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The Right to a Healthy Environment in the Hungarian Constitution***

Abstract

The aim of the study is to present the development of the environmental law institutions founded up to the present day. Regulations concerning the protection of the environment had first been defined on international level before they appeared in the national legal system. Basic questions of environmental law are being analysed in this study. The history of environmental law is reviewed briefly from the 1950s to the present day both in international and national aspects as well as the constitutional foundation of environment protection within the right to a healthy environment and its Constitutional Court practice. This study will not touch upon the detailed study of the underlying principals of the national environmental law.

Keywords: right to a healthy environment, environmental protection, polluter pays principle, constitution, Constitutional Court.

1. Introduction

Problems concerning the protection of the environment started to increase significantly in the second half of the 21st century. Intensified exploitation of the environment both on international and national level demanded that environmental protection become a priority. Increasing production and consumer demand both contributed to growing ecological concerns. All the elements of the environment (earth, water, air, etc.) were immensely affected which has resulted in a stricter and more defined regulation as regards environment protection. In the past few decades, it has become ever so clear, both on international and states levels, that environment pollution has gone so far that it now prospectively endangers the survival of mankind. Environmental problems indicate the codependence of nations and peoples. Not a single nation, however powerful, can protect their environment without cooperation beyond its borders. Therefore, environmental protection inevitably has an international dimension. There are typically two tendencies contributing to making environmental protection laws. The first one is the preventing and regulating integrated pollution, which enables the regulation of the ecosystem as a whole instead of by sectors.

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This mechanism aims particularly to avoid the transboundary effects of pollution (spreading pollution from water to air for example). The second tendency is the use of economic means to manage and monitor measures taken. According to this latter approach, the government specifies aims and makes it possible for the members of a regulated community to share the burden of complying. As a result, international organizations such as the United Nations and the European Union, along with the nations seek to prescribe environmental targets and laws that would ensure the protection of the environment.

2. The development of environmental protection

The development of environmental protection and environmental regulations is one of the answers to the recognition of environmental concerns, whose aim is to sustain, or more precisely restore a certain balance.¹

When defining environmental law, it is equally important to acknowledge that the environment is a system. This system has elements which are in correlation therefore, the environment is much more than just a set of its elements, so its protection needs to be extended to include the relationships connecting the elements.²

There is a recent approach according to which environmental regulations cannot be separated from the protective requirements (such as technical or safety requirements) of the production process, but it is the integrated regulation of the work that affects the condition of the environment in consideration of the environment.

Thus, environmental protection applies not only to the protection but management, preservation, attendance, development, restoration, etc. and not only to endangering factors but usually natural resources, materials, energy. Regulations aim to pay attention to all these simultaneously.³

According to environmental protection law, environmental protection involves the totality of activities and measures, which aim to prevent endangering, harming, polluting of the environment. It also targets to reduce or eliminate the damage caused and restore to conditions to a level prior to the damage.⁴

However, implementing the regulation of environmental protection into the legal system has for long been a contentious question. When we review the literature, there are approaches according to which environmental law is: (a) the most recent and dynamically developing area of the legal system becoming an independent branch of law with specific principles and methods; (b) a functional branch of law focusing independently on the legal requirements of environmental protection; (c) mixed specialized law or overlapping laws with elements of public and private law; (d) not an independent branch of law but part of the traditional branch of laws; (e) has become devoid of purpose due to its status as an independent branch of law having been questioned and therefore it should not be dealt with.⁵

¹ Kerényi 2003, 76–78.

² Fodor 2015, 14.

³ Fodor 2015, 18.

⁴ Act LIII of 1995., 4. § 32.

⁵ Fodor 2015, 29.

As for the function of the environmental protection within the legal system, it could be stated that environmental protection cannot be considered an independent branch of law but rather as an area of law having a mixed nature. This area of law is connected to several other areas of law such as administrative law, civil law, criminal law, and specialized areas (agricultural law or financial law).⁶

3. The history of environmental protection

3.1. The development of environmental protection on the international level

The environmental dangers threatening the world are immense, many of them are global therefore the international community can only deal with these with concerted action. International law is a key means in the battle against the reduction of biological diversity and climate change as well as other significant environmental issues.

From the 18th century, provisions concerning environmental protection emerged. These were, for example the banning of hunting practices during mating seasons, or in the 19th century, the regulation of industrial factories as regards noise and air pollution.

Despite all the above, international environmental law only appeared in the 1970s with the adoption of the Stockholm Declaration at the first international environmental protection conference held in 1972. The principles stated in the Declaration were the foundation of modern environmental law. The Stockholm conference organized under the aegis of the UN symbolically means the beginning of environmental protection. Subsequently came upon laws concerning environmental protection, whose sectoral approach applied to specific environmental elements as part of economical and social processes.⁷

From the basic principles written in the closing document of the Stockholm environmental protection conference many are worth mentioning as this conference had a lasting influence on the environmental politics of the European Economic Community at the time: (a) everyone has the right to a healthy, human environment; (b) developing countries should be supported in their development and in making up their backlog; (c) in the purpose of the optimal utility of resources, environmental protection should be integrated into the decision-making process on development issues. systematic planning - in the coordination of economic and environmental interests; (d) the importance and support of environmental education and research; (e) countries have the sovereign right to utilize their natural resources according to their environmental policies without causing any harm beyond their borders; (f) the countries must cooperate in the protection of the environment and improvement of regulations; (g) the requirements for developed countries cannot be applied automatically to developing countries due to the issues of costs, value measures and the difference in natural environment etc.⁸

⁶ Csák 2008, 10.

⁷ Csák 2008, 10.

⁸ Fodor 2015, 72–73.

Following the Stockholm conference, the appetite for regulations greatly increased both on national and international levels. In 1982 the United Nations Assembly adopted the document called the World Chart for the Environment and in the same year, the UNCLOS, in other words the Montego Bay Naval law agreement was made.⁹

It was in 1992 when the Rio conference was held where the integrative aspect was promoted following the appearance of sustainable development, with the definition that specific environmental elements and environmental effects need to be inspected and prevented as a whole.¹⁰

In the Rio de Janeiro world conference held in 1992 with the title Environment and Development, new basic principles were laid down among which there are some that substantially refer to national judiciary, not just political or international: (a) in terms of sustainable development, the needs of the future generations must be ensured; (b) special attention needs to be paid to the needs of countries that are poorer and less fortunate regarding environmental impact; (c) global affinity (the principal of common, but distinguished responsibility) in terms of which the countries hold the responsibility for preserving the earth ecosystem in unity but fairly, according to their share of polluting of the environment; (d) individuals must be ensured the right to take part and be informed when it comes to making decisions; (e) harmony of the natural environment and environmental regulations; (f) polluter pay, etc.¹¹

The Johannesburg summit was held in 2002 entitled ‘sustainable development’ which pointed out the insufficiency in the implementation of the elements declared at the Rio conference, furthermore, it recorded the insufficiency regarding the issues of integrative protection. The reasons for insufficiency were: (a) the principle of integration does not work with sufficient efficacy; (b) more resources are being used than the ecosystem can provide; (c) there is a lack of long-term principals and connected policies in terms of finance, economy, and trade; (d) there is insufficient financial background for implementing new regulations; (e) the effect of globalization on the environment.

The documents adopted at the conference did not have mandatory power, at the same time they are very important as they shape the regulations of environmental law.¹²

There was another UN conference held in Rio de Janeiro in 2012 called ‘Rio+20’ on sustainable development. The adopted document entitled ‘The Future we Would Like to See’ confirmed the participant countries’ obligation of sustainable development, along with recognizing the validity of the principles adopted in 1992 in Rio. In regard to the principals of integration, the need for the integration of sustainable development dimensions was emphasized as the results of the past 20 years cannot be considered satisfactory in this respect. Revolutionary is the road to achieve sustainable development, the conception of the so called ‘green economy’ whose much favoured means are the so-called sustainable consumer and production models.¹³

⁹ Raisz 2011, 96.

¹⁰ Csák 2008, 10.

¹¹ Fodor 2015, 73.

¹² Csák 2008, 10.

¹³ Fodor 2015, 73.

4. Environmental protection regulations in Hungary

In Hungary the area of environmental protection was regulated with a framework by the 1976/II. act on human environmental protection. Provisions for some sectors' regulated laws were connected to the regulations based on the sectoral approach.

The integrative aspect appeared in the national environmental protection regulations from the 1990s. Primarily, the change of perspective was seen as a result of economic influence, considering the technological advancement, environmental impact beyond the borders, which involved environmental elements in complexity. The 1976/II act was an interlocutory stage between the speciality regulations and the currently effective 1995/LIII act on the general regulations of the protection of the environment. The insufficiency of the law adopted in 1972 were the lack of: (a) complexity; (b) integrative aspect; (c) environmental protection provisions; (d) responsibility; (e) prevention.

The law did not prioritize prevention, but otherwise handling or eliminating instead of decreasing environmental pollution, minimalizing emission, or recycling environmentally hazardous materials.

The 1995 law's innovative nature was to prioritize prevention, and introduce institutes for impact assessment (for example, in case of new establishments, the survey and prognosis of the impact on the environment and, on the other hand the product fee were introduced considering the principle of polluter pay¹⁴).¹⁵

Since the adoption of the environmental protection law, it has been modified several times much as the sectoral environmental protection regulations in many cases. From the 2000s the necessity of modifications was justified partly due to the fact that as part of the European Union, regulations must meet the Union's strict conditions regarding environmental protection. This has been completely achieved by today.

5. Right to the environment as the third generation right

Human rights are observed on an everyday basis. The common similarity in every reference regarding human rights is that by human rights we mean the important, strong and inevitable rights that an individual is in need of and entitled to. Every single social aim sooner or later becomes a human right: there are human rights to water, healthy environment, food, well being, development and so on. Qualifying for human right emphasises the importance of demand or need as human rights necessarily mean insurable rights. Governments and the legal system must ensure human rights unconditionally: the importance of this insurance is that human rights – they are always norms – must be implemented and maintained as positive rights by the legal system and most of all by government agencies specifying in law.¹⁶

¹⁴ See more: Csák 2011, 31–45.

¹⁵ Csák 2008, 11.

¹⁶ Jámor 2020, 993-994.

The importance and role of environmental protection in a country are defined by principal and constitutional level regulations. The right to the environment is in the Constitutional Law and it was mentioned in the Constitution effective until 2012. The right to the environment is a so called third generation right which means that it appeared later than other fundamental rights.

Human rights have several classifications, but the most widely used classification is the one based on the foundation of human rights according to which the rights men are entitled to belong to different generations. Most of the individual rights that belong to the first generation are traditionally called freedom rights. These ensure the individual their undisturbed life, activities and social position, and this freedom could be interfered and controlled by the state only in exceptional and reasonable scenarios. These are so called negative rights since the state, as the obligated, is demanded not to interfere. Freedom rights are further categorized into individual (citizen) freedom rights including the right to life and political freedom rights such as free speech.¹⁷ The framework of the first-generation rights is mostly similar since the subject of the right, in other words the entitled, is the individual, the obligated is the state or the persons acting on behalf of the state, and the subject matter is refraining from interfering or acting.

Second generation such as economic, social and cultural rights were the result of the change in the state's involvement. The 19th century capitalist system would not provide protection to the needy against suppression or deprivation, however, with the increasing redistribution of state resources and the limiting of private owners' independence, the state's involvement increased more and more in ensuring the citizens' welfare. Increasing is the number of Constitutions which include, within the people's entitled rights as the individual's entitlement, the state's requirement to interfere, the state's different economic, social and cultural obligations. Following the second world war most constitutional democracies included the economic (such as the right to go on strike), social (such as the right to healthcare) and cultural rights (such as the right to education) in their catalogue listing the basic rights.

The rights in the third generation of human rights were initiated by the rising global problems in the second half of the 20th century, problems like the differences between the developed north and the developing southern states, furthermore the occurring insolvable problems within some states. The right to a healthy environment is in this latter group of the third-generation rights.¹⁸

The right to the environment is a third generation right. It has several important features that distinguish it from the traditional rights – from the classical rights to freedom or economic, social and cultural rights. These features are the following: (a) being global means, it does not just ensure the rights of the individuals or their small or extended groups, but maintains the existence of human life and the human race, (b) the effort of a single nation is usually not enough for the right to the environment to prevail due to the global nature of the environmental problems, (c) a further feature of the right to the environment is that harming it has no direct and immediately felt effect, the damage caused will have its impact felt in a long term, immediate effects

¹⁷ Halmai & Tóth 2003, 83.

¹⁸ Halmai & Tóth 2003, 86–87.

could only be measured by sensors, (d) the importance of all these in the aspect of enforcing these rights is that the infringement will not bring pressure for immediate justice like in the case of restricting freedom.¹⁹

The right to a healthy environment is in mutual connection with two basic rights: the right to life and the right to human dignity.²⁰ According to the interpretation of the Constitutional Court *“the right to the environment is really part of the objective, institutional protection side of the right to life: it separately names the state’s obligation as a fundamental right regarding sustaining the natural foundations of human life.”*²¹

The right to the environment appears in a general definition in 1972 (Stockholm). The Stockholm Declaration’s I. fundamental principle lays down: People have the fundamental right to freedom, equity and appropriate living conditions in a quality of environment that ensures their dignity and prosperity.²²

Healthy environment can be specified in both a strict and a broader sense. In a strict sense: the lack of environmental pollution, environmental damage, the lack of permanent or temporary health conditions. In a broader sense, a healthy environment does not only mean that the health threatening pollutants are not present, but the healthy environment is a safe, undisturbed and aesthetic environment, in fact it also means environment – health.²³

6. The right to environment in the Constitution

Environmental protection was first included in the fundamental law (57. §) as a result of an amendment in 1972 in the form of the right the citizens are entitled to. As a result of the amendment to the constitution in 1989, the 18 § of the Constitution declared: The Hungarian Republic acknowledges and enforces everyone’s right to a healthy environment. Furthermore, the Constitution’s 70/D. § declaring the highest level of right to a healthy body and soul recorded that this right is guaranteed – among others – via the protection of the built and natural environment by the Hungarian Republic.²⁴ The fact of double mention already promoted environmental protection. According to the Constitutional Court, the use of the word ‘Constitution’ (including the right to a healthy environment and the state’s task regarding environmental protection in the means of implementing the right to a healthy environment) cannot be interpreted as a restriction of the right to a healthy environment.²⁵

In its decision 996/G/1990 AB, the Constitutional Court at the beginning of its operation declared that, on the grounds of the above constitutional provisions, *“the state is obligated to establish and operate specific institutions which serve the realization of the right to a healthy environment...the obligations need to include the protection of the natural foundation of life and need to be extended to the establishment of institutions managing finite resources...”*

¹⁹ Sári & Somody 2008, 317.

²⁰ Horváth 2013, 229.

²¹ Decision 28/1994. (V.20.) of the Constitutional Court.

²² Csák 2008, 13.

²³ Csák 2008, 14.

²⁴ Act XX of 1949, 70/D. § (2).

²⁵ Sólyom 2001, 612.

The 1990 decision along with the 28/1994 decision (from here on: environmental fundamental decision) reflects the interpretation of the Hungarian Constitutional Court regarding the right to the environment. Pursuant to these, the right to the environment belongs to the fundamental rights, therefore it is one of the constitutional values receiving the highest protection. Due to its specific subject matter or its connection to the other fundamental rights, it stands out. *“The right to the environment is neither a subjective fundamental right, nor it is a constitutional task or state objective, but a so called third generation constitutional right, its nature is still disputed and very few constitutions include it.”*²⁶

The fact that it is not a so called subjective fundamental right means that this right is *“independent and institutional protection in itself, namely a specific fundamental right that has a predominant and determining objective and an institutional protection side.”* Instead of the protection of the subjective rights the state’s obligation in this respect is providing organizational guaranties.²⁷

Therefore, the right to the environment does not mean that everyone – even from the state – would be able to claim rights and immediately (through legal proceedings) enforce it before the court, demanding an environmental condition which meets their individual needs. Nevertheless, the requirements laid down by the state – according to the Constitutional Court – must compliment the subjective side, in other words, must ensure the same (high) level of protection as if it were a legitimate, and classic fundamental right (or a subjective right).²⁸

The most important means of enforcing the right to the environment is legislation. In the first place the legislator’s obligation is to make legislations that ensure the constitutional values, in the present case providing the legal framework of the sensible management of natural resources. It does not only mean that the legislator particularly needs to make environmental legislations, but that they need to consider the affected environment in regulating the different living conditions (integration). The legislators are not obligated to ensure the protection level required by the scientists (or the maximum level) as they need to consider the achievability, the economic and sociopolitical objectives as well as other constitutional values (for example the freedom of possession and businesses). Therefore (if we exceed the necessary requirements of the protection of life) the sufficient protection level in space and time may be different or it might change as regards environmental protection. However, as the issue is the environmental foundation of human life, the level of protection must be high. According to the Constitutional Court, it is also a basic requirement that the legal order must prevent the condition of the environment from deteriorating. In case the regulations are not able to operate, or they cannot protect the environment, it means that the legislators made a mistake on the level of the protection, or the state did not establish the proper institutional system and organizational guarantees to enforce the regulations. However, the insufficient choice of the level of protection – according to

²⁶ Fodor 2006, 44.

²⁷ Fodor 2006, 45.

²⁸ Fodor 2015, 105.

the principal literature – can only have constitutional law consequences in extreme cases.²⁹

From all the requirements by the Constitutional Court is outstanding the non derogation principle.³⁰ In this decision the Constitutional Court recorded that *“the right to a healthy environment includes the Hungarian Republic’s obligation that the state cannot reduce the level of environmental protection ensured by the environmental protection regulations unless it is inevitable in the implementing of other fundamental rights or constitutional values. The deduction rate of the level of protection still cannot be out of proportion when it comes to the achievable target.”*³¹ The board pointed out that the right to a healthy environment is not an absolute right, it could also be limited according to the fundamental right test laid down by the Fundamental Law.³²

The non derogation principle does not seek the choice of the first protection level, but to change the previous one. The derogation protects the previously chosen – already achieved with the legislations – level of protection from decrease, in other words the legislators cannot possibly decrease the achieved level of protection during the course of the legal regulation. The explanation for this is that decreasing the requirements regarding environmental protection could lead to the deterioration of the environment in a way that it could be irretrievable later. Therefore, this – as the environmental foundation of human life is in question – cannot be allowed. There could be many reasons in practice for the decrease, but the Constitutional Court, in order to avoid the disadvantageous consequences, the condition of the environment could have, (in theory) only in limited cases (in practice at no time) acknowledges such reasons as constitutional. Merely an economical reason or enforcing the freedom of businesses and property rights are not sufficient for the decrease.

Based on the derogation the step back is usually not a possibility unless it is absolutely necessary in order to enforce a constitutional value.³³

The Constitutional Court in its decision of 14/1998. (V.8.) on the one hand repeated the implemented decisions according to the 1994 decision, on the other hand it acknowledged that the heavy involvement of the environment is necessarily inherent in the development policies: *“There is not a single developed country that would be capable of guaranteeing, in its whole area without differentiating, the minimal involvement of the environment. The improvement of the living conditions for humans or even maintaining their level is impossible without production investments or the development of the infrastructure, as railway construction or town developments will inevitably increase the previous involvement of the environment in the given area.”*³⁴

7. The right to the environment in the Fundamental Law

The Fundamental Law includes several innovative provisions in the matter of environment with an outstanding concern regarding the interest of the future

²⁹ Fodor 2015, 107.

³⁰ See more: Bándi 2017, 9–23.

³¹ Decision 28/1994. (V.20.) of the Constitutional Court.

³² Decision 17/2018. (X.10.) of the Constitutional Court.

³³ Fodor 2015, 108.

³⁴ Hermann 2017, 96.

generations.³⁵ At the time of the adaptation of the Fundamental Law, the legislators took into consideration the basic findings the Constitutional Court had adopted in its twenty-year-practice.

The requirements of preserving and maintaining environmental protection were raised to fundamental law level by section 1 of article P) of the Fundamental Law, these exemplary requirements, name which specific environmental values need to be protected by everyone: *“Natural resources, especially farmland, forests and water resources, biological diversity, most importantly native plants and species of animals as well as cultural values contribute to a country’s common inheritance therefore it is the state’s and everyone’s obligation to protect, maintain, and preserve them for the future generations.”* A significant improvement needs to be emphasized, namely that the Fundamental Law now points out ‘everyone’s’ commitment, so it extends the circle of the obligated as opposed to the Constitution, in which only the state’s commitment was emphasized regarding environmental protection. According to the Fundamental Law environmental protection is every natural and legal individual’s obligation.³⁶ The right to a healthy environment was declared on the one hand as a right everyone is entitled to, on the other hand, the individual responsibility appears in connection to environmental protection.³⁷

This regulation confirms the requirements developed previously by the Constitutional Court regarding the state’s obligations, the initiation of sensible farming and the citizens’ responsibility to cooperate in the protection of the environment (this latter has not been an element in the system of rights and obligations stated in the Constitution).

Environmental protection, as the obligation of the state and the citizens, was separately regulated in this section: this obligation is the protection, maintenance and the preservation of the environment for the future generations. Mentioning the future generations is also forward thinking, a rule warning the state to consider long term aspects. The Constitutional Court explained that the present generation has three obligations regarding the preservation of natural resources for the future generations: the preservation of the possibility of choice, quality and accessibility.³⁸

These principles help the evaluation of the present and the future generations’ interest in equal aspects, creating a balance in enforcing the three obligations as stated in article P).³⁹

In 3104/2017. (V.8.) of the Constitutional Court decision the board explains that the Fundamental Law section 1 article P is a pillar of the institutional protection guarantee ensuring the right to a healthy environment as a basic right. This pillar states that based on the Fundamental Law, it is everyone’s obligation and general constitutional responsibility to protect, maintain the natural and built environment, the nation’s common, natural and cultural inherited values and preserve these for the future generations. The sustainability requirement founded for the constitutional protection of the nation’s common inheritance appears in the Fundamental Law as an achievement

³⁵ Raisz 2012, 43.

³⁶ Gáva, Smuk & Téglási 2017, 17.

³⁷ Csink & T. Kovács 2013, 19.

³⁸ Szilágyi 2018, 80.

³⁹ Decision 13/2018. (IX.4.) of the Constitutional Court.

of constitutional development, which can, as new constitutional value, place basic rights and other constitutional values in new perspective of development. The constitutional responsibility for the nation's common inheritance is general as well as joint and several in the Fundamental Law. However, based on the practice of the Constitutional Court concerning the right to a healthy environment, the state has a kind of primacy and authority within the general range of responsibilities. In fact the state is obligated to enforce this responsibility by institutional protection guarantees as well as by the establishment of institutional protection, correction and putting these into effect. Therefore, the entire content regarding the constitutional responsibility for the nation's common inheritance is framed and developed by legal practice, by Constitutional Court practice and future legal development in addition to the enforcement of the institutional protection guarantee ensuring the basic right to a healthy environment and the requirement for legal certainty.⁴⁰

In addition to the right to a healthy environment, the obligation for sustainable development is specifically laid down in the Fundamental Law. In this regard, article Q) refers to the state's international responsibilities when it states that *"Hungary...in the interest of sustainable development of mankind aims to cooperate with all countries and nations of the world."*

The right to a healthy environment is necessarily in connection with the right to a healthy body and soul laid down in article XX. of the Fundamental Law. Article XX. lays down the right to health and the means of enforcing this right, in many ways connecting it to the requirements regarding the environment: This *"...right is enforced in Hungary by providing an agriculture that is free from genetically modified live-stock, providing healthy food and water as well as ensuring the protection of the environment."* This provision, regarding water and food, establishes the state's obligation, in providing a more tangible service (drinking water as one of the environmental services of water supply) according to the present practice and the government's objectives, as well as the safety of the distribution of a product line (regulations concerning the safety of food, the establishment of an institutional system).⁴¹

The section 1 of article XXI. in the Fundamental Law includes, identically to the Constitution, that *"Hungary recognizes and enforces everyone's right to a healthy environment."*

In its decision 16/2015 (VI. 5.) the Constitutional Court stated that the ensuring and enforcing the right to a healthy environment in section 1 of article XXI. fulfills the state's objective drawn up in the section of article P). Maintaining the achieved level of protection of a healthy environment, as a result, ensures the accomplishment of the state's cited objective and the enforcement of the basic right to a healthy environment.

Reference to the responsibilities of the polluter appears as an annex in the Fundamental Law as well as the prohibition by the Fundamental Law to dump or traffic hazardous waste across the border: *"... (2) Anyone causing harm to the environment is obligated – determined by the law – to restore or cover the cost of the restoration. (3) It is forbidden to enter Hungary with hazardous waste for the purpose of dumping it."* The first regulation refers to the legal responsibilities of the environmental law⁴² which is connected to the principles

⁴⁰ Decision 3104/2017. (V. 8.) of the Constitutional Court.

⁴¹ Fodor 2015, 111.

⁴² See more: Fodor 2020, 42-66.

of environmental law (the principle of polluter pay which is raised to constitutional level by the Fundamental Law). Regulations on waste⁴³ is unprecedented in Europe, and regarding its content – as waste is considered goods in the EU – it is the regulated based on the restrictions on the free transport of goods. Regarding its bonding power, it cannot be enforced directly, but provide guidance for further legislative proposals.⁴⁴

The Constitutional Court in its decision 3114/2016. (VI. 10.) declared that the right to a healthy environment must be ensured by the state in its obligation of objective institutional protection, furthermore, the step back of the once achieved level of environmental protection must be justified by the state in consideration of the necessity and scale and along with applying other basic rights. The board also emphasized that “...*the objects of the protection regarding the right to a healthy environment are the external phenomena that could be influenced by the state, and which are directly able to have an effect on human health as well as contribute to achieving the regulation objectives of the Fundamental Law by the state’s regulations. The object of the protection regarding the right to a healthy body and soul is the citizens’ physical integrity and well-being. Although the objects of the protection are different in the two basic rights, they are necessarily interconnected as in some cases the violation in the right to a healthy environment could as well mean the restriction of the right to physical and spiritual health. Nevertheless, they share similarities in dogmatic aspect of the constitutional right in a way that only actual restriction proposes the possibility of the violation of fundamental rights.*”

8. Closing thoughts

Environmental protection all over the world has received great significance since the middle of the 20th century. Air pollution, the lack of safe drinking water, trade and disposal of hazardous goods and waste, soil erosion, global climate change and decreasing biological diversity in a wide range demand measures to provide favorable environmental conditions for life and the well-being of mankind.

To establish a sustainable future requires universal actions in decreasing the long-term negative effects concerning the economy, society and the environment as well as in recognizing the need for changes.

Nowadays, communication networks make it possible to faster raise the awareness of the existence and extent of environmental problems. However, the large-scale mobility of people, products and goods can also contribute to the problems, for example by bringing in non-native species or spreading pollutants. Excessive consumption means a threat to the exhaustion of – living and non-living – resources while the increasing emission of greenhouse affecting gases harmfully change the global climate. High population density heavily affects the resources and causes pollution to an extent which exceeds the assimilation ability or capacity of the Earth. Resulting from the nature and range of human activity, there are constantly emerging problems, consequently modifying the European Union and international environmental protection regulations is a constant need.

⁴³ See more: Csák 2014, 16–32.

⁴⁴ Fodor 2015, 113.

In Hungary regulations of the basic issues of environmental protection are in accordance with international and EU trends. A provision regarding the right to a healthy environment was also included in the Constitution which provision was interpreted by the Constitutional Court's practice and was filled with content. At the same time, it established a strong constitutional requirement for the legislator (for example the non derogation principle). The Fundamental Law confirmed the constitutional foundations of the right to a healthy environment as well as the protection of the environment as an annex to the previous regulations of the Constitution.

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