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This volume includes a survey of the basic concepts of environmental protection and of the most important international and national legal sources relevant to this theme. Given that one of the major problems in Serbia is the effective implementation of the existing laws on environmental issues, this study focuses on the procedural aspects of the protection of the environment. Special attention was paid to the issues related to the legal protection of the related rights and to the participation of the public in the decision-making in this field.

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In Belgrade, April 2009.

The pace at which bills, strategies and action plans related to environmental protection were adopted and harmonized with acquis communautaire

As regards environmental protection the necessary strategic acts and action plans, which would serve as the basis for implementing reforms in a programmatic manner, were not adopted. There is no national strategy for environmental protection with which all strategies related to individual issues would be harmonized. Draft National Program for Environmental Protection was elaborated in 2007, but it has not yet been adopted. Serbia does not have defined strategic goals in the environmental field and it is necessary to harmonize, adopt and implement relevant national strategies as soon as possible, and to elaborate programs and action plans for their implementation in different environmental fields. These acts would have to contain both the definitions of concrete problems which Serbia is facing and concretely defined obligations of the Government and other public institutions, as well as time limits within which they should fulfil their obligations. The existing legal framework, i.e. adopted laws, and the laws which are planned for adoption should be only one of the guidelines for the achievement of national goals.

Until now, the Government of the Republic of Serbia has adopted strategies in some relevant sectors, the National Waste Management Strategy, the Sustainable Development Strategy and other.

In our view it is not sufficient for the Government to adopt the planned strategies; it should rather implement them

in a consistent manner. As regards implementation of strategies, experience so far does not include significant results. The mentioned waste management strategy, adopted in 2003, should have contributed the process of making Serbia cleaner until 2010. In early 2009 some 40% of communal waste, as well as household waste, is in no way systematically disposed of, and it ends in informal landfills. At present, there are 4,481 illegal landfills in Serbia and 164 officially registered landfills; however, most of them are rather garbage heaps, and were not built according to EU standards; annually about 1.24 million tons of waste is brought to regular landfills, and some million tons is placed in informal dumping areas.

Serbia's National Strategy for Accession to the EU of Serbia and Montenegro, adopted in June 2005, was the first document to envisage future activities of the Government of Serbia in the field of environmental protection and harmonization with *acquis communautaire*, including the adoption of the strategy and the elaboration of action plans, and the adoption of laws and their enforcement.

As a strategic document, the Strategy envisaged the elaboration and adoption of action plans related to specific fields; the plans are supposed to manage the priority of reform moves, the sequence and pace at which they are to be adopted within the relevant ministries of the Republic of Serbia. The Strategy envisaged also the completion of the elaboration and adoption of the National Environmental Program, the strategies related to climate changes, waste water, forests, protection from air pollution and numerous other documents. Plans envisaged in the 2005 Strategy were not fulfilled.

By signing and ratifying the Stabilization and Association Agreement Serbia undertook to harmonize her legislation with the EU *acquis communautaire*. In the National Program for Integration of Serbia into EU (NPI), a document from October 2008, the Government of Serbia presented a comprehensive survey of laws, strategies, action plans, programs and other strategic docu-

ments needed for the fulfilment of obligations and criteria for EU accession. The National Program for Integration – NPI shall be the framework for the legislative work of the Government of Serbia up to 2012, the year which in Serbia's National Strategy for EU Accession was marked as the year in which Serbia will be ready to take over obligations stemming from EU membership.

The NPI is a good and precise plan on how to fulfil all necessary criteria for Serbia to become an EU member, from the political to the economic ones, up to the adoption of laws and the most detailed EU standards related to trade, agriculture, environmental protection, and infrastructure.

The National Program for EU Integration defines short-term, mid-term and long-term environmental goals.

Particularly significant seems to be the National Plan's provision on financing policies and investment plans pertaining to environmental protection. The Strategy on Sustainable Development speaks also of the need for reforms and the ways in which they should be financed; the aim is to equate environmental protection funds in countries of the region until 2017 – presently the funds are 0.4 percent, whilst they were planned to be 2.5 percent of GDP. The Strategy on Sustainable Development envisages also around 920 million euros for projects related to pollution reduction and desulphurization of thermoelectric power plants, to increasing energy efficiency, waste management, harmonization of industrial facilities with environmental standards, as well as to decontaminating of locations in the period 2009–2011. It is planned to invest 0.61% of Serbia's GDP in 2009.

Republic of Serbia's budget in 2009 is 748,652,903,100 dinars, out of which 3,314,589,000 dinars is allocated to sectors dealing directly with ecology, which is only 0.4% of the budget. Bulgaria's budget envisages 2.9 to 3.3% for ecology.

Responsibility for inadequate reform in the environmental field lies primarily with the People's Assembly of the Republic of Serbia; by failing to adopt the necessary legal documents and to respect the planned deadlines the Assembly made the accom-

plished legal changes in this field senseless. We recall that out of the total number of *acquis communautaire,* which must be introduced into the domestic legal system, at least 30 per cent are rules related to environmental protection.

Legislation and Implementation

The right to a healthy environment is guaranteed by Constitution. Article 74 of the Constitution guarantees the right to a healthy environment and to prompt and complete information of its current state. According to the Constitution, the Republic of Serbia and the Autonomous Province have special responsibility regarding environmental protection. The Constitution envisages also that the entire population has the duty to protect and improve the environment.

The legislative framework for environmental protection in Serbia has been regulated by the 2004 laws, namely the Law on Environmental Protection, Law on Environmental Impact Assessment, Law on Strategic Environmental Assessment and the Law on Integrated Prevention and Control of Environmental Pollution. In addition, the current framework includes also by-laws and other acts passed in order to enforce these laws.

Provisions of the Law on Environmental Protection envisage the adoption of specific laws which – in order to achieve sustainable development – regulate issues pertaining to protection of the nature, waters, air, soil, forests, geological resources; to management of chemicals and waste management; to ionizing and non-ionizing radiation; and, to noise protection.

The Law on Environmental Protection foresees establishing the EMAS system for management and control of the environment, as well as registering both the natural and legal persons whose regular work includes planning and implementing environmental protection (Articles 44–49). The Ministry of Environment and Spatial Planning plans to make the EMAS register until year 2012.

By passing the Law on Integrated Environmental Pollution Prevention and Control in December 2004, the IPPC Directive of the European Union on the integrated prevention and pollution control has been introduced into the legal system of the Republic of Serbia. It aims to achieve integrated prevention and control of pollution originating in industrial activities. In Serbia, according to the preliminary list compiled by the Inspection for Environmental Protection of the Republic of Serbia, there are 240 plants which will need to implement procedures and directives for the protection of environment and to obtain integrated work permits.

Law on Environmental Impact Assessment and the Law on Strategic Environmental Impact Assessment were passed simultaneously with the Law on Integrated Environmental Pollution Prevention and Control and the Law on Environmental Protection, thus providing the legal framework for effective environmental protection in Serbia.

The Law on Environmental Impact Assessment specifies assessment procedures for projects which have significant impact on the environment, the contents of the study of this assessment, the participation of the relevant agencies, organizations and the general public, cross-border notifications about projects that can have a significant impact on the environment of another state, as well as the supervision and other issues important for environmental impact assessment. The goal is to determine and rate the impact that the proposed project can have on the environment during its realization and exploitation.

The Government of the Republic of Serbia makes the list of projects for which impact assessment is mandatory and those for which it is optional. Participating in the environmental impact assessment procedure are: the project manager, authorized body, persons working on the assessment, relevant agencies and organizations and the general public.

These laws correspond with the relevant EU legislation and problems occur due to their improper application.

It has to be established whether the general public does really participate in environmental impact assessment, as enabled by law, and particularly whether opinions of relevant stakeholders in these procedures are taken into consideration in a sufficient manner, or whether at all.

In order for these laws to be applied in a proper manner, it is necessary to build the administrative capacities and to continually educate and inform the general public which is both a relevant party and a potential "controller" in such procedures. Particular attention should be paid to raising public awareness on possibilities and the significance of participating in these procedures because Serbia's citizens pay very little attention to the issue – only 3% of citizens consider ecology and environment to be a priority.

Special attention should be given both to enabling the NGOs to participate in a more active manner in the assessment procedures, and to the media whose professional reporting on these matters can change the general public's position on the environment and mobilize them to take an active part in the assessment procedures because they can have immediate impact upon the environment they live in. On the other hand, the investors often regard the assessment procedure as an obligation and additional cost in obtaining all the necessary permits, thus leaving important data on environmental protection unused, rather than using it as an information base for establishing an effective system for environmental protection management.

The participation of the general public in decision making regarding environmental protection in Serbia is of utmost importance for maintaining the basic principles of sustainable development as well as for preventing irresponsible behaviour of the authorities, individuals and companies.

Regulations and practice in developed countries, as well as in countries which want to achieve regional economic and political integration, enable and encourage citizens' initiative through the concept of public participation in decision-making.

The crucial moment in the development of the idea and practice of public participation is the adoption of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), which was adopted in Aarhus (Denmark) in 1998. The Convention entered into force on 30 October 2001. The Law on the Ratification of the Convention is in parliamentary procedure.

Serbia's organs and enterprises which are potential polluters must work in a transparent manner and they have the duty to inform the citizens on ecological problems; these are the rights of the citizens and a constitutional obligation.

In order to ensure precise information on the state of environmental parameters in Serbia it is necessary to ensure funds for the modernization of monitoring objects so as to enable comprehensive and systemic monitoring of the state of the environment. It is also necessary to establish a functional and efficient information system related to the environment, which shall ensure data and information on the status and protection of the environment which shall be available both to decision-makers and the broad public.

The major part of information is available to the public in certain fields even in real time over the Ministry's web-site, however, it should be kept in mind that a significant number of citizens do not have access to these information – 50% of citizens do not have a computer, and only 34% of Serbia's population uses Internet actively and on a daily basis, 37% use it occasionally – either because they do not have a computer or due to technical reasons, whilst as much as 29% of the population do not use the Internet at all.

Article 74 of the Constitution of Serbia guarantees everybody the right to a healthy environment and timely and complete information on the state of the environment. These rights and duties are regulated in more detail in other laws. Information regarding the environment is public, and the procedure for

obtaining such information is regulated also by the Law on Free Access to Information of Public Importance.

In order to analyze the application of the Law on Free Access to Information of Public Interest in environmental matters, the Belgrade Centre for Human Rights conducted a survey of courts practices and the work of other competent state organs. We concluded that the majority of municipal courts in Serbia did not respect this Law which envisages the duty to treat requests on environmental issues as an urgent matter and to provide information no later than 48 hours upon receiving such request. Although bound by the Law, some courts did not respond to requests at all, some courts completely disregarded the provision that non-governmental organizations are exempted from making any payment when requesting information related to environmental issues and asked compensation for the expenses of distribution of the requested information. Also, it was not a rare situation to get answers citing the inability to submit the file of an environment related case because it is extensive and as such inadequate for distribution. On average, every fourth court in Serbia has not sent a response to the request.

In order to inform the citizens in a prompt and adequate manner on issues of importance for the environment it is necessary to adopt the by-laws during 2009 that integrate the provisions of the EU guideline into domestic legislation – about the availability of information in relation to the environment (2003/4/EC), about the standardization of the reports on implementation of specific instructions (91/692/EEC) and on the establishment of the European Environment Agency and the European Information and Observation Network (Eionet).

Judicial protection of the environment

Civil protection of the environment

The Law on Environmental Protection pays particular attention to the issue of environmental pollution, the accountability of the polluter and the necessary compensation. According to Article 85, funds obtained from compensation are shared between the Republic and the self-government unit on whose territory the pollution occurred. The polluter is accountable pursuant to the principle of objective responsibility, and must undertake necessary remediation measures as envisaged in the remediation plan of the Republic or the self-government unit or, if remediation is not possible, must provide compensation equal to the value of inflicted damage. As regards compensation, it is envisaged that whoever suffers damage has the right to compensation from the polluter, i.e. the person which gives insurance, within urgent court proceedings. The right to compensation, if there are no other persons, lies with the Republic of Serbia.

In regard to compensation proceedings in cases that are not envisaged by the Law on Environmental Protection, this Law directs to the application of the rule of torts and contract, namely the Law on Obligations. In regard to sources of danger which threatens an unspecified number of persons, the Law on Obligations envisages judicial protection, i.e. the legal basis for so-called ecological charges. These charges protect different interests, and the interest related to environmental protection is only one of them. The Law envisages that these charges can be filed by persons exposed to immediate threat, and those which are not exposed but file them on behalf of endangered persons.

Of particular significance for civil liability is the *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, ETS No. 150, which was adopted by the Council of Europe in 1993.* It applies to situations when the incident occurred in the territory of the signatory country, regardless of where the consequences of the damage are felt.

Protection of the environment in criminal law

The Criminal Code of the Republic of Serbia deals with the environment in Chapter XXIV. Environmental crimes are illegal, socially dangerous behaviour of individuals against the environment for which the law provides sanctions. There are environmental crimes which endanger only the environment and those that affect also other social values. The specificity is that such behaviour is dealt with by other laws in the so-called bylaw criminal legislation, such as the Law on Protection of the Environment or the Law of the Waters. Relevant draft laws which are in parliamentary procedure apply this approach, too; they contain a part on penalty provisions in their final sections. The objective is a healthy environment, and respect of the basic human right to healthy living conditions.

Regulations that sanction ecological crimes, and regulations governing the responsibility of legal and natural persons for activities or omissions regarding environmental protection, can be divided into three groups: criminal law provisions contained in Chapter XXIV of the Criminal Law; provisions on commercial offence which include ecological commercial offences committed by responsible entrepreneurs, legal persons, and persons employed in legal entities; misdemeanour regulations that envisage accountability for environmental violations by citizens, entrepreneurs, legal persons or their bodies.

Chapter XXIV of the Criminal Code envisages eighteen offences. This group of criminal offences ranges from crimes of environmental pollution (Article 260), failure to undertake en-

vironmental protection measures (Article 261), violation of the right to information on the state of the environment (Article 268), up to killing and wanton cruelty to animals (Article 269) and forest theft (Article 275). Protection of human health is covered by Chapter XXIII of the Criminal Code, where as the most severe crimes are mentioned pollution of drinking water and foodstuff (Article 258), negligent inspection of foodstuff (Article 257) and the production and distribution of harmful alimentary products (Article 256). For the most severe crimes against human health envisaged is 12 years imprisonment.

The basic environmental crime includes events that resulted in pollution because they were in disobedience of regulations on protection, maintenance and the improvement of the environment were violated. Therefore, environmental crimes need to be dealt with by articles in special laws that regulate certain aspects of the environment. Maximum sentence for the most extreme cases of environmental pollution is set to 8 years imprisonment. Such verdict, according to our knowledge, was never declared. The analysis of the number and subject-matter of cases before Serbian courts related to the crime of environmental pollution shows that a significant number of courts have never dealt with such cases – in 37 Serbian municipalities there were no proceedings in this matter, or verdicts.

In 2008 out of the total of 12 judgments related to environmental issues before the courts in Serbia, only one judgment related to pollution. Statistics shows that the biggest number of criminal proceedings relates to forest theft pursuant to Article 275 of the Criminal Code, and that in most cases the sentences were either probation jail sentences or low fines.

Data gathered from the courts, indictments and judgments show that courts and prosecutors are inefficient in applying Chapter XXIV of the Criminal Code. One of the examples is the crime of environmental pollution pursuant to Article 260 of the Criminal Code which says "Whoever by violating the regulations on protection, preservation and improvement of the en-

vironment pollutes air, water or soil **to a larger extent or over a wider area**...". The reason behind the inadequate application of this provision is that the courts in Serbia see this wording as unclear and consider it to be a matter for interpretation by the Serbian Supreme Court. However, even without the opinion of the Serbian Supreme Court on the wording – *to a larger extent or over wider areas* – the courts are bound by the law to evaluate evidence presented, having in mind particular circumstances of the case in hand and to interpret this provision themselves. In time, the number of indictments raised for this crime will undoubtedly force the development of court practice in this field.

The judicial system in Serbia is facing a problem of inadequate environmental expert reports and gathering of evidence during the investigation and throughout the criminal proceedings.

On the level of municipalities in Serbia there are no accurate lists of court experts in environmental matters and there is certain level of doubt as to their objectivity and credibility. Supporting this fact is the opinion of some prosecutors that a big number of cases were rejected because it was not possible to obtain an expert's report or the report was not submitted in due time. Furthermore, there are no studies, i.e. medical studies on health issues, that the prosecution could use as a relevant parameter to show to what extent does environmental pollution support the development of certain diseases.

In court proceedings, data gathered by monitoring imissions and emissions can be of great importance for the final outcome of the case. However, the courts take into consideration only analyses of institutions authorized by the State and listed as official institutions for monitoring the state of the environment. Here we emphasize the problem of Pancevo, one of the most polluted towns in Serbia, which has a functional system of municipal monitoring which, however, is not approved by relevant institutions and whose results cannot be valid proof before the courts.

With the help of foreign donations, the town of Pancevo developed a modern system for continuous observation of air pollution by creating four stations for automatic emission monitoring, in addition to the ones used by the Government. The results of monitoring are on an hourly basis transferred to the central computer of the Secretary for Environmental Protection, where the data is being stored and analyzed. However, as said above, these data cannot be used in court because the monitoring system developed in Pancevo is not registered as part of the official governmental system.

The role of the Inspection for Environmental Protection of the Republic of Serbia is of vital importance for the work of the prosecution. Prosecution often acts on their reports, they do field work and are present when evidence is gathered, and they suggest what kind of charge should be submitted to the court. Considering the fact that criminal courts apply very mild punishment policies (in most cases offenders are sentenced to probation), Inspection brings more cases before the commercial and misdemeanour courts in order to maintain a higher level of protection.

Introducing a higher level of coordination and cooperation of different government institutions would contribute resolving the problem of inadequate proceedings and punishment for the polluters in cases before the criminal courts.

The treatment and evaluation of the evidence presented by court's environmental experts is also a problem. On one side the court depends on reports made by environmental experts, but on the other side it frequently disregards them.

Due to a small number of cases before the courts, and the public's undeveloped environmental conscience and a lack of governmental responsibility, there is no established practice in any part of environmental protection, so it is necessary to intensify and coordinate the cooperation between all actors in the process.

We find very important the provision of the Criminal Code that in the case of a probation sentence, an obligation is set

upon the offender to take necessary measures to protect, maintain and improve the environment. We also believe that the new Criminal Code, which will be enacted this year, should consider the possibility of putting in power this measure in all cases.

Courts should change their current practice so that the criminal proceedings in environmental protection represent the final option that is to be taken into consideration only when it is impossible to resolve the case through regular administrative proceedings, or in cases of extreme pollution. However, the preconditions are efficient administrative procedures and a far stricter punishment policy of the courts.

The courts could also use the measure of seizing property assets from the polluters. These envisage that money, objects of value and all other types of assets which are obtained through criminal activity will be taken away, and if the property cannot be taken away, the polluter will be obligated to pay an amount that is equal to the value of the asset. Cases before the courts in Serbia show that individuals responsible for pollution often acted on financial reasons, so we find the implementation of this measure to be effective and adequate.

According to the Law on Criminal Liability of Legal Persons, the legislator introduced the possibility for the court to declare for the responsible polluters a fine higher from those envisaged in special environmental laws. The fines range from the minimum of 100,000 dinars up to the maximum of 500 million dinars. This law implies that the possible fine for legal persons that pollute the environment is set according to the maximum imprisonment sentence prescribed by the Criminal Code. Having in mind that operators can be already included in commercial felony or misdemeanour proceedings – which in the current practice of criminal courts proved to be more effective – we find that innovations provided by this Law will not help to improve environmental protection because of complications related to obtaining evidence in criminal proceedings. However, implementation of this Law introduces significant advantages in rela-

tion to legal remedies, such as losing the right or permission to operate in certain fields or blocking the account and preventing operators from opening new ones.

Provisions of special environmental laws envisage the cases in which polluters are liable for commercial offences and misdemeanours. In cases of commercial felonies and misdemeanours it is possible to financially punish the operators in a range from 30.000 up to 1.000.000 dinars for felonies and from 150.000 up to 3.000.000 dinars for misdemeanour. Proposed changes to the Law on Environment envisage an increase, so that the minimum sentence would be 1.500.000 dinars. Since in the judicial practice in Serbia prevail tendencies to apply the minimum proposed sentence, it is a justified and very useful legislator's intention to increase the minimum sentence, even though the maximum sentence remains extremely low in regard to the potential damage.

In transition societies, and in states with developed economies due particularly to the newly emerged economic crisis, it is possible to have confrontation between economic progress and interest related to environmental protection. When there was a conflict of interest between a region with "dirty" technologies on one hand, and interests related to protection of human health and the environment on the other, states have the right to enjoy broad freedom when deciding on the balance between economic and ecological interests. States should ensure a just relation between interests of the individual and those of the community, and one of the state's obligations in this regard is, for instance, to exercise efficient control over the work of factories through work permits and effective sanctions for disregard of national rules on pollution. In Serbia, this problem is evident in the privatization process, since there are no developed mechanisms for solving inherited pollution, i.e. the damage inflicted to the environment, and for fulfilling obligations related to environmental protection.

The legal framework for environmental protection offers the necessary basis for the implementation of economic instruments, such as: fees for using natural resources, fees for environmental pollution, subsidies, tax incentives, fines for non-fulfilment of ecological standards and compensation for the local self-government unit. In Serbia, the application of instruments is not on a sufficient level, due to general inefficiency of state organs, first of all the inspection and the judiciary (prosecution and courts). The desired punitive effect is not achieved not only because of inadequate implementation of existing norms, but also because the compensation and fines for violating legal regulations are generally bellow a stimulating level.

CDM projects in Serbia

Due to a lack of clear development strategies, political instability, immature market conditions and the neglect of basic postulates of sustainable development, it is not possible to consider the principle "the pollutant pays" to be successfully implemented in Serbia. There is a lack of adequate compensation for pollution and the exploitation of natural resources, and domestic sources which would offer financial support are not sufficiently developed to cope with accumulated problems.

Serbia, as a State-Party to the Kyoto protocol, has the possibility to participate in projects of the Clean Development Mechanism (CDM). Financial support to developing countries within CDM should assist these countries in achieving a number of economic, societal and environmental goals, i.e. goals of sustainable development. For the realization of CDM it is necessary to designate a national authority and elaborate the implementation strategy for CDM projects. The Ministry of Environment and Spatial Planning has adopted Rules of Procedure, criteria and deadlines for assessments and approval of potential CDM projects, and has designated the "National Authority of Serbia" consisting of the Expert Group and the Secretariat, and its work

is coordinated by the competent minister. As regards adoption of the strategy, a part of the strategy for the realization of CDM projects in the energy sector should have been prepared in the second half of 2008.

The implementation of CDM projects would help Serbia solve a number of problems, such as the reduction of air pollution in industrial regions, the reduction of air pollution caused by heating installations in urban centres, or the reduction of air pollution caused by the traffic in big urban centres. Low energy prices, bad management over infrastructure and high energy losses due to inefficient systems for production, transmission and distribution of energy, suggest that there is plenty of room to implement projects related to the reduction of glasshouse gasses and to offer good business opportunities for foreign investors. CDM projects could significantly contribute to the modernization of all economic structures in Serbia. However, the entire legal system of Serbia could negatively influence the development of CDM projects, because investors search for politically stable states, with laws favourable for investing into the ecological field.

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