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Property and Environmental Protection
- An overview of the Slovene legal framework -

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I. Introduction

The use of a property has not only civil law meaning and it is not limited only to things. This article aims to discuss how the private property in land/industry/buildings etc can serve as a protective shield against environmental regulatory restrictions of land-use, operations of industry, uses of buildings, etc. For instance, if an authority closes down a polluting factory its owner may claim undue intervention into his property. He may conceive the restriction as an expropriation (or in other vases as an indirect expropriation) and argue that the action was unlawful or at least triggering compensation. Other examples include the restriction of agriculture in Natura 2000-sites, or the introduction of energy efficiency requirements (isolation etc.) concerning existing buildings. And there might also be other examples where property is invoked as a reason for protection against insufficient or ineffective state's measures. By property we understand not the civil law notion (which tends to be somewhat narrow) but the notion used in the constitutional law (i.e. in the context of protection against intervention by state action).

II. Objects of "property" and use of which is being defended against environmental protection regulation

Regulatory regime of property is defined, in general, in the Constitution of the RS.[1] The approach used is not self-sufficient; namely, Art. 67 foresees that it is the legislator that defines what exactly the property is, how it is defined, how the property can be obtained and what the benefits, i.e. implied rights, of the property are. At the same time, mentioned provision defines that property is *limited by its commercial, social and ecological function.* [2] It is therefore for the legislator to define the actual contend of the "property" and this is not done by the Constitution itself.

According to private law rules, property can be obtained not only on real objects but also on rights, especially private law rights. On the other hand, there are objects that are excluded from property. This is especially true for things that are defined as *public goods*, which might be natural public goods or constructed public goods. Natural resources, generally speaking, are not subjects of public rights; they are public goods, belonging to all, to the community, and

[1] *Constitution of the RS, Official Journal of the RS, Nr. 33-1409/1991I, RS 42-2341/1997, RS 66-3052/2000, RS 24-899/2003, RS 69-3092/2004, RS 69-3090/2004, RS 69-3088/2004, RS 68-2951/2006.*
[2] *Article 67, (Property): »The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social, and environmental function.*
The manner and conditions of inheritance shall be established by law.« For its commentrary see also: L. Šturm, Komentar Ustave RS, Dopolnitev – A, FDEŠ, 2011, p. 963 – 1002.

the State administer and managing them.[3] But from the constitutional point of view, property comprehends also rights, market shares, etc. It is not only reals things that are subject of a property, although real things, especially immovable are having some special rules (for instance that limitation in the use or ownership of the immovable is subject to compensation; Art. 69).

However, it is common that legal language refers only to rights, not to property in the above sense. For instance, certain official documents awarding an allowance to a person (like an environmental permit), will be treated as an *acquired* or *vested* right, although not as a property right. If somebody has a permit to build certain construction, that right cannot be used as a property that outweigh environmental protection measures.

Rights to use natural resources are, primarily, given to the state alone; namely, natural resources are public good as noted above.[4] However, the State authorities (and also local authorities) can award rights to exploit natural resources. Under Art 164 of the Environmental Protection Act (EPA) the state, or a municipality, may award, against payment, concessions to use or exploitation of natural assets to a legal or natural person when that person is qualified to exercise that concession. Concessions are awarded for a certain period of time but not more than 30 years. This is for instance true for concessions to exploit forests in Slovenia.

It was, until recently, a general trend to award concessions, also in cases where the state or municipality owned (public) company could have exploited the natural resource. This practice was followed also by the *Statute on Private-Public Partnerships*,[5] which make obligatory, under Art. 141, for all public companies to reorganize in two ways: they can be 100% owned by the state/municipalities or they can organized as private companies. A substantive number of former public companies became private and they asked for concessions. This way the State/municipalities lost certain control embodied to the public companies, but most important, public interest was exchanged for private one.

Private interest in using the natural resources is, as we are evidencing now in Slovenian practice, not welcomed; Court of Auditors of the RS is also very critical in its assessment to the concession's approach. The Court of Auditors estimates that approximately 16 mil EUR is lost every year due to the inefficiency of the system.[6] The system of concessions is therefore not find appropriate by the Court of Auditors. The concessions will end on 2016 and the court proposes to the legislator to adopt a new approach, i,e, a new, more efficient system that would enable more sustainable treatment of natural resources.

III. A private property as a defense of environmental protection

[3] *Therefore, if natural resources are part of certain spot, which is in private property, the owner is not entitled to use that natural resource without a permission i.e. the concession, and this is part of the constitutional limitation of the property rights due to the ecological reasons.*

[4] *According to the Environmental Protection Act (EPA), a natural resource shall mean any component of the environment, which is subjected to economic exploitation / commercially exploited. This is a definition in Art. 3 of the EPA, Official Journal of the RS, 41-1694/2004, RS 17-629/2006, RS 20-745/2006, RS 49-2089/2006, RS 66-2856/2006, RS 33-1761/2007, RS 57-2416/2008, RS 70-3026/2008, RS 108-4888/2009, RS 48-2011/2012, RS 57-2415/2012, RS 92-3337/2013.*

[5] *Official Journal of the RS, No 127/2006.*

[6] *Report of the Court of Auditors of the RS, of 18 May 2012, Directing forests in Slovenia, Nr. 321-2/2010/93, available http://www.rs-rs.si/rsrs/rsrs.nsf/I/K38B07CAD3EAF5421C1257A000030F18C/$file/Gozd_SP09.pdf.*

Differently as above, it is not only hot to get to the property and what are conditions to get certain right that is linked to the environment, but also vice-versa; namely, can one's right be an obstacle for the enjoyment of the healthy environment?[7] There are, legally speaking, several possibilities to invoke private property for or also against environmental protection. In the private law enforcement, individual can rely on property as a defence against activities of other persons, might be neighbours or any third persons (like companies, i.e. factories, investors, also perhaps against activities of an army (like military exercises), also against actions of hunters; i.e. against everybody that is not included in the notion of the State. Actions can be legally based on provision of so called "neighbouring law" (like nuisance), or in *actio popularis.* The latter is well framed in the Civil (Code Article 133).

It reads:

> *(1) Any person may request that another person dispose of a source of danger that threatens major damage to the former or an indeterminate number of persons and refrain from the activities from which the alarm or risk of damage derives, if the occurrence of alarm or damage cannot be prevented by appropriate measures.*
> *(2) At the request of an interested person the court shall order appropriate measures to prevent the occurrence of damage or alarm or to dispose of a source of danger to be taken at the expense of the possessor thereof should the latter fail to do so.*
> *(3) If damage arises during the performance of generally beneficial activities for which permission has been given by the relevant authority it shall only be possible to demand the reimbursement of damage that exceeds the customary (usual) boundaries.*
> *(4) Nevertheless, appropriate measures to prevent the occurrence of damage or to reduce damage may also be demanded in such a case.*

This action can be used also in those cases where the State issued a permission for activities that are harmful to the environment and private property; in these cases, only measures that can prevent or reduce the damage are possible.[8] However, the action cannot be brought towards the state (administrative authorities) to change or to annul permissions, but only to private parties. Procedures against the State can be brought in different procedures, i.e. public law remedies. An owner, that can prove his property being affected by activities, harmful to the environment, and whereby the permission was issued, can claim, first in the administrative procedure and later on with a lawsuit at the administrative court to change or to annul the permission. It is not so rare that environmental NGOs are filing such actions, helping at the same time individual owner who is usually *one-shot player*, i.e. mostly not being in position to search for legal protection against the State measures at courts. NGOs are, on the other side, often parties (claimants) seeking state's measures to be changed. On the other side, it is a different approach against private investors, relaying only on civil law measures. Namely, state

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[7] *It shall be mentioned also that the sole property can also poses obligations and responsibility in environmental matters. One can be responsible for (environmental) damage only because he owns the property. According to Art. 157.a of the Environmental Protection Act the owner of the property shall bear the costs for the restitution (restitutio integrum) of the land in question, in case the polluter cannot be find or cannot be identified. So far, the courts did not find this solution contrary to the Constitution of the RS or to Art. 8 of the ECHR or to the EU rules or even to the principle of proportionality. There are however different views on that among the scholars present. Compare R. Knez, Evropsko prekrškovno pravo (s ponazoritvijo na primeru vinjetnega sistema in nelegalno odloženih odpadkov).* Pravosodni bilten, *ISSN 1318-1459, 2013, Year 34, Nr. 1, p. 45-63.*

[8] *Burden of proof is in Slovene law, in case of dangerous activities, where the strict liability applies, on the defendant. In case of the strict liability, Slovene law foresees the burden of proof in the sphere of the party being engaged in the dangerous activities. Taking together actio popularis and the reverse burden of proof, Slovene law makes for the plaintiff rather acceptable procedural position.*

measures, general and individual, like permissions, are still those that in the first place, allow activities; no private action to stop activities would be successful, if State authorities allow certain activities. It is therefore, first, necessary to change state's rules or measures.

Another, rather important feature in private law actions is also a standard of "*usual boundaries*"; only if damages exceed that boundary, the legal defense is possible. This "case-by-case" approach brings certain legal uncertainty and it can be a difficult task for the court to define it in particular cases.[9] For instance, is it bad odour because of the farm something that is within the limits of usual boundaries in rural areas.

Let us imagine the following case: A factory, situated near a town, has been operating for decades. People are slowly realizing that statistically the inhabitants in the city and in the vicinity do not live average age and the cancer is more frequently present among them, also the frequent cause of the deaths. They have no direct proofs that the factory could be responsible, although it is rather clear that the soil around the factory is poisoned and that the heavy metals found in the vegetable could be linked to the factory. However, credible proofs are missing. Here are some immediate questions: What could be the obligation of the state? Could the inhabitants rely on the public remedies procedure? If the state wants to revoke the operation permit, could the factory claim any sort of property guarantee?

Let us discuss this case, starting from the point of view of public remedies, *ex ante* and *ex post*. The state shall check the procedure and the best available technics (BAT) in the factory. There are possibilities for the state authorities (inspectors) to investigate and to search for proofs. In case they find the necessary proofs, they can impose measures (*restitutio integrum*, ban the production). However, the state inspector will not demand the factory to compensate damages to individuals. That has to be claimed by individuals alone (private law remedies). Public remedies procedure will be essential for inhabitants, since it will be unlikely to obtain the necessary proofs themselves. Courts, under private law remedies procedures, are not bound by decision and by findings of the public authorities (executive authorities), but usually they follow them and take them into account.

If the State revokes the operation permit from the reason of noncompliance, there is no right for the operator arising out of the property guaranty. As explained, a permit cannot be used against mandatory provision on the environmental protection.[10] From this point of view, the permit will not be seen as a property guarantee. The sole goal of the permit is to allow the factory to operate. However, even though the factory is in line with the permit, the damage might be caused. The State, although it issued the permit, is not responsible and the factory cannot rely on the permit and exclude itself from the obligation to compensate damage. However, if the operation permit is revoked from any ground which is in the sphere of the

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[9] *R. Knez*, Odgovornost gospodarskih subjektov za obremenjevanje okolja v materialnem in mednarodnem zasebnem pravu, PFUM, *Maribor, 1998, p. 26 – 30.*

[10] *The permits issued by the state, in general, do not exclude a holder of such a permit from the liability toward third persons. This is not the approach that Slovenia would accepted. Even more, in certain cases (constructions) investors are not allowed to start with constructions, if the building permit is not final. That means that no court remedies are possible any more. The finality obtained in administrative process (within executive authorities) is not enough. If the investor would like to start with the constructions despite that, he will have to bear consequences in case the court will annul such state permit (Art. 3 of Construction Act, Zakon o graditvi objektov (Uradni list RS, št. 102/04 - uradno prečiščeno besedilo, 14/05 - popr., 92/05 - ZJC-B, 93/05 - ZVMS, 111/05 - odl. US, 126/07, 108/09, 61/10 - ZRud-1, 20/11 - odl. US, 57/12, 101/13 - ZDavNepr in 110/13).).*

State and whereby the operator is not liable for the revocation, than the operator is entitled for compensation.

IV. A public management of natural resources

Property is not always connected with the ownership. Especially in case of the environment and nature the ownership will not be the sole reason to constitute certain rights. Nature and the environment are not having the owner – although somebody can hold an ownership on certain plot that does not mean that also natural resources belongs to him. On a contrary – the owner of a plot is still obliged to get permits from the State to use or influence the natural resources. Namely, a according to Arts. 5, 70 and 73 of the Slovenian Constitution the State is responsible to safeguard and administrate natural resources. Natural resources are public goods and there is no ownership. This is not exclusively defined in the Constitution of the RS nor in the statues, but the Constitution Court is clear on that issue.[11] Natural resource can be defined as such by a decision of the State/municipalities or can be as such according its characteristics.[12]

Duties of the state in this respect are to adopt rules for proper safeguard of natural resources, to supervise and also, important, to act in cases of pollution, environmental strain, (possible) environmental damage, etc (preventive and curative actions) in case of inactivity of the polluter or in case the polluter is not known (so called subsidiary duty). These are all duties, mostly defined in the EPA.

A regulatory restrictions to use property are possible. The general rule is that restrictions, even those in the public interests, are to be compensated. However, in such cases the state would rather buy certain land for purposes of state interest (like for instance roads, motorways, etc.) or to expropriate (as an option of the last resort). In cases where infrastructure is needed and buying-off the land or the expropriation are not proportional solutions, state or municipalities can agree with the owner to use the property (they conclude contracts on a use). It is also possible that courts define necessary restrictions of the property like inevitably allowance to use private property. The *Law on Property Act*[13] defines that appropriate reimbursement shall be paid to the owner.

On the other hand, certain valuable natural resources can be specially protected. *Law on Nature conservation*[14] defines specially protected areas (SPA) , besides Natura 2000 protected areas, which are subject to a special regime, whereby the use of private property can be restricted. In these cases the owners are not entitled to the compensation, but the whole area would usually gain public economic help for different purposes. That way regulatory restrictions would be outweighed by the State financial investment in these areas.

In cases, defines under the law, also expropriations are possible. The expropriation is regulated in the Spatial Management Act.[15] It is possible, according to Art. 93, to expropriate the owner also in cases of public commercial infrastructure. That means that for instance in the case of

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[11] *Decision of the Constitutional Court of teh RS, No U-I-176/94-16, of 5.10.1995.*
[12] *Par. 11 of the above Constitutional Court judgment. Also civil courts are follwing this decision. See also Order of the Supreme Court Sklep II Ips 347/2005 of 16.3.2006.*
[13] *Official Journal of the RS, Nr. 87-4360/2002, RS 91-3303/2013, RS 17-540/2014*.
[14] *Offcial Journal of the RS, Nr. 56-2655/1999, RS 31-1/2000, RS 119-5832/2002, RS 41-1693/2004, RS 61-2567/2006, RS 32-1223/2008, RS 8-254/2010.*
[15] *Offcial Journal of the RS, Nr. 110/02, 8/03 - popr., 58/03 - ZZK-1, 33/07 - ZPNačrt, 108/09 - ZGO-1C and 80/10 - ZUPUDPP).*

renewable energy infrastructure that condition would be fulfilled. It would be enough that there are official plans for the public infrastructure, in the level of the state or local spatial plans. Once such plans are adopted, the public interest is to be presumed. There is also a special act for infrastructure of national importance.[16] This act is even stricter for the owner and favours the investments in infrastructures. It defines in Art. 47: "When within 30 days following upon the service of the offer for the sale of real estate or for the acquisition of rights over real estate an Investor does not manage to conclude an Agreement, upon the proposal of an Investor the State shall immediately file a proposal for expropriation or for the restriction of the rights of ownership." This rule is applicable for different infrastructure: roads, railways, transports terminals, air transport terminals, border crossing, water infrastructure etc. The important is only that the project is part of infrastructure and that is included in the spatial acts in the State level.

The procedure for the expropriation can be initiated by the state or by the local communities (municipalities). Authority, competent to decide in the expropriation matters, is the Ministry for the environment and its administrative units. The decision of the Ministry is final but can be a subject of a court's supervision, i.e. in a dispute at the Administrative court.

Slovene legal system used to have a different approach, where courts were competent to hear such cases.

It has now been several years since this is not in the competence of courts but of the executive authorities. Courts are only competent in cases where either party would like to annul the final decision by executive authorities.

Expropriation caused by EU legal acts or their implementation is not really the case in Slovenian legal order. But the approach would be the same; the EU rules enter the national legal order also due to Slovene Constitution (Art. 3a): "Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations." The EU has no rule in this respect.

It is true that the EU can be responsible for the damage caused, but EU does not demands expropriations. It might be that the EU rules have an effect to property rights and their limitation, but this does not mean that the EU is responsible. If the Member States adopts rules that limits property rights, case will be dealt as noted above, according to Art. 15 of the Slovene Constitution – principle of proportionality and weighting of the interest of two right that coincide.

V. A subsidization of a beneficial use of natural resources

Another important issue, closely connected with the rights in the broader sense, is also a right to be subsidized in environmental matters. Subsidization itself is a subject of a decision of the State (Agency for Energy in case of feed-in-tariff), but this itself is not a reason for not defining it as a right. Subsidization is usually possible only based on the transparent procedure and therefore it is open to competition. Once awarded, it can be also changed.

[16] *The Act Regarding the Siting of Spatial Arrangements of National Significance in Physical Space (ZUPUDPP), Offcial Journal of the RS, No*

In case of green energy in Slovenia the approach is different. The Government is entitled to adopt rules – who, which facility is entitled to the subsidy and how much subsidy is given.[17] This is exactly so in case of feed in tariffs. The *Energy Act*[18] empowers the Government to regulate the level of subsidization each year. It is therefore up to the Government to increase/decrease not only level of the subsidization but also criteria which project can compete/be subsidized, etc. It cannot, therefore, be said that subsidization is construed as a property right in Slovenian legal system in absolute term. It is true that facility, which fulfils the requirement, can apply for subsidy, but the Government can easily change the requirements.

VI. Vested rights and compensation for reasons of environmental protection

According to the law, vested rights shall be respected; Constitution of the RS prohibits retroactive effects.[19] It is also defined in the Constitution of the RS, that ownership rights to real estate may be revoked or limited in the public interest with the provision of compensation in kind or monetary compensation under conditions established by law.[20] This is, however, only a special provision in case of immovable. Generally speaking, this is not the approach also for other rights. For instance the Slovene Constitutional court adopted a different solution in the case of social rights. Because Slovenia was faced with the financial crises, Slovenian Government decided to balanced public expenses with the public incomes. A special statute was adopted for this reason[21] and its rules touch upon quite a number of social rights. In addition, mandatory retirement, social financial transfers etc. The Constitutional court decided that severe economic financial circumstances in the country justify restrictions of wasted rights.[22] The Court added that restrictions shall be proportional and that there should be certain time limit for adoption to the restricted vested right.

The same is also true for subsidising green electricity. In 2014, the new Energy Act[23] was adopted and that law gives power to the Government to change the level for subsidies for green electricity in accordance with the circumstances on the market, public, finances, etc. This is not done in a clear way, but rather only with the fact that subsidization is subject of the rules adopted by the Government, not by the legislator.

In the field of the environment, things are no different. Only in cases where rights to immovable are concerned one can expect compensation. In other cases, it is necessary to outweigh the right, which is at stake with other right (principle of proportionality). A decision of the Constitutional Court[24] is one such example: "A prescription issued by a municipality and regulating the navigation on the waterways within the territory of this municipality on the

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[17] *Regulation on supports for the electricity generated from renewable energy sources, Official Journal of the RS, No 37/09, 53/09, 68/09, 76/09, 17/10, 94/10, 43/11, 105/11, 43/12, 90/12 and 17/14 - EZ-1).*
[18] *Official Journal of the RS, No 17/2014, of 7. 3. 2014.*
[19] *Art. 155.*
[20] *Art. 69.*
[21] *Fiscal Balance Act, Official Journal of the RS, Nr. 40/12, 96/12 - ZPIZ-2, 104/12 - ZIPRS1314, 105/12, 25/13 - odl. US, 46/13 - ZIPRS1314-A, 56/13 - ZŠtip-1, 63/13 - ZOsn-I, 63/13 - ZJAKRS-A, 99/13 - ZUPJS-C, 99/13 - ZSVarPre-C, 101/13 - ZIPRS1415 in 101/13 - ZDavNepr)*
[22] *U-I-13/13, of 14.11.2013.*
[23] *Official journal of the RS, Nr. 17/14.*
[24] *U-I-3/92 of 17/9-1992.*

basis of the law and comprising certain local and other limitations of the usage of water as an asset in common use is not in conflict with the law. In regulating the navigation, a municipality is authorized to prescribe, apart from the conditions stipulated by the law, also other conditions which safeguard human life and the environment." This clearly indicates that limitation of rights due to the environmental reasons are possible, but it is necessary to take into account the nature of the right that is reason for limitation of the property and other rights and also that the principle of proportionality is respected.

VII. Compensation for environmental deteriorations of private property

Damage to private property is not the same as damage to the environment. Environmental damage has basically no owner, it is damage caused to the environment itself, and pecuniary compensation is meaningless. Therefore, environmental damage shall not occurred in the first place (therefore the emphasis is given to preventive measures) and if it occurs, the main action is headed towards restitution (*restitution integrum*). These are main features that distinguishe environmental damage from private property damage or so called traditional damage. The later one is caused to the property of an individual and the word is not about the environment. It might be, of course, the environment that is damaged, but this is already covered by the environmental damage.[25]

Let imagine a case for better understanding: *A communal waste disposal site is located not far away from a place with appr. 150 individual houses. Inhabitants assert that they smell bad odour and they would like to sell their property, but, of course, there are no potential buyers. Their property is almost worthless. The waste disposal site is equipped with the necessary permits.*

Are the inhabitants in the neighbourhood entitled to compensation (perhaps to annual revenue)? Do they have to search for withdrawal of the operation permit first?

There are legal remedies under public and private interest that are applicable to this case. In case of harm caused to inhabitants, they can, within private law remedies, use *actio popularis*[26]

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[25] *According to the Directive 2004/35 the environmental damage is defined as:*
(a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;
Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.
(b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;
(c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;.

[26] *Art. 133 of the Slovene Obligation Code. For its commentary see: D. Jadek – Pensa in M. Juhart, N. Plavšak, (eds): Obligacijski zakonik s komentarjem, Splošni del, GV Založba, prva knjiga, Ljubljana 2003, p. 760.*

and claim the operator to improve a waste disposals site with necessary measures to reduce the bad odour. They are also entitled to damages. *Actio popularis* makes possible to anybody to start procedure against the person (operator) responsible for the danger that threat. It is further on up to the rules of the civil responsibility, if the inhabitants will have to prove cause and produce evidences; if the activity can be regarded dangerous, strict liability system will apply. It will be up to the operator to exclude himself of the liability, meaning that he will have to produce evidences, not the plaintiffs (inhabitants). In case of fault-based liability this will be, on a contrary, a duty of the plaintiffs. Most likely, due to the nature of the activity of the dumping site, the strict based liability will be used in the case.

If it is the state the one who issued permit for the disposal site and the smell is inappropriate (there is no smell limits set in Slovenian legal order; and the case can be regarded as "a-normal"[27]), the inhabitants can claim precautionary measures (is measures that will reduce the smell); but they cannot claim to close the site. The fact that property worth less is also a reason for a compensation. Withdrawal of the permit is not condition precedent for compensation, but it is of substantial help, since one of the condition for the compensation is also a proof of violation of the law. If the permit remains valid, it is necessary to prove its violation or noncompliance.

With respect to legal remedies in public interest, inhabitants can give notice of the problem at stake to State inspectorate. This body is under a duty to start the procedure if public health issue is at stake (i.e. if there is no pure private relationship). The inspector can order the facility to close or to make a repair measures. Inhabitant are not party to this procedure, but are witnesses. If they want to claim compensation, they have to initiate a parallel procedure or wait until the administrative procedure is finished; and then used the decision of this procedure to prove liability of the operator.

Constitutional remedies are possible once the regular courts procedures (administrative or private) are final.

VIII. Conclusions

In environmental matters, especially in environmental administrative law, a command-and-control approach is usually the one, which public authorities apply to regulate activities and to safeguard the environment and nature. Since these rules are mandatory in the nature and since they impose limitations might be that they affect also the property of an individual or a company, factory, etc. Because mandatory administrative rules are widely accepted and the command-and-control approach is widely used, state measures has to be carefully imposed in order not to improperly limit the property. However, there is also another side; the property can also be used, not only for the environmental protection measures but also against them. The latter case might happen if measures of state authorities are not sufficient to safeguard the environment. Objections to safeguard property can also be headed towards another legal or natural persons. As we can see from the article, these different circumstances are also requesting different answers. There is not only one answer how to handle relationship between environmental protection and property.

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[27] *This is a question of a standard of "usual boundaries" – in other words, what is normally accepted and, what is not. As noted above this is not an easy task of the court. Due to the difficulties to foresee the reaction of the court (legal foreseeability), plaintiffs are not always keen to bring an action. See also M. Krisper Kramberger, Pravni režim dobrin v splošni rabi, Pravnik - revija za pravno teorijo in prakso, letnik 45, št. 8-10/1990, p. 315.*

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