

Original Scientific Paper

**ENVIRONMENTAL CRIME IN THE REPUBLIC OF SERBIA:
THEORY, PRACTICE AND LEGISLATION**

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Abstract. *There are numerous activities by which human beings harm, destroy, pollute or endanger the environment. Most of these activities are the result of man's conscious omission or failure to abide by the rules, technical guidelines and standards in managing many dangerous sources of energy and raw materials or in handling hazardous appliances and technologies properly. Such misconduct generates a variety of risks, involving incidents of various kinds and scales of magnitude that may affect a specific location and everything within the hazard-affected zone. Such activities, conducted either by individuals, groups and even entire states are illegal and punishable as criminal offences and misdemeanours (delicts). Considering that these activities are related to the unlawful conduct in the field of management, preservation, development and protection of man's immediate living and working environment either on the local or on the global scale, all these diverse types of harmful acts may be called **environmental offences** (ecological delicts). There are several kinds of environmental delicts, whose classification depends on the scope and intensity of the harmful effect on the environment, the specific type of activity at issue, the perpetrator's personality, the general normative framework prescribing specific conduct in the legislative and other regulatory acts, as well as on the kind of penalties prescribed for these specific criminal offences and misdemeanours. In this paper, the author analyses the theoretical and practical aspects of environmental offences as envisaged in the legal solutions of the new Criminal Code of the Republic of Serbia.*

Key words: *environment, legislation, unlawfulness, criminal offence, liability, penalty, criminal justice.*

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INTRODUCTION

As a result of technical and technological development and a huge exploitation of energy sources and raw materials in the course of the 20th century and at the outset of the new millennium, the human labour has been largely substituted or supplemented by different machines, appliances and devices made of metal, plastic or other materials and operated by different driving powers and energy sources. All these machines have indeed enriched, improved and made human life easier but in many ways they have also contributed to the endangerment of human life.¹ On the one hand, a large number of automated and computerized machines using different and often dangerous sources of energy and raw materials have huge production capacity but, on the other hand, they also have the power to destroy or jeopardize human life and health, to endanger the human living and working environment and, thus, imperil the foundations of man's existence, subsistence and survival.²

The use of nuclear, thermonuclear, electrical, solar and other sources of energy have enabled man to submit vast expanses on the planet Earth under his control and to make them accessible to humans in a short while, to penetrate into the depths of the earth, to explore the vast stretches of oceans and the infinite outer space, to break through and get deeper into the secrets of life and nature, to comprehend the secrets of the substantive matter but also to get to know himself. Man has discovered and subdued such forces, created such instruments and invented such technological processes that have largely enabled him to become the master of nature and, to a great extent, of his own destiny. However, all these forces also involve a risk of man's uncontrolled, unprofessional, negligent, accidental or reckless conduct, a danger of expansion and a large-scale destruction of everything standing in their way, which eventually causes immediate danger to the living environment, human life and health.³

The devastating and destructive force of energy, raw materials and machines used in all forms of production and research is not only viable but also quite realistic. There are numerous examples from a distant or recent past bearing witness of various industrial, chemical, oil and other incidents which have caused large-scale environmental disasters. Wild open fires, floods, explosions, damage or breakdown of power plants/production facilities, poisoning and numerous incidents of various type,⁴ scope and duration are frequent phenomena which have serious, detrimental and even catastrophic consequences to the living environment. The consequences of these incidents are huge numbers of casualties, physical injuries and disabilities, health risks as well as substantial material damage to air, water, soil, flora, fauna and other elements which constitute the environment

¹ M. Simović, *Krivično zakonodavstvo i zaštita životne sredine* (Criminal Legislation and Environment Protection), Pravna misao, Sarajevo, no. 11-12/1988, pp. 19-27

² D. Jovašević, *Savremene društvene promene i krivično zakonodavstvo* (Contemporary Social Changes and Criminal Legislation), Izbor sudske prakse, Beograd, no. 9/1995, pp.5-9.

³ Lj. Jovanović, D. Jovašević, *Krivično pravo, posebni deo* (Criminal Law, Special Part), Beograd, 1995, pp. 178-180.

⁴ Ž. Aleksić, *Krivična odgovornost za nehatne i namerne požare, bezbenost i društvena samozaštita* (Criminal Liability for Negligent and Intentional Fires, Environmental Safety and Social Protection), Beograd, no. 4-1984, pp. 42-48

at large.⁵ This dark side of the problem is actually a tribute in blood to the rapid technical and technological development the humankind has gone through in the last half a century.⁶

1. ENVIRONMENT PROTECTION

The environment encompasses natural assets and man-made values created as a result of man's labour, as well as the entire territory inhabited by human beings including human settlements, material goods for general consumption, industrial and other facilities. Considering that the subject matter of environmental law is the regulation, management, protection and preservation of the environment as a whole, we may therefore distinguish two groups of protected assets:⁷ a) *natural environmental assets* such as: natural resources, soil, waters, forests, air, flora and fauna; and b) *man-made environmental assets* created as a result of human labour, which serve to satisfy man's general, communal/collective and individual needs (such as: housing, culture, education, social, religious and other needs). Thus, the principal factors of the living environment are the soil, water, air, flora and fauna which are integral parts of the lithosphere, pedosphere, hydrosphere, atmosphere, biosphere and technosphere. Considering their significance for the human society, its survival and further development, man has developed an elaborate system of environment protection and development. This system is defined as a set of measures and requirements which are to provide for: the preservation and protection of both natural and man-made environmental assets; the protection of human beings and the environment as a whole from pollution; the protection from the impact of harmful and dangerous substances, ionizing and non-ionizing radiation, noise and vibrations; the protection from destruction and degradation of natural resources; this system is also to provide measures and relevant conditions for promoting the quality of the living environment.

In the Republic of Serbia, the environment protection and development system⁸ currently comprises more than a hundred regulations on: housing and urban planning; building; mining; geological research; protection of waters, soil, plants and animals; forests; national parks; waste management; sale of toxic substances; sale and transport of explosives and ultra-hazardous substances, etc. Such a huge regulatory system (governed by a vast number of rules and administered by different state authorities, public services or public companies and agencies working in different sectors) cannot provide for a consistent and coherent environment protection. The economic interests and non-economic rea-

⁵ D. Jovašević, *Odgovornost za ugrožavanje životne sredine po evropskim konvencijama*, Zbornik radova: Sistemska analiza šteta u privredi, osiguranju i preventivno inženjerstvo (Liability for Danger to the Environment under the European Convention, Collection of Papers: Systemic Analysis of Damages in Economy, Insurance and Preventive Engineering), Beograd, 2002, pp. 201-204.

⁶ A. Ljuština, *Pojam i osnovne karakteristike organizovanog ekološkog kriminaliteta*, Zbornik radova: Organizovani kriminalitet - stanje i mere zaštite (The Concept and the Basic Characteristics of Organized Environmental Crime, Collection of Papers: Organized Crime – current state of affairs and protection measures), Beograd, 2005, pp. 713-724

⁷ V. Joldžić, *Krivična, disciplinska i materijalna odgovornost za zagađivanje životne sredine, kaznena politika u oblasti zaštite u svetu i kod nas* (Criminal, Disciplinary and Material Liability for Environment Pollution, Penal policy in the field of Environment Protection in the world and in Serbia), Beograd, 2007, pp. 45-61.

⁸ D. Matijević, *Ekologija kroz sudsku praksu - krivični aspekt* (Ecology in Judicial Practice: Criminal Aspect), Odvjetnik, Zagreb, no. 1-2/1988, pp.40-45

sons have had a predominant influence on the conditions and the manner of exploiting natural resources and material goods, without taking into account the direct or indirect impacts on the environment. Thus far, this kind of approach has featured incompatible action plans and decisions at the national and other levels, as well as an insufficient coordination and activity of all social subjects in the process of protecting and preserving the natural resources, materials goods and the living environment in the territory of the Republic of Serbia. A large number of legislative and regulatory acts lack common goals and uniform objectives, and produce unsatisfactory effects in terms of establishing a responsible relationship and solidarity towards the use of natural resources and environment protection. This allegedly regulated environment protection system actually requires a consequential approach in decision-making processes and implementation of decisions, as well as a synchronized system of legal requirements and measures for environment protection and for the prevention and control of using natural resources and material goods.⁹

For this reason, at the outset of 2002, the Serbian legislator entered the process of drafting new legal solutions aimed at regulating, protecting and promoting the development of the environment as a whole and some of its integral parts: water, air, soil, flora and fauna, etc; the governing idea was to regulate this highly important area on new legal grounds. The complexity and the interrelatedness of environmental phenomena and processes require an integral approach and call for determining the basic principles and conditions for establishing a solid normative framework in the field of managing natural resources and environment protection.¹⁰ Such an integral management of natural assets and environment protection is a contemporary requirement which ensures the necessary balance and harmony between man (and his activities) and nature, and further provides for exercising the right of the contemporary and future generations to live in a healthy environment.

In the process of solving environment protection problems, many countries¹¹ encounter the need to eliminate the consequences of prior pollutions and concurrently exert action to prevent and control the sources of new pollutions. Although all industrial countries have gone or have been going through this process, many of them have started handling these problems by implementing new approaches. They develop integral approaches to managing some natural resources (such as water) or managing all natural resources.¹² In many countries, reducing the impact on the environment by means of promoting and launching waste recycling programs has become a central issue in the environmental protection policy. In countries such as Germany, Switzerland and Denmark, there are clean technology programs (which are either operative or under development) aimed at precluding and reducing waste in general and industrial waste waters in particular. Even

⁹ D. Jovašević, M. Milošević, *Odgovornost za štetu izazvanu požarom i eksplozijom*, Zbornik radova: Sistemska analiza šteta u privredi, osiguranju i preventivno inženjerstvo (Liability for Damages caused by Open Fires and Explosions, Collection of Papers: Systemic Analysis of Damages in Economy, Insurance and Preventive Engineering), Beograd, 2002, pp.201-204.

¹⁰ Đ. Đorđević, *Ugrožavanje života ljudi škodljivim proizvodima* (Endangering Human Life by Harmful Products), *Pravni život*, Beograd, no. 9/2003, pp.191-204

¹¹ D. Jovašević, *Zaštita životne sredine u uporednom krivičnom zakonodavstvu*, Zbornik Fakulteta civilne odbrane (Environment Protection in the Comparative Criminal Legislation), Beograd, 2001, pp. 139-152.

¹² The elaboration of the Draft Act on the Environment Protection System, Government of the Republic of Serbia, Belgrade, 2002

though these efforts are frequently initiated by regulatory acts, there are also initiatives coming from industrial groups and concerned citizens' association.¹³

In the European Union, there is a tendency to provide uniform criteria for preserving and improving the quality of the living environment. The fact of particular relevance in the EU policy is the integration of economic and environmental goals, and the focus on preventive measures. This integration may actually serve as the basis for reaching a consensus on the European goals for further development.¹⁴ In that context, the Republic of Serbia needs an efficient environment protection system, particularly in light of new investment projects and participation of foreign capital. In the forthcoming period, we may expect the first changes in the economic structure in the economically and environmentally endangered regions. The environment protection framework¹⁵ must include a clear and practical set of norms which shall not hinder but stimulate and promote further development. The process of adjusting the legal provisions to these requirements implies taking an immediate and efficient action, measures and activities which will enable the Republic of Serbia to participate in these processes on an equal footing. Such an orientation entails not only international cooperation but also international support.¹⁶

In line with its constitutional orientation, given the fact that the nature of environmental problems justifies the intervention of the state to protect the rights of man and the citizen, and considering that relevant solutions to these problems are inseparable from its development, the Republic of Serbia has established a new concept governing its environment protection system, which is based on: 1) adopting and implementing the decisions which are to ensure a balance between the environment protection and economic development by means of integrating the environment protection into all sectors of state policy; 2) planning and rational use of natural resources, materials goods and energy; 3) applying the regulations by establishing a system of licences, technical and other standards and normative acts, as well as by providing funds, incentives and other environment protection measures; 4) preserving and improving the quality of the environment; 5) monitoring, preventing and limiting the negative impacts on the environment; 6) introducing energy-efficient technologies and ensuring a gradual transition to using renewable natural resources; 7) integrating the economic analysis and environment assessments in the process of estimating the project efficiency and effectiveness in respect of calculating the costs of negative environmental impacts; 8) providing incentives for the production and consumption of products involving the application of clean technologies which reduce the environment pollution and waste production; 9) protecting the endangered or

¹³ D. Jovašević, *Stanje i problemi savremenog krivičnog zakonodavstva*, Zbornik radova Policijske Akademije (The State of Affairs and Problems in the Contemporary Criminal Legislation, Collection of Papers of the Police Academy), Belgrade, no. 1/1995, pp 21-34

¹⁴ D. Jovašević, *Odgovornost za ugrožavanje životne sredine po evropskim konvencijama*, Zbornik radova: Sistemska analiza šteta u privredi, osiguranju i preventivno inženjerstvo (Liability for Endangering the Environment under the European Conventions, Collection of Papers: Systemic Analysis of Damages in Economy, Insurance and Preventive Engineering), Beograd, 2002, pp.201-204.

¹⁵ I. Mecanović, *Zaštita životne sredine i njen pravni režim* (The Environment Protection System), Pravni vjesnik, Osijek, no. 2/1986, pp. 257-269

¹⁶ V. Joldžić, *Krivična, disciplinska i materijalna odgovornost za zagađivanje životne sredine, kaznena politika u oblasti zaštite u svetu i kod nas* (Criminal, Disciplinary and Material Liability for Environment Pollution: Penal Policy on Environment Protection in the world and in Serbia), op.cit. 61-71

hazard-affected areas of special social value; 10) repairing the damage caused to the environment; 11) reducing, reusing and recycling waste; 12) providing educational training and developing awareness about the relevance of environment protection; and 13) ensuring the participation of the general public in environment protection.

Recognizing the danger coming from different forms of violation or endangerment of the environment, the international community has already taken a series of measures to establish a common ground which would provide for instituting the concept of "sustainable development" of the environment. The sustainable development policy reflects a new social relation towards the environment, the living space and natural resources, including man's full awareness of the responsibility for environment protection for the benefit of the generations to come. This rational attitude to using the available natural resources is an imperative of the human existence in a civilized society.¹⁷ The sustainable development may be achieved by adjusting the structure and dynamics of human activities to the structure and dynamics of the environment. It implies the structural, technical and technological changes which will prevent a further degradation of the living environment.¹⁸

In the Republic of Serbia, there is a wide range of legislative and regulatory acts (of varied legal force and authority) which regulate diverse issues pertaining to environment protection as a whole or some of its specific elements: food, water, air, soil, etc.¹⁹ Thus, the Serbian legislator has endeavoured to create a solid legal ground comprised of both legislative and regulatory acts whose binding character would oblige all the participants in social life to abide by these regulations in their everyday life, and which would lay down the grounds for determining liability and imposing relevant punishment for a violation of these legal provisions.

2. TYPES OF ENVIRONMENTAL OFFENCES (*DELICTS*)

Most activities by which man harms, destroys, damages, pollutes or endangers the living environment are the result of man's conscious omission to apply or a failure to abide by the rules, technical guidelines and standards in managing many dangerous sources of energy and raw materials or in handling hazardous appliances and technologies. Such misconduct generates a variety of risks, involving incidents of various kinds and scales of magnitude that may affect a specific location and everything within the hazard-affected zone.²⁰

¹⁷ The United Nations Efforts towards a Better Living Environment, Federal Ministry of Development, Science and Environment, Belgrade, 1997, pp. 1-2

¹⁸ B. Čejović, *Krivično delo izazivanja opšte opasnosti požarom*, *Jugoslovenska revija za kriminologiju i krivično pravo* (The Criminal Offence of causing General Public Danger by Open Fire, *Yugoslav Review for Criminology and Criminal Law*, Beograd, no. 4/1985, pp. 147/161.

¹⁹ V. Gozze Gučetić, *Krivična zaštita čovekove prirodne sredine u SFRJ*, *Jugoslovenska revija za kriminologiju i krivično pravo* (Criminal Law Protection of Man's Natural Environment in SFRY, *Yugoslav Review for Criminology and Criminal Law*, Belgrade, no. 1/1980, pp. 77-87.

²⁰ D. Jovašević, *Krivično delo izazivanje opšte opasnosti – teorijski i praktični aspekt*, *Jugoslovenska revija za kriminologiju i krivično pravo* (The Criminal Act of causing General Danger: theoretical and practical aspect, *Yugoslav Review for Criminology and Criminal Law*, Beograd, no. 3/1999, pp. 49-65.

Such activities, conducted by individuals, groups and even states (particularly by multinational companies) are prohibited, illegal and punishable as criminal offences and misdemeanours (*delicts*). Considering that these activities are related to the unlawful conduct in the field of management, preservation, development and protection of man's immediate living and working environment either on the local or on the global scale, all these different kinds of harmful acts may be called *environmental offences or ecological delicts*²¹ (*ecologia*: Gr. *oikos* – home, habitat and *logos* – science). There are several kinds of environmental delicts, whose classification depends on the scope and intensity of the harmful effect on the environment, the specific type of activity at issue, the perpetrator's personality, the existing general normative framework prescribing specific conduct in the general legislative and other statutory acts, as well as on the kind of penalties prescribed for these specific criminal offences and misdemeanours.²² In this paper, the author analyses the theoretical and practical aspects of environmental offences (delicts) as envisaged in the legal solutions of the new Criminal Code of the Republic of Serbia.

The term "environmental (ecological) delicts"²³ implies an entire range of human activities and conduct by which human beings harm or endanger the social values governing the conditions for preserving, promoting and protecting man's living and working environment.²⁴ These offences (delicts) are only a kind or part of the overall delinquency encountered by a society, an individual state or humanity as a whole in a particular period of time. The feature that distinguishes these delinquent forms of behaviour from other delicts is the protected object (which is defined as a set of social values which are harmed or endangered by these activities); in this specific case, the protected object is man's immediate environment²⁵ on the one hand, and one of the fundamental human rights to live in healthy living conditions, on the other hand.²⁶

It is actually this object of protection that gives rise to the consequence of the undertaken action. The consequence may be twofold: first, the consequence may be expressed as physical damage (destruction, smaller or larger magnitude of harm, or activities that make the living and working environment impossible to use); second, the consequence may be some danger to the environment (including either a specific, concrete, immediate and realistic danger or an abstract danger). This consequence is a result of the commission of an act (active and positive action) or the omission to act (negative or passive action), either in violation of the legal provisions governing the environment protection, preserva-

²¹ M. Andrić, *Privredni prestupi, prekršaji i krivična dela* (Economic Torts, Infractions and Criminal Offences), Beograd, 1982, pp. 17-29

²² D. Jovašević, *Sistem ekoloških krivičnih dela u našem pravnom sistemu* (the System of Environmental Criminal Offences in the Serbian Legal System), *Sudska praksa*, Beograd, no. 12/2003, pp. 60-71

²³ S. Grgurević, *Ekološka stajališta promjena u kaznenom zakonodavstvu*, (The Environmental Standpoints on Change in Penal Legislation), *Socijalna ekologija*, Zagreb, no. 1-2/1999, pp. 67-76

²⁴ D. Jovašević, *Kaznena odgovornost za nepropisan prevoz eksplozivnih i drugih otrovnih materija*, *Zbornik radova: Upravljanje rizikom i osiguranje u industriji, transportu i skladištenju* (Criminal Liability for Unlawful Transport of Explosives and other Poisonous Substances, Collection of Papers: Risk Management and Insurance in Industry, Transport and Storage), Beograd, 2001, pp. 357-360.

²⁵ B. Čejović, *Neki aspekti zaštite životne sredine* (Some Aspects of Environment Protection), *Obeležja*, Priština, no. 2/1976, pp.251-263.

²⁶ M. Arsenovski, *Krivičnopravna zaštita na čovekovata okolina* (Criminal Law Protection of Human Environment), *Bezbednost*, Skopje, no.5/1979, pp.485-498

tion or development or in contravention of some other regulations governing the use of machines, appliances, devices, raw materials, energy sources or other potential source of general danger to man's life or limb and property. Regardless of a number of common characteristics underlying environmental offences (ecological delicts),²⁷ they may be classified into three types of offences: 1) criminal offences,²⁸ 2) economic torts, and 3) misdemeanours (infractions).

The first group includes the most dangerous illicit activities of natural person; by their nature, these activities are criminal offences²⁹ which are subject to the most stringent criminal sanctions. These offences (delicts) are also referred to as environmental crime. Within this group of criminal offences, there are three types of environmental criminal offences.³⁰

1) *real environmental criminal offences* (i.e. environmental offences in a narrow sense) which are systematized in the Serbian Criminal Code within the group of criminal offences against the environment; the immediate object of protection in these offences is the living environment as a whole or some of its integral parts that constitute a healthy and natural environment;

2) *unreal environmental criminal offences* (i.e. environmental offences in a broader sense) which are systematized in the Serbian Criminal Code within some other groups of criminal offences; in these offences, the environment comes under attack only indirectly whereas the primary or prevalent object of attack are some other social values (depending on these criteria, these criminal offences are classified in respective groups of criminal offences),³¹ and

3) *secondary environmental criminal offences*, which are not included in the Serbian Criminal Code (as the basis legislative act in this area) but are classified in a special, secondary criminal legislation. These environmental criminal offences are envisaged in a secondary criminal legislation, which contains legislative acts that regulate the environment as a whole or some of its integral parts but usually within a special chapter located towards the end of the legislative acts; the Chapter titled "*Penal Provisions*" envisages one or more criminal offences classified according to the nature and characteristics of the crime, the type and the degree of punishment which a perpetrator may be awarded in compliance with the envisaged requirements, proceedings and subject to the procedure prescribed in the Serbian Criminal Code. There are three legislative acts which envisage secondary environmental criminal offences: a) the Act on Plants Health Protection; b) the Act on Plant Nutrition Products; and c) the Act on Genetically Modified Organisms. All these secondary legislative acts were adopted in 2009.

Economic torts and misdemeanours (infractions) include various violations of legal rules contained in the legislative or regulatory act which are subject to sanctions pre-

²⁷ D. Jovašević, *Krivičnopravna zaštita životne sredine* (Criminal Law Aspect of Environment Protection), *Sudska praksa*, Beograd, no. 2-3/2002, pp.53-59

²⁸ B. Čejović, *Krivičnopravna zaštita čovekove životne sredine*, (Criminal Law Protection of Human Environment), *Collection of Papers of the Law Faculty in Zagreb*, Zagreb, no. 3-4/1978, pp 353-361

²⁹ D. Jovašević, *Krivično pravo, Opšti deo* (Criminal Law, General Part), Beograd, 2006, pp. 145-148

³⁰ V. Belaj, *Oblici pravne zaštite čovekove okoline od ekoloških štetnih utjecaja* (Legal Protection of Human Environment from Harmful Impacts), *Pravni vjesnik*, Osijek, no. 4/1988, pp 433-447

³¹ A. Ignjatović, *Ugrožavanje ljudi izazivanjem opšte opasnosti* (Endangering Human Life by causing General Danger), *Pravni život*, Beograd, no. 9/1998, pp. 203-211

scribed in tort law or misdemeanour law (penalties or protection measures). These delicts involve a lower degree and intensity of social danger if we take into consideration (at all) that the social danger in these delicts is actually a constituent part or element of the nature of these delicts (which is an isolated opinion in our legal theory). Along with the environmental crime, economic torts and infractions fall into the category of environmental delinquency in a broader sense.

3. ENVIRONMENT PROTECTION IN CRIMINAL LAW

In order to ensure the quality of the living environment and provide for its legal, timely and efficient protection, the Serbian legislator has instituted an elaborate system of environmental delicts. Considering their significance, nature and character, the most distinct among them are environmental criminal offences, as the most dangerous form of environmental delicts.³² The basic or real environmental criminal offences are envisaged in the Criminal Code, primarily within the group of criminal offences against the environment but also in the group of criminal offences against public safety and property.

Yet, in the course of 2009, the Republic of Serbia adopted three environment-related legislative acts which provide for environment protection within a special Chapter titled "*Penal provisions*". The environmental criminal offences envisaged therein are secondary environmental criminal offences. They are not contained in the Serbian Criminal Code but are part of a special, secondary criminal legislation. There are three legislative acts in the secondary criminal legislation which envisage secondary environmental criminal offences: a) the Act on Plants Health Protection; b) the Act on Plant Nutrition Products; and c) the Act on Genetically Modified Organisms.

The protected object in all the environmental criminal offences (real, secondary or unreal) is either the environment as a whole or some of its parts: air, water or soil, flora and fauna, which are violated or harmed either by the commission of an activity or an omission to act. Yet, the most recent conceptions in the legal theory often point out that the object of protection in these criminal offences is the human right to live in a healthy environment, as one of the fundamental human and universal rights of man and the citizen.³³ Environmental crime (environmental criminal offences) is an entire body of illicit activities (performed either by a natural or legal person) and dangerous forms of behaviour aimed against the environment which are subject to criminal sanctions.³⁴ The punishment for these criminal offences is prescribed by the law. Depending on whether the environment is the only or the predominant object under attack, there is a further distinction between: 1) *the basic or real environmental criminal offences* (i.e. environmental criminal offences in a narrow sense) which are only and exclusively aimed against the environment,

³² D. Jovašević, *Sistem ekoloških krivičnih dela u našem pravnom sistemu*, Zbornik radova Fakulteta civilne odbrane (The System of Environmental Criminal Offences in the Serbian Legal System, Collection of Papers of the Faculty of Civil Defence), Beograd, 2002, pp. 187-208

³³ D. Jovašević, *Osnove pravnog uređenja i zaštite od rizika u životnoj sredini*, Zbornik radova Fakulteta civilne odbrane (The Basics of the Legal Regulation and Protection from Environmental Risks, Collection of Papers of the Faculty of Civil Defence), Beograd, 2003, pp.227-253.

³⁴ D. Jovašević, *Komentar Krivičnog zakona SR Jugoslavije* (Commentary on the Criminal Act of SR Yugoslavia, Beograd, 2002, pp.3-14

and 2) other or *secondary environmental criminal offences* (i.e. environmental criminal offences in a broader sense) which are concurrently aimed against the environment as well as against some other social values (such as: general public safety of people and property, human health, etc).³⁵ There are also some other environmental criminal offences which are not contained in the Serbian Criminal Code but which are envisaged in the secondary criminal legislation.

4. THE OBJECT OF PROTECTION IN ENVIRONMENTAL CRIMINAL OFFENCES

In Serbia, environmental criminal offences are envisaged in an elaborate system of legislative acts comprising a vast number of legal solutions which are often mutually incompatible, overlapping, outdated and even archaic. Thus, the Serbian Criminal Code, which entered into force on 1st January 2006, contains provisions on a number of environmental criminal offences which were practically entered into the national legislation on the basis of the undertaken obligations, after signing and ratifying some international agreements, treaties or conventions. Given the fact that environment protection is an area of special interest for the Republic of Serbia (which has been finally guaranteed in the constitutional provision stipulating that Republic of Serbia shall provide and regulate the system for the protection and development of the environment, flora and fauna), it is apparent that a series of national legal acts adopted in 2005 in many ways provide for a comprehensive and efficient protection of this social value.³⁶ In line with these assumptions, the new criminal legislation has established a system of criminal law protection of the environment as a whole and some of its segments, and envisaged criminal liability and a system of criminal sanctions.

The protected object in these real environmental criminal offences (in a narrow sense) is man's living environment. Yet, there is a conception in the criminal law literature³⁷ under which the environment is a complex issue which may be understood in a broad or in a narrow sense, depending on the approach to the problem and the intentions governing its resolution. The environment encompasses natural assets as well as man-created values. Environment protection includes a range of diverse but interrelated values, explicitly prescribed in the legislation which sets forth the conditions for a safe, healthy and efficient life and work of both contemporary and future generations. Therefore, environment protection should encompass the preservation of nature and natural resources, clean air, water and soil, flora and fauna, urban assets, as well as the protection from all kinds of pollution, ionizing radiation, harmful noise, vibrations, etc.³⁸

³⁵ D. Jovašević, *Leksikon krivičnog prava* (Criminal Law Lexicon), Beograd, 2002, p. 347

³⁶ Official Gazette of SR Serbia, no. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and 21/90; and Official Gazette of Republic of Serbia, no. 16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/2002, 11/2002, 80/2002, 39/2003 and 67/2003.

³⁷ D. Jovašević, *Komentar Krivičnog zakona Republike Srbije* (Commentary on the Criminal Act of the Republic of Serbia, Beograd, 2003, pp.356-361; a group of authors, *Komentar Krivičnog zakona Republike Srbije* (Commentary on the Criminal Act of the Republic of Serbia), Beograd, 1995, p.495.

³⁸ D. Jovašević, *Osnove pravnog uređenja i zaštite od rizika u životnoj sredini* (The Basics of the Legal Regulation and Protection against Environmental Risks), Zbornik radova Fakulteta civilne odbrane, Beograd, 2003, pp.227-253; D. Nikolić, *Krivična dela protiv životne sredine*, Zbornik radova: Nove tendencije u nauci

Yet, the criminal law literature also contains a conception under which such a definition of the protected object is disputable³⁹ considering that the object of protection in these criminal offences is human life and health (from new forms of violation, harm or danger) or individual legal assets (such as air, water, soil, flora and fauna) or all these assets and values equally at the same time. Namely, even though the proponents of this conception⁴⁰ perceive the environment as the primary object of protection, they still dispute whether these assets should be understood in terms of eco-media (such as: air, water, soil) or in terms of their particular manifestation forms (flora and fauna), or in terms of protecting the environment as a whole. Therefore, these authors conclude that, according to the grammatical interpretation of the legal provisions on these criminal offences, man's relation to the eco-media and the environment as a whole prevails, as well as the importance of the environment for human subsistence. The environment has another important role in human life: to provide the living conditions for a dignified life and sustainable development of the human society as defined in international legal documents.

In a nutshell, the object of protection in these legal provisions is the human right to live in a healthy environment, without any detrimental or endangering effects and impacts. This right is one of the rights included in the corpus of man's fundamental, primary, principal and natural rights (inseparable from man's essence as a human being); this right is also part of the constitutional assumptions or principles (inaugurated and guaranteed by the constitution).⁴¹ We may come to the same conclusion by interpreting the contents of this legal provision. It is obvious that the primary objective of such a legal solution is the need to preserve and provide for the immediate protection of the living environment from all forms and types of danger.

Yet, if we understand the object of protection in real environmental offences in this way, then we may conclude that the protection is incomplete and partial. First, such protection starts taking effect only when the act of one or more persons has caused imminent, real or specific danger to the environment. Therefore, this protection takes effect *post delictum*. Second, such protection is also incomplete because it does not protect the environment as a whole but only some of its segments, such as: air, water, soil (as expressly envisaged in the law), and only in case that the criminal act has been committed in the manner explicitly stipulated in the law and providing that it involves serious danger on a large scale or in a large area. Therefore, all other forms or types of danger to the envi-

krivičnog prava i naše krivično zakonodavstvo (Criminal Offences against the Environment, Collection of Paper: New Tendencies in the Criminal Law Science: Theory and Serbian Criminal Legislation), Zlatibor, 2005, pp. 227-254

³⁹ B. Tomković, *Krivičnopravna zaštita životne sredine*, Zbornik radova: Jugoslovensko krivično zakonodavstvo i slobode i prava čoveka i građana (Criminal Law Protection of the Environment, Collection of Papers: Yugoslav Criminal Legislation and the Rights and Freedoms of Man and the Citizen), Beograd, 2001, pp.81-85; B. Čejović, *Krivičnopravna zaštita čovekove životne sredine*, (Criminal Law Protection of Human Environment, Collection of Papers of the Law Faculty in Zagreb, Zagreb, no. 3-4/1978, p. 354 onwards.

⁴⁰ Z. Stojanović, O. Perić, *Krivično pravo, Posebni deo* (Criminal Law, Special Part), Beograd, 2002, pp. 204-205; Lj. Jovanović, D. Jovašević, *Krivično pravo 2, Posebni deo* (Criminal Law 2, Special Part), Beograd, 2002, pp. 190-194.

⁴¹ D. Jovašević, *Zaštita životne sredine u uporednom krivičnom zakonodavstvu*, Zbornik radova Fakulteta civilne odbrane (Environment Protection in the Comparative Criminal Legislation, Collection of papers of the Faculty of Civil Defence), Beograd, 2001, pp. 139-152

ronment (those related to causing some danger on a smaller scale or in a smaller area) are not included in this criminal provision; consequently, they are not subject to criminal prosecutions and punishment.

5. GENERAL CHARACTERISTICS OF ENVIRONMENTAL CRIMINAL OFFENCES

In the Republic of Serbia, the system of environmental criminal offences is primarily contained in Chapter 24 of the Criminal Code of 2006, under the heading "*Criminal Offences against the Environment*". These legal provisions explicitly envisage that the object of protection in these criminal offences is the environment. Pursuant to Article 3 of the Serbian Environment Protection Act,⁴² the environment is a set of natural assets and man-made values whose complex relations and interrelatedness constitute man's living and working environment, living space and generate conditions for human life. Such a definition necessarily implies the quality of the environment. The quality of the environment is defined as a state or environmental condition which is expressed by means of physical, chemical, biological, esthetic and other indicators. In such a conception of the environment, we may distinguish diverse values: natural resources, protected natural assets, public natural assets, geo-diversity (geological diversity), bio-diversity (biological diversity), etc.⁴³

The object of protection in these criminal offences may be the environment as a whole or some of its integral elements (air, water, soil, flora and fauna, etc.) which are found in the lithosphere, pedosphere, hydrosphere, biosphere and technosphere. These protected values are the subject matter of diverse regulations both on the national and international level.⁴⁴ In the Republic of Serbia, there is a wide range of legal provisions regulating the protection, preservation, administration and promotion of the living environment, such as: 1) the Environment Protection Act⁴⁵; 2) the Strategic Environmental Impact Assessment Act⁴⁶; 3) the Act on the Integrated Protection and Control of Environment Pollution⁴⁷; 4) the Environmental Impact Assessment Act⁴⁸; 5) the Act on the Protection from Ionizing Radiation and on Nuclear Safety⁴⁹; 6) the Act on the Protection from Non-ionizing Radiation⁵⁰; 7) the Waste Management Act⁵¹; 8) the Act on the Use of Chemicals⁵²; 9) the

⁴² Official Gazette of the Republic of Serbia, no. 135/2004

⁴³ Z. Stojanović, *Krivičnopravna zaštita životne sredine* (Criminal Law Aspect of Environment Protection), Beograd, no 9-1995, pp. 298-302

⁴⁴ D. Jovašević, *Sistem ekoloških krivičnih dela u našem pravnom sistemu*, Zbornik radova Fakulteta civilne odbrane (The System of Environmental Criminal Offences in the Serbian Legal System, Collection of Papers of the Faculty of Civil Defence), Beograd, 2002, pp. 187-208, D. Jovašević, *Sistem ekoloških krivičnih dela u našem pravnom sistemu* (The System of Environmental Criminal Offences in the Serbian Legal System), Sudska praksa, Beograd, no. 11-12/2003, pp. 60-71

⁴⁵ The Official Gazette of the Republic of Serbia, no. 135/2004 and 36/2009

⁴⁶ The Official Gazette of the Republic of Serbia, no. 135/2004

⁴⁷ The Official Gazette of the Republic of Serbia, no. 135/2004

⁴⁸ The Official Gazette of the Republic of Serbia, no. 135/2004 and 36/2009

⁴⁹ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁰ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵¹ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵² The Official Gazette of the Republic of Serbia, no. 36/2009

Act on Biocide Products⁵³; 10) the Act on Packaging and Package Waste⁵⁴; 11) the Act on the Protection and Sustainable Use of Fisheries and Fish Resources⁵⁵; 12) the Nature Protection Act⁵⁶; 13) the Air Protection Act⁵⁷; 14) the Noise Protection Act⁵⁸; 15) the Plant Healthcare Protection Act⁵⁹; 16) the Act on Plant Protection Products⁶⁰; 17) the Act on Plant Nutrition Products and Soil Fertilizers⁶¹; 18) The Food Safety Act⁶²; 19) the Act on the Genetically Modified Organisms⁶³; 20) the Livestock Breeding Act⁶⁴; 21) the Animal Welfare Act⁶⁵; and 22) a number of regulatory act on environment-related issues.

The corpus of these legal provisions is called the environmental law or the law regulating environment protection. These national provisions are more or less in compliance with the international regulations in this area. In the corpus of international rules, we may distinguish two types of regulations: 1) universal regulations adopted by and under the auspices of the United Nations Organization and its bodies; and 2) regional regulations adopted by regional organizations such as the Council of Europe, European Union, etc. Moreover, there are numerous international organizations dealing with diverse issues in the area of environment protection, preservation and development, such as: the UN Commission on Sustainable Development, the UN Environment Program, the UN Development Program, the World Meteorological Organization, etc. As early as in 1986, the European Union (the former EEC) adopted the Single European Act (SEA) which specifies (in Articles 130 p, 130 c and 130 t) that the goals of this organization include the preservation, protection and further development of the quality of the environment, a contribution to human health protection and securing a prudent and rational use of natural resources. In 1993, the EU adopted the Fifth Environmental Policy and Action Program on the environment and sustainable development. In 1995, the EU issued the White Book aimed at preparing the associated states of the Central and Eastern Europe for the EU accession.

These values are protected from all forms of pollution. Under the Serbian Environment Protection Act, pollution is defined as an emission of polluting substances or energy into the environment as a result of human activities or natural processes which have or may have harmful impact and effect (consequences) on the quality of man's immediate environment and human health. The Environment Protection Act also makes a distinction between pollution and the degradation of the environment. The latter concept implies the process of deteriorating the quality of the environment which is a result of some natural processes or human activities, or a consequence of one's omission to take relevant measures to eliminate the cause that deteriorates the quality of the environment or harms the

⁵³ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁴ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁵ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁶ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁷ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁸ The Official Gazette of the Republic of Serbia, no. 36/2009

⁵⁹ The Official Gazette of the Republic of Serbia, no. 41/2009

⁶⁰ The Official Gazette of the Republic of Serbia, no. 41/2009

⁶¹ The Official Gazette of the Republic of Serbia, no. 41/2009

⁶² The Official Gazette of the Republic of Serbia, no. 41/2009

⁶³ The Official Gazette of the Republic of Serbia, no. 41/2009

⁶⁴ The Official Gazette of the Republic of Serbia, no. 41/2009

⁶⁵ The Official Gazette of the Republic of Serbia, no. 41/2009

environment, its natural assets or man-made values.⁶⁶ Indirectly, the object of protection in these criminal provisions is human health of an indefinite number of individuals. Human health is a psycho-physical condition which is characterized by a harmonious operation of all bodily organs and processes which enable a human being to live a normal life, work and be socially productive. The technical and technological development, the general progress of the civilization, the process of industrialization as well as the use of diverse and often dangerous energy sources, raw materials and hazardous appliance has posed various dangers to human life and health, particularly those people who are exposed to such a hazard in a specific location of a hazard-affected zone.⁶⁷

These criminal offences are mostly defined by a *blanket* disposition. It means that their perpetration involves any activity (involving either the commission of an act or an omission to act) which is in contravention of the prescribed regulations or in violation of legal provisions contained in the Environmental Law (as a special branch of Administrative Law). Therefore, in order to make the substantive features of these criminal offences more comprehensive, it is necessary to analyze these other provisions which are not part of the criminal legislation in order to have a complete insight into the kinds of conduct which are considered to be lawful or illicit.⁶⁸

For a criminal offence to exist, there must be a consequence of the undertaken criminal activity (as envisaged in the law), which means that there must be some change or a change of status concerning the object of attack.⁶⁹ The consequence of environmental criminal offences is defined as follows: 1) danger to the environment, and 2) danger to human health. Further on, the danger caused to the protected environmental assets/values may be classified as: a) abstract danger, and b) specific danger. The *specific danger* is a real, concrete and immediate danger to human life, physical integrity and health of another person, or to the environment. It means that there was a considerable degree of certainly or high likelihood of causing damage/harm which did not actually take place in the specific case. This kind of danger is a substantive element of a criminal act which must be proven in each specific case in the course of the criminal proceeding. If there is no specific, real and immediate danger, the criminal act does not exist. The *abstract danger* is a general danger which could have occurred as a result of the undertaken criminal act but it actually did not occur in the specific case. Practically, once the perpetrator has engaged in the perpetration of the criminal act, the consequence is considered to have occurred in the form of an abstract danger to the protected goods. Abstract danger is not a substantive element of a criminal act and it does not have to be proven in court. In order to be qualified as an act involving abstract danger, it is sufficient to show that the perpetrator has undertaken the act of commission, which eventually caused the abstract danger.

⁶⁶ M. Škulić, *Krivičnopravna zaštita životne sredine* (Criminal Law Aspect of Environment Protection), Pravni život, Beograd, no. 9/2001, pp. 257-261

⁶⁷ D. Jovašević, *Krivični zakonik Republike Srbije sa uvodnim komentarom* (The Criminal Code of the Republic of Serbia, with Introductory Remarks), Beograd, 2007, pp. 216-218

⁶⁸ D. Jovašević, *Sistem ekoloških krivičnih dela u našem pravnom sistemu* (The System of Environmental Criminal Offences in the Serbian Legal System), Zbornik radova Fakulteta civilne odbrane, Beograd, 2002, pp. 187-208, D. Jovašević, *Osnove pravnog uređenja i zaštite od rizika u životnoj sredini* (The Basics of the Legal Regulation and Protection from Environmental Risks), Zbornik radova Fakulteta civilne odbrane, Beograd, 2003, pp.227-253

⁶⁹ D. Jovašević, *Krivično pravo, Opšti deo* (Criminal Law, General Part), Beograd, 2006, pp. 189-191

Yet, the consequence in some criminal offences contained in Chapter 24 of the Serbian Criminal Code is damage or harm to the protected assets including: pollution to the environment as a whole or some of its parts: air, water or soil (either by the commission of the act or by an omission to take environment protection measures); the destruction of flora and fauna (either by unlawful construction or by putting in operation some facilities that pollute the environment); the destruction or damage to the protected natural assets or man-made facilities or systems aimed at environment protection (by damaging these facilities and systems, or by destroying, damaging or taking the protected natural goods out of the country).

6. THE SYSTEM OF ENVIRONMENTAL CRIMINAL OFFENCES

The new criminal legislation of the Republic of Serbia recognizes a large number of environmental criminal offences, including⁷⁰: 1) environment pollution (Article 260); 2) omission to take preventive environment protection measures (Art. 261); 3) unlawful construction and operation of facilities and installations which pollute the environment (Art. 262); 4) damage to the facilities and apparatus aimed at environment protection (Art. 263); 5) damage to the environment (Art. 264); 6) destroying, damaging, exporting or importing the protected natural assets (Art. 265); 7) importing dangerous substances and unlawful reproduction, disposal and storage of dangerous substances (Art. 266); 8) illicit construction of nuclear power plants (Art. 267); 9) violation of the right to be informed about the current state of the environment (Art. 268); 10) animal abuse and killing (Art. 272); 11) transmission of contagious animal and plant diseases (Art. 270); 12) malpractice in veterinary services (Art. 271); 13) producing harmful products for treating animals (Art. 272); 14) contamination of livestock food and water (Art. 273); 15) devastation of forests (Art. 274); 16) forest theft by felling timber (Art. 275); 17) poaching game (Art. 276); and 18) poaching fish (Art. 277).⁷¹ Given the nature of this paper, the author will further explore the concept and the basic characteristics of the general, basic or real environmental criminal offences envisaged in the Serbian Criminal Code of 2009.

6.1. Environment Pollution

Environment pollution is one of the basic general environmental criminal offences, which is envisaged in Article 260 of the Serbian Criminal Code. This offence involves the pollution of air, water, or soil on a larger scale or in a larger area by violating the rules on the environment protection, preservation and development.⁷² The concept of pollution is defined in Article 3, paragraph 11 of the Environment Protection Act, under which environment pollution implies an act of contaminating the environment with polluting substances or energy, which is a result of some human activity or natural processes that have or may have detrimental consequences on the quality of the environment and human

⁷⁰ D. Jovašević, *Krivični zakonik Republike Srbije sa uvodnim komentarom* (The Criminal Code of the Republic of Serbia, with Introductory Remarks), Beograd, 2007, pp. 216-220

⁷¹ V. Đurđić, D. Jovašević, *Krivično pravo, Posebni deo* (Criminal Law, Special Part), Beograd, 2006, pp. 170-172

⁷² Lj. Jovanović, *Krivičnopravna zaštita životne sredine*, Zbornik radova: *Zaštita životne sredine* (Criminal Law Aspect of Environment Protection, Collection of Papers: Environment Protection), Niš, 1976, pp 81-95

health.⁷³ The object of protection is the environment (air, water, soil in man's immediate environment). The protection of human environment implies the preservation of nature and its integral elements (water, air and soil, flora and fauna) from poisoning, pollution or destruction. In the legal theory, there are conceptions under which the object of protection is the human right to live in a healthy environment as one of the natural, universal and fundamental human rights.⁷⁴

In this criminal offence, the commission of this act is established on the basis of its consequence;⁷⁵ this criminal offence implies the commission of an act or an omission to act which may give rise to the specific consequence (air, water or soil pollution). This act may encompass different activities, performed in different ways and by using different means; it may include: emission of large quantities of toxic or choking gases into the atmosphere; emission of toxic or polluted waste waters or other harmful substances into the water, rivers, lakes, or soil. For this criminal offence to exist, it is important to establish that the act has been committed,⁷⁶ which implies that: 1) the act must be undertaken in a specific way – in contravention or in violation of the legal provisions governing the environment protection, taking into consideration that the offender's intent (premeditation) must include the perpetrator's awareness and knowledge of the illicit nature of such conduct; and 2) the commission of the act resulted in water, air or soil pollution on a large scale or in a large area. This means that there has to be a more serious consequence: damage or harm. As long as there is no damage or harm, the offender's act may not be qualified as a criminal offence but rather as an economic tort or an infraction. Whether the environment pollution has actually occurred is a factual issue which the competent court has to determine on the merits of each individual case, taking into consideration all the objective and subjective circumstances of the committed act as well as the offender's personality. The consequence of this environmental criminal offence is a specific, imminent, real and immediate danger to human life and health in a specific territory at a specific time.

This act may be committed by any (natural or legal) person but in terms of culpability there are two options: intent (premeditation) and negligence. If it is determined that the act has been committed with premeditation (intent), the prescribed punishment is imprisonment for a term not exceeding 3 years, whereas an act of negligence is sanctioned by a fine or imprisonment for a term not exceeding one year. In case the offender is awarded a conditional (suspended) sentence, the competent court may oblige the offender to take specific measures within a given time to protect, preserve and improve the environment. The omission to act in compliance with such an order may be the legal ground for cancelling the conditional (suspended) sentence.

A more serious (aggravated) form of this environmental criminal offence occurs: 1) if the commission of the act has resulted in an extensive destruction or harm to the flora and

⁷³ Z. Šeparović, *Krivičnopravni problemi zaštite životne sredine* (Criminal Law Issues in Environment Protection), *Naša zakonitost*, Zagreb, no. 11-12/1976, pp.5-14

⁷⁴ D. Lakčević, *Zagađenje životne sredine kao krivično delo* (Environment Pollution as a Criminal Offence), *Bezbednost*, Beograd, no. 3/1978, pp. 288-293

⁷⁵ B. Tomković, *Krivičnopravna zaština životne sredine*, Zbornik radova: Jugoslovensko krivično zakonodavstvo i slobode i prava čoveka i građanina (Criminal Law Aspect of Environment Protection, Collection of papers: Yugoslav Criminal Legislation and the Rights and Freedoms of Man and the Citizen), Beograd, 2001, pp.81-85;

⁷⁶ M. Škulić, *Krivičnopravna zaštita životne sredine* (Criminal Law Aspect of Environment Protection), *Pravni život*, Beograd, no. 9/2001, pp. 257-261

fauna; and 2) if the commission of the act has resulted in such extensive environment pollution that the removal of its consequences will take a long period of time and incur substantial const. This act is qualified by the occurrence of a serious (aggravating) consequence, which must be a result of the offender's negligence.⁷⁷ There must be a causal link (causation) between the committed criminal act and the serious (aggravating) consequences of the committed act. On the merits of each specific case at issue, the competent court is obliged to determine the factual issues concerning whether the consequences have been substantial and whether the removal of the detrimental effects on the environment would take a long period of time or incur substantial expenses. If this act has been committed with intent (premeditation), the prescribed punishment is a term of imprisonment ranging from 1 to 8 years; if the act has been committed negligently, the prescribed punishment is a term of imprisonment ranging from 6 months to 5 years.⁷⁸

6.2. Omission to take Environment Protection Measures

Another basic or real environmental criminal offence envisaged in Article 261 of the Criminal Code is committed by an official or authorized person who does not take the prescribed environment protection measure or does not act in compliance with a decision of a competent authority to undertake a prescribed environment protection measure.⁷⁹ The object of protection is the environment as well as the system of preventive environment protection measures.

This activity is defined as an omission to act (negative or passive action) or a failure to undertake specific activities, the result of which is a danger or risk to the environment as a whole or some of its parts: air, water or soil. This act includes two alternative activities: 1) an omission to take the prescribed environment protection measures, and 2) an omission to act upon the decision of a competent authority to undertake these environment protection measures. Such a definition points to a blanket disposition of this criminal offence because in order to establish the contents of this offence it is first necessary to determine the contents of the legislative and regulatory acts contained in Environmental law in order to establish the contents of the prescribed measures and proceedings as well as the nature of this act; therefore, it is necessary to establish the specific contents of the decision which the competent authority has violated or failed to observe in the specific case (either by inactivity or by improper activity). The consequence of this act is an abstract danger to human life and health.

The perpetrator of this act may only be an official or authorized person in a company, institution or some other legal entity who has the authority to take appropriate environment protection measures (but fails to do so). In terms of culpability, this act may be committed with intent (premeditation) or negligently. If the act has been premeditated, the prescribed punishment is a fine or imprisonment for a term not exceeding one year. In case of an act of negligence, the prescribed punishment is a fine or a term of up to 6

⁷⁷ N. Mrvić –Petrović, *Krivično pravo* (Criminal Law), Beograd, 2005, pp. 287-289

⁷⁸ V. Đurđić, D. Jovašević, *Krivično pravo, Posebni deo* (Criminal Law, Special Part), op.cit., pp. 172-174

⁷⁹ D. Jovašević, *Osnove pravnog uređenja i zaštite od rizika u životnoj sredini*, Zbornik radova Fakulteta civilne odbrane (The Basics of the Legal Regulation and Protection from Environmental Risks, Collection of Papers of the Faculty of Civil Defence), Beograd, 2003, pp.227-253

months' imprisonment. In case the offender is awarded a conditional (suspended) sentence, the competent court may issue an order instructing the offender to take specific measures within a given period of time to protect, preserve and improve the environment. The omission or failure of the convicted offender to abide by the imposed order may be the legal ground for canceling the conditional (suspended) sentence.⁸⁰

A more serious (aggravated) form of this environmental criminal offence occurs if the commission of the act has resulted in extensive environment pollution. The more serious (aggravating) consequence is a result of the offender's negligence, and there must be a causal link (causation) between the committed act and the aggravating consequence of the committed act. If this criminal act has been committed with intent (premeditation), the prescribed punishment is a term of imprisonment ranging from 1 to 8 years; if the act has been committed negligently, the prescribed punishment is a term of imprisonment ranging from 6 months to 5 years.

6.3. Unlawful Construction and Operation of Facilities and Systems Causing Environment Pollution

Unlawful construction and operation of a facility or system which causes environment pollution is the environmental criminal offence envisaged in Article 262 of the Serbian Criminal Code. This act is committed by an official or an authorized person who allows the construction, operation or use of a facility or system, or the application of technologies that cause substantial environment pollution in a larger area, in contravention of the prescribed rules governing the protection, preservation and development of the environment. In this criminal offence, the objects of attack are the facilities, systems or technologies which may cause environment pollution.

This act has a number of alternative forms,⁸¹ such as: 1) issuing a licence for building, setting-up, adaptation, extension or reconstruction of such facilities; 2) construction, including direct or indirect building, installation, assembly, repair or reconstruction of such facilities; 3) putting the facility in operation - direct or indirect activation of these facilities; 4) the use of such facilities for an envisaged purpose; 5) using unclean technologies and technological processes for production or reproduction purposes.⁸² There are two conditions which must be satisfied for this criminal offence to exist: 1) the criminal act must be committed in a specific way in contravention of the prescribed rules governing the environment protection, preservation and development; in order to establish the offender's culpability, the prosecutor has to prove that the offender has been aware of the illicit nature of such a conduct, which points to the blanket disposition of this criminal act; and 2) the consequence of this act must be a substantial harm to the environment in a large territory. On the merits on each specific case, the competent court is obliged to determine as a matter of fact whether the environment pollution has occurred on a large

⁸⁰ M. Tmušić, *Krivičnopravna zaštita životne sredine*, Zbornik radova: Aktuelni problemi suzbijanja kriminaliteta (Criminal Law Aspect of Environment Protection), Beograd, 1993, pp. 123-127

⁸¹ V. Đurđić, D. Jovašević, *Krivično pravo, Posebni deo* (Criminal Law, Special Part), op.cit., pp. 174-175

⁸² L. Medvidović, *Krivična odgovornost za propuštanje preduzimanja mjera zaštite životne i radne sredine* (Criminal Liability for the Omission to take Measures to Protect the Living and Working Environment), Osijek, no. 3/1988, pp. 309-314

scale or in a large area, taking into account all the objective and subjective circumstances of the committed act.⁸³

The perpetrator of this act may only be an official or authorized person working in a legal entity or institution who has the authority to apply relevant technical environment protection measures related to installation, maintenance and use of dangerous or polluting products, facilities and technologies. This criminal act is punishable by a term of imprisonment ranging from 6 months to 5 years. In case the offender is awarded a conditional (suspended) sentence, the competent court may order the offender to take specific measures within a given period of time to protect, preserve and promote the development of the living environment.

A person who has committed a more serious (aggravated) form of this criminal offence may be subject to a term of imprisonment ranging from 1 to 8 years, provide that the act has resulted in a serious (aggravating) consequence which includes: a) a substantial destruction of flora and fauna; or b) substantial water, air or soil pollution in a large territory.⁸⁴ The aggravating circumstance may be a result of the offender's negligence and there must be a causal link (causation) between the committed act and the aggravating consequence, which must have exerted a substantial impact in a larger territory for a longer period of time. On the merits of each specific case, the competent court is obliged to determine the factual issues concerning whether the substantive environment pollution or a large-scale destruction of the flora and fauna has actually occurred, and whether the removal of the detrimental effects on the environment would take a long period of time, taking into consideration all the relevant objective and subjective circumstances of the committed act.

6.4. Damage to Facilities and Apparatus for Environment Protection

Article 263 of the Serbian Criminal Code has envisaged a criminal offence which implies damage, destruction, removal or any other activity aimed at making a facility or apparatus for environment protection inoperative or unfit to serve its purpose. The object of protection in this environmental offence is the environment while the objects of attack are the facilities and apparatus for environment protection. These facilities and apparatus are specifically defined in the legal provisions contained in the environmental law legislative and regulatory acts.⁸⁵

The committed act may include a number of alternative activities⁸⁶ envisaged in the law: 1) damage – which implies causing temporary, short-term or partial damage to facilities or apparatus and making them unfit for their original purpose for a shorter or longer period of time, but which may become operative again by repairing the damage or by replacement of some spare parts; 2) destruction – which implies a final and permanent destruction of the material the object is made of or disfiguring the object in such a way

⁸³ B. Čejović, V. Miladinović, *Krivično pravo, Posebni deo* (Criminal Law, Special Part), Niš, 1995, pp 272-273

⁸⁴ D. Matijević, *Ekologija kroz sudsku praksu - krivični aspekt* (Ecology in the Judicial Practice: Criminal Aspect), Odvjetnik, Zagreb, no. 1-2/1988, pp.40-48

⁸⁵ Z. Stojanović, O. Perić, *Krivično pravo, Posebni deo* (Criminal Law, Special Part), Beograd, 2000, pp. 201-203

⁸⁶ D. Lakčević, *Zagađenje životne sredine kao krivično delo* (Environment Pollution as a Criminal Offence), Bezbednost, Beograd, no, 3/1978, pp. 288-294

that it may not serve its original purpose any longer; 3) removal – which implies an act of moving or removing an object from its original location where it served its intended purpose into another (usually unknown) location; 4) making the object inoperative in some other way – which includes other activities which make the object impracticable to serve its original purpose in general or for a long period of time without exerting a direct impact on the object, its shape, or substance/material it is made of.⁸⁷ It is important that the object of attack in this criminal act (irrespective of its forms) have been the facilities and apparatus used for environment protection as a whole or some of its parts: air, water or soil. The consequence of this criminal act is an abstract, general danger to human life and health, or to human environment.

The perpetrator of this criminal offence may be any natural or legal person but in terms of culpability there are two options: premeditation (intent) and negligence. If the act has been premeditated, the prescribed punishment is imprisonment for a term not exceeding 3 years, whereas an act of negligence is sanctioned by a fine or imprisonment for a term not exceeding one year. In case the offender is awarded a conditional (suspended) sentence, the competent court may order the offender to take specific measures within a given time limit to protect, preserve and improve the living environment. The omission to abide by this obligation may be the legal ground for cancelling the conditional (suspended) sentence.

There are two serious (aggravated) forms of this criminal offence, for the commission of which the legislator has prescribed more serious punishment. The first aggravated form of this criminal offence occurs if the committed act has been a result of the offender's negligence which caused air, water or soil pollution of a larger scale or in a larger area. Whether a substantive pollution has actually occurred in a larger area is a factual issue which the competent court is obliged to determine on the merits of each individual case at issue. On the other hand, if the basic criminal act has been committed with intent (premeditation), the prescribed punishment is a term of imprisonment ranging from 6 months to 5 years. If the act has been committed negligently, the prescribed punishment is a term of imprisonment not exceeding 3 years. The second aggravated form of this criminal offence occurs in case the perpetrator's negligent act has resulted in a serious consequence, which may be discerned as: 1) destruction or substantial damage/harm to the flora and fauna; and 2) extensive environment pollution which implies that the removal of its consequences will take a longer time and incur huge costs and expenses. On the merits of each individual case, the competent court is obliged to determine whether such extensive consequences have occurred and whether the removal of these consequences would require a longer time or incur considerable costs and expenses. If the basic serious criminal act has been committed with premeditation (intent), it is punishable by a term of imprisonment not exceeding 8 years; if the act has been committed negligently, it is punishable by a term of imprisonment ranging from 6 months to 5 years.

⁸⁷ B. Čejović, V. Miladinović, *Krivično pravo, Posebni deo* (Criminal law, Special part), Niš, 1995, pp 272-273

6.5. Damage to the Environment

Article 264 of the Serbian Criminal Code envisages a criminal offence which implies a substantial damage or harm to the environment in a larger territory by violating the prescribed legal provisions, exploiting natural resources, construction of facilities, performing any kind of works or in some other way.⁸⁸ The object of protection is the environment.

This criminal offence involve a number of alternative activities: 1) exploitation of natural resources – which implies the use of natural resources and products of nature in any way, including logging woods /cutting down trees, redirecting water-flows, making dams, excavating minerals, etc; 2) construction of facilities – which implies building objects of different size or capacity, type of ownership or for any purpose (for housing, tourist industry or industrial facilities) or facilities for private purposes (residential houses, weekend houses, etc); and 3) performing any kind of works involving natural resources for any purpose, scope and duration. This criminal offence exists only if these activities have been undertaken in a specific manner: a) in violation of the prescribed legal provisions (involving either a commission of an act or an omission to act in contravention of the provisions on environment protection; and b) in some other way. The consequence of this criminal act is some substantial damage or harm to the environment to a large extent or in a larger area.

The perpetrator of this criminal offence may be any natural or legal person but in terms of culpability there are two options: premeditation (intent) and negligence. If the act has been committed with intent (premeditation), the prescribed punishment is a term of imprisonment not exceeding 3 years; an act of negligence is sanctioned by a fine or a term of imprisonment not exceeding one year. In case the offender is awarded a conditional (suspended) sentence, the competent court may order the offender to take specific measures aimed at protecting, preserving and promoting the development of the environment. The omission to abide by the imposed obligation may be the legal ground for the cancelling the conditional sentence.

CONCLUSION

In the Republic of Serbia, the environmental criminal offences were primarily regulated in Chapter 24 of the Criminal Code of 2006, under the heading "*Criminal Offences against the Environment*". The object of protection in these legal provisions is the environment. Pursuant to Article 3 of the Serbian Environment Protection Act, the environment is a set of natural assets and man-made values whose complex relations and interrelatedness constitute man's living and working environment, living space and generate conditions for human life. Such a definition necessarily implies the quality of the environment. The quality of the environment is defined as a state or environmental condition which is expressed by means of physical, chemical, biological, esthetic and other indicators. In such a conception of the living environment, we may distinguish a wide range of values: natural resources, protected natural assets, public natural assets, geo-diversity (geological diversity), bio-diversity (biological diversity), etc.

⁸⁸ V. Đurđić, D. Jovašević, *Krivično pravo, Posebni deo* (Criminal Law, Special part), op.cit., pp. 176

The object of protection in these criminal offences is the environment as a whole or some of its integral elements (air, water, soil, flora and fauna, etc.) which are found in the lithosphere, pedosphere, hydrosphere, biosphere and technosphere. These protected values are the subject matter of diverse regulations both on the national and international level. In the Republic of Serbia, there is a wide range of legal provisions regulating the protection, preservation, administration and promotion of the living environment, such as: 1) the Environment Protection Act; 2) the Strategic Environmental Impact Assessment Act; 3) the Act on the Integrated Protection and Control of Environment Pollution; 4) the Environmental Impact Assessment Act; 5) the Waters Protection Act; and 6) a series of other legislative and regulatory acts. The corpus of these provisions is called the environmental law or the law regulating environment protection.

All these national legal provisions are more or less in compliance with the international regulations in this area. In the corpus of international rules on this issue, we may distinguish two types of regulations: 1) universal regulations adopted by and under the auspices of the United Nations Organization and its bodies; and 2) regional regulations adopted by regional organizations such as the Council of Europe, European Union, etc. Moreover, there are numerous international organizations dealing with diverse issues in the area of environment protection, preservation and development, such as: the UN Commission on Sustainable Development, the UN Environment Program, the UN Development Program, the World Meteorological Organisation, etc.

These values are protected from all forms of pollution. Under the Serbian Environment Protection Act, pollution is defined as an emission of polluting substances or energy into the environment, which is a result of human activities or natural processes which have or may have harmful impact and effect (consequences) on the quality of man's immediate environment and human health. The Environment Protection Act also makes a distinction between pollution and the degradation of the environment. The latter concept implies the process of deteriorating the quality of the environment which is a result of some natural processes or human activities, or a consequence of one's omission to take relevant measures to eliminate the cause that deteriorates the quality of the environment or harms the environment, its natural assets or man-made values. Indirectly, the object of protection in these criminal provisions is human health of indefinite number of individual. Human health is a psycho-physical condition which is characterized by a harmonious operation of all bodily organs and processes which enable a human being to live a normal life, work and be socially productive. The technical and technological development, the general progress of the civilization, the process of industrialization as well as the use of diverse and often dangerous energy sources, raw materials and hazardous appliance have posed various dangers to human life and health, particularly those people who are exposed to such a hazard in a specific location of a hazard-affected zone.

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EKOLOŠKI KRIMINALITET U SRBIJI - TEORIJA, PRAKSA, ZAKONODAVSTVO -

Dragan Jovašević

Delatnosti kojima čovek povređuje, uništava, oštećuje, zagađuje ili ugrožava životnu sredinu rezultat su svesnog propuštanja ili neprimenjivanja pravila, tehničkih uputstava i standarda u rukovanju brojnim opasnim izvorima energije i sirovina, odnosno pri rukovanju ili postupanju na drugi način opasnim uređajima čime se stvaraju uslovi za rizik od akcidenata raznih vrsta, obima i dimenzija zahvatajući određeni prostor i sve što se u njemu nađe, u zoni dejstva ovako prouzrokovane

opasnosti. Takve delatnosti pojedinaca i grupa, pa čak i čitavih država predstavljaju nedozvoljena, zabranjena i kažnjiva, odnosno deliktna ponašanja ili delikte. Pošto se radi o nedozvoljenim ponašanjima u oblasti uređenja, čuvanja, unapređenja i zaštite čovekove životne i radne sredine u široj ili užoj okolini, to se sve ove vrste delikata mogu nazvati ekološkim deliktima. Zavisno od obima i intenziteta prouzrokovane posledice na životnu sredinu, preduzete delatnosti, svojstva učinioca delikta i propisanosti određenog ponašanja u zakonima i drugim podzakonskim aktima opšteg karaktera, te vrste propisanih sankcija, razlikuje se više ekoloških delikata od kojih su najznačajnija ekološka krivična dela o čijim teorijskim i praktičnim karakteristikama, shodno rešenjima iz novog Krivičnog zakonika Republike Srbije, govori ovaj rad.

Ključne reči: životna sredina, zakon, protivpravnost, krivično delo, odgovornost, kazna, sud.