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THEORETICAL REFLECTIONS ON COMPENSATION FOR NON-PECUNIARY DAMAGE ARISING FROM THE VIOLATION OF THE RIGHT TO A HEALTHY ENVIRONMENT[**]

ABSTRACT: The Constitution of the Republic of Serbia guarantees the right to a healthy environment, while the Law on Contracts and Torts leaves room for compensation for non-pecuniary damage arising from the violation of personal rights. The paper analyzes whether the right to a healthy environment is considered a personal right, what constitutes its violation, and whether a lawsuit for compensation for non-pecuniary damage arising from the violation of this right is the most effective mechanism for protecting the rights of persons endangered by pollution.

Keywords: right to a healthy environment, personal rights, pollution, non-pecuniary damage, state liability, environmental law, tortious liability

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INTRODUCTION

The Constitution of the Republic of Serbia guarantees the right to a healthy environment. However, contemporary society often strikes a compromise between the enjoyment of this right and the needs of industrial development. The paper aims to examine situations in which such a compromise makes it virtually impossible for people to peacefully enjoy the rights guaranteed by the Constitution, as well as the alternative legal mechanisms that are available to individuals living in highly polluted areas when specific damage in the form of health impairment has not yet occurred.

The problem with current, theoretically developed mechanisms[1] is multifaceted, but the primary difficulty lies in proving the origin of the damage, especially given the time difference between the harmful act and its effects.[2] The mechanism examined in this paper could help injured parties avoid this issue and obtain compensation even in situations where specific damage in the form of health impairment has not occurred.

The thesis of the paper is that it is possible to file a lawsuit for compensation for non-pecuniary damage arising from the violation of the right to a healthy environment due to pollution. In order to substantiate this thesis, it is necessary to answer several questions – whether the right to a healthy environment is considered a personal right; how the violation of this right is manifested; and how to link the violation of this right to the actions of the polluter.

[1] For civil-law protection mechanisms against the adverse effects of pollution, some authors use the term "environmental litigation" (*ekološke parnice*). For more on different types of protection, see: Drenovak, M., Đorđević, S., Važić, S. (2015). *Pravni instrumenti ekološke zaštite – građanskopravna i krivičnopravna zaštita.* Belgrade: Organization for Security and Co-operation in Europe, 68–69.

[2] For more on these difficulties, see: Ludeña, S., Abella, J. (2010). Environmental Civil Liability under Comparison: Some notes in soft law. *Revista Jurídica Piélagus*, 9(1), 58–100; Kenneth S. A. (2002). The Relation between Civil Liability and Environmental Regulation: An Analytical Overview. *Washburn Law Review*, 41, 379–398; Radončić, Dž. (2023). Građanskopravna zaštita kolektivnih interesa u pravu okoliša u Bosni i Hercegovini. *Annals of the Faculty of Law in Zenica*, 28(14), 11–41; Salma, M. (2014). Preventivna tužba za otklanjanje izvora opasnosti od štete u svetlu održivog razvoja. *Collected Papers of the Faculty of Law in Novi Sad*, 4, 131–145.

THE RIGHT TO A HEALTHY ENVIRONMENT – NORMATIVE FRAMEWORK AND RELATIONSHIP WITH PERSONAL RIGHTS

The right to a healthy environment is guaranteed by Article 74 of the Constitution of the Republic of Serbia.[3]

The content of this right is complex, given that it consists of substantive and procedural elements. It is often emphasized in the literature that its substantive content is derived from fundamental human rights such as the right to life, health, property, etc.[4] It is not incorrect to conclude that this right coexists and draws its content from already recognized human, i.e., personal rights, and that it does not have an inherent content that differs from the content of these rights.

The anthropocentric theory, which views humans as the primary "object" of protection in environmental regulation, confirms this idea.[5] Moreover, the normative regulation of the right to a healthy environment was undertaken precisely to ensure adequate protection of the most fundamental human rights.[6]

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[3] Constitution of the Republic of Serbia, *Official Gazette of the RS*, No. 98/2006 and 115/2021*, Decision on Proclamation of the Constitutional Law Implementing the Act Amending the Constitution of the Republic of Serbia – Amendments I–XXIX – Official Gazette of the RS*, No. 16/2022, Art. 74: "(1) Everyone has the right to a healthy environment and to timely and complete information about its condition. (2) Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. (3) Everyone shall be obliged to preserve and improve the environment."

[4] World Health Organization. *Human Rights–based Approach to Health and Environment – Report of a Regional Seminar*. Thailand, 2007, 13.

[5] The anthropocentric theory in environmental ethics entails the view that "only humans possess intrinsic value; in other words, only human beings are capable of making moral judgments and conclusions, while the rest of nature has an instrumental character, i.e., it serves human ends." By contrast, ecocentric theory "requires the protection of nature and its elements as goods that have independent value, regardless of their importance to humans." Although the anthropocentric theory was the primary idea until the end of the 20th century, it still influences environmental policy-making, given that "shifting the pendulum from anthropocentrism to ecocentrism entails a long-term struggle to adopt a new environmental ethic." Despite this theoretical shift, the focus on humans and their needs has not been displaced; rather, "anthropocentrism remains a segment of ecocentric theory, but not in the sense of favoring humans, rather in the sense of favoring ecosystems as the key factor for the survival of humankind." See: Mladenov, M. (2017). *Pravo na odgovarajuću životnu sredinu kao osnovno ljudsko pravo*, doctoral dissertation, 66–68, available at: https://nardus.mpn.gov.rs/bitstream/handle/123456789/8813/Disertacija14948.pdf?sequence=6&isAllowed=y

[6] One of the most important international instruments adopted in the field of environmental protection is the Aarhus Convention (*Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*.

The inclusion of this right in the corpus of human rights indicates that its holders are human beings and that, when assessing whether a violation of this right has occurred, the impact of pollution on human health and well-being is primarily taken into account.

First, it is necessary to analyze the nature of the right to a healthy environment and determine whether it can be considered a personal right. Given that there is no exhaustive catalog of personal rights, at first glance, there is no obstacle to this claim. In addition, the number of recognized personal rights is increasing on a daily basis, in light of advances in civilization and technology and the resulting creation of new social relations.[7] Personal rights are inextricably linked to the individual and, as such, exist "above" positive-law solutions.

Their emergence is not tied to the moment of legislative recognition; rather, statutory regulation has a merely declaratory function in protecting inherent personal rights. A certain right does not have to be explicitly provided for as a personal right in order to be considered as such.

Given that the laws do not define personal rights, the starting point must be theory. Petrović defines personal rights as rights of a non-property nature inextricably linked to the individual.[8] Similarly, the Appellate Court in Belgrade considers personal rights to be

> "...subjective rights to personal goods, goods that are most directly and inextricably linked to a natural or legal person."[9]

It appears that the core features of personal rights are, on the one hand, their non-property character and, on the other, their close connection with the individual. The right to a healthy environment meets both conditions. Its non-property nature is indisputable, while its connection to the individual is derived indirectly. Realizing the most fundamental personal rights, the rights to life and health, depends on the protection of this right. The European Court of Human Rights has repeatedly taken the position that the realization of fundamental human rights is inconceivable without adequate environmental protection.[10] In addition, the literature particularly emphasizes that the ECtHR does not protect

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Aarhus, 1998) which establishes the right of access to environmental information, participation in environmental decision-making, and access to court in the event of a violation of rights.

[7] Petrović, Z. (1996). *Naknada nematerijalne štete zbog povrede prava ličnosti*. Belgrade: Vojna knjiga, 44.

[8] *Ibid.*, 45.

[9] Judgment of the Appellate Court in Belgrade, Gž 3130/2010, June 9, 2010.

[10] *Lopez – Ostra v. Spain* (App. No. 16798/90), 9. 12. 1994., para. 51: "Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health."

the environment directly and in isolation from the fundamental human rights guaranteed by the Convention, but exclusively in situations in which environmental damage is linked to the violation of another guaranteed right.[11]

Environmental protection is a prerequisite for the peaceful enjoyment of the rights most closely tied to the individual. Without a healthy environment and, consequently, an adequate standard of living, humans cannot exercise their fundamental rights. The right to life and the right to health are inextricably linked to a healthy environment because their enjoyment is automatically endangered when the environment is impaired. This position was also expressed in the separate opinion of Judge Weeramantry of the International Court of Justice in the case of *Gabcikovo–Nagymaros*:[12]

> "The protection of the environment is [...] a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments."

If the enjoyment of the most intimate personal rights cannot be conceived without the right to a healthy environment, then it must also be considered a personal right. The right to a healthy environment cannot be viewed in a vacuum; rather, it is important to note that it was proclaimed precisely to protect the most fundamental human rights that are already recognized as personal rights. The right to a healthy environment is inseparable from the individual – a human being could not exist or survive in an inaccessible environment, so its preservation is of crucial importance for human life, health, and development.

Cordella and Others v. Italy (App. No. 54414/13, 54264/15), 24. 1. 2019.: "Serious environmental damage may give rise to a breach of Article 8 if it substantially reduces the applicant's ability to enjoy his or her home or private and family life. Whether that threshold has been reached depends on the origin, intensity, and duration of the damage, as well as its consequences for the applicant's physical and mental health and quality of life."

Verein Klimaseniorinnen Schweiz and Others v. Switzerland (App. No. 53600/20) 9. 4. 2024., para. 435: "As the Court has already recognised, Article 8 is capable of being engaged because of adverse effects not only on individuals' health but on their well-being and quality of life (see paragraph 514 below) and not only because of actual adverse effects but also sufficiently severe risks of such effects on individuals."

On breaches of Article 8 of the Convention, see, e.g.: *Taşkin and Others v. Turkey* (App. No. 46117/99), 10. 11. 2004.; Tătar v. Romania (App. No. 67021/01), 27. 1. 2009.; *Cordella and Others v. Italy* (App. No. 54414/13, 54264/15), 24. 1. 2019.

[11] Stjelja, I. (2023). *Učešće javnosti u ostvarivanju ekološke pravde u Srbiji*, doctoral dissertation, 46.

[12] International Court of Justice. *Gabcikovo–Nagymaros Project* (*Hungary v. Slovakia*) (*Separate Opinion of Vice-President Weeramantry*), 25. 9. 1997.

Personal rights should not be viewed too narrowly, but rather in the context of the role they play. The purpose for which they are established is the same as the purpose of the right to a healthy environment – creating conditions for the free development of the individual. Consequently, the right to a healthy environment proclaimed by the Constitution meets all the conditions for classification within the corpus of personal rights.

This issue can be approached from a different angle. The literature contains views that, when defining personal rights, place emphasis on their protected object. Therefore, they are understood as rights whose protected object is a personal good, such as life, bodily integrity, health, freedom, etc.[13] Using such a definition makes it difficult to treat the right to a healthy environment as a personal right. At first glance, the object of this right is the environment, which is a good in itself.

However, given the postulates of the anthropocentric theory, environmental protection is pursued primarily for the protection of human beings. For example, the determination of environmental pollution is measured according to "normal limits," which are determined with the needs of humans in mind – noise levels people can tolerate, particle levels that do not impede breathing, and similar benchmarks. Positive law does not protect the environment (primarily) for its own sake but for the sake of preserving the best possible standard of living for people. Therefore, it is inadequate and incomplete to claim that the object of the right to a healthy environment is (merely) the environment; rather, the specific features of this right, whose primary aim is the realization of human well-being, must also be taken into account. If the environment is the direct object of protection, the preservation of the quality of human life is an indirect object operating behind the scenes.

Since the primary goal of introducing this right is the unhindered development of the individual, and since a healthy environment is a prerequisite for the enjoyment of the rights most closely tied to the individual, it should be considered a personal right; any other understanding would render meaningless the enjoyment of already recognized personal rights.

Treating the right to a healthy environment as a personal right is also recognized in comparative law. Certain Swiss authors consider the right to a healthy environment to be a personal right, i.e., an inseparable part of personal liberty.[14]

In summary, deeply personal human rights cannot be peacefully enjoyed without adequate environmental protection. The right to a healthy environment

[13] Kostić, S. (2023). Građanskopravna odgovornost zbog objavljivanja na društvenim mrežama. *Bulletin of the Supreme Court*, 3/2023. Belgrade: Intermex, 176.

[14] Vučković, M. (2018). *Građanskopravni aspekt zaštite od prekomernih imisija*, doctoral dissertation, 160–161, available at: https://phaidrani.ni.ac.rs/view/o:1580

was introduced for the purpose of protecting personal rights and does not exist independently of them. Moreover, it draws its content from the rights most closely related to the individual. Therefore, a right without which the enjoyment of the right to life, the right to health, and the free development of personality is inconceivable and must be considered a personal right.

However, the basic thesis of the paper stands even if this conclusion proves incorrect. Compensation for non-pecuniary damage caused by pollution can be achieved without invoking the right to a healthy environment as a distinct personal right, given that pollution deeply affects almost all personal rights.

Compensation can be obtained on the basis of a violation of the right to life, the right to health, bodily integrity, property, and the peaceful enjoyment of private and family life, since all of these personal goods are directly targeted by environmental damage, as confirmed by the already cited case law of the ECtHR. Naturally, in these situations, establishing a causal link is more difficult, given that the injured party must prove a specific consequence resulting from pollution (for example, health impairment due to an inadequate environment).

WHAT CONSTITUTES A VIOLATION OF THE RIGHT TO A HEALTHY ENVIRONMENT?

The right to a healthy environment and the right to health are very closely related, and one virtually cannot exist without the other. However, when proving a violation of the right to a healthy environment, the injured party does not have to prove a violation of the right to health. Moreover, it is not necessary for the environmental damage to have an adverse effect on the injured party's health for there to be a violation of the right to a healthy environment. Therefore, it is important to distinguish between these two rights. A violation of the right to health implies a certain physical consequence resulting from impaired health (bodily injury, illness, etc.). On the other hand, a violation of the right to a healthy environment does not require there to be adverse effects on the injured party's health. The very act of harming the environment to the extent that it creates an increased risk of health problems constitutes a violation of the right to a healthy environment.[15]

[15] This understanding of a violation of the right to a healthy environment corresponds to the definition of pollution given in Art. 3, para. 1, point 11 of the Law on Environmental Protection: "environmental pollution is the introduction of polluting substances or energy into the environment, caused by human activity or natural processes, *which has or may have harmful consequences for the quality of the environment and human health*";

Neither the courts nor the laws define what constitutes a violation of personal rights; rather, determining whether a violation has occurred is left to the court's discretion.[16] This determination is made on the basis of all available facts presented and their subsumption under legal norms. There are certain facts that suggest a violation of the right to a healthy environment. The emission of polluting particles in quantities above "normal," as determined by rulebooks and similar legal instruments, indicates the existence of a violation of this right. Likewise, a lack of drinking water in a certain place suggests to the court that this right has been violated. When assessing whether a violation exists, the court should take into account the standards provided in domestic and international environmental regulations.[17]

Similar reasoning already exists in case law concerning the violation of honor and reputation as personal rights. In a number of cases, the court has held that it is not necessary for there to have been a specific consequence of a violation of honor and reputation, in the sense that the defendant's conduct resulted in the creation of a negative image of the plaintiff in society. On the contrary, when assessing the violation of these rights, courts do not take into account whether a certain act actually affected the plaintiff's honor and reputation, but whether it was capable of doing so:

> "In the reopened proceedings, the first-instance court will remedy the indicated substantial violation by [...] clarifying the disputed issue of whether, and to what extent, the characterizations referred to in the complaint [...] could have violated the plaintiff's honor and reputation."[18]

See also: "Loss of the right to environment is also a type of environmental harm. Right to environment is defined as the right of the public to have a healthy, secure, quiet, comfortable and 45 graceful environment. Infringement of rights to environment means interference with the public's enjoyment of the environment. For instance, the construction of a building that is beyond the maximum height set by law interferes in the neighboring public's right to sunshine." Ludeña, S., Abella, J. (2010). Environmental Civil Liability under Comparison: Some notes in soft law. *Revista Jurídica Piélagus*, 9(1), 67.

[16] Borovac, J. (2011). Naknada neimovinske štete zbog povrede prava ličnosti, *Bulletin of the Supreme Court*, 3/2011. Belgrade: Intermex, 78–98, 82.

[17] Mladenov, M. (2017). *Pravo na odgovarajuću životnu sredinu kao osnovno ljudsko pravo*, doctoral dissertation, 81; See: Art. 39 of the Law on Environmental Protection, which provides:

"(1) Requirements in respect of environmental quality, i.e. the limit values of the levels of pollutants, noise, radiation and energy and limit values of the emissions thereof in the air, water and land, including the emission from mobile sources of pollution, shall be determined in the Republic of Serbia.

(2) The unique norms shall be laid down with a view to: controlling the quality of air, water, land, handling of waste and chemicals, treating of waste waters, industrial pollution and managing of risk, level of noise and vibrations, etc.

(3) The limit values referred to in paragraph 1 of this Article shall be determined by the Government in compliance with special regulations."

[18] Judgment of the Appellate Court in Belgrade, Gž3 439/22, 26. 6. 2023.

By analogy, it can be concluded that, depending on the nature of the personal right at issue, the court may find a violation regardless of any external consequences.[19]

This reasoning is also supported by the position of the Constitutional Court set out in decision Už–1424/2018, in proceedings regarding, *inter alia*, the violation of the right to a healthy environment. The Court did not find a violation, given that the applicant "did not prove a sufficient degree of probability of harm to her health and quality of life."[20] The Court clearly considers that there is a violation if the environment is harmed to the extent that it endangers human health, and it does not require this damage to actually occur. Despite this, a problem that will certainly arise in proving such a violation is determining the degree of probability required to establish that pollution has endangered health. Some authors justifiably criticize this position of the Court as indicating insufficiently developed awareness of the importance of the environment and avoidance of engaging in an assessment of the health risks of pollution.[21] On the other hand, in the small number of proceedings before the Constitutional Court in which the applicants invoked a violation of the right to a healthy environment, the Court most often does not discuss this violation at all but merely states that the constitutional complaints do not provide constitutional grounds supporting the claim that the right in question was violated.[22]

GENERAL THESES ON NON-PECUNIARY DAMAGE FOR VIOLATIONS OF PERSONAL RIGHTS

The Law on Contracts and Torts (hereinafter: LCT) provides for the possibility of filing a lawsuit for compensation for non-pecuniary damage

[19] *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* (App. No. 53600/20) 9. 4. 2024., para. 513: "This would also imply that where the victim status of an individual applicant has been established in accordance with the criteria set out in paragraphs 487 to 488 above, it would be possible to assume that a serious risk of a significant decline in a person's life expectancy owing to climate change ought also to trigger the applicability of Article 2."

[20] For example, see the Decision of the Constitutional Court, Už-1424/2008, 31. 3. 2011.

[21] Milojević, G. (2021). *Osnovi za podizanje tužbe za naknadu štete u ekološkom pravu*, doctoral dissertation, 223–224, available at: https://nardus.mpn.gov.rs/handle/123456789/20882?locale – attribute=sr_RS; Judgment of the Higher Court in Pančevo, Gž 886/13, 24. 12. 2013.

[22] Decision of the Constitutional Court, Už–2945/2013, 23. 12. 2015.

caused by mental anguish resulting from a violation of personal rights.[23] What is specific to our system is that it approaches non-pecuniary damage through the prism of a subjective theory, such that the mere violation of a right is not sufficient for non-pecuniary damage to exist; rather, the violation must result in mental anguish.[24] In countries that adopt an objective approach, the situation is different; the very act of violating a personal right constitutes damage, while possible mental anguish is one of the criteria for determining the amount of compensation.[25] In comparative law, there is a trend of objectifying moral (non-pecuniary) damage. For example, the Croatian legislator opted to objectivize this concept through recent amendments to the Croatian Civil Obligations Act.[26]

Shortly after the adoption of the LCT, certain authors wrote that refusing to recognize violations of personal rights as non-pecuniary damage in cases where the injured party does not suffer anguish would "represent a step backwards in comparison with the achievements of our law, jurisprudence, and theory."[27] Cigoj explains this position by noting that the introduction of a preventive measure prohibiting further violation of personal rights in Article 157 of the LCT contains the idea that interference with these rights is impermissible regardless of any anguish caused.

Other authors consider that the concept of non-pecuniary damage is so closely linked to the concept of personal rights that it cannot even be discussed in the absence of a violation of these rights. Criticizing the solution of the LCT, they state that pain and fear are merely consequences of the damage caused by a violation of personal rights.[28] Moreover, before the adoption of the LCT, case law awarded compensation for non-pecuniary damage regardless of mental anguish (i.e., physical pain or fear), if the circumstances justified

[23] Law on Contracts and Torts, *Official Gazette of the SFRY* No. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia, and 57/89; Official Gazette of the Federal Republic of Yugoslavia No. 31/93; Official Gazette of Serbia and Montenegro No. 1/2003 – Constitutional Charter; and *Official Gazette of the RS* No. 18/2020, Art. 200.

[24] Simonović, I., Lazić, M. (2014). Građanskopravna zaštita prava ličnosti. *Collection of Papers, Faculty of Law, Niš*, LIII(68), 269–290, 281.

[25] Baretić, M. (2006). Pojam i funkcije neimovinske štete prema novom Zakonu o obveznim odnosima. *Collected Papers of Zagreb Law Faculty*, 56, 461–500, 472.

[26] Civil Obligations Act, *Official Gazette of the Republic of Croatia,* 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23, Art. 1046.

[27] Cigoj, S. (1980). *Komentar Zakona o obligacionim odnosima*, eds. Blagojević, B., Krulj, V. Belgrade: Savremena administracija, 430–431.

[28] Petrović, Z. (1996). *Naknada nematerijalne štete zbog povrede prava ličnosti*. Belgrade: Vojna knjiga, 12.

awarding compensation for the feelings of anger, sorrow, suffering, and other discomfort.[29]

Without further delving into the dilemmas of objective and subjective theories, it should be noted that there are also authors who prefer the mixed concept of non-pecuniary damage found in the Draft Law on Obligations and Contracts.[30]

However, since this position has not been adopted in domestic law, the framework established by the LCT and case law should be taken as the starting point. Awarding compensation for non-pecuniary damage arising from a violation of personal rights necessarily entails proving the mental anguish suffered. The fact that there is a violation of a personal right is not sufficient; the violation must cause suffering for the injured party.[31] Courts often require an intensity of mental anguish that leads to a serious disturbance of mental health.[32]

When environmental damage occurs, it is clear that a person may suffer pecuniary and non-pecuniary damage if the harmful action has caused health impairment, i.e., if it has had a specific effect on a person's health. However, the question remains whether non-pecuniary damage can occur due to the violation of personal rights resulting from pollution, regardless of any potential physical effects of the violation.

Beginning with what constitutes a violation of the right to a healthy environment – environmental damage to an extent that may endanger human health and well-being, it is clear that people who are exposed to high levels of pollutants over a long period of time suffer a violation of their right to a healthy environment.[33] In that situation, it should be assessed whether they also suffer mental anguish as a result of this violation.

Mental anguish can manifest in different ways. Courts often consider various aspects of internal suffering in order to determine the existence and intensity of mental anguish. According to case law, non-pecuniary damage can consist of feelings of humiliation, shame, stress, distress, dissatisfaction,

[29] *Ibid.,* 181.

[30] Karanikić Mirić, M. (2015). Objektivizovanje moralne štete*. Matica Srpska Journal of Social Sciences*, 3/2015, 487–503, 493–494; Konstantinović, M. (1996). *Skica za zakonik o obligacijama i ugovorima*. Belgrade, Art. 124.

[31] Karanikić Mirić, M. (2015). *Op. cit.*, 489.

[32] Kostić, S. (2023). Građanskopravna odgovornost zbog objavljivanja na društvenim mrežama. *Bulletin of the Supreme Court*, 3/2023. Belgrade: Intermex, 187, 188.

[33] Some authors argue that rules on the protection of personal rights could be applied to protection from imissions, especially where they do not cause significant harm, since they nevertheless constitute interference with an individual's private life. See: Vučković, M. (2018). *Građanskopravni aspekt zaštite od prekomernih imisija*, doktorska disertacija, 300–302.

anger, etc. More severe cases of violations of personal rights can lead to mental illness.[34]

Constant exposure to elevated concentrations of pollutants can cause high levels of stress, distress, dissatisfaction, and other discomfort. There are studies linking exposure to polluted air with mental health problems.[35] In this sense, it is clear that those affected may suffer mental anguish due to the violation of the right to a healthy environment.

In addition to mental anguish, the possibility of compensation for damage in the form of fear should be considered. Awareness of the negative effects of pollution on human health and life is greater than ever. Long-term exposure to pollutants creates an increased risk of health impairment and the onset of disease. People living in highly polluted areas may be exposed to high-intensity fear over long periods due to potential health impairment.

The term "reasonable fear" can be found in American literature. Case law links this notion to the fear of future damage in the form of illness that occurs when the injured party is exposed to a harmful substance such as asbestos or excessive radiation. In that situation, in order for compensation to be awarded, there must be a reasonable fear of future damage that other persons would also experience if they were in the same situation.[36]

The literature contains advocacy for recognizing fear due to pollution as a distinct form of non-pecuniary damage. It is emphasized that the fear that individuals suffer due to pollution is heightened by possible catastrophic consequences and uncertainty.[37]

In our law, compensation for non-pecuniary damage due to fear is awarded if the intensity and duration of the fear justify it.[38]

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[34] Kostić, S. (2023). *Op. cit.*, 187, 188.

[35] Newbury, J., Stewart, R., Fisher, H., Beevers, S., Dajnak, D., Broadbent, M., ... Bakolis, I. (2021). Association between air pollution exposure and mental health service use among individuals with first presentations of psychotic and mood disorders: retrospective cohort study. *The British journal of psychiatry. The journal of mental science*, 219(6), 678–685.

[36] Ahmed, R. (2023). *The Influence of Reasonableness in Determining Delictual or Tort Liability for Emotional Distress or Mental Harm in American and French Law*, Potchefstroom Electronic Law Journal, 26, 9–10. Available at: https://www.saflii.org/za/journals/PER/2023/12.html

[37] Lin, A. (2006). The Unifying Role of Harm in Environmental Law. *Wisconsin Law Review*, Vol. 3, UC Davis Legal Studies Research Paper No. 74, 898–985, 946–950.

[38] "Moreover, given the established factual situation, the plaintiff would not be entitled to compensation for non-pecuniary damage for physical pain and fear, since the intensity and duration of the physical pain and fear do not justify awarding compensation for non-pecuniary damage." Judgment of the Supreme Court of Cassation, Rev2 1691/2019, 20. 5. 2021.

In this sense, it would be difficult to envision awarding compensation for non-pecuniary damage due to fear of future damage. However, the author believes that this characterization of fear due to pollution is not entirely adequate. Namely, the injured party is already suffering damage consisting of fear for their life and health. In addition, fear is a distinct form of non-pecuniary damage, which is awarded independently of any physical or mental pain suffered, and even in their absence. It is not necessary for the injured party to have already suffered an injury or health impairment for fear to be recognized as damage.

The conditions for awarding compensation for non-pecuniary damage due to fear relate to the intensity and duration of the fear, the importance of the protected good, and the purpose served by the compensation so that it does not favor ends that are incompatible with its nature and social function.[39] In a specific case, awarding compensation for fear suffered due to endangerment of health does not favor such ends; if the court finds that the fear is of high intensity and duration, these circumstances should suffice to award compensation even if there was no immediate threat to the injured party's life and health.

However, a problem that arises in conceptualizing fear lies in proving causation between fear due to pollution and the conduct of a specific tortfeasor, given the number of actors who contribute to pollution to a greater or lesser extent. Therefore, it is difficult to prove that fear is a consequence of the tortfeasor's conduct. Because of this, the literature increasingly mentions liability for increased risk of harm rather than the concept of causation.[40]

COMPENSATION FOR NON-PECUNIARY DAMAGE ARISING FROM THE VIOLATION OF THE RIGHT TO A HEALTHY ENVIRONMENT

Finally, since the basic postulates of this paper's hypothesis hold – the right to a healthy environment can be considered a personal right, it can be violated as a result of pollution, and the injured party can suffer non-pecuniary damage as a result of such a violation, it is necessary to examine what proceedings before a court would look like, what facts the plaintiff would have to prove, and how they could do so.

In order to succeed in the proceedings, the plaintiff must prove that there has been a violation of the right to a healthy environment, the mental anguish

[39] Art. 200 of the LCT.

[40] Simon, M. A. (1992). Causation, Liability and Toxic Risk Exposure. *Journal of Applied Philosophy*, 9(1), 35–44.

suffered as a result of that violation, and the causal link between the defendant's actions and the damage caused.[41]

First, as previously elaborated, a violation of the right to a healthy environment implies environmental damage to the extent that may harm or endanger human health.[42] Proving the violation would be based on measuring the concentration of polluting particles with reference to reports by expert bodies on the possible adverse effects of pollution on human health. A violation of the right to a healthy environment does not imply a negative effect on health; rather, it exclusively entails an environmental condition in which there is an increased risk of such an effect.

As noted in the literature, and given that the LCT does not specify when a personal right is considered violated, the court, depending on the circumstances of the case and taking into account all the evidence presented, should determine the facts based on which it will draw a conclusion as to whether a personal right has been violated.[43] It can be assumed that, in proving their case, plaintiffs would largely rely on reports by expert bodies on the impact of specific types of pollution on human health and their capacity to impair health. Accordingly, proving the existence of a violation of the right to a healthy environment would be reduced to proving that pollution occurred and that it is capable of affecting human health. In that case, the injured party's right to a healthy environment should be considered violated regardless of whether the violation had an effect on the injured party's health. The mere fact that the pollution created an increased health risk and that continued exposure to the pollution would produce "tangible" harm to health is sufficient to constitute a violation of the injured party's right to a healthy environment.[44]

This is one of the key differences compared to "classic" lawsuits for compensation for damage resulting from pollution. In these cases, in addition to proving that pollution occurred and that it is capable of producing harmful effects on health, the plaintiff must also prove that it was the cause of specific damage – an illness or injury. Establishing a causal link in this case is particularly difficult, given the range of factors that affect health.

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[41] Borovac, J. (2011). Naknada neimovinske štete zbog povrede prava ličnosti, *Bulletin of the Supreme Court*, 3/2011. Belgrade: Intermex, 82.

[42] "Such impairments of the quality of life as a result of environmental conditions, though falling short of actually harming human health, should nevertheless be considered as infringements of the right to a healthy environment *sensu lato*." Déjeant–Pons, M., Pallemaerts, M. (2002). *Human rights and the environment*. Berlin: Council of Europe, 21.

[43] Borovac, J. (2011). Naknada neimovinske štete zbog povrede prava ličnosti, *Bulletin of the Supreme Court*, 3/2011. Belgrade: Intermex, 82.

[44] *Di Sarno and Others v. Italy*, (App. No. 30765/08), 10. 1. 2012, para. 106: "States have an obligation to set in place regulations geared to the special features of the activity in question, particularly with regard to the level of risk potentially involved."

By contrast, in litigation for compensation for non-pecuniary damage arising from a violation of the right to a healthy environment, it is not necessary to prove a causal link in the same sense. Rather, it is sufficient for the injured party to prove that they are suffering mental anguish because their right has been violated. The injured party does not have to prove that they have specific physical consequences as a result of impaired health; it is sufficient to prove that the harmful act is capable of endangering their health and that they are suffering mental anguish due to the violation of the right to a healthy environment, which can appear in the form of an elevated level of stress, apprehension due to uncertainty regarding health, anxiety, fear of illness, etc.

Proving the violation of this right is not particularly demanding. The same applies to mental anguish due to its violation – it can be proven through the testimony of the plaintiff and witnesses, medical reports, as well as all evidence indicating the plaintiff's everyday life and standard of living.[45] If, as a result of pollution, the plaintiff developed a mental disorder, it would be necessary to appoint an expert, given that the court does not have the specialized knowledge required to determine relevant facts concerning the disorder.[46]

Success in such litigation depends mostly on proving the causal link between the violation of the right (i.e., the mental anguish) and the defendant's actions.[47] Causation is established under the general rules applied in civil disputes. Therefore, when an increased presence of polluting particles in the air has been proven, the causal link should be established between the particle level (as a form of violation of the right to a healthy environment) and the defendant's actions. It can be assumed that this would be proven by establishing the defendant's main activity, the substances specific to that activity, and similar factors.

However, the problems of causation run deeper than proving that the defendant's actions are capable of leading to a violation of the right to

[45] Judgment of the Supreme Court of Cassation, Rev2 687/2012 of 27. 12. 2012: "Contrary to the defendant's allegations, expert examination is not necessary in the procedure for determining discrimination. Expert examination is carried out when a problem requires knowledge the court does not have. Based on the evidence presented (hearing of the parties, witnesses), the court can assess and determine whether there is unequal treatment in identical situations."

[46] Kostić, S. (2023). Građanskopravna odgovornost zbog objavljivanja na društvenim mrežama. *Bulletin of the Supreme Court*, 3/2023. Belgrade: Intermex, 187, 188.

[47] Fault of the tortfeasor will not be the focus of this paper, given that Article 103 of the Law on Environmental Protection provides for strict (objective) liability for pollution. If, however, the court were to apply the general LCT rules on fault, there would in any case be a presumption of fault in favor of the injured party, so the tortfeasor would have to prove that they were not at fault for the damage caused. Due to the nature and limitations of the paper, the issue of the tortfeasor's potential fault in pollution-related harm will not be elaborated in greater detail.

a healthy environment. Especially today, when there are a large number of actors influencing pollution levels, it is difficult to determine each actor's contribution, i.e., to claim that without the defendant's contribution, there would have been no violation of the plaintiff's right. Therefore, the literature proposes easing the procedural position of the plaintiff by focusing on mitigating or shifting the burden of proof. Thus, Cigoj notes that this requires abandoning strict proof of the causal link; rather, a high degree of probability should suffice.[48] In some countries, a reversal of the burden of proof has been introduced in environmental litigation, so the polluter bears the burden of proving the exclusion of liability, i.e., the absence of a causal link between their action and the damage.[49]

Even in a situation where the defendant did not emit the entire amount of pollutants present, they should be held liable if this activity significantly contributed to exceeding the permitted particle level. In this way, the problem of adequate causation can be avoided, especially when it comes to a polluter who has substantial resources for collecting information on the impact of emitted substances on human health, as well as a duty of care to protect the environment. The legal standard of "significant contribution" remains for courts to establish.

Given the difficulties in establishing the causal link between the polluter's actions and the damage suffered, it would be in the interest of the plaintiffs to initiate proceedings against the Republic of Serbia, an autonomous province, or a local self-government unit, who are obligated to protect the environment, i.e., to keep environmental pollution at a level that does not exceed the limits set by technical regulations.[50] Article 5 of the Law on Environmental Protection explicitly provides for the liability of these actors for "failure to undertake environmental protection measures." In addition, Article 103, paragraph 2 of that law provides that

> "...a legal and a natural person that enabled or allowed environmental pollution through illegal or irregular activities shall be held liable for the pollution of the environment."

[48] Cigoj, S. (1980). *Komentar Zakona o obligacionim odnosima*, eds. Blagojević, B., Krulj, V. Belgrade: Savremena administracija, 440; Similar see: Wu, C. F. (2021). Challenges to Protecting the Right to Health under the Climate Change Regime. *Health and Human Rights*, 23(2), 121–138, 131.

[49] In China, see: Qianxun, X., Mehran, K. (2023). Reflections on the environmental damage compensation regime in Chinese civil legislations. *Heliyon*, 9(4), Available at: https://www.sciencedirect.com/science/article/pii/S2405844023023617

[50] Article 74, paragraph 2 of the Constitution of the Republic of Serbia explicitly stipulates that everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. The same obligation is also provided in Article 4 of the Law on Environmental Protection.

Therefore, given that the Republic of Serbia, autonomous provinces, and local self-government units are obligated to protect the environment, i.e., to take measures to maintain the level of pollution below limit values, it is clear that they can be held liable for a breach of that obligation. The breach would consist of excessive pollution, i.e., pollution above limit values.

In this situation, it would be significantly easier for the injured party to succeed in litigation, since this approach bypasses the need to prove a causal link between the polluter's conduct and the damage that has occurred. A lawsuit directed against a specific polluter is based on the act of polluting and entails proving that the specific act caused the damage. By contrast, a lawsuit filed against, for example, the Republic of Serbia, is based on the fact that excessive pollution was permitted, regardless of the specific entity that caused the pollution. The state's liability is not based on the mere fact of pollution, but on the failure to adopt adequate regulation or to implement it with regard to polluters, as a result of which pollution levels exceed limit values.

In this way, the injured party asserts that the Republic of Serbia has the duty to protect the environment (as provided by law) and proves that the level of environmental pollution exceeds limit values. This "unlocks" state liability, since the state is required to take measures to keep pollution below limit values; because pollution has exceeded the prescribed limits, the injured party may simply claim that the state failed to fulfill its statutory obligations. However, in this situation, the state can attempt to prove that it took the necessary measures or that the damage would have occurred even if they had been taken; however, the injured party's position is nonetheless more favorable, given that the burden of proof shifts to the other side.

The unlawful or irregular activities of the authorities of the Republic of Serbia, which are stipulated as a condition of liability in the aforementioned Article 103 of the Law on Environmental Protection and Article 5 of the Law on State Administration,[51] can be proven relatively easily. Since pollution limit values are prescribed by specific Government regulations, failing to take measures that would prevent pollution from exceeding the prescribed limits is unlawful because it explicitly violates these regulations, as well as the Law on Environmental Protection.

Finally, this paper will analyze the only available judgment in proceedings for compensation for non-pecuniary damage arising from the violation of the right to a healthy environment. The literature refers to proceedings conducted before the Basic Court in Pančevo as an example showing that case law

[51] Law on State Administration, *Official Gazette of the RS,* No. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018 – other law, Art. 5, para. 1: "The Republic of Serbia shall be liable for damage caused by unlawful and improper work of state administration authorities to natural and legal persons."

is not favorable toward lawsuits for compensation for non-pecuniary damage arising from environmental pollution.[52] Although this view is undoubtedly correct, the judgment may indicate gaps that should be addressed when filing a lawsuit.

An analysis of the judgments of the Higher Court in Pančevo Gž 886/13 and the Basic Court in Pančevo P–591/2012 reveals the following.[53] The plaintiff filed a lawsuit seeking compensation for non-pecuniary damage due to fear and mental anguish arising from violations of the right to life, freedom of movement and choice of residence, and the right to a healthy environment. The lawsuit was filed due to exposure to strong, unpleasant odors, as a result of which the plaintiff could not breathe and felt distress and fear. The court ruled in favor of the defendant, stating that there was no causal link between the presence of harmful substances in the air and the plaintiff's symptoms. The court based its conclusion on measurements of particle levels in the air; since concentrations of polluting particles did not exceed normal limits, the harmful consequences experienced by the plaintiff could not be attributed to the defendant.

It is clear that the court relied on causation, but it also indirectly indicated how a violation of the right to a healthy environment is proven. The court did not specifically consider whether this right was violated or what its violation entails. Nevertheless, from its view that there was no causal link between the defendants' activities and the plaintiff's symptoms solely because of the amount of pollutants, it can be concluded that the court considers that proving a violation of the right to a healthy environment essentially means proving that pollution levels exceed prescribed limit values.

The court's reasoning was poorly formulated. In one place, it states that

> "...the defendants have permits to carry out their activities and the damage they caused in performing those activities does not exceed normal limits,"

while it then points to the absence of causation between the damage and the defendants' activities. It appears that the court "hid" behind the standard of excessive damage without defining it anywhere. In addition, it seems that the court derives both the absence of causation and the absence of a violation of

[52] Drenovak, M., Đorđević, S., Važić, S. (2015). *Pravni instrumenti ekološke zaštite – građanskopravna i krivičnopravna zaštita.* Belgrade: Organization for Security and Co-operation in Europe, 99.

[53] Taken from Drenovak, M., Đorđević, S., Važić, S. (2015). *Pravni instrumenti ekološke zaštite – građanskopravna i krivičnopravna zaštita.* Belgrade: Organization for Security and Co-operation in Europe, 99. Aćimović, A. (2015). *Ekološko–pravna zaštita u građanskom postupku sa posebnim osvrtom na pitanje naknade nematerijalne štete*. Zaštita životne sredine u zakonodavstvu i praksi. Belgrade: OSCE Mission to Serbia, 33–41, 37–38.

the right to a healthy environment from the absence of excessive damage, i.e., from the measured particle concentrations. In that situation, it appears that the plaintiff would have succeeded if she had managed to prove that particle concentrations were higher than permitted during the relevant period.

It appears that proving causation should not pose a particular problem, especially compared to proceedings in which the plaintiff must also prove damage in the form of a specific effect on their health or bodily integrity. As the court states:

> "The above measurement determined an excess of suspended particles and soot, but this excess cannot be linked to the defendants' production and technological processes because these are not substances characteristic of the type of technology they use."

In reaching its decision, the court took into account all relevant facts, in particular the type of technological processes the defendants used and the substances characteristic of their activity. Accordingly, if the plaintiff had proven that the limit values of polluting substances characteristic of the defendants' activity were exceeded, it appears that the burden of proving that the substances were emitted by other entities, i.e., that the damage did not result from the defendants' actions, would have shifted to the defendant.

In any case, after analyzing the judgment, it can be concluded that the court applies Article 156 of the LCT;[54] that it views a violation of the right to a healthy environment as pollution exceeding normal limits; and that the occurrence of mental anguish and fear, as well as causation, are proven under general rules. It appears that the plaintiff would have succeeded if they had proven that the level of emitted pollutants exceeded the permitted level; in that case, the violation of the right to a healthy environment would have been established, and the court could have determined the existence of a causal link based on the type of substances and the specific features of the defendants' activity.

Of course, this does not mean that the position of the plaintiffs in such litigation is easy. On the contrary, the plaintiff must rely on expert examination; proving causation is difficult because multiple actors may contribute to the level of polluting particles in the environment, and similar obstacles may arise. However, this is still significantly simpler than proceedings for compensation for non-pecuniary damage when health impairment actually occurs, in which case the plaintiff must prove that the consequence occurred precisely

[54] In essence, reliance on Article 156 of the LCT is consistent with the paper's premise that a violation of the right to a healthy environment consists of the emission of polluting particles above the permitted level (environmental damage to the extent that endangers human health), which corresponds to the statutory concept of excessive damage.

due to the defendant's actions. In our case, the plaintiff is at least relieved of the burden of proving that this impairment occurred; it is sufficient to remain at the level of pollution (thereby proving a violation of the right to a healthy environment), and the mental anguish or fear experienced due to that violation. In other words, the plaintiff does not have to prove that their health was impaired; it is sufficient to prove a violation of the right to a healthy environment, which is significantly easier. Additionally, if the plaintiff initiates proceedings against the Republic of Serbia, an autonomous province, or a local self-government unit, this burden of proof is avoided, and the link between the defendant's improper conduct and the increased level of pollution is significantly easier to establish.

From the theoretical analysis, as well as the analysis of the judgment cited above, it can be concluded that litigation for compensation for non-pecuniary damage arising from a violation of the right to a healthy environment is a mechanism available to injured parties and represents a simpler method for protecting the rights of people exposed to high levels of pollution. This position is supported by numerous statements by authors writing in this field who either explicitly advocate, or at least suggest, the possibility of compensation for non-pecuniary damage arising from pollution.[55]

During the writing of this paper, the Basic Court in Podgorica rendered a judgment establishing the liability of the Republic of Montenegro for air

[55] "A claim for damages (pecuniary or non-pecuniary) appears as an accessory element […] and it is possible to raise the claim alongside any of the above environmental lawsuits." Aćimović, A. (2015). *Ekološko–pravna zaštita u građanskom postupku sa posebnim osvrtom na pitanje naknade nematerijalne štete*. Zaštita životne sredine u zakonodavstvu i praksi. Belgrade: OSCE Mission to Serbia, 35;

"It is evident that, as a consequence of an environmental incident, damage to human life and health may also occur (non-pecuniary damage)." Milojević, G. (2021). *Osnovi za podizanje tužbe za naknadu štete u ekološkom pravu*, doctoral dissertation, 163;

"Based on Art. 156 of the LCT, a claim for damages may be brought if the damage exceeds the normal limit […] and such damage may be non-pecuniary." Karanikić Mirić, M. (2024). *Obligaciono pravo*. Belgrade, 650; Karanikić Mirić cites the judgment of the Appellate Court in Belgrade Gž 15476/2010 of 1 June 2011: "Fear among tenants of an explosion or rupture of pressurized equipment used for heating, which by its dimensions is not suitable for the basement premises in which it is installed."

"We believe that non-pecuniary damage for mental anguish caused by the negative impact of industrial and neighboring facilities should also be recognized." Šago, D. (2013). Ekološka tužba kao instrument građanskopravne zaštite okoliša. *Collected Papers of the Faculty of Law in Split*, 50, 4/2013, 895–915, 908;

"One should be aware that those inconveniences arising from gases, smoke, dust, noise, radiation, and other disturbances may already constitute impermissible disturbance of the balance in nature and interference with human integrity." Cigoj, S. (1980). *Komentar Zakona o obligacionim odnosima*, eds. Blagojević, B., Krulj, V. Belgrade: Savremena administracija, 438.

pollution in Pljevlja and awarding the plaintiff compensation for non-pecuniary damage arising from the violation of the right to a healthy environment.[56] State liability was based on the failure to fulfill the obligation to prevent excessive environmental pollution.[57] It appears that the key evidence relied upon by the plaintiff in the proceedings, in addition to their own testimony, included expert examination by the Institute of Public Health concerning the impact of air pollution on human health and reports by the Environmental Protection Agency on air pollution levels. The plaintiff reportedly stated in their testimony that they suffered non-pecuniary damage due to pollution in the form of a taste of coal in their mouth, reduced physical fitness, impaired mobility, and similar effects.[58]

The judgment is still not publicly available, but its issuance is a step in the right direction and an indicator that a lawsuit for compensation for non-pecuniary damage arising from a violation of the right to a healthy environment is not merely a theoretical possibility but a reality; domestic courts should therefore be prepared for a potential increase in such proceedings in the future.

CONCLUSION

A lawsuit for compensation for non-pecuniary damage arising from the violation of the right to a healthy environment due to pollution is a mechanism that is available to injured parties even when the negative effects of pollution have not (yet) had an impact on their health. The premises on which the thesis is based – the concept of the right to a healthy environment as a personal right, its violation, and the form of mental anguish suffered by injured parties due to that violation, have been analyzed and substantiated in detail, so there is no obstacle to the claim that such a lawsuit is not only possible, but also represents the most favorable mechanism for injured parties due to numerous advantages over alternatives, mainly regarding the burden of proof and the plaintiff's procedural position.

It is a matter of time before these proceedings gain momentum; this will show whether domestic courts will develop case law that would help achieve

[56] Ajković, D., *Sud usvojio tužbu Hrković. Država odgovorna za zagađenje vazduha u Pljevljima*, available at: https://www.vijesti.me/tv/emisije/746011/sud-usvojio-tuzbu-hrkovic-drzava-odgovorna-za-zagadjenje-vazduha-u-pljevljima

[57] *Žena iz Pljevlja tužila Crnu Goru zbog zagađenog vazduha, pa napravila presedan u regionu*, available at: https://6yka.com/region/zena-iz-pljevlja-tuzila-crnu-goru-zbog-zagadjenog-vazduha-pa-napravila-presedan-u-regionu/

[58] *Pokrenuti državu da se posveti zdravlju Pljevljaka*, available at: https://www.standard.co.me/drustvo/pokrenuti-drzavu-da-se-posveti-zdravlju-pljevljaka

fair compensation for the intangible damage that citizens exposed to high levels of pollution over long periods suffer on a daily basis. In particular, as a response to potential claims that such litigation could develop into a phenomenon of "mass" lawsuits, the author believes that there are a number of reasons preventing that outcome, of which only a few will be presented. First, the likelihood that a large number of citizens will decide to initiate such proceedings is reduced by the fact that the proceedings would certainly last for years, and that their potential "monetization" would be preceded by a range of costs that they would have to bear. Second, the amount of compensation for non-pecuniary damage that might be awarded to citizens would be too low to create unjustified incentives to initiate such proceedings, which would undoubtedly be clear both to the citizens themselves and to their attorneys, even before initiating proceedings. In addition, domestic law is unprepared to rule in favor of plaintiffs on a mass basis; rather, courts would award compensation only in extreme situations of pollution that significantly exceeds prescribed limits and persists for an unjustifiably long time. All of this indicates that there is no real risk of overburdening the courts with such proceedings, nor of an excessive impact on the state budget.

The contribution of this paper goes beyond theoretical frameworks, particularly given that there has recently been case law in the region adopting a positive stance toward such proceedings; the paper serves as an incentive for the development of law in a direction that provides adequate protection from the negative consequences of industrial development.

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