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## Legal Regulation of the Right to a Healthy Living Environment in Slovenia and Case law of Slovenian Courts

Lucija Božič

*(Student at Law faculty, University of Ljubljana, Slovenia)*

**ABSTRACT :** The paper deals with regulation of the right to a healthy living environment in the Slovenian legal order. Human have changed and adapted their natural environment up to a degree where the negative impact of their manmade alterations on their living environment exceeds the impact of natural phenomena. In order to prevent the environmental catastrophe that threatens us, we have to establish adequate legal protection of the environment. The right to a healthy living environment is regulated in Article 72 of the Constitution of the Republic of Slovenia, which is the highest legal act in the Republic of Slovenia. The right is not a part of the human rights charter, but the constitutional court of the Republic of Slovenia has acknowledged its nature as a human right. The right is regulated in the Environment Protection Act and the Obligations Code. An individual who is directly affected by excessive environment interventions may start certain permitting procedures or initiate a procedure to stop the intervention in the environment. The case law in this area is well developed, appearing mostly as the compensation for noise and odor immissions.

**Keywords** -*environmental intervention, human right, principle of protection of rights, right to a health living environment*

### I. INTRODUCTION

Environmental protection is one of the mostdiscussed topics today. Interventions in the environment have a significant impact on our lives, as well as the lives of the future generations. Cessation of the excessive environmental interventions would improve the state of the environment, which is now polluted in all areas. The Report on the state of the environment in the Republic of Slovenia for 2017 ranks air pollution and noise pollution among the most important areas where adverse health effects occur and further action by the state will be required. Despite the improvements, measures in the field of water management and waste management must continue to be properly implemented. [1]

When considering conservation of nature and movements toward moderate pollution, we must not only look at the current situation, but we must also look to the future and take into account the long-term consequences of our actions. The right to a healthy living environment has evolved due to accelerating and uncontrolled technological progress, with the aim of maintaining a natural balance that will enable humans to survive.

The establishment of a legal framework is extremely important, as it gives a certain standard of eligibility to an individual, while on the other hand it encourages the prevention of excessive interference in the environment. The pollution of the environment has already exceeded the critical limit several times due to excessive interventions. Hence, the international community stepped together and adopted several binding and non-binding actsThe first important legal act is the 1972 Stockholm Declaration on the Human Environment, in which environmental protection is considered an essential element of human rights, in particular the right to life and health care. The Aarhus Convention is a more recent document, which in the introduction mentions that every individual has the right to live in a healthy environment, that citizens can exercise their right to have access information, participate in decision-making and access to environmental protection matters. [2]

The national legislation of the state is also important, which through various mechanisms tries to comply to the agreed upon international treaties. The right to a healthy living environment in Slovenia is already guaranteed at the constitutional level. It is also mentioned in the Environmental Protection Act and obligations Code, which regulates the legal protection of this right. In the following paragraphs I will present the legal regulation of the right to a health living environment in Slovenia in the Constitution of the Republic of Slovenia and different acts and possibilities of legal protection.

## II. CONTENT OF THE RIGHT TO A HEALTHY LIVING ENVIRONMENT

To understand environmental legislation and analyze the legal protection of the right to a healthy living environment, it is necessary to define the concept of a healthy living environment. The right is defined in the Constitution of the Republic of Slovenia in article 72, which states that everyone has the right to a healthy living environment in accordance with the law. Furthermore, it empowers the legislator to take care of a healthy living environment and to determine the content and scope of this right.

In Slovenia, the environmental law is generally regulated in the Environmental Protection Act, in which this right is not directly defined. Article 3 defines the concept of the environment as that part of nature to which the influence of human activity extends or could extend. The previous Environment Protection act defined also the concept of living environment as a part of the environment where the impact on humans is direct. The new act does not contain this definition, nevertheless we can conclude that the definition from the new act contains the concept of living environment. In order to ensure a healthy living environment, it is necessary, as already mentioned, to protect against harmful interventions and burdens, which are defined in Article 3 of Environmental Protection Act as any human behavior or omission that may affect the environment by harming human health, well-being and quality of life, and the survival, health and well-being of other organisms. Burden on the environment means any intervention or consequence of an intervention in the environment that causes environmental pollution, a risk to the environment, environmental damage or the use of a natural asset. [3]

The prevailing belief in legal theory is that humans have the right to environmental protection, which must be ensured by state or social authorities by protecting this right and exercising general protection of nature. Nature protection does not only mean protection against pollution, but also the reduction of unnecessary noise and other harmful sources, and the provision of a suitable urban environment. Interventions in the environment cannot be completely prevented, but they must be limited. [2] The Environmental Protection Act stipulates that it is an excessive burden on the environment when the burden exceeds the emission limit values, standard environmental quality, the right to act or the permitted use of a natural asset.

Such an interpretation has been repeatedly emphasized in the decision of the Constitution Court which states that the right to a healthy living environment is protected by standards that apply to interventions in space and by standards or norms that ensure that there is no such environmental impact that would be so excessive as to endanger human health. Unacceptable interventions in the environment can occur in cases, where the aforementioned impacts are excessive loads on the environment. The systematic issues of ensuring the right are regulated in the Environmental Protection Act. In Article 17 act authorizes the Government to prescribe limit values for emissions of substances or energy into air, water or soil and together with them mandatory measures in relation to their achievement. These emission limit values set by the Government present one of the most important bases for exercising the right to a healthy living environment, as these are norms that ensure there are no such environmental impacts that would be so excessive as to endanger human health. [4]

The right to a healthy environment is constantly breached by river, noise, air and soil pollution, segregation of agricultural land, the devastation of forested areas as well as uncontrolled discharges from industry. Mismanagement of waste, illegal constructions, non-compliance with the basic principles of spatial planning, poor environmental information, and problems related to the public decision-making process, extensive judicial proceedings, etc. remain a great concern. [5]

## III. ARTICLE 72 OF CONSTITUTION OF REPUBLIC OF SLOVENIA

Article 5 of the Constitution of the Republic of Slovenia (after the Constitution) imposes on the state the care for the preservation of natural wealth and cultural heritage and the creation of opportunities for the harmonious civilization and cultural development of Slovenia. Article 8 imposes a duty on the state that laws and other regulations must be in accordance with the generally applicable principles of international law and international treaties binding on Slovenia. Ratified and published international treaties are directly applicable. [6]

The right to a healthy living environment is a constitutionally protected right although the Constitution does not define it in the charter on Human Rights and Fundamental Freedoms, but in the charter on Economic and Social Relations, that does not deny its nature of human right and related guarantees of its provisions, control and sanctioning in case of violations. The Constitutional Court of the Republic of Slovenia has already defined the right to a healthy living environment as a right that has the same protection as the rights stated in the chapter on human rights. [7]

Article 15 of the Constitution states that human rights and fundamental freedoms are exercised directly on the basis of the Constitution. The law may prescribe the manner of exercising human rights and fundamental freedoms when so provided by the Constitution, or if this is necessary due to the nature of an individual right or freedom.

Article 72 of the Constitution stipulates: "Everyone has the right to a healthy living environment in accordance with the law. The state takes care of a healthy living environment. For this purpose, the law determines the conditions and methods for performing economic and other activities. The law determines the conditions and to what extent the perpetrator of damage to the living environment is obliged to compensate the damage. The protection of animals against torture is regulated by law." this provision imposes on the state an active role in caring for and being responsible for a healthy living environment. The state can only adopt such regulations and measures to maintain the balance in nature. For that purpose, the law must determine the conditions and methods for performing economic and other activities. The state must therefore regulate by law the content and scope of the right to a healthy living environment, the conditions for carrying out economic activities and the conditions and scope for compensation for damage caused by a person in the living environment. This does not mean, however, that the state must ensure the existence of such an environment, but that it must take such normative and other measures, thus establishing the legal framework for a healthy living environment. [8]

The right to a healthy environment is protected by standards that apply to the construction of facilities and by standards or norms that ensure that such environmental impacts are not created as to be so excessive as to endanger human health. A healthy living environment is one of the key conditions for ensuring the health of every individual. As health is our fundamental value, people are extremely sensitive to the adequacy, appropriateness and prudence of decisions of the state and the authorities on possible interventions in the environment, which can significantly change the quality of life and affect our health. [3]

Other constitutional provisions are also important for the protection of the environment, for example on the ecological function of property in Article 67, expropriation in Article 69, public goods and natural resources in Article 70, protection of land in Article 71, protection of the natural and cultural heritage in Article 73 and restrictions on free economic initiative in Article 74.

#### **IV. LEGAL PROTECTION AND PRINCIPLE OF PROTECTION OF RIGHTS**

In Slovenia, we have two types of protection of the right to a healthy living environment. The first form is the state's liability for damages. The state has a duty already on the basis of the Constitution and the Environmental Protection Act to take care of a healthy living environment and is liable for damages under the conditions and scope determined by law, just like other perpetrators. We must separate two claims of the beneficiaries, the responsibility of the state as the cause of the burden on the environment of the failure to perform the tasks referred to in the second paragraph of Article 72 of the Constitution and the responsibility of the state for the burden of the environment caused by another entity. [2]

The second form of the right to a healthy living environment is based on various laws, we are no longer talking about the responsibility of the state but of legal and natural persons. The basis for this type is Article 14 of Environmental Protection Act, Article 133 of the Obligations Code which contains the claim for removal of damage. Then we have claims in Article 134 on the cessation of violation of personal right and in Law of Property Code in Article 75 about prohibited imission.

In the following, I will elaborate on another form of the protection of the right to a healthy living environment namely the regulation in the Environmental Protection Act and the Obligations Code.

Environmental Protection Act comprehensively regulates a part of the field of environmental protection law, and some parts of the environment are regulated in more detail in sectoral laws and by-laws. The Environmental Protection Act regulates the right to a healthy living environment, as required by the constitution to the legislator. The right is directly mentioned in Article 14 entitled The principles of protection of rights. The content of the article reads: Individuals or legal persons to exercise the right to a healthy living environment before the court require the holder of the intervention to stop the intervention if it would cause excessive burden on the environment or if it would pose an immediate threat to human life or health. However, the start of an environmental intervention may also be prohibited if it is demonstrated that it is likely to cause such consequences. [3]

The act imposes a wide range of actively legitimized entities that can request judicial protection, these are individuals as well as societies, associations and organizations. Therefore, in this case, we are talking about actiopopularis. These subject may require the operator to stop the intervention for two alternative reasons: in the event of already caused or causing an excessive burden on the environment or if it poses a direct threat to human life or health. Prohibition of the commencement of the intervention may be required only in the case of meeting the standard of high probability that damage will occur. The act also grants the Ombudsman the power to protect this right.

Demonstrating an imminent danger to human life and health can prove problematic in practice, as human health is also affected by other activities and an individual's resilience, the courts must therefore decide on this case on a case-by-case basis. In practice, a prohibitory action is not used to the difficulty of proving the

consequences of encumbrance and unreliability, scientific finding may be deficient or research has not been carried out at all, there is also an obstacle to the high financial burden of proving with experts, etc.

For the protection of the right to a healthy living environment, the relevant provisions of Article 133 of the Obligations Code state that everyone may require another to remove a source of danger from which he or an indefinite number of people disturbance or damage, if the occurrence of disturbance or damage cannot be prevented by appropriate measures.

The court shall, at the request of the interested individual, take appropriate measures to prevent the occurrence of damages or disturbance or to remove the source of danger at the expense of its possessor if he does not do so himself. If damage occurs in the performance of a public benefit activity authorized by the competent authority, only compensation in excess of normal limits may be claimed. However, even in this case, justified measures may be required to prevent or reduce the injury.

As we can see, just like the actiopopularis in the above case, it is possible to file a lawsuit with a request to remove the source of danger, even by one who is not directly threatened by the damage. It is enough to prove that there is a treat of greater harm to an indefinite number of people. In addition, the Obligations Code does not only protect against emissions in relations between owners and users of real estate, as provided in Article 75 Law of Property Code. Protection against emission and other hazards has been established for the benefit of all endangered persons, as well as the protection of the human environment. Based on this Article it is possible to request: the removal of the source of danger, the prohibition of activities to the operator and to impose a duty on the operator to act in a way that harmful effects on the environment will be prevented. [2]

The advantage of the regulation under Environmental Protection Act over the regulation under Article 133 of the Obligations Code is a wider circle of persons against whom judicial protection can be exercised. It also covers persons who carry out a generally useful economic activity for which they have obtained an administrative permit and also persons who act in accordance with the regulations and the obtained administrative permits.

## V. CASE LAW

The courts have ruled on the right to a healthy living environment and related claims on several occasions. Most claims relate to the state's liability for damages, and thus to the award of damages. If the state does not fulfill this duty, regardless of whether it has sufficient budgetary resources, and there is an excessive burden on the environment, it is liable for damages. [3]

According to old case law, the courts assessed the monetary compensation claim on the basis of Article 133 of the Obligations Code in the light of the answer to the question whether the damage exceeded the normal or customs limits. These limits are usually set out in the regulations on permitted amounts of emissions, but if certain limits are not set, this does not mean that judges cannot find a violation. Many cases in the case law have concerned excessive road noise. The general increase in traffic on transit roads is not something special, as long as the noise does not exceed the limit or already critical values. [9]

The Supreme Court of the Republic of Slovenia has repeatedly emphasized that living in an urban environment requires a certain degree of adjustment and tolerance for immissions from the individual, which, however, must not exceed normal limits. An individual cannot be expected to suffer immissions, which may affect his or her health upon brief exposure, without adequate compensation. Whenever this limit is exceeded, a causal link has been established between the damage and the conduct of the perpetrator.

The courts did not take into account that every individual is also obliged to take care of their health and a healthy living environment. In addition, they have a duty to reduce the damage under the fourth paragraph of article 133 of the Civil Code, which requires the implementation of reasonable measures to prevent or reduce the damage from the injured party, which the courts neglected in their decisions. If he does not take action to prevent or reduce the damage, his compensation should also be reduced.

In 2018, there was a change in case law with the judgment VMS Judgement and decision I Cp 748/2018, in which the court wrote that it does not follow from the Constitution that the state would guarantee a healthy living environment for everyone. Establishing automatism regarding the assessment of compensation when the encroachment on the environment exceeds a certain prescribed limit should not yet be the only reason for assessing compensation. The financial capacity of the State should be taken into account, as liability should not be provided so broad that would jeopardize its function. The court also mentions a number of lawsuits filed by residents along the Pesnica - Vučja vas road and residents of Cankarjeva and Tišinska streets in Murska Sobota. Until the Pomurje motorway was built, passenger and freight road traffic (especially international, with Hungary) ran along the road through the settlements. People therefore suffered increased noise, vibrations and other road impacts. The residents based their claims on the Article 133 of Obligations Code, according to which compensation for damage caused by an otherwise generally useful and permitted activity may be claimed to the extent that the damage exceeds normal limits. The Court emphasized that the administrative rules on permitted immissions are only an orientation to which the court is not bound. They had

to take into account that the interference with the rights of the individual is justified only by the common interest or the rights of others. And it is necessary to weigh between the interests of the individual or society, and to ask about a fair balance and possible measures to eliminate or reduce the interference. For all these reasons, the court reasoned that in this individual case the plaintiff is not entitled to compensation for a small excess of the usual amount of immissions. [10]

There is also the problem of proving causation, so in theory there could be a case where an individual's health is actually at risk and he or she would not only suffer from the mental pain and cannot be compensated for failing to prove causation. If he or she does not suffer health, the damage could be reimbursed as property damage when it makes more sense (e.g. the cost of replacing windows). Such an interpretation would be more in line with existing rules and with the interpretation used in foreign legal practice which justifies such immissions as public law immissions. The court has already mentioned that the defendant must be allowed to choose appropriate measures to immissions could be prevented or reduced. This would also be in line with the theory that the primary claim to preventive measures should be.

The legal order should not promote compensation protection, as this may prove to be useless, especially for large polluters (industry), and the damage to the environment will not be rehabilitated effective enough. Once again, however, the state must provide fair compensation to the individual in any case where the state of adverse environmental impacts is such that it poses a serious threat to the health or life of the individual and cannot be prevented in any other way. [3]

## VI. CONCLUSION

The Slovenian legal regulation of the right to a healthy living environment is already enshrined in Article 72 of the Constitution. The third paragraph stipulates that the perpetrator of the damage in the living environment is obliged to compensate the damage. However, it does not provide grounds for a constitutional appeal because the constitution provision refers to an act. The constitution thus connects with the law not only the right to a healthy living environment, but also the obligation to compensate. This constitutional right and obligation therefore cannot be an independent basis for asserting a claim for damages.

The Environmental Protection Act gives individuals and organizations the possibility to request from the court with a lawsuit to order the carrier of the intervention in the environment to stop the intervention or to prohibit the holder of the intended intervention from performing such an intervention. Despite the legal basis, the case law based on Article 14 of Environmental Protection Act does not appear. The case law is based on Article 133 of the obligations Code, which stipulates that one person may require another to remove a source of danger from which he or an indefinite number of people is in greater harm, and to refrain from activities which give rise to disturbance or damage, if the occurrence of disturbance or damage cannot be prevented by appropriate measures.

For the effective protection of the right to a healthy living environment in the Republic of Slovenia, it will be crucial to demand the preventive action of the state and the simplified judicial protection of this right.

## REFERENCES

- [1] Environmental report in the Republic of Slovenia for 2017, available: [http://mop.arhiv-spletisc.gov.si/fileadmin/mop.gov.si/pageuploads/pomembni\\_dokumenti/porocilo\\_o\\_okolju\\_2017.pdf](http://mop.arhiv-spletisc.gov.si/fileadmin/mop.gov.si/pageuploads/pomembni_dokumenti/porocilo_o_okolju_2017.pdf)
- [2] J. Miklavčič, *Varstvo pravice do zdravega življenjskega okolja v Republiki Sloveniji od leta 1990*, diplomsko delo, Fakulteta za družbene vede Univerza v Ljubljani, 2003.
- [3] B. Horvat, *Pravica do zdravega življenjskega okolja in obveznost države zagotavljanje zdravstvenega varstva*, magistrsko delo, Law faculty University of Ljubljana, 2017.
- [4] Judgment of Constitutional Court of Republic of Slovenia: U-I-80/04, 24. November 2005
- [5] H. Jashari, Public participation in Environmental Matters in Kosovo, *Public participation in environmental matters, with an emphasis on public participation in the adoption of environmental regulations: collection of written contributions / 4th International Conference on the Environment and Human Rights*, Ljubljana, Slovenia, 2017, 120-125
- [6] K. Marzel, The significance of the public for the respect of human rights and for achieving legitimacy of decisions in environmental matters, the perspective of the Human rights Ombudsman of the Republic of Slovenia, *Public participation in environmental matters, with an emphasis on public participation in the adoption of environmental regulations: collection of written contributions / 4th International Conference on the Environment and Human Rights*, Ljubljana, Slovenia, 2017, 40-47
- [7] Decision n. Up 88/94, 31. May 1996 and Odl US 5, 201
- [8] M. Ocepek J. Hanžel, The hollow right to public participation, *Public participation in environmental matters, with an emphasis on public participation in the adoption of environmental regulations:*

*collection of written contributions / 4th International Conference on the Environment and Human Rights*, Ljubljana, Slovenia, 2017, 48-71

- [9] Judgement of High Court in Maribor: VSM sodba I Cp 619/2014 and VSM sodba I Cp 705/2014  
[10] Judgement of High Court in Maribor, VSM Judgement and decision I Cp 748/2018