FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 9, N°1, 2011, pp. 35 - 52

Original Scientific Paper

INSTRUMENTS OF ENVIRONMENTAL JUSTICE*

UDC 502.14:342.72/.73

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Abstract. *Environmental justice has been developing as a movement and concept putting emphasis on the redefinition of the essential parts of environmental legislation and judicial protection of civil rights in cases related to environmental protection. Environmental and social justice entails efficient approach to the administrative and legal system whose purpose is to protect rights and implement legislation in the domain of environment and health protection. The Aarhus Convention is fundamentally related to international human rights and fundamental constitutional rights and freedoms. Access to justice, as defined in the Aarhus Convention, is based on the essential human right – that to a fair trial. This connection may be noticed in the link between the Aarhus Convention and other international documents dealing with the protection of human rights, such as the Universal Declaration of Human Rights (1948), International Pact on Civil and Political Rights (1966) and particularly European Convention on Human Rights and Fundamental Freedoms (1950). Standards of criminal law penalize behavior which stands in opposition to environmental provisions. Environmental standards of criminal law introduce criminal penalties so as to suppress illegal activities of legal entities in the domain of environmental law. According to the Recommendation of the European Parliament and Council of Europe, inspection in the environmental domain should be carried out by introducing a minimum of criteria into the organization and conduction of inspection, its procedures (decisions, charges, etc.) and into reporting on the activities of the inspection. The primary role of the environmental lawsuit is to act preventively against activities harming the environment. The environmental lawsuit may prevent the commencement of activities that could harm the environment before such harm occurs. In contrast to comparative law, our current judicial practice does not acknowledge intangible damages for the psychological pain caused by the harmful effect of industrial and adjacent industrial buildings, even though the right to a healthy environment is one of fundamental constitutional rights, paid as such due attention in Europe. According to the*

Received May 25, 2011 / Accepted June 12, 2011
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* The paper is a result of research within the project "Development of Serbian Legal System and Harmonization with EU Law" of Belgrade School of Law

European Commission's Serbia 2010 Progress Report (4.2.3 Environment): "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.".

Key words: *Environmental justice, The Aarhus Convention, environmental criminal offenses, the environmental lawsuit, environmental inspection. Serbia 2010 Progress Report.*

1. ENVIRONMENTAL LAWSUIT

In its history human society has faced numerous challenges marked as global problems. Today there is general consent that environmental protection is such an issue. Testifying to this statement is the fact that in both professional literature and everyday life problems of environmental protection are labeled "environmental crisis", meaning these are "…situations and influences existing in the environmental domain and which endanger the stability and functioning of processes in the biosphere and in society"[1]

In search of the causes of the environmental crisis, experts point at human activities. 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 – the 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 of developed as opposed to 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.[2]

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. [3] The concept basically preserves current economic and social models but introduces the limitation – that future generations must not be deprived because of our current needs. From the viewpoint of global

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[1] Dragoljub Todić, Vid Vukasović, *Environmental Crisis in the World and the Respons of the International Community,* Federal Labor, Healthcare and Social Care Secretariat, Belgrade, 2002, p. 1 (*Ekološka kriza u svetu i odgovor međunarodne zajednice,* Savezni sekretarijat za rad, zdravstvo i socijalno staranje, Beograd, 2002, str. 1.)

[2] Compare: Wilfred Beckerman, *A Poverty of Reason – Sustainable Development and Economic Growth*, The Independent Institute, Oakland, 2003.

[3] The Rio Declaration on Environment and Development (1992)
(Source: http://www. unep.org/Documents.multilin gual/Default.asp? DocumentID=8&ArticleID =1163).

society, and in relation to the protection of the environment, this includes efficient access to "environmental justice".

2. 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.[4] 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 'environmental justice'."[5]

This has been of decisive influence on finding solutions to environmental issues, but also for the establishment of standards and principles of their regulation. 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).[6] On that occasion a UN Environmental Protection Program (UNEP) was instituted.[7] In the period following the Convention there has been an increasing number of international, regional and other organizations dealing with environmental protection, including the European Community (European Union).[8] 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[9], who provides five forms of exercising environmental justice in

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[4] Compare: John Rawls, *A Theory of Justice* (Džon Rols, *Teorija pravde*, CID, Podgorica), 1998.
[5] Brian Baxter, *A Theory of Ecological Justice,* Routledge, London – New York, 2005. p. 6.
[6] Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972, (Source: http://www.unep. org/Documents.multilingual/ Default.asp? DocumentID =97&ArticleID=1503).
[7] UNEP – United Nations Environmental Protection Program (www.unep.org).
[8] Compare: Maria Lee, *EU Environmental Law*, Oxford and Portland, 2005.
[9] R.J. Lazarus, *Pursuing Environmental Justice: The Distributional Effects of Environmental Protection*, 87 *Northwest University Law Review,* 1993, p. 787, quoted after Jonas Ebbeson, *Comparative Introduction*, in Jonas Ebbeson (Ed.), "Access to Justice in Environmental Matters in the EU", Kluwer International, the Hague, 2002, p. 8.

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[10] 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 must be equally accessible to all and, secondly, it must lead to individually and socially just outcomes' (…)]"[11]

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,[12] 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".[13]

The right of access to justice has to do with two basic situations. "First, any person who considers that his or her request for environmental information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the Convention, has access to a review procedure before a court of law or another independent and impartial body established by law" (Article 9/1).Second, each member of the public having a sufficient interest or maintaining impairment of a right, shall have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to "special activities" which may influence the environment (Article 9/2). Access to justice is not limited to cases in which rights to information have been violated in accordance with the Aarhus Convention. Rather, these rights must also be acknowledged so as to enable that the substantive legality of a decision is disputed. Apart from decision pertaining to special activities, the parties shall also ensure access to justice in instances pertaining to other relevant provisions of the Convention (i.e. decisions and plans and programs, "when so provided for by national law" (Article 9/2). (…) Basically, national legislations are allowed to decide on what is reasonable interest and violation of rights, where the two must be accorded with the aims of the Convention so that the public concerned can be given "broad access to justice" (Article 9/3).[14]

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[10] Cappelletti and Garth, *Access to Justice: the Worldwide Movement to Make Rights More Effective* in Cappelletti and Garth (eds.), "Access to Justice, Vol. III, Emerging Issues and Perspectives", Sijthoff and Noordhoff, Alphen an den Rijn, 1979, p. 6, quoted after Jonas Ebbeson, op. cit., p. 8.

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

[12] *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.

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

[14] Jonas Ebbeson, op. cit. *Comparative Introduction*, in Jonas Ebbeson (Ed.), "Access to Justice in Environmental Matters in the EU", Kluwer International, the Hague, 2002, p. 14.

The Aarhus Convention is crucially related to international human rights and fundamental constitutional rights and freedoms. [15] Access to 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 European Convention on Human Rights and Fundamental Freedoms (1950). The European Convention on Human Rights and Fundamental Freedoms 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)[16] 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-à-vis* ECHRB, case law of the European Court of Human Rights provides suggestion as to what is considered to be an independent and impartial body, as defined in the Aarhus Convention."[17] In its practice, the European Court of Human Rights has had a number of cases related to "environmental justice". [18]

3. The Aarhus Convention and Environmental Justice in Serbia

Serbia acceded to the Aarhus Convention and ratified it in May 2009. As the literature claimed: "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 up until now numerous activities have been completed with an 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. However, work in this field so far has unquestionably had a strong influence on a

[15] Compare: Tim Hayward, *Constitutional Environmental Rights*, University Press, Oxford, 2005.
[16] European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. (Source :http://www.mediacenter.org.yu/code/navigate.asp? Id=262)
[17] Jonas Ebbeson, *Comparative Introduction*, u Jonas Ebbeson (Ed.), *Access to Justice in Environmental Matters in the EU*, Kluwer International, the Hague, 2002, p. 15.
[18] Among others the case *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 *Taskin et alia v. Turkey*, application no. 46117/99, judgment of 10 November 2004, related to the license to open a goldmine. An overview of the decisions of the European Court of Justice in environmental cases can be found at: http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId =10272448&skin=hudoc-en&action=request.

quicker and more thorough preparation of the state for the ratification of the Aarhus Convention. Moreover, it is obvious that the mode of work and number of 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 preparing the implementation of the Aarhus Convention should intensify. Essentially, they should include further harmonization of the legislation, establishment of institutional framework for the implementation of the Convention, materials and technical equipment for the institutions, training of staff and further activities for raising public awareness with regard to the Convention." [19]

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 new Serbian Constitution (Official Bulletin of the Republic of Serbia no. 83/2006) 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 (Official Bulletin of the Republic of Serbia no. 120/2004), 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 (Official Bulletin of the Republic of Serbia, no. 135/2004). 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 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, Clause 10).

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

The Environmental Protection Act contains a separate chapter on information and public participation (Articles 78-82). Thus, according to this Act, state authorities, those of the autonomous province, local self government units and authorized and other organizations shall be obliged to regularly, timely and objectively inform the public of the envi-

[19] Sreten Đorđević, Miloš Katić, *A Guide through Practical Implementation of the Aarhus Convention and a Small Environmental Lexicon*, Regional Environmental Center for Central and Eastern Europe, Serbia and Montenegro Office, Belgrade, 2004, pp. 11-13 *(Vodič kroz praktičnu primenu Arhuske konvencije i Mali ekološki rečnik,* Regionalni centar za životnu sredinu za centralnu i istočnu Evropu, Kancelarija u Srbiji i Crnoj Gori, Beograd).

ronmental status, namely phenomena monitored in keeping with the monitoring of imission and emission and warning measures or development of the pollution which may pose threat to human life and health, in compliance with this Act and other regulations. The public is entitled to access statutory registers or records containing the information and data in compliance with this Act." (Article 78).

Information concerning environmental protection shall be forwarded from the competent authority to the applicant within 30 days of the date of submitting such a request. If this information is voluminous or if its preparation would take a longer period of time, the deadline shall be 60 days of the date of submission. The cost of the supply of the data shall be borne by the applicant. The Minister shall prescribe the amount of the costs, depending on the scope and character of the data (Article 79).

A request for information about the environmental protection system may be declined if its publication would adversely affect: a) confidentiality of the state authorities when stipulated by law; b) international relations, national defense and public security; c) the work of the judiciary; d) confidentiality of commercial and industrial data when provided so by law, except for information on emissions endangering the environment; e) intellectual property rights; f) confidentiality of personal data or files when so stipulated by the law; g) interests of the third parties in possession of information and not having the obligation to submit it, i.e. if they have not agreed to publicize it (Article 80).

In compliance with the law, the public shall be entitled to participate in the process of decision-making in: a) strategic assessment of the impact of plans and programs on the environment; b) environmental impact assessment of projects whose realization may result in environmental pollution or threat for environment and human health; c) approving new or existent installations. Participation of the public regarding strategic impact assessment shall be ensured by displaying a spatial and urban plan, or another plan or program to public scrutiny. Participation of the public in decision-making about environmental impact assessment of project implementation shall be carried out through public project presentation and public debate. Participation of the public in decision-making about commissioning new or existent installations shall be carried out during the procedure of issue of an integrated prevention and pollution control permit. The stakeholders shall be informed by public announcement of the procedure for decision-making and shall take part in the process by submitting opinion, comments and suggestions to the competent authority and shall be timely informed about the decision. In order to protect the interests of national security and defense, the Government may limit the participation of the public in decision-making (Article 81).

Finally, the Act defines misdemeanor liability in relation to environmental information and public participation. Thus, a responsible person within competent authority or organization carrying out public authorizations shall have to pay a fine ranging from 5,000 to 20,000 dinars for the offense if he or she submits information contrary to this Act or if he or she does not inform the public timely and truly about his or her activities for which purpose it has been established in a way prescribed in the Fund's Statute or does not provide information on conducting activities upon such request by the public (Article 120, Clauses 16, 18).

4. ENVIRONMENTAL CRIMINAL OFFENSES

In criminal law environmental protection is based on the so-called biocentric conception, which treats the environment as a protected treasure *per se*. This stands in opposition to the earlier, today abandoned, anthropocentric conceptions, which once defined the environment as a resource whose 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 penalize behavior contrary to substantive provisions of environmental nature. "Therefore, 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."[20]

Criminal offenses against the environment are numerous and they vary considerably. Starting from the Criminal Code of Serbia[21] 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).

Pollution of 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 concept of pollution entails causing harmful changes on the said eco-media. Thus, the *Waters Act* defines the concept of "water pollution" as any harmful alteration in the natural composition, content and quality of water, waterbeds, watercourse, and basin.[22]

The Environmental Protection Act defines environmental pollution as "introduction of polluting materials or energy into the environment, caused by human activities or natural processes which has or may have harmful effects on the quality of the environment and

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[20] Slavoljub Popović, *Principal Characteristics of Environmental Law* (*Osnovne karakteristike ekološkog prava*), in Dragoljub Kavran, Gordana Petković, Law and Environment (Pravo i životna sredina), Belgrade, 1997, p. 78.

[21] *Criminal Code*, Official Bulletin of the Republic of Serbia, no. 85/2005.

[22] *Act on Water*, Official Bulletin of the Republic of Serbia, no. 46/1991, 53/1993, 67/1993, 48/1994, 54/1996.

welfare of people". In order for this criminal offense to exist, the pollution had to occur as a result of violating regulations on the protection, conservation, and promotion of the environment.

The basic form of the criminal offense of environmental pollution, defined in Article 260, Paragraph 1 of the Criminal Code, occurs when air, water or soil are polluted to a larger extent or over a wider area. Therefore, for this to be a criminal offense, pollution of one of the three eco-media, to a larger extent or over a wider area, has had to take place. The formulation in question is very broad and imprecise – in criminal law this is called "a general clause". The basic orientation helping define these imprecise conceptions is the determination of borderline values of the pollution of individual eco-media. If carried out with intent, the basic form defined in Article 260 Paragraph 1 shall be punished by imprisonment of up to three years.

A more severe form of the offense is given in Article 260, Paragraph 3. It differs from the basic form in that it results in a more severe consequence, reflected in the destruction of or damage to animal and plant life to a larger extent, or environmental pollution in such an extent that the clean-up requires a longer period of time or major expenses. This implies the need for two qualifying circumstances. The first qualifying circumstance pertains to the interpretation of the phrase "large extent". The Criminal Section of the Supreme Court of Serbia has defined that in environmental offenses a "damage of a large extent" exceeds 4,000,000 dinars. For this particular criminal offense, one may object to the decision to define an amount of money as the primary consequence of committing the offense is not financial, but rather harm to environmental resources: it may perhaps be expressed in terms of money, but this is not the most appropriate option. The second qualifying circumstance is given as one of two alternatives: either a longer period of time is needed for the rehabilitation or the rehabilitation requires major expenses. Both these circumstances suggest the severity of the pollution. In Paragraph 3, for this more severe form, imprisonment of one to eight years is prescribed.

Apart from criminal intent, the criminal offense of environmental pollution can also be committed out of negligence, as defined in Article 260, Paragraph 2. This form also differs in terms of the degree of guilt: it may result in a fine or imprisonment of up to one year. Paragraph 4 reads that if the offense specified in paragraph 2 results in destruction or damage to animal and plant life to a large extent or environmental pollution in such extent that a clean-up requires a longer period of time or major expense, the offender shall be punished by imprisonment of six months to five years.

Paragraph 5 of Article 260 prescribes that if the court pronounces a suspended sentence instead of punishment, it may order the offender to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement. The consequence of the criminal offense is concrete danger to the lives or health of people, i.e. to animal and plant life. Any person can be the perpetrator.

5. ENVIRONMENTAL INSPECTION

Inspection is a specific form of administrative supervision, and it is performed by means of direct insight into applicable legal and actual situations.[23] The aim of inspection is to control the implementation of the law both by citizens and legal entities and by administrative agencies.[24] There are numerous inspections and numerous legal and other regulations covering their organization and activities.[25]

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.[26] 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 Serbian Constitution defines that public administration activities are carried out by ministries.[27] The ministries apply legal acts and other regulations, the general acts of the National Assembly and the Government, and the general acts of the President of the Republic; they make decisions in administrative matters, perform administrative supervision and carry out other tasks defined in by the law.

In its part seven, the *Nature Conservation Act*[28], 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.

Based on the Nature Conservation Act, as the basic act, the following acts have been passed: Act on Strategic Environmental Impact Assessment [29], Act on Environmental Impact Assessment[30] and Act on Integrated Prevention and Control of Environmental Pollution[31] Indirectly, these acts also regulate inspection activities.

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[23] See: Stevan Lilić, *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, 2007, pp. 277–287.

[24] Compare: Stevan Lilić, *Administrative Law / Administrative Procedural Law (Upravno pravo / Upravno procesno pravo)*, Belgrade, 2008, pp. 371–381.

[25] Compare: Đorđije Blažić, *A Contribution to the Theory of Inspection (Prilog teoriji o inspekcijskom nadzoru)*, Legal Life (Pravni život), no. 9, 1995; Đorđije Blažić, *Inspections (Inspekcije)*, Podgorica, 2000.

[26] Compare: Dejan Milenković, *A Collection of Environmental Protection Regulations (Zbirka propisa iz oblasti zaštite životne sredine)*, Belgrade, 2006, pp. 76-87.

[27] Compare: *The Constitution of the Republic of Serbia*, Official Bulletin of the Republic of Serbia, no. 83/2006, Article 136.

[28] *Nature Conservation Act*,Official Bulletin of the Republic of Serbia, no. 135/2004

[29] *Act on Strategic Environmental Impact Assessment*, Official Bulletin of the Republic of Serbia, no. 135/2004.

[30] *Act on Environmental Impact Assessment*, Official Bulletin of the Republic of Serbia, no. 135/2004. This Act regulates the procedure for the assessment of projects that may have significant impact on the environment, the content of the study assessing the environmental influence, supervision and other questions relevant for the

Environmental inspection is incorporated in the work of networks established to build the capacity of the inspection, such as ECENA[32] and INECE.[33]

Ecologists often stress that inspections are inefficient, and the efficiency of inspection can sometimes be put to question due to the lack of equipment. An inspector brought to the scene in the polluter's car, since the inspection often does not have its own means of transportation, can hardly be independent. 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.[34]

The Environmental Protection Agency is a body working under the auspices of the Ministry of Environment, which acts as a legal entity.[35] The Agency carries out professional tasks pertaining to: the collection and analysis of data on the environment and natural resources; it is responsible for the system of supervision, the information system in the environmental domain, and preparation of the national report on the environmental condition; it cooperates with competent international agencies and organizations, in particular the European Environment Agency (EEA) and the European Environment Information and Observation Network (EIONET), as well as other institutions in the field.

According to the Recommendation of the European Parliament and Council of Europe[36] inspection in the domain of environment should be performed by introducing a minimum of criteria: into the organization and performance of inspection, its procedures (decisions, charges, etc.), and also in the reporting on the inspection's activities, which would improve implementation and strengthen EU laws in member states. The basic principles promoted by the Recommendation are: preservation of inspection responsibility of member states; preservation of the appropriate national structure of member states, where the regulations of other inspections are not repealed.

In the EU Recommendation environmental inspection is defined as an activity involving checking and promoting the compliance of "controlled installations" with conditions from the laws, directives, licenses; monitoring the impact of "controlled installations" on the environment. Accordingly, the Recommendation recognizes two types of environmental inspection: (1) routine (regular and planned) environmental inspection whose task is to determine the total influence on the environment, education and promo-

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assessment of the impact of environmental project implementation.

[31] *Act on Integrated Prevention and Control of Environmental Pollution*, Official Bulletin of the Republic of Serbia, no. 135/2004.

[32] *Environmental Compliance and Enforcement Network for Accession (ECENA)* – a network which has been established for countries in the process of EU accession. In addition to Serbia, members of this network are Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro. The European Commission is also a network member. (Source: www.rec.org).

[33] *International Network for Environmental Compliance and Enforcement (INECE)* – whose goals are: raising awareness on complaince and enforcement, development of networks through mutual cooperation, and capacity building with the purpose to meet and implement environmentally defined standards. (Source: www.rec.org).

[34] Jasmina Lazić, Slobodan Bubnjević, *People and Nature without Protection (Ljudi i priroda bez zaštite).* (Source: www.vreme.com/cms/view.php? id=409535).

[35] See: *Act on Ministries,* Official Bulletin of the Republic of Serbia, no. 65/2008, Article 20, Paragraph 3.

[36] Recommendation of the European Parliament ad of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States (2001/331/EC). Source: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_118/l_ 11820010427en00410046.pdf

tion of knowledge of operators and assessment of existing compliances, and (2) non-routine, i.e. *ad hoc* environmental inspection, which performs supervision in such cases in response to complaints, accidents, incidents etc. While performing an inspection, among other things, an environmental inspector has an educational role which consists in promoting the law, familiarizing the operator with new regulations, amendments thereof, etc.

Since 2001 Serbia has been a member of BERCEN - Balkan Environmental Regulatory Compliance and Enforcement Network. The network was established in Albania in 2001.[37] The BERCEN network was founded with an aim to facilitate, aid and promote the enforcement of regulations in the domain of environmental protection in southeast European countries by disseminating information and supporting projects of common interest to all network members. Members of this network are Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia, while Bulgaria and Romania are observers. The European Commission is also a member, and every second yearly meeting of members is held in Brussels. BERCEN members work together on promoting the implementation of environmental legal acts, and on increasing the efficiency of agencies and inspectorates in charge of their implementation. The point is that all inspections should implement all environmental legislations in the same way, by preparing the inspection in the same manner, by using the same or similar check lists in their work in the location, and reporting in the same fashion.

Thanks to our country's participation in the BERCEN, i.e. ECENA network, a number of state environmental protection inspectors have passed a trainer's training for the implementation of the Recommendation providing for minimum criteria for environmental inspections. These people have had an opportunity to familiarize themselves with the work of inspectors in Finland, Germany, Bulgaria, Croatia, etc.

6. THE ENVIRONMENTAL LAWSUIT

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).[38]

Provisions from Article 156 of the Obligations Act, on the request to remove the danger from possible damage, are particularly important for the environment. This Article gives the right to anyone to submit a petition to protect themselves 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 threatens. 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 re-

[37] In 2005 BERCEN changed its name to ECENA.

[38] *Obligations Act*, Official Bulletin of the Socialist Federative Republic of Yugoslavia, no. 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court of Yugoslavia 57/1989 and Official Bulletin of the Federal Republic of Yugoslavia, no. 31/1993 and Official Bulletin of Serbia and Montenegro, no. 1/2003 – the Constitutional Charter.

quest 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.[39]

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 immission theory, which reduced environmental protection to relations among neighbors. However, one should pose the question what "normal values", "considerable damage" and "generally useful activity" are. 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. Thus in our daily reality a rule has been tacitly accepted that inhabitants of certain industrial centers must put up with polluted air, noise and quakes which are much stronger than in some other areas (i.e. Bor, Trepca, Pancevo).

The danger of possible damage must be concrete, where there is a negative interpretation that there is no such danger if "it is quite uncertain and conditioned by an uncertain future event". In a litigation in the 1980s, the plaintiff requested the removal of a hay stack located about 3 meters from his house, with the justification that hay is a highly flammable material and therefore damage can occur." The court took the position that the request should be denied because "in itself, hay is not a dangerous thing, or a highly flammable material that could burn in and of itself, but this could only be done by a third party". This is why, in the court's opinion, the danger does not lie in the actions of the respondent, but might potentially lie in the actions of third persons. This justification shows that there are uncertainties in relation to the grounds for the responsibility for possible damage, i.e. to whether the responsibility in question is subjective or objective.

As for the phrase *concrete danger*, the judicial practice varies considerably. In a case, the court took the position that carrying out an allowed activity (in the given case – butcher business) on the premises above the plaintiff's apartment, at the moment in which the activity had not started yet, posed a danger of noise. In another case, the construction of a cesspool near the plaintiff's well, the same court did not find that this action posed a danger of imminent damage, providing a justification that the danger would commence only when the construction of the cesspool finished. [40] It can be noticed that in two similar cases diametrically opposed positions were taken. "Concreteness", however, should not

[39] Compare: Brian Baxter, *A Theory of Ecological Justice*, Routledge, 2005, str. 77–94.
[40] Compare: Vesna Rakić-Vodinelić, *The Environmental Lawsuit (Ekološka tužba)*, Volume *Environmental Law (Pravo zaštite čovekove okoline)*, edited by Vesna Rakić-Vodinelić, School of Law, Belgrade, 1997, p. 129.

mean allowing that facilities are constructed that would most likely cause damage. Rather, it should mean that such construction is to be prevented.

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. It is considered that the circumstances of the case, in particular the intensity and duration of psychological pain (relevant criteria from Article 200 of the Obligations Act) do not justify the sentence for the provision of fair intangible damages. Clearly, intangible damages are not allowed for the loss of life enthusiasm, shattered comfort and disturbed environment.[41] Factors contributing to a more efficient application of the environmental lawsuit are: the urgency of the judicial procedure initiated by the environmental lawsuit; the legal definition of precise timeframe for scheduling a hearing and making a decision; the introduction of minimal expenses for providing expert opinion, and of lawyers' fees in procedures following an environmental lawsuit.

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 Valjevo sued a poacher so the judge asked that he compensate for the economical value of trouts. 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.[42]

7. INSTEAD OF A CONCLUSION: EUROPEAN COMMISSION'S 2010 SERBIA PROGRESS REPORT (4.2.3. ENVIRONMENT)

The 2010 Serbia Progress Report of the European Commission (4.2.3 Environment)[43] 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 Programme for Environmental Protection (NPEP) 2010–2019 was adopted. The financing projections

[41] Compare: Predrag Trifunović, *Compensation of Damages from Buildings (Naknada štete od objekata)*, Legal Informer (Pravni informator), no. 6, Belgrade, 2006, http://www.informator.co.yu/tekstovi/naknada_606.htm
[42] Source: http://www.vreme.com/cms/view.php?id=409535&print=yes
[43] Euopean Commission, *2010 Serbia Progress Report*, SEC(2010) 1330, {COM(2010) 660}3, Brussels, 2010.

outlined in the NPEP are based on a low-cost scenario and on increased user charges, which will require considerable liberalisation 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 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.

Some progress on water quality has been noted. A new law on water was adopted. Water management is to be financed by the national and the Vojvodina provincial budget, as well as by water fees, concession fees and other funds. Dissuasive water pollution fees are to be paid to the Environmental Protection Fund and to be used for the construction of waste water treatment plants. However, there is still no system to monitor nitrate concentrations in and contamination of groundwater. The wastewater treatment infrastructure throughout the country needs upgrading. The Water Directorate within the Ministry of Agriculture, Forestry and Water Management remains to be strengthened. The administrative capacity of the water directorate was reduced. Progress can be reported on nature protection. Serbia adopted the law on wild game and hunting in March 2010, aligning further with the acquis and international obligations under the Bonn Convention on Conservation of Migratory Species of Wild Animals. Serbia adopted the new law on forests, which provides for a framework to protect the forest against atmospheric pollution and fire. However, the strategy on biodiversity remains to be adopted. On industrial pollution control and risk management there has been some progress. The process of implementing the International Plant Protection Convention has started with the first applications received from existing installations in the cement industry as well as from a new installation for pesticide production. The list of installations which will have to comply with the acquis before 2015 is being revised. Good progress can be reported on chemicals. The Chemicals Agency, a regulatory and implementation body dealing with biocidal products and chemicals became operational

In terms of climate change, good progress can be reported even if a number of important implementation steps remain. The National Strategy for Incorporation of Serbia into the Clean Development Mechanism under the Kyoto Protocol was adopted by the Government in February 2010 for agriculture, forestry and waste management sectors. The first National Communication under the UNFCCC and greenhouse gas inventory is under development and is expected to be finalised in 2010. Serbia also associated itself with the Copenhagen Accord. A national ozone office was established within the Ministry of Environment and Spatial Planning responsible for the phasing out of ozone depleting substances. There has been an improvement in human resources working on climate change but further increase in staff is still needed.

As regards noise, there has been no progress in implementation of the legislation.

In terms of administrative capacity there was little progress. Further training was provided to the environmental protection inspectorates. The Environmental Protection Agency remains fully operational and its performance is improving. The Environmental Protection Fund continues to be active. However, it still lacks the capacity to ensure proper implementation of the integrated monitoring strategy. Budgetary resources for environmental protection remain low. The institutional capacity needs to be strengthened, especially at local level. Better coordination with the central level as well as further enforcement remain necessary.

REFERENCES

1. *Act on Environmental Impact Assessment*, Official Bulletin of the Republic of Serbia, no. 135/2004.
2. Act on Integrated Prevention and Control of Environmental Pollution, Official Bulletin of the Republic of Serbia, no. 135/2004.
3. *Act on Ministries,* Official Bulletin of the Republic of Serbia, no. 65/2008, Article 20, Paragraph 3.
4. *Act on Strategic Environmental Impact Assessment*, Official Bulletin of the Republic of Serbia, no. 135/2004.
5. *Act on Water*, Official Bulletin of the Republic of Serbia, no. 46/1991, 53/1993, 67/1993, 48/1994, 54/1996.
6. 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.
7. Brian Baxter, *A Theory of Ecological Justice,* Routledge, London – New York, 2005. p. 6, p. 77-94.
8. Cappelletti and Garth, Access to Justice: the Worldwide Movement to Make Rights More Effective in Cappelletti and Garth (eds.), "Access to Justice, Vol. III, Emerging Issues and Perspectives", Sijthoff and Noordhoff, Alphen an den Rijn, 1979, p. 6, quoted after Jonas Ebbeson, op. cit., p. 8.
9. *Criminal Code*, Official Bulletin of the Republic of Serbia, no. 85/2005.
10. *Declaration of the United Nations Conference on the Human Environment* (Stockholm Declaration), 1972, (Source: http://www.unep. org/Documents.multilingual/ Default.asp? DocumentID =97&ArticleID=1503).
11. Dejan Milenković, A Collection of Environmental Protection Regulations (Zbirka propisa iz oblasti zaštite životne sredine), Belgrade, 2006, pp. 76-87.
12. Đorđije Blažić, A Contribution to the Theory of Inspection (Prilog teoriji o inspekcijskom nadzoru), Legal Life (Pravni život), no. 9, 1995;
13. Đorđije Blažić, *Inspections (Inspekcije)*, Podgorica, 2000.
14. Dragoljub Todić, Vid Vukasović, Environmental Crisis in the World and the Respons of the International Community, Federal Labor, Healthcare and Social Care Secretariat, Belgrade, 2002, p. 1 (Ekološka kriza u svetu i odgovor međunarodne zajednice, Savezni sekretarijat za rad, zdravstvo i socijalno staranje, Beograd, 2002, str. 1.)
15. Euopean Commission, *2010 Serbia Progress Report*, SEC(2010) 1330, {COM(2010) 660}3, Brussels, 2010.
16. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. (Source: http://www.mediacenter.org.yu/code/navigate.asp? Id=262)
17. Jasmina Lazić, Slobodan Bubnjević, *People and Nature without Protection (Ljudi i priroda bez zaštite).* (Source: www.vreme.com/cms/view.php? id=409535).
18. John Rawls, *A Theory of Justice* (Džon Rols, *Teorija pravde*, CID, Podgorica), 1998.
19. Jonas Ebbeson, op. cit. *Comparative Introduction*, in Jonas Ebbeson (Ed.), "*Access to Justice in Environmental Matters in the EU*", Kluwer International, the Hague, 2002, p. 14.
20. Maria Lee, *EU Environmental Law*, Oxford and Portland, 2005.
21. *Nature Conservation Act*,Official Bulletin of the Republic of Serbia, no. 135/2004
22. *Obligations Act*, Official Bulletin of the Socialist Federative Republic of Yugoslavia, no. 29/1978, 39/1985, 45/1989

23. Predrag Trifunović, *Compensation of Damages from Buildings (Naknada štete od objekata)*, Legal Informer (Pravni informator), no. 6, Belgrade, 2006, http://www.informator.co.yu/tekstovi/naknada_606.htm
24. R.J. Lazarus, Pursuing Environmental Justice: The Distributional Effects of Environmental Protection, 87 Northwest University Law Review, 1993, p. 787,
25. Recommendation of the European Parliament ad of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States (2001/331/EC). Source: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_118/l_ 11820010427en00410046.pdf
26. Slavoljub Popović, *Principal Characteristics of Environmental Law* (*Osnovne karakteristike ekološkog prava*), in Dragoljub Kavran, Gordana Petković, Law and Environment (Pravo i životna sredina), Belgrade,1997, p. 78.
27. Sreten Đorđević, Miloš Katić, *A Guide through Practical Implementation of the Aarhus Convention and a Small Environmental Lexicon*, Regional Environmental Center for Central and Eastern Europe, Serbia and Montenegro Office, Belgrade, 2004, pp. 11-13 *(Vodič kroz praktičnu primenu Arhuske konvencije i Mali ekološki rečnik,* Regionalni centar za životnu sredinu za centralnu i istočnu Evropu, Kancelarija u Srbiji i Crnoj Gori, Beograd).
28. Stevan Lilić, *Administrative Law / Administrative Procedural Law (*Upravno pravo / Upravno procesno pravo*)*, Belgrade, 2008, pp. 371–381.
29. Stevan Lilić, *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, 2007, pp. 277–287.
30. *The Constitution of the Republic of Serbia*, Official Bulletin of the Republic of Serbia, no. 83/2006, Article 136.
31. The Rio Declaration on Environment and Development (1992)
(Source: http://www. unep.org/Documents.multilin gual/Default.asp? DocumentID=8&ArticleID =1163).
32. Tim Hayward, *Constitutional Environmental Rights*, University Press, Oxford, 2005.
33. Vesna Rakić-Vodinelić, *The Environmental Lawsuit (Ekološka tužba)*, Volume *Environmental Law (Pravo zaštite čovekove okoline)*, edited by Vesna Rakić-Vodinelić, School of Law, Belgrade, 1997, p. 129.
34. Wilfred Beckerman, A Poverty of Reason – Sustainable Development and Economic Growth, The Independent Institute, Oakland, 2003.

INSTRUMENTI EKOLOŠKE PRAVDE

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Ekološka pravda razvija se kao pokret i koncept sa naglaskom na redefinisanje suštine zakonodavstva o zaštiti životne sredine i ostvarivanje sudske zaštite građanskih prava u slučajevima koji su povezani sa ekološkom zaštitom. Ekološka i socijalna pravda podrazumeva efikasan pristup administrativnom i pravnom sistemu kako bi prava bila zaštićena i kako bi zakoni u oblasti zaštite zdravlja i životne sredine bili primenjeni. Arhuska konvencija je suštinski povezana sa međunarodnim ljudskim pravima i fundamentalnim ustavnim i pravima i slobodama.

Pristup pravdi, kako je to definisano Arhuskom konvencijom, počiva na osnovnom ljudskom pravu na pravično suđenje. Ovaj odnos se može uočiti u vezi Arhuske konvencije i drugih međunarodnih dokumenata koji se tiču zaštite ljudskih prava, kao što su Univerzalna deklaracija o ljudskim pravima (1948), Međunarodni pakt o građanskim i političkim pravima (1966) i posebno Evropska konvencija o ljudskim pravima i osnovnim slobodama (1950). Normama krivičnog prava sankcioniše se ponašanje koje je suprotno odredbama ekološkog karaktera. Norme krivičnog prava ekološkog karaktera imaju za cilj da krivično-pravnim sankcijama suzbijaju protivpravne radnje pravnih subjekata na području ekološkog prava. Prema Preporuci Evropskog parlamenta i Saveta Evrope inspekcijski nadzor u oblasti zaštite životne sredine treba da se vodi uvođenjem minimalnih kriterijuma u organizaciju i vođenje inspekcijskog nadzora, postupcima (rešenja, prijave i sl.), kao i u način izveštavanja o radu inspekcije. Osnovna uloga ekološke tužbe je preventivno postupanje protiv štetnih delatnosti za životnu sredinu. Ekološkom tužbom se može sprečiti započinjanje delatnosti koje bi mogle štetiti životnoj sredini pre nego što šteta nastupi. Za razliku od uporednog prava, naša aktuelna sudska

praksa ne priznaje nematerijalnu štetu za pretrpljene duševne bolove zbog negativnog uticaja industrijskih i susednih objekata, bez obzira na to što je pravo na zdravu životnu sredinu jedno od osnovnih ustavnih prava i što mu se u Evropi poklanja pažnja.

Prema Izveštaju o Napretku Srbije za 2010. godinu Evropske Komisije (4.2.3. Životna sredina): "Uopšteno govoreći, Srbija je umereno napredovala u oblasti zaštite životne sredine kada se radi o ispunjavanju evropskih standarda. Neophodno je ojačati kapacitete za sprovođenje i primenu zakonskih propisa."

Ključne reči: *ekološka pravda, Arhuska konvencija, ekološka krivična dela, ekološka tužba, ekološka inspekcija, Izveštaj o napretku Srbije za 2010. godinu.*