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**LEGAL PROTECTION OF VALUES, RIGHTS
AND OBLIGATIONS ESTABLISHED BY THE
ECOLOGY (ENVIRONMENTAL) LAW, WITH SPECIAL
EMPHASIS ON MISDEMEANOR NORMS**

This paper observes the Ecology (Environmental) Law as the scientific and, at the same time, practical discipline, which also requires its adequate guaranties within the provisions of penal law. The author of this paper discusses principally those of criminal guaranties, which are considered the most numerous, explaining the matter with the examples from the legislation the Republic of Serbia, but also highlighting the legislative solutions of other states, as well as scientific and research papers analyzing the same topic in the context of other countries and legal systems.

Key words: Environment, environmental penal law elements, environmental offences.

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1. Introduction

If we wish Ecology Law to exist as a scientific, and, at the same time, practical discipline, we also need adequate penal law guaranties that will ensure this. Having in mind the fact that environmental law is in the process of constant development as well as the environmental protection, the author of this paper has initiated a special research project: “Environmental Penal Law – Roots, Logic and Structure of Environmental Offences” in 2011, as a part of the Project 47011 “Crime in Serbia, Phenomenology, Risk and Social Prevention” conducted by the Institute of Criminological and Sociological Research and financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia. The efforts made within this project represent the continuation and further development of previous results of the author’s wider reflections on the following topics:

1. Environmental Penal Law, possibilities to excerpt it as a special law theoretical and at the same time practical discipline and

2. the roots, logic and structure of Environmental Penal Law

The author has previously discussed the first theoretical elements that primarily treat the questions of environmental crimes as well of penal politics connected with such incriminated acts in this scientific work (Joldzic, V. 1995a, 1995b, 2007), dedicated to the issues related to penal law and material responsibility for environmental offences, in both - the Republic of Serbia as well as worldwide.

Penal law in general incriminates and prescribes a variety of sentences for all behaviors that: a) endanger, or b) harm, not only common values and qualities, such as life and material goods, but other values too. It should not be forgotten that the development of penal law over time has led, in almost all countries, to the development of two categories of punishable behaviors: 1. Crimes, and 2. Offenses (also known as the *misdemeanors* and *infringements*). The explanation of the basic elements of these two categories is of utmost importance for the effective protection of environmental rights, values and relations. This protection is based on the norms of laws and bylaws, which are either environmentally oriented, or relevant to both - environmental as well as some other issues.

The most important part of the overall Penal Law is the so-called Criminal Law. Criminal Law, especially as a practical discipline, can be observed as the entity formed through: 1. the norms of so called *Basic Criminal Law*, located in the texts of Criminal Code(s) or criminal legislation(s)¹, and 2. the norms of the *Secondary* (Subsidiary) *Criminal Law*, constituted from many criminal law norms

1 See logic of criminal legislatures, for example: French Pénal Code, German Criminal Code and United States of America Federal Criminal Code.

(articles) integrated in numerous but rather different legal acts, which treat different problems, the acts that are not criminal laws, but contain a number of articles that can be considered as the provisions of criminal law, and that are commonly placed at the end of these legal documents.

At this place it should be pointed out that Japan, for example, in the *Basic Criminal Law* “Criminal Code of the Year 1907”, only one norm (Article 211) can be applied to the protection of humans from injuries or death induced by negative environmental impacts. At the same time, Japan has a purely environmentally, but also human-oriented, criminal code that belongs to the so-called *Secondary Criminal law*: “Law No 142”. The specificity of the relevant law is expressed in the fact that it prescribes criminal liability of both - natural as well as legal persons, exclusively for the environmental crimes (Kentsuku, 2001: 278). In that context, it should be highlighted that crimes are more serious injuries of certain social values and often, but not always, legally established relations, than the offences. One should also take into consideration the fact that the offenses differ in relation to crimes, starting from the fact that laws that established them are constituted from the following elements: at first place, in every state, a special legal act that regulates this law breach generally². This means that this special legal act particularly inducts: 1.1. Who can commit the offence, 1.2. the forms of the offence, 1.3. When and under which conditions can be the responsibility for the offence manifested; and 2. special laws that establish actual offences and their sanctions³.

At this point, one more fact should be taken into account. Unlike most countries, the Republic of Serbia, as well as the other countries that had emerged from the former Yugoslavia, is not familiar only with the crimes and offences, but also with the third category of punishable acts: Economical offences. About this category of penal acts we had discussed in detail in our earlier books (1995a: 47, 1995b: 27-45, 2013). More than 40 environmental crimes regulated by current legislation of the Republic of Serbia have been further explained and thoroughly analysed in a book published within the aforementioned macro Project 47011 (Joldžić, Jovašević, 2012). But this research also indicates that in reality such penal acts are far less present than the environmental offences defined by the elements of positive legislation. That is the reason why the second phase of the research Project 47011, has been oriented towards numerous issues that need to be resolved in the field of environmental values and rights and their protection by the norms that define offences. Some of those questions are briefly explained in this paper.

2 Such example is Misdemeanour Law, *Official Gazette of the Republic of Serbia*, No. 101/2005, 116/2008, and 111/2009.

3 Republic of Serbia Misdemeanour Law, Article 4.

2. The role and ways of including the offences into the protection of the respect of environmental values, relationships and obligations.

2.1. How the ecological offences can be determined?

For the explanation of the environmental offences we shall use some examples of the Republic of Serbia legislature. Since 2005, the Serbian Law on Misdemeanors has had the starting and, at the same time, key and principal role in this process. Its “Article 2 - “Misdemeanors Definition”, within Paragraph 1, defines offence as “an illegal, offended and performed doing which is by the norm designated as offence”. This law also prescribes that nobody can be punished for some offence if such specific activity had not been previously enacted and incriminated as punishable (Art. 3).

The first logical question is: On which bases can offences generally be determined? (which refers to the environmental offences as well). Formally, on the distinct norms’ base that define them precisely. Practically all the modern legislations (including Serbian) define environmental offences starting from some formally and precisely defined substantial-legal base, which refers to the norms that establish: 1. Environmental rights, 2. Environmental values, 3. Environmental obligations, 4. Duties of various subjects, and 5. Environmental responsibilities. From this point of view, it is clear that environmental offences are formally defined (enacted) offences based on strong substantial-legal, often substantial-legal and accompanied by sub-legal base⁴. This basis establishes obligatory elements of legal relations of importance for the environmental values, rights, relations, duties and responsibilities, as well as of their protection via adequate environmental offences. This clearly means that logical essence of the environmental offences has been formed not only by the actual offence norm but, almost always, by the accompanied obligatory elements from laws and bylaws that regulate legal relations of importance for the environmental values, rights, duties and responsibilities, thus providing a basis for prescribing punishment for their endangerment and/or injury.

4 Sub-legal as supplementary elements.

2.2. *The logic of the systematization of environmental norms as well as norms of environmental offences*

As it has been explained previously, within the author's earlier studies and books that established and discuss the General Part of Environmental Law (Joldžić, V., 1988, 1996a and 1999), so-called Special Part of the Environmental Law, starting from the knowledge of the General Part of Environmental Law, is in logical obligation to direct its' energy towards the cognition and understanding of the growing mass of the environmental legal relationships, to define them more precisely and, of course, to *systematize* them. Only in such manner can the quality of complex mosaic of the rules incriminating environmental offences be developed and explained. We also point at the fact that environmental norms, as the elements of the environmental legislations, thus also as formal and material-legal base for environmental offences formulating, can be, in this theoretical but at the same time practical and concretized approach, observed, thus systematized, methodologically starting from *general* toward *particular*, as: 1. General rules, placed in legal acts of so called *lex generalis* category, 2. Entities of separated rules, legislative texts located in so called *lex specialis*, and 3. Entities of singular rules, named (at *Latin*) as *lex singulum*⁵. In this process of considering the formation of the *Systematic of the Environmental Offences Law*, we, at first place, have to aim our attention at its general predecessor: *Systematic of the so called Separate Part of the Environmental Law*. Of course, based on actual legislature of the observed state, taking into consideration that all the mentioned norms are automatically of importance to adequately form *Systematic of the Environmental Offences (Misdemeanors) Law*.

Into *Systematic of the Separate Part of Environmental Law* logically belong distinct entities that we (Joldžić, V, 2011: 96-97) named as: 1. - General rules and other texts that form the basement for protection of the environment generally, as well as the rules that treat the elements of the environment that have to be specially protected in a general way (Joldžić, 2011: 101-259), 2 - Rules that treat nature generally and especially protected natural values, 3. - Waters, 4 - Air, 5 - Land, 6 - Forests, 7 - Plant and animal world, 8 - Hunting and fishing, 9 - Mining, 10 - Ionizing radiation, 11 - Nuclear safety, 12 - Loudness, 13 - Dangerous materials, 14 - Poisons, 15 - Accidental situations, 16 - Traffic, 17 - Construction, especially 17.1 - Construction of objects, and 17.2 - Ambience arranging, 18 - Waste, 19 - Cultural properties, and 20 - Legal norms which are hard to classify, but can be described as “the other group objects”, but which can also be internally classified.

5 Nearly every state possess such laws that treat one singular problem, not two or more identical.

Each of the aforementioned group objects can be, at the same time, observed as the object of importance and base for the: Ecology (Environmental) Law mosaic forming, and also for Ecology (Environmental) Offences defining. We observe them with law-logical order, starting from generally oriented norms toward the norms of lower hierarchical level (Joldzic, 2011: 91-92), which are of importance for the environmental regulating as well as environmental penal law elements that protect them.

Having in mind the fact that the environmental legal texts are mainly of complex (*L. blanket*) nature, with logical beings formed not by one but by the elements from two or more norms, in reality we have the duty to analyze them, observing at first place legislative texts, but also the elements off bylaws if they are mentioned in observed articles of environmental laws and laws of importance for the environment also.

2.3. Offences generally oriented towards the protection of the environment and their substantial-legal fundamentals

Excellent examples of previously explained legal - logical approach, can be observed in actual legal and accompanying bylaws, for example of: Sweden⁶, Norway⁷, Germany⁸, Great Britain⁹... In the Republic of Serbia, this had been represented within the “Law on Nature Protection (1975)” (adopted more than 40 years ago), and after that, within the “Law on the Environment (1991)” and current “Law on the Protection of Environment (2004)”. Precise elements of the actual “Law on the Protection of Environment” provide the framework and the ground for the forming of environmental offences. This law: 1. Makes environmental protection fundamentals, 2. Regulates adequate relations to them, and 3. Forms obligations for relevant entities to adopt and apply a series of specialized laws regulating: air, water, soil, forestry, ionizing radiation, waste, *etc.*

6 Kingdom of Sweden, Environment Protection Act.

7 Act No 63 of 19th June 1970 relating to nature conservation.

8 See the following German laws: Bundesnaturschutzgesetz (Law on the Protection of Nature and Care for Land), Year 1976, Gesetz uber die Umwelthaftung (Law on the Responsibility for Environmental Contravention), Year 1990, and latest: Bundesnaturschutzgesetzes (Law on the Protection of Nature and Care for Land), Year 2009.

9 Environmental Protection Act, Great Britain, 1990.

2.4. *Offences Regulating the Protection of the Environment based on specialized legal fundamentals*

As it has already been pointed out, while explaining the *Systematics of the Separate Part of the Environmental Law*, some twenty specially designated group objects of ecological importance exist in a large number of laws and complementary bylaws (rulebooks, regulations, standards, lists of substances...) and of significance for the environmental offences defining. Only a few examples of these from Serbian national legislation are presented in this paper, relevant to the protection of basic environmental values that are, at the same time, considered eco-mediums: air, water and soil.

Air is protected by the norms of the “Law on air protection”, among them also with the articles that define a number of offences directed against air protection rules. To be precise, articles 81, 82 and 83, prescribe a number of different violations of environmental regulations. But the texts of those norms are not sufficient to precisely determine the essence of those offences. That is the reason why the so-called *supplemental elements* are required, which complete the constructions of their logical beings, the elements emerging in a series of laws and, also, sub-legal documents referred to as “regulations”. Among them, the utmost significance is given to those that regulate:

- a. Which activities and installations with volatile compounds (voc) emissions shall be controlled,
- b. Which substances are important for the protection of the ozone layer,
- c. Limited values of air pollutant emissions, and especially, and
- d. Limited values of air pollutant emissions from stationary sources of pollution.
- e. Waters are protected by the elements of the “Law on waters (year 2010)”, and the elements which also are of importance to determine whether in a particular case is, or is not, expressed the element of some ecological offence determined not only by the articles of this law (articles: 212, 213 and 214) but also the elements of few sub-law texts¹⁰.

The general treatment of soil is regulated by the “Law on soil protection (2015)” (articles 44-47). Additional elements, which are necessary for the finding of a distortion or damage to the observed land area, are given by the specific

10 See, especially: Regulation on emission limit values for pollutants in waters and the deadlines for their reaching, Regulation on emission limit values for pollutants in surface and ground waters and sediments and the deadlines for their reaching, and Regulation on limited values of priority substances and priority hazardous substances polluting surface waters, and the deadlines for their reaching.

bylaw - Regulation on the limit values of polluting, dangerous and hazardous materials in the soil (2018).

The protection of other environmental values is regulated in the same way, including the protection of these values from the violations directed against them. For example, if we observe mining, we must take into consideration the provisions of the “Law on Mining and Geological Research (2015)”, which in its 13th chapter, with the articles 182-186, establishes basic elements for more than 15 offences. Most of them have logical beings completed with the norms of some 31 specific sub-laws (rule books) specifically regulating the field of mining. The same can be said for the protection from waste pollution, regulated by the specialized “Law on Waste (2009)” and also by the accompanying sub-legal texts. The same can also be concluded for the “Law on chemicals”, especially its articles 98-101, which define basically formulated elements of the environmental offences, offences that also have to be completed with some of sub-legal texts elements¹¹. Similar assumption can be made for “Law on Waste Management” accompanied with adequate sub-law texts (provisions)¹², as well as for the other group objects¹³ protected by the norms that establish environmental offences.

3. Apparatus and Conditions Necessary for the Offences Treatment – the Questions of Principled Approach

When analyzing the role and forms of offences relevant to the protection of environmental values, relationships and obligations, it has been explained: 1. How the ecological offenses can be determined, 2. How the establishment of the classification of environmental norms as well as norms of environmental offences has been made, 3. Offences generally directed towards the protection of the en-

11 See, for example: Rulebook on the import and export of certain hazardous chemicals, Rulebook on the manner of performing chemical safety assessment, and the content of the chemical safety report, and Rulebook on classification, packaging, labeling and advertising of chemicals and certain products in accordance with the globally harmonized system of classification and labeling of the united.

12 For example: Provisions on the documentation submitted in the procedure for the issuance of import-export and transit permits, The provisions on the criteria for determining the location and disposal of waste materials to waste disposal site, Provision on the conditions and the method of selection, packaging and storage of secondary material, Provisions on the handling of hazardous waste, and Provision of the construction of the liquid oil and the gas storage and loading of liquefied petroleum gas.

13 For which the Law on Environmental Protection, with the Article 10, clearly stipulates the need and obligation for our State to establish specialized laws. Such laws, few dozens of them, had so far been formed by the actual legislature.

environment and their material-legal fundaments, and 4. Offences directed towards the protection of the environment based on specialized legal fundaments.

But for practical approach to the observed matter the knowledge about the norms of importance for the environmental offences is required. We are familiar with the fact that *Ecology (Environmental) Law*, thus environmental legislations also, form substantial-legal bases for *Environmental Offences* legislation. However, they do not comprise all the elements necessary for their understanding and application. Norms of general importance for the treatment of offences in every state are systematized within a special law dedicated to this matter, law that regulates the general issues of importance to all offenses threatening. Such law “Law on Minor Offences” exists in the Republic of Serbia also. The analysis of this law provides the answers about the general substantial and procedural questions important for the environmental offences. Basic substantial questions of importance for the environmental offences are: 1. Who prescribes the offence, 2. Why the offences are prescribed, 3. Who is responsible for the offence, and 4. Which of sanctions are of special importance for the environmental offences? Basic procedural question are: 1. Who, 2. Where, and 3. When, starts and implements *offences procedure* for environmental problems?

“Law on Minor Offences” proclaims that “Offences may be prescribed by law or regulation, or decision of the Assembly of the Autonomous Province, the Municipal Assembly of the City Assembly and the City Assembly of Belgrade (Law on Minor Offences, Article 4, paragraph 1)”, in order to refrain from committing them (Art. 5, par. 2). It also prescribes that the following entities may be responsible for the offences: individuals, entrepreneurs, legal persons and responsible persons within legal persons (articles: 17, 18, 27 and 27). This law clearly prescribes that sanctions of special importance for the treatment of the environmental offences are: 1. Penalties (Art. 32, paragraph 1, under 1, and Art. 32.) and 2. Protective measure (Art. 32, paragraph 1, under 4 and also Articles 51 and 52.).

In the Republic of Serbia, the following protective measures are of special importance for the environmental offences,: 1. Subtraction of the object (Art. 52, paragraph 1, under 1 and Art 54), 2. Prohibition of carrying out certain activities (Art. 52, paragraph 1, under 2 and Art. 55), 3. Prohibition of the legal person to perform specific activities (Art. 52, paragraph 1, under 2 and Art 56), and 4. Denying access to the injured party, to protected objects or place of the delicts execution (Art. 52, paragraph 1, under 8 and Art. 61).

The research and analysis of current legislation suggests that, in general, the sanctions for some environmental offence can be imposed by: 1. Competent court, at the request of the prosecutor (Art. 87, paragraph 1, under 1 and art. 127),

and 2. Authorized body, or person authorized for misdemeanor threatening, in accordance with the law (Art. 87, paragraph 1, under 2, and Art. 128).

Authorized officers, primarily inspectors, can impose a fine (also known as the *mandate* and *pecuniary*), up to a certain height (Art. 168, 169 and 179). The competent authority often makes its decision, about the environmental offence, basing it on the expertise (Art. 218). Powers and procedures of inspectors needed for the protection of the environmental rights values and relationships, as we explained, are regulated by a number of laws (Joldžić, V, 2010), usually in their finishing parts. Knowing them in this momentum in the Republic of Serbia we can single out the following inspectorates: 1. Republic inspectorate for the protection of environment (part of Ministry competent for the environment), 2. Agricultural inspectorate, 3. Water inspectorate, 4. Phyto-sanitary inspectorate, 5. Veterinary inspectorate, 6. Forestry inspectorate, 7. Hunting, and 8. Fishing inspectorates, 9. Building inspectorate, 10. Communal inspectorate, 11. Town planning inspectorate, 12. Road-ways inspectorate, 13. Railway inspectorate, 14. Inner navigation inspectorate, 15. Sanitary inspectorate, 16. Pharmaceutical inspectorate, 17. Workmanship inspectorate, 18. Market inspectorate, 19. Traffic police, 20. Fire inspectorate, 21. Electro-energy inspectorate, 22. Inspectorate for utensils under pressure, and 23. Mining inspectorate. All mentioned inspectorates, which exist not only in Serbia but practically in every state, although not always under the identical names, had been formed and their authorizations, obligations, duties and responsibilities have been précised through numerous legal acts in force. All the mentioned inspectorates will be present, in the future also, with the same obligations, duties and responsibilities, having many of such obligations and duties not only regulated by our inherent legal products but also as the answer at demands from the ratified convention of global or local importance.

4. Conclusions

When discussing the environmental offences, we need to have in mind the fact that this matter is constantly changing. These changes largely depend on the continuous development of the economy and supporting technology, and loads of new products, hence the constant multiplying and growing of environmental problems. All this requires new laws, sub-laws and especially standards. This has to be recognized as the process constantly present at the international level and, at the same time, at the territory of the Republic of Serbia. Hence we have a permanent obligation to improve environmental legislation, including it's' penalty environmental elements.

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