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Constitutionalizing the Environment in 21st Century Europe: Innovations for Greener Constitutions

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Abstract
This paper analyzes and systematizes innovations in the constitutional entrenchment of environmental protection provisions, moving beyond the mere recognition of the right to a healthy environment or the affirmation of general policy declarations. Using the comparative constitutional method, it examines relevant provisions in the constitutions of France, Montenegro, Hungary, Austria, and Slovenia. The findings reveal significant diversity in the scope and manner of environmental constitutionalization, contrasting with the similarities observed among constitutions adopted in the 1990s. Identified approaches include the integration of environmental law principles, the constitutional recognition of procedural environmental rights, and the establishment of institutions dedicated to environmental protection. These constitutional innovations demonstrate significant potential for broader adoption, thereby strengthening frameworks for environmental protection and enhancing the safeguarding of human rights and liberties.

Keywords
Constitutions; Environmental Protection; Environmental Rights and Liberties; Environmental Law Principles; Environmental Constitutionalism; Green Amendments

INTRODUCTION

The constitutional protection of the environment is a relatively new phenomenon. The 1948 Constitution of Italy conferred an obligation on the state to protect natural landscapes, which was the first national constitution to bring, at least symbolically, environmental protection into the realm of constitutional matters (Boyd 2012). The process gained momentum after the Stockholm Declaration of 1972 established the interdependence between human rights and the environment (Shelton 2004, 667; "Report of the United Nations Conference on the Human Environment" 1972). The Constitutions of Portugal of 1976 and Spain of 1978 were the first constitutions to recognize a special "right to a healthy environment" at the constitutional level (Daly 2012, 72). Today, over three-quarters of all constitutions (148 out of 193) contain provisions addressing environmental rights and obligations (O'Gorman 2017).

For the most part, the entrenchment of environmental provisions in the constitutions was done by recognizing a (not always enforceable) substantive right to an environment of a certain quality (healthy, balanced, sustainable, etc.) or by public policy statements that obliged the state to protect the environment (Brandl and Bungert 1992, 8). The new constitutions of the former communist countries adopted in the early 1990s largely mimicked this approach by recognizing the substantive right to a healthy environment accompanied by a corresponding obligation to protect it by both the state and any person. This approach demonstrated two key shortcomings.

The vague language could not ensure enforceable substantive rights to a healthy environment (Weis 2018). Similarly, the policy statements that established an obligation to the state to protect the environment failed to meet their objectives. The key challenge was to ensure that environmental constitutional provisions are more than mere policy aspirations and are, in fact, binding legal instruments. In the same period, the level of environmental degradation proceeded at an unprecedented pace, requiring a new approach to protect the rights and liberties affected by it (Boyd 2019).

Several European countries took a step further during the first two decades of the 21st century to address these shortcomings. They introduced innovative constitutional amendments, which substantially differed from the previously established practice of entrenching a general right to a healthy environment and the corresponding obligation. These constitutional reforms were introduced as part of adopting a new constitution (Hungary and Montenegro) or as specific amendments (France, Slovenia, and Austria). The novelties included the constitutional recognition of procedural environmental rights, the sustainable use and management of natural resources, the entrenchment of environmental law principles in constitutions, the establishment of institutions with a mandate to protect the environment, and a greater emphasis on the interests of future generations.

This paper aims to describe and analyze the constitutional revisions in European countries that introduced environmental provisions from 2000 to the present. The author holds that constitutionalizing the environment is an evolving phenomenon, continuously broadening its scope and making it more heterogeneous in its operationalization. To test this hypothesis, the author will examine the new constitutions of Montenegro (2007) and Hungary (2011), as well as the constitutional amendments in France (2005) and Slovenia (2016) and the adoption of the constitutional act on sustainability in Austria (2011). Firstly, the paper describes and analyses the content of the adopted environmental constitutional amendments. Secondly, it identifies and describes the causes and key actors responsible for bringing these constitutional amendments. Thirdly, the paper analyses the evolving case law of national constitutional courts and other institutions conducting constitutional reviews to assess whether these amendments have a substantive legal effect and can impact legislation and guide policy-making processes.

The research's findings and conclusions will contribute to advancing domestic constitutional-legal theory about modern trends in constitutionalizing environmental protection. This is a time when the need for a comprehensive and effective response from states and the international community to the challenges arising from environmental degradation is intensifying. This research endeavor will also make an empirical contribution to the thriving movement of environmental constitutionalism, primarily because it is inherent to legal innovations to migrate both vertically and horizontally (Perju 2012). In environmental law, the relationship is a two-way street, where domestic law is "uploaded" into international law. At the same time, its institutions are "downloaded" into national constitutions and legislation (Wiener 2001). Constitutional borrowing is quite common, particularly among European countries, and studies of this type will also provide an evidence-based contribution to the public debate. Primarily, the issue of environmental protection necessitates a suitable balance between often competing rights, interests, and liberties, such as the right to property, freedom of enterprise and economic development.

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LITERATURE REVIEW

The constitutionalization of the environment is defined as raising legal protection of the Environment from the legislative to the constitutional level (Gellers 2015, 75; Boyle 2008). Since the early 1990s, a significant body of theoretical and empirical literature has studied this phenomenon, which was later named "environmental constitutionalism" (May and Daly 2014; Kotzé 2015). Kotzé understands this phenomenon as a socio-legal and political project that seeks to transform how states manage environmental protection. It arises due to the failure of ordinary legislation to provide the necessary level of environmental protection (Kotzé 2015, 188-89). Ruhl refers to the stability and permanence of constitutions (as opposed to ordinary laws) as a characteristic that enables the transfer of environmental constitutional values to future generations (Ruhl 2009, 85-87).

These works are rooted in the broader, interdisciplinary field of environmentalism, encompassing works in philosophy, political science, law and economics (Stone 1972; Goldsmith and Allen 1972; Meadows, Club of Rome, and Potomac Associates 1974; Hardin 1968). The link between the Environment and the enjoyment of human liberties has been firmly established in the theory. Sen points out that environmental diversities are identified as a factor that directly affects personal liberty, and as such, they should receive serious attention in public policy (Sen 1999, 69-70). Despite its successes in other fields, the free market is deeply limited, particularly regarding issues of economic inequality and environmental protection, and state action is necessary to step in (Sen 1999, 263-67). In that sense, Rawls associates the need for law and government to institute the necessary corrections on public harm (Rawls 1971, 268).

The first classification of constitutional provisions on the environment was proposed in 1992 (Brandl and Bungert 1992). In the same year, Bosselman took a step further and advocated for a shift from a purely anthropocentric (human-centered) legal perspective to an eco-centric one (Bosselmann 1992). Following the expansion of constitutional environmental rights in the 1990s, Hayward took the stance that the right of every individual to live in an environment that is adequate for their health and well-being should be constitutionally recognized in every modern democratic state (Hayward 2005). Boyd further strengthens this argument in favor of environmental rights. In his comprehensive empirical analysis of 193 constitutions, he demonstrated that, to a certain extent, nations with constitutional protections have stronger environmental laws, enhanced enforcement, greater government accountability, and better access to justice, information, and public participation in decision-making than nations without such provisions (Boyd 2012). May and Daly's work on conceptualizing the contours of environmental constitutionalism contributed to setting up the foundation of a coherent theory. They advocate for a rights-based approach, i.e., greater judicial recognition of environmental rights (May and Daly 2014; Daly and May 2015). Contrary to them, Weiss argues that the focus should be on constitutional directives and guidelines that the political branches of government must fulfill (Weis 2018). The right-based approach also receives criticism for its inherent anthropocentrism (Petersmann 2022).

Environmental degradation poses a significant threat to human dignity, and in response, the concept of environmental dignity rights has been developed (Daly and May 2018). This framework recognizes that environmental protection is not just about preserving nature but also about safeguarding human dignity. It also highlights the role of constitutional dignity rights in

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providing a legal basis for protecting the Environment and ensuring that environmental policies respect human dignity. Besides safeguarding human dignity, environmental constitutionalism is firmly rooted in the work of Weiss and the principle of intergenerational eequity and the rights of future generations. The theory of intergenerational equity states that humans, as a species, hold the Earth's natural and cultural environment in common with other members of the present generation and past and future generations. Each generation is both a trustee or custodian of the planet for future generations and a beneficiary of the stewardship of previous generations (Weiss 1990).

While environmental constitutionalism has gained recognition as a crucial component of sustainable governance, significant theoretical and contextual gaps persist. Theoretical gaps include the lack of a clear, universally accepted framework, difficulty balancing competing rights, and the absence of global integration. Contextual gaps emerge from political, economic, and social challenges in implementing environmental constitutionalism. Bridging these gaps will require innovative legal frameworks, increased global cooperation, and a deeper understanding of local realities to ensure that environmental rights are effectively protected and enforced in the face of urgent ecological challenges. This article aims to bridge this gap by providing insight into several innovative legal frameworks.

METHODS

For the research, a combination of theoretical and empirical methods was employed. First, a detailed review and analysis of the available theoretical literature related to the subject of this research was conducted. The second step was to identify the countries subject to this research. They were identified based on two criteria. The first criterion is that they underwent a procedure for amendment in their constitutions. The second criterion is that they introduced environmental provisions that substantially differ from the commonly accepted practice of recognizing substantive environmental rights accompanied by a duty to protect the Environment. After applying the criteria, the following countries were identified: France, Montenegro, Slovenia, Hungary and Austria. Thirdly, using the database with constitutional texts (constituteproject.org), the constitutional amendments subject to this research were accessed in English. Verifying translations and versions was performed by accessing the websites of legislative bodies in all five countries. The constitutional texts were analyzed by applying normative and teleological methods. Secondary sources of data were consulted to contextualize the content of the norms. The key actors and drivers of the constitutional amendment processes were identified through textual analysis of scientific papers. The relevant case law interpreting and applying the "green amendments" was identified and assessed through the institutions' websites conducting constitutional reviews in each of the five countries and through secondary data sources, including papers and reports.

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RESULTS

France 2005: The Charter for the Environment - An Environmental Bill of Rights

In 2004, the French Parliament adopted the Charter for the Environment (*Charte de l'environnement),* which was incorporated into the French Constitution in 2005 (*Loi constitutionnelle No. 2005-205)*. It is a unique document, a French "Green Bill of Rights," that catalogs basic environmental principles, rights and duties and entrenches them into the domain of constitutional law. Several factors impacted why France resorted to such an unconventional constitutional instrument. Before 2004, France was not particularly effective in advancing environmental policies; it failed to implement EU directives consistently, and the Environment was not a high priority on the political agenda (Bourg and Whiteside 2007, 118). However, several strong civic movements from the 90s, the role of environmental activists and the leadership of the then President Jacques Chirac have paved the way for the Charter (Marrani 2008, 12-13).

The constitutional act that introduced the Charter contains three articles. The first article incorporates the Charter into the Preamble of the French Constitution as one of the constitutive documents of French statehood, alongside the Declaration of the Rights of Man and Citizen from 1789 and the Preamble of the 1946 Constitution. The second article proclaims the text of the Charter. In contrast, the third article amends Article 34 of the French Constitution by vesting authority in the Parliament to adopt legislation for preserving the Environment following the Charter.

The Charter is structurally composed of a preamble and a normative section of 10 articles. Though without a normative function, the recitals in the Preamble to the Charter are relevant for its interpretation. The normative section comprises 10 articles. The first two articles guarantee the right of all persons to live in a healthy and balanced environment, along with the corresponding obligation of all individuals, whether private or public, to participate in its protection and improvement. In Articles 3 to 4, the Charter enshrines the four key principles of environmental law—prevention, the polluter-pays principle, precaution, and sustainable development—though with varying levels of elaboration and precision. Article 7 recognizes the procedural environmental rights (access to information and participation). Articles 8 and 9 emphasize the importance of education and research, while Article 10 states that this Charter shall inspire France's actions on European and international levels. The Charter falls within what the Constitutional Council of France calls the *Le bloc de constitutionnalité,* representing a corpus of norms of constitutional importance (Boyron 2012, 39).

By including them in the Preamble, laws that conflict with the Charter's principles related to rights and freedoms can be subject to constitutional review by the Constitutional Council (Marrani 2015, 389-90). The Charter is used as a reference to interpret international agreements related to the Environment, which France has ratified (Dadomo 2017). The provisions of the Charter are interpreted and applied by the Constitutional Council through *ex-ante* and, since 2008, *ex-post* constitutional review (Boyron 2012, 154). Since 2005, the Constitutional Council has produced a substantial body of case law clarifying the meaning of various provisions in the Charter (Sohnle 2018, 159). The first set of decisions were *ex-ante* reviews. In a landmark decision following an *ex-ante* review, the Council held that "all the rights and duties defined in

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the Charter of the Environment have constitutional value." They are binding on "public powers and administrative authorities in the field of their respective competence" (CC No. 2008-564 DC). This case concerned a review of the compliance of an enacted legislation on GMOs with the Constitution. When enacting laws, the Council explicitly stated that the legislator must adhere to the precautionary principle outlined in Article 5 of the Charter, a principle of constitutional value with direct legal effect. This decision builds upon the doctrine of the Constitutional Council that, in assessing the direct applicability of specific constitutional provisions, distinguishes between the "principles of constitutional value" and the "objectives of constitutional value" (CC No. 1982-141 DC). Principles of constitutional value are directly applicable and can be invoked by an individual before a court. In contrast, objectives of constitutional value are imposed on the legislative power but are never directly invoked before a court. With this decision, the Council granted Article 5 of the Charter the status of a principle of constitutional value that does not require legislative action (Marrani 2015, 385).

Implementation of the Charter is more restrictive under *ex-post* review. Such a procedure may be brought only if, in a specific procedure, a question arises as to whether a legislative provision infringes the "rights and freedoms" guaranteed by the Constitution. This narrows the provisions of the Charter that can be subject to *ex-post* review. The Constitutional Council has recognized that Articles 1 and 7 can be invoked for *ex-post* review (CC 2012-282 QPC). On the other hand, CC has ruled that the policy guidelines set in Articles 5 and 6 can not be invoked in an ex-post review since "it does not provide a right or a freedom guaranteed by the Constitution" (CC 2012-283 QPC, CC 2013-346 QPC). Lastly, the CC has found that even some of the "duties" enshrined in the Charter are, in fact, rights and freedoms, particularly concerning Article 3 (the prevention principle) (CC 2012-282 QPC).

In another landmark case concerning the importation and handling of toxic waste, the Constitutional Council addressed one of the key environmental law issues: balancing different and opposing rights and interests. The Council made a decision (CC Decision 2019-823) aimed at striking a balance between protecting the Environment and human health, on the one hand, and promoting the freedom of enterprise, which is also protected under the French Constitution, on the other. The Council considered that the reconciliation of interests between the freedom of enterprise and protecting the environment and human health was not patently imbalanced. In a 2013 decision (CC No. 2013-346 QPC), the CC upheld the statutory prohibition on drilling and hydraulic fracturing: balancing the right of entrepreneurship on one side and the protection of the Environment as a general objective in the public interest on the other side, the CC gave priority to the latter and validated the "general and absolute prohibition" of fracking provided by the statute (Sohnle 2018, 174).

Montenegro 2007: An Ecological State

The 2007 Constitution of Montenegro defines the country as an "ecological state." This attribute is set in Article 1, which determines the form of government and the country's fundamental characteristics (Constitution of Montenegro 2007). Though this practice of assigning constitutional attributes is not uncommon in comparative constitutionalism (e.g., democratic, republican, social, secular, etc.), Montenegro remains the only European country constitutionally declaring itself an ecological state. According to legal scholars, such a notion

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aims to oblige the state itself, legal and natural persons, other institutions and entities on its territory to respect and protect natural resources and behave responsibly regarding the Environment (Vukčević 2021).

Its roots are in the 1991 Zabljak Declaration of the Parliament of the Republic of Montenegro. The pledge of the Declaration was constitutionalized in the 1992 amendments to the Constitution of the Republic of Montenegro, then a constituent part of the Federal Republic of Yugoslavia. The causes for such an avant-garde move are diverse. Aside from the genuine desire to preserve its virgin stretches of coastline, natural beauty, and mountainous hinterland, two other factors played a role. The first is the attempt to create a distinctive constitutional and national identity, given its relatively newfound independence. In contrast, the second one is related more to a comprehensive marketing strategy for tourism as the dominant source of income (Derbyshire 2016, 139-142).

The 2007 Constitution also recognizes the right to a healthy environment in both a substantive and procedural sense. In a procedural sense, the Constitution recognizes three key elements: the right to timely and complete information about the status of the Environment, the right to influence decision-making regarding environmental issues, and the right to legal protection of these rights. It also imposes a duty to everyone, particularly the state, to preserve and improve the Environment (Constitution of Montenegro, Art. 23). Protection of the Environment is also a ground for restriction of freedom of enterprise (Constitution of Montenegro, Art. 59 par. 2).

However, aside from this, the constitution does not specify nor enact specific measures or instruments to realize the "ecological state" objective. There is no reference to sustainable development as a policy principle or specific institutional safeguards. On the other hand, environmentalists consider the reality of environmental protection to be quite grim. The depletion of natural resources, the corruption that enables it, and the failure to address air and water pollution are key environmental concerns the country fails to address (Kajosevic 2021). Consequently, the "ecological state," though inspiring and unique, remains only a parchment guarantee without an effective policy to ensure its implementation in practice.

The Constitutional Court of Montenegro's case law, from the adoption of the constitution in 2007 until 31 December 2024, does not contain any decisions alleging a violation of the right to a healthy environment or referring to the notion of an ecological state.

Hungary 2011: An Ombudsman for Future Generations

In 2011, Hungary adopted a new constitution, replacing the 1949 constitution. According to several authors, the constitution, titled the Fundamental Law of Hungary (Magyarország Alaptörvénye 2011), is based on a firm philosophy that represents the importance of protecting the Environment, which is reflected in a high level of legal protection guaranteed by the constitutional provisions (Krajnyák 2022, 204). The constitutional regulation encompasses various approaches to environmental protection. It directly links protecting the environment as a precondition for realizing the right to physical and mental health and vests an obligation on the state to ensure environmental protection. Hungary recognizes and endorses everyone's right to a healthy environment. The constitution also incorporates the polluter-pay principle by setting up an obligation for anyone who causes environmental damage to be obliged to restore it or

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bear the costs of restoration. Additionally, the precautionary principle is in place, which prohibits the transport of pollutant waste into Hungary's territory for disposal.

However, aside from these comparatively more advanced forms of constitutional protection of the Environment, Hungary took an additional step by establishing a specialized institution with a mandate to protect, among other things, the Environment. Article 30 of the Fundamental Law of Hungary established the function of the Commissioner for Fundamental Rights (i.e., the Ombudsman). The Commissioner has two deputies, one for national minorities and another for protecting the interests of future generations. The constitutional mandate of the Deputy Commissioner for Future Generations is based on three main pillars: the human right to a healthy environment, the right to physical and mental health, and the protection of the "common heritage of the nation" encompassing the natural resources, in particular, arable land, forests and the reserves of water, biodiversity, in particular, native plant and animal species, and cultural artifacts (Krajnyák 2022, 212). The interests of future generations are understood as issues mainly related to protecting the Environment and cultural heritage.

The roots of such an institution in the Hungarian legal system date back to the 1990s when a draft act prepared by László Sólyom, the first President of the Hungarian Constitutional Court (1990-1998) and later President of the Republic (2005-2010) (Krajnyák 2023, 12-13). In 2007, the Parliamentary Commissioner for Future Generations position was established. The so-called "Green Ombudsman" operated as a separate ombudsman alongside three other independent ones. Following 2011, this institution was integrated into the Deputy Commissioner for Future Generations.

The Deputy Commissioner for Future Generations has a wide range of competencies about the enforcement of the interests of future generations, including the power to investigate maladministration complaints and environmental nuisance claims to draw the attention of the Commissioner to the danger of the infringement of the rights of a larger group of natural persons, especially of future generations; to participate in the inquiries of the Commissioner; to propose that the Commissioner institute proceedings *ex officio* and to propose that the Commissioner turn to the Constitutional Court or submit legislative proposals to the legislature suggesting new laws or the amendment of existing ones.

The Constitutional Court considered and referred to the findings, opinions and *Amicus Curiae Briefs* of the Deputy Commissioner in several key environmental decisions (Krajnyák 2023, 19). In a decision relevant to the interpretation of biodiversity protection set in the Fundamental Law, the Constitutional Court relied on the amicus curiae. It concluded that the sale of protected areas without legal provisions guaranteeing preservation and improvement violates the obligations laid down in the Constitution (Decision No. 28/2017). This decision is also important because it is based on anthropocentric and eco-centric perspectives (Krajnyák 2023, 19). In another case (Decision No. 13/2018) concerning the constitutionality of legislation allowing unlimited drilling and use of underground water, the arguments of the *Amicus Curiae* were also referenced. The Constitutional Council declared the law unconstitutional, justifying its decision by invoking the precautionary principle and the principle of intergenerational equity. Lastly, the Constitutional Court of Hungary, upon the initiative of the Commissioner (Decision No. 14/2020), held that "natural and cultural values should be protected per se for future generations, even if doing so acts against the actual economic interest of current generations" (Krajnyák 2022, 211-15).

Austria 2013: Declaring Environmental State Objectives in a Constitutional Act

Austrian constitutional law is specific because, in addition to its core document, the Federal Constitutional Law (Bundes-Verfassungsgesetz 1920), it encompasses a set of federal constitutional acts that are hierarchically superior to ordinary legislation (Stelzer 2022, 20-27). The first reference to environmental protection dates to 1984, when a commitment to comprehensive environmental protection was stated as a state objective in a federal constitutional act (BGBl, 491/1984). A significant step further was taken in 2013 with the adoption of the Federal Constitutional Act on Sustainability, Animal Protection, Comprehensive Environmental Protection, and Water and Food Security (FCA). This document is integral to the Austrian constitutional law (Gamper 2008, 94).

The FCA consists of eight articles, each setting a specific obligation to the Republic (including the federation, the provinces, and the municipalities). The first article specifies commitment to the principle of sustainability and inter-generational equity. The second article relates to animal protection. The third article requires comprehensive environmental protection and entrenches the prevention principle into constitutional law. The fourth article demands that the provision and quality of drinking water be ensured and that public ownership and control be maintained. The fifth article obliges the Republic to supply quality food, and the sixth article acknowledges the importance of research.

While these objectives do not grant specific rights, they must be applied as objective benchmarks by the Austrian Constitutional Court when assessing legislation or administrative acts (Stelzer 2022, 23-27). The objectives, as stated, provide more detailed guidance for state policy than the general duty for preserving the environment. Nevertheless, in the context of their enforceability, the case law of the Constitutional Court of Austria, until now, is not very promising. In a decision concerning the third runway of Vienna airport (VfSlg 20.185/2017), the Constitutional Court has somewhat restricted than widened the application of State objectives for the future. In this specific case, the Constitutional Court, according to some authors, failed to balance the public interests adequately, particularly "the protection of the general public" and "the prevention of negative effects on life, health and property" in the light of the need for comprehensive environmental protection and the sustainability principle (Hollaus 2017; Lachmayer 2024). In 2022 and 2023, the Constitutional Court of Austria rejected several climate change lawsuits for formal deficiencies. The content of the relevant applications was not addressed. This led to concerns that although anchored in the constitution, the degree of protection for the climate deriving from the Austrian constitution is weak (Bertel 2023, 73).

The restrictive approach continued in another landmark case, *Children of Austria v. Austria VFGH* (VfSlg 123/2023-12 & 139/2021-11). In 2023, a group of Austrian children filed a complaint with the Austrian Constitutional Court. The applicants alleged that the Federal Climate Protection Act (Klimaschutzgesetz 2011) is, in part, unconstitutional for failing to adhere to the principle of intergenerational equity. The Austrian Constitutional Court rejected the application as inadmissible. According to the Court, the scope of the application was too narrow, and repealing the contested provisions would not have eliminated the underlying unconstitutionality. Relying on its earlier case law, the Court, therefore, considered the application as inadmissible.

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Slovenia 2016: A Constitutional Right to Drinking Water

In November 2016, the National Assembly of Slovenia supplemented the Constitution of the Republic by introducing a special right to drinking water (Constitutional Act 2016). The new Article 70a recognized the right to drinking water as a constitutionally guaranteed right. With this, Slovenia became the first country in Europe to protect it as a separate and independent right. There are a few causes for such an amendment. Slovenia, although territorially small in terms of its water resources, is one of the wealthiest countries in Europe (Eman and Meško 2020, 469). This access to a significant surplus of relatively cheap water has made it particularly interesting for large multinational corporations that, through privatization or concessions over water resources, have increased drinking water costs and decreased quality (Eman and Meško 2020, 472). These circumstances caused a robust civil movement in 2013 to strengthen the legal protection of water and water resources (Loen and Gloppen 2021, 12).

The calls for reinforcement gained momentum with the 2011 Directive of the European Commission on granting concessions contracts, which proposed at the EU level the liberalization of the process of granting concessions over natural resources, including water resources. The proposal of the Directive met with serious resistance among the public in the EU member states, which was organized in the Right2Water initiative. The Directive was adopted, but concessions regarding water resources intended for drinking were exempted from regulation (Knez 2017, 21). The Directive proposal's impact at the Slovenian level connected civil activists with the deputies and obtained support for specific constitutional amendments (Loen and Gloppen 2021, 13).

Despite the exemption of managing water resources for drinking water from the disputed Directive, the fear remained that a similar initiative could be implemented in the future. Wanting to protect water resources and the access of the citizens of Slovenia to drinking water from future legislation that may foresee their privatization, as well as the fact that laws can be changed more quickly than the constitution, a group of deputies in the Slovenian Parliament in March 2014 submitted an initiative to include the human right to water in the Slovenian Constitution. The proposal faced several obstacles; however, after more than 45,000 citizens supported a civic initiative for constitutional reforms, the initiative managed to obtain support from the leading political parties (Eman and Meško 2020). In July 2016, an amendment to the constitution was proposed, which was accepted by the Constitutional Commission and put to a vote in the Parliament in November 2016.

The right to drinking water is added to the third section of the Constitution of the Republic of Slovenia, which regulates economic and social relations foundations, as Article 70a titled "The Right to Drinking Water." The article introducing the right is composed of four paragraphs. Content-wise, the article recognizes the right to drinking water, regulates the legal nature of water and water resources, and provides the basic principles for managing water resources and water supply (Knez 2017, 21).

The first paragraph recognizes the right of every person (not only citizens) to access drinking water. The second paragraph explicitly stipulates that the state manages water resources as a public good. The third paragraph prioritizes that water resources should be primarily used to supply the population and households. The same paragraph prohibited water resources from being considered a market commodity eligible for privatization and trading.

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The final paragraph further regulates the population's access to drinking water. The state can only achieve this through self-governing local communities, without intermediaries, and on a non-profit basis. Article 70a did not completely ban the water market. Water remains a commodity that can be traded for various purposes, including filling drinking water, bathing, industrial use, and hydroelectric power generation. However, the household drinking water supply will be exclusively in the public domain.

The Constitutional Court in Slovenia conducts constitutional reviews. Even before its creation in 2016, the Constitutional Court played a pivotal role in shaping the legal framework surrounding the right to drinking water (Juhart and Sancin 2022, 464-65). According to the Constitutional Court in Slovenia's database, the right to drinking water has been referenced in seven decisions since 2016. The Constitutional Court held that providing drinking water is the only original competence of local governments set in the Constitution (U-I-223/16), while the others are set in law. In a landmark decision from 2023 (U-I-416/19) concerning using plant protection products (pesticides) in core water protection areas, the Court established the principles that should be applied when interpreting the right to drinking water. The case referred to a law regulating the use of plant protection products in water protection areas, which allowed their use as long as it was not near the water source. The petitioner argued that plant protection products should be prohibited throughout core water protection areas. The Court held that the right to drinking water, particularly ensuring water is free from health hazards, is focused on providing drinking water to the present generation and future generations. Secondly, proceeding from the precautionary principle, the Constitutional Court must not overlook the possibility of harmful long-term consequences when protecting groundwater used to abstract drinking water against contamination by plant protection products. The Constitutional Court ordered the National Assembly and the Government to remedy the unconstitutionality within one year of the Decision. In the meantime, it was determined that until the established unconstitutionality is remedied, plant protection products may not be used in part of the core water protection areas in the Ljubljansko Polje aquifer area. In another decision (U-I-25/17) concerning the constitutionality and legality of the Decree on the National Spatial Plan, the CC adopted the position that non-governmental organizations in the field of environmental protection that operate in the public interest have themselves a legal interest when intending to protect the environment, they challenge implementing regulations that regulate the field of environmental protection and stressed the importance of environmental assessment institutes for environmental protection.

DISCUSSION

The findings of this study reveal significant developments in the constitutionalization of environmental rights across selected European countries. This trend reflects a more profound recognition of the intrinsic connection between environmental sustainability and human rights, a view supported by other researchers in the field (Jeffords and Minkler 2016). The novel approaches present an intriguing case for examining their contributions to individual and collective liberty, intergenerational equity, and environmental protection. Although unique and progressive in the European context, they have retained an anthropocentric approach, where rights exist to meet the needs of people rather than those of the environment and nature. Some

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minor steps to incorporate eco-centric approaches are evident in the Preamble to the French Charter of the Environment, which states that "natural resources and equilibriums have conditioned the emergence of humanity," as well as in Decision No. 28/2017 of the Constitutional Court of Hungary, which balances anthropocentric and biocentric values. However, it is too early to conclude that the heralded paradigm shift is near the horizon. Compared to other legal traditions, particularly those from Latin America and Southeast Asia, Europe remains conservative in granting status to nature as a subject of law and a right-holder.

Implementing constitutional amendments or provisions, such as France's Charter for the Environment and Montenegro's Declaration as an "ecological state," illustrates a growing legal commitment to embed environmental considerations into the highest legal governance frameworks. This development has profound implications for both the environment and human liberties. Incorporating environmental rights into constitutional law suggests a transformative shift in the legal landscape. Specifically, it indicates that environmental issues are now viewed as fundamental rights that necessitate constitutional protection (Collins 2007; Hiskes 2008). Strong political leadership, such as in France, Hungary, and Slovenia, also leads to more progressive moves in the constitutional protection of the environment.

Comparatively, the analysis of the constitutional amendments in Hungary, Slovenia, and Austria illustrates varying degrees of success in enforcing these newly established environmental rights. For instance, Hungary's establishment of the Ombudsman for Future Generations presents a proactive institutional approach to protect the interests of future generations (Debisso and Szabó 2021). This office has demonstrated a determination to influence the judiciary's willingness to interpret the environmental provisions in the Constitution robustly. On the other hand, Austria's Federal Constitutional Act demonstrates a commitment to sustainability. However, it faces challenges regarding the enforceability of its provisions, as seen in recent court decisions. These disparities highlight the variability in how constitutional provisions are interpreted and enforced, affecting their ability to facilitate genuine environmental protection effectively and, by extension, protect human rights and liberties.

Despite these advancements, several limitations emerge from the study. Firstly, the impact of these constitutional provisions remains contingent on the political will of the various governments to prioritize environmental issues over economic development concerns, such as in the case of Montenegro and Austria. As the example of Hungary showed, the need for enforcement mechanisms can be highly valuable and effective in ensuring the constitutional provisions are adequately implemented. Furthermore, the constitutionalizing process itself may be hindered by socio-political factors, such as corruption or public apathy, particularly in countries like Montenegro, where environmental degradation continues to escalate despite constitutional promises.

Future research should explore the implications of these constitutional amendments on the principles of intergenerational equity and human rights. Areas ripe for further inquiry include comparative analyses of the implementation of environmental constitutional rights across different jurisdictions and the effectiveness of constitutional courts in interpreting and enforcing these rights. Additionally, scholars could investigate how public participation in environmental governance, as facilitated by constitutional provisions, enhances democratic values and ensures greater accountability in governance. Such research could highlight these constitutional frameworks' critical role in environmental protection and fortifying human liberties against

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governmental infringement. In conclusion, the recent constitutional amendments may herald a new era for environmental constitutionalism in Europe, aligning legal advancements with the need to protect human rights.

CONCLUSION

The experiences of the five countries demonstrated that the constitutionalization of environmental protection is gaining momentum, and it is no longer viewed exclusively as a declaratory pledge. The scope, forms, content, and manner of performance vary and depend to a large extent on the specific socio-political circumstances in each country, the constitutional-legal tradition, the level of development of civil society, and especially the level of priority given to green issues among key political factors.

Furthermore, a trend that is also noticeable is the inclusion in the Constitutions of the so-called procedural rights of the environment, above all, the right to information, participation, and legal remedy. These procedural rights are essential for giving people the agency necessary for them to have a voice in crafting environmental policies and decisions. This is essential for protecting their liberties. Mainly because environmental decision-making often requires balancing competing interests. Protecting individual liberties requires that people have a say whenever a specific decision affects the environment, as well as their right to property and the freedom of enterprise.

Citizen support for constitutional amendments proved to be a particularly significant factor. This was especially the case in Slovenia, where the "Citizens' Initiative for Slovenia and Freedom," an advocacy group, utilized the constitutional opportunity to initiate a procedure for amending the Constitution. Without the citizens' initiative, there was a real possibility that the process would get lost in the political labyrinths. On the other hand, strong political leadership can also be a significant factor in raising environmental protection.

The different legal traditions among nations were also observed in the development of the provisions analyzed in this paper. The universality of human rights and the republican ideals founded by French statehood are reflected in the place accorded to the Charter in the country's constitutional order. On the other hand, the state-legal history of Slovenia in the SFRY, as well as the attitude towards the social situation and resistance to neoliberal ideas regarding privatization, had a significant impact on ensuring the constitutional protection of drinking water as a public good rather than a private good that can be traded.

Constitutional recognition of environmental protection continues to have a solid normative and symbolic function. The legitimacy of these rights is strengthened by regulating environmental degradation as a violation of fundamental constitutional norms. What is more, the constitutional provisions that protect the environment can direct the content of laws and policies in a "greener" direction and, as such, should no longer be perceived as texts with a political declarative meaning but as practical legal texts that citizens can rely on. They are more frequently used in procedures for constitutional review to annul legislation that violates environmental rights and principles.

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