



Integration of Environmental Justice in High Education

„Essays on Practical Perspectives of Environmental Justice“



Rule of Law and Human Rights Global Programme



Integration of Environmental Justice in High Education „Essays on Practical Perspectives of Environmental Justice“



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Integration of Environmental Justice in High Education
„Essays on Practical Perspectives of Environmental Justice
in North Macedonia“

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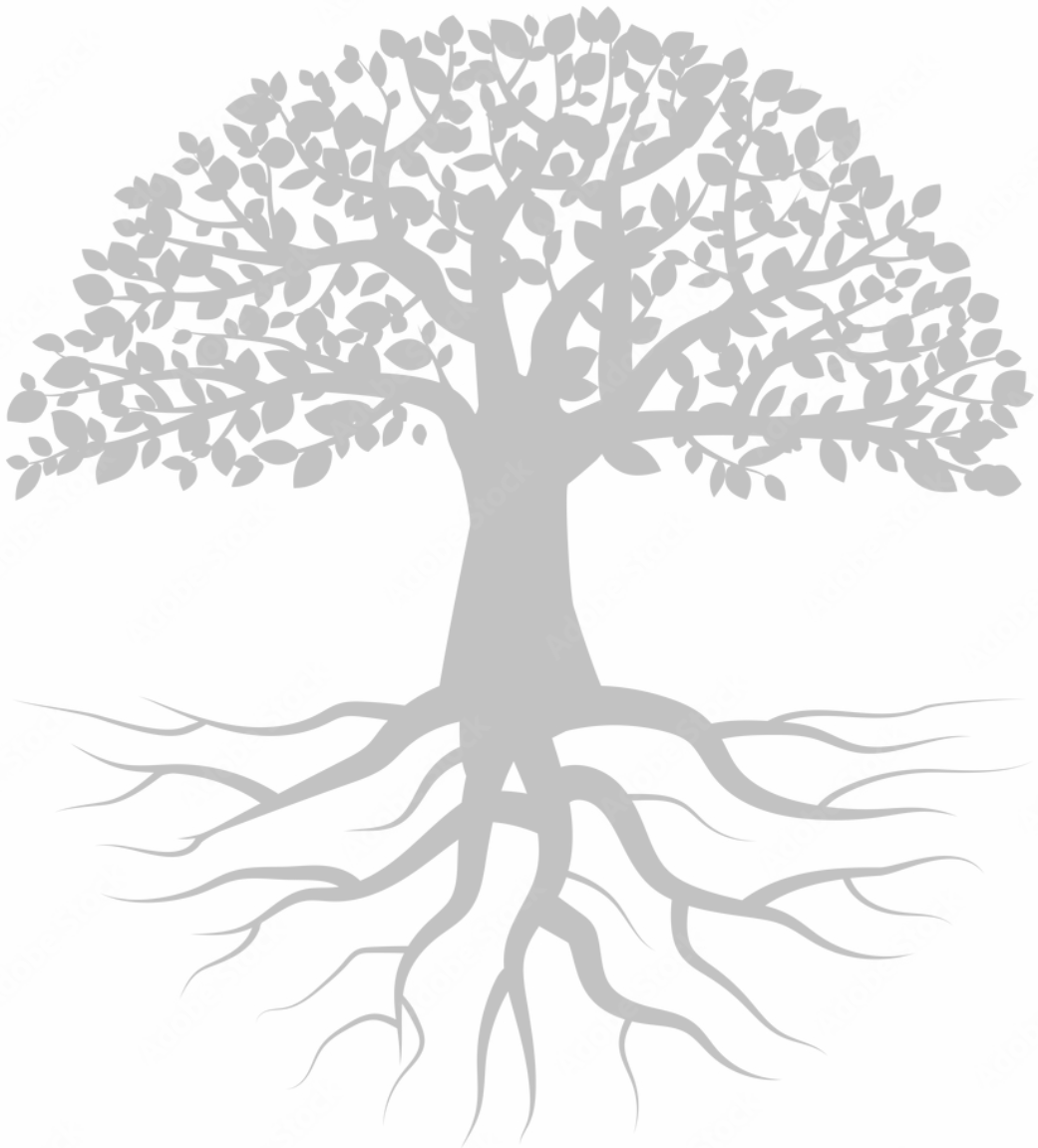
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Introduction

The growing recognition of environmental challenges—ranging from air pollution and climate change to the degradation of natural resources—has brought the concept of environmental justice to the forefront of global discussions.

In the Republic of North Macedonia, where the Constitution ensures the right to a healthy environment, translating this principle into practical legal frameworks and effective policies is more pressing than ever.

The project „**Integration of Environmental Justice in Higher Education**“ was designed to address this need by fostering a deeper understanding of environmental law and justice within academia, raising awareness among young people about their constitutional rights, and engaging the public in meaningful dialogue. At its core, the project recognizes education as a caring pillar in shaping future leaders, advocates, and policymakers who can advance sustainable solutions to environmental issues. With this regard, this publication serves as a cornerstone of the project, bringing together essays that explore key aspects of environmental justice and its application in North Macedonia.

The publication’s topic collection is intended not only to contribute to academic discourse, but also to serve as a resource for policymakers, educators, and citizens.

We extend our gratitude to all contributors, students, and mentors from the **Iustinianus Primus Faculty of Law**, whose dedication and insights have enriched this work. We also acknowledge the support of UNDP, whose commitment to environmental governance has made this initiative possible. Together, we hope to inspire a broader commitment to environmental justice across all sectors of society.

Sincerely,

Kiril Ristovski,
Center for Environmental Democracy FLOROZON



The Right to a Healthy Environment: Constitutional Approaches in the Balkans

- Ana Marija Naumovska

Abstract

On a national level, constitutions serve as the primary safeguards of human rights as they embed them into the core values and legal frameworks of the state. Despite this foundational role, and the zealous support of states for the adoption of the 2022 UNGA Resolution endorsing the human right to a healthy environment, only about 50 states globally have enshrined this right within their constitutions. This essay sets its scope on the Balkan region, examining the material and procedural guarantees of the right to a healthy environment enshrined in the constitutions of North Macedonia, Serbia, Bosnia and Herzegovina, Montenegro, Croatia and Slovenia. In particular, it sheds a light on the varying degrees of recognition afforded to environmental human rights in each constitutional framework, the forms of responsibility prescribed for their infringement, and the availability of constitutional complaints as legal remedies before the national constitutional courts. It highlights both the progress and challenges faced by these states in integrating human rights within their constitutional systems.

Ultimately, this study aims to contribute to the understanding of the critical intersection of constitutional law and environmental sustainability in fostering a healthier and more equitable future for the region. By analyzing the legal provisions and practical mechanisms in place across Balkan countries, the essay seeks to illuminate pathways for strengthening the position of the right to a healthy environment, given the strategic propensity of these states' policies to economic development.

Keywords: right to a healthy environment, Balkan, constitutional right to a healthy environment, constitutional protection, individual responsibility, state responsibility, constitutional complaint,

Introduction

Various international fora has addressed environmental issues mainly through the lens of human rights protection.¹ This approach reached a significant milestone with the UN General Assembly's recognition of the right to a healthy environment as a standalone human right in its July 2022 Resolution.² The overwhelming support – 161 votes in favor of, and no votes against – underscore the States' support for the importance of this human right alone and its fundamental role for the enjoyment of all other human rights³, most conspicuously the rights to life, health and human dignity⁴.

As a part of the third generation of human rights, or solidarity rights, the right to a healthy environment relies on both state and individual actions for its protection. The state protection encompasses two dimensions – a material and a procedural one.⁵ The material aspect embraces the scope of substantive qualities of the environment that are necessary for the fulfilment of this human right. On the other hand, the procedural guarantees maintain the establishment for specific procedures for the protection of the substantive guarantees⁶ and typically cover access to justice, access to information and public participation in the decision-making processes in this area, as established by the Aarhus Convention.⁷

On a national level, the Constitution is the primary safeguard of human rights, including environmental rights. However, despite nearly 150 states referring to environmental rights and/or responsibilities in their constitutions,⁸ only around 50 states explicitly guarantee the right to

1 See for example, Human Rights Council, The human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13 (8.10.2021); the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), A/CONF.48/14/Rev.1, Report of the United Nations Conference on the Human Environment, Stockholm, (5-16.6.1972), pp.3-6.

2 UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28.7.2022)

3 *Ibid.* Preamble and §2

4 May, James R. & Daly, Erin, “Global Judicial Handbook on Environmental Constitutionalism (Third Edition)”, UN Environment Programme (2019), [*Hereinafter*, May & Daly], p.81

5 Daly, Erin. “Constitutional Protection for Environmental Rights: The Benefits of Environmental Process.” *International Journal of Peace Studies* 17, no. 2 (2012), [*Hereinafter* Daly], p. 71; Камбовски, Владо & Мујоска – Трпевска, Елена, “Улогата на уставните судови во заштитата на животната средина и на првото на здрава животна средина”, Center for legal research and analysis, Skopje, (2022), [*Hereinafter* Камбовски & Мујоска – Трпевска] p.34

6 Daly, p.72

7 See Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998).

8 Boyd R., David, “The Status of Constitutional Protection for the Environment in Other Nations”, David Suzuki Foundation (2013), p.6

a healthy environment.⁹ Although some states incorporate this right under broader protections (as are the right to life, health and human dignity),¹⁰ the explicit constitutional recognition remains vital since it provides for the highest level of protection, above rights guaranteed by statute.

This essay examines the constitutional protection of the right to a healthy environment in the Balkans, particularly in North Macedonia, Serbia, Bosnia and Herzegovina, Montenegro, Croatia and Slovenia. It delves into both material and procedural guarantees, with a particular focus on the normative constitutional protection of this right. The first part sheds a light on the constitutional foundations of the right to a healthy environment, which entail the degrees of recognition afforded to it and the individual and state responsibility for its protection. The second part explores the availability of constitutional complaints as a key mechanism of the procedural right of access to justice.

Constitutional foundations of the right to a healthy environment in Balkan constitutions

The scope of the right to a healthy environment

Balkan countries vary in their constitutional approaches in guaranteeing the right to a healthy environment, although they do share some commonalities. Reflecting the legacy of the 1974 Yugoslavian Constitution, which guaranteed the right to a healthy environment and the obligation of the “social community” to ensure the realization of this right,¹¹ most constitutions now refer to the environment, either as an explicit human right, or as a state obligation. Except for Croatia and Bosnia and Herzegovina, all of the examined states grant an explicit substantive guarantee of this human right, which requires a certain level of quality that is ascribed to the environment. Although in other comparative laws there are examples of qualifications such as “clean”, “harmonious”, or “sustainable”,¹² the Balkan Constitutions carry forward the Yugoslavian tradition by prescribing a right to a “healthy” environment, as a qualitative bar. Despite this, none of them define the term “healthy environment”, leaving it up for statutory and judicial interpretation. Additionally, all of these Constitutions prescribe this right as a broad human

9 Bogunović, Damjan Rehm et al., “Životna sredina i ljudska prava: Smernice i preporuke za udruženja građana i donosiocje odluka”, RERI– Regulatorni institut za obnovljivu energiju i životnu sredinu, Beograd (2023), p.11

10 May & Daly, p.81

11 Constitution of the Federative Republic of Yugoslavia, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 9/1974, (1974), Article 192

12 Камбовски & Мујоска – Трпевска, p. 45

right – granted to “everyone”, as opposed to limiting it to a civil right, granted only to their own nationals.

North Macedonia and Slovenia have a similar, and rather simple approach to defining the right to a healthy environment. They expressly guarantee that “Everyone has the right to a healthy environment to live in.”¹³ Uniquely, the Slovenian Constitution marks this right as one that is to be enjoyed in accordance with statute.¹⁴ This shrinks the value of the constitutional guarantee since statute limitations can be imposed on this right. Additionally, it subtracts the effect of its direct enforcement by requiring mandatory statute regulation to further define and precisely determine the content and scope of this right.¹⁵ Accordingly, the Supreme Court of Slovenia has determined that the “substance of the right to a healthy living environment is determined by the legislator by setting the limits of admissibility of interventions in the environment”.¹⁶

The Constitutions of Serbia and Montenegro each contain a provision similar to the previous ones, which guarantees the right to a healthy environment.¹⁷ However, adjacently to that substantive guarantee, they provide for the procedural right to “timely and full information about the state of environment.”¹⁸ The Montenegrin Constitution goes even further to guarantee the opportunity “to influence the decision-making regarding the issues of importance for the environment” and to guarantee the legal protection of these rights.¹⁹ These provisions are in conformity with the international consensus, and namely the Aarhus Convention, which envisages the right to be informed about environmental matters, the right of public participation in the decision-making process, and access to justice as aspects of the procedural guarantees of the right.²⁰

13 Constitution of the Republic of North Macedonia, Official Gazette of Republic of North Macedonia nos.52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19, 36/19, [Hereinafter, Macedonian Constitution], Article 43

14 Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a, and 92/21 – UZ62a [Hereinafter, Slovenian Constitution], Article 72

15 Although the other States inevitably further regulate this matter by statute, they do so under a general provision, without the express obligation that is strictly connected to the right to a healthy environment. For the Slovenian interpretation, see Samac, Aleksandra, “Pravica do zdravega okolja v Evropski uniji in Sloveniji”, Urbani izziv, strokovna izdaja, št.10, (2020), p.118.

16 Decision of the Slovenian Constitutional Court, U-I-98/04, Official Gazette RS, No. 120/2006 and OdUS XV, 78 of (9.11.2006)

17 Constitution of the Republic of Serbia, Official Gazette of the RS No. 98/2006, [Hereinafter, Serbian Constitution], Article 74; Constitution of Montenegro, Official Gazette Nos. 01/07 & 38/13, [Hereinafter, Montenegrin Constitution], Article 19

18 Serbian Constitution, Article 74; Similarly, Montenegrin Constitution, Article 19 “... right to timely and complete information”.

19 Montenegrin Constitution, Article 23.

20 See further in Društvo za politiku i pravo životne sredine Equilibrium Srbija, Arhuska

The Croatian Constitution does not guarantee the human right verbatim – instead it encompasses this right under the right to a healthy life.²¹ This is evident from the fact that, after guaranteeing the right to a healthy life, the Constitution provides for the state's obligations to ensure the conditions for a healthy environment and the general obligation of everyone to protect human health and the human environment.²² This directly indicates that the right to a healthy environment is incorporated by the broader guarantee of the right to a healthy life.²³ Despite this, the Constitutional Court of Croatia implicitly disagreed with this interpretation, arguing that the state obligation to protect conditions for a healthy environment does not cover constitutionally guaranteed freedoms and rights.²⁴ However, there is wide agreement among experts that this single, fifteen-year-old case does not generate a definitive constitutional approach, especially in light of recent decisions by the European Court of Human Rights which incorporate the right to a healthy environment within other provisions of the European Convention on Human Rights.²⁵

The Bosnian Constitution adopts a different approach when guaranteeing human rights in general, primarily referencing international human rights documents²⁶ and allowing for the direct implementation of the European Convention and its Protocols.²⁷ Furthermore, it provides a non-exhaustive list of enumerated human rights, which does not include the right to a healthy environment.²⁸ In line with this approach, BiH follows the European Court of Human

konvencija u pravu i praksi Republike Srbije, Društvo za politiku i pravo životne sredine Equilibrium Srbija, Novi Sad (2012), pp.33-37

21 Constitution of the Republic of Croatia, Official Gazette Nos. 56/1990 & 28/2001. [Hereinafter Croatian Constitution], Article 69.1.

22 *Ibid.* §§2,3.

23 Ofak, Lana, "The Approach of the Constitutional Court of the Republic of Croatia towards the protection of the right to a healthy environment", Journal of Agricultural and Environmental Law ISSN 1788-6171, 2021 Vol. XVI No. 31, (2001), [Hereinafter Ofak] p.86; Omejec, Jasna "Uvodna i osnovna pitanja prava okoliša", Pravo okoliša, Treće izmjenjeno i dopunjeno izdanje, Ministarstvo zaštite okoliša i prostornog uređenja, Organizator, Zagreb, (2003) [Hereinafter Omejec], p.59; Staničić, Frane, "Croatia: Constitutional Protection of the Right to a Healthy Life – Do We Need More to Safeguard the Environment and Future Generations?", Constitutional Protection of the Environment and Future Generations, Miskolc–Budapest, Central European Academic Publishing, (2022), p.138

24 Decision of the Croatian Constitutional Court, U-III/3643/2006, (23.5.2007).

25 See Ofak, p.96

26 Constitution of the Republic of Bosnia and Herzegovina, OHR (Office of the High Representative), Sarajevo, (1995) and Official Gazette 25/2009; [Hereinafter BiH Constitution], Article 2.1

27 *Ibid.* Article 2.2

28 *Ibid.* Article 2.3

Right's interpretation which incorporates the human right to a healthy environment under the guarantees of the right to life and the right to respect for private life.²⁹ It is important to note that the Constitution of Republika Srpska, as a constituent part of BiH, contains a provision which expressly guarantees the human right to a healthy environment.³⁰

It is relevant to highlight that, except for Montenegro, every Constitution which expressly guarantees the right to a healthy environment systematizes it in the section of social and political rights.³¹ This belittles the undeniable relation between this right and other fundamental human rights, as are the right to life and the right to health,³² since this positioning risks framing the right to a healthy environment as a secondary or aspirational, rather than an essential element of human dignity and well-being. Instead, the approach taken by the Montenegrin Constitution classifying it as a general provision in the section of human rights and freedoms is more reflective of its impact over the enjoyment of all other human rights.

Individual and state responsibility for the protection of the right to a healthy environment

The human right to a healthy environment falls within the third generation of human rights – rights of solidarity. These rights differ from the political, social and economic rights as their fulfillment does not only require action from the state, but it also calls for collective action for safeguarding their inherent values.³³ In line with this, most of the Balkan constitutions mandate individual and state responsibility for environmental protection.

The general obligation of individuals to contribute in environmental protection aligns with the idea that the constitutional rights are mandatory for everyone, including individuals and entities.³⁴ All of the Balkan constitutions, with the

29 See European Court of Human Rights, *Kolyadenko and Others v. Russia*, Application No. 17423/05, (2012); ECtHR, *Boudayeva and Others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, (2008); *Brincat and Others v. Malta*, Applications nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, (2014); *More in Mrdović, Fatima*, "Pregled sudske prakse u Bosni i Hercegovini u oblasti zaštite okoliša", UNDP, Sarajevo, (2023), [*Hereinafter Mrdović*], p.19.

30 Constitution of Republika Srpska, Official Gazette of Republika Srpska, Nos.21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02, 30/02, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05, Article 35

31 Slovenia fits this right in the section of Economic and Social Relations, rather than in the Fundamental Rights and Freedoms section. However, it was confirmed by the Slovenian Constitutional Court on multiple occasions that the right "enjoys the same protection as the rights set out in the chapter on human rights." (See Slovenian Constitutional Court Decisions U-I-182/16, Up-88/94 and Up-629/02.

32 Камбовски & Мјоска – Трпевска, p. 71

33 Bačić, Arsen, "Ustavni temelji i problemi zaštite okoliša u hrvatskom i europskom pravu", *Zbornik radova Pravnog fakulteta u Splitu*, god. 45, 4/2008, (2008), p.741

34 Škulić, Milan, "USTAVNOPRAVNA ZAŠTITA ŽIVOTNE SREDINE", *Glasnik Advokatske*

exception of Bosnia and Herzegovina, mandate individual responsibility for the protection of the environment.³⁵ It is important to note that the right to a healthy environment and the obligation to protect it are separated in all of these Constitutions, indicating that the right is independent from the obedience to the obligation.³⁶ While other states impose a positive obligation on its subjects to protect the environment, the Slovenian Constitution uniquely mandates compensation for wreaking environmental damage, thus enshrining the internationally acclaimed principle – “the polluter pays”. Additionally, the Macedonian, Montenegrin and Serbian constitutions extend this responsibility to include promotion of the environment.³⁷

On the other hand, all Balkan Constitutions, with the Bosnian exception³⁸, are unified in providing state responsibility for ensuring conditions for the exercise of the right to a healthy environment.³⁹ This duty of the state entails positive and negative obligations. The positive obligations include enacting appropriate legislation for the enforcement of this right and taking necessary measures through state organs to ensure effective environmental protection. The negative obligations of the state entail that state organs will refrain from actions that could infringe upon the constitutional right to a healthy environment. An interesting shift occurred in the Croatian constitution in 2001 when the state’s duty was redefined from “guaranteeing the right to a healthy environment” to “ensuring conditions for a healthy environment.”⁴⁰ Although theorists remain on the view that this is merely a nomotechnical setback in guaranteeing the right, the interpretation of the Constitutional Court elaborated above suggests that this poses a significant threat of the constitutional guarantee of this right.

It is interesting to observe the division of responsibility between central and local governments in respect to environmental matters. Namely, both the

komore Vojvodine, br. 4/2023 (2023), [*Hereinafter* Škulić] p.1205; Vukčević, Marko & Armenko, Snežana. “Komentar Zakona o Ustavnom sudu Crne Gore”, Podgorica: JU Službeni list Crne Gore, (2023), p.15

35 Macedonian Constitution, Article 43; Serbian Constitution, Article 74; Montenegrin Constitution, Article 23; Slovenian Constitution, 72; Croatian Constitution, 69.

36 Sanja Savčić, “Serbia: Constitutional Framework for Environmental Protection: Value in Regulation, Silence in Realization”, *Constitutional Protection of the Environment and Future Generations*, Miskolc-Budapest, Central European Academic Publishing, (2022) p.369.

37 Macedonian Constitution, Article 43; Montenegrin Constitution, Article 23; Serbian Constitution, Article 74.

38 The Bosnian exception of both individual and state responsibility follows logically since the BiH Constitution does not explicitly provide the right to a healthy environment.

39 Macedonian Constitution, Article 43;

40 The Change of the Constitution of the Republic of Croatia, Official Gazette, No. 28/2001; See more in Blagojević, Anita & Majnarić, Marijana, “The “Green” Constitution Of The Republic Of Croatia And The Constitutional Court As A Protector Of The Right To A Healthy Environment”, *EU and Comparative Law Issues And Challenges Series (ECLIC) – ISSUE 7*, (2023), p.40

Macedonian and Croatian Constitution assign the duty of environmental protection to both central and local governments.⁴¹ On the other hand, the primary criticism towards the Serbian constitutional framework is that it does not relegate responsibilities to local governments, centralizing the duty at state and provincial levels,⁴² thus excluding the local governments from the decision-making processes.⁴³ The Montenegrin⁴⁴ and Slovenian⁴⁵ constitutions do not designate any particular duties and functions as local, but leave the matter up to statute regulation. .

The division of the state responsibility is of vital significance since it enhances both accountability, and responsiveness to environmental challenges, that inevitably affect the realization of the right to a healthy environment.

Access to justice: constitutional complaints as a protection mechanism of the right to a healthy environment

The primary benefit from the legal guarantee of a right is the individuals' ability to seek legal redress when the right is infringed, ensuring access to justice. In national systems, constitutional courts are the main 'guardians of the Constitution' and the rights enshrined within it, including the right to a healthy environment.⁴⁶ However, this role is incomplete without an established mechanism that allows individuals to directly and judicially enforce their constitutionally guaranteed human rights. Constitutional complaints serve as a mechanism for the protection of subjective human rights and thus address only specific violations of these rights.⁴⁷ Consequently, a special legal interest i.e. a breach of an individual right, needs to be proven in order for a constitutional complaint to be filed.

All Balkan states have established constitutional courts with jurisdiction to handle constitutional complaints filed for the protection of individual human rights enshrined in their constitutions.⁴⁸ However, they differ in the scope of

41 Macedonian Constitution, Amendment XVII points 1 and 2; Croatian Constitution, Articles 69 & 129a*

42 Serbian Constitution, Article 74

43 Tintor, Ljubomir "PRAVO NA ČISTU I ZDRAVU ŽIVOTNU SREDINU – DOMETI I OGRANIČENJA LJUDSKOG PRAVA U NASTAJANJU", *Harmonius*, (2022) p.331

44 Montenegrin Constitution, Article 23

45 Slovenian Constitution, Article 140

46 Камбовски & Мјоска – Трпевска, p.59

47 *Ibid.* p.62

48 Macedonian Constitution, Article 110.3; Slovenian Constitution, Article 160; Montenegrin constitution, Article 149.1.3, Law on the Constitutional Court of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 109/07, 99/11, 18/13 (CC), 40/15, 103/15, 10/2023 and 92/2023 [*Hereinafter* Serbian Constitutional Court Act] Article 45.9; The Constitutional Act On The Constitutional Court Of the Republic Of Croatia, Official Gazette, No. 49/02 of May 3, 2002 [*Hereinafter* Croatian Constitutional Court Act], Article 62.

rights that can be invoked through this mechanism and the conditions that need to be fulfilled for filing a constitutional complaint.

With the exception of North Macedonia, all of the Balkan Constitutions provide a broad scope for filing constitutional complaints regarding violations of all of the human rights enshrined in their constitutions.⁴⁹ The Slovenian Constitution elevates this protection even further to permitting complaints for violations of any human rights guaranteed in international instruments ratified by Slovenia, beyond those guaranteed in the Constitution itself.⁵⁰ In contrast, the Macedonian Constitution grants the right to file a request for the protection of their rights before the Constitutional Court,⁵¹ but only for a limited scope of constitutional rights, which do not include the right to a healthy environment.⁵² This leaves the Constitutional Court unable to directly protect the right to a healthy environment of every citizen, despite the broad guarantee for judicial protection of constitutional human rights under Article 50 of the Constitution.⁵³ As a result, the protection of the constitutional right to a healthy environment is relegated to the regular courts, particularly to the Administrative Court of North Macedonia, as declared by the Supreme Court in October 2024.⁵⁴

When it comes to the conditions for instigating this procedure, two key factors play a role: the gravity of the violation and the exhaustion of legal remedies. A severity threshold is imposed only by the Slovenian Constitution, permitting constitutional complaints only in cases where the violation of the right results in serious consequences for the complainant.⁵⁵ The exhaustion of legal remedies is a generally unified prerequisite for filing constitutional complaints, however notable exceptions exist within various national frameworks. The Montenegrin, Serbian, Croatian and Slovenian Constitutions allow for constitutional complaints as ultima ratio remedies – they are to be filed only after the exhaustion of all available legal remedies.⁵⁶ However, all

49 *Ibid.*

50 See the Slovenian Constitution, Article 60 and Arne Marjan Mavčič, *INDIVIDUAL COMPLAINT AS A DOMESTIC REMEDY TO BE EXHAUSTED OR EFFECTIVE WITHIN THE MEANING OF THE ECHR: Comparative and Slovenian Aspect*, (2011), p.15

51 Act of the Constitutional Court of North Macedonia, (2024). Official Gazette No. 115/24, Article 53

52 According to Article 110.1.3 of the Macedonian Constitution, the Constitutional Court is competent to protect the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation;

53 “Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency”

54 Врховен суд на РСМ, Начелен став од 08.10.2024.

55 Slovenian Constitution, Article 55a

56 Constitutional Court Act of the Republic of Slovenia, Official Gazette Nos. No. 64/07, 109/12, 23/20, & 92/21, [Hereinafter, Slovenian Constitutional Court Act] Article

of them, except for the Serbian one, provide for an exception to this rule. The Croatian Constitution provides for an exception in cases when the lower-instance Courts did not render a decision within a reasonable time, or when there is a gross violation of a constitutional right that might cause gross and irreparable outcomes, if proceedings are not speedily initiated.⁵⁷ Similarly, the Slovenian mechanism excuses the non-exhaustion when irreparable consequences are involved, however only if “the alleged violation is manifestly obvious”.⁵⁸ The Montenegrin mechanism allows for an exception if the legal remedy “was not or would not be effective” in the particular case.⁵⁹ Opposed to this last resort approach, the Bosnian Court has its jurisdictional basis set as a court of second instance over constitutional matters.⁶⁰

The Bosnian and Croatian Constitutional Courts maintain specific positions about their jurisdiction over constitutional complaints that concern the right to a healthy environment. Even though the Bosnian Constitutional Court formally possesses jurisdiction over constitutional matters, this jurisdiction is rarely enforced by complainants as the right to a healthy environment is not explicitly provided in the constitution. Instead, the Court addresses cases where this right is invoked indirectly, through national environmental laws and statutes, although this practice is infrequent as well.⁶¹ Nevertheless, it is evident that the Court implements the Bosnian laws in accordance with internationally acclaimed human rights standards, as it is mandated by its Constitution.⁶²

In contrast, the Croatian Constitutional Court has entertained a constitutional complaint over the human right to a healthy environment only once. In this case, it ruled that the state’s obligation to ensure conditions for a healthy environment did not extend a constitutional right which could be protected via a constitutional complaint.⁶³ The denial of jurisdiction over complaints that concern this right collides with the prevailing doctrinal consensus elaborated in the previous section that the right to a healthy environment is incorporated within the right to healthy life. Thus, it is argued that the Court would revise its position nowadays, if it were presented with such a complaint today.

51; Croatian Constitutional Court Act, Article 62; Montenegrin Constitution, Article 149.1.3; Serbian Constitutional Court Act, Article 170;

57 *ibid*, Article 63

58 Slovenian Constitutional Court Act, Article 51.2

59 Law on the Constitutional Court of Montenegro, Official Gazette no. 23-1/14-14/18, EPA 656 XXV, Article 68.3

60 BiH Constitution, Article VI.3.b

61 This is possible having in view the status of the Bosnian Constitutional Court as an appellate court (court of second instance).

62 For example, Decision of the Constitutional Court of Bosnia and Herzegovina, AP-3016/17, (17.7.2019). See more in Mrdović, pp.29-35

63 Decision of the Constitutional Court of the Republic of Croatia, U-III/3643/2006, (23.5.2007).

A comparison of judicial practices across the region shows that, although the Balkan legal frameworks envisage constitutional complaints as mechanisms for the protection of the right to a healthy environment, their practical enforcement remains limited⁶⁴ This limitation is partially due to the conceptual gap between the right to a healthy environment and traditional constitutional complaints, which usually deal with cases based on a specific and distinct set of facts, unlike the broad and vague nature of environmental rights that often require courts to engage in extensive fact-finding and investigation.⁶⁵ For instance, the Serbian Constitutional Court upheld a complaint on the constitutional right to a healthy environment only once.⁶⁶ However, the Slovenian Court has dealt with a number of complaints for the protection of the constitutional right to a healthy environment, albeit complaint joint with initiatives for review of constitutionality and legality.⁶⁷

In summary, while constitutional complaints present a vital mechanism for the judicial protection of human rights, their application to the right to a healthy environment remains constrained across the Balkan region. This is due to both the procedural requirements tied to filing constitutional complaints and the inherent challenges of addressing broad and complex environmental rights within traditional legal frameworks.

64 See for example in Miščević, Nikolina & Dudás, Attila, “The “Environmental Lawsuit” as an Instrument of Preventive Protection of the Constitutional Right to Healthy Environment in the Law of the Republic of Serbia”, the Law of the Republic of Serbia - Journal of Agricultural and Environmental Law ISSN 1788-6171, Vol. XVI No. 31, (2021), pp. 65-67; Škulić, pp.1209-1210

65 Daly, p.75

66 Decision of the Constitutional Court of the Republic of Serbia No. Už-7702/2013 from 07.12.2017. Bulletin of the Constitutional Court for 2017, Belgrade, (2019) pp.612-629

67 See for example cases of the Slovenian Constitutional Court no. U-I-313/04 (2.2.2006), U-I-325/02 (22.1.2024). See more in Juhart, Miha & Sancin, Vasilka, “Slovenia: An Example of a Constitution Guaranteeing High-Level Protection of Natural Resources and Sui Generis Right to Drinking Water” Constitutional Protection of the Environment and Future Generations, Miskolc- Budapest, Central European Academic Publishing, (2022) pp. 455-463.

Conclusion

The constitutional guarantee of the right to a healthy environment, along with its protection by the constitutional courts are essential for ensuring the highest legal protection for this right on a national level. Its practical significance lies within its ability to serve as a balancing scale between environmental protection and the pursuit of economic progress and entrepreneurial freedoms. Striking this balance is of particular relevance in the Balkan region, where most of the examined states remain in the process of economic development.

The human right to a healthy environment is recognized in most of the Balkan constitutions, although its scope of guarantees is at variance across the region. Generally, the broadest protections are found in the constitutions of Montenegro and Serbia, which encompass both substantive and procedural aspects of the right. The prescription of individual and state responsibility for the protection of this right imposed by most of these states is vital for its further legislative regulation and its judicial enforcement. Moreover, it is reflective of their nature as third-generation human rights, which require solidarity for their protection.

The access to justice for environmental rights through constitutional complaints is an established mechanism, although its practical application remains limited. The most pertinent issues include the lack of this procedural guarantee in North Macedonia and the interpretation of the Croatian Constitutional Court which excludes the right to a healthy environment from the scope of the rights that enjoy the protection of the Constitutional Court. However, establishing and enforcing the protection of environmental rights through the mechanism of constitutional complaints is imperative for upholding the substantial guarantee of the right. More importantly, it is vital for the prioritization of environmental rights over economic development, thus preventing long-term environmental degradation. This mitigation of environmental harm through judicial mechanisms is of essential importance as the environmental deterioration has the potential to render other human rights meaningless.

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14. The Constitutional Act On The Constitutional Court Of the Republic Of Croatia, Official Gazette of the Republic of Croatia No. 49/02.

Constitutionalizing climate action - Nikola Donev, LL.M.^{1*}

Abstract

Climate constitutionalism is a novel approach and emerging area within legal scholarship and practice to address the challenges posed by the Anthropocene, the current geological age dominated by human activity and its profound environmental impact. As climate change intensifies and its effects become more evident, the inadequacy of existing legal frameworks, especially at the international level, has become clear. Much of the development in addressing challenges of climate change are focused on international law, yet its diffused nature means that current international norms are scattered, and plagued by lackluster enforcement. However, a growing trend has emerged in which domestic legal systems, often through constitutional provisions, are stepping in to fill this gap. National courts, legislatures, and constitutional reform processes are increasingly integrating climate change principles into their legal frameworks. The salient question that arises from this novel concept is whether constitutions, traditionally designed to govern political and civil rights, are appropriate tools and spaces for environmental protection and climate justice. And if so, how should these constitutions be structured to effectively confront the unique nature of climate change? Several countries have already begun to experiment with constitutional provisions related to climate change, often pushing the boundaries of traditional constitutional theory. States such as Algeria, Bolivia, Côte d'Ivoire, Cuba, the Dominican Republic, Ecuador, Thailand, Tunisia, Venezuela, Vietnam, and Zambia have introduced climate-relevant provisions into their constitutions. These provisions vary widely in terms of scope, specificity, and focus, reflecting the diversity of approaches that countries are taking in response to the climate crisis. A comparative analysis of these different constitutional approaches can reveal interesting patterns and divergences. One key issue is whether these provisions focus on the protection of human beings from the harmful effects of climate change, or whether they are centered on the protection of the environment itself as an entity deserving of legal recognition and safeguarding. In some cases, constitutions adopt an anthropocentric approach, emphasizing the need to protect human life, health, and livelihoods from the consequences of environmental degradation. In others, more eco-centric approaches are taken, where the constitution recognizes the inherent value of the environment, regardless of its utility to humans, and seeks to protect ecosystems, biodiversity, and natural resources for their own sake. The contribution of this paper is outlining the patterns and divergences that appear in the practice of climate constitutionalism, through a comparative approach which is well suited to examine different legal systems and contexts.

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Introduction

The world faces an era of polycrisis.² The 2023 Global Risk Report from the World Economic Forum (WEF)³ highlights some of the ongoing crisis facing the world, namely interstate conflict, cyber insecurity, inflation and misinformation. However, their perception survey shows that when respondents were asked to rank global risks by severity, in both short term and long term estimates environmental risks dominate the top ten spots.⁴ For the past number of decades the calls for action to prevent, mitigate and remediate environmental degradation have steadily taken center-stage in mainstream political discourse, notwithstanding the narratives that deny human-caused climate change. These discourses sparked political and legal action. The nature of climate change is global; thus, it cannot be tackled by a singular sovereign state, rather it requires global cooperation. This is why the most notable successes to tackle climate change happen at the level of the international community. States have agreed to be bounded by international agreements from the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and most recently the Paris Agreement.⁵ Beyond international agreements, litigation is occurring before international and domestic courts. The International Court of Justice (ICJ)⁶ and the Inter-American Court of Human Rights (IACHR)⁷ are in the process of creating advisory opinions on state obligations concerning climate change; the European Court of Human Rights (ECtHR) has considered a number of

2 'This Is Why "polycrisis" Is a Useful Way of Looking at the World Right Now' (*World Economic Forum*, 7 March 2023) <<https://www.weforum.org/stories/2023/03/polycrisis-adam-tooze-historian-explains/>> accessed 3 November 2024.

3 'Global Risks Report 2023' (*World Economic Forum*) <<https://www.weforum.org/publications/global-risks-report-2023/digest/>> accessed 3 November 2024.

4 *ibid.*

5 'Global Climate Agreements: Successes and Failures | Council on Foreign Relations' <<https://www.cfr.org/backgrounder/paris-global-climate-change-agreements>> accessed 4 November 2024.

6 'INTERNATIONAL COURT OF JUSTICE' <<https://www.icj-cij.org/case/187/request-advisory-opinion>> accessed 20 September 2024."plainCitation": "INTERNATIONAL COURT OF JUSTICE" <<https://www.icj-cij.org/case/187/request-advisory-opinion>> accessed 20 September 2024."noteIndex": 6,"citationItems":[{"id": 591,"uris":["http://zotero.org/users/local/Ks6yEfoB/items/XVRE2669"],"itemData":{"id": 591,"type": "web-page", "title": "INTERNATIONAL COURT OF JUSTICE", "URL": "https://www.icj-cij.org/case/187/request-advisory-opinion", "accessed": {"date-parts": [{"2024", 9, 20}]}}], "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}>

7 'Balancing the Arguments Before the Inter-American Court on the Climate Emergency and Human Rights Advisory Proceedings' (*Opinio Juris*, 31 May 2024) <<http://opiniojuris.org/2024/05/31/balancing-the-arguments-before-the-inter-american-court-on-the-climate-emergency-and-human-rights-advisory-proceedings/>> accessed 20 September 2024."plainCitation": "Balancing the Arguments Before the Inter-American Court on the Climate Emergency and Human Rights Advisory Proceedings" (*Opinio Juris*, 31 May 2024

consequential cases which altered aspects of its jurisprudence;⁸ the UN has received a proposal to amend the Rome statute to include ecocide as an international crime⁹ and cases are brought before national court seeking accountability for environmental degradation.¹⁰ However, one area remains open for rich academic, legal and political discussion – the constitution. According to historical data from the Constitute project¹¹ there is a clear trend of incorporating constitutional provisions related to the protection of the environment. According to their database, around 80% of current constitutions have environmental provisions.¹² This trend is evidence of a globally shared “constitutional concern.”¹³ However, the salient question in this regard is whether constitutions are appropriate tools and spaces for environmental protection and climate justice. The global nature of climate change means that it is beyond the power and resources of a sovereign state, thus requiring international cooperation, leading to the conclusion that international law is more suitable for our aims to combat environmental degradation. Louis J. Kotzé argued that international environmental law suffers from deficiencies that makes it ineffective which is why constitutions offer a more robust space to tackle the challenges of the Anthropocene.¹⁴ This paper aims to examine how constitutions approach environmental and climate issues. Firstly, it will analyze arguments regarding the constitutionalisation of these issues in the context of the literature of constitutionalism. Afterwards, the paper will analyze constitutional provisions as they pertain to the environment using a comparative approach. The comparative analysis will focus on constitutions of countries in Europe to determine whether there is a general consensus among European countries in terms of the approach to the issue, and where there are divergences. The paper will also highlight constitutional research from other regions to further analyze different constitutional approaches to environmental and climate issues.

- 8 Sandra Arntz and Jasper Krommendijk, ‘Historic and Unprecedented’ [2024] Verfassungsblog <<https://verfassungsblog.de/historic-and-unprecedented/>> accessed 20 September 2024.
- 9 Daniel Bertram, ‘Should Ecocide Be an International Crime? It’s Time for States to Decide’ (*EJIL: Talk!*, 12 September 2024) <<https://www.ejiltalk.org/should-ecocide-be-an-international-crime-its-time-for-states-to-decide/>> accessed 20 September 2024.
- 10 Jannika Jahn, ‘Domestic Courts as Guarantors of International Climate Cooperation: Insights from the German Constitutional Court’s Climate Decision’ (2023) 21 *International Journal of Constitutional Law* 859.
- 11 ‘About - Constitute’ <<https://www.constituteproject.org/content/about>> accessed 23 November 2024.
- 12 ‘Topics - Constitute’ <<https://www.constituteproject.org/topics>> accessed 4 November 2024. From the dropdown menu select ENVIRONMENTAL PROTECTION. Regions ALL
- 13 Pasquale Viola, ‘The Ongoing Foundation of the Constitutionalisation of Climate’ in Pasquale Viola (ed), *Climate Constitutionalism Momentum: Adaptive Legal Systems* (Springer International Publishing 2022) <https://doi.org/10.1007/978-3-030-97336-0_3> accessed 4 November 2024.
- 14 Louis J Kotzé, ‘Arguing Global Environmental Constitutionalism’ (2012) 1 *Transnational Environmental Law* 199.

Is constitutionalism appropriate?

From a theoretical perspective, Louis Kotzé recalls four different constitutional concepts: (i) the constitution, as the set of norms to limit the political power, organising the governance of the state within a legal framework, avoiding the arbitrariness of legitimate coercive powers and establishing the institutional outline; (ii) constitutionalism as the set of core values that legitimate the limits to the political power, providing specific guarantees; (iii) constitutionalisation as the process that makes the political and legal systems “constitutional”, as well as the process to do it; (iv) the constitutional state, in which the constitution performs the tasks of constitutionalism.¹⁵ His argument for environmental constitutionalism is that “part of the normative interventions to cope with the Anthropocene should be constitutional, since constitutionalism is an apex juridical construct that aims to establish order where there is none, and to improve a legal order and its regulatory effects, while countering forms of domination.”¹⁶ Proponents of environmental constitutionalism argue that environmental constitutionalism offers a new approach to move forward when other legal mechanisms fall short. It can be coalescent, merging governmental structures and individual rights modalities in furtherance of “an overarching legal-normative framework for directing environmental policy.”¹⁷ It can be deployed to protect local concerns, such as access to fresh food, water, or air, or global concerns like biodiversity and climate change that share elements of both human rights and environmental protection.¹⁸ Ryan K Gravelle argues that entrenching environmental rights in the constitution means that environmental protection will not depend on majorities and coalition party politics in the legislative body. Constitutionalisation offers some permanence because of the elaborate special procedures required to amend constitutions. Consistent with this emphasis on permanency is the belief that constitutionally granted environmental rights may take on a broader character not only by addressing individual grievances, but also by articulating an overarching policy for environmental preservation. In this sense the constitutional provision assumes a dual role in acting as a guide to public actions and discourse.¹⁹ Former Special Rapporteur on the Right to a Healthy Environment – David Boyd – has previously concluded that constitutionalizing environmental rights contributes to an assortment of causal and correlative outcomes,

15 LJ Kotzé, *Global Environmental Constitutionalism in the Anthropocene* (2017).

16 *ibid.*

17 Tim Hayward and Tim Hayward, *Constitutional Environmental Rights* (Oxford University Press 2004).

18 James R May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2014) <<https://www.cambridge.org/core/books/global-environmental-constitutionalism/EC9A67A5448AE555015CAA6579104C24>> accessed 14 November 2024.

19 Ryan K Gravelle, ‘Enforcing the Elusive: Environmental Rights in East European Constitutions’ (1997) 16 *Virginia Environmental Law Journal* 633.

including a decrease in pollution (including emissions of greenhouse gases), and an increase in both the enactment and enforcement of environmental laws.²⁰ Others have posited that constitutionalizing environmental rights can also serve to promote human and environmental rights,²¹ procedural guarantees,²² remedies,²³ and judicial engagement.²⁴

Comparative overview

To ascertain how constitutions incorporate environmental provisions a comparative view is most suitable. The approach taken in this paper is regional taking into consideration constitutions of European countries. Other constitutions from other regions are included which have a distinct provision which is unique to the country's context in order to highlight different approaches. The constitutional texts referenced in the following section are taken from the Constitute project database.²⁵

In terms of framing and placement of a constitutional provision concerning the environment, a majority of European constitutions place such provision under the human/fundamental rights sections, and textually

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- 20 David Richard Boyd, 'The Environmental Rights Revolution : Constitutions, Human Rights, and the Environment' (University of British Columbia 2010) <<https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0058239>> accessed 1 November 2024.
 - 21 See generally, John H. Knox & Ramin Pejan, *The Human Right to a Healthy Environment* (2018); John H. Knox, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Framework Principles, UN Doc. A/HRC/37/59 (January 24th, 2018); John H. Knox, 'The United Nations Mandate on Human Rights and the Environment' in Erin Daly & James R. May, *Implementing Environmental Constitutionalism: Current Global Challenges* (2018); Stephen Turner, *A Substantive Environmental Right* (Routledge, 2008); Stephen Turner, *A Global Environmental Right* (Routledge, 2014); James R. May & Erin Daly, *New Directions in Earth Rights, Environmental Rights and Human Rights: Six Facets of Constitutionally Embedded Environmental Rights Worldwide*, 1 IUCN Acad. Envtl. L. e-J. 13, 14 (2011).
 - 22 James R May, 'Constitutional Directions in Procedural Environmental Rights' (19 December 2013) <<https://papers.ssrn.com/abstract=2370132>> accessed 14 November 2024.
 - 23 Erin Daly and James R May, 'Constitutional Environmental Rights and Liabilities' (2012) <<https://papers.ssrn.com/abstract=2221561>> accessed 14 November 2024.
 - 24 James R May and Erin Daly, 'Vindicating Fundamental Environmental Rights: Judicial Acceptance of Constitutionally Entrenched Environmental Rights' (28 September 2009) <<https://papers.ssrn.com/abstract=1479849>> accessed 14 November 2024."plainCitation": "James R May and Erin Daly, 'Vindicating Fundamental Environmental Rights: Judicial Acceptance of Constitutionally Entrenched Environmental Rights' (28 September 2009
 - 25 'Constitute' <<https://www.constituteproject.org>> accessed 14 November 2024.

they are framed as a human right. This is the case of Albania,²⁶ Latvia,²⁷ Andorra,²⁸ Luxembourg,²⁹ Azerbaijan,³⁰ Belarus,³¹ Moldova,³² Belgium,³³ Montenegro,³⁴ Bulgaria,³⁵ Croatia,³⁶ Norway,³⁷ Poland,³⁸ Czech Republic,³⁹ Portugal,⁴⁰ Romania,⁴¹ Estonia,⁴² Finland,⁴³ North Macedonia,⁴⁴ Serbia,⁴⁵ France,⁴⁶ Slovakia,⁴⁷ Georgia,⁴⁸ Slovenia,⁴⁹ Spain,⁵⁰ Greece,⁵¹ Türkiye,⁵² Ukraine.⁵³ This framing is important since it highlights the continued dominance of the classical anthropocentric human rights paradigm. This is evidenced by the fact that much of the advancement of the idea of a human right to a healthy environment has been achieved through the enforcement of classic ‘first generation rights,’ such as a right to life, health or dignity.⁵⁴ In this sense, the constitutional provisions embody a right for people to live in a healthy environment. This is an anthropocentric paradigm since the object that is protected is the human, who is protected from adverse effects of an unhealthy environment, but not the environment, as an end on itself. Beyond the usual human rights paradigm, European constitutions also contain what Tarunabh Khaitan defines as constitutional directives. Namely, constitutional directives are “obligatory telic norms that identify thick moral objectives whose full realisation is deferred to a future date. These directives impose two duties: (i) a *duty to endeavour* to realise the directed goal, which kicks

26 Article 56

27 Article 115

28 Article 31

29 Article 11

30 Article 39

31 Article 46

32 Article 37

33 Article 23

34 Article 23

35 Article 55

36 Article 69

37 Article 112

38 Article 74

39 Article 35

40 Article 66

41 Article 35

42 Article 34

43 Section 20

44 Article 43

45 Article 74

46 Article 43 and Charter for the Environment

47 Article 44

48 Article 29

49 Article 72

50 Section 45

51 Article 24

52 Article 56

53 Article 50

54 James R May, ‘Environmental Rights and Wrongs: Implementing Environmental Constitutionalism’ (1 November 2019) <<https://papers.ssrn.com/abstract=3671878>> accessed 4 October 2024.

in immediately, and (ii) a *duty to fully realise* that goal by some (specified or unspecified) future date.”⁵⁵ Environmental provisions in this regard, often impose a duty, not just on the state, but also on private entities and citizens themselves.⁵⁶ These are often grouped alongside the general human right provision in the rights section of the constitution. Additionally, European constitutions also contain provisions authorizing the state to legislate on environmental protection. These provisions empower the state as a whole, like in the French Charter for the Environment, but more often they empower the legislature to enact laws and bylaws such as in the case of Ukraine,⁵⁷ and Sweden.⁵⁸ Considering that effects of environmental degradation are variable, constitutions accommodate this by allowing local government, or subnational units to legislate on environmental protection. For instance, in federative state like Germany,⁵⁹ Switzerland,⁶⁰ Austria⁶¹ and Belgium⁶² environmental protection jurisdiction is concurrent between the national government and the Länder, Cantons, Laender, communities and regions respectively. In other states like Spain,⁶³ Azerbaijan⁶⁴ where there are autonomous entities they assume competences for environmental protection.

Outside of European continent states are adding and changing environmental provisions. These are inspired by the specific social context, and movements that operate within these societies. One such example is the *nuevo constitucionalismo latinoamericano* which some scholars have defined as the “particular form of constitutionalism, predominantly grounded on popular claims and social movements, as well as on popular participation in the constituent phase, interculturalism, new emerging legal subjects and rights, and the quest for different economic paradigms”⁶⁵ Other states have taken inspiration from international norms and treaties, like the Paris Treaty, who have included their commitments in the constitutional text. Navraj Singh Ghaleigh, Joana Setzer and Asanga Welikala identified 11 jurisdictions with “climate clauses” (Algeria, Bolivia, Côte d’Ivoire, Cuba, Dominican Republic, Ecuador, Thailand, Tunisia, Venezuela, Vietnam and Zambia). While they

55 Tarunabh Khaitan, ‘Constitutional Directives: Morally-Committed Political Constitutionalism’ (2019) 82 *The Modern Law Review* 603.

56 For example: Albania, Azerbaijan, Belarus, Estonia, France, Moldova, Poland, Portugal, Romania, Russia, Spain, Switzerland, Türkiye, Ukraine.

57 Article 85; Article 116; Article 119; Article 138

58 Article 6, supplementary provision 4.6.13

59 Article 72; Article 74; Article 91A

60 Article 74; Article 76; Article 77; Article 78; Article 79; Article 80; Article 84; Article 86; Article 89; Article 76; Article 104; Article 120

61 Article 10; Article 11; Article 12

62 Article 7bis

63 Section 148

64 Article 78

65 Pasquale Viola, ‘The Ongoing Foundation of the Constitutionalisation of Climate’ in Pasquale Viola (ed), *Climate Constitutionalism Momentum: Adaptive Legal Systems* (Springer International Publishing 2022) <https://doi.org/10.1007/978-3-030-97336-0_3> accessed 4 November 2024

do not give a clear definition, their analysis showed that “most climate constitutional provisions identified are open textured, broadly stating a commitment to tackle climate change or achieve an aspirational climate scenario.”⁶⁶

Conclusion

The challenges of the Anthropocene require us to rethink the norms and laws that govern our societies. One such restructuring of our legal framework is climate constitutionalism. This paper has demonstrated that constitutional frameworks, while traditionally designed to govern political and civil rights, are being reimagined to address environmental protection and climate justice in ways that international law and other mechanisms have struggled to achieve. Through a comparative analysis of constitutional provisions across Europe and other regions, it is evident that while there is no single model of climate constitutionalism, certain trends and divergences offer valuable insights. This diversity of approaches towards designing environmental constitutional provisions is valuable since it shows that while climate change is global, its effects differ between regions. This difference of effects, coupled with different societal context reveal the adaptability of constitutional frameworks

66 Navraj Singh Ghaleigh, Joana Setzer and Asanga Welikala, ‘The Complexities of Comparative Climate Constitutionalism’ (2022) 34 *Journal of Environmental Law* 517. It is marked by a distrust of state power as it relates to climate action or inaction. This is a venerable approach. In his 1967 classic, MJC Vile recounts that the ‘great theme of the advocates of constitutionalism [had been] the frank acknowledgement of the role of government in society, linked with the determination to bring that government under control and to place limits on the exercise of its power’. This mode of distrust has been ported to the climate constitutionalism literature and in particular its focus on adjudication of constitutional rights provisions for climate purposes. This, we argue, is but one aspect of climate constitutionalism that no longer speaks to the needs of the world when we think about the relationship between climate change, the doctrines and institutions of comparative constitutional law, and the underpinning theory of constitutionalism for this relationship. The institutional dimension of the constitutional management of climate change must go beyond courts and rights to processes and institutions in the two political branches of the state. The normative theory of climate constitutionalism—why should climate change be a constitutional subject on a global scale?—should address itself to the matter of how that question can be answered from a wider and more pluralistic set of normative standpoints than simply only liberalism. In other words, how can climate constitutionalism be normatively justified beyond, although not against, liberalism?” *Journal of Environmental Law*, DOI: “10.1093/jel/eqac008”, ISSN: “0952-8873”, issue: “3”, journalAbbreviation: “Journal of Environmental Law”, page: “517-528”, source: “Silverchair”, title: “The Complexities of Comparative Climate Constitutionalism”, volume: “34”, author: “{“family”: “Ghaleigh”, “given”: “Navraj Singh”}, {“family”: “Setzer”, “given”: “Joana”}, {“family”: “Welikala”, “given”: “Asanga”}”, issued: “{“date-parts”: [“2022”, “11”, “1”]}”, schema: “https://github.com/citation-style-language/schema/raw/master/csl-citation.json”}

to reflect societal values, cultural contexts, and global imperatives. Moreover, the durability and foundational nature of constitutional provisions offer a unique opportunity for embedding long-term commitments to climate action, transcending the volatility of political cycles and legislative priorities. By establishing a framework that integrates environmental protection with human rights and governance structures, constitutions can play a pivotal role in bridging the gaps left by international law, promoting accountability, and fostering innovative legal solutions. Constitutionalizing environmental rights and responsibilities can provide both permanence and adaptability, guiding states in their pursuit of climate justice.

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The Importance of Emission Trading Schemes as Innovative Legal Solutions to Combat Air Pollution in Urban Areas - Jovan Vasilevski

Abstract

Urban air pollution is a common challenge experienced in diverse areas around the world. As such, it creates a scientific, political, and legal frontier for implementing innovative solutions that aim to impact and overcome this issue. One such solution can be observed in emission trading schemes, which attempt to tackle climate change through a market-based approach. Emission trading schemes are regulatory instruments which aim to cap or limit emission levels of mainly greenhouse gas emissions through financial incentives for polluters that cut emissions, and financial burdens for those that surpass the imposed limits. Further, these programmes often include systemic planning provisions for overall emission reductions and the generation of revenue marked for investment into environmental causes. This paper examines the legal aspects of these programmes, as well as their observed and potential effectiveness for combatting urban air pollution. In doing so, it analyses how any future market-based regulation tackling air pollution may avoid pitfalls and establish a strong legal framework, drawing from the experience of existing emissions trading schemes. The main subjects of analysis are the EU Emissions Trading System (EU ETS), which predominantly targets industrial pollutants, and California's Cap and Trade Program, which additionally includes the transport industry. The findings demonstrate that these programmes can be effective and meaningful as long as they are backed by a solid legal framework and enforcement mechanisms. On the other hand, the programmes have been subject to manipulation, with companies developing methods to cheat their way through the system and improper market control mechanisms have led to pitfalls. The paper suggests that these programmes have a lot of potential to significantly benefit the fight against air pollution through tackling climate change, but any new projects must seek guidance in the experience of existing ones.

Introduction to emissions trading schemes

Air pollution, particularly in urban environments, represents one of the most pressing environmental and public health challenges in the world. The World Health Organization (WHO) estimates that 9 out of 10 people worldwide breathe polluted air¹ which is a major cause of premature death, with over one-eighth of global annual deaths linked to it.² Furthermore, the World Bank brings attention to significant economic losses attributed to air pollution.³ Given the complexity and scale of this issue, combating air pollution has become a multifaceted endeavour, requiring innovative regulation that can effectively drive emission reductions.

Legal frameworks in environmental regulation have evolved over the past few decades, with more and more regulators abandoning command-and-control approaches in favour of market-based solutions.⁴ One of these approaches that has gained momentum in recent years is the use of emission trading schemes.

While these programmes are primarily designed to reduce greenhouse gas emissions and address global climate change, they offer valuable insights for reducing urban air pollution. Even more significantly, they offer future projects guidance on how best to lay down the legal framework in order to avoid the pitfalls experienced by the existing programmes.

Emissions trading schemes are regulatory instruments which adopt a market-based approach to the reduction of emissions. Essentially,

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- 1 World Health Organization, '9 out of 10 people worldwide breathe polluted air, but more countries are taking action' (News release, 2 May 2018) <www.who.int/news/item/02-05-2018-9-out-of-10-people-worldwide-breathe-polluted-air-but-more-countries-are-taking-action> Accessed 15 Nov 2024.
 - 2 World Health Organization, '7 million premature deaths annually linked to air pollution' (News release, 2 May 2018) <www.who.int/news/item/25-03-2014-7-million-premature-deaths-annually-linked-to-air-pollution> Accessed 15 Nov 2024.
 - 3 World Bank and Institute for Health Metrics and Evaluation 'The Cost of Air Pollution: Strengthening the Economic Case for Action' (World Bank 2016).
 - 4 Richard Schmalensee and Robert N. Stavins, 'Lessons Learned from Three Decades of Experience with Cap and Trade' (2017) Review of Environmental Economics and Policy 11 (1) 59; OECD, 'Effective Carbon Rates 2023: Pricing Greenhouse Gas Emissions through Taxes and Emissions Trading' (OECD Series on Carbon Pricing and Energy Taxation, OECD Publishing 2012) 38 (OECD Effective Carbon Rates 2023).

they involve the procurement of allowances by subjects to be able to generate greenhouse gas emissions through their work. The subjects and emissions covered are specifically defined by the programmes' establishing legislation.⁵ The allowances can be acquired in many ways, with most established schemes today employing a hybrid arrangement of auctions, trading and handouts for vulnerable sectors (such as agriculture). Subjects which generate emissions larger than their allowed levels will face fines and financial disincentives. The key aspect is that there is always a limited set amount of allowances. This represents a "cap" on emissions. The schemes are implemented in phases, which are monitored by benchmarks culminating in the reduction of emissions to predetermined levels corresponding to pre-industrial emissions. This is done by consistently lowering the "cap" of available allowances and, subsequently, overall emissions, in coordination with larger national and international plans for climate policy.⁶ The end goal is the emergence of an emissions market which will offer financial incentives for lowering emissions and thus assist the effort in their elimination.

The Acid Rain Program in the United States is proclaimed as the first "prototype" programme of this kind.⁷ It was established by Title IV of the Clean Air Act 1990 and aimed to significantly reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) in an effort to combat acid rain.⁸ Emissions trading gained international prominence with the United Nations Framework Convention on Climate Change (UNFCCC), with article 4 encouraging the development of such practices.⁹ Then, article 17 of its Kyoto Protocol established emissions trading as a viable method states can utilise for lowering greenhouse gas emissions and

5 eg Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (2003) OJ L275/25 (EU ETS Directive) art 2, Annex I, Annex II, Annex III; and Cal Code Regs tit 17, div 3, ch 1, subch 10, art 5, subart 3 (2019) [CA].

6 eg Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (2021) OJL 243/1 preamble (12) and (13); Assem Bill 32 § 1 (Nunez 2006) pt 5 [CA].

7 Jan-Peter Voß, 'Innovation processes in governance: The development of 'emissions trading' as a new policy instrument' (2007) *Science and Public Policy* 34 (5) 334-335.

8 EPA, 'Acid Rain Program' (Last updated on 24 Jan 2024) <www.epa.gov/acidrain/acid-rain-program> Accessed 15 Nov 2024.

9 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 Mar 1994) 1771 UNTS 107, art 4.

tackling climate change.¹⁰ The EU Emission Trading System (EU ETS) is the first international programme of this kind. It was launched in 2005 and serves as the European Union's flagship carbon market programme.¹¹ By 2021 emission trading programmes have been implemented by at least 35 countries on both national and regional levels.¹²

There are two main reasons why so many have adopted this approach. Firstly, there is the cost factor. Market-based approaches have been shown to be economically cost-effective relative to other approaches and, at least in theory, provide the most emission reduction at a minimum cost.¹³ Secondly, they are politically and legally more feasible than other regulatory instruments, such as a carbon tax. They employ a much lower administrative burden and require lesser qualified majorities in legislatures to be adopted, for example, California considered a carbon tax but opted for their Cap and Trade emission trading programme as the former required a two-thirds legislative majority in order to be implemented.¹⁴

The performance of the programmes has been mainly heralded as a success. The Acid Rain Program has helped in achieving a 95% reduction in SO₂ emission levels and 89% in NO_x emission relative to 1989 levels.¹⁵ The EU ETS has contributed to a 47% emission decrease from European power and industry plants relative to 2005.¹⁶ And California's Cap and Trade programme achieved its target emission reduction goals 4 years earlier than legally mandated.¹⁷

However, a market-based approach is not without downsides. Naturally,

10 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 Dec 1997, entered into force 16 Feb 2006) 2303 UNTS 162 art 17.

11 European Commission, 'What is the EU ETS?' <climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/what-eu-ets_en> Accessed 15 Nov 2024.

12 OECD Effective Carbon Rates 2023, 41-42.

13 Schmalensee and Stavins (n 4) 59.

14 OECD Effective Carbon Rates 2023, 40.

15 EPA, 'Acid Rain Program Results' (Last updated on 5 Apr 2024) <<https://www.epa.gov/acidrain/acid-rain-program-results>> Accessed 15 Nov 2024.

16 European Commission, 'What is the EU ETS?' <climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/what-eu-ets_en> Accessed 15 Nov 2024.

17 California Air Resources Board, 'Cap-and-Trade Program: Frequently Asked Questions' (California Air Resources Board 2022).

it offers a degree of uncertainty and volatility. A pungent example of this is the 2006 EU ETS price crash.¹⁸ Informetoin a large degree by this event, the OECD recommends¹⁹ the use of price control mechanisms for any scheme aiming to be effective. Many employ such mechanisms today. It involves concepts such as price ceilings, price bottoms and the use of emergency reserve allowances for certain situations. Another commonly used mechanism is that of banking, where subjects are allowed to “bank” a certain amount of their acquired allowances for future use, enabling them to strategically plan their emission generation.

Ruminating on the issue of air pollution in urban areas, the rest of this paper will closely analyse two well-documented flagship emissions trading schemes: the EU ETS and California’s Cap-and-Trade Program. The conclusions drawn from this analysis will provide how air pollution has been affected by these programmes and how the lessons derived from their performance can help shape future solutions.

The eu emissions trading system (eu ets)

The EU ETS was implemented in 2005 through Directive 2003/87/EC of the European Parliament and of the Council with the intent “to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner”²⁰ and “contribute to the levels of reductions that are considered scientifically necessary to avoid dangerous climate change.”²¹ All EU member states participate, with Iceland, Liechtenstein and Norway opting in as non-members. The scope of the programme covers greenhouse gas emissions of electricity and heat production, industrial manufacturing, aviation and, since 2024, maritime transport.²²

It is described as a “cap and trade” system which limits the total greenhouse gas emissions of its participants. The system then utilises allowances which “are essentially rights to emit [greenhouse gas] emissions equivalent to the global warming potential of 1 tonne of CO₂ equivalent (tCO₂e).”²³ Some

18 OECD Effective Carbon Rates 2023, 40.

19 OECD Effective Carbon Rates 2023, 63.

20 EU ETS Directive, art 1.

21 Ibid.

22 European Commission, ‘EU ETS emissions cap’ <https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/eu-ets-emissions-cap_en> Accessed 15 Nov 2024;

23 European Commission, ‘EU ETS Handbook’ (Climate Action, European Union 2015) 16.

allowances are allocated for free, either through a system of benchmarks measuring emission performance²⁴ or with the goal of developing certain energy sectors²⁵, but most are acquired in transactions between participants or auctioning.²⁶ It is necessary for participants' yearly CO₂ emissions to correspond with the number of allowances they have, and failing to do so creates a requirement to either buy more allowances or reduce emissions.²⁷ Furthermore, there is a penalty for each tonne of emissions with no allowance returned in due time, on top of the cost of new allowances, and the names of those penalised are made public.²⁸ The number of allowances available is designed to decrease annually since 2013.²⁹ The programme is implemented in phases, with a pilot phase from 2005-2007 and currently in the midst of its fourth phase.³⁰

It is clear that the EU ETS is a programme which has the primary goal of fighting global warming and climate change through the reduction of carbon emissions. However, it is also a very robust operation that rests on a detailed legal framework which gives valuable insight into the workings of market-based regulatory instruments which may be employed to combat any environmental issue related to chemical emissions. Its role as the largest international, fully functioning emission trading market cannot be understated.

The EU has enjoyed a steady, although modest, reduction of total CO₂ emissions since 2005.³¹ But there is also data that suggests the EU ETS has had a great deal of positive impact on pollutants responsible for ambient air pollution like SO₂, PM_{2.5} and NO_x as they primarily result from fuel combustion and are thus co-pollutants of CO₂. The data shows that emissions reductions of these chemicals follow the reductions in CO₂ emissions since the inception of the EU ETS and that it "likely leads to large reductions in air pollution and health damages, even when bounding the potential effects of

24 EU ETS Directive, art 10a.

25 EU ETS Directive, art 10c.

26 European Commission, 'EU ETS Handbook' (Climate Action, European Union 2015) 16.

27 Ibid.

28 European Commission, 'Monitoring, reporting and verification of EU ETS emissions' <https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/eu-ets-emissions-cap_en> Accessed 15 Nov 2024.

29 European Commission, 'EU ETS Handbook' (Climate Action, European Union 2015) 16.

30 For a detailed overview of each phase see Schmalensee and Stavins (n 4) 70-71.

31 Christian Nissen, Sabine Gores, Sienna Healy, Hauke Hermann, 'Trends and projections in the EU ETS in 2023: The EU Emissions Trading System in numbers' (ETC-CM Report 2023/07, European Topic Centre on Climate change mitigation 2023) 8.

EU emission standards.”³²

On the other hand, the programme has not gone without pitfalls. In its first phase of implementation, participants enjoyed the liberal allocation of allowances without counteracting mechanisms of price control. The prices moved with a great dose of volatility in the 2005-2007 starting period of the programme, going from €8 per ton of CO₂ all the way to €30, back to €8 in April 2006 and escalated into a crash of the carbon market in 2007.³³ Participants were not permitted to bank and transfer their allowances from phase one to phase two, and this, along with the general volatility of energy prices at the time is what ultimately caused the price collapse.³⁴ The EU went on to address this by implementing unlimited banking for participants between later phases.³⁵

The California cap-and-trade program

With increasing political attention to climate change during the early 2000s and empowered by an unlikely alliance between the strong Democratic Party and the Republican, but moderate, Governor Arnold Schwarzenegger, California set out to implement its very own emissions trading scheme inspired by the Kyoto Protocol and its European allies.³⁶ Politicians and regulators alike were heavily reliant on the lessons from the European experience and aimed to create a system that would avoid any of the pitfalls experienced by the EU ETS.³⁷

Assembly Bill 32 (AB32) was delivered by the Californian legislature in 2006 and it instructed the California Air Resources Board to create a programme that would aim to lower greenhouse gas emissions and this programme included, among other regulations, a cap-and-trade system.³⁸ This manifested as a statewide cap on emissions “measured in metric tons of carbon dioxide equivalent (MTCO₂e)” which started in 2013, gradually

32 Piero Basaglia, Jonas Grunau, Moritz A. Drupp, ‘The European Union Emissions Trading System might yield large co-benefits from pollution reduction’ (2024) *Proceedings of the National Academy of Sciences of the United States of America* 121(28) 2.

33 Schmalensee and Stavins (n 4) 69-70

34 Market Advisory Committee, ‘Recommendations for Designing a Greenhouse Gas Cap-and-Trade System for California. Sacramento’ (California Air Resources Board 2007) 96.

35 Schmalensee and Stavins (n 4) 69-70

36 Guri Bang, David G. Victor, Steinar Andresen, ‘California’s Cap-and-Trade System: Diffusion and Lessons’ (2017) *Global Environmental Politics* 17(3) 16.

37 *Ibid* 19-20.

38 Schmalensee and Stavins (n 4) 67.

decreasing and consequently achieving emission reductions.³⁹ Participants are expected to surrender allowances or offset credits⁴⁰ for each ton of greenhouse gas emissions that they produce which can be acquired through mutual transactions, auctions or allocated for free.⁴¹ The programme is implemented in phases called compliance periods which represent a time frame for calculating obligations⁴² and also employs price collars as a control mechanism.⁴³

What makes the California Cap-and-Trade system stand out is its expansive scope. It is estimated that the programme covers 85% of the state's greenhouse gas emitters throughout an array of different industries such as electricity production, large industry and manufacturing.⁴⁴ The programme was expanded in 2015 to include fuel distributors in an attempt to cover the emissions of the transportation sector.⁴⁵

It is a robust, complex and ambitious programme that aims to tackle multiple issues at once and take on an economy-wide approach. As such, it has generated a significant amount of revenue for the state and is complemented by Assembly Bill 1532 (2012) which mandates that the generated funds be used to “achieve co-benefits such as job creation, air quality improvements, and public health benefits.”⁴⁶ This stands as a testament to its ambition and an example of the multifaceted benefits of emission trading schemes as regulatory instruments.

California Cap-and-Trade has overseen a steady decrease in greenhouse gas emissions over the years⁴⁷ and has managed to achieve crucial benchmarks ahead of time.⁴⁸ The revenue generated by the programme is actively being

39 California Air Resources Board, 'Cap-and-Trade Regulation Instructional Guidance' (California Air Resources Board 2012).

40 Allowance credits given to certain subjects which are not under compliance requirements of the programme but have lowered their greenhouse emissions. Provides another form of financial incentive for lowering emissions.

41 California Air Resources Board, 'Cap-and-Trade Regulation Instructional Guidance' (California Air Resources Board 2012).

42 Ibid.

43 Schmalensee and Stavins (n 4) 67.

44 Berkeley Law, Center for Law, Energy & the Environment, 'California Climate Policy Fact Sheets: Cap-and-Trade' <<https://www.law.berkeley.edu/research/cee/research/climate/projectclimate/california-climate-policy-fact-sheets/>> Accessed 15 Nov 2024.

45 Schmalensee and Stavins (n 4) 67.

46 Ibid 68.

47 California Air Resources Board, 'California Greenhouse Gas Emissions from 2000 to 2022: Trends of Emissions and Other Indicators' (California Air Resources Board 2024).

48 California Air Resources Board, 'Cap-and-Trade Program: Frequently Asked

used to develop projects and further environmental causes. More than \$10 billion of funds generated from Cap-and-Trade proceeds were implemented into different environmental projects, providing meaningful benefits.⁴⁹

However, critics point out that systemic data might not correspond with the true picture, a critique often levied against emission trading schemes. An investigative report suggests that the programme has allowed oil and gas industries to increase their emission levels by not offering sufficient accountability.⁵⁰ The report further argues that meeting the remaining benchmarks would take unprecedented amounts of emission reductions.⁵¹ Essentially, as long as the data is reported systemically, some large polluters may get credited due to significant emission reductions by other participants. And if the programme in question allows for the banking of allowances, and California does, it could lead to serious problems down the line, especially as the cap tightens.

Conclusion

Emission trading schemes have become ever the more popular regulatory instrument in addressing climate change. Even though they are mostly used to tackle carbon emissions, there is evidence that these programmes can be a major tool for addressing other environmental issues including the fight against urban air pollutants, as the data from the EU ETS and California's Cap-and-Trade Program has shown. Overall, there are three main conclusions to be drawn from contemporary experience with these programmes.

Firstly, emission trading schemes have proven to be effective in the steady reduction of overall emissions. Both the EU ETS and California's Cap-and-Trade Program have overseen a steady decrease in emissions since their inception in the sectors that they regulate. Barring drastic inefficiency, an emission trading scheme is pretty much guaranteed to bring about a reduction in emissions, although the volume and haste will depend on the stringency and ambition during implementation.

Secondly, emission trading schemes are more politically and legally feasible

Questions' (California Air Resources Board 2022).

49 California Climate Investments, 'Annual Report to the Legislature on California Climate Investments Using Cap-and-Trade Auction Proceeds Greenhouse Gas Reduction Fund' (Annual Reports, California Climate Investments 2024) 5.

50 Lisa Song, 'Cap and Trade Is Supposed to Solve Climate Change, but Oil and Gas Company Emissions Are Up' (ProPublica 15 Nov 2019). <www.propublica.org/article/cap-and-trade-is-supposed-to-solve-climate-change-but-oil-and-gas-company-emissions-are-up> Accessed 15 Nov 2024.

51 Ibid.

compared to command-and-control approaches in regulation, such as a carbon tax. There are two reasons for this: they require lesser legislative majorities to get implemented, and they generate significant funds that can be marked for investing in environmental causes. The above-analysed programmes were both implemented through simple legislative majorities and have contributed proceeds to investment in local initiatives that directly impact air quality.

Thirdly, and most importantly, any future emission trading schemes must implement price control and transparency mechanisms if they wish to remain effective on a long-term basis. Experience from the EU ETS has shown that too much liberal allocation of allowances and a lack of price control contributed to a collapse of their emissions market, while California's reporting of data shows a lack of transparency as it does not indicate the uphill battle that the programme will face, as participants find ways to manipulate the system and avoid cutting emissions.

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4. Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (2021) OJL 243/1.

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1. Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 Dec 1997, entered into force 16 Feb 2006) 2303 UNTS 162.
2. United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 Mar 1994) 1771 UNTS 107.

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1. Environmental Justice and Accountability: The Case for an Environmental Ombudsman - Mia Mladenovska

Abstract

Environmental justice aims to ensure equitable treatment and non-discriminatory involvement of all individuals in environmental decision-making processes. The right to a healthy environment, as a universally recognized human right, corresponds to an obligation of States to safeguard a clean, healthy and sustainable environment. This duty has been enhanced through international treaties, particularly the Aarhus Convention which requires States to ensure that all persons have access to justice in environmental matters. It emphasizes the need for independent and impartial bodies to review the legality of decisions, acts, or omissions by the State that impact the environment. A key mechanism for promoting accountability and transparency in government decisions is the office of the Ombudsman. This institution serves as a direct oversight body for governmental decisions, providing a unique platform for individuals and communities affected by State actions to seek redress. In regards to environmental justice, the role of the Ombudsman is particularly important, as violations of environmental rights could have far-reaching effects on entire populations. In most jurisdictions, the general Ombudsman is responsible for protecting the right to a healthy environment within the broader human rights framework, but environmental justice often constitutes only a small and underutilized part of their mandate. In this sense, a case can be made for an establishment of a dedicated Environmental Ombudsman as a specialized mechanism for addressing environmental concerns. This paper examines the effectiveness of establishing a separate Environmental Ombudsman to address environmental concerns, distinct from a general human rights Ombudsman. The paper presents an analysis of the mandate of Ombudsman offices in environmental matters through a comparative study of their roles across different jurisdictions. It further examines the practices of countries with established Environmental Ombudsmen or similar institutions – specifically New Zealand, Canada and Hungary - drawing on their experiences to highlight the impact and role of such mechanisms in promoting environmental justice. Additionally, the paper delves into the role of the Ombudsman in North Macedonia concerning environmental protection and evaluates the necessity of establishing a dedicated Environmental Ombudsman to further strengthen environmental governance and accountability.

Keywords: environment, ombudsman, environmental justice, environmental ombudsman

Introduction

Environmental justice is broadly defined as the pursuit of “justice and accountability in environmental matters” by upholding environmental rights and ensuring equitable involvement of all individuals in environmental decision-making processes.¹ Environmental rights pertain to “conditions of a specified quality”², such as clean air, safe and sufficient water, healthy food and ecosystems, and a non-toxic environment.³ As of 2023, more than 160 countries have recognized the right to a healthy environment, taking on the duty to ensure these substantive standards.⁴

However, the sole substantive qualities of environmental rights are not sufficient for their protection. They correspond to a duty of the State to uphold and safeguard them through procedural guarantees, including “access to information, public participation and access to justice with effective remedies”.⁵ Such obligations have been globally strengthened through international treaties, particularly the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“Aarhus Convention”). Article 9 of this Convention is crucial, as it emphasizes the need for independent and impartial bodies to assess the legality of State decisions, acts, or omissions that affect the environment, ensuring that procedural guarantees are upheld.⁶

To maintain these standards, independent national human rights bodies are essential, with Ombudsman offices being key institutions. Tasked with protecting constitutionally guaranteed rights and overseeing government decisions, these offices offer a vital platform for individuals and communities affected by state actions to seek redress. In environmental justice, the Ombudsman’s role is particularly important to guarantee the rationality of environmental decision-making processes, taking into account the legality, procedural appropriateness and public interest.

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- 1 United Nations Development Programme, *Environmental Justice: Securing our right to a clean, healthy and sustainable environment* (2022) p. 15
 - 2 United Nations Environment Programme, *What Are Environmental Rights?* available at < <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> > [accessed 5 November 2024]
 - 3 UN Office of the High Commissioner for Human Rights, ‘The Right to a Healthy Environment: A User’s Guide’ by David R. Boyd Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment (2024), p. 7.
 - 4 United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (2023), p. 92
 - 5 UN Office of the High Commissioner for Human Rights, ‘The Right to a Healthy Environment: A User’s Guide’ by David R. Boyd Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment (2024) p. 7
 - 6 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (“Aarhus Convention”), Art. 9.

This paper examines the role and mandate of Ombudsman offices as independent mechanisms for ensuring accountability and advancing environmental justice. The first section highlights success stories of general Human Rights Ombudsman offices in promoting environmental protection. The second section analyzes the mandate and impact of dedicated Environmental Ombudsman offices or similar institutions and their practices in dealing with environmental issues. In the last section, the paper explores the role of the North Macedonia Ombudsman in protecting environmental rights and discusses the need for establishing a specialized Environmental Ombudsman.

Human Rights Ombudsman Success Stories in Environmental Protection

While traditionally focused on civil and political rights, many ombudsman offices now address environmental issues, recognizing the link between human rights and environmental protection. By investigating complaints and advocating for policy change, these institutions play a crucial role in enforcing environmental rights. This section highlights success stories of human rights ombudsmen in Ecuador, Colombia, and the Philippines in safeguarding both people and the environment.

In February 2019, the Indigenous Waorani community in Ecuador co-filed a lawsuit with the Ecuadoran Human Rights Ombudsman against three government bodies for conducting a faulty consultation process in 2012 with the community before auctioning their land in the Amazon rainforest to the oil industry. The Ombudsman played a crucial role by conducting independent investigations and making determinations that ultimately led to the case being brought before the Pastaza Provincial Court in Ecuador.⁷ The court ruled in favor of the Waorani, finding the government had not ensured a free, prior, and informed consent process. The landmark victory halted the mining operations which would have covered over 7 million acres of indigenous land across the southeast Amazon.⁸

In the Atrato River case, communities in Colombia's Chocó region, alongside several NGOs, petitioned the court to address the severe environmental degradation caused by illegal mining and deforestation in the area. The

7 Kimberley Brown, 'A Landmark Lawsuit Sets New Precedent for Indigenous Land Rights in the Amazon' *Pacific Standard* (8 May 2019) available at <<https://psmag.com/environment/a-landmark-lawsuit-sets-new-precedent-in-the-amazon/>> [accessed 7 November 2024].

8 Mitch Anderson, 'Waorani People win landmark legal victory against Ecuadorian Government' *One Earth* (25 September 2023) available at <<https://www.oneearth.org/waorani-people-win-landmark-legal-victory-against-ecuadorian-government/>> [accessed 7 November 2024].

Ombudsman was essential in defending the rights of Afro-Colombian and Indigenous communities affected by the river's degradation, advocating for environmental protection and restoration. In response to growing concerns, the Ombudsman Office adopted a resolution declaring a humanitarian and environmental emergency in the region of Choco, despite government inaction. In the proceedings, the Ombudsman provided crucial evidence through its reports on the mining and forestry activities causing diseases in the communities.⁹ The Colombian Constitutional Court's 2016 ruling recognized the river's legal personhood, which marked a significant development in environmental and human rights law. With such recognition, the river was to be guaranteed protection, conservation, maintenance, and restoration.

The Philippines Commission on Human Rights (CHR) took substantial steps to hold accountable 47 fossil fuel companies ("carbon majors"), including multinational giants like Chevron, Shell, OMV, and BHP Billiton, for their role in exacerbating the climate crisis. Though not an official Ombudsman office, the CHR functions similarly as an independent body, through investigating human rights violations, recommending policy measures, and monitoring the government's compliance with human rights obligations. In 2015 the CHR launched an investigation, supported by local communities affected by extreme weather, aiming to assess the impact of carbon majors on climate change and the rights of Filipinos. In 2022, the CHR's National Inquiry on Climate Change Report found that carbon majors contributed to 21.4% of global emissions from fossil fuel combustion and knowingly suppressed climate science, depriving the public of the right to make informed decisions about their products.¹⁰ It emphasized the corporate responsibility of these companies to exercise human rights due diligence and to provide remediation for their impact on climate change.¹¹

The cases discussed showcase the powerful impact that human rights ombudsman offices can have in promoting environmental justice. Whether halting destructive land development, defending vulnerable communities against environmental degradation, or holding corporations accountable for climate-related damages, these institutions have proven essential in bridging human rights and environmental protection.

9 Constitutional Court of Colombia, Center for Social Justice Studies et al. v. Presidency of the Republic et al. Judgment T-622/16 (*The Atrato River Case*) (10 November 2016) p. 9

10 Commission on Human Rights of the Philippines, *National Inquiry on the Climate Change Report* (2022) pp. 98-110.

11 *ibid.* pp. 110-115.

Mandate and Impact of Environmental Ombudsmen Offices

Despite general human rights ombudsman offices having powers to address environmental issues, some jurisdictions have opted to create separate Environmental Ombudsman institutions or similar bodies. These independent institutions focus exclusively on environmental matters, ensuring a more comprehensive protection of the right to a healthy environment. This section will explore the mandates and impact of such institutions in New Zealand, Canada, and Hungary, discussing the effectiveness of their establishment.

New Zealand Parliamentary Commissioner for the Environment

Established under the Environment Act of 1986, the New Zealand Parliamentary Commissioner for the Environment (PCE) is an independent office tasked with enhancing the efficiency of institutions managing environmental impacts. It has broad functions, including investigating environmental issues, assessing environmental planning and resource management, advising on preventive or corrective measures, encouraging the collection and sharing of information and recommending improvements.¹² The PCE functions similarly to a typical ombudsman, by responding to public concerns on environmental matters through launching investigations, conducting inquiries, directing complainants to legal remedies, and overall issue monitoring.¹³ The Commissioner outlines that its mission is “to maintain or improve the quality of the New Zealand environment by providing robust independent advice that influences decisions.”¹⁴ In this sense, it serves as a vital mechanism for addressing environmental concerns, promoting accountability and regularly reporting to Parliament.

In its 2024 Annual Report, the office reported 95 public submissions, up from 52 the previous year. From 2014 to 2024, it handled over 250 public concerns and information requests, forwarding them to relevant institutions to provide responses.¹⁵ In addition, through its investigative function (prompted by the public or independently), the PCE conducts reports containing recommendations to Ministers which are submitted to Parliament.¹⁶ From 2014 to 2024, the Commissioner has published 30 reports, concerning matters such as water and air quality, climate change and rising seas, farms and forests conservation, sustainable tourism, emissions reduction and the general state of New Zealand’s environment.¹⁷

12 New Zealand Ministry for the Environment, Environment Act No 127, Section 16 (1986)

13 Parliamentary Commissioner for the Environment, *Annual Report for the year ended 30 June 2024* (September 2024) New Zealand, p. 24

14 *ibid.*, p. 14

15 Annual Reports of the New Zealand Parliamentary Commissioner for the Environment are available at: <https://pce.parliament.nz/pre-publications/>

16 Parliamentary Commissioner for the Environment, *Annual Report for the year ended 30 June 2024* (September 2024) New Zealand p. 11.

17 Environmental Reports of the New Zealand Parliamentary Commissioner for the Envi-

Establishing the PCE has proven to be an efficient measure for promoting environmental justice through providing unbiased assessments and serving as a critical link between public interests and governmental decisions. The demonstrated increase in public submissions to the PCE and the significant number of reports issued, highlight both the societal trust in this institution's role and its effectiveness as an advocate for environmental justice.

Canadian Commissioner of the Environment and Sustainable Development

As part of the Office of the Auditor General, the Canadian Commissioner of the Environment and Sustainable Development (CESD) was created in 1995, focusing on providing the Parliament and the general public with independent reviews of the government's management of environmental and sustainable development issues. Its mandate includes examining and advising on the implementation of government strategies and efforts towards protecting the environment, mitigating climate change and fostering sustainable development.

A key activity carried out by the CESD involves performance audits which provide an independent, objective, and systematic evaluation of how effectively the government manages its activities, responsibilities, and resources. From 2015 to 2024, the CESD published 67 reports on environmental issues, addressing topics such as sustainable development, biodiversity conservation, marine life protection, climate change impacts, and reductions in emissions and plastic waste.¹⁸

A distinctive aspect of the Commissioner's work is the administration of environmental petitions, which allow Canadian residents and organizations to directly address environmental concerns and request information from responsible federal ministers and be guaranteed a response. The CESD compiles an annual report summarizing the petitions, their status, and the responses received, which is submitted to Parliament and made publicly available. These petitions often inquire about the sustainability and eco-friendly policies of federal departments and agencies, with a high rate of responses received within the statutory 120-day deadline. Since its establishment in 1996, the CESD has handled 568 environmental petitions and follow-ups.¹⁹

The statistical data of the Commissioner's engagement speaks on the high efficiency of its work, clearly justifying its establishment for ensuring

ronment are available at: <https://pce.parliament.nz/pre-publications/>

- 18 Reports to Parliament of the Canadian Commissioner of the Environment and Sustainable Development are available at <https://www.oag-bvg.gc.ca/internet/English/parl_lp_e_925.html>
- 19 Bi-annual Reports of the Canadian Commissioner of the Environment and Sustainable Development containing environmental petitions available at <https://www.oag-bvg.gc.ca/internet/English/parl_lp_e_901.html>

environmental responsibility in governmental decisions. The proficient management of environmental petitions further strengthens the guarantees for public participation, with the independent Commissioner effectively connecting public concerns with institutional operations.

Hungarian Office of the Parliamentary Commissioner for Future Generations

Hungary's Office of the Parliamentary Commissioner for Future Generations (CFG) was created in 2008, focusing on protecting environmental rights and advocating for sustainable development. In its first annual report, the CFG emphasized the need for its creation, highlighting the demand for expanded responsibilities beyond the general ombudsman's duties and new solutions for environmental issues through consultation, legal compliance, and protection of the right to a healthy environment.²⁰ This so-called "green ombudsman" was assigned the task of ensuring responsibility for the preservation of natural values "for the sake of protecting the next generations."²¹

Through its mandate, the Ombudsman addressed environmental issues by conducting investigations (based on *ex officio* interventions, public complaints or petitions), providing recommendations on environmental protection, challenging unconstitutional legislation, and monitoring policy developments.²² The institution performed three main duties: investigating complaints, advocating in Parliament, and developing strategic projects and policies. Acting as a typical ombudsman, the CFG handled individual complaints, identifying violations of the right to a healthy environment. The Commissioner also provided consultancy on draft environmental legislation and contributed to strategic development. The Commissioner reported that in the first two years of operation, the office assisted in the preparation of over 20 environmental acts protecting future generations' rights.²³ Throughout its mandate, the CFG handled about 200 substantial cases a year concerning environmental complaints from citizens and NGOs.²⁴

20 Parliamentary Commissioner for Future Generations of the Republic of Hungary, *Comprehensive Summary of the Report of the Parliamentary Commissioner for Future Generations of Hungary 2008 – 2009* (Budapest, 2010) p. 5.

21 *ibid.*, p. 8.

22 UN Office of the High Commissioner for Human Rights, *The Office of the Hungarian Ombudsman for Future Generations on methods to promote the implementation of human rights obligations relating to the environment*, Ombudsman for Future Generations, Office of the Commissioner for Fundamental Rights (Hungary) available at <<https://www.ohchr.org/Documents/Issues/Environment/ImplementationReport/Ombudsman%20for%20Future%20Generations.doc>>

23 Parliamentary Commissioner for Future Generations of the Republic of Hungary, *Comprehensive Summary of the Report of the Parliamentary Commissioner for Future Generations of Hungary 2008 – 2009* (Budapest, 2010) p. 31.

24 Kultur Work, *Interview with new trustee Dr. Sándor Fülöp | Looking back at the impact and role of Hungary's Ombudsman for Future Generations*, Foundation for Democracy and Sustainable Development (27 October 2016) available at <https://www.fdsd.org/i_sandor_fulop/> [accessed 10 November 2024].

Hungary's 2011 Fundamental Law dismantled the CFG, bringing in place the broader Commissioner for Fundamental Human Rights, tasked with, *inter alia*, protecting the interests of future generations.²⁵ Act CXI of 2011 on the Commissioner for Fundamental Rights further details the institution's functions, which encompass the original duties of the former CFG.²⁶ Under this mandate, the Commissioner for Fundamental Rights now oversees the protection of the right to a healthy environment and the preservation of natural resources.²⁷

The analysis of Environmental Ombudsmen in New Zealand, Canada, and Hungary highlights their superior effectiveness in addressing environmental challenges compared to general ombudsmen. Their exclusive focus on environmental issues enables them to develop deep expertise, implement tailored strategies, and respond more efficiently to public concerns. Moreover, the specialized nature of environmental ombudsmen allows them to adopt innovative mechanisms, like Canada's environmental petitions, to advance accountability. Such mechanisms, often unfeasible for general ombudsmen due to limited resources or competing priorities are vital for environmental concerns as they allow for greater public participation and transparency. Additionally, these institutions are better equipped to anticipate and tackle emerging environmental challenges through strategic planning and foresight, exemplified by Hungary's emphasis on preserving natural resources for future generations. In contrast, general ombudsmen, with their broader and primarily reactive approach (responding only to received complaints), often lack the capacity for such proactive initiatives. Through targeting environmental issues, environmental ombudsmen build stronger public trust and empower citizens to actively seek accountability, while reducing bureaucratic inefficiencies that can arise when environmental matters are dispersed across multiple general institutions.

The Role of the Ombudsman in North Macedonia in Environmental Justice

The North Macedonia Ombudsman office is an independent institution tasked with protecting "the constitutional and legal rights of citizens when they are violated by state administrative bodies and other authorities and organizations with public powers."²⁸ The Ombudsman supervises human rights protections,

25 Fundamental Law of Hungary (25 April 2011, as in force on 23 December 2020), Ministry of Justice ("Fundamental Law of Hungary"), Art. 30 available at <<https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>> [accessed 10 November 2024].

26 Office of the Commissioner for Fundamental Rights of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights (promulgated on 26 July 2011), Section 1, available at <<https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>>

27 Fundamental Law of Hungary, Art. P.

28 Assembly of the Republic of North Macedonia, Constitution of the Republic of North Macedonia (6 July 1992), Art. 77 available at <<https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns-article-constitution-of-the-repub->

offering recommendations to improve public administration efficiency and supporting communication between the government and citizens. Its key areas of responsibility include non-discrimination, public services, healthcare, social rights, urban planning, property rights, and environmental protection. In line with Article 43 of the Constitution, which guarantees the right to a healthy environment, the Ombudsman works to ensure that the state provides “conditions for the realization of citizens’ right to a healthy environment.”²⁹ Citizens can seek the Ombudsman’s protection for violations of environmental rights, such as failure to prevent environmental pollution and harmful noise, or failure to enforce measures aimed at proper waste management and protection of air and water.³⁰

The only available research conducted by the Ombudsman in the area of environmental matters was in 2016, collecting data from 67 municipalities regarding landfill practices on disposal and management of waste.³¹ The report revealed that 42 municipalities used local landfills for waste management without the necessary environmental permits, failing to meet legal standards.³² Alarmingly, it found that only 18% of waste was recycled, largely at the “Drisla” regional landfill in Skopje. The Ombudsman adopted recommendations on the matter, including remediation and re-cultivation of existing landfills, establishing organized waste collection and disposal in rural areas, promoting waste separation, and cleaning illegal dumpsites.³³ In its Work Programme for 2024, the Ombudsman envisions issuing a year-end report assessing environmental protection measures taken by local authorities in 6 cities identified as highly polluted. The report would examine municipal programs for clean air and their realization, available resources allocated for these efforts, cooperation with civic organizations and actual implementation of specific measures.³⁴ From 2008 to 2022, the Ombudsman submitted 18 initiatives for amending laws³⁵, and 10 recommendations to

[lic-of-north-macedonia.nspx](#)> [accessed 10 November 2024].

29 *ibid.*, Art. 43.

30 Ombudsman of the Republic of North Macedonia, Law on the Ombudsman (29 March 2018), Art. 11 available at <<https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Interni%20akti/Zakon%20na%20NP/Preisten%20tekst%20na%20Zakon%20za%20NP-29.03.2018-Ang.pdf>>

31 Ombudsman of the Republic of North Macedonia, *Survey on the situation with the waste disposal in the Republic of Macedonia*, (July-October 2016) p. 106 available at <<https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Posebni%20izvestai/2016/Deponii-2016.pdf>> [accessed 10 November 2024].

32 *ibid.*, p. 118.

33 *ibid.*, p. 119.

34 Ombudsman of the Republic of North Macedonia, Work Program of the Ombudsman for the year 2024 (May 2024), p. 12, available in Macedonian at <<https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Programa%20za%20rabota/2024/Programa%20za%20rabota%202024.pdf>>

35 Ombudsman of the Republic of North Macedonia, *Initiatives for Amendment and Supplementation of Legal and Sub-legal Acts*, available in Macedonian at <<https://ombudsman.mk/%D0%9F%D0%BE%D1%87%D0%B5%D1%82%D0%BD%D0%B0%D>

government bodies³⁶ but none pertaining to environmental issues. Public records of practical examples of the Ombudsman's work show no cases related to environmental protection, though there are multiple examples addressing anti-discrimination, children's rights, and healthcare.³⁷ Statistical reports on received complaints are available only for January and February 2024, which show that just one environmental complaint was received in January (for which no action was provided) and no environmental complaints on this basis in February.³⁸

Beyond the Ombudsman's data, it is essential to consider the broader context of environmental rights protection in North Macedonia and the Ombudsman's role within the institutional framework as a mechanism for upholding the right to a healthy environment. This discussion gains further urgency in light of the findings of the World Bank's Country Climate and Development Report for North Macedonia, published on 7 October 2024.³⁹ While the report primarily addresses climate change, it nevertheless offers valuable insights into the institutional and legislative readiness of the country to provide environmental protection, with mitigation of climate change forming a large part of this

[0%9F%D0%A0%D0%95%D0%94%D0%9C%D0%95%D0%A2%D0%9D%D0%9E %D0%A0%D0%90%D0%91%D0%9E%D0%A2%D0%95%D0%8A%D0%95/%D0%98%D0%BD%D0%B8%D1%86%D0%B8%D1%98%D0%B0%D1%82-%D0%B8%D0%B2%D0%B8.aspx](https://ombudsman.mk/%D0%9F%D0%A0%D0%95%D0%94%D0%9C%D0%95%D0%A2%D0%9D%D0%9E%D0%A0%D0%90%D0%91%D0%9E%D0%A2%D0%95%D0%8A%D0%95/%D0%98%D0%BD%D0%B8%D1%86%D0%B8%D1%98%D0%B0%D1%82-%D0%B8%D0%B2%D0%B8.aspx) [accessed 10 November 2024].

- 36 Ombudsman of the Republic of North Macedonia, *Submitted opinions and suggestions to authorities in the Republic of North Macedonia*, available in Macedonian at <https://ombudsman.mk/%D0%9F%D0%BE%D1%87%D0%B5%D1%82%D0%BD%D0%B0/%D0%9F%D0%A0%D0%95%D0%94%D0%9C%D0%95%D0%A2%D0%9D%D0%9E %D0%A0%D0%90%D0%91%D0%9E%D0%A2%D0%95%D0%8A%D0%95/%D0%9C%D0%B8%D1%81%D0%BB%D0%B5%D1%9A%D0%B0 %D0%B8 %D1%81%D1%83%D0%B3%D0%B5%D1%81%D1%82%D0%B8%D0%B8/%D0%94%D0%BE %D0%BE%D1%80%D0%B3%D0%B0%D0%BD%D0%B8 %D0%B2%D0%BE %D0%A0%D0%A1%D0%9C.aspx>
- 37 Ombudsman of the Republic of North Macedonia, *Examples of the practical work of the Ombudsman*, available in Macedonian at <https://ombudsman.mk/%D0%9F%D0%BE%D1%87%D0%B5%D1%82%D0%BD%D0%B0/%D0%9F%D0%A0%D0%95%D0%94%D0%9C%D0%95%D0%A2%D0%9D%D0%9E %D0%A0%D0%90%D0%91%D0%9E%D0%A2%D0%95%D0%8A%D0%95/%D0%9A%D0%B0%D1%80%D0%B0%D0%BA%D1%82-%D0%B5%D1%80%D0%B8%D1%81%D1%82%D0%B8%D1%87%D0%BD%D0%B8 %D0%BF%D1%80%D0%B8%D0%BC%D0%B5%D1%80%D0%B8.aspx>
- 38 Ombudsman of the Republic of North Macedonia, *Statistical Data*, available in Macedonian at <https://ombudsman.mk/%D0%9F%D0%BE%D1%87%D0%B5%D1%82%D0%BD%D0%B0/%D0%9F%D0%A0%D0%95%D0%94%D0%9C%D0%95%D0%A2%D0%9D%D0%9E %D0%A0%D0%90%D0%91%D0%9E%D0%A2%D0%95%D0%8A%D0%95/%D0%A1%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D0%BA%D0%B0.aspx>
- 39 World Bank, *Western Balkans 6 - Country Climate Development Report: North Macedonia Country Compendium (English)*, World Bank Group (October 2024) ("World Bank Report North Macedonia") available at <https://documents1.worldbank.org/curated/en/099092624072036221/pdf/P17920510eb24a0561a98b1a8b00a307db2.pdf>

matter. The report emphasizes the toll that economic advancement goals of the country have taken on its environment, predicting that the impact of climate change could cost North Macedonia up to 4% of its GDP by 2050, requiring an investment of US\$6.4 billion over the next decade to effectively safeguard the environment.⁴⁰ A notable section of the report is dedicated to public participation in climate policy, which it notes that it is emerging, but the government's accountability for climate action could be further strengthened.⁴¹ While the section mentions key institutions such as the Ministry of Environment and Physical Planning, the Parliament Subcommittee on Transport, Energy, Regional Development and Environment, and the State Audit Office, it makes no reference to the Ombudsman office. This omission raises critical questions about the extent of the Ombudsman's engagement in facilitating public participation in environmental issues, particularly given its mandate to address public complaints in this area. As noted above, the Aarhus Convention, to which North Macedonia is a party,⁴² underscores the importance of public participation and access to justice in environmental matters, and the Ombudsman's impartiality puts it in an ideal position to assess governmental decisions in light of public considerations.

Although the independence and functions of the Ombudsman in North Macedonia could offer a valuable platform for advancing environmental accountability, its mandate is clearly not being fully utilized. In its current scope, this paper will not delve into the feasibility and legal/financial conditions or constraints of establishing a separate Environmental Ombudsman office. However, the discussed inadequate and insufficient attention to environmental and sustainable development concerns strongly supports the case for creating a dedicated Environmental Ombudsman. The current framework of the Ombudsman restricts proactive engagement in government decisions, confining its role to addressing specific citizen complaints. Establishing an Environmental Ombudsman would allow for continuous monitoring and active participation in decision-making, ensuring public concerns are heard and preventing resource allocation to environmentally harmful projects. Moreover, this specialization would reduce the bureaucratic burden on the general Ombudsman, whose broad mandate and workload have led to the oversight of environmental protection responsibilities, as reflected in current statistics. Overall, a specialized Environmental Ombudsman would enhance the protection of the right to a healthy environment through rigorous investigations and a more direct alignment of public and state interests.

40 World Bank Report North Macedonia, *Executive Summary*

41 World Bank Report North Macedonia, p. 9

42 United Nations Treaty Collection, *Chapter XXVII Environment 13. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, Ratification, Acceptance Approval and Accession Status, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XX-VII-13&chapter=27 [accessed 10 November 2024].

Conclusion

Achieving justice and accountability in environmental matters requires a dual approach - state mechanisms to safeguard environmental rights and meaningful citizen participation in governmental decisions. Ombudsman offices, particularly those specialized in environmental issues, are instrumental in ensuring that environmental decision-making is both transparent and accountable. Their independence and investigative authority allow them to address systemic failures, advocate for remedies, and offer preventive measures to mitigate environmental harm.

The discussed experiences of Ecuador, Columbia, and the Philippines demonstrate the potential of general ombudsman offices in advancing environmental protection. However, when their mandate is too broad it may result in the right to a healthy environment being underrepresented, as in the case of the North Macedonia Ombudsman. This oversight becomes even more critical in the context of escalating climate change and development goals that prioritize economic growth over environmental protection.

The examples of countries with Environmental Ombudsman offices, such as New Zealand, Canada, and Hungary, demonstrates the effectiveness and positive impact of having a specialized body to advance environmental rights. Their dedicated mandates allow them to prioritize environmental concerns, conduct targeted investigations, and foster public trust through advocacy and oversight. For North Macedonia, where environmental issues remain overlooked, establishing a dedicated Environmental Ombudsman could fill critical gaps in governance, ensuring that environmental protection is no longer a peripheral issue but a core focus of institutional accountability.

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1. The Role of Education and Civil Society on Climate Action

- Delina Hajradinovic

Abstract

This essay examines the critical role of education and civil society in climate action, emphasizing the need for informed, participatory individuals who can be the future creators of sustainable solutions. It shows how in recent times the global awareness, especially among young people has inspired the need for information and action on climate change. School curricula and community-level initiatives are at the core of shaping attitudes and behaviors towards climate action. Local solutions, while varying from case to case, share a common feature of using education to enable communities to take control of their own climate adaptation strategies. The essay argues about the power of digital solutions and innovation as well. It displays how they enhance communication, reduce emissions and promote green solutions. Additionally, the role of non-governmental organizations is seen through the prism of advocating for policies that support vulnerable communities and foster global cooperation. These organizations often provide immediate relief at time of crisis, as well as, foster collaboration across all influential sectors. They offer critical assessment on existing policies as well as promote future, green policies that can benefit the community. A holistic approach that combines education, community empowerment, and policy advocacy can help us create a sustainable future.

Keywords: education, climate action, civil society, sustainability, global cooperation.

Introduction

For ages, the desire to predict the future has been a human phenomenon. How our planet will look like, what kind of inventions will be made and whether our existence is guaranteed. Curiosity and knowledge is ingrained from an early age and with the education we receive, we are either motivated or ignorant to the idea of engagement in societal issues. When it comes to a crisis of worldwide proportion, one can only be aware of the severity of it, through education. Climate change has had adverse effects not only on our planet, but also on the wellbeing and health of each individual. There has been a global, growing awareness among young people to engage in climate issues. Their desire for change is being paralyzed by the lack of information and equipment to tackle climate change. A UNESCO survey found that 70% of young people cannot explain climate change, or can only explain its broad principles, especially in countries and economies where student performance in science tends to be lower¹. An active and educated civil society is the core force for change. Developing and prioritizing educational programs on climate change on all educational levels will build new attitudes, behaviors and green skills. By training all stakeholders in the educational sector to integrate climate action in school curricula, this topic will become standardized and could only develop and improve in this digitalized future. Involving civil society in climate policy provides more opportunities for societal access to climate information and knowledge, which will ensure that even the most vulnerable groups can participate in and be heard².

Climate Change Effects

No country is immune to climate change, but different socio-economic backgrounds affect the severity of the burdens to be carried³. Due to limited resources, different parts of the world have limited power to engage in climate action. Through cooperation and restructuring, climate action can build new dimensions. Living in ever-changing conditions creates environment of a fearful mass. In the battle to find fast solutions, one can become ignorant to what actually can make realistic progress long term. Raising awareness of the power each individual holds can help gradually make changes in

- 1 UNICEF. Harnessing the Transformative Potential of Education for Climate Change Mitigation, Adaptation and Resilience Building in Europe and Central Asia. UNICEF, 2023. <https://www.unicef.org/eca/media/32381/file/Education%20for%20climate%20change%20mitigation.pdf>.
- 2 Youssef, A. B. "The Role of NGOs in Climate Policies: The Case of Tunisia." *ERF Working Papers Series* 1519 (December 2021): pp.5-8; https://erf.org.eg/app/uploads/2021/12/1640263511_866_1020388_1519.pdf.
- 3 World Bank. "For the Poorest Countries, Climate Action is Development in Action." *World Bank*, December 2, 2023. <https://www.worldbank.org/en/news/feature/2023/12/02/for-the-poorest-countries-climate-action-is-development-in-action>.

the right direction. By 2050, potentially 9.8 billion people will be living on our planet, which means our needs will only multiply⁴. Our lifestyles will be affecting the future of our homes. The overuse of resources in agriculture has already affected biodiversity and caused extinction of animals and plants. The rising levels of greenhouse gas emissions and global temperatures are directly connected with the loss of biodiversity. When our ecosystems collapse, we collapse with them as well. A frustrating fact is that a staggering one-third of all food on the planet is wasted every year, and around one-fourth of all animals killed for food are never actually eaten⁵. There is a rise in resource extraction where about 60 billion tons of raw materials are extracted a year which is linked not only to environmental issues, but human rights violations⁶. The strive to consume continues in every aspect, so most of the time people consume more than they need or simply choose to throw out products for new, more attractive ones. Since availability of resources varies, different world regions need trade in order to exchange goods, which has resulted in around a quarter of global energy-related greenhouse gas emissions from transport activities solely (ibid).

The Role of Education on Climate Action

A holistic approach on climate action would secure future generations that will have profound understanding of the human rights violations in this climate crisis the world is facing. Students will not be only aware on their role in climate action, but they will also be able to criticize the governmental institutions and economical systems as key players in reducing the effects of climate change. Through education, societies can adapt to climate crisis and foster projects that could be integrated on their particular territories. Taking South Africa as an example, farming communities are facing their crops and animals dying due to less predictable rains which has called for adaptive projects which concentrate on planting fast-maturing crops, eating wild fruits, collecting wild seeds, selling animals and starting up small businesses. The safety indicators that would be taught in schools

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- 4 Thrive. "Doing More With Less: How Overconsumption Ruins Our Planet." *Thrivability Matters*, October 8, 2021. <https://thrivabilitymatters.org/doing-more-with-less-overconsumption/>.
 - 5 Millstein, S. "How Overconsumption Affects the Environment and Health, Explained." *Sentient Media*, January 4, 2024. <https://sentientmedia.org/overconsumption/>.
 - 6 The Sustainable Europe Research Institute. *Overconsumption? Our Use of the World's Natural Resources*. 2009; <https://friendsoftheearth.uk/sites/default/files/downloads/overconsumption.pdf>.
 - 7 UNESCO. *Greening Curriculum Guidance: Teaching and Learning for Climate Action*. Paris: United Nations Educational, Scientific and Cultural Organization, pp.20-27, 2024.
 - 8 Oxfam. *Adapting to Climate Change: What's Needed in Poor Countries and Who Should Pay*. Oxfam International, 2007. <https://oxfamilibrary.openrepository.com/bitstream/>

could save lives and reduce the disaster risk due to natural disasters. Generally, developing countries struggle with access to reliable information on climate action, which prevents them in planning and generating means of learning how other similar communities adapt and grow in these conditions. Communities must be at the heart of efforts to build resilience to climate change because action and adaptation is inherently local. Climate action as a concept requires extensive understanding of science, societal influence and policy-making. The success depends mainly on approaching issues with local, participatory solutions. In Ghana, there was an organized training for peer educators and more than 3,500 community members to use clean energy sources, improve health and environmental outcomes by integrating green economy issues into Ghana's national basic education curriculum. Improving school curricula, ensuring learning continuity and giving power to students and teachers to be affective agents of change can contribute immensely for climate action. Surveys show that there is eagerness from young people in low- and middle- income countries to be proactive, however they lack the knowledge and skills to act. Around 65% of young people across eight countries believe their futures are at stake if they do not develop green skills, but 60% also believe they did not learn enough about climate change in school¹⁰. The report also shows that each year of education increases climate awareness by nearly 9%, based on data from 96 countries (ibid). Reshaping behaviors, lifestyles, mindsets and overall new perspectives come directly from the hands of civil society. By breaking old patterns, new solutions can arise. The embedding of education on climate change should be multileveled and dispersed in all formal institutions, workplaces and communities. Japan has been a successful example of how disaster education has been implemented in not only schools, but government institutions and private enterprises as well. Education's central role in climate action is seen through Japan's disaster risk reduction campaign in schools, which has not only concentrated on the causes and consequences, but it has prepared students and workers for practical responses on the impacts of disasters. Schools are ensured as safe sites that are disaster-proofed and multi-hazard resilient. Students, teachers, parents and communities are involved in being educated on disaster risk while practicing early warning simulation drills and evacuation for expected and recurring disasters¹¹.

[handle/10546/114075/bp104-adapting-to-climate-change-290507-en.pdf;jsessionid=63BFCCFF533055B3ED8C994BD6FC02D64?sequence=1](https://www.worlded.org/handle/10546/114075/bp104-adapting-to-climate-change-290507-en.pdf;jsessionid=63BFCCFF533055B3ED8C994BD6FC02D64?sequence=1).

- 9 World Education. "Addressing Climate and Environmental Issues Through Education." *World ED*, April 23, 2023. <https://worlded.org/addressing-climate-and-environmental-issues-through-education/>.
- 10 Sabarwal, S., S. V. Marin, M. Spivack, and D. Ambasz. *Choosing Our Future: Education for Climate Action*. Washington: The World Bank, 2024.
- 11 Anderson, A. "Learning from Japan: Promoting Education on Climate Change and Disaster Risk Reduction." *Brookings*, March 14, 2011. <https://www.brookings.edu/articles/learning-from-japan-promoting-education-on-climate-change-and-disaster-risk-reduction/>.

The Role of Civil Society on Climate Action

The future is often put into the hands of the youth; however, a mature, participatory society can fully change the dynamic in which the community will treat climate action. When it comes to making new laws, policies and programs on climate change, civil society has the crucial role to hold governments accountable in their climate action strategies. As a growing trend, non-government organizations and other stakeholders have started to cooperate on national level to form networks in battling climate change. These civic organizations more often support adaptation strategies to climate change that fits the most vulnerable and at the same time conducts research on which policies can truly make change. They also reinvent themselves into community hubs or enterprise modes, which organize workshops and focus on dialogue and networking to build deeper understanding of the issues society is faced with. Vulnerable groups such as women and children in poverty, must be reached at the time of climate crisis as they suffer the consequences the most. In this way, motivation, solidarity and sense of belonging will be promoted to help the community create a stronger bond in fighting a mutual enemy. Local NGOs most of the time serve as relief networks that are first to respond and offer help at times of crisis. This is not merely a humanitarian response role, but it is the strong capacity that associations and local organizations have in influencing the government's understanding of the climate issue, helping to shape official analysis of climate vulnerability and potentially steer the direction of resources¹². An active civil society has the ability to influence the process of government planning. For example, Climate Action Network Latin America, Climate Action Network South Asia and Sustainability Watch Latin America all operate at regional levels and they direct their advocacy efforts on particular government policies or actions, as well as international processes, donors and in some cases the private sector¹³. Lobbying and building relationships with people in authority will help raise awareness about what the community is really being faced with. Taking action in an informed and educated society becomes a public demand that cannot be ignored. In a digital era as such, media plays a central role in information outreach. Climate change advocacy can be spread out efficiently and by just a simple click on popular platforms. Due to the strong engagement of the modern individual in social media, everyone can be easily informed of the issues and activities undertaken by the governments. Online platforms have showed to be more active in the context of fighting

12 Zayed, D. "On the Margins: Civil Society Activism and Climate Change in Egypt." *Carnegie Endowment for International Peace*, May 2, 2024. <https://carnegieendowment.org/research/2024/05/on-the-margins-civil-society-activism-and-climate-change-in-egypt?lang=en>.

13 Reid, Hannah, G. Ampomah, M. I. Prera, G. Rabbani, and S. Zvigadza. *Southern Voices on Climate Policy Choices*. London: International Institute for Environment and Development (IIED); pp.20-22, 2012. <https://www.iied.org/sites/default/files/pdfs/2021-01/10032IIED.pdf>.

for new laws and highlighting the need to more resources on issues and places that are neglected. Climate action comes in many forms, therefore civil society can push for strengthening already- existing programs and additionally advocate for implementing global agreements. In this decisive decade, new approaches to sustainable growth are highly supported. Digital solutions could reduce global emissions by 20%. Combining technology with climate action could be the answer to building a healthier future. The “twin transition agenda” has been advocating for a seamless integration of digital innovation with the steadfast pursuit of environmental sustainability¹⁴. The twin transition does not isolate technology and sustainability, but it rather combines them together in order to unlock huge benefits in terms of efficiency and productivity¹⁵. Turkey and the EU have been highly vocal and supportive on this project. This year, the Ministry of Industry and Technology of Turkey and the Delegation of the EU to Turkey organized an event in Istanbul which highlighted the shared goal for a more sustainable and efficient future through this particular project¹⁶. This green transition calls attention to the meaning of civil society’s involvement in sustainability and exploiting its potential. Learning about the usage and power of digital tools in the battle against climate change will empower the capacity to which individuals can communicate and collaborate in the digital world. Transforming infrastructure, manufacturing and green technology will help to manage environmental challenges, preserve ecosystems, and ensure sustainable renewable energy sources.

14 Narayan, S. “What Is Twin Transition? And How Do Digital and Green Futures Connect?” *Medium*, March 13, 2024. <https://medium.com/@narayan.somendra/what-is-twin-transition-and-how-do-digital-and-green-futures-connect-a8ab304921a7>.

15 World Economic Forum. “What Is the ‘Twin Transition’ - and Why Is It Key to Sustainable Growth?” *World Economic Forum*, October 26, 2022. <https://www.weforum.org/stories/2022/10/twin-transition-playbook-3-phases-to-accelerate-sustainable-digitization/>.

16 European Union External Action. “The EU and Türkiye Embrace Digital and Green Future.” *European Union External Action*, October 10, 2024. <https://www.eeas.europa.eu/delegations/t%C3%BCrkiye/eu-and-t%C3%BCrkiye-embrace-digital-and-green-future-en>.

Conclusion

Climate action calls for multi-level cooperation in order to reach every party concerned. Coming to terms as being agents of destruction, individuals must take accountability and release the shackles of fear and skepticism that “all is lost”. Climate change is often seen as this invisible, very complex, distant and even fictional concept that overshadows the actual ability to stimulate practical and collaborative action against it from the community itself. Learning about what makes the world tick and how each individual can help in creating a sustainable future will ensure a world of opportunities. Educational systems can build generations that will empathize, reason and find evidence on how decision-making and communication is affecting the environment. The knowledge of local and global land can help students see directly and indirectly the effect of climate change. The use of the creative arts and storytelling can introduce an expressive dimension to learning. A hands-on method will increase interest and enjoyment from the students¹⁷. With gained knowledge, critical assessment follows. A natural change will follow which will make students be able to critically assess policy-building, governmental decisions, core values and propose possible solutions for the future. Education calls for a collaborative ground, therefore all educational stakeholders should participate and nurture learning environments. The interconnectivity between inequality and the experience of climate change is key element of the concept of environmental justice; therefore, it is necessary to design educational programs that will consider the range of abilities, genders, race and class. As the voice of vulnerable groups in society, NGOs can contribute in structuring these educational campaigns. Civil organizations are uplifting the status of climate change issue to a national priority. By being involved in the decision-making process and the critical assessment of already-existing laws, NGOs are seen as vital agents in setting clearly the governmental agenda and identifying policy options. The sense of personal responsibility can awaken a change in values and behavior. Climate action is a world-building process that should ensure that nobody’s world will end by the individual’s choices made.

17 UNESCO. *Greening Curriculum Guidance: Teaching and Learning for Climate Action*. Paris: United Nations Educational, Scientific and Cultural Organization, 2024.

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