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ENVIRONMENTAL – LEGAL FRAMEWORK IN THE REPUBLIC OF SERBIA

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Abstract

The legislative framework in each contry is one of the elementary, and at the same time key conditions for preserving and the improving the environment. In the Republic of Serbia, environmental protection is becoming more visible and importhe, because the system of legal norms, among the ather things, in this area makes in large number of laws and relevant propolsals. As a candidate country in the process of joining the European Union, Serbia has begun the process of aligning its regulations with the EU legal acquisitions (acquis communautaire). The environment protection regulations represent a central instrument for the environment protection management, with the obligations arising as an indispensable factor for any future activity, either of state authorities, or economic and other entities. In relation to the complexity and the number of law and by-law acts in this area, the paper presents a shorter review of individual laws with a commentary. Prior to the final consideration, the commentary on the current state of the legislation on environmental protection in the Republic of Serbia, whit a review of the previous implementation of EU legislation in Serbian legislation.

Key words: environment protection, Republic of Serbia, legislation, legal obligations, economic entities, state bodies

INTRODUCTION

In line with the international community's commitments, the environmental protection takes a significant place at the top of the world's priorities. Coordinated activities on the protection of air, water, sea, land, forests, hazardous substances, ionizing and non-ionizing radiation, all types of waste, climate, ozone etc. are assumed to be global, regional, sub-regional, bilateral and national.

In the countries all over the world the environmental protection policy is defined and managed by the governments of states, regardless of the socio-political system and level of development. Therefore, through the relevant authorities and professional bodies, governments make themselves responsible for the environment conditions in their territory. Setting up an efficient environment management system requires harmonized principles, shared competencies and modern and efficient socio-administrative measures. These measures must have their foothold in the national regulations of each state for the most.

As far as the Republic of Serbia is concerned, and as regards the organization, the environment protection issues have belonged to the newly formed Ministry of

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Environment Protection.[30] The process of adopting the acquis communautaire has begun in national legislation. It is necessary to continue the process, by providing coordinated monitoring of the state of the environment and proposing to the Government to take certain measures in this area, which is achieved by appropriate legislative regulations. In this regard, the Government of the Republic of Serbia expects the realization of the undertaken obligations in the field of environmental protection in the coming period.

CONSTITUTION AND ENVIRONMENT RIGHTS REGULATION

The provisions on rights related to the environmental protection regulations are controlled by the Constitution of the Republic of Serbia.[31] The healthy environment, as defined in the Chapter of the Constitution, in which human and minority rights are grouped, contains three norms important for guaranteeing and realizing the right to a healthy environment. The first standard is a general warranty that "everyone is entitled to a healthy environment", by which another right is guaranted - the right to "timely and fully information about the condition of the environment".[32] The second and third constitutional norms relate to the obligations and responsibilities of institutions and individuals in relation to environmental protection, prescribing that every physical and legal entity is responsible for environmental protection, explicitly and specifically emphasizing the responsibility of the RS and the Autonomous Province: "All, the Republic of Serbia and the Autonomous Province in particular, are responsible for the protection of the environment".[33]

The Constitution reserves the right for the Republic to provide through its legislation: "sustainable development; a system of protection and improvement of the environment; a protection and improvement of plant and animal world; a production, trade and transport of weapons, poisonous, flammable, explosive, radioactive and other dangerous substances".[34]

The autonomous province has thus been ascertained to have the jurisdiction to "regulate the issue of provincial importance (...) in the area of environmental protection"[35] within the boundaries and frameworks regulated by the law.

It decrees jurisdiction to local communities by establishing that "in accordance with the law (...), they shall take care of environmental protection, protection from natural and other disasters", as well as of "protection, promotion and use of agricultural land".[36]

[30] Law on Ministries Of. Gazzette RS no. 128/2020
[31] Of. Gazzette RS no. 98/06
[32] Article 74. para. 1. of the Constitution RS, op.cit.
[33] Article 74. para. 2. of the Constitution RS, op.cit.
[34] Article 97. para 1. t. 9. of the Constitution RS, op.cit.
[35] Article 183. para. 2.t. 2. of the Constitution RS, op.cit.
[36] Article 191. para 2.t. 6. of the Constitution RS, op.cit.

DEVELOPMENT OF REGULATIONS IN THE ENVIRONMENT PROTECTION AREA IN THE REPUBLIC OF SERBIA

The beginning and indication of the development of legislation in the environmental protection area in our country is characterized by scarce legal regulations. Namely, as a whole this area had not been seen as a special legal discipline for a long time, in terms of interconnectedness, which resulted in its individual segments being studied within different branches of law such as constitutional, civil, criminal, administrative.[37]

The beginnings of these regulations relate to the period from 1991 to 2004, characterized by the separation of environment protection into a separate legal entity. With the adoption and entry into force of the Law on Environmental Protection,[38] and in 1991, for the first time, Serbia tried to regulate the system of protection and improvement of the environment. However, the enactment of the Environment Protection Act, unfortunately, failed to regulate the existing problems in that area, because it was not accompanied by an adequate number of laws and by-laws that would regulate the matter in more detail. The issues related to different areas, such as air quality, water quality, noise protection, protection of nature, chemical management, waste management and others, should implicitly include special and individual regulations for each of those areas. By the said Law, neither those areas were, nor could they have been properly regulated.

The period from 2004 to 2009 relates to the introduction into this field of four very important laws, which represent and are called system laws: Law on Environment Protection, Law on Integrated Pollution Prevention and Control, Law on Strategic Assessment of the Environment Protection Impact and the Law on Environment Impact Assessment.

The 2009 period is related to the submission of Serbia's application for EU accession and it was preceded by the adoption of a number of sectoral laws.[39] Although their adoption has had positive changes, they are still characterized by the lack of a more serious solution to the accumulated problems in the area of environmental protection.

[37] Živković T., On the harmonization of national environment legislation with the laws of the European Union, Legal issues, no. 1/2014, Belgrade, p. 198

[38] Of. Gazzette RS no. 66/91

[39] Law on Chemicals, Of. Gazzette RS no. 36/09, 88/10, 92/11, 93/12 and 25/15; Law on Waste Management, Of. Gazzette RS no. 36/09, 88/10, 14/16 and 95/18; Law on Packaging and Packaging Waste, Of. Gazzette RS no. 36/09 and 95/18; Law on Protection against Non-Ionizing Radiation, Of. Gazzette RS no. 36/09; Law on Protection against Ionizing Radiation and Nuclear Safety Of. Gazzette RS no. 36/09 and 93/12; Law on Protection against Noise in the Environment, Of. Gazzette RS no. 36/09 and 88/10; Law on Bio-cidal Products, Of. Gazzette RS no. 36/09, 88/10, 92/11 and 25/15; Law on Air Protection Fig. Of. Gazzette RS no. 36/09 and 10/13; Law on Nature Protection, Of. Gazzette RS no. 36/09, 88/10, 91/10 - amendment I 14/16; Law on Protection and Sustainable Use of Fish Fund, Of. Gazzette RS no. 128/14, Law on waters, Of. Gazzette RS no. 30/10, 93/12, 101/16 and 95/18.

REVIEW OF INDIVIDUAL ENVIRONMENT PROTECTION ACTIVITIES IN THE REPUBLIC OF SERBIA

As regards the environmental protection matters, general environmental issues are regulated by system laws,[40] whereas the rules on the use and protection of certain goods are regulated by sectoral laws.

Within a shorter summary of certain laws, the **Law on Environment Protection** is of great importance for the regulation of this area. Consequently, it implies certain statements regarding its application. As the umbrella law, it regulates issues relating to the principles of environmental protection; management and protection of natural resources; measures and conditions, programs and plans for environmental protection; industrial accidents; remedy measures; systems for issuing environmental permits and approvals; protective measures against hazardous substances (production, transport and handling); monitoring in the field of environmental protection (systems and information); the rules representing the implementation of SEVESO II of the Directive;[41] penalties for offenses and economic offenses (increased by new amendments); access to information and public participation in decision-making; economic instruments for the protection of the environment; responsibility for pollution of the environment; control. Otherwise, the environmental protection system prescribed as such is provided by different entities (administrative bodies, business entities, scientific and professional organizations, citizens and their associations) with their respective roles.

The provisions of this law are very extensive defining, among other things, general principles of environmental protection as well as the legal framework. Thus, it establishes rules for various issues that are as indirect as those relating from nature protection to the management of chemicals, making it very difficult to establish a single regime, since they do not constitute legal provisions in terms of defining rights and obligations.

In connection with the problematic issue of the above said, a comparison with the Law on Strategic Environment Assessment is set as an example. Namely, the said law establishes five principles of strategic assessment, of which three (the principle of sustainable development, the principle of integrity and the precautionary principle) are also listed as principles in the Law on Environment Protection yet phrased differently. The Law on Strategic Environment Assessment is lex specialis, and the Law on Environment Protection is a general law and takes precedence over it so it seems there are no conflicts. Nevertheless, the question arises whether it is useful for the umbrella law to define these general principles already defined by other laws regulating certain areas of environmental protection. An important fact is that the law

[40] Law on Environmental Protection, Of. Gazzette RS no.. 135/04, 36/09, 36/09 – other law. 72/09 – and other law 43/11 - Decision US and 14/16; Law on Integrated Pollution Prevention and Control, Of. Gazzette RS no. 135/04 and 25/15; Law on Strategic Environment Impact Assessment, Of. Gazzette RS no. 135/04 and 88/10; Law on Environmental Impact Assessment, Of. Gazzette RS no. 135/04 and 36/09.

[41] Council Directive 96/82 / EC on the control of major accident hazards, Parliament and of the Council of 16 December 2003.

has underwent several amendments in the previous period, more precisely from 2004 to the present, a thing not preferred for a system law regulating such an important area.

When it comes to its implementation, the Law on Integrated Prevention and Control of Environment Pollution raises certain issues. Since the entry into force of this law, especially from 2004 to this date, the scarce number of integrated permits has been issued for the whole territory of the Republic of Serbia.[42] As a system law, its provisions regulate the conditions and procedure for issuing integrated permits for plants and activities that may have negative effects on human health, the environment or material assets, the types and activities of plants, and other issues of importance for the prevention and control of environmental pollution. Regardless of the prescribed (rigorous) conditions, which have not changed with the new amendments, it is questionable whether economic entities can fulfill them in the current circumstances. Furthermore, it is also stated that the procedure for issuing an integrated permit is very complex and time-consuming (the period of license issuance is at least 6 months). The Law on General Administrative Procedure, representing the basic general regulation on the basis of which the state administration bodies and local self-governments act, prescribes a deadline of 30 to 60 days for resolving administrative cases upon a submitted request. According to the applicable regulations, there is a problem of compliance with the legally prescribed deadlines.

The Law on the Environment Impact Assessment, making the group of system laws, regulates issues related to the impact assessment procedure for projects that may have significant environmental impacts (projects in the fields of industry, mining, energy, transport, tourism, agriculture, forestry, water management, waste management and communal activities, as well as projects that are planned for a protected natural asset and in a protected environment of a fixed cultural property), also regulating the contents of the study on environment impact assessment, participation of interested authorities, organizations and the public, cross-border notification for projects that can have significant impacts on the environment of the other states, and other issues of importance for the assessment of the impact on the environment. The Regulation on the Establishment of the List of Projects for which Environment Impact Assessment is mandatory and the List of Projects for which an Environment Impact Assessment may be required is of great importance for the implementation of this law.[43] When it comes to the implementation of the List of Projects for which an impact assessment can be required, the competent authorities might face difficulties in practice assessing which activity it is, or which project is to be classified or not into the relevant category. This is due to the decision being made by the competent authorities solely on the basis of a submitted request with the attached documentation, without getting out onto the field, thus making the decision taken problematic (possible personal influence). In addition to this and in terms of legally prescribed deadlines, the decision-making process and decision-making on the need for making an environment impact assessment study is also long and contrary to the ZUP.

[42] www.mpzzs.gov.rs
[43] Fig. Of. Gazzette RS no. 114/08

In the aim of the efficient air quality management, together with the passing of the **Law on Air Protection**, the process of establishing a unique system for monitoring and controlling the level of air pollution and of maintaining an air quality database has begun. The provisions of this law precisely determine the competencies in the establishment of state and local networks, air quality management and the determination of measures, the manner of organizing and controlling the implementation of protection and improvement of air quality, the conditions under which monitoring can be carried out, as well as the obligation of the competent authorities to provide all relevant information on the quality of air prescribed in the bylaws to the Environment Protection Agency and for the eye of the public. Although the Law regulates almost all segments related to air quality, the so far practice application has identified certain shortcomings that comprise the inconsistency or inadequacy of its particular provisions. For example, the obligation of business entities that influence or may influence air quality in the performance of their activities has been stipulated so as to provide technical measures for preventing or reducing air emissions, plan the costs for the prevention of air pollution within investment and production costs and monitor the impact of its activities on air quality. In this connection, a duty has also been prescribed for the operator of a stationary source of air pollution to apply measures that will lead to smoke reduction where gases of unpleasant smells can be emitted in the process of performing activities, although the concentration of the emitted substances in the waste gas is below the emission limit value. In addition, no provision of the law determines which technical measures prevent or reduce air emissions, as well as the measures leading to the said reduction, especially given that neither by-laws treat catering facilities and other types of activities that deal with term treated food as environmental pollutants. The lack of legal authority for the competent inspectors to apply these provisions of the law, especially in large, urban areas, cities, makes it impossible in practice to undertake the necessary measures in such like situations.

The Waste Management Law, within sectoral laws, almost all of which were brought in May 2009, requires a certain explanation. Its provisions determine the modern principles of waste classification, waste management planning, waste management responsibilities, waste management organization, specific waste flows management, waste management licenses, including mobile plant permits, transboundary movements of waste, waste and database reporting, funding waste management, as well as supervision, or inspection supervision over the application of provisions of the same and penal provisions. Since the implementation of this law, until now, besides the existing fresh amendments from 2018, there has been some overlapping with another regulation, that is, with the Law on Communal Activities,[44] related to inspection supervision. In this particular case, The Law on Waste Management entrusts environmental inspectors of the city of Belgrade and municipal authorities with inspection activities related to inert and non-hazardous waste (municipal waste). Likewise, the provisions of the Law on Communal Activities establish, as the original, the competence of communal inspectors to perform inspection supervision in the field

[44] Fig. Of. Gazzette RS no 88/11

of municipal waste. The issue of the application of these laws, or performing the tasks of inspection supervision of environmental inspectors and municipal inspectors having the same subject of the inspection control remains the same.

The Law on Protection against Noise in the Environment should have been, by its provisions, an adequate example of the continuation of the process of decentralization of competences in the area of environment protection, ie of the transfer of competencies to the level of the Autonomous Province and local self-government, both in the issuance of licenses and in inspection supervision. Its provisions regulate the entities involved in noise protection in the environment, measures and conditions for protection against noise in the environment, noise measurement in the environment also, access to information, monitoring and penal provisions. However, in its application so far, especially at the level of local self-government, it can be concluded that it has not proved adequate. The shortcomings concern the lack of provisions in the Law on the Establishment, or regulation of conditions and measures related to sound protection, protection against noise in facilities that perform activities in residential and both residential and business buildings. In this regard, the law has not authorized the local self-government unit to prescribe closer conditions for the use of noise sources used in certain types of activities, which is necessary especially in larger cities, where the complexity of urban space is present. In the part referring to the conditions and measures that operators should undertake during the performance of the registered activity, neither the conditions and measures have been established, nor the local self-government has been given the authority to regulate this area by its regulations. Thus there is a threat to the environment and human health, since the activities of economic entities approved of without the participation of the bodies responsible for environmental protection have been in question. Namely, it is about performing activities in objects for which the environmental conditions have not been previously defined or fulfilled (technical documentation and facility take over or adaptation and conversion most often without appropriate approvals).

The Law on Protection against Non-Ionizing Radiation is a good example of Serbia's present progress in the transposition of EU legislation. The adopted law has been necessary because the situation in the field of protection against non-ionizing radiation in our country is unsatisfactory. Many sources of non-ionizing radiation in the environment were largely uncontrolled. No measures have been taken to protect human health and the environment from the harmful effects of non-ionizing radiation in the use of non-ionizing radiation sources. There is no database of the type, characteristics and number of non-ionizing radiation sources used in the living and working environment. Systematic testing of levels of non-ionizing radiation in the environment has not been established. All these questions, as well as the conditions and measures for protecting human health and environmental protection related to the harmful effects of non-ionizing radiation, in the use of sources of non-ionizing radiation, have been regulated by this law, as well as other mandatory provisions. The application of this law is most frequent in the part of issuing orders to test the level of non-ionizing radiation in the local zone of base stations at places of interest, and the part related to the submission of requests to the competent authority on the need to assess the impact of the situation.

COMMENT

In the segment of harmonizing the regulations, the Republic of Serbia has made great progress passing a set of laws in the past period by which the reform of the regulations has began. However, regardless of the progress achieved so far, the basic characteristics of the current environmental legislation could bereduced to the characteristics reflected in the following:

The implementation of EU legislation in Serbian legislation is insufficient and adequate. The key factors of insufficient or misplaced implementation lie in the poor administrative capacity of the state administration, the state's unwillingness to apply the adopted laws, the state of the economy and the privileged or unequal position of those who need to comply with their provisions.[45]

Furthermore, there is a mutual disharmony of the laws, since sectoral planning is still dominant with very little horizontal integration. In this regard, sectoral strategies are not sufficiently harmonized with respect to environmental protection. For example, the insufficient coordination between the environmental laws and other laws defining other competencies of institutions at the national level causes imbalances and overlapping, which is specifically demonstrated in the Law on Local Self-Government[46] and the Law on the Establishment of Autonomy of the Autonomous Province of Vojvodina.[47] In addition, there is a weak inter-ministerial coordination and cooperation. The Law on Environment Protection speaks in support of this statement, which, although a systemic regulation, does neither in one provision define a closer relation of the ministry with other sectors thus complicating adequate program activities. Regarding the implementation of regulations, there is insufficient effective implementation of these regulations. Namely, one of the basic features of the environmental sector in Serbia is that it is regulated by a large number of regulations and it is a very complex system. These regulations are very difficult to understand because, regardless of the multidisciplinarity involved in them, they contain a large number of contradictions and unnecessary things, so they are sometimes more of policy documents with ambitious provisions, rather than a legal framework with norms of rights and obligations[48].

A very important fact is that the drafting of secondary legislation is done after the adoption of laws, while the existing by-laws are still in force. Thus, there is a lack of harmonization of the regulations, because when applying the newly adopted laws and existing ("old") by-laws, "problem cases" (administrative items) that cannot be regulated by law occur.

The segment of public participation in the field of environmental protection is particularly emphasized, which deserves the next commentary. By adopting the Law on the Confirmation of the Convention on the Availability of Information, Public Participation in Decision-making and Right to Legal Protection in Environmental

[45] Živković et.al., 2012: 75-81
[46] Of. Gazzette RS no. 99/09 i 67/12 - Decision US
[47] Of. Gazzette RS no. 129/07 i 83/14 - and other law
[48] National Strategy for the approximation in the environment protection area for for the Republic of Serbia

Matters[49], the Aarhus Convention "entered" into the legal system of the Republic of Serbia. The participation of the public in the process of harmonizing the national regulations with EU regulations is not sufficiently represented. Since the environmental protection frameworks in Serbia are regulated by a number of laws and by-laws, it should be emphasized that the process of obtaining environmental information and public participation in environmental decision making has been divided according to two sets of laws: those regulating a particular procedure for participation of the public and those which do not standardize the particular procedure for public participation.

The group of regulations, standardizing by their provisions a special public participation procedure[50] incorporate international standards on information and participation of the public in procedures of environmental importance, as well as the significant protection of these rights before state authorities - administrative and judicial With the series of these laws, the public participation has been appropriately incorporated into a legal framework that can be applied, although there is a necessity to strengthen their monitoring. However, the second group consists of a number of laws[51], which do not regulate the matter of public participation in environmental procedures. These laws cannot sufficiently answer the question of the role and powers of the public, that is, the interested public to enable the entity to take part as a party to the proceedings in the matter regulated by them. Therefore, the role of the interested public in the process of harmonizing the national regulations with EU regulations has not been achieved[52].

CONCLUDING CONSIDERATIONS

The current legislative framework for environmental protection makes this matter as one of the most significant and complex in the Republic of Serbia. This conclusion confirms that harmonization of regulations is a comprehensive and complex process for every state claiming EU membership, having in mind that the implementation of the most complex and financially demanding parts of the acquis takes some time[53]. In this segment, the Republic of Serbia has made great progress, which is reflected in the reform of the environmental regulations. These changes indicate the efforts that the state is investing in creating institutions that are capable of implementing obligations

[49] Of. Gazzette RS no. 80/11

[50] Law on Environmental Protection, Law on Integrated Prevention and Control of Environment Pollution, Law on Strategic Environment Impact Assessment, Law on Environment Impact Assessment, Law on Nature Protection, Law on Waters.

[51] Law on Waste Management, Law on Air Protection, Law on Chemicals, Law on Protection against Noise.

[52] Živković, On the harmonization of national environment legislation with the laws of the European Union, Legal issues, no. 1/2014, Belgrade, p.197-217

[53] Živković Tatjana, Punishments and remedy aspects of inspection control in the field of environmental protection in the Republic of Serbia, Doctoral dissertation, 2013, Faculty of Law, Union University in Belgrade, p. 215-21

arising from international, national and EU obligations[54]. The fact that laws are the basis for regulation of the environment is undisputed. However, it is not the most important, because the issue of the efficiency of their implementation and application is at stake.

In the context of the above conclusions, it is necessary to point out that many economic entities, that is, responsible persons within, are still not sufficiently familiar with the current legislation in the field of environment. By the provisions of these laws and bylaws the activity of economic organizations in Serbia has been placed under a high degree of responsibility in the field of environmental protection. This creates a business environment that needs to incorporate environment protection into the core values it aspires to, as it has long been highly positioned in the practice of most companies in the world.

Therefore, the economic organizations and state authorities in the Republic of Serbia have an obligation to urgently perform the necessary organizational changes and preparations, in order to implement the provisions of these laws in everyday practice. In this way it is possible to start a comprehensive and well-designed environment protection process in the Republic of Serbia in the short time.

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