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Managing the Conflict Between Private Ownership and the Public Interest in the Context of Intellectual Property Rights and Environmental Sustainability

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Abstract
This article discusses how the IP law has a delicate dependency on environmental protection through the prism of sustainable development. Due to the increasing global environmental issues, the conflict between protecting the interests of the private IP owners and promoting the cause of the environment is attracting more and more attention. The research identifies the role of IP regimes (especially pattens, bio-technology and green technology) as a facilitating or as an obstructing factor to environmental innovation and access. It critically evaluates the current legislative systems and international treaties, pointing out the loopholes, through which the protection of IP might be in contravention of the sustainability. Finally, suggested in the paper, a more balanced approach should be changed in the legal policies, which would balance the incentives of innovation with the overall ecological and social demands in making sure that IP legislation is not allowed to become a stumbling block to planetary environmental sustainability.
Keywords: ***Intellectual property law, environmental protection, sustainable development, green technology, public interest, private rights, innovation, legal frameworks, biotechnology, climate change.***

1.Introduction
In our time, when environmental destruction of the planet as a whole poses an ever-increasing problem of human future, the understanding of the relationship between law and sustainability becomes more complicated and important than ever. The anthropogenic mark of the modern human that is formed by the industrial progress, modern cities and technological development has reshaped the ecosystems, contaminated the natural resources and threatened the biodiversity. In this context, environmental protection is no more a side-discussion matter to be placed somewhere on the legislative packages of this and that country, including Serbia. The constitutional framework in the country emphasizes the right to healthy environment, both at individual and mass responsibility to maintain the environment and improve it. Interestingly, this legal obligation cannot be limited to the government regulatory requirements but also touches the areas of general private law: property, contracts and intellectual property (IP) rights(1). This clash of interests (i.e. the protection of the commercial interests of individuals by IP law as opposed to and against the greater need of all people to maintain a healthy environment) is the convergence which is the central point of this paper.

The emerging interest into sustainable development in the world requires reconsideration of the interaction between legal systems and environmental issues. By definition, sustainability includes the aspects of ecological balance, economic feasibility, and social justice, which do not always go hand in hand. In an effort to be more environmentally friendly, IP law, which has typically been concerned with how to encourage innovation and safeguard property rights, must be evaluated with the possibility of a dualistic pursuit in mind: as something that is as likely to inspire green technology creation as well as to prevent general access to the environmentalally positive solutions. This contradiction leads to the most important question whether this disjuncture between individual legal rights and a shared objective of environmental protection can co-exist.

Although it is clear that the role of public law in establishing the environmental norms and enforcing them remains predominant, the mechanisms of the private law, especially the specific aspects of IP have much unexploited potential of affecting environmental outcomes. This is obvious when the instance of the innovation ecosystem is taken into account as patents are used to reward ingenuity and further staged movement towards technological innovation. Nonetheless, patents could also restrict the diffusion of green technologies, particularly in developing or resource-poor areas due to the exclusivity that the patent system offers(2). Another type of IP causes the same tension, a so-called use of geographical indication (GIs), which associates product identity and localities. When

coupled with environmentally friendly production processes, GIs can make consumers more trusting, and it can lead to environmental responsibility, yet GIs simply provide barriers of entry and barriers to production.

These international forces manifest on the Serbian law scene. Constitution recognizes the right to healthy environment as well as a responsibility of the state to preserve the healthy environment. It contains clauses that permit a limitation in other rights including the rights of businessmen when such limitation is to accomplish environmental or communal health concerns. Although there are situations when environmental control in Serbia is dictated by mandatory laws, and even policy, there are considerable opportunities to use the civil and IP law machinery to promote environmental ends. Nevertheless, the capabilities of such frameworks are underused. As an example, the current laws permit the use of a property in ways that ensure environmental protection, however, there is little indication of positive utilization of IP incentives to develop environmental technologies or sustainable practices.

FIGURE 1 IP Law and Environmental Sustainability

In light of this gap, the article by Savcic looks into how according to the author of the paper, a reimagination of the private law and more so IP law can be reconsidered, in as a tool of environmental protection and sustainable development. The review transcends the two particularities of the relationship between the authorities of the people and those of the individual, which is the idea of the formation of more unified management in the sense that the rights of the law will aim at benefiting not only the commercial objectives but also the ecological emergence. By so doing, it questions the limit of patents and geographical indications as environmental governance instruments. It also raises the issues of whether exclusivity is necessarily to be toned down in the public interest and how law changes or incentives can spur voluntary licensing, compulsory licensing based on the public interest provisions, or joint ventures between research bodies and business players.

With transnational pledges such as Paris Agreement and United Nations Sustainable Development Goals (SDGs) already changing the language of the law and policy regarding environmental responsibility, the study is especially timely. Such international frameworks demand accelerated innovation, transfer of technologies and inclusive access to sustainable solutions- which are among the goals that have to be provisioned by the IP regimes increasingly(3). Moreover, the importance of green innovation in ensuring climate-neutral futures is highlighted by economic strategies like European Green Deal, which in turn puts a greater pressure on national IP systems to change accordingly.

Overall, such a question is not an academic one. It reacts to urgency in practice. Or such a rethink of the law as is demanded by the environmental crisis and which recognizes the interdependence in reinvigoration of private innovation with public good. Instead of approaching IP rights as hostile to sustainability, as the article does, it favors a positive synthesis, in which the innovation cannot only be safeguarded but also coupled with ecological objectives. In this light, the law can fulfill two roles that is that it protects and promotes, and keeps aligned the urge to invent, with the demands of the planet.

2.Reframing Private Legal Rights for Ecological Stewardship

As part of revising the approach to legal safeguarding of the environment, the civil law is discussed not merely as a context of rights and remedies but as the site of possible profound change in which environmental ethics may be incorporated into the practice of privately exercised interests. The civil law has traditionally been conceptualized as the protector of personal freedom, which allows one to manage property, to enter into a trade and to enforce

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contracts in their own will. Due to the evolving world-social awareness of the climate crisis and its environmental impoverishment, however, such a narrower understanding is, in jurisprudence, overdue-that is, one through which the private law is construed and regulated to accelerate not just individual but the common ecological interest as well. Such a philosophical alteration is creeping into the legal system, especially in Serbia. The constitutional design has directly considered that the right to healthy environment can be used to justify placing limitations to other fundamental rights such as the right to property and freedom of entrepreneurship(4). This constitutes a judicial shift in thinking: in this case, the environment cease to be an external contingent of civil relations but a value on which to base civil rights can legitimately depend on the enjoyment of individual rights.

This paradigm transformation presupposes analyzing the nature of given mechanisms according to which the civil law can serve ecological results. Property rights as viewed as absolute under the classical liberal theory are increasingly being subjected to regulations that limit them in order to avert any form of environmental degradation. This trend is affirmed by Serbian provisions in its constitution. An example is that Article 83 and 88 do give the state the power to restrict the use of properties in the occasion that their use threatens the existence of natural resources or the health of the people. These legal standards portray how environmental well being is taking precedence over individual free will. In this regard, the traditional division of the rights of property, the so-called conventional triad (usus and fructus and abusus) is no longer inviolable but have to be contrasted to the role of the state to protect natural ecosystems.

But as far as such limitations are necessary, they only represent one half of the equation, restraint. Still under-researched is the constructive promise of civil law in raising active environmental civic and corporate responsibility. Legalities may develop such that instead of simply punishing bad practice, there is an incentive to offer legal encouragement and incentive to undertake sustainable practices by the individual actors. This may include conservation incentives in land usage, a preference on the eco-friendly contractual terms or presumptions in law on those who engage in activities that are environmental friendly. The idea here is that the future of civil law would be to not serve only as a neutral space of individual interference and become a prescriptive instrument through which sustainability can be instilled in daily legal negotiations(5).

The other hopeful aspect is on the aspect of contractual law. Contracts are the legal framework of markets and collaboration and accordingly are also excellently located to affect environmental behavior. Green contracting, which involves the incorporation of sustainability provisions, energy exchange contracts and resource consumption demands in privately signed contracts is a new form of global jurisprudence. Under the Serbian contract law, the Law on Obligations provides party autonomy, which is vague as though it would be in accordance with the requirements of the public order and practicability of business. And in this less strict system, judges and regulators may push contractual forms that give greater weight to environmental preservation considerations, and they may acknowledge such terms as evidence of good faith or the common good. This would assist in neutralizing environmental awareness in economic transactions.

In addition, tort law provides one more opportunity civil law can be used to deal with ecological demands. Historically, torts concern the controversial agreements of injury and mobility of personal parties, although, environmental torts, which are derailed by pollution or contamination or some interruption to the environment deciding damage, are growing to be significant. Although such cases are commonly taken by using the laws in place to protect the environment, civil remedies, such as compensation, injunction or restitution, may be used to strengthen the responsibility of individuals and corporations. Recognition of civil liability to environmental damage in theory is present in Serbia, however, an effective enforcement has been described to be made difficult by the complexity of procedure and heavy burden of proof. Enforcing this part of the tort system, such as overturning burdens of proof or increasing standing eligibility to public interest plaintiffs would improve the role that civil law can play in environmental justice.

Notably enough, the constitutional requirement of every person rather than a state to take care of the environment and make it better preconditions more active participation of civil in the ecological issues. The Serbian Constitution (Article 74) points out clearly that citizens and the governmental institutions are liable to take care of their environment. This reciprocity means that civil law rights, even when they are owned at a personal level, fall within the jurisdiction of a further context of ecological responsibility. It revises the belief that the existence of private rights and public interest is an exclusive one and seeks to redefine their position mutually interdependent.

These positive indications notwithstanding, there is still an inconsistent application of the practical implementation. Majority of the environmental laws remains under the umbrella of the regulatory process of the

state, whereas the civil law processes take place in their own autonomous world. Overcoming this break will call forth positive efforts of law and legal conceptions. An example of what the state can invite and organize includes drafting model concepts of green clauses in contracts, issuing tax incentives or lower legal charges in order to encourage eco-certification processes, or generating civil responsibility standards depending on that of environmental contamination (6). There should also be a legal training and justice education to accommodate the ecological concept in the interpretation of the civil law so that the judges are well trained to have the ability of weighing the individual rights against environmental facts.

It can be summarized here that civil law cannot be regarded as just a framework or structure of private interactions it has a sleepy power to effectuate the results of the environment through the norms it stabilizes, actions it rewards, and the values it entrenches. The legal system can be a meaningful part of the sustainability effort by redefining civil rights to serve the purpose of ecological stewardship and not their obstruction. In Serbia and anywhere environmental justice can only be achieved by going through such routes not only through the collective demand of the people that is the public mandate but also through individual and privately held up and legally upheld behavior or conduct. This is the future of environmental protection--a broader vision where at all levels the law will be in favor of the planet.

3.Toward a Harmonized Future: Legal Pathways Linking Sustainability with Environmental Governance

Quest to achieve sustainable development is one of the most defining issues of our times. The idea ceased being limited to the aspirational rhetoric and came to be established as one of the pillars of environmental governance, international economic planning, and national law. It requires that we redefine our growth patterns empowering the societies to strike a balance between economic prosperity and environmental sustainability and social justice. In this respect, the significance of the law, first and foremost, constitutional and administrative law, becomes prominent. It defines how institutions act, what national priorities should be and how resources should be allocated so as to either prevent or facilitate sustainability. Even the countries, which are still in the process of the transition complexity of the environmental modernization, like Serbia gradually have exercised the principle of sustainability into legislative and constitutional structures. Nonetheless, these legal commitments are more or less deep and coherent, and doubts remain on whether recent mechanisms would be sufficiently adapted to achieve long-term ecological objectives.

Sustainable development is strongly interdisciplinary; it fits legal requirements, technological options and cultural expectations and political imperativeness. It is a matter of juggling: trying to guarantee that the present-day developmental demands are met without prejudicing the ability of tomorrow to take care of their own. This principle of intergenerational equity applies especially to the norms of environmental law where the misuse of natural resources, pollution and loss of species destroy irreparably the natural systems. Guidelines to regulating sustainable development, the United Nations has always understood and considered the imperativeness of legal policies as envisioned in some of the most prominent documents of the UN development agenda, including the Stockholm Declaration (1972), the Rio Declaration (1992), and the Agenda 2030. Although they are not legally binding, they set up normative standards and inculcate national law reforms(7).

In the Serbian case, the constitutional aspects that make mention of sustainability provide the most basic point of departure but they are mostly ambiguous or sector-specific. The Serbian constitution, Article 94, equips the Republic with the responsibility of contributing to the balanced and sustainable development of the region, and Article 97 states that he or she is responsible in establishing sustainable development and ensuring environmental and biological diversity protection. Such constitutional guidelines are further buttressed by the laws in various sectors, especially by the Law on Environmental Protection that directly enumerates the principle of sustainable development as one of the guiding norms. In this law, the intended design is to have a systemic integration of the technological, economic, and social policies to secure the environmental quality of the current and future generations. It is also a demand of processes of decision making that convincingly strive to blend in economic necessity with ecological accountability- a prospect that is in line with the other good in the world.

Interpretation of these values in real life governance is however still a work-in-progress. Institutional fragmentation is one of the problems. The environmental protection responsibilities are shared by several of the governmental levels: national, provincial, and local, but they are not always effectively connected or allocated. Decentralization has the potential to encourage responsive and locally owned responses but can cause uneven

application between regulatory frameworks or conflicting jurisdiction. To achieve the actual operationalization of the sustainable development, the legal mechanisms have to guarantee synergy of the different administrative levels and transparent criteria regarding implementation, monitoring, and enforcement.

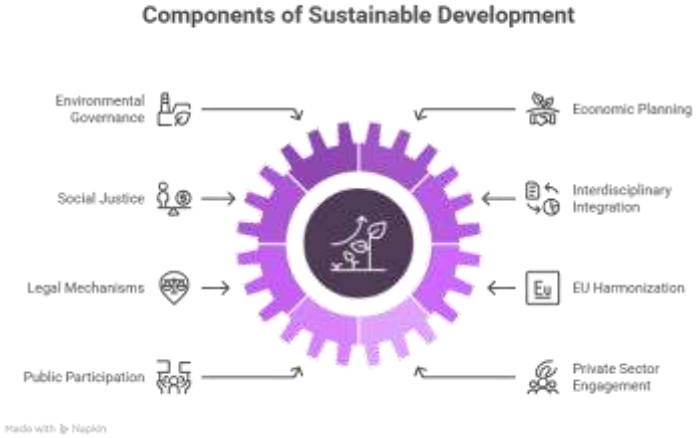

FIGURE 2 Components of Sustainable Development

Besides, Serbia has a strong need to incorporate sustainability more comprehensively into other legal areas not related to the environment, i.e., taxation, infrastructure, public procurement, education, and health. As it stands now, environmental law gets to be a silo where it is not part of the mainstream movements of economic planning or industrial development. Such compartmentalization is a barrier to the cross-sectoral integration needed by sustainable development. E.g., the legislation regarding infrastructure must require the sustainability analysis; policies on agriculture must encourage the rehabilitation of soils and biodiversity; the financial policy must encourage green investment (8). The state can come up with a comprehensive legal ecosystem by embedding itself sustainability as a cross cutting legal principle where every law has common language in environmental front.

The match between national legislation of Serbia on one part and the norms and directives of the European Union on the other is one of the promising opportunities. Driven by imperatives of sustainability, such as creating a circular economy, reducing carbon and driving biodiversity-focused initiatives, the EU environmental acquis has slowly changed to address issues of sustainability. Serbia is currently an intending EU member that has already incorporated some aspects of this acquis even though implementation gaps still exist. The integration of sustainable development into the set of core EU objectives via the Lisbon Treaty, and legal frameworks included in the European Green Deal, is both an example and a direction toward the harmonization. The progression towards strengthening the alignment of Serbia with these standards will not only lead to the achievement of the accession objectives, but also hasten the maintenance of sustainability within its laws.

The other vital dimension is the access to the environmental justice and the involvement of the people. Sustainable development is not something that can be imposed above as it has to be created by the civil society, local communities, and vulnerable groups in collaboration. The legal systems or frameworks, therefore, need to ensure that procedural rights are available in the field of environmental management; these include, the right to information, the right to participate in the decision making and to seek justice through the judicial or administrative means. Such rights are provided in the Aarhus Convention, which Serbia is a member, although the practice, regarding their implementation, is highly uneven across the country. Enhancing these rights would help in democratisation of environmental management and would also improve the legitimacy of the sustainability processes.

Significantly, the efforts towards the achievement of sustainable development ought not to shut out the interests of the privates but instead determine those towards the achievement of the objectives of the state at large. Other key players in the green transition are the private actors usually the businesses or landowners and investors. Public-private partnerships, environmental taxes, green bonds and voluntary green certification schemes are some workable legal instruments that can be used to drive private action(9). Simultaneously, the law needs to prevent greenwashing, regulated compliance, and make the players responsible in relation to environmental degradation. The two course of action which is to enable and regulate will make sure that the capability of the private initiative will become a force of sustainability and not an obstruction.

4.Patents, Progress, and Planet: Reimagining Patent Law for Environmental Innovation

Innovation is not only a survival measure but also a moral duty, as human beings are pushed against the wall as far as environmental degradation is concerned, with climate change, loss of biodiversity, and depletion of natural resources, now the order of the day. Technological innovation, especially that providing low-carbon, renewable, resource-efficient options, would be essential in re-inventing livelihoods in production, consumption, and relation with the earth. However, the success of these innovations as the driver of sustainable development lies more on the legal structures involved in protection, dissemination and use of the same. Most notable of these frameworks is patent law. Patents are purposely made to encourage innovativeness by giving the achievement of technology developers with novel and industrially useful establishments the privilege to have exclusive rights to utilize. However, this exclusivity when not in the right proportion can hinder diffusion of desperately required green technologies as well. In this part, the author examines the ways in which patent regimes could come closer to serve the environmental purpose and how states could change the policy to promote the environmentally sustainable innovation and reasonable access.

4.1 Compatibility of Exclusivity and Environmental Urgency

The patent system was created around a basic conflict, on the one hand the patent system has the merit of rewarding invention by assigning a monopoly, and on the other, patenting access to certain technologies that can solve global ecological crises. Patent Exclusivity: A patent may grant exclusivity to the owner up to a period of 20 years, which may hold up wide-scale usage of clean technologies even in the jurisdictions in which it is the most needed, especially in low- and medium-income jurisdictions. It raises a crucial question, whether an exclusion of environmentally advantageous inventions should be under the same regime of exclusivity as commercial innovations, which lack a social aspect of the public good? Environmental technologies are commonly called also green technologies or sustainable technologies; they have a twofold purpose. They give competitive advantage to the inventors of them, but they also serve a more general purpose by providing environmental benefits through cutting pollution, saving energy or repairing ecosystems.

To some extent, international agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) give a degree of flexibility that is witnessed when members states can categorize the technologies which will not be patented that could be used in ways that negatively affect the environment. Nevertheless, green technology does not have a corresponding directive to be accelerated or to be motivated. This disjuncture is not good. These aspects like climate change, water scarcity, air pollution will not happen in the future, but they are real emergencies that are already taking place. The patent regimes have to hence be adjusted to entail faster access especially in instances where Environmental sustainability is involved.

4.2 The Argument in Favor of Green Patent Pools and Compulsory Licensing

There are other options that have been put forward by legal scholars and policymakers aimed at solving the access dilemma and among them allows us to mention green patent pools, mandatory licenses and tiered pricing models. Green patent pooling entails voluntary summation and licensing of environmental technology restricted patents. Sharing the IP in an open or semi-open platform allows inventors to remain owners of that technology and also, give other individuals and companies in the world, particularly in the developing countries, to utilize and advance the technology. Such a model can lead to an innovation diffusion without fully displacing market incentives.

By comparison, compulsory licensing provides a more aggressive form of law. In this case, the state can permit the utilization of a patented invention to be used without the approval of the patent owner, mostly in the public good. Such licensing is permitted under Serbian patent law in the event of public health, nutrition and socio-economic development but it never expressly mentions the need to protect the environment and environmental emergencies. Harmonizing the Serbian policy of ecological protection with international commitments on sustainability by acknowledging it as such a legitimate domain of compulsory licensing would not only strengthen its local environmental policy provisions but would also align them with international obligations on sustainability. In a bid to protect against abuse and keep the confidence of the investors, these licenses may be under judicial scrutiny and reasonable compensation to the owners of the rights.

4.3 Past Legal Toolbox: Innovation Ecosystem and State incentives

Legal framework cannot be the sole instrument that can provide a prosperous environment of green technology development. The patent has only one leg, and there are more such things like research funding, academic-industry collaboration, commercialization infrastructure, and the startup support, which are now components of an entire

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innovation ecosystem. In Serbia and other countries with transition backbones, such an ecosystem is not fully developed. Although being the signatory of the European Patent Convention and the member of the World Intellectual Property Organization (WIPO), the domestic implementation of green technologies on the large scale has not yet taken place in Serbia.

Governments need to do more other than regulating to re-energize innovation by implementing strategic incentive schemes. These may be:

- Incentives on green technology development and licensing by companies
- Provide university research programs in sustainable engineering with grants
- Fast tracking of green patent applications
- The obligation of giving preference to eco-innovative products through the practice of public procurement

These policies constitute a clear market signal and show that environmental objectives are not just desirable but they are also economically feasible. Besides, they establish pipeline between laboratory works and commercial use, which is crucial in bringing results into the real world in terms of the environmental change.

4.4 World Inequalities and Requirement of Patent Harmonisation

The most impossible challenge continues to emerge in environmental patent law over the intense division between developed and developing nations. Patents in the world belong to the richer countries with the strong R&D systems and courts that are able to process lots of cases. In the meantime, poor states with the highest level of exposure to climate-related disasters are usually deprived of the essential technologies. To fill this gap, the frameworks between the world should also help in capacity building of local innovations besides facilitating the transfer of technology.

International bodies and agencies such as the United Nations, the WIPO and the World Bank can be instrumental in facilitating South to South and the North to South co-operations. Some of the instruments which may democratize access to green innovations are shared research facilities, patent mentorship programmes, and subsidized licensing affiliations. Also, the establishment of a global-scale, open-access (or low-cost licensed) international green patent commons, in which contributions of technologies appropriate to sustainability endeavors are openly-posted, would facilitate considerable mitigation of technological inequality, and greater environmental benefit.

4.5 Reconsidering the Life and the Territory of the Green Patents

The length and breadth of green technologies patents is another segment that needs to be restructured. In view of their community benefit, ought to green patents have less protection time? Or be accorded longer protection when their benefit to the environment is proven to be high? Such a hair-triggers system of patenting terms, where patent terms are modified according to the effect on the populace, may result in a rather dynamic balance between a patent incentive to promote innovation and a patent objective of accessibility. Likewise, the boundaries of coverage can be reduced to exclude the overly broad monopolies that inhibit downstream innovation or adaptation of the products.

This suggestion is not very uncontroversial. Opponents believe that not following through the uniform patent system brings about legal ambiguity and is likely to discourage investment. But there is the precedent. An example is the pharmaceutical patents which are already being treated differently in many jurisdictions since such patents are life saving. This distinction of the green technologies might be morally acceptable and useful in practice.

5.Conclusion

Considering the increased scope of global environmental issues, the legal system needs to be adjusted to address the new and pressing interests of sustainability. This paper has suggested that the thought allegedly presenting a zero-sum game between personal gain and societal good--an area of environmental protection and intellectual property rights--is, instead, the dynamic area where innovation of law may advance ecological development. The conventional divides between civil rights and civic necessities are becoming permeable; once-individual rights are now subject to ecological use and reuse with heavy implications that do not stop at the individual action. In this regard, environmental stewardship is not left to individuals or discretion of individual policy-makers, rather it is hardcoded into the governing document (regulatory) as well as the legal tools and language associated with innovation, property, and commerce.

Patents law has the potential of being a landmark and a curse in the battle with environmental degradation as discussed. It has the advantage of encouraging green technologies and has the disadvantage of inhibiting their international spread especially in the developing countries where the most ecological dangers are present. Green patent pools, compulsory licensing and other provisions that differ the length of protection are some of the reforms that are feasible and strike a balance between inventiveness and accessibility. Notably, these instruments need to be accompanied by more comprehensive state-initiated mechanisms, namely, fiscal stimuli, investment in research and legal fast-tracking to establish an ambiance conducive to sustainable innovation.

Likewise, the regime of geographical indications (GIs) demonstrates that the intellectual property can be turned to the service of the environment. GIs are also instrumental in the protection of traditional knowledge and cultural heritage and in promoting environmentally sensible production process. They tie in the identity of a product with ecologic integrity, therefore establishing market-based instrument of conservation of natural resources. Nevertheless, the possibility of GIs to enrich sustainability is underused and needs more investments in them by people, certification procedures, and legal recognition.

In a broader sense, this paper has also highlighted the fact that it is crucial to inculcate environmental values into the DNA of the body of laws namely the private law. Not just the clauses in contracts which lean toward sustainability, but the torts that take into consideration environmental loss needs to be broadened to include the 21 st century take on the environment. This does not mean the declining of individual rights but their grown-up transformation keeping in view of wider social and earthy requirements.

Finally, the boundary on whether one should protect the environment in the interest of the public or one must protect the environment in the interests of the individual is not a rigid mark. As opposed to an attempt to find a final point where to stop and at all costs, legal systems should aim at collaborating, finding a balance, and being innovative. This way, they will be able to keep to their promise to make the private legal tools, which are traditionally being viewed as separate to the ecological responsibilities on the part of the state, become pace-setters of the sustainable growth. As a matter of fact, the future of the environment lies in the transformative value of integrated, responsive, and forward-looking law coming at a time, when the health of the planet is not susceptible to human rights, the economy, and intergenerational equity.

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Conflicts of interest

The authors have no conflicts of interest to declare

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