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THE ROLE OF ENVIRONMENTAL LAW IN THE IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT

Abstract: *Environmental law, as a developing branch of legal science, has been gaining in importance recently. As such, its primary task is to examine, define and clearly determine a number of terms in the field of environmental protection. Parallel to this, environmental law has another, seemingly even more important task at this point, which is to offer adequate legal solutions to prevent and stop further environmental degradation, as it is a burning issue in the present time. Sustainable development and environmental law are inseparably associated. Legal acts shall regulate the rules of conduct, among other things, in the field of environmental protection and sustainable development. There is a large number of international and national regulations which deal with the issue of sustainable development. As people obey legal regulations, either from their own beliefs about the correctness of behavior that a legal act requires, or out of fear of sanctions that can follow, it is clear that the regulations in the field of sustainable development represent a very important means which can act as a powerful corrective to undesirable behavior towards the environment.*

Key words: environmental law, sustainable development, legislation, environmental protection.

INTRODUCTION

For their own survival people have always resorted to establishing certain rules of conduct. If any individual's acting was guided by their own impulses and the current discretion the society would be brought into serious danger, as it would mean a complete anarchy. For this reason, people develop rules of behavior in society. These rules may be written or unwritten. The unwritten rules include customs, morals and the like. In the event of non-compliance of those rules one does not know in advance whether the offender will be punished at all, who will make a sanction and what the sanction can be. In contrast to these unwritten rules, socially most important rules of conduct include legal norms. They are characterized by always being prescribed by a certain legal act (national, international, autonomous, heteronomous) and their application is provided by the state as an organization that has a monopoly on physical coercion. Therefore, the state is responsible for respecting the rights and it applies the sanction in case of non-compliance with the prescribed rules of conduct. This specific characteristic of this type of code of conduct gives it a special character and sets it among major types of social norms.

Legal acts regulate rules of conduct, among other things, in the field of environmental protection and sustainable development. These issues have become topical for legal science in the relatively recent future, ie. especially in the second half of the twentieth century. Namely, at the international level

environmental awareness began to rise at that time due to the growing environmental problems that have long since begun to seriously threaten the survival of mankind. In response, the states initiated the organization of international conferences, adoption of international regulations, action plans, formation of various committees, research, etc. In a word, the international community has realized that environmental protection needs to gain the attention it deserves and that it is a precondition for any other kind of international activities and, consequently, activities at the country level.

Thus, the conferences organized by the United Nations devoted to the environment are widely known. The first in the series was held in Stockholm in 1972. It is especially significant because it was the first conference organized by an organization of such a rank, committed to the environment. On this occasion the Declaration on the Human Environment was adopted. It contained the basic principles of environmental protection. Then, it was followed by a conference in Nairobi in 1982, which indicated the extent of the consequences to the environment caused by the exploitation of natural resources. One of the particularly important conferences took place ten years later, in Rio de Janeiro in 1992. This conference confirmed the principles established in Stockholm and adopted the Declaration on Environment and Development, Agenda 21, United Nations Framework Convention on Climate Change, the Convention on

Biological Diversity. In New York in 1997 there was a conference at which it was concluded that no substantial progress had been made in protecting the planet. It was followed by the World Summit on Sustainable Development in Johannesburg in 2002. On that occasion the countries promoted one goal - sustainable development - and again supported the objectives set in Stockholm in 1972. In Brazil in 2012 there was another conference held, the focus of which was sustainable development. Finally, in Paris in 2015, there was a conference dedicated to climate change. It began with tumultuous organized protests. Its aim was an agreement upon the prevention of further global warming. In addition to these, there have been many other international meetings on the protection of the environment where numerous international documents in this field were adopted. Also, the non-governmental sector in the international regulation of this problem is noticeable and complementary to the activities of the states.

As the environmental awareness spread at the international level, the states individually began to deal with the legal regulation of environmental issues. While this is not an area in which the results of government intervention are achieved quickly and easily, nevertheless, states are increasingly recognizing that the issue of protection of the environment must be addressed seriously.

Simultaneous, with the evident increase of environmental awareness the idea of sustainable development is developing. Nowadays, this is a concept without which it is not possible to imagine the development of society. According to the Brundtland Report, sustainability is defined as the kind of development that meets the needs of the present without compromising the ability of future generations to meet their own needs. [5] The term sustainable development implies the direction that sustainably combines ecological, political, economic, social, technological and cultural development. The three pillars of sustainable development are the economy, society and environment. The development can only be sustainable if the balance among these three fields is achieved. [7]

For the state to ensure the realization of the concept of sustainable development it is very important to regulate the behavior of the subjects of environmental protection systems by the legislation. In this way, the rules of conduct, rights and obligations, as well as the consequences in case of non-compliance with these rules are clearly defined. In this regard, the role of the law in establishing a quality system of environmental protection is essential.

ECOLOGY LAW OR ENVIRONMENTAL LAW

Before the discussion about resolving the dilemma between the name of ecology law or environmental law, it is desirable to point out some of the most

acceptable definitions of ecology and the definitions of the environment. According to one definition, ecology is "the science that studies the relationship of living things to the external environment," or "the science that studies the relationships of organisms (plants, fungi, lichens, animals, micro-organisms and viruses) and living communities (biome and landscape ecosystems) towards the conditions of the external environment, as well as the mutual relations between living beings themselves and between their cenotic systems, primarily biocenoses and ecosystems." [21]

In addition to these attitudes, ecology can be observed in a broad sense as "the study of ecosystems, the study of individual organisms or groups of organisms and total living organisms and non-living (inorganic) components, with which they are in constant interaction." Then, it can be defined as an "independent study that systematizes the knowledge about the economics of living beings on whose interactions and feedbacks with inanimate nature the origin of the frame of life is based." [21]

In terms of the concept of the environment, it includes "environmental sources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction among these same factors." The term also includes "the property, which represents part of the cultural heritage and characteristic aspects of the landscape." or, "the components of the environment consisting of soil, air, water, biosphere and man-made values and their parts." [21]

Ecology law is a relatively young branch of science. It is being increasingly taught as a subject at many universities in the world (for example, Berkley University of California), and in Serbia as well. [1] In the study of the legal treatment of ecological values, the authors use different terms for naming this legal branch – Ecology Law or Environmental Law. As Vladan Joldžić observes, a narrow anthropocentric approach to defining the names of this legal branch prevails in Europe. In Britain the expression Environmental Law is used, in France *Droit de l'environment*, in Italy *Dritto dell'ambiente*, etc. These expressions can be translated as the environmental law. Many theoreticians in Serbia use the term Environmental Law and refer to the environment in which one lives or resides. A small number of authors use the term Right to the Protection of Nature, but, according to Joldžić, in this way, the object of legislation is impermissibly narrowed because the United Nations in their documents refer to the natural and man-made values of one's environment. With the adoption of the document of the United Nations Serbia also opted for anthropocentric approach to the development of environmental law. The fact is that this approach narrows the field of scientific research, because it covers only part of the ecos, and it is necessary to examine it in its entirety. The term environment is narrower than the term *oikos*, and the law claimed numerous expressions of environmental science through the documents of public international

law. According to Joldžić, ecology law shall not be confused with environmental law, its constituent forms which regulate the relationship between individuals and legal entities towards different material values and processes that make up a large and important part of the ecological system. They regulate it in order to preserve these values because of their importance for mankind.[6]

Ecology law is, in the view of many scholars, broader than the concept of environmental law. This view is increasingly supported by lawyers in Europe. This branch of law regulates various forms of ecological relationships and this is its basic characteristic. Ecology law incorporates the concept of environmental law and regulates various forms of ecological relations. [6] In determining the distinguishing point between these two terms it is necessary to consider the original meaning of the terms environment and ecos. Some legal theorists advocate that ecos is exclusively understood as the environment in its immediate lexical meaning. Therefore, Environmental Law is defined as ecology law or law on the living environment. In that sense they are synonyms. This view is not entirely justified. [6] The New International Webster Encyclopedic Dictionary of the English Language defines the environment as "all physical, social and cultural factors and conditions that act upon the existence and development of an organism or assembly of organisms." [20] Therefore, the factors stated in the defined space of existence of the observed organism or community. The very notion of ecology is explained as the name of the multidisciplinary science that studies the relationships between organisms and total environment, living and non-living. It is also seen as a branch of sociology associated with human population, its overall surroundings, spatial distribution and resulting cultural characteristics. The conclusion is that ecology deals with the total interrelations between everything living and non-living in their integrity, as well as its subject. [6] The term ecos is derived from the ancient Greek word oicos, which means house, habitat. Modern ecology defines ecos as a whole being - the totality of the living and non-living on the planet in constant interaction. This concept goes beyond the environment understood as the physical environment in its spatial and substantial sense. It has been accepted as such by other branches of science, law included.

Based on these considerations, it is concluded that the Ecology Law is a "right to regulate questions of all factors and conditions affecting the existence or development of organisms or assembly of organisms (which obviously include man and human community), as well as the preservation of their habitat, and the ecos in its totality." [6] Environmental law is narrower term in comparison to ecology law and its institutes are included in ecology law, but it has a wider subject of interest and study.

RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy environment is an individual universal human right which is one of the most important human rights guaranteed in the highest state documents. This is shown on the example of the constitutions in the Balkan countries. For example, in the Constitution of the Republic of Serbia, Article 74 stipulates that everyone has the right to a healthy environment and timely and complete information about its condition.[4] Or, "man has the right to a healthy environment," as stated in Article 35 of the Constitution of the Republika Srpska.[2] In Montenegro, the Constitution regulates the right to a healthy environment in a similar way as it is regulated in Serbia. Thus, in Article 23 of the Constitution of the Republic of Montenegro it is stated that everyone has the right to a healthy environment and to receive timely and complete information about its condition (it is also expressed in the Constitution of Serbia), but everyone has the right to influence the decision-making on issues of importance to the environment and the legal protection of these rights.[3]

What is particularly characteristic is that the right to a healthy environment is linked to the obligation to protect the environment. This obligation particularly belongs to the state. Apart from the right to a healthy environment, the constitutions often specify that subjects of environmental protection systems, and especially the state, is required to protect the environment. Most often, this obligation is established by the general constitutional provision whose effect extends to all public authorities, but, apart from these general provisions, constitutions often contain concrete forms in which public authorities exercise mentioned obligations (for example, by preventing the negative consequences of environmental degradation, supporting the activities of citizens to preserve and improve the environment, adhering to a policy that guarantees environmental safety, etc.). [17]

In some constitutions the obligations of the state relating to the protection of the environment is directly connected to a balanced development or sustainable development. These cases also show that these values are ranks among the highest and that they support specific political community. An example of this are the Constitutions of Montenegro, Macedonia, Poland, etc. [17]

Regardless of how the constitution of one state regulates the mentioned law, the mere fact that the state considers it in its highest document shows a clear preference for it to be classified in the highest order of human rights (almost no constitution fails to devote appropriate space to human rights). But it should be noted that the right to a healthy environment is one of the recent human rights and the introduction of a new law in an existing constitutional catalog is not always simple.[14] The proponents of constitutional regulation

of this law emphasize that human rights and human environment are inseparable – in order to live people need air to breathe, food to eat, the place to live. If any of these elements is contaminated, then the man's existence is threatened. Constitutional recognition of this right means the recognition of new values and consideration of new threats to human life. The opponents of this view point out that there are possible complications in terms of geography and weather manifested only regarding this law, not pertaining to other laws. The right to a healthy environment is the right of the present and future generations. This means that the survival of future generations is in our hands, and, among other things, depends on our ability to predict future scientific and technological development. Also, nature knows no political boundaries and environmental pollution in one country can cause a violation of the right to a healthy environment of the citizens in another country. In this case, the state is not able to fully respect the rights of its citizens, because it is a matter that cannot be under the jurisdiction of a single state.[14]

It is an undoubted fact that nowadays the right to a healthy environment has reached the level of constitutional protection. However, the proclamation of this law in the constitutional document cannot in itself ensure the realization of rights. Therefore, laws and regulations that the constitutional provisions specified and elaborated on can have an important role. Also, one should not forget the importance of the role of the competent inspection, the judicial system and the efficiency of legal remedies.

Finally, in addressing environmental issues it is of crucial importance for the very citizens to recognize their severity and complexity. They should be encouraged to have the initiative and participate in decision-making concerning the environment.

ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT IN THE DOCUMENTS OF THE REPUBLIC OF SERBIA

As already mentioned, the Constitution of Serbia in Article 74 stipulates the following: “everyone has the right to a healthy environment and to receive timely and full information about its condition. Everyone, especially the Republic of Serbia and autonomous provinces, is responsible for environmental protection. Everyone is obliged to preserve and improve the environment.” These principle constitutional provisions should be elaborated in numerous laws and by-laws.

Basic laws in the field of environmental protection in Serbia are: Law on Environmental Protection, Law on Environmental Impact Assessment, Law on Strategic Environmental Assessment and Law on Integrated Environmental Pollution Prevention and Control. Some authors advocate that the Law on Nature Protection belongs to this group as well.

Law on Environmental Protection regulates the integral environmental protection system which ensures the realization of the human right to life and development in a healthy environment and the balance between economic development and environmental protection in Serbia. This law pays special attention to the issues such as environmental protection system and duties of its subjects, the basic principles of environmental protection, management of natural resources, measures and conditions of environmental protection, environmental monitoring, public awareness and participation, etc.[9]

Law on Environmental Impact Assessment regulates the impact assessment procedure for projects that may have significant impacts on the environment, the contents of the study on the environmental impact assessment, the participation of interested authorities and organizations and the public, cross-border notification for projects that may have significant impacts on the environment of another state, supervision and other issues of importance for the environmental impact assessment. This law does not apply to projects for the country's defense.[8]

Law on Strategic Environmental Assessment deals with the conditions, manner and procedure for assessing the impact of certain plans and programs on the environment to ensure the protection of the environment and promotion of sustainable development by integrating the basic principles of environmental protection in the process of preparation and adoption of plans and programs. It regulates in detail the procedure of strategic assessment - the subject of strategic assessment, criteria, stages in the process of evaluation, etc.[12]

Law on Integrated Environmental Pollution Prevention and Control deals with the conditions and procedures for issuing integrated permits for installations and activities that may have adverse impacts on human health, the environment or material goods, types of activities and installations, supervision and other issues of importance for the prevention and control of environmental pollution.[10]

Law on Nature Protection regulates the protection and conservation of nature, biological, geological and landscape diversity as part of the environment. It determines nature as the common good for the Republic of Serbia and it enjoys special protection. The objectives of this Law are: protection, preservation and enhancement of biodiversity (genetic, species and ecosystem), geological and landscape diversity, harmonization of human activities, economic and social development plans, programs, and projects with sustainable use of renewable and non-renewable natural resources and long-term preservation of natural ecosystems and natural balance, sustainable use and management of natural resources and goods, protection of their function while preserving natural resources and the natural balance of the ecosystem, timely prevention of human activities that can lead to permanent

depletion of biological, geological and landscape diversity, as well as disorders with negative consequences in nature, establishment and monitoring of the condition of nature, improvement of the condition of damaged parts of nature and landscapes. [11]

In addition to these basic laws, in Serbia there are dozens of laws devoted to the protection of individual segments of the environment. For example, those are: Law on Air Protection, Law on Soil Protection, Law on Noise Protection, Law on Ionizing Radiation Protection and Nuclear Safety, Law on Non-Ionizing Radiation Protection, Law on Water, Law on Chemicals, Law on Waste Management, Law on Packaging and Packaging Waste, etc. It is understood that the application of these laws is facilitated by the by-laws which they elaborate on.

In the area of strategic documents, one of the most important is the National Environmental Protection Programme from 2010.[15] Environmental planning and management is realized by the implementation of the Programme. This programme includes: the description and assessment of the state of the environment, objectives, criteria for enforcement of environmental protection in whole, according to sectors and geographical areas with priority protection measures, conditions for the application of most favorable economic, technical, technological and other measures for sustainable development and environmental management, long-term and short-term measures for prevention, mitigation and control of pollution, carriers, manner and timing of implementation, resources for implementation. Based on the National Environmental Protection Programme, the ministry in charge of the environment is preparing an Action Plan for its implementation adopted by the Government of Serbia for a period of five years.

In addition to the National Programme, the National Strategy of Sustainable Development is also effective.[16] The aim of the Strategy is to balance three key factors, ie. three pillars of sustainable development - sustainable development of economy, industry and technology, sustainable development of society based on social equality and environmental protection with rational use of natural resources. At the same time, the strategy aims to combine these three pillars into a whole that will be supported by relevant institutions. Otherwise, the United Nations, the European Commission and the Organization for Economic Cooperation and Development have developed general guidelines for national sustainable development strategies that can be used both for countries with developed economies, and for countries with economies in transition.[19] The methodology developed by the OECD consists of eight criteria: policy integration, intergenerational timeframe, analysis and evaluation, coordination and institutions, local and regional management, involvement of

interested parties, targets and indicators, monitoring and evaluation.[18]

The situation in the field of the environment is monitored through periodic reports of the competent institutions. For example, in 2008, considered as a whole, the situation in this area could not be characterized as satisfactory. A report from 2009 shows the improvement compared to the previous year. In 2010, the regulation of a number of fields regulating the environment was significantly improved.[13] This trend is continued and legal environmental protection in Serbia is enhanced.

CONCLUSION

Today in the world there is broad agreement that the concept of sustainable development is a hope for the survival and rebirth of our planet. An awareness of the importance of a healthy environment is increasingly stronger in the international community in general, but also in the countries individually. It was necessary to go a long way to come to the conclusion that the transition to a safe and sustainable economy with minimal negative effects on the environment is possible and inevitable.

In this process, legal regulations have an important role. There is a large number of international and national documents which regulate the issue of environmental protection and sustainable development. Many states harmonize their national legislation with international regulations in this area. This is logical, because the environment knows no political boundaries. However, not every country is equally able to establish satisfactory standards in environmental protection. It requires the necessary financial resources to be continuously set aside. It is known that investing in a healthy environment does not make quick and easy political points. It is not always simple to motivate the state governments to turn to this kind of environmentally-oriented policy. However, it is evident that the situation is improving on this subject.

The adoption of quality regulations in this field is only the first step and it is not an easy one. After the adoption, the regulations shall be respected. As a person obeys legal regulations, from their own beliefs about the correctness of behavior that a legal act requires, or out of fear of sanctions that can follow, it is clear that the regulations in the field of environmental protection and sustainable development are a very important means which can act as a powerful corrective to undesirable behavior towards the environment.

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ULOGA EKOLOŠKOG PRAVA U REALIZACIJI ODRŽIVOG RAZVOJA

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Rezime: *Ekološko pravo, kao mlada grana pravne nauke, u novije vreme sve više dobija na aktuelnosti. Kao takvo, ono ima prevashodni zadatak da prouči, definiše i jasno odredi brojne pojmove u domenu zaštite životne sredine. Paralelno sa ovim, ekološko pravo ima još jedan, čini se u ovom trenutku i važniji zadatak, da ponudi adekvatna pravna rešenja u cilju sprečavanja i zaustavljanja dalje degradacije životne sredine, kao gorućeg problema čovečanstava danas. Održivi razvoj i ekološko pravo čine nerazdvojnu celinu. Pravnim aktima propisuju se pravila ponašanja, pored ostalog, i iz domena zaštite životne sredine i održivog razvoja. Veliki je broj međunarodnih i nacionalnih propisa koji za predmet svog regulisanja imaju pitanje održivog razvoja. Kako se čovek pravnim propisima povinuje, ili iz sopstvenog uverenja o ispravnosti ponašanja koje pravni akt nalaže, ili iz straha od sankcije koja može uslediti, jasno je da propisi u oblasti održivog razvoja predstavljaju veoma uticajno sredstvo koje može delovati kao snažan korektiv nepoželjnih ponašanja prema životnoj sredini.*

Ključne reči: ekološko pravo, održivi razvoj, pravni propisi, zaštita životne sredine.