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- Case of Serbia -

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ENVIRONMENTAL PROTECTION AS A TASK OF THE INTERNATIONAL COMMUNITY

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Historically speaking, human beings have always influenced the environment. In earlier periods, this influence was local. However, since the times of the industrial revolution, the nature of the influence has changed. Starting in the mid 20th century, environmental issues have been causing increasing concern, for which reason efforts have been doubled to discover the causes and factors leading to such effects. Two factors have been the principal cause for concern in relation to environmental protection - rapid increase of population on our planet and our current socio-economic production models. Both these processes have a significant influence on the reduction of natural resources and disturbance of environmental balance. Apart from the population increase, the problem of uneven development between

developed and developing countries and regions of the world is also related to problems such as the lack of food, poverty and hunger. Poor countries have very limited capacities to tackle these problems, which results in pressures for the exploitation of natural resources. In this context, the majority of international documents stress that poverty is precisely one of the decisive factors preventing efficient solutions to environmental issues.[1]

A response to the environmental crisis can be found in the concept of "sustainable development", presented in the Rio Declaration (1992), on which the modern strategy and legal framework for environmental protection are based.[2] The concept basically preserves current economic and social models but introduces a limitation - that future generations must not be deprived because of our current needs. From the viewpoint of a global society, and in relation to the protection of the environment, this includes efficient access to "environmental justice".

In the general framework of political philosophy, crucial attention is given to numerous theoretical and conceptual questions of social justice and other forms of justice.[3] In that context: "This is the result, to put the matter at its most general, of our increasing realization that human beings have important impacts upon each other's well-being even when they do not inhabit the same society or historical period. (...) Among the latter issues, that of environmental sustainability, which forms a large part of the problem of what we are morally required to bequeath to future generations, has emerged as the focus of much debate. This forms a part of a more general set of issues concerning the just distribution of environmental 'goods', such as agricultural land, clean water, and mineral resources, and 'bads', such as landfill sites and toxic waste disposal plants. This set of issues - how environmental goods and bads are to be distributed among human beings, within and across societies at any one time, and between generations across time - has recently received the label of 'environmental justice'."[4]

This has been of decisive influence on finding solutions to environmental issues, but also for the establishment of standards and principles of their regulation.

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[1] Cf.: Wilfred Beckerman, *A Poverty of Reason - Sustainable Development and Economic Growth,* The Independent Institute Oakland, 2003.

[2] *Rio Declaration on Environment and Development*, 1992. (source: http://www.unep.org/Documents .multilingual/).

[3] Cf.: John Rawls, *A Theory of Justice* (Džon Rols, *Teorija pravde*), CID, Podgorica), 1998.

[4] Brian Baxter, *A Theory of Ecological Justice,* Routledge, London - New York, 2005, p. 6.

The most important role has certainly been played by the United Nations, which contributed to the crucial change in the way strategies and the legal regulation in the environmental domain had been viewed. Primarily, this was achieved by adopting the Declaration of the United Nations Conference on Human Environment, held in Stockholm in 1972 (the Stockholm Declaration).[5] On that occasion the UN Environmental Protection Program (UNEP) was established.[6] In the period following the Convention there have been an increasing number of international, regional and other organizations dealing with environmental protection, including the European Community (European Union).[7] This is also important for Serbia, one of the remaining European countries striving to become a member of the European Union.

Environmental justice "...has developed as a movement and concept in social science putting emphasis on 'unfair' distribution of influences in the contemporary, society, such as risk exposure, but it also takes into account available funds, or, put more precisely, the lack thereof - for persons to whom acceptable decisions refer. [Remark: Here is an example given by R.J. Lazarus[8], who provides five forms of exercising environmental justice in the USA, among other things, a redefinition of the essence of environmental legislation and judicial protection of civil rights in cases related to environmental protection]. From this perspective, it is clear that environmental and social justice, according to any standard, entails efficient access to the administrative and legal system so that rights could be protected and existing health and environmental protection laws could apply. [Remark: See Cappelletti and Garth[9] and their argumentation that 'access to justice' relies on 'two basic purposes of the legal system - a system through which people can protect their rights, and resolve their disputes under the general auspices of the state. Primarily, the system

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[5] Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 (source: http://www.unep.org/Documents.multilingual/).

[6] UNEP - United Nations Environmental Protection Program (www.unep.org).

[7] Cf.: Maria Lee, *EU Environmental Law,* Oxford and Portland, 2005.

[8] R.J. Lazarus, *Pursuing Environmental Justice: The Distributional Effects of Environmental Protection,* 87 *Northwest University Law Review,* 1993, p. 787, quoted in Jonas Ebbeson, *Comparative Introduction,* in Jonas Ebbeson (Ed.), "Access to Justice in Environmental Matters in the EU", Kluwer International, the Hague, 2002, p. 8.

[9] Cappelletti and Garth, *Access to Justice: the Worldwide Movement to Make Rights More Effective* in Cappelletti and Garth (eds.), "Access to Justice, Vol. Ш, Emerging Issues and Perspectives", Sijthoff and Noordhoff, Alphen an den Rijn, 1979, p. 6, quoted in Jonas Ebbeson, *Comparative Introduction,* in Jonas Ebbeson (Ed.), "Access to Justice in Environmental Matters in the EU", Kluwer International, the Hague, 2002, p. 8.

must be equally accessible to all and, secondly, it must lead to individually and socially just outcomes' (...)]"[10]

Within the so-called three pillars of the Aarhus Convention - access to environmental information, participation in decision-making on environmental issues and access to justice,[11] the segment related to the access to "environmental justice" may be defined as a "possibility to correct a wrong administrative decision by a court or another independent agency defined by the law".[12]

The Aarhus Convention is crucially related to international human rights and fundamental constitutional rights and freedoms.[13] Access to environmental justice, as defined in the Aarhus Convention, is based on the fundamental human right to a fair trial. This connection can be noticed if one traces the links between the Aarhus Convention and other documents pertaining to the protection of human rights, such as the Universal Declaration of Human Rights (1948), International Pact on Civil and Political Rights (1966) and particularly the European Convention on Human Rights and Fundamental Freedoms (1950). The European Convention on Human Rights and Fundamental Freedoms (ECHRB) states that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." (Article 6/1)[14] Although the Aarhus Convention is neither structurally nor institutionally directly related to the European Convention on Human Rights (non-European countries also have access to the Aarhus Convention), the similarity of the linguistic formulations leads one to the conclusion that "in spite of the autonomy of the Aarhus Convention *vis-a-vis* the ECHRB, case law of the European Court of Human Rights provides suggestions as to what is considered to be an independent and impartial body, as defined in the Aarhus Convention."[15] In its

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[10] Jonas Ebbeson, *Comparative Introduction,* in Jonas Ebbeson (Ed.), "Access to Justice in Environmental Matters in the EU", Kluwer International, the Hague, 2002, p. 8

[11] *Act Ratifying the Convention on Access to Information, Public Participation in Decision-making and Access to Judicial Justice in Environmental Matters,* Official Bulletin of the Republic of Serbia, no. 38/2009.

[12] Jonas Ebbeson, *Comparative Introduction,* in Jonas Ebbeson (Ed.), "Access to Justice in Environmental Matters in the:EU", Kluwer International, the Hague, 2002, p. 13.

[13] Cf.: Tim Hayward, *Constitutional Environmental Rights,* University Press, Oxford, 2005.

[14] European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. (Source :http://www.mediacenter.org.yu/code/navigate.asp? Id=262)

[15] Jonas Ebbeson, *Comparative Introduction,* u Jonas Ebbeson (Ed.), *Access to Justice in Environmental Matters in the EU,* Kluwer International, the Hague, 2002, p. 15.

practice, the European Court of Human Rights has had a number of cases related to "environmental justice".[16]

Serbia acceded to the Aarhus Convention and ratified it in May 2009. As stated in relevant literature: "Due to the well known circumstances related to its international position, what was then the Federal Republic of Yugoslavia did not participate in the preparatory activities for drafting and adopting the Convention. It did not take part in the conference of ministers that adopted the Convention either, although representatives of NGOs from the Federal Republic of Yugoslavia participated in the Conference. The first initiatives related to the Aarhus Convention in Serbia were launched in 1999 through the Regional Environmental Center (REC) for Central and Eastern Europe, i.e. REC's Belgrade office. Since then numerous activities have been undertaken with the aim to create conditions for ratifying and implementing the Aarhus Convention in Serbia. (...) One can say that all these activities have contributed, first of all, to the dissemination of general information, creating a favorable climate on the Aarhus Convention and raising public awareness on both the Convention and the overall importance of environmental protection. The work and activities implemented so far have had a positive effect on the promotion and training of the state sector and NGOs for a successful implementation of the Aarhus Convention. (...) Based on this, one can expect that further activities regarding the implementation of the Aarhus Convention should intensify. Essentially, they should include further harmonization of the legislation, establishment of institutional frameworks for the implementation of the Convention, materials and technical equipment for the institutions, training of staff and further activities in raising public awareness with regard to the Convention." [17]

In current constitutional and legal standards in Serbia the "spirit" of the Aarhus Convention is already felt, to a certain extent, at least in terms of environmental information (and not so much in terms of access to environmental justice). Thus, the

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[16] *Inter alia,* the case of *Okyay et alia v. Turkey,* application no. 36220/97, judgment of 12 July 2005, related to the request of the national authorities to close down three power plants for polluting the environment, and the case of *Taskin et alia* v. *Turkey,* application no. 46117/99, judgment of 10 November 2004, related to the license to open a gold mine. An overview of the decisions of the European Court of Justice in environmental cases can be found at: http^/cmiskp.echr.coe.int/tkpl97/portal.asp?sessionId =10272448&skin=hudoc-en&action=request

[17] Sreten Bordević, Miloš Katić, *A Guide for Practical Implementation of the Aarhus Convention and a Small Environmental Lexico* (*Vodić kroz praktičnu primenu Arhuske konvencije i Mali ekološki rečnik),* Regional Environmental Center for Central and Eastern Europe, Serbia and Montenegro Office, Belgrade, 2004, pp. 11-13.

new Serbian Constitution (2006) reads that "Everyone shall have the right to healthy environment and the right to timely and full information about the state of environment" (Article 74/1). Likewise, the Act on Free Access to Information of Public Interest (2004), among other things, prescribes the following: "It shall be deemed that there is always a justified public interest to know information held by the public authority, regarding a threat to, i.e. (...) protection of public health and the environment (...)" (Article 4).

However, in Serbian law the real spirit of the Aarhus Convention is mostly felt in some provisions of the Environmental Protection Act (2004). Thus, among the fundamental principles of environmental protection, this act specifically lists the "principle of public information and participation", according to which: "in the exercise of the right to a healthy environment everyone shall be entitled to be informed of the environmental status and to participate in the process of decision making whose implementation may have an effect towards the environment. The data about the environment status shall be open to public." (Article 9, Para. 10).

Apart from this, in its general provisions, this Act specifically stresses that: "Raising awareness about the importance of environmental protection is provided through the educational system, scientific research and technological development, public information and the popularization of environmental protection" (Article 6/2), and also that: "Civil society organizations, established for environmental protection shall prepare, promote and realize their protection program, protect rights and interests in environmental protection, propose activities and measures conducive to this protection, participate in the decision making process in compliance with the law, assist in or directly disseminate information about the environment." (Article 7).

In Serbia's penal legislation, environmental protection is based on the bio-centric concept, which treats the environment as a protected good *per se.* This stands in opposition to the earlier, today abandoned, anthropocentric concepts, which defined the environment as a resource whose only function is to satisfy human needs.

The fundamental principle of criminal law is the principle of *subjective responsibility,* i.e. responsibility based on guilt. In that sense, numerous prohibitions with regard to environmental protection are followed by criminal penalties. "Standards of criminal law which are ecological in nature aim to introduce criminal

penalties so as to suppress illegal activities of legal entities in the domain of environmental law." [18]

Criminal offenses against the environment are numerous and they vary considerably. Starting from the Criminal Code of Serbia (2005) and other acts, these offenses may be classified into the following categories: a) general criminal offenses against the environment (pollution of the environment, failure to take measures for the protection of the environment, illegal construction and putting into operation of installations polluting the environment, damage to facilities and devices protecting the environment, damage to the environment, destruction of, damage to or export abroad of a natural good, violation of the right to information of environmental conditions); b) criminal offenses related to hazardous materials (bringing hazardous materials into Serbia and illegal processing, disposal and storage of hazardous materials, illegal construction of nuclear facilities); c) criminal offenses against plant and animal wildlife (killing and torturing animals, transmitting contagious diseases to animals and plants, unconscientious veterinary aid, production of harmful substances for animal treatment, pollution of eatable food and drinkable water, or using them on animals, devastation of forests, forest theft); d) criminal offenses related to illegal hunting and fishing (illegal hunting, illegal fishing). Polluting the environment is forbidden in Article 260 of the Criminal Code. The criminal offense of environmental pollution (Article 206) is perpetrated by a person, who, by violating the regulations on protection, preservation and improvement of the environment pollutes air, water or soil to a larger extent or over a wider area. An offense is committed in any instance which can cause a consequence of the criminal offense and which consists in the pollution of air, water or soil to a larger extent or over a wider area. The *Waters Act* (1991, 1996) defines the concept of "water pollution" as any harmful alteration in the natural composition, content and quality of water, waterbeds, watercourse, and basin.

Inspection is a specific form of administrative supervision, and it is performed by means of direct insight into applicable legal and actual situations.[19] The aim of

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[18] Slavoljub Popovic, *Principal Characteristics of Environmental Law {Osnovne karakteristike ekoloskog prava),* in Dragoljub Kavran, Gordana Petkovic, Law and Environment (Pravo i zivotna sredina), Belgrade 1997, p. 78.

[19] See: Stevan Lilic, *Environmental Inspection in Serbian and EU Legislation (Ekološka inspekcija u zakonodavstvu Srbije i Evropske unije),* 50 Years of the European Union („50 godina Evropske unije"), Institute of Comparative Law, Belgrade, 2007, pp. 277-287.

inspection is to control the implementation of the law both by citizens and legal entities and by administrative agencies.[20]

Environmental protection management has been conferred upon the environmental inspection. Tasks performed by the inspection in the domain of environmental protection are primarily protective, i.e. they aim to prevent activities harmful to the environment which could emerge from uncontrolled technological development.[21] One of the most important protective measures in environmental protection is found in provisions of acts forbidding certain activities, whose nature is such that they could cause environmental pollution, until a permit (license) of an authorized agency for carrying out such an activity has been obtained. The *Nature Conservation Act* (2004), the general act regulating environmental protection in Serbia, separately covers inspection. Accordingly, supervision of the implementation of provisions of this Act is conducted by the Ministry (of environment), unless otherwise prescribed by this Act. The Ministry performs inspection defined by this Act through environmental inspectors. The Act (Articles 110-111) exhaustively lists the rights and obligations of inspectors in performing their duties, and also the authorities of inspectors stemming from their rights and obligations. Environmentalists often stress that inspections are inefficient, and that the efficiency of inspection can sometimes be put to question due to the lack of equipment. According to the data of the Environmental Protection Agency, in the period November to January 2004, 115,148 inspections were performed, of which 100,328 on border crossings, 3,268 in the domain of the environment, and 1,552 in the domain of protection and use of natural goods and resources.[22]

From the point of view of environmental law the question of judicial protection from the source of danger threatening an indefinite number of persons is particularly important. Judicial protection from the source of danger threatening an indefinite number of persons was introduced in our national legal system in the *Obligations Act* (1978). Provisions of Article 156 of the Obligations Act, on the request to remove the danger from possible damage, are particularly important for the environment. This

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[20] Compare: Stevan Lilic, *Administrative Law / Administrative Procedural Law (Upravno pravo / Upravno procesno pravo),* Belgrade, 2008, pp. 371-381.

[21] Cf.: Dejan Milenković, *A Collection of Environmental Protection Regulations (Zbirka propisa iz oblasti zastite zivotne sredine),* Belgrade, 2006, pp. 76-87.

[22] Jasmina Lazic, Slobodan Bubnjevic, *People and Nature without Protection (Ljudi i priroda bez zastite.* (source: www.vreme.com/cms/view.php?id=409535).

Article gives the right to anyone to submit a petition to protect them or a particular number of persons from a source of danger threatening to cause substantial harm or activities from which disturbance or danger of damage threaten. Since it also pertains to cases in which danger to the environment is present, this Article in effect establishes a standard for filing an environmental lawsuit. The motion from Article 156 of the Obligations Act can be filed by anyone, even a person not directly endangered. This means that anyone could request that appropriate measures be taken, such that they should prevent a possible harm to the environment, i.e. such that could remove the source of danger for the environment. Therefore, an environmental suit has the meaning of the so-called popular suit *(actio popularis).* The possibility for anyone to file an environmental suit is advantageous as it expands the circle of persons concerned with the environment and its protection.

When the Obligations Act was passed, regulations from Article 156 were considered modern and useful legislative solutions because they allowed for the so-called "popular suit", especially because this meant a breakup with the traditional emission theory, which reduced environmental protection to relations among neighbors. However, one should pose the question what "normal values", "considerable damage" and "generally useful activity" is. Answers to these questions need to be sought in legal standards or the nature of social relations according to which people who have established mutual relations are due to suffer inevitable inconveniences emerging from living together (noise in city transportation, music from adjacent restaurants, breathing in polluted air in densely populated industrial areas). Regulations of public law define technical measures for the determination of allowed limits (of pollution, noise, soot, ionizing radiation), so that, with the help of experts (from specialized institutions) the court can assess the actual condition. In this matter the principle of selectivity holds, because a situation which is usual in one environment does not need to be considered tolerable in another environment.

An environmental lawsuit cannot be filed against a generally beneficial activity for which there is compliance of competent authorities. Its principal role is to act preventively against activities which harm the environment. An environmental lawsuit can prevent the commencement of activities which could harm the environment before the damage occurs. Contrary to solutions in comparative law, our current judicial practice does not acknowledge intangible damages for the psychological suffering caused by the negative influence of industrial and other adjacent facilities,

even though the right to a healthy environment is one of the fundamental constitutional rights which is paid due attention in Europe.

Environmental activists mostly stress that in Serbia there is no efficient judicial mechanism. Our judiciary still does not consider environmental cases important. Some analyses have shown that most writs getting to the court are set aside until the case expires. During a training organized in 2003 by the United Nations for judges specializing in environmental cases, it turned out that even this select group of individuals did not have basic knowledge of environmental issues and their importance. Moreover, very few judges were generally interested in learning more in the field. A few years ago the association of fishermen in the town of Valjevo sued a poacher and the judge asked that he compensate for the economical value of trout. A person from the School of Law had to show up and explain that the damage pertained to the environment, that the fish had been cultivated for two years so as to have substantial offspring, and only then did the judge understand that he was trying a case related to the environment.[23]

The 2010 Serbia Progress Report of the European Commission (4.2.3 Environment)[24] concludes that: "Overall, Serbia is moderately advanced in the area of environmental protection towards fulfilling the European standards. The capacity to implement and enforce legislation remains to be strengthened." According to the Report, as regards horizontal legislation, the National Program for Environmental Protection (NPEP) 2010-2019 was adopted. The financing projections outlined in the NPEP are based on a low-cost scenario and on increased user charges, which will require considerable liberalization of current tariff policies. The Serbian Environmental Protection Agency continues to maintain a good level of cooperation with the European Environment Agency. In the area of air quality, progress can be reported. Implementing legislation to the law on air quality was adopted. However, implementing legislation on emission limit values and emission measurements at large point sources remains to be adopted. Progress can be reported on waste management. A regulation on establishing the plan for the reduction of packaging waste for the period from 2010 until 2014 has been adopted, following the adoption of laws on waste management. In addition, the National Waste Management

[23] Source: http://www.vreme.corn/cms/view.php?id==409535&print==yes

[24] Euopean Commission, *2010 Serbia Progress Report,* SEC(2010) 1330, {COM(2010) 660}3, Brussels, 2010.

Strategy (NWMS) was adopted. The NWMS provides guidance on the implementation of waste legislation. It establishes systems for the management of specific waste streams. However, the procedures for setting product charges, as well as criteria and procedures for the Environmental Fund to finance waste recovery and recycling activities need to be further established. Waste management plans at regional and local levels have to be developed.