject to constitutional review, the CCRC is tasked with ascertaining not only whether such act complies with the Constitution, but also whether it adheres to the statutory framework from which it derives authority. Therefore, in the process of assessing the constitutionality and legality of such sub-legislative act, the CCRC shall examine whether it was adopted by an authorised body; whether the body had the legal competence to adopt such a measure (i.e. whether a proper legal basis existed); and whether the content of that act remains within the limits set by law. The first two questions address whether the disputed act is formally consistent with the Constitution, whereas the third assesses its material consistency with the Constitution.

The Court observed that, concerning the Decision's formal inconsistency with the Constitution, point V of the Decision provided that the Decision would be published in the Official Gazette (*Narodne novine*) and would enter into force on the

39 | *Ibid.*, point 20.8.

40 | *Ibid.*, point 21.5.

date of its adoption. Thus, the Decision entered into force before it was published in the Official Gazette. The Constitutional Court observed that the purpose of publishing legal regulations is to ensure that all relevant parties may acquaint themselves with the binding text in its authentic and final form, as adopted by the competent authority. In the present instance, the act came into effect on 21 December 2018, but was only published in *Narodne novine* on 9 January 2019. This contravened Article 90, paragraph 1 of the Constitution, which mandates that legal acts of state bodies must be published in the Official Gazette of the Republic of Croatia prior to their entry into force. The Constitutional Court, therefore, held that the Decision was inconsistent with the Constitution during the period between its adoption and its subsequent publication.<sup>41</sup>

Concerning the objections raised as to the legal authority of the Minister to adopt the disputed Decision, the Constitutional Court determined that the Minister responsible for environmental protection was unequivocally vested with the authority to do so.<sup>42</sup> Even though the Waste Management Act is a legal act that impacts authority in the realm of local self-government, its provisions were incorporated into the Croatian legislation because the Republic of Croatia had an obligation to align its laws with EU legal sources – specifically, the Landfill Directive and the Waste Framework Directive. Failure to meet these obligations would result in the State having to pay sanctions for infringements of EU law. Given that waste management is of interest to the Republic of Croatia, and in light of the State's constitutional duty to ensure conditions conducive to a healthy environment, the legislator rightly conferred upon the Minister, as the head of the competent central state administrative body, the formal authority to adopt decisions concerning the rehabilitation of existing landfills and the closure of those failing to meet requisite standards. Therefore, the Constitutional Court established that the Minister's Decision on the order and dynamics of closing waste disposal sites does not deprive local self-government units of their right to autonomy. In light of all the above circumstances, the CCRC concluded that the legislator had valid justifications for granting the Minister the authority to adopt the disputed Decision.<sup>43</sup>

The ensuing two chapters shall address the specific material inconsistencies of the Minister's Decision with the Constitution. In its assessment of the Decision's material conformity with both the Waste Management Act<sup>44</sup> and the Constitution, the Constitutional Court examined specific fundamental rights protected by the Constitution. The CCRC assessed point III of the contested Decisions as a limitation of the fundamental right to a healthy life and environment prescribed in Article 69 of the Constitution (see Chapter 3.3) and as the limitation of the guarantee of citizens' rights to local and regional self-government (see Chapter 3.4).

41 | *Ibid.*, point 14.4.

42 | *Ibid.*, point 16.3.

43 | *Ibid.*, point 16.5.

44 | Waste Management Act, no. 84/21.

### 3.3 Constitutional guarantee of the fundamental right to a healthy life and environment (Article 69 of the Constitution)

As already mentioned, in the Decision dated 18 April 2023, the Constitutional Court explicitly stated for the first time that the Constitution guarantees the fundamental right to a healthy life and environment (Article 69 of the Constitution). It is noteworthy that the Constitutional Court made this pronouncement without providing an accompanying interpretation of Article 69, which, as shown in Chapter 2, does not expressly guarantee the right to a healthy environment but the right to a healthy life. The finding of the Constitutional Court that Article 69 contains a constitutional guarantee of the right to a healthy life and environment is undoubtedly a laudable development. Although Croatian legal scholars have already highlighted this conclusion in their literature, it wasn't until the Decision of 18 April 2023 that the Constitutional Court officially confirmed this interpretation of Article 69. To facilitate a fuller understanding of its ruling, it would be desirable for the Constitutional Court to provide more explanation on its determination that the right to a healthy life "and environment" is indeed a fundamental constitutional right. The absence of explicit reference to the environment in Article 69, paragraph 1, which guarantees the right to a healthy life (and not the environment), calls for some degree of clarification. It is to be hoped that this lack of detailed explanation will not give rise to a different interpretations of Article 69, particularly in the event of changes in the Constitutional Court's composition.

It appears that the Constitutional Court anchored its determination regarding the right to a healthy life and environment on the judgments of the Court of Justice of the European Union (CJEU). This approach is somewhat curious, given that the Charter of Fundamental Rights of the European Union does not recognise an individual right to a healthy environment but emphasizes the need for a high level of environmental protection.<sup>45</sup> Notably, as the Waste Management Act serves as an implementing law that introduces several EU directives in the regulatory area of waste management and environmental protection into the Croatian legal order, the CCRC was guided by Article 141c of the Constitution.<sup>46</sup> The Constitutional Court emphasised the significance of environmental protection within the EU legal framework, quoting or referring to pertinent parts from specific judgments of the CJEU.<sup>47</sup>

45 | Article 37 of the Charter (OJ C 326, 26.10.2012), reads as follows: „A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. “

46 | Point 17.2 of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20). For Article 141c see fn. 33.

47 | C-24/19 A and others, Judgment of 25 June 2020, ECLI:EU:C:2020:503; C-323/13 European Commission v Italian Republic, Judgment of 15 October 2014., ECLI:EU:C:2014:2290; C-551/13 SETAR, Judgment of 18 December 2014, EU:C:2014:2467; and C-315/20 Regione Veneto, Judgment of 11 November 2021, ECLI:EU:C:2021:912.

In assessing the compliance of the contested decision with the constitutional guarantee of the fundamental right to a healthy life and environment, the CCRC began by acknowledging that waste disposal imposes restrictions on the right to a healthy life and a clean environment.<sup>48</sup> It continued to scrutinise whether the measures mandating the closure of landfills which fail to satisfy the legal standards for environmental protection, as well as the measures to redirect waste to landfills of local self-government units that have harmonised their operations with legal requirements, represent restrictions on the fundamental right to a healthy life and environment. Such restrictions would be permissible only if they accord with the principle of proportionality enshrined in Article 16 of the Constitution.<sup>49</sup>

The Constitutional Court did not find any constitutional infirmity in point II of the Minister's Decision, which ordered the closure of landfills that did not comply with the environmental protection requirements set by EU legislation.<sup>50</sup> However, the contested Decision also contains point III, which introduces a specific mechanism for diverting waste from the closed landfills to those that continue to operate and are located within the territory of other local self-government units. The CCRC construed this measure of waste diversion as an unequivocal limitation of the fundamental right to a healthy life and environment, particularly affecting the residents of local self-governing units compelled to accept diverted waste.<sup>51</sup>

In assessing whether such limitations on the fundamental right to a healthy life and clean environment were proportionate, the Constitutional Court acknowledged that the contested measure pursued a legitimate aim of waste disposal, which was not contested from the standpoint of health and environmental protection. However, the Constitutional Court emphasised that waste disposal will be accepted as legitimate disposal for the purpose of health and environmental protection only on condition that it is reduced to those quantities that are strictly unavoidable, namely waste that could not be otherwise processed or used in accordance with the prescribed hierarchy of waste management measures.<sup>52</sup> Given the established fact that waste disposal was permitted notwithstanding the absence of prior processing or recovery (see Chapter 3.1), the Constitutional Court concluded that allowing waste disposal without requiring its processing or recovery constituted a disproportionate limitation on the constitutional right to a healthy environment and a healthy life, as enshrined in Article 69.<sup>53</sup> In conclusion, the CCRC determined that the waste diversion mechanism, as currently formulated, fails to satisfy the proportionality requirement prescribed by Article 16 of the Constitution, insofar as it is incapable of attaining the objective of proper waste disposal. Accordingly,

48 | Point 17.3. of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).

49 | See fn. 24.

50 | Point 18.3. of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).

51 | *Ibid.*, point 19. and 19.1.

52 | *Ibid.*, point 19.3.

53 | *Ibid.*, point 20.2.

it is inadequate to justify the imposed restriction on the right to a healthy life and environment guaranteed to citizens under Article 69 of the Constitution.<sup>54</sup>

### **3.4 Citizens' constitutional right to local and regional self-government**

The Constitutional Court assessed the disputed Decision as constituting a limitation upon the guarantee enshrined in Article 128 of the Constitution, which secures to citizens the right to local and regional self-government. In doing so, the Constitutional Court examined the potential of citizens to utilise local self-government mechanisms to establish waste disposal regulations, aiming to safeguard health and the environment in the specific local areas where they reside. Given that the transport and disposal of waste represent a risk of environmental degradation and, consequently a limitation of the fundamental right to a clean environment and a healthy life, state authorities bear the obligation to ensure that only waste whose generation could not reasonably have been prevented is transported and disposed of. With the progressive closure of currently active landfill sites, a consequence which will ensue should the envisioned waste management system based on 11 waste management centres fail to materialise in the near term, the waste generated in the area of those local units that have already decommissioned their landfills will no longer be capable of being redirected to presently operational sites. In such circumstances, an entirely new solution will need to be identified to dispose of this waste. Furthermore, citizens living in local self-government units that were compelled to receive the diverted waste from other will themselves be left without a functioning local landfill and a mechanism for disposing of their own municipal waste. Such an eventuality would amount to the effective collapse of the existing municipal waste disposal system.<sup>55</sup>

The Constitutional Court found that there exists no statutory obligation of the central government to reimburse the local self-government units to which the waste is diverted for the costs incurred in financing the management of the landfill due to the obligation to receive the diverted waste.<sup>56</sup> Local self-government units cannot solely bear the burden of increased costs associated with managing a legal landfill, as the decision to redirect waste was made by the competent bodies of the central executive authority. The CCRC concluded that compensation for the increased costs of landfill management needed to be addressed within the framework of the model establishing the obligation to divert waste to landfills of other local self-government units.<sup>57</sup>

In addition to imposing disproportionate financial liabilities on certain local units, the Constitutional Court determined that the impugned waste diversion

54 | *Ibid.*, point 21.

55 | *Ibid.*, point 21.7.

56 | *Ibid.*, point 21.12.

57 | *Ibid.*, point 21.13.

mechanism impermissibly transfers responsibility from one set of local units to another. The representative bodies in the local self-government units that are obliged to take waste to their landfills lack any mechanisms that could influence the behaviour of those local self-government units whose waste they are compelled to accept. This structural imbalance renders it exceedingly difficult for them to fulfil the objectives of rational and controlled waste disposal. Under the disputed waste reorganisation mechanism, local self-government units must accept and manage any waste transferred to them from units that have failed to handle their landfills responsibly. These receiving units, being bereft of legal or practical instruments to influence the originators of the waste, are thus prevented from safeguarding the interests and well-being of their own citizens—particularly in circumstances where the waste they are required to receive does not even meet the legal standards for prevention or mandatory pre-disposal sorting.<sup>58</sup>

Thus, the Constitutional Court concluded that such an allocation of responsibility amounts to an explicit limitation of the right to democratically legitimise local self-government guaranteed by Article 128 of the Constitution—one which cannot be justified by considerations of necessity. Additionally, it contradicts the fundamental principles of the Waste Management Act and the Waste Framework Directive, which goes against the constitutional obligation outlined in Article 141c to respect the legal order of the EU.<sup>59</sup>

### **3.5 Execution of the landmark decision of the Constitutional Court**

The Constitutional Court repealed point III of the contested Minister's Decision. Pursuant to Article 31 of the Constitutional Act on the Constitutional Court, all decisions and orders rendered by the Constitutional Court are binding and must be observed.<sup>60</sup> Moreover, under Article 55, paragraph 2 of the same Act, the Constitutional Court may set a term when the repealed provisions shall cease to

58 | *Ibid.*, point 21.15.

59 | *Ibid.*

60 | Article 31 of the Constitutional Act on the Constitutional Court reads as follows: (1) The decisions and the rulings of the Constitutional Court are obligatory, and every individual or legal person shall obey them.

(2) All bodies of the central government and the local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.

(3) The Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and the rulings of the Constitutional Court.

(4) The Constitutional Court might determine which body is authorized for the execution of its decision or its ruling.

(5) The Constitutional Court may determine the manner in which its decision or its ruling shall be executed.

have legal effect.<sup>61</sup> Considering that repealing point III of the Minister's Decisions with the date of publication of the decision in the Official Gazette would create a constitutionally impermissible legal vacuum, the Constitutional Court decided to delay the termination of the point III for a period of six months from the date of publication.

The Ministry was accordingly obliged to adopt a new Decision within a period of six months. Moreover, the Constitutional Court determined that the Ministry, before adopting a new Decision, must take the necessary and specific measures and mechanisms by which, in all local self-government units, and especially in those local self-government units where waste disposal sites have been decommissioned and non-hazardous waste is redirected to other local self-government units, the following objectives are effectively realised:

- | the prevention of waste generation;
- | the prior recovery of waste;
- | the recycling of such waste as could not be prevented, with a view to reducing the volume ultimately consigned to disposal; and
- | the imposition of consequences upon those units of local self-government which, prior to the redirection of waste to neighbouring jurisdictions, fail to meet prescribed targets or to adhere to mandated measures.<sup>62</sup>

In a notably unusual intervention, the Constitutional Court took an additional step and stated that the competent Ministry possessed a range of viable options for complying with the Constitutional Court's decision within the prescribed period. By way of illustration, the Court drew attention to a series of recommendations issued by the European Commission to Member States deemed at risk of failing to meet the municipal waste targets. These include:

- | the imposition of mandatory requirements for sorting biowaste and the alignment of planned or existing processing infrastructure with the corresponding collection systems;
- | the promotion of inter-municipal cooperation in infrastructure planning and the procurement of services, in order to secure economies of scale and an equitable distribution of financial burdens;
- | the enhancement of the extended producer responsibility scheme;
- | the introduction of measures designed to incentivise waste sorting at the household level;
- | the implementation of more frequent collection schedules for separated waste streams in comparison to residual mixed waste; and

61 | Article 55, paragraph 2 of the Constitutional Act on the Constitutional Court reads as follows: „The repealed law or other regulation, or their repealed separate provisions, shall lose legal force on the day of publication of the Constitutional Court decision in the Official Gazette *Narodne novine*, unless the Constitutional Court sets another term.“

62 | Point 23.3. of the Decision and Ruling of the CCRC of 18 April 2023 (fn. 20).



- | the more strategic and effective deployment of European Union funds in the development of waste infrastructure, ensuring that co-financing supports waste prevention, reuse, and efficient recycling practices.<sup>63</sup>

It is indeed a rare occurrence for the Constitutional Court to provide so detailed and comprehensive an exposition of the means by which its decision may be implemented. Such an approach is typically reserved for circumstances in which the Court seeks to forestall any misapplication of its ruling and to obviate the need for the matter to be referred back to it.

The Minister was required to implement the Decision of the CCRC by 26 October 2023, upon the expiry of the six-month compliance period. Decision on Amendments to the Decision on the Order and Dynamics of Landfill Closure was accordingly adopted on 10 October 2023,<sup>64</sup> published in the Official Gazette on 18 October 2023, and entered into force the following day.

Following the new Decision, the Environmental Protection and Energy Efficiency Fund<sup>65</sup> will assume direct responsibility for co-financing the procurement of equipment and devices for the treatment of municipal waste, in addition to supporting rehabilitation programmes and the necessary expansion of landfill capacity to ensure continued operations pending the commissioning of the waste management centres. Simultaneously, the Fund's contribution to the co-financing of eligible costs for landfill rehabilitation and equipment acquisition has been increased to 90%. In addition, the new Decision imposes enhanced monitoring obligations concerning the reduction of waste disposal by all local self-government units transferring waste to other landfills. The Fund will co-finance the procurement of specialised equipment and devices for these units, which shall, in turn, be obliged to submit annual reports detailing the implemented measures and activities in relation to waste prevention, separate collection, recycling, and recovery.

## 4. Conclusion

As earlier studies have demonstrated, the Constitutional Court does address environmental cases;<sup>66</sup> however, its primary focus continues to lie in the review of the conformity of legislation with the Constitution or the legality of other sub-legislative normative acts. In doing so, the Court exercises its mandate to determine whether the competent authority adhered to the obligations established by the Constitution, particularly those emanating from the principles of the rule of law

63 | *Ibid.*, point 23.4.

64 | Decision on Amendments to the Decision on the Order and Dynamics of Landfill Closure, OG no. 120/23.

65 | For information about the Fund see its official website.

66 | See Blagojević & Majnarić 2023, 33–55; Staničić 2022, 127–160; and Ofak 2021, 85–98.

and the conservation of nature and the human environment as constitutionally enshrined values.

A significant constitutional shift occurred in 2001, when Croatia amended its Constitution to alter the nature of citizens' environmental rights. Prior to this amendment, the Constitution expressly recognised right of citizens to a healthy environment. Following the amendment, however, this right was reformulated as a right to a healthy life in 2001. By removing the explicit reference to a healthy environment, Croatia potentially weakened the protection afforded by the Constitution. However, in Croatian legal scholarship, the right to a healthy life is seen as an integral part of the broader right to a healthy environment. This interpretative approach holds that, despite the absence of a clear textual guarantee, the Constitution continues to safeguard environmental rights. Such a view was ultimately reaffirmed by the Decision of the Constitutional Court of 18 April 2023, which received a thorough analysis in Chapter 3 of this paper.

The CCRC's decision is distinguished by the remarkable depth and breadth with which the Constitutional Court examined the systemic challenges associated with waste disposal in Croatia. The Constitutional Court expressed serious concern that Croatia may exhaust the full capacity of its active landfills within the next decade. Through this landmark decision, the Constitutional Court provided a definitive interpretation of Article 69 of the Constitution, holding that it guarantees citizens the right to a healthy life and environment.

To date, citizens' associations in Croatia have yet to fully embrace the practice of resorting to litigation to compel governmental compliance with environmental protection regulations, particularly when compared with trends observed in other European jurisdictions, as discussed in the introduction of this paper.

Beyond the acute challenges posed by waste management, the European Commission frequently highlights other environmental problems in Croatia. These issues specifically pertain to shortcomings in flood protection, persistent non-compliance with the Urban Waste Water Treatment Directive, and widespread concerns over air quality.<sup>67</sup> Moreover, Croatia is increasingly impacted by climate change, a reality underscored by growing scientific and empirical evidence. Given its geographical position within the Mediterranean basin, Croatia is particularly vulnerable to the intensifying impacts of climate change.<sup>68</sup>

In this context, it is worth noting that climate litigation often employs a human rights-based approach.<sup>69</sup> Therefore, the CCRC's Decision of 18 April 2023 assumes heightened significance. In a situation where government bodies failed to take appropriate action to address pressing waste-related concerns, the Constitutional Court decisively intervened to uphold the constitutional rights of citizens to a

67 | See EU Environmental Implementation Review Country Reports for Croatia (fn. 25).

68 | Climate Change Adaptation Strategy in the Republic of Croatia for the Period Until 2040 With a View to 2070 (2020), 5.

69 | See Lewis 2018.

healthy life and environment. Citizens may now invoke Constitutional Court's arguments to demand that government authorities take swift, appropriate, and efficient actions to protect both public health and the environment from imminent risks or harm. It is thus anticipated that this Decision will have considerable influence on the trajectory of environmental adjudication and legislative development in Croatia, including with respect to climate change. Nonetheless, its true impact will depend on its invocation by the concerned public.

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