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## **NEW SERBIAN LEGISLATION IN THE FIELD OF ENVIRONMENTAL PROTECTION AND ITS APPLICABILITY ON THE WATERWAY OF THE DANUBE**

### **Introduction**

The Danube river connects thirteen European states. In the segment flowing through the Republic of Serbia a Danube waterway has been formed, covering parts of the Danube, Tisa, Timok river basins as well as the basins of the Mlava and Pek rivers (pursuant to Art. 6 of the current Law on Waters 1996). The Danube has been designated as Corridor No. 7<sup>1</sup> due to its exceptional economic, as well as social importance for all countries through which it flows. However, in the current legislation of the Republic of Serbia, only certain abstract norms relating to the protection of waters as goods of a general public interest can be found.<sup>2</sup> Any pollution of the environment, including that of waters in general, must be avoided or at least brought down to a bearable level. Furthermore, at the same time, there is a tendency towards maintaining the qua-

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<sup>1</sup> Susedski program Bugarska- SRbija i Crna Gora, Zajednički programski dokumenti 2004-2006

<sup>2</sup> Granične vrednosti emisija za vode: Projekat JUGOLEX, razvoj propisa o zaštiti životne sredine u Srbiji i Crnoj Gori, zbornik radova, urednici prof. dr Slavko Bogdanović and prof. dr Božo Dalmacija, Novi Sad, 2005.

lity of all water in the Republic of Serbia in the I, II and IIb class, or undertaking measures to bring them of to such a level.<sup>3</sup>

In late 2004, a new set of laws having to do with environmental protection was passed, in accordance with modern tendencies in this field, while primarily with the legislation of the European Union. It should be noted that Serbia and Montenegro are not signatories to any of the more important international acts, such as the Aarhus Convention, nor are they obliged to implement standards deriving from the legal acts of the EU, such as the IPPC Directive. However, there has been a noticeable incorporation of certain segments of the mentioned acts into the new domestic legislation by which, at least in this field, there is a movement towards the EU. The new laws are as follows: Law on Environmental Protection, Law on the Assessment of Consequences on the Environment, Law on the Strategic Assessment of Consequences on the Environment, and the Law on the Integrated Prevention and Control of Pollution. The mentioned laws were published in the Official Journal of the Republic of Serbia No. 135 on 21 December 2004 and came into effect eight days later, i.e. 29 December.

In this paper the author will briefly present their content, as well as the possibility for their implementation for the protection the Danube as a separate natural resource.

### **Law on Environmental Protection**

As the foundation of this Law, Article 1 determines the integral system for environmental protection that is to secure the realization of the rights of man to life and development in a healthy environmental and a balanced relationship between economic development and the environment. The to a healthy environment belongs to the latest generation of fundamental human rights and freedoms, guaranteed by all universal international acts. From this right we derive further and other rights, the content of which is tied to the environment on a global scale, i.e. flora and fauna, as well as certain segments of social life (e.g. the right to work in a smokefree environment, etc.). Being that environmental law has numerous common points with the field of civil law, Article 108 of this Law establishes the fitting application of the Law on Obligations in cases where certain situations are not regulated by this Law.

An important aspect of this Law is that Article 4 establishes the opportunity for citizens as individuals to appear as subjects within the environmental system and not only through associations. Furthermore, the next article of the Law,

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<sup>3</sup> Prostorni plan Republike Srbije za 2004. godinu

provides for the responsibility of the mentioned subjects to undertake measures for the protection of the environment. Based on this it can be concluded that the domestic legislation has recognized the institute of *actio popularis* – an action which any person may bring against a state in the case of damages, or simply if there exists the possibility of damages being incurred that may endanger the environment. The same is confirmed in Article 7, within the framework of the principle of the protection of the right to a healthy environment, wherein the right to court access is addressed explicitly (as is done in the Aarhus Convention). The mentioned provisions of the Law, albeit of a general character, may be relevant to the protection of the Danube, as an irreplaceable natural resource.

In accordance with the Republic of Serbia Spatial Plan wherein the long-term goal is the maintenance of appropriate quality of river water, which either completely or just partially flows through the Republic of Serbia, is the establishment of appropriate treatment for water usage, its encumbrance<sup>4</sup> as well as the discharge of wastewater. None of these activities, regardless on its overall necessity, may be allowed to lessen the quality of water and the possibility for its multipurpose use (Art. 23 of the Law).

It should be mentioned that as early as 2003, thus before the initiation of the new Law on Environmental Protection, the Project for the Reduction of Pollution in the River Danube from Plants in Serbia was initiated, which was an investment by the GEF Foundation for the reduction of nutrients in the Black Sea and the Danube Basin. Initial information that was used as the foundation for this project was rather disappointing. Serbia and Montenegro is the third largest polluter of the Danube Basin of all the countries through which it flows according to the amount of spilled nitrogen (13%) and second according to the amount of phosphorus and its compounds (14%)<sup>5</sup>. Therefore, the goals of this Project was to establish and promote sustainable production and good agricultural practice by which the Danube Basin environment would not be endangered. In that sense, as a form of support for further efforts in that attaining of the mentioned goals, there is Art. 23(3) of the Law on Environmental Protection which states that “measures for the protection of waters secure the prevention of limiting of the introduction of dangerous, waste and other matters, tracking and assessing the quality of surface and underground waters, as well as the quality of wastewater and its filtering.”

Also of importance in this Law is the possibility of participation of the public in the decision-making process and the assessment of consequences of plans and programs on the environment, particularly with projects whose realization may bring about pollution or presents a risk to the environment.

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<sup>4</sup> In the sense of industrial complexes, hydroelectric power stations, etc.

<sup>5</sup> The Danube River Basin District – Danube Basin Analysis (WFD Roof Report) 2004

Furthermore, participation of the public is also possible in procedure for work approval for new or the expansion of already existing plants in the form of public presentations and discussions.

Another innovation is the Foundation for Environmental Protection which was formed in order to secure financial resources for the promotion of protection and enhancement of the environment.

### **Law on the Assessment of Consequences on the Environment and the Law on the Strategic Assessment of Consequences on the Environment**

These are two completely new laws dealing with a subject which has been completely foreign to our legislation up until now. Moreover, the Government of the Republic of Serbia has issued a list of project for which an assessment must (mandatory) or may (facultative) be carried out, particularly due to the potential effect these projects may have on the environment. The second mentioned law governs the procedure for the assessment of consequences of projects on the environment. As a secondary goal, the enhancement of sustainable development through the integration of basic principles of environmental protection within the procedure for the implantation and adoption of plans and programs has been established.

The procedure itself shall be carried out in three phases: decision on the need for assessment of the consequences of the project on the environment, determining the scope and content of the study and deciding on giving approval to the given study. Being that no single aspect of the environment is singled out in the mentioned laws, one may conclude that these may be applied in cases having to do with projects for the exploitation of the Danube in any shape or form. On the other hand, the authority of state bodies in such procedures is rather clearly defined, whereby there is little room for incorrect interpretations.

### **Law on the Integrated Prevention and Control of Pollution**

In this case as well, this is a law dealing with a completely new subject. Its content is in accordance with the so-called IPPC Directive of the EU enacted in 1999, which was preceded by dozens of other directives, which referred to different aspects of environmental protection. Up until now, the Directive has

been implemented into the legal systems of Sweden<sup>6</sup>, Finland, Estonia, Slovenia and other Member States of the EU.

The very issue of development and implementation of the IPPC system in Serbia, in accordance with the norms of the European Union, entails further comprehensive research. The introduction of this system in Serbia is one of the subjects of negotiations for the signing of the stabilization and association agreement and for accession to the EU, which has been approved for Serbia and Montenegro (albeit only orally). The Law on Integrated Prevention in that sense presents merely an initial phase of this project, being that the foundations of this Directive are accepted, as well as the principles of precaution, sustainable development and publicity. Special attention within this Law is given to the principle of publicity or the availability of information. Unfortunately, there is no further mention of neither form of public participation or access to the courts<sup>7</sup> in cases where there exists the possibility for damager or the endangering of the environment.

In that sense, special attention is given to the so-called bordering values of emissions, in pursuance with Directive 2000/60/EC of the European Parliament and Council of 23 October by which a Community framework for action in water policy is established. Bordering emissions are defined as an instrument for the attainment of the goal of good standing of all waters, within the framework of action plans for every river basin. In this way, efficient control of the consequences of human activity may be carried out for each river basin.

### **Special Activities of State Bodies Regarding the State of the Danube Basin**

In the last few years there has been an evident intensified activity of state bodies in the development and sustaining of awareness about environmental protection, in accordance with the latest legal tendencies in this field. Consequently, a special project entitled JUGOLEX has been initiated, the goal of which is to present the development of regulations on environmental protection in

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<sup>6</sup> In Sweden, a similar system has been in force since 1969, see: Helena Lindemark: Implementation of the IPPC Directive in Sweden. The text is available at [www.yugolex.co.yu](http://www.yugolex.co.yu).

<sup>7</sup> Access to the courts or access to justice carries the connotation of a fundamental human right, thereby representing a principle of contemporary civilization. Its value cannot be lessened based on the case for which the realization of this right is being requested, i.e. every case, whether it has to do with parental rights or environmental protection, is equally valuable and deserves an opportunity to be discussed adequately before a court. Ludwing Kramer: Protection of the Environment and the Citizen, Resource Management Journal, 1999.

Serbia and Montenegro. The Project has been receiving financial support from Finland, logistic support has been given by the relevant ministries of Finland and Serbia and Montenegro.

Furthermore, a project for the cross-border cooperation between Serbia and Montenegro and Bulgaria has been initiated and will last until 2006, as well as a Project for the Reduction of Pollution in the Danube River from Plants in Serbia. The Office for the Protection of the Environment which exists within the Ministry of Science and Environment of the Republic of Serbia has initiated the enacting of the set of laws on environmental protection. It has also participated in a number of important international projects, having particularly to do with the state of the Danube Basin, such as the Aquaterra Danube Survey<sup>8</sup>, as well as the work of the expert group of the International Commission for the Protection of the Danube River.

This unique intensification of activity in this field, particularly regarding the preservation of the Danube River, points to the high level of awareness and need for establishing and maintaining sustainable development of the environment in Serbia and Montenegro. The Danube River, being a main waterway for a large number of European states, represents a symbol of evolution of the states through which it flows. It is in itself the single best promoter of their cooperation, whereby any intensification of activity for its physical preservation is only a way towards deepening such cooperation. The new Serbian legislation in the field of environmental protection has taken this direction.

## Conclusion

It is clear, that new serbia legislation has taken a queit new direction, by implementing some very important provisins of the relevantna international conventions. The newly recognized need for establishing and maintaining sustainable development of the environment in Serbia and Montenegro has a special significance, as it is heading to make closer ties with EU and its environmental law, as far as with relevant international principles of protecting the environment.

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<sup>8</sup> The full name of the Project is: "Understanding the River-Sediment-Land-Underground Water Interaction for the purpose of enhancing Water Management," see Report on the Working of the Office for Protection of the Environment in 2004, Belgrade, December 2004.

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***Abstract***

In late 2004, a new set of laws having to do with environmental protection was passed, in accordance with modern tendencies in this field, while primarily with the legislation of the European Union: Law on Environmental Protection, Law on the Assessment of Consequences on the Environment, Law on the Strategic Assessment of Consequences on the Environment, and the Law on the Integrated Prevention and Control of Pollution. In this paper the author will briefly present their content, as well as the possibility for their implementation for the protection of the Danube as a separate natural resource.