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Original Scientific Paper
Introductory speech
DOI: 10.47152/ns2025.1

THE RIGHT TO A HEALTHY ENVIRONMENT AS A FUNDAMENTAL PREREQUISITE FOR THE RIGHT TO HEALTH

This paper examines the interdependence between the right to health and the right to a healthy environment as emerging cornerstones of contemporary international human rights law. It argues that the realization of the right to the highest attainable standard of health is inseparable from the guarantee of a clean, safe, and sustainable environment. Particular emphasis is placed on the normative controversies surrounding their legal nature: the right to health as a subjective, enforceable entitlement, and the right to a healthy environment as a predominantly collective and objective right, often framed as a state duty. The paper highlights the growing convergence of these rights in international practice, especially following the 2022 United Nations General Assembly resolution recognizing the right to a clean, healthy, and sustainable environment.

The analysis further explores the challenges of implementation, including political resistance, weak institutional capacities, and tensions between economic development and ecological sustainability. The studies from the Western Balkans illustrate the gap between constitutional recognition and judicial enforcement, while comparative insights from Europe and Latin America reveal evolving models of constitutional environmentalism. The paper concludes that effective protection of both rights requires constitutional reforms, legislative precision, judicial empowerment, and robust mechanisms of access to justice. By adopting an integrated approach that combines anthropocentric and ecocentric perspectives, the right to health and the right to a healthy environment can be transformed into mutually reinforcing guarantees that safeguard human dignity, sustainability, and intergenerational equity.

***Keywords**: right to health, right to healthy environment, interdependence, legal mechanisms for protection.*

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Introduction

In contemporary international human rights law, the interdependence between the right to health and the right to a healthy environment has gained unprecedented importance. While the right to health has long been recognized in international instruments such as the Constitution of the World Health Organization (1946) and the International Covenant on economic, social and cultural rights (1966), the recognition of the environment as a determinant of health is more recent. Global crises such as climate change, biodiversity loss, and industrial pollution have made clear that human health cannot be achieved without a safe, clean, and sustainable environment.

The principal challenge for the further development of the right to health, in conjunction with the right to a healthy environment, lies in formulating an integrated legal concept capable of transcending their conventional separation as rights situated within distinct normative spheres – namely, the right to health as a fundamental subjective human right and the right to a healthy environment as a predominantly collective and objective right, extended by the state insofar as it accords with prevailing economic interests. The creation of such an framework presupposes the resolution of the inherent controversies embedded within the notions of health and a healthy environment as dynamic standards. By adopting an integrated approach that combines anthropocentric and ecocentric perspectives, the right to health and the right to a healthy environment can be transformed into mutually reinforcing guarantees that safeguard human dignity, sustainability, and intergenerational equity. The integral approach, which situates the inherent connection between the right to health and the right to environmental protection within the appropriate legal framework, entails constitutional reforms directed toward the constitutionalization of environmental justice, reforms of legal systems centered on achieving standards of effective environmental protection in harmony with the principle of sustainable development, and the establishment of guarantees for access to justice and the judicial protection of the right to a healthy environment as a subjective right.

1. Contended Nature of the Right to Health

1.1. Conceptual Foundations

Health, as an essential prerequisite for human existence and the highest societal value, is defined by the World Health Organization (1946) as a state of complete physical, mental, and social well-being, extending beyond the mere absence of disease. This holistic conception frames the right to health as integral to human rights and sustainable development. Historical traditions across civilizations – from Greek and Roman public

health measures to Islamic and Christian care systems – demonstrate early recognition of the link between collective health and social stability, laying the foundations for modern public health institutions[1].

The first significant shift in society's approach to human health can be traced to the advent of the modern capitalist era, which coincided with the emergence of the nation-state as the primary framework for organizing collective life at the close of the eighteenth and the beginning of the nineteenth century[2].This period is characterized by the increasing regulation of social relations through legal norms and the expansive institutionalization of diverse spheres of life, exemplified by the establishment of schools, hospitals, prisons, and other disciplinary institutions that paralleled the factories and economic structures of industrial capitalism. Within this context, the protection and promotion of public health, alongside its humanitarian dimension, became an integral element of state governance, reflecting the imperative to maintain and reproduce the labor force demanded by the emerging capitalist mode of production. The Public Health Act of 1848 in the United Kingdom marked a turning point in recognizing health as a legal entitlement and institutionalizing state responsibility for public well-being. Health protection shifted from a moral duty to a regulated sphere within socio-economic governance. Eighteenth – and nineteenth – century reforms in sanitation, welfare, nutrition, and medical care laid the basis for major gains in life expectancy, later reinforced by advances in immunology, social security, health insurance, and health promotion.

The recognition of the right to health as an individual, subjective right emerged progressively, culminating in the aftermath of the Second World War with the establishment of the modern international human rights system. For the first time within binding international discourse, the Universal Declaration of Human Rights (UDHR) of 1948 explicitly affirmed, in Article 25, that *"*everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.*"* This provision represented a pivotal step in defining health not merely as a policy aspiration but as an essential component of human dignity and social justice.

In parallel, the Constitution of the World Health Organization (WHO) (1946) articulated an even more explicit affirmation, declaring that *"*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." The full

[1] See D.Porter, (1999): *Health, Civilization and the State: A History of Public Health from Ancient to Modern Times*. London and New York: Routledge, pp.11; T. H.,Tulchinsky, E. A. Varavikova,., & M. J, Cohen, (2023): *The New Public Health*. Elsevier, pp. 2

[2] Porter, ibid., pp. 48; Tulchinsky, Varavikova & Cohen, ibid. pp. 15.

expression of this entitlement is "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".[3] The normative content of this right was further strengthened and endowed with binding legal force through the International Covenant on economic, social and cultural rights (ICESCR), adopted in 1966 and entering into force in 1976. Article 12 of the ICESCR obliges States Parties *to recognize* "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," and to adopt appropriate measures for the prevention, treatment, and control of diseases, as well as for the creation of conditions that ensure access to medical services and care for all.

1.2. Controversies

Internationally, the right to health is broadly understood to encompass not only healthcare but also underlying determinants such as safe water, sanitation, working conditions, and a sustainable environment. This expansive view reflects recognition that health is shaped by structural and societal factors. Yet, debates persist over its status as a subjective right, given its reliance on proactive state and societal engagement. Unlike civil and political rights, which are largely negative in nature, the right to health requires positive measures, including legislation, policy, and resource allocation, for its progressive realization.

This predominance of positive obligations complicates the traditional understanding of what constitutes a subjective right – one that confers an enforceable legal entitlement upon the individual holder, correlating with a legally binding duty upon the state or other duty-bearers. The question arises whether rights that are so heavily dependent on progressive realization, resource availability, and policy discretion can truly function as subjective rights in the same way as, for example, the right to freedom of expression or the right to a fair trial.

These conceptual tensions reflect broader debates in contemporary human rights theory regarding what qualifies a right as a human right. *Erk* argues that a right can be properly classified as a human right only if it possesses certain universal, inherent characteristics that distinguish it from other legal entitlements and social claims. Human rights in a strict sense, i.e. understood as universal, unchangeable and inherent, can, however, only be justified with reference to ontological dignity which has its root in human beings substantial being, i.e. personhood. According to this view, the mere existence of a social interest, however compelling, does not in itself suffice to elevate it to the status of

[3] Paul Hunt, (2006): "The Right to the Highest Attainable Standard of Health: New Opportunities and Challenges," Transactions of the Royal Society of Tropical Medicine and Hygiene, pp.606.

a human right; rather, it must embody a fundamental moral claim that imposes binding obligations on public authorities and enjoys recognition and protection under international or constitutional law.[4] In this light, the right to health exemplifies the ongoing evolution of human rights discourse, demonstrating how socio-economic rights challenge the boundaries of traditional legal categories and compelling scholars and policymakers to reconsider the meaning of enforceability, justiciability, and the nature of state obligations within interdependent rights frameworks. Ultimately, it is the justification and normative specification that determine the actual meaning and scope of any particular human right. Viewed through the lens of the theory of interest as the essence of the subjective right, the concept of a claim-right – originally termed *right stricto sensu* by *Hohfeld* – rests on and embodies two foundational propositions: first, that there exists an identifiable subject who holds entitlements; and second, that the existence of a right presupposes the existence of a duty-bearer against whom the right is asserted. Thus, to possess a claim-right is to be owed a corresponding duty by another party[5]. Accordingly, the subjective right to health is, to a large extent, dependent on the existence and functioning of the objective right to health, which essentially consists of the legal regulation of state activities in response to the individual's subjective claim to health. The rationale for its existence is political and thus contingent upon the balance of power within a state. Therefore, the subjective right to health is frequently regarded as a relative legal right precisely because it presupposes institutional recognition and enforceability through the normative and coercive mechanisms of the legal system.

A fundamental controversy lies in delineating the precise scope and normative content of the right to health as a justiciable standard. Defining its essential minimum core obligations necessarily entails the identification of a normative nucleus toward which state measures and social policies must be consistently directed[6]. This requirement gives rise to enduring debates regarding the extent of state responsibility, the modalities of progressive realization in accordance with available resources, and the broader justiciability of the right to health. An illustrative example is provided by the WHO,s Model List of Essential Medicines, which enumerates approximately thirty essential medicines intended to meet the minimum pharmaceutical needs of any basic health care system (*WHO Model*

[4] Christian Erk, (2012): What Makes a Right a Human Right? A Theory of Human Rights, in Schweidler, Walter (Ed.), Human Rights and Natural Law: An Intercultural Philosophical Perspective, Sankt Augustin: Academia Verlag, pp. 101.

[5] Wesley Newcomb, Hohfeld, (1917): "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal*, 26, pp. 710.

[6] Asbjørn, Eide, (2001):'Economic, Social and Cultural Rights as Human Rights' in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (2nd edn, Martinus Nijhoff Publishers) pp.21.

List of Essential Medicines, 23rd List (WHO 2023), online accessed 11 July 2025). The list prioritizes those medicines that are considered the most efficacious, safe, and cost-effective for addressing priority health conditions[7]. However, it is important to emphasize that the *WHO Model List of Essential Medicines* primarily functions as a technical guideline rather than a legally binding norm for WHO Member States. This consideration points to broader debates concerning the boundaries and practical enforceability of the minimum core content of the right to health, particularly in light of resource constraints, competing public health priorities, and the institutional capacities of national health systems[8].

The right to health follows the trajectory of economic and social rights under the ICESCR, which differ from civil and political rights and require distinct legal mechanisms[9]. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights recognizes that full realization of this right remains distant for many and that states cannot guarantee absolute health protection. Instead, the right entails access to facilities, goods, and services necessary for the highest attainable health standard. States are obliged to provide these within available resources, though obligations often remain programmatic, limited to constitutional or statutory duties to organize and fund healthcare systems[10].

1.3. Health as an object of legal protection

The protection of the right to health first requires defining what 'health' entails. Once seen as merely the absence of disease, it is now understood, following the WHO, as complete physical, mental, and social well-being. This broader view obliges states to secure disease prevention, safe living and working conditions, adequate nutrition, clean water, and medical care. It also requires attention to mental health through services, prevention, and anti-stigma measures, as well as fostering emotional well-being by ensuring environments of safety, belonging, and dignity. Finally, emotional well-being, while

[7] Hans Hogerzeil, V. (2006): Essential medicines and human rights: what can they learn from each other?. Bulletin of the World Health Organization, 84 (5), pp. 371.

[8] L.Forman, A. R., Chapman, E., Lamprea, & B. Carbonetti,. (2016). Conceptualising minimum core obligations under the right to health: How should we define and implement the "essential minimum"? *Health and Human Rights Journal*, 18(1), pp.23.

[9] O.de Schutter, (2013): Economic, social and cultural rights as human rights: An introduction. Edward Elgar Publishing, pp.4

[10] M.,Sepúlveda, (2003): The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights. In M. Sepúlveda (Ed.), The obligations of states under the International Covenant on Economic, Social and Cultural Rights (pp. 33-63). Intersentia. Anwerp, pp.33; E.Riedel, (2009): The human right to health: Conceptual foundations. In A. Clapham & M. Robinson (Eds.), Realizing the right to health, Rüffer & Rub, pp. 29.

closely intertwined with mental health, highlights the subjective and relational dimensions of human life – fostering environments in which individuals can experience safety, belonging, and dignity.

The existing concept of legal protection remains primarily focused on safeguarding physical health, a focus that is particularly evident in the field of criminal law through offences against life and bodily integrity, as well as other crimes in which harm to physical integrity or health is prescribed as a constitutive consequence. Nevertheless, it is beyond dispute that the notion of harm to health also encompasses damage to mental health, manifested in the onset of mental illness, disorders, or severe psychological impairments. In this respect, criminal legislation has traditionally given priority to the protection of physical health, while provisions aimed specifically at safeguarding psychological health have emerged only recently. Such developments include the criminalisation of conduct such as psychological harassment or stalking, which directly targets the protection of mental well-being [11].

An effective legal framework for the right to health must, therefore, transcend the biomedical model and embrace an integrated perspective. Such an approach not only reflects the indivisibility of human rights but also acknowledges the complex interplay between the physical, mental, and emotional dimensions of health. In this respect, a particular challenge lies in the legal – especially criminal law – protection of the right to emotional health, which today is threatened to the same extent as mental health by the proliferation of hate speech, misinformation, and psychological and media violence. These phenomena undermine peace, tranquillity, and interpersonal empathy within society[12]. The core difficulty is that any attempt to impose certain restrictions inevitably clashes with the prevailing glorification of freedom of speech and expression, which is often regarded as the principal precondition for the democratisation of society[13]. This is so despite the fact that such freedoms are frequently abused in ways that run counter to the genuine democratisation of social relations in the 'Algorithmic Society'[14].

[11] Filip Mirić, Gordana Nikolić, (2024): Criminal offence of stalking in Serbian criminal law and Macedonian criminal law, 11th International Scientific Conference 'Social Changes in the Global World', Faculty of Law, Goce Delcev University, Stip, pp. 249.

[12] WHO, World Mental Health Report: Transforming Mental Health for All, Geneva, 2022, p. 87, noting the societal impacts of hate speech and misinformation on emotional and mental well-being.

[13] See European Court of Human Rights, Handyside v. the United Kingdom, App. No. 5493/72, Judgment of 7 December 1976, para. 49, affirming the essential role of freedom of expression in a democratic society.

[14] J.M, Balkin, (2018): 'Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation,' UC Davis Law Review, Vol. 51, pp. 1149.

In contrast to the increasingly intense forms of threats to emotional health, its protection as a legal interest remains an underdefined legal concept. It is frequently subsumed under 'mental health' without distinct recognition, leading to under-protection when emotional harm does not rise to the level of a diagnosable mental disorder (WHO, 2005). The lack of terminological consistency across legal instruments – including terms such as 'psychological integrity' and 'emotional stability' – further complicates judicial interpretation. Courts often require a high evidentiary threshold for emotional harm, sometimes demanding psychiatric diagnoses. The subjective nature of emotional suffering makes it difficult to establish causation, especially in cases involving diffuse harms like online harassment or sustained social exclusion. Digital platforms have amplified the risk of sustained emotional harm through cyberbullying, doxing, and the spread of harmful misinformation. Strengthening legal protection for emotional health risks overreach into legitimate speech. Stigma around emotional suffering and the perception that it is less serious than physical injury lead to chronic underreporting.

In most jurisdictions, there is no comprehensive legislative framework that codifies emotional health as a distinct protected interest, ensures coordinated protection across civil, criminal, and administrative branches of law, and establishes a proportionate balance between such protection and the safeguarding of freedom of expression. This highlights the necessity of establishing an appropriate and comprehensive legislative framework for the legal protection of the right to emotional health. For the purposes of such a legal concept, emotional health should be defined as a state of well-being in which individuals are able to regulate their emotions, maintain meaningful and fulfilling interpersonal relationships, and cope effectively with life's stresses without sustaining undue psychological harm. When conceived as a negative right, the right to emotional health entails freedom from harassment, humiliation, intimidation, persistent verbal abuse, manipulation, and exposure to harmful misinformation deliberately intended to cause emotional distress.

This includes establishing the legal basis for civil and criminal liability for acts such as harassment, cyberbullying, or other conduct intended to cause significant emotional distress. Within the ongoing reforms of criminal legislation in the countries of our region, special attention has been devoted to the criminalization of various forms of psychological harassment, stalking, and other violations of emotional health. In this regard, particular significance should be attributed to the most recent amendments to the Criminal Code of the Republic of North Macedonia from 2023, which introduced provisions aimed at more precisely defining and sanctioning psychological harassment and different forms of stalking. Comprehensive approaches – integrating consistent solutions across health,

labor, information, civil, and criminal legislation – have been developed in several countries, including Norway, Sweden, Canada, Japan, and the European Union (Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work). These models demonstrate that embedding emotional health protections into multiple legal domains is significantly more effective than relying on isolated legislative provisions.

1.4. The duality of legal protection of the right to health?

The legal protection of the right to health follows two dominant conceptual trajectories: the individual rights approach and the solidarity-based approach[15]. The first conceives the right to health as a subjective legal entitlement, safeguarded either directly, through explicit judicial recognition, or indirectly, via the protection of other fundamental rights – such as the rights to life, property, physical integrity, and freedom from inhuman treatment – which thereby function as collateral guarantees of health protection. While the normative distinction between civil-political and socio-economic rights is not absolute, effective indirect protection requires that the auxiliary right meaningfully conveys the essential normative content of the right to health[16]. In contrast, the solidarity-based approach shifts the focus from individualized entitlements to collective obligations, prioritizing distributive justice and legislative frameworks. Within this paradigm, courts typically act as guardians of statutory standards, annulling administrative acts that unlawfully restrict access to healthcare or affirming lawful denials in line with current legislation[17]. Nonetheless, the democratic legitimacy of social rights necessitates judicial restraint: courts may safeguard equality of access and prevent arbitrary exclusions, but cannot supplant the legislature as the primary architect of health policy. In the past decade, the concept of social rights adjudication has evolved from a predominantly declaratory approach to one that increasingly recognizes these rights as justiciable before courts, rather than solely matters of legislative discretion[18]. This shift has produced a hybrid model in which courts, while refraining from direct policymaking, actively enforce minimum core obligations – such as access to basic healthcare, housing, and social assistance – and prevent

[15] Arenas, Catalán Eduardo (2021): The Human Right to Health Solidarity in the Era of Healthcare Commercialization, Edward Elgar Publishing pp.101.

[16] M, Langford,. (Ed.). (2008): Social Rights Jurisprudence: Emerging Trends in International and Comparative Law. Cambridge University Press, pp. 77.

[17] S.Fredman, (2008): Human Rights Transformed: Positive Rights and Positive Duties. Oxford University Press, pp. 94.

[18] Young, K. G. (2012). Constituting Economic and Social Rights. Oxford University Press, pp. 38.

regression of acquired rights. Influenced by international standards, adjudication now emphasizes progressive realization and the state's duty to employ the maximum available resources[19]. Moreover, courts increasingly integrate socio-economic rights with civil and political rights through the principle of interdependence, thereby strengthening legal protection, redefining the judicial role from passive arbiter to guardian of social justice, while maintaining respect for the democratic legitimacy of political institutions[20].

The complexity of the legal protection of the right to health is further increased by the frequent conflation of the right to health with the right to healthcare. This conceptual distinction, often reflected in constitutional texts, has significant implications for the practical realization and justiciability of these rights. In many cases, the right to health is recognized as a fundamental and subjective right, while the right to healthcare is framed more as a programmatic obligation of the state, dependent on available resources and broader socio-economic policies.

European constitutions present a mosaic of approaches. Several European constitutions enshrine the right to health or health protection explicitly (Portugal (art. 64), Spain (art. 43), Italy (art. 32), Greece (art. 21, para. 3). Some constitutions do not explicitly mention the right to health but derive it from other fundamental rights: Germany (Basic Law, the constitutional jurisprudence derives health protection from art. 2(2) (right to life and physical integrity), France: (the 1946 Preamble (with constitutional value) guarantees the protection of health). Some constitutions formulate the right to health not as a subjective enforceable right, but as a social policy directive: Ireland (art. 45): Poland (art. 68), Hungary (art. XX). European Convention on Human Rights (ECHR), does not explicitly recognize a right to health, but the European Court of Human Rights (ECtHR) has derived health protections from art. 2 (right to life), art. 3 (prohibition of inhuman treatment), and art. 8 (private and family life).

EU Charter of Fundamental Rights (art. 35) explicitly guarantees the right of access to preventive healthcare and medical treatment under national laws and practices. Constitutions in the countries of our region guarantee the right of every citizen to health protection, stipulating that the state shall ensure conditions for exercising this right through public healthcare and social measures (Macedonian Constitution, art.39, Serbian Constitution, art.68, Croatian Constitution, art. 58)[21].

[19] R.Alexy, (2002): A Theory of Constitutional Rights. Oxford University Press, pp. 223.

[20] M. Langford, (edit.)(2008): Social Rights Jurisprudence: Emerging Trends in International and Comparative Law. Cambridge University Press, pp. 10; A. Nolan,Porter, B., & M.Langford, (2014): Human Rights and Public Finance. Hart Publishing, pp. 112.

[21] Žaklina, Harašić, (2022): Zdravlje kao pravna vrijednost i faktori zdravlja, Zbornik radova Pravnog fakulteta u Splitu, pp.632; Marta Sjeničić, (2022) Pravna zaštita prava na zdravlje. In: Zbornik radova Međunarodnog naučnog skupa „Izazovi i perspektive razvoja pravnih sistema u XXI vijeku, Banja Luka, pp.127

This comparative constitutional framework highlights a recurring distinction: the right to health, rooted in human dignity, is framed as a subjective entitlement, whereas the right to healthcare is understood as an institutional guarantee dependent on state capacity and resources. While closely connected, these rights are not identical. The right to health under international law entails the highest attainable standard of physical and mental well-being, encompassing determinants such as safe water, adequate nutrition, housing, and a healthy environment. By contrast, the right to healthcare refers to a narrower legal concept focused on the organization and provision of health systems, the availability of medical services, and equal access to health facilities. Too often, violations of the right to health are assessed solely through the lens of healthcare access, thereby neglecting broader state duties to secure environmental safety, food and water quality, and safe working conditions[22]. A clear conceptual distinction between these rights is therefore essential to uphold international standards and prevent their erosion[23]. Within existing legal frameworks, their realization spans both negative obligations – criminalizing conduct that endangers health – and positive obligations – ensuring medical assistance and adequate living conditions. The right to health embodies the broader challenges of economic and social rights: while legally guaranteed, its realization depends on political will, institutional capacity, and equitable socio-economic conditions. Balancing individual entitlements with collective public health goals, setting priorities for limited resources, and ensuring equitable access continue to pose significant challenges for policymakers, courts, and international oversight bodies[24]. It should thus be seen as a hybrid norm, simultaneously an objective state duty and a subjective entitlement. The central challenge for modern legal systems is to operationalize this hybrid nature by defining minimum guarantees, identifying clear duty-bearers, and ensuring legal effective remedies in practice.

[22] Brigit,Toebes, (1999): The Right to Health as a Human Right in International Law, Antwerpen: Intersentia, pp. 45.

[23] Lisa,Forman, (2016): Can Minimum Core Obligations Survive a Reasonableness Standard of Review Under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights? Ottawa Law Review, Vol. 47, No. 2, pp.557.

[24] P.Hunt, (2016): Interpreting the international right to health in a human rights-based approach to health. *Health and Human Rights Journal*, 18(2), pp. 109.

2. The right to a healthy environment

2. 1. A healthy environment as the greatest challenge to the protection of health

The concept of the right to health, understood as an emanation of human dignity, generates increasingly resolute demands for the protection of the environment. The interrelationship of human rights and environmental protection is undeniable. Without diverse and sustained living and nonliving resources, human beings cannot survive. The problem can be illustrated by the example of freshwater. Only 2 percent of the earth's water is accessible for human use. Any loss of water resources, especially the pollution of underground aquifers, poses dangers for generations to come[25]. From this perspective, the right to health can no longer be perceived solely through the lens of access to medical care or the absence of disease. Rather, it encompasses a holistic understanding of well-being that is inextricably linked to the quality of the environment in which individuals live. Scientific evidence confirms that air pollution alone causes approximately 7 million premature deaths every year, primarily due to cardiovascular and respiratory diseases. Nearly 99% of the world's population breathes air that exceeds WHO air quality guidelines. Respiratory diseases, cardiovascular disorders, and lung cancer remain leading causes of morbidity and mortality attributable to polluted air (WHO (2021). Air Pollution. Fact Sheet). Water scarcity and contamination place nearly 2 billion people at risk, while food insecurity driven by soil erosion and biodiversity loss has left more than 828 million people chronically undernourished. Moreover, climate change exacerbates the spread of vector-borne diseases such as malaria and dengue fever, thereby introducing new health burdens in regions previously unaffected. The Food and Agriculture Organization (FAO) estimates that up to 828 million people worldwide faced chronic hunger in 2021, while over 2.3 billion experienced moderate or severe food insecurity.

The Western Balkans is one of the most vulnerable regions in Europe when it comes to the impacts of climate change and environmental degradation. Due to its geographical location, socio-economic conditions, and governance challenges, the region faces disproportionate risks that threaten ecosystems, human health, and sustainable development. Firstly, climate change has intensified extreme weather events across the Western Balkans. Secondly, air pollution remains a critical challenge. Major urban centers in the region, including Skopje, Belgrade, Sarajevo, and Pristina, regularly record some of the highest concentrations of fine particulate matter (PM2.5) in Europe. Thirdly,

[25] Donald K. Anton, Dinah L. Shelton George, (2011): Environmental Protection and Human Rights,Cambridge, pp.131.

deforestation, unsustainable agricultural practices, and inadequate waste management undermine the region's environmental stability. Illegal logging and weak enforcement of environmental regulations accelerate soil erosion and biodiversity loss. Waste management remains underdeveloped, with many municipalities still relying on open dumpsites that pose risks to public health and contaminate water sources. Moreover, water scarcity is an emerging issue in parts of the region. Mortality rates attributable to fine particulate matter (PM2.5) are considerably higher in the region compared to the EU. The Joint Research Centre of the European Union emphasizes that air pollution contributes on average between 4 and 19 percent of total premature mortality and reduces life expectancy by between 0.4 and 1.3 years in the countries of the Western Balkans[26]. For example, air pollution in Macedonia claims 5,000 lives a year, as if the country were at war. One in nine infant deaths in the country is linked to air pollution. Babies and young children are the most at risk of death and ill health due to air pollution, facing disproportionately high exposure to PM2.5 pollution, according to the UNICEF report "Breathless Beginnings." The health impacts of pollution have substantial economic costs, averaging more than 3.6% of GDP in Kosovo, 6.9% of GDP in North Macedonia, and 8.2% of GDP in Bosnia and Herzegovina[27]. This alarming statistic highlights the severe impact of environmental degradation on public health, underscoring the urgent need for stronger environmental protection measures and comprehensive public health policies.

Governance challenges amplify these environmental risks. Corruption, weak institutions, and lack of regional cooperation hinder the effective implementation of environmental protection policies. While the European Union provides frameworks and funding for climate resilience and environmental reforms, progress is uneven and often slowed by political instability and limited administrative capacity. The health protection standards and healthcare systems of these countries lag behind in almost all areas when compared to EU benchmarks[28]. Eurobarometer data consistently reveals a high prevalence of

[26] Marija Kovačević & Ivana Prica & Lazar Čolić, (2022): "Grupisanje Zemalja Prema Zdravstvenom Stanju Stanovništva: Slučaj Zemalja Zapadnog Balkana I Evropske Unije (Grouping Of Countries According To The State Of Health Of The Population: The Case Of The W," Ekonomske ideje i praksa, Faculty of Economics and Business, University of Belgrade, issue 47, pp. 45.

[27] World Bank (2021). "Going Green Means Cleaner Air, Healthier Living in the Western Balkans";WHO Europe (2021). "Roadmap for Health and Well-being in the Western Balkans (2021–2025)";Balkan Barometer (2023); Environmental Performance Index (2022); UNDP Human Development Reports; WHO (2023). *Country cooperation strategy: Serbia, Bosnia and Herzegovina, North Macedonia, and Albania*. WHO Regional Office for Europe; UNICEF. (2023, May 12). *Fighting for air quality: Children across the Western Balkans breathe unsafe air*. United Nations Children's Fund.

[28] See Marija Panić, Živan, Živković, (2021): Global Health Security (GHS) index model extension and assessment of the Western Balkan countries position, University American College Skopje, Skopje, pp. 287; Fatime Arenliu Qosaj, Margaret Bourdeaux, (2024): Health policy developments in the Western Balkan Countries

perceived corruption across the Western Balkan countries. While general corruption levels are a widespread concern, the healthcare sector frequently emerges as particularly susceptible to illicit practices. Deficiencies in the rule of law, including a perceived lack of effective prosecution for high-level corruption cases and insufficient transparency in public financial management, erode public trust[29]. The European Commission, in its annual reports on enlargement countries, frequently uses Eurobarometer findings to emphasize the imperative for comprehensive anti-corruption reforms, particularly in sectors critical to public welfare like healthcare.

2.2. The interdependence between the right to a healthy environment and the right to health

The interdependence of the rights to health and to a healthy environment represents a central dimension of contemporary human rights[30]. Indivisibility and interdependence of the right to health with the right to a healthy environment has been affirmed in various international legal instruments, which explicitly acknowledge that a safe, clean, and sustainable environment constitutes a precondition for the enjoyment of[31]. The recognition of this interdependence not only broadens the scope of the right to health but also reinforces the indivisibility and interrelatedness of all human rights[32]. Nevertheless, this integrative concept raises significant controversies. Both rights are deeply interconnected, as environmental degradation directly impacts human health, while the protection of health requires a safe and sustainable environment[33]. The controversy arises from the dual

2000–19: towards European Health and Health Care Policies, European Journal of Public Health, Volume 34, Issue 3, June 2024, pp 460.

[29] European Commission. Eurobarometer surveys on public opinion in EU candidate countries and potential candidates. Various reports, e.g., Special Eurobarometer 534: Attitudes of Europeans towards corruption, 2022; Transparency International. Global Corruption Barometer – European Union: People's experiences with corruption. Berlin: Transparency International, 2021. While focused on EU, patterns often reflect those in WB; European Commission. Western Balkans Enlargement Package: Country Reports. Brussels: European Commission. Annual reports, e.g., 2023 and 2024 editions; World Health Organization, Regional Office for Europe. Human resources for health in the Western Balkans. Copenhagen: WHO, 2017; World Bank. (2020). Health Systems in Transition: Western Balkans. Washington, DC: World Bank.

[30] UN General Assembly, Resolution 76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022.

[31] European Court of Human Rights, López Ostra v. Spain, Application no. 16798/90, Judgment of 9 December 1994.

[32] Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights and the Environment', Fact Sheet No. 37, 2016.

[33] Alan Boyle, (2020): Human Rights and the Environment: Where Next? *European Journal of International Law*, 31(1), pp.27

nature of these rights[34]. On one side, the right to a healthy environment imposes negative obligations, requiring states and private actors to refrain from polluting and degrading natural resources. On the other, it entails positive obligations, demanding proactive state measures such as the regulation of industrial activities, the enforcement of environmental standards, and public access to environmental information. Similarly, the right to health has traditionally been recognized both as an individual entitlement and as a collective social responsibility, creating tension between limited resources and universal demands[35]. The challenge lies in developing a coherent legal framework that harmonizes these obligations and ensures synergistic protection. Overcoming such controversies requires rethinking the doctrinal separation between civil, political, economic, social, and environmental rights. However, at the current stage of development of human rights doctrine, such a vision appears practically unattainable[36]. While a unified approach is essential for sustainable development and the protection of human dignity, entrenched categorizations and the absence of binding international instruments hinder progress. The entrenched categorization of rights into distinct groups has created fragmented legal and political mechanisms, with civil and political rights often prioritized over social and environmental ones[37]. As a result, a fully integrated framework remains more of an aspirational vision than an imminent reality.

From the standpoint of justiciability, the relationship between the rights to health and to a healthy environment remains contested. Although Article 12 of the ICESCR and other instruments affirm the right to health, its implementation is often programmatic rather than enforceable. Similarly, in many jurisdictions, the right to a healthy environment lacks direct enforceability, being framed instead as a collective state duty, which complicates judicial remedies[38]. Both rights encounter practical constraints, as environmental standards often conflict with economic policies, and responsibility for violations – particularly those involving multinational corporations – remains a matter of debate.

Effective protection further depends on procedural rights such as access to information, participation, and legal remedies. Yet vulnerable groups frequently face barriers, including restricted access to information, limited judicial mechanisms, and prohibi-

[34] Audrey R. Chapman, (2016): Global Health, Human Rights, and the Challenge of Neoliberal Policies, Cambridge University Press, p. 58.

[35] Eduardo Arenas, Catalán. (2021): *The Human Right to Health: Solidarity in the Era of Healthcare Commercialization*. Edward Elgar Publishing, pp. 101.

[36] Boyle, ibid.,pp. 34.

[37] Olivier, de Schutter, (2013): *International Human Rights Law: Cases, Materials, Commentary*. Cambridge University Press, pp. 123.

[38] J. Knox, (2022): *The Human Right to a Healthy Environment*, Cambridge University Press, pp. 42.

tive costs. The Aarhus Convention has strengthened such guarantees, but regional disparities persist: Latin American and African jurisprudence has embraced collective environmental rights more fully, while European protection of the right to a healthy environment often remains indirect, grounded in Article 8 of the ECHR (ECHR, as seen in Lopez Ostra v. Spain). This fragmentation complicates the development of universal standards and a coherent doctrine. Advancing an integrative framework is therefore essential to secure the indivisibility of rights and to promote human dignity, public health, and environmental sustainability.

2.3. A perspective on the integral approach in the context of environmental justice

The concept of environmental justice affirms that all individuals have the right to live in a safe, healthy, and sustainable environment, thereby linking human rights with ecological sustainability. It underscores the inseparability of protecting nature and ecosystems from the protection of human dignity, health, and equality. This notion embodies a synthesis of anthropocentric and ecocentric principles, reflecting both the ethical foundations of the right to a healthy environment as a subjective human right and the recognition of nature as an intrinsic value. The ecocentric perspective highlights that the right to health cannot be secured without ensuring a healthy environment, thus redefining key legal concepts: responsibility shifts from retrospective to prospective, harmful conduct encompasses both commission and omission, and the victim is conceived not only as an individual but also collectively[39]. Unlike purely anthropocentric views, the ecocentric approach represents a paradigm shift by situating the right to health within a broader ethical and legal obligation to safeguard the environment as the basis of human life[40].

The recognition of the right to a healthy environment and the rights of nature marks a paradigm shift in contemporary legal and philosophical thought. A genuinely healthy environment cannot exist unless nature itself is protected as an intrinsic and intergenerational value. Restricting its significance to human interests neglects both its independent worth and the ecological balance essential for human survival. Legal protection must therefore integrate anthropocentric and ecocentric perspectives: safeguarding human dignity, health, and well-being, while simultaneously affirming the inherent rights of nature. Traditionally, environmental law prioritized human interests against ecological degradation; however, the emerging recognition of nature's intrinsic value acknowledges ecosystems, rivers, forests, and species as rights-bearing entities. The complementarity

[39] Vlado Kambovski, (2021): The right to life in the light of the environmental justice, Yearbook Human tights protection, Right to life, Number 4, Novi Sad, pp.40.

[40] D.Shelton, (1991). Human Rights, Environmental Rights, and the Right to Environment. Stanford Journal of International Law, 28(1), pp.105.

between the right to a healthy environment and the rights of nature creates a holistic framework: recognition of nature's rights protects the ecological foundations of human life, while the human right to a healthy environment enables individuals and communities to demand their enforcement. Philosophically, this synthesis bridges anthropocentric and ecocentric worldviews, affirming both the instrumental and intrinsic value of nature.

The relationship between the right to a healthy environment and the rights of nature remains contested in international law[41]. While many advocate recognition of a substantive human right to a healthy environment, such a right has not yet been firmly established. Opinions diverge: some view human rights framing as adding little beyond existing law, while others stress its potential to strengthen environmental protection despite challenges of implementation and justiciability. Global initiatives, such as the 2030 Agenda for Sustainable Development (UN Doc. A/RES/70/1), affirm the duty to safeguard the planet for present and future generations. Declarations like the Universal Declaration of the Rights of Mother Earth [42] go further, recognizing nature's rights to water, clean air, and freedom from pollution, though these remain aspirational and lack binding force. Despite advocacy from civil society and symbolic tribunals, major international bodies have refrained from granting nature formal legal rights, instead promoting integrated approaches to sustainable development. This unresolved tension continues to raise difficult legal, philosophical, and practical questions.

In practice, several jurisdictions have already embodied this complementarity. Over the past decades, various natural entities have been recognised as having rights or legal personhood in certain domestic jurisdictions[43]. This approach has gained increasing traction, particularly in Latin America, where Ecuador's 2008 Constitution and Bolivia's 2010 Law of Mother Earth grant legal personhood to nature. This practice in other jurisdictions, such as New Zealand's recognition of the Whanganui River as a legal person (Whanganui River Claims Settlement Act 2017), further demonstrates the potential of this framework to transform environmental governance. Some reflection of this pattern could be seen in the Constitution of Italy (Article 32), which, while not directly granting

[41] See Günther Handl, (2020): The Human Right to a Clean Environment and Rights of Nature: Between Advocacy and Reality, in. von Arnauld, Andreas, von der Decken, Kerstin, Susi, Martin (edits), (2020): The CambridgeHandbook Of New Human Rights: Recognition, Novelty, Rhetoric [1stEdition], Cambridge .pp. 137.

[42] World People's Congress on Climate Change and the Rights of Mother Earth, Cochabamba, 22 April 2010.

[43] Gilbert, E.Macpherson, E.Jones, J. Dehm, (2023): The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda. In: Dam-de Jong, D., Amtenbrink, F. (eds) Netherlands Yearbook of International Law 2021. Netherlands Yearbook of International Law, vol 52. The Hague, pp.47.

rights to nature, recognizes that the protection of nature is essential for the human right to a healthy environment, and the Constitution of Germany (Article 20a – Protection of the natural foundations of life and animals), which provides that "Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."

The 'rights of nature' paradigm remains contested in practice. When environmental protection conflicts with development goals, its effectiveness is often limited, and despite its rhetoric, the concept is frequently invoked without regard to nature's intrinsic value. At the international level, no binding framework recognizing rights of nature has emerged, with proposals facing objections of practicality and necessity. The EU, while monitoring global debates, has not adopted a formal declaration on the rights of nature. Instead, its policies emphasize sustainability and human rights linked to a healthy environment, as reflected in the European Green Deal, Environmental Action Programmes, and Article 37 of the EU Charter of Fundamental Rights. Yet, Article 37 frames environmental protection as a policy goal rather than granting direct rights to nature. Nonetheless, some European municipalities, particularly in France, Italy, and Portugal, have experimented with ordinances recognizing the legal rights of ecosystems and rivers. A Draft EU Declaration on the rights of nature is currently under discussion, proposing rights such as existence, flourishing, restoration, protection from harm, legal standing, sustainable use, and participation in decision-making, alongside obligations for member states to integrate these rights into governance.

2.4. Recognition of the right to healty environment

The right to a healthy environment has increasingly been recognized as a fundamental human right, affirming that all individuals are entitled to live in safe, clean, and sustainable conditions free from threats to health, dignity, and quality of life[44]. A key milestone was the 1972 Stockholm Declaration, which recognized a healthy environment as a prerequisite for the realization of fundamental rights, including the right to health (Principle 1 affirms: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being"). The 1992 Un Rio Declaration on environment and development reaffirmed this principle, introducing precaution, public participation, and intergenerational equity as

[44] Alan Boyle, (2020): Human Rights and the Environment: Where Next? *European Journal of International Law*, 31(1), 27; Dinah Shelton, (1991): Human Rights, Environmental Rights, and the Right to Environment. Stanford Journal of International Law, 28, 103.

core elements of environmental justice. These ideas were further reinforced in the subsequent document of the United Nations Conference on Sustainable Development (Rio+20)[45]. The recognition of this right has developed along two parallel tracks: international law and constitutional law. At the international level, the United Nations Human Rights Council in 2021 recognized the human right to a clean, healthy, and sustainable environment, marking an important normative milestone. On 28 July 2022, the United Nations General Assembly adopted Resolution 76/300, recognizing for the first time at the global level the right to a clean, healthy, and sustainable environment as a universal human right. This right encompasses substantive guarantees – clean air, safe water, fertile soil, and biodiversity – alongside procedural rights such as public participation, access to information, and legal remedies in cases of ecological harm. It operates on both collective and individual levels, protecting communities from widespread harm while safeguarding individuals from specific threats. Its recognition provides a foundation for sustainable development and intergenerational justice.

The Aarhus Convention of 1998, formally the Convention on access to information, public participation in decision-making and access to justice in environmental watters, was crucial in establishing the international legal foundation of the right to a healthy environment. Adopted under United Nations Economic Commission for Europe (UNECE), it created binding obligations for states and guaranteed three fundamental public rights: access to information, participation in decision-making, and access to justice. Widely regarded as a cornerstone of environmental democracy, it strengthened transparency, accountability, and citizen involvement in environmental protection.

Constitutional recognition has further deepened this right's significance. The right to a healthy environment has gained constitutional recognition and protection in more than 100 states This demonstrates a broad consensus on the its importance globally. Many Latin American states have incorporated it into their constitutions, either as an individual or collective entitlement or as a state duty. Ecuador (2008) and Bolivia (2009) pioneered by recognizing both the human right to a healthy environment and the rights of nature. Other constitutions, such as Argentina (1994), Brazil (1988), and Chile (1980), enshrine it as a subjective right, while the Dominican Republic (2015) and El Salvador (1983) adopt collective or state-duty approaches[46]. Such an approach reflects the broader orientation of Latin American constitutionalism towards what has often been described

[45] See United Nations Conference on the Human Environment, *Stockholm Declaration*, 1972; United Nations Conference on Environment and Development, *Rio Declaration on Environment and* United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, 2015.

[46] Ahmad Shohani, Elham Ataei, Nima Norouzi, (2021): Environmental Constitutionalism in Latin America, Trends Journal of Sciences Research 1(1), pp. 54.

as a transformative, egalitarian, participatory, and pluralist neoconstitutionalism. All constitutional systems in the region demonstrate a commitment to the rule of law and to constitutionalism, understood both as a theoretical ideal and as a practical institutional reality. Consequently, many constitutions introduced new judicial remedies, such as the "acción de tutela", and reinforced constitutional justice, strengthening the judiciary's role as guardian of rights. Institutions like the ombudsman were also established to promote human rights. The Inter-American Court of Human Rights, in Advisory Opinion OC-23/17 (2017), affirmed the autonomous right to a healthy environment and emphasized procedural rights – access to information, participation, and justice – as integral to its protection[47].

The recognition of the right to a healthy environment has become an important feature of many European constitutional systems, though its scope and formulation vary. Some constitutions enshrine it as an explicit entitlement, while others frame it primarily as a state duty to safeguard the environment for present and future generations. Portugal (1976, Art. 66) recognizes both rights and duties of citizens and the state; Spain (1978, Art. 45) guarantees the right to an adequate environment and the duty to conserve it; and Greece (1975, Art. 24) affirms environmental protection as both a state duty and individual right. France's Constitutional Charter for the Environment (2004) enshrines the right to a balanced environment respectful of health, while Finland (1999, Art. 20) and Norway (1814, Art. 112) explicitly emphasize that every person has the right to an environment that is conducive to health, as well as to natural resources that will be managed on the basis of comprehensive long-term considerations, thereby safeguarding these rights for future generations. Sweden constitution (1809) provides a more programmatic formulation but complements it with the Environmental Code (1988) and specialized environmental courts, ensuring effective judicial protection[48]. Collectively, these constitutional provisions demonstrate a broad European commitment to ecological sustainability,

In the constitutions of countries in the region, the right to a healthy environment is generally recognized in declarative and programmatic terms. Croatian (1990, Art. 69) guarantees the right to a healthy life and obliges the state to ensure environmental conditions; Serbian (2006, Art. 74) affirms the right to a healthy environment and obliges both the state and citizens to protect it; and North Macedonian (1991, Art. 43) provides for the

[47] Rodrigo Uprimny, (2011): The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges Texas Law Review [Vol. 89 pp.1586

[48] Boyd, David R. (2012): *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment, Vancouver-Toronto pp.193; D'Onofrio, Andrea (2019): 'The Constitutionalization of the Right to a Healthy Environment in Europe.' European Constitutional Law Review*, 15(2), 211; Goce Kocevski, (2025): Constitutionalizing the Environment in 21st Century Europe: Innovations for Greener Constitutions, Journal of Liberty and International Affairs 11(1), pp.62.

right to a healthy environment and the duty of the state to secure its realization. These provisions demonstrate a formal commitment to environmental protection and sustainable development but rarely function as directly enforceable rights. In practice, they serve more as guiding principles for legislation and policy. Procedural rights – such as access to information, participation in decision-making, and judicial protection – are not clearly defined. This gap has not been filled by environmental protection legislation either, which, throughout the region, remains below the basic standards established by the Aarhus Convention – particularly regarding the right of access to justice. For example, the Serbian Law on Environmental Protection (2018, art.81-a) formally provides for the right of the interested public, in the procedure of exercising the right to a healthy environment to initiate as a party a procedure for the review of a decision before the competent authority or court, in accordance with the law (but such a law does not exist or is not applied). This situation leaves a significant gap between the constitutional recognition of the right to a healthy environment and its practical enforceability, undermining the effective implementation of international standards.

2.5. How to overcome challenges in the applicability of the right to a healthy environment

The recognition of the right to a healthy environment as a human right represents one of the most significant achievements in contemporary human rights law. Yet its practical applicability remains constrained by tensions between international obligations, constitutional provisions, and political, economic, and institutional realities. International instruments – including the 1972 Stockholm Declaration, the 1992 Rio Declaration, the Paris Agreement (2015), and the 2022 UN General Assembly Declaration – affirm this right, but despite their importance, these instruments often lack direct enforceability. Their effectiveness depends on state commitment, while courts are often reluctant to grant individuals direct standing to invoke environmental rights. Even where recognized, weak institutions, political resistance, and competing economic priorities undermine implementation. Developing states face additional obstacles such as limited resources, fragile judiciaries, and inadequate monitoring, while political elites often prioritize economic growth over sustainability. These challenges are particularly acute in the region, where weak rule of law enables the ruling elites a wide margin of arbitrariness in determining economic and legal policies, without due regard for international standards and the proclaimed constitutional values. Effective protection of this right requires a holistic approach integrating legal, institutional, economic, and societal measures. Recognition in international and

constitutional texts must be matched by strong mechanisms of implementation, monitoring, and enforcement to ensure a clean, healthy, and sustainable environment for present and future generations.

The establishment of a coherent system for recognizing and enforcing the right to a healthy environment requires an integral approach combining substantive and procedural rights. Substantive rights establish the core entitlements related to environmental quality, such as clean air, safe climate, water and sanitation, healthy and sustainably produced food, right to a non-toxic environment for living, working, studying, and recreation, healthy biodiversity and ecosystems, and protection from pollution, while procedural rights ensure access to information, public participation in environmental decision-making, and access to justice and effective remedies in environmental matters[49]. Together, these dimensions strengthen enforceability and align domestic law with international standards such as the Aarhus Convention and the 2022 UN General Assembly resolution on the human right to a clean, healthy, and sustainable environment.

To achieve this, constitutional reform is essential, particularly in states of the region where existing provisions remain largely declaratory. Strengthening constitutional justice requires empowering constitutional courts as true guarantors of rights through proactive interpretation, rigorous review of legislation, and a commitment to human dignity, sustainability, and intergenerational equity[50]. By engaging in extensive interpretation of fundamental rights and subjecting legislation and general acts to rigorous constitutional review, such reforms would transform constitutional courts into central pillars of environmental constitutionalism, ensuring that environmental rights are not subordinated to short-term political or economic interests.

The next stage of reform requires a re-examination of the legislative framework through the adoption of laws that translate constitutional and international commitments into precise and enforceable standards, aligned with sustainable development goals. Particular emphasis should be placed on criminal legislation, which must conform to international and European norms, notably Directive (EU) 2024/1203 on the protection of the environment through criminal law. In this context, the Macedonian Criminal Code has introduced a range of environmental offences, including the criminalization of ecocide, a matter of ongoing debate in relation to possible amendments of the Rome Statute of the International Criminal Court. Effective implementation further depends on strengthening independent, transparent, and well-equipped institutions. Environmental agencies, in-

[49] David R., Boyd, (2024):The Right to a Healthy Environment, a User's Guide. United Nations, pp.7.

[50]Lukas Lixinski, L. (2019). 'Constitutionalism and the Environment: Comparative Perspectives.' *International Journal of Constitutional Law*, 17(2), pp. 391.

spectorates, and courts must be provided with adequate resources, expertise, and mechanisms of accountability and coordination to ensure compliance, enforcement, and adjudication consistent with the rule of law and sustainable development.

Environmental protection is a central element of modern governance, with administrative bodies playing a crucial role in ensuring procedural rights to information and participation in decision-making. Environmental agencies in many jurisdictions enforce laws safeguarding natural resources, thereby preventing harmful actions by individuals, businesses, and governments. In contrast, administrative structures in the region lack capacity, clear competences, and political will, hindering effective implementation.

A central challenge in protecting the right to a healthy environment lies in its limited recognition as an enforceable subjective right. Commonly framed as a state obligation to safeguard collective interests, it seldom grants individuals direct legal standing, thereby weakening justiciability. Environmental harms are thus often addressed indirectly through related rights such as life, health, or private life, rather than directly through environmental claims. The issue is therefore one of enforceability rather than normative recognition. Recasting the right as a subjective entitlement would allow individuals to directly invoke environmental harms before courts, advancing both human rights and ecological sustainability.

In many judicial systems, including those in the region, individuals or associations lack procedural status to initiate claims before courts. which significantly undermines the justiciability and practical enforceability of this right[51].This stands in contrast to Article 9 of the Aarhus Convention, which guarantees access to justice in environmental matters and underscores the need to strengthen procedural rights for individuals and civil society. The role of the European Court of Human Rights is essential in overcoming such a position. Through its evolving case law (such as *Lopez Ostra v. Spain* (1994) and *Fadeyeva v. Russia* (2005), the European Court of Human Rights, referring to violations of articles 2, 3, and 8 of the European Convention on Human Rights, has emphasized that effective access to justice is a fundamental element in the protection of the right to a healthy environment, thereby compelling states to align their judicial practices with international standards and obligations[52].

[51] D.Shelton, (1991). Human Rights, Environmental Rights, and the Right to Environment. Stanford Journal of International Law, 28(1), pp.103.

[52] Stephen Stec, (2009): Environmental justice through courts in countries in economic transition, in:Environmental Law and Justice in Context, edited by J.Ebbesson, P. N. Okowa, P. Okowa, Cambridge,pp.161.

In some legal systems, progress has been made by granting NGOs an active role in judicial proceedings for the protection of the right to a healthy environment[53]. Under the Aarhus Convention, environmental NGOs enjoy rights to access information, participate in decision-making, and seek justice. This includes passive roles such as consultation, submitting opinions, or acting as amicus curiae, as well as active roles in some jurisdictions. In some court systems, they can appear as *amicus curiae* (friends of the court). This is a classic passive procedural role – they don't start the case but can submit briefs. Many countries' administrative procedures allow NGOs to be "interested parties" if they can show sufficient interest. The Court of Justice of the EU allows NGOs in certain cases to intervene in proceedings. In Germany, NGOs can have "Verfahrensbeteiligung" (procedural participation) under the Federal Administrative Procedure Act if they represent affected public interests, and the Umweltverbandsklagegesetz (Environmental NGOs Act) allows recognised NGOs to bring legal challenges. In France, NGOs can be "parties civiles" in criminal proceedings – this is active standing, but they also have passive rights like being notified, presenting observations, and requesting investigations. In USA NGOs often appear *as amici curiae* in federal and state courts. Statute of the Court of Justice of the European Union allows interventions by parties demonstrating an interest in the outcome.

In contrast, courts in the region remain hesitant to recognize individuals or NGO standing. Although constitutional and legal frameworks exist, judicial practice largely fails to provide effective protection. Disputes initiated by individuals or NGOs are often dismissed, with courts reluctant to exercise jurisdiction even where legislation allows it. The "popular lawsuit" under the Law on Obligations has rarely been applied in practice, reflecting judicial reluctance in both Serbia and North Macedonia to recognize claims brought by individuals or NGOs in such cases[54]. This reluctance underscores the broader challenge of establishing environmental justice as a core element of democracy, legitimacy, and the rule of law.

In Macedonian judicial practice, civil society organizations, particularly environmental associations, have long struggled with administrative and ordinary courts over the admissibility of lawsuits seeking to protect the right to a healthy environment. Disputes often concern injunctions against authorities that fail to perform legally mandated duties, such as addressing waste disposal, monitoring air quality, or regulating industrial activities without permits and safeguards. In late 2023, the Supreme Court adopted a legal

[53]See Mariolina Eliantonio, (2018): The role of NGOs in environmental implementation conflicts: 'stuck in the middle' between infringement proceedings and preliminary rulings? Journal of European Integration 40(6):753.

[54] StevanLilić, Mirjana Drenovak-Ivanović, (2014): Ekološko pravo, Drugo, ažurirano izdanje, Beograd, pp.68.

opinion affirming the Administrative Court's jurisdiction over such cases, yet the judiciary has shown little response. Even in a recent case involving an illegal landfill near Struga by Lake Ohrid, where over 40,000 tons of waste are dumped annually, courts rejected lawsuits demanding closure. Environmental organizations have therefore turned to the European Court of Human Rights, whose rulings may prove decisive in shifting Macedonian courts toward greater access to justice in environmental protection.

Conclusion

The right to health and the right to a healthy environment are inseparably linked, as health in its comprehensive sense cannot be realized without a safe and sustainable environment. International law, constitutional practice, and jurisprudence demonstrate progress in recognizing these rights, though their implementation remains uneven and often subordinated to political or economic interests. The divide between the subjective right to health and the predominantly collective right to a healthy environment complicates enforceability, leaving gaps between recognition and protection. Still, the evolving case law of the European Court of Human Rights, Aarhus Convention and the landmark 2022 UN General Assembly recognition of the right to a clean, healthy, and sustainable environment affirming the right to a clean, healthy, and sustainable environment provide a strong normative foundation.

The main challenge lies not merely in the declaratory recognition but in creating effective enforcement and accountability mechanisms. Stronger judicial independence, institutional reforms, and active civil society participation are essential. Health and environmental rights must be approached as mutually reinforcing guarantees, requiring constitutional reforms and constitutionalization of environmental justice, legislative clarity on state and corporate responsibilities, as well as judicial reforms that would enable the transformation of this right into a subjective, enforceable entitlement, supported by the right of access to justice and effective judicial protection.

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