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PREKRŠAJNOPRAVNA ZAŠTITA ŽIVOTNE SREDINE OD BUKE**

SAŽETAK: Neretko se za prekršaje kaže da predstavljaju predvorje odgovornosti za krivična dela. Posmatrano sa tog aspekta, svrha kažnjavanja za prekršaj naročito dobija na značaju u oblasti kao što je zaštita životne sredine, imajući u vidu nepovratnu, nekada i nesagledivu štetu koja može nastati kao posledica krivičnog dela. Kroz odgovornost za prekršaj može se sprečiti dalje kršenje propisa i eventualno prouzrokovanje teže štete.

Zaštita životne sredine uređena je kroz veći broj zakona i podzakonskih akata, od kojih se u doktrini poseban naglasak stavlja na primenu Zakona o zaštiti životne sredine, kao sistemskog zakona u ovoj oblasti. Sa druge strane, analiza primene sektorskih zakona kojima se detaljnije uređuju posebni načini zaštite životne sredine zavređuje pažnju autora upravo zbog svoje specifičnosti i naročite usmerenosti na pojedine oblike delikata. Stoga je fokus ovog rada sektorska zaštita životne sredine od buke i istraživanje načina primene propisa u praksi.

Ključne reči: buka, prekršaj, životna sredina, javni red i mir

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UVOD

Prekršajnopravna zaštita životne sredine blaža je od krivičnopravne zaštite, ali je efikasnija i ekonomičnija, naročito kada je propisana novčana kazna u fiksnom iznosu u kom slučaju nadležni organ izdaje prekršajni nalog¹. Analizirajući prekršajnopravnu zaštitu životne sredine i upravljanje otpadom, pojedini autori zaključuju da je ona u određenim slučajevima od nemerljivog značaja, te da je efikasnija od krivičnopravne zaštite zbog brzine i manjeg obima formalizma prekršajnog postupka kao i zbog učestalije odgovornosti pravnih lica za prekršaj u odnosu na retku odgovornost pravnih lica za krivična dela.²

Tatjana Živković u svom istraživanju podnetih prijava za privredne presteupe i prekršaje republičkih inspeksijskih organa prilikom vršenja inspeksijskog nadzora nad primenom Zakona o zaštiti životne sredine u periodu 2010–2011. godine, ukazuje da postoji incidenca malog broja prekršaja u odnosu na ukupan broj prekršaja koji su propisani navedenim zakonom. Iz navedenog razloga, citirani autor zaključuje da možda nije bilo nužno da zakonodavac toliko široko propiše zonu inkriminacije ovim sistemskim zakonom s obzirom da u sektorskim zakonima iz oblasti zaštite životne sredine takođe postoji kazneno-pravna zaštita.³

Zaštita životne sredine uređena je kroz veći broj zakona i podzakonskih akata, od kojih se u doktrini poseban naglasak stavlja na primenu Zakona o zaštiti životne sredine, kao sistemskog zakona u ovoj oblasti. S druge strane, analiza primene sektorskih zakona kojima se detaljnije uređuju posebni načini zaštite životne sredine zavređuje pažnju autora upravo zbog svoje specifičnosti i naročite usmerenosti na pojedine oblike delikata. Stoga se fokus ovog rada odnosi na sektorsku zaštitu životne sredine od buke i na istraživanje načina primene propisa u praksi kako bi se utvrdila incidenca pojedinih prekršaja i ishoda postupaka.

PRAVNI OKVIR ZAŠTITE ŽIVOTNE SREDINE OD BUKE U EVROPSKOJ UNIJI

„Izvori prava EU u oblasti zaštite životne sredine i prava čoveka na zdravu životnu sredinu mogu se podeliti na dve osnovne grupe: primarne

¹ Stajić, LJ. (2018) Praksa Prekršajnog suda u Novom Sadu u oblasti zaštite životne sredine. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 52 (4), 1503–1505.

² *Ibid.*, 1516.

³ Živković, T. (2013) Primena kaznenog prava prema Zakonu o zaštiti životne sredine. *Strani pravni život*, 57 (3), 330–331. Beograd.

(osnovne izvore) i sekundarne (izvedene): uredbе, odluke i uputstva (I grupa) i rezolucije, preporuke i mišljenja (II grupa). Ipak, tek Zelenom knjigom Evropske komisije (1996), problemi sa bukom su eksplicitno definisani kao problemi životne sredine.⁴⁴

U Zelenoj knjizi Evropske komisije (1996) navodi se da je buka, bilo da potiče od saobraćaja, industrijskih ili rekreativnih aktivnosti jedan od glavnih problema zaštite životne sredine na lokalnom nivou i sve veći razlog za brigu javnosti.⁵

„Lista propisa EU u oblasti buke obuhvata 13 akata različite vrste.⁶ Propisi EU u oblasti kontrole buke iz specifičnih izvora mogu biti podeljeni u četiri kategorije kojima su obuhvaćeni izvori buke iz motornih vozila, aviona, različitih uređaja i opreme na otvorenom prostoru. Tako, Direktiva Saveta 70/157/EE C o ujednačavanju prava država članica u vezi sa dopuštenim nivoom zvuka i izduvnim sistemom motornih vozila, od 6. februara, 1970.

⁴ Lazić, M. (2012) Zaštita od buke – komunalna buka i imisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 131.

⁵ Commission of the European Communities. (1996) Future noise policy – European Commission Green paper, COM (96) 540 Final, Brussels, 4. 11. 1996. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51996DC0540&from=PT>, pristupljeno: 10. 9. 2022.

⁶ Komunikacija Evropske komisije od 1. decembra 1999. o vazdušnom prevozu i okolini (Commission Communication of 1 December 1999 on Air Transport and the Environment, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0640:FIN:EN:PDF>); Direktiva Veća 70/157/EEZ od 6. februara 1970. o usklađivanju zakonodavstava država članica u odnosu na dopušten nivo buke i ispušni sistem motornih vozila (Council Directive 70/157/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31970L0157>); Direktiva Veća 77/311/EEZ od 29. marta 1977. O usklađivanju zakonodavstava država članica u odnosu na visinu buke traktora na točkovima za poljoprivredu i šumarstvo koju doživljavaju vozači (Council Directive 77/311/EEC of 29 March 1977 on the approximation of the laws of the Member States relating to the driver-perceived noise level of wheeled agricultural or forestry tractors, <https://www.legislation.gov.uk/eudr/1977/311/contents>); Direktiva Veća 80/51/EEZ od 20. decembra 1979. o ograničavanju emisije buke od podzvučnih vazduhoplova i njene dopunske direktive (Council Directive 80/51/EEC of 20 December 1979 on the limitation of noise emissions from subsonic aircraft, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31980L0051>); Direktiva Veća 92/61/EEZ od 30. juna 1992. o homologizaciji tipa motornih vozila na dva ili tri točka (Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:31992L0061>); Direktiva 2000/14/EZ Evropskog parlamenta i Veća od 8. maja 2000. o usklađivanju zakona država članica koji se odnose na emisiju buke u okolini uzrokovane opremom za upotrebu na otvorenom (Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0014>), itd.

godine, predviđa da se ova pravila Zajednice primenjuju na motorna vozila namenjena za drumski saobraćaj, sa najmanje četiri točka, čija maksimalna projektovana brzina prelazi 25km/h, osim vozila na šinama, poljoprivrednih i šumskih traktora i mobilnih mašina.“⁷

Najznačajniji sistemski dokument u oblasti zaštite životne sredine od buke je Direktiva o proceni i upravljanju bukom u životnoj sredini 2002/49/EC od 25. juna 2002. godine.⁸ Njome je definisan pojam buke, štetnog dejstva buke, utvrđene zajedničke metode procene buke, usklađeni indikatori za utvrđivanje graničnih vrednosti štetne emisije buke, izrada strateških karata buke, itd. Države članice same mogu odrediti dozvoljene nivoe buke iz okoline primenom zajedničkih metoda procene i mogu dati definiciju granične vrednosti primenom usklađenih indikatora u zavisnosti od područja koje je u pitanju. Glavni zajednički indikatori buke su dan-veče-noć „Lden“ kao i indikator noćne buke „Lnight“.

Direktiva je definisala buku iz okoline kao neželjen ili po ljudsko zdravlje i okolinu štetan zvuk u spoljnjem prostoru izazvan ljudskom aktivnošću, uključujući buku koju emituju: prevozna sredstva, motorni, železnički i vazdušni saobraćaj, kao i buka iz područja sa industrijskim delatnostima.

Neke kategorije buke, kao što je buka u prevoznom sredstvu ili buka od vršenja svakodnevnih kućnih poslova, ne ulaze u opseg zaštite ove Direktive. Isti je slučaj i sa bukom kojoj je izložena osoba koja proizvodi buku, bukom koju emituju susedi, buka na radnom mestu, itd.

NACIONALNI PRAVNI OKVIR ZAŠTITE OD PREKOMERNE BUKE

Prilikom razmatranja nacionalnog okvira zaštite od buke, značajno je najpre definisati predmet zaštite. Doktrina razdvaja zaštitu od „emisija buke kao štetnih uticaja koja se odnosi na štetna dejstva u susedskim odnosima“ i „emisija buke kao štetnih uticaja na životnu sredinu koja podrazumeva širenje takvih štetnih uticaja i dalje od susedovih nepokretnosti“.⁹

⁷ Lazić, M. (2012). Zaštita od buke – komunalna buka i emisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 131.

⁸ European Parliament and Council, Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise, 2002, dostupno na: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002L0049&from=EN>.

⁹ Lazić, M. (2012). *Op. cit.*, 62, 131.

„Neposredni objekat zaštite su dve društvene vrednosti – imovinsko pravo svojine i lično pravo na život i zdravlje kao posebne kategorije ljudskih prava“

zbog čega postoji dvostruka zaštita od prekomerne buke – građansko-pravna i javnopravna.¹⁰

Zakon o zaštiti od buke u životnoj sredini¹¹ predstavljao je značajan korak ka implementaciji Direktive 2002/49/EC u nacionalno zakonodavstvo. Njime su bila usklađena pitanja subjekta zaštite životne sredine od buke, mere i uslovi zaštite od buke u životnoj sredini, merenje buke u životnoj sredini, pristup informacijama o buci, nadzor i druga pitanja od značaja za zaštitu životne sredine i zdravlje ljudi (čl. 1, st. 1. Zakona iz 2009). Pod opseg primene ovog zakona nije potpadala buka koja nastaje na radnom mestu i u radnoj okolini, buka koja nastaje u prevoznom sredstvu, buka koja potiče od vojnih aktivnosti na armijskim poligonima i aktivnosti na zaštiti od elementarnih nepogoda, prirodnih i drugih udesa, buka od aktivnosti u domaćinstvu, buka iz susjednog domaćinstva, kao i buka kojoj su izloženi oni koji je stvaraju (čl. 1, st. 2. Zakona iz 2009). Na ovaj način su identično kao i u Direktivi 2002/49/EC, van opsega primene Zakona iz 2009. stavljene određene kategorije buke.

Zakonom o zaštiti od buke u životnoj sredini¹² nije se promenio opseg pitanja koja se njime uređuju, a značajno je što se naročito propisuje na koje kategorije buke se on primenjuje. Naime, odredbom čl. 1, st. 2. Zakona iz 2021. propisano je da se odredbe ovog zakona odnose na buku u životnoj sredini kojoj su izloženi ljudi posebno u izgrađenim područjima, javnim parkovima ili drugim tihim zonama u aglomeracijama, u tihim zonama izvan naselja, blizini škola, bolnica i drugih objekata, zona osetljivih na buku, a koja potiče od rada izvora buke u smislu ovog zakona. U odnosu na Zakon iz 2009. godine, u važećem Zakonu iz 2021. proširen je opseg drugih kategorija buka koje ne potpadaju pod njegovu primenu. Tako je van primene ovog zakona propisana buka od domaćih i divljih životinja, buka koja potiče od zvučnog oglašavanja zvonima ili elektroakustičkim uređajima iz verskih objekata, kao i buka od vazduhoplova u meri u kojoj je zaštita od buke od vazduhoplova uređena drugim posebnim zakonom i propisima u oblasti vazdušnog saobraćaja (čl. 2. Zakona iz 2021).

Trebalo bi naglasiti da je relevantna i Uredba o indikatorima buke, graničnim vrednostima, metodama za ocenjivanje indikatora buke, uznemira-

¹⁰ Lazić, M. (2012). Zaštita od buke – komunalna buka i imisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 130.

¹¹ Zakon o zaštiti od buke u životnoj sredini, *Službeni glasnik RS*, br. 36/2009, 88/2010.

¹² Zakon o zaštiti od buke u životnoj sredini, *Službeni glasnik RS*, br. 96/2021.

vanja i štetnih efekata buke u životnoj sredini.¹³ Pored navedenog, u skladu sa čl. 43, st. 3. Zakona iz 2021, do donošenja novih podzakonskih akata primenjuju se i dalje Pravilnik o metodologiji za određivanje akustičnih zona,¹⁴ Pravilnik o metodama merenja buke, sadržini i obimu izveštaja o merenju buke,¹⁵ Pravilnik o metodologiji za izradu akcionih planova.¹⁶ Pravilnik o uslovima koje mora da ispunjava stručna organizacija za merenje buke, kao i dokumentaciji koja se podnosi uz zahtev za dobijanje ovlašćenja za merenje buke,¹⁷ Pravilnik o sadržini i metodi izrade strateških karata buke i načinu njihovog prikazivanja javnosti,¹⁸ Pravilnik o buci koju emituje oprema koja se upotrebljava na otvorenom prostoru¹⁹. Značajno je napomenuti da je donet Pravilnik o uslovima koje treba da ispunjava komunalni milicionar da bi mogao da vrši poslove merenja buke poreklom iz ugostiteljskih objekata.²⁰

Oblast zaštite od buke uređena je i drugim propisima kao što je Zakon o vazдушnom saobraćaju,²¹ Pravilnik o bezbednosti mašina,²² Pravilnik o podeli motornih i priključnih vozila i tehničkim uslovima za vozila u saobraćaju na putevima.²³

¹³ Uredba o indikatorima buke, graničnim vrednostima, metodama za ocenjivanje indikatora buke, uznemiravanja i štetnih efekata buke u životnoj sredini, *Službeni glasnik RS*, br. 75/10.

¹⁴ Pravilnik o metodologiji za određivanje akustičnih zona, *Službeni glasnik RS*, br. 72/10.

¹⁵ Pravilnik o metodama merenja buke, sadržini i obimu izveštaja o merenju buke, *Službeni glasnik RS*, br. 72/10.

¹⁶ Pravilnik o metodologiji za izradu akcionih planova, *Službeni glasnik RS*, br. 72/10.

¹⁷ Pravilnik o uslovima koje mora da ispunjava stručna organizacija za merenje buke, kao i dokumentaciji koja se podnosi uz zahtev za dobijanje ovlašćenja za merenje buke, *Službeni glasnik RS*, br. 72/10.

¹⁸ Pravilnik o sadržini i metodi izrade strateških karata buke i načinu njihovog prikazivanja javnosti, *Službeni glasnik RS*, br. 80/10.

¹⁹ Pravilnik o buci koju emituje oprema koja se upotrebljava na otvorenom prostoru, *Službeni glasnik RS*, br. 01/13.

²⁰ Pravilnik o uslovima koje treba da ispunjava komunalni milicionar da bi mogao da vrši poslove merenja buke poreklom iz ugostiteljskih objekata, *Službeni glasnik RS*, br. 132/21.

²¹ Odredbe Glave devete „Zaštita od buke i emisije izduvnih gasova“, čl. 200–203. Zakona o vazдушnom saobraćaju, *Službeni glasnik RS*, br. 3/2010, 57/2011, 93/2012, 45/2015, 66/2015, 83/2018. i 9/2020.

²² Vidi 1.5.8. Buka u Pravilniku o bezbednosti mašina, *Službeni glasnik RS*, br. 58/2016. i 21/2020.

²³ Pravilnik o podeli motornih i priključnih vozila i tehničkim uslovima za vozila u saobraćaju na putevima, *Službeni glasnik RS*, br. 40/2012, 102/2012, 19/2013, 41/2013, 102/2014, 41/2015, 78/2015, 111/2015, 14/2016, 108/2016, 7/2017, 63/2017, 45/2018, 70/2018, 95/2018, 104/2018, 93/2019, 2/2020, 64/2021, 129/2021, 110/2022.

PREKRŠAJI U OBLASTI ZAŠTITE ŽIVOTNE SREDINE OD BUKE

Drenovak-Ivanović Mirjana ističe da se

„...šteta u životnoj sredini ne može svesti samo na štetu koju je pretrpelo određeno lice (...) već da je u nekim slučajevima veoma teško ili gotovo nemoguće utvrditi ko je izvor zagađenja, a da se u drugim slučajevima ne može identifikovati lice koje je pretrpelo konkretnu štetu već je reč o povredi koja ima pretežan javnopravni karakter.“²⁴

Stoga prekršajnopravna zaštita životne sredine od buke odslikava ovakav javnopravni karakter povrede propisa o zaštiti od buke, prema kojem za odgovornost za prekršaj nije propisana konkretna šteta po životnu sredinu, već je dovoljno da se radi o povredi propisa kojim je uređena zaštita životne sredine od buke.

Zakonom o zaštiti od buke u životnoj sredini²⁵ (Zakon iz 2021) propisani su prekršaji za pravna lica, odgovorna lica u pravnim licima, preduzetnike i fizička lica koja postupe suprotno materijalnim odredbama kojima su uređene obaveze svih činilaca u oblasti zaštite životne sredine. Pored navedenog, značajno je što su ovim zakonom propisani prekršaji za odgovorna lica u organu državne uprave, imaoću javnih ovlašćenja, odnosno ovlašćenom pravnom licu koja ne preduzmu obaveze iz ovog zakona.

Naime, odredbom čl. 36. Zakona iz 2021. propisana je novčana kazna od 500.000 do 1.000.000 dinara za pravno lice ako:

- 1) emituje buku iznad propisanih graničnih vrednosti (čl. 16, st. 1);
- 2) emituje buku u akustičkoj zoni iznad propisanih graničnih vrednosti (čl. 17, st. 3);
- 3) ne obezbedi merenje buke i izradu izveštaja o merenju buke koju emituje (čl. 18, st. 1. i 2. i čl. 23, st. 1);
- 4) održava javno okupljanje i aktivnost bez odluke ili suprotno odredbama odluke jedinice lokalne samouprave (čl. 20, st. 1).

Za prekršaj iz st. 1. ovog člana kazniće se i odgovorno lice u pravnom licu novčanom kaznom od 25.000 do 50.000 dinara, a preduzetnik novčanom kaznom od 250.000 do 500.000 dinara.

Prekršaj pod tačkom 1) propisan je za emitovanje buke iznad graničnih vrednosti, ali se upućuje na odredbu čl. 16, st. 1. Zakona iz 2021, u kojoj je propisano da u slučaju prekoračenja graničnih vrednosti buke navedeni u

²⁴ Drenovak-Ivanović, M. (2015). *Pravni instrumenti ekološke zaštite – građansko-pravna i krivičnopravna zaštita*. Beograd, 12.

²⁵ Zakon o zaštiti od buke u životnoj sredini, *Službeni glasnik RS*, br. 96/21.

čl. 5, t. 1–4. ovog zakona, subjekti životne sredine dužni su da preduzimaju mere za smanjenje buke. Mišljenja smo da se na ovaj način vrlo precizna norma kojom je propisana radnja izvršenja prekršaja dovodi u nejasnu vezu sa dužnošću subjekata životne sredine da preduzmu mere za smanjenje buke. Smatramo da je u konkretnom slučaju trebalo primenu ove kaznene norme uputiti na odredbu čl. 16, st. 2. koja propisuje da se granične vrednosti iskazuju indikatorima buke u skladu sa ovim zakonom, dok je u st. 3. citiranog člana propisano da će navedeno pitanje biti uređeno podzakonskim propisom. Takođe, odredba čl. 16, st. 1. Zakona iz 2021. upućuje na primenu čl. 5. kojim su propisani subjekti zaštite životne sredine (Republika Srbija, autonomna pokrajina, opština, grad, odnosno grad Beograd, pravna lica i preduzetnici, koji u obavljanju privredne delatnosti emituju buku, kao i vlasnici, upravljači i koncesionari izvora buke, naučne i stručne organizacije i druge javne službe, udruženja, građani i druga pravna lica) ali ne i granične vrednosti buke.

Utvrđivanje graničnih vrednosti buke jeste bitan element analiziranog prekršaja. Prilikom procene ispunjenosti ovog elementa posebnog opisa bića prekršaja, neophodno je uzeti u obzir Uredbu o indikatorima buke, graničnim vrednostima, metodama za ocenjivanje indikatora buke, uznemiravanja i štetnih efekata buke u životnoj sredini. Iz analize sudske prakse proizlazi da je izreka presude kod navedenog prekršaja nerazumljiva ukoliko

„...ne sadrži naznačenje činjenica i okolnosti koje čine obeležja prekršaja i od kojih zavisi primena propisa o prekršaju jer iz izreke nije vidljivo čime je iskazana granična vrednost, koja se iskazuje indikatorima buke, niti je vidljivo koja je to u konkretnom slučaju najviša dozvoljena vrednost indikatora buke, a koja granična vrednost može biti različita za različite izvore buke, odnosno za različite akustičke zone“.²⁶

Dakle, nije dovoljno da izreka presude sadrži samo opšti opis obeležja ovog prekršaja, već je neophodno precizirati sva bitna obeležja radnje ovog prekršaja. Pri tome, ukoliko su okrivljeni pravno i odgovorno lice, izreka treba da sadrži tačan opis radnje odgovornog lica u pravnom licu postupajući u ime i za račun pravnog lica.²⁷ Trebalo bi napomenuti da sudija u prekršajnom postupku ne može samostalno urediti dispozitiv zahteva za pokretanje prekršajnog postupka, već nakon pokretanja postupka to može učiniti podnosilac zahteva i to na glavnom pretresu. Analiza predmeta iz ove oblasti ukazala je da postoji prostor za unapređenje postupanja u ovim predmetima tako što će najpre podnosioci zahteva, nadležna inspekcija, podneti sudu zahtev za pokreta-

²⁶ Presuda Prekršajnog apelacionog suda u Beogradu, 111 PRŽ br. 3662/21. od 9. 3. 2021. godine.

²⁷ Delibašić, T. (2012) *Pravni stavovi i odluke Višeg prekršajnog suda 2011. godine*. Beograd: Udruženje sudija prekršajnih sudija RS, 161.

nje prekršajnog postupka sa potpunim činjeničnim opisom prekršaja i opisanim svim bitnim obeležjima posebnog opisa prekršaja. Ukoliko to nije slučaj, sud bi prilikom ocene da li su ispunjeni uslovi za pokretanje prekršajnog postupka, trebalo da vrati podnosiocu zahteva na uređenje zahtev koji ne sadrži sve činjenične i zakonske elemente ovog prekršaja. Kada se pokrene prekršajni postupak sa zahtevom koji nije uređen na opisan način, sud ne može u izreci presude precizirati dispozitiv jer bi na taj način postupio suprotno čl. 247. Zakona o prekršajima kojim je uređen objektivni identitet zahteva i presude.

Kod ovih prekršaja izdvajaju se glavne procesne poteškoće dokazivanja radnje jednog ili više lica koji su emitovali buku, načina i visine emitovanja buke, kao i izolovanja konkretnog predmeta-uređaja koji je emitovao buku od drugih bliskih emitera buke. Stoga u postupcima zbog prekršaja emitovanja buke veće od dozvoljene zakonom o zaštiti od buke, postojanje dokaza o visini buke izmerene posebnim uređajem izražene u decibelima, ne znači nužno i dokazivanje uzročno-posledične veze konkretnog uređaja sa visinom buke, s obzirom da se vrlo često javljaju situacije da postoji više emitera buke koji su u datom vremenu izvršenja zajednički emitovali buku koja je dovela do izmerene vrednosti. Takav primer je emitovanje buke sa tzv. splavova, odnosno emitovanje buke izvođenjem muzičkog sadržaja u mnogobrojnim restoranima na vodi koji su postavljeni jedan do drugoga u nizu. Merenje visine buke podrazumeva poštovanje svih tehničkih specifikacija u smislu udaljenosti od izvora buke i drugih uslova, ali blizina drugih izvora buke u blizini kontrolisanog objekta zaista unosi sumnju u ispravnost zaključka da je izmerena buka zaista potekla samo od kontrolisanog objekta bez doprinosa drugih objekata u neposrednoj blizini.

Specifičnost tzv. ekoloških prekršaja ogleda se i u tome što težinu prekršaja prilikom odmeravanja prekršajne sankcije treba sagledavati s aspekta toga da se radnjom prekršaja „ugrožavaju životni uslovi neograničenog broja ljudi a ne pojedinca“.²⁸

Ovaj prekršaj emitovanja buke suprotno propisima o zaštiti životne sredine treba razlikovati od emitovanja buke koji je kao prekršaj propisan Zakonom o javnom redu i miru²⁹. Naime, odredbom čl. 7, st. 2. Zakona o javnom redu i miru, propisano je ko narušava javni red i mir ili stvara uznemirenje građana, izvođenjem muzičkih i drugih sadržaja, korišćenjem muzičkih instrumenata, radio i televizijskih prijemnika i drugih zvučnih uređaja, kao i

²⁸ Stajić, LJ., Bugarski, T., Ristivojević, B., Pisarić, M., Milić, I. (2018). *Praksa Prekršajnog suda u Novom Sadu u oblasti zaštite životne sredine. Zbornik radova Pravnog fakulteta*. Novi Sad, 52 (4), 1503–1519. <https://doi.org/10.5937/zrpfns52-19753>.

²⁹ Zakon o javnom redu i miru, *Službeni glasnik RS*, br. 6/2016. i 24/2018.

mehaničkih izvora buke i zvučnih signala (motora, sirena i sl.) – kazniće se novčanom kaznom od 5.000 do 30.000 dinara.

Za razliku od prekršaja emitovanja buke iz oblasti zaštite životne sredine, kod ovog prekršaja je zaštitni objekt javni red i mir i međusobno usklađen odnos građana. Kod potonjeg prekršaja nije bitan element visina emitovane buke, granična vrednost, odnosno buka iznad granične vrednosti. Tada nije potrebno tehničkim aparatima utvrditi intenzitet buke već se radi o osetljivosti na buku koja je relativno individualna stvar.

Za postojanje ovog prekršaja najpre je bitno mesto izvršenja, a to je javno mesto. Iz prakse je zanimljiv slučaj kada je okrivljeni lupanjem u šerpu stvarao buku u svom stanu, a ne na javnom mestu, a buka se čula u drugom stanu iste zgrade.

„Čl. 3, st. 1, t. 2. Zakona o javnom redu i miru jasno je definisano javno mesto kao prostor dostupan neodređenom broju lica čiji identitet nije unapred određen pod istim uslovima ili bez posebnih uslova, te u tom smislu privatni stan se jasno ni u kom slučaju ne može podvesti pod pojmom javnog mesta. Pa imajući u vidu da se u radnjama okrivljenog nisu stekli svi bitni elementi bića prekršaja koji se okrivljenom stavlja na teret, to ovaj sud nalazi da nije dokazano u toku prekršajnog postupka da je okrivljeni učinio prekršaj koji mu se zahtevom za pokretanje prekršajnog postupka stavlja na teret, pa je primenom čl. 274. Zakona o prekršajima preinačio ožalbenu presudu pod tačkom I. izreke ove presude, okrivljenog oslobodio odgovornosti za prekršaj iz čl. 7, st. 2. Zakona o javnom redu i miru a na osnovu čl. 250, st. 1, t. 3. Zakona o prekršajima.“ (*Iz obrazloženja presude Prekršajnog apelacionog suda 5 PRŽ br. 25515/20*).

Pored navedenog, bitan element ovog prekršaja je i posledica koja može biti narušen javni red i mir ili uznemirenje građana. Posledica spada u fakultativne elemente posebnog opisa bića prekršaja³⁰ i ona može biti apstraktna ili konkretna. U prvom slučaju se radi o apstraktnoj posledici, dok potonja predstavlja konkretnu posledicu koja se ima dokazivati u konkretnom slučaju.

Dakle, prekršajopravna zaštita od buke obuhvata zaštitu prema propisima o zaštiti životne sredine, ali i zaštitu od buke kao imisije pod kojom se podrazumevaju „uticaji koji dolaze sa jedne nepokretnosti na drugu, susednu, koji su materijalne prirode i koji se mogu opaziti čulima“. Stoga je neophodno u postupku utvrditi prekomernost buke, u smislu da se radi o nedozvoljenoj

³⁰ Delić, N., Bajović, V. (2018). *Praktikum za prekršajno pravo*. Beograd: Službeni glasnik, 137.

radnji koja se ne mora trpeti za razliku od „tzv. idealnih imisija – koje se u datom okruženju moraju trpeti“³¹.

Prekršaj pod tačkom 2) Zakona iz 2021. ogleda se u emitovanju buke u akustičkoj zoni iznad propisanih graničnih vrednosti, odnosno postupanje suprotno čl. 15, st. 3. ovog zakona kojim je propisano da u akustičkim zonama i tihim zonama u aglomeracijama i izvan naselja, ograničava se ili zabranjuje upotreba izvora buke, odnosno obavljanje aktivnosti koje prouzrokuju buku iznad propisanih graničnih vrednosti.

Prekršaj pod tačkom 3) Zakona iz 2021. propisan je kada se ne obezbedi merenje buke i ne izradi izveštaj o merenju buke koju emituje, a u skladu sa odredbama čl. 18, st. 1. i 2. i čl. 23, st. 1. ovog zakona. Citiranim materijalnim odredbama propisano je da je pravno lice koje je vlasnik, odnosno korisnik izvora buke dužno da pre stavljanja izvora buke u upotrebu obezbedi prvo merenje buke na lokaciji, pribavi izveštaj o merenju buke ovlašćene stručne organizacije, snosi troškove tih merenja i po potrebi sprovede mere zvučne zaštite u skladu s ovim zakonom. Takođe, ovaj prekršaj odnosi se na obavezu redovnog periodičnog merenja nivoa buke u životnoj sredini, koje je upravljač objektom koji emituje buku, vlasnik, odnosno korisnik izvora buke, vrši jednom u tri godine.

Zakon iz 2021. uvodi posebna ovlašćenja komunalnoj miliciji da može da izda prekršajni nalog sa novčanom kaznom od 200.000 dinara ugostitelju ukoliko emituje buku iznad propisanih graničnih vrednosti. Kazna od 50.000 dinara propisana je za odgovorno lice u pravnom licu, a od 100.000 dinara za preduzetnika (čl. 37, st. 1–3).

Prema mišljenju autora, ovlašćenje komunalnog milicionera da novčanom kaznom od 500.000 do 1.000.000 dinara kazni ugostitelja koji ponovi izvršenje prekršaja emitovanje buke u periodu od godinu dana od izdavanja prekršajnog naloga u suprotnosti je sa Zakonom o prekršajima (čl. 37, st. 5–8. Zakona iz 2021).

Naime, odredbom čl. 87. Zakona o prekršajima,³² propisano je da prekršajnu sankciju može izreći samo nadležni sud koji vodi prekršajni postupak po ovom zakonu, a da izuzetno od ovog pravila, prekršajnu sankciju može izreći ovlašćeni organ, odnosno ovlašćeno lice prekršajnim nalogom u skladu sa zakonom.³³ Ovaj izuzetak je dalje uređen odredbom čl. 168, st. 1. Zakona

³¹ Lazić, M. (2012), *Zaštita od buke – komunalna buka i imisija buke. Zbornik radova Pravnog fakulteta u Nišu*, 62, 136–138.

³² Zakon o prekršajima, *Službeni glasnik RS*, br. 65/2013, 13/2016, 98/2016, 91/2019, 91/2019, 112/2022.

³³ Spasić, B. (2009). *Sistem prekršajnih sankcija u novom Zakonu o prekršajima. Podrška primeni novog Zakona o prekršajima i uvod u rad novoformiranih Prekršajnih sudova*. Kladovo: USAID, 51–76, <https://www.usudprek.org.rs/pub/download/podrška-primeni-novog-zak-prek.pdf>

o prekršajima kojim je propisano da se prekršajni nalog izdaje kada je za prekršaj zakonom ili drugim propisom od prekršajnih sankcija predviđena samo novčana kazna u fiksnom iznosu.

Prema tome, izuzetak od pravila da jedino sud može izreći prekršajanu sankciju postoji samo u slučaju da je propisana novčana kazna u fiksnom iznosu. U konkretnom slučaju, nije propisana novčana kazna u fiksnom iznosu, već naprotiv, poprilično visok raspon novčane kazne od 500.000 do 1.000.000 dinara za ugostitelja, novčana kazna u rasponu od 100.000 do 300.000 dinara za odgovorno lice, novčana kazna od 250.000 do 500.000 dinara za preduzetnika.

Pored ukazane neusaglašenosti ove odredbe sa Zakonom o prekršajima, nejasno su propisani elementi bića posebnog opisa ovog prekršaja. Naime, radi se o tome da je izvršilac ponovio prekršaj emitovanja buke u roku od godinu dana od izdavanja prekršajnog naloga. Najpre treba poći od toga da izdavanje prekršajnog naloga ne znači u svim slučajevima i odgovornost za prekršaj iz razloga što kažnjeni može podneti zahtev za sudsko odlučivanje. U navedenoj situaciji, ukoliko su ispunjeni svi uslovi, sud će pokrenuti prekršajni postupak i preduzimati sve procesne radnje u cilju utvrđivanja da li postoji odgovornost za prekršaj. Stoga se može dogoditi da je jednom licu izdato dva ili više prekršajnih naloga, da je to lice podnelo zahteve za sudsko odlučivanje kojima je inicirano sudsko odlučivanje u prekršajnom postupku, a da, prema ovako propisanoj odredbi, proizlazi da je to lice višestruki povratnik u vršenju prekršaja iako o odgovornosti za prekršaj nije odlučeno. Čak i u slučaju da jeste doneta odluka povodom zahteva za sudsko odlučivanje, o povratniku se može govoriti samo ukoliko se radi o ponovljenom prekršaju nakon pravnosnažne presude u kojoj je utvrđena odgovornost izvršioca za prekršaj. Sa druge strane, kod ovog prekršaja se kao bitno obeležje bića propisuje datum izdavanja prekršajnog naloga iako od tog datuma teče rok od 8 dana za podnošenje zahteva za sudsko odlučivanje, čijim protekom prekršajni nalog postaje konačan i izvršan. Stoga je mišljenje autora da je ovako propisan prekršaj neusaglašen sa zakonom, da je neprecizan i da je ovakvo proširivanje ovlašćenja komunalne milicije u oblasti zaštite životne sredine od buke pravno neutemeljeno, čak možda i neustavno. Ovo naročito iz razloga što je u prekršajnoj pravnoj teoriji većinski stav da pored redovnog odmeravanja kazne u propisanim granicama postoji institut odmeravanja kazne ispod propisanog minimuma (ublažavanje kazne), kao i institut pooštavanja kazne iznad propisanog posebnog maksimuma samo u slučaju prekršaja u produženom trajanju.³⁴

Pored navedenih primedbi ovakvom zakonskom rešenju, trebalo bi istaći da je za ovakav svojevrсни povrat propisana obavezna zaštitna mera oduzimanja predmeta (izvora buke) koji su upotrebljeni ili namenjeni za

³⁴ Vuković, I. (2015). *Prekršajno pravo*. Pravni fakultet Univerziteta u Beogradu, 95.

izvršenje prekršaja. Potpuno je nejasno na koji način je komunalnoj miliciji dato ovlašćenje koje ima samo sud, a to je da izrekne obaveznu zaštitnu meru oduzimanja predmeta i to uz prekršajni nalog za koji je umesto fiksnog iznosa propisana novčana kazna u rasponu. Odredbom čl. 54. Zakona o prekršajima propisano je da će sud koji je doneo presudu odlučiti da li će se oduzeti predmet koji je upotrebljen ili namenjen za izvršenje prekršaja. U presudi u kojoj se odlučuje o zaštitnoj meri, sud će opredeliti o kom predmetu se radi i isti detaljno opisati u izreci.³⁵

Prema podacima komunalne milicije, u prvih godinu dana primene (novog) Zakona o zaštiti od buke u životnoj sredini, izdat je 31 prekršajni nalog zbog prekomerne buke.³⁶ Nadamo se da će zakonodavac usaglasiti odredbe o povratu sa Zakonom o prekršajima pre nego što bude izdat prekršajni nalog za prekršaj povrata u emitovanju buke.

Pored navedenih prekršaja, u odredbi čl. 39. Zakona iz 2021. propisani su prekršaji odgovornog lica u organu državne uprave, imaocu javnih ovlašćenja, odnosno ovlašćenom pravnom licu.

Novčanom kaznom od 25.000 do 50.000 dinara kazniće se za prekršaj odgovorno lice u organu državne uprave, imaocu javnih ovlašćenja, odnosno ovlašćenom pravnom licu ako:

1) ne izvrši akustičko zoniranje, odnosno odredi akustičke zone i ne donese odluku o ograničenju nivoa buke (čl. 17);

2) ne odredi mere zvučne zaštite (čl. 20, st. 2);

3) odobri održavanje javnog okupljanja i aktivnosti bez akta jedinice lokalne samouprave o utvrđenim merama zvučne zaštite (čl. 20, st. 4);

4) ne izrađuje strateške karte buke u skladu sa odredbama ovog zakona i propisa donetih na osnovu ovog zakona (čl. 21, st. 2, 3. i 4);

5) ne usvoji akcioni plan u skladu sa odredbama ovog zakona i propisa donetih na osnovu ovog zakona (čl. 22, st. 2, 3. i 4);

6) ne obavlja monitoring buke u skladu sa odredbama ovog zakona i propisa donetih na osnovu ovog zakona (čl. 24);

7) ne obezbedi informisanje javnosti o buci (čl. 28).

³⁵ Vukčević, B. (2014). *Komentar Zakona o prekršajima, sa obrascima, podzakonskim aktima i registrom pojmova*. Beograd: Poslovni biro.

³⁶ „N1“, 2022. Komunalna milicija: Za godinu dana izdat 31 prekršajni nalog zbog buke, <https://rs.n1info.com/vesti/komunalna-milicija-za-godinu-dana-izdat-31-prekršajni-na-log-zbog-buke/>

ZAKLJUČAK

Evropska komisija je još 1996. godine eksplicitno definisala buku kao jedan od glavnih pitanja zaštite životne sredine. U ovoj oblasti doneto je preko deset instrumenata EU različitog pravnog dejstva od kojih je najznačajniji sistemski pravni akt – Direktiva o proceni i upravljanju bukom u životnoj sredini 2002/49/EC od 25. juna 2002. godine. Njome je definisan pojam buke, štetnog dejstva buke, utvrđene zajedničke metode procene buke, usklađeni indikatori za utvrđivanje graničnih vrednosti štetne emisije buke, izrada strateških karata buke, itd.

Implementacija standarda evropskih dokumenata u oblasti zaštite životne sredine od prekomerne buke u nacionalnom zakonodavstvu sprovedena je usvajanjem više zakona i podzakonskih akata. Prilikom razmatranja nacionalnog okvira zaštite od buke uzeto je u obzir da je ona dvostruke prirode – građansko-pravne i javnopravne. U ovom radu je analizirana javnopravna zaštita od buke i to u prekršajnom postupku.

Zaštita životne sredine od buke uređena je Zakonom o zaštiti od buke u životnoj sredini iz 2021. godine. U radu se analiziraju kaznene odredbe ovog zakona u odnosu na Zakon o zaštiti od buke u životnoj sredini iz 2009. godine kojim je i započela implementacija evropskih standarda u ovoj oblasti.

Predmetno istraživanje obuhvatilo je i analizu sudske prakse kod prekršaja emitovanja buke kojom se narušava javni red i mir ili izaziva uznemirenje građana. Postojanje dva različita prekršaja emitovanja buke u posebnom prekršajnom zakonodavstvu nije u suprotnosti sa Direktivom o proceni i upravljanju bukom u životnoj sredini 2002/49/EC od 25. juna 2002. godine. Naime, definicija buke za potrebe primene ove direktive ne obuhvata određene kategorije buke kao što je buka u prevoznom sredstvu ili buka od vršenja svakodnevnih kućnih poslova, buka kojoj je izložena osoba koja proizvodi buku, buka koju emituju susedi, buka na radnom mestu, itd. Stoga, ni prekršaj iz Zakona o zaštiti od buke u životnoj sredini nema takav zaštitni objekat. Radi se o zaštiti od imisije buke koja ne mora nužno imati posledice po životnu sredinu, ali je sa javnopravnog aspekta značajna za održavanje javnog reda i dobrosusedskih odnosa. Stoga je kroz prizmu ovog prekršaja iz Zakona o javnom redu i miru, ukazano na razlike u bitnim obeležjima i dokazivanju prekršaja u odnosu na prekršaj iz Zakona o zaštiti od buke u životnoj sredini.

Naročitu pažnju u analizi zakonskog okvira zaštite od buke autor je posvetio novim ovlašćenjima komunalne milicije da izdaju prekršajne naloge za emitovanje buke ugostiteljima. Posebno zabrinjavajuće zakonsko rešenje prema mišljenju autora je uvođenje ovlašćenja komunalne milicije da izda prekršajni nalog za povrat u emitovanju buke za koji nije propisana novčana kazna u fiksnom iznosu već u rasponu. Mišljenje autora da je ovako propisan

prekršaj neusaglašen sa zakonom, da je neprecizan i da je proširivanje ovlašćenja komunalne milicije u oblasti zaštite životne sredine od buke pravno neutemeljeno. Pored navedenih primedbi ovakvom zakonskom rešenju, trebalo bi istaći da je za ovakav svojevrsni povrat propisana obavezna zaštitna mera oduzimanja predmeta (izvora buke) koji su upotrebljeni ili namenjeni za izvršenje prekršaja. Potpuno je nejasno na koji način je komunalnoj miliciji dato ovlašćenje koje ima samo sud, a to je da izrekne obaveznu zaštitnu meru oduzimanja predmeta i to uz prekršajni nalog za koji je umesto fiksnog iznosa propisana novčana kazna u rasponu.

Autor zaključuje da se kroz odgovornost za prekršaj može sprečiti dalje kršenje propisa i eventualno prouzrokovanje teže štete u oblasti zaštite životne sredine, ali da zakonodavac prilikom propisivanja prekršaja i uvođenja novih nadležnosti i ovlašćenja organa uprave naročitu pažnju treba da obrati ustavnim načelima pravičnog suđenja.

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PROTECTION OF THE ENVIRONMENT AGAINST NOISE THROUGH MISDEMEANOR LAW**

ABSTRACT: Misdemeanors are often said to represent the gateway to criminal liability. From that point of view, the purpose of punishing someone for a misdemeanor becomes especially important in fields such as environmental protection, bearing in mind the irreversible, sometimes incalculable damage that can occur as a consequence of a criminal offense. By imposing liability for misdemeanors, further illegal activity and possibly more serious damage can be prevented.

Environmental protection is regulated through a large number of laws and bylaws, with special emphasis on the implementation of the Law on Environmental Protection as a systemic law in this field. On the other hand, the analysis of the application of sector-specific laws, which regulate specific approaches to environmental protection in more detail, deserves attention precisely because of its specificity and a particular focus on certain forms of violations. Therefore, the focus of this paper is sector-specific protection of the environment against noise and research on how to apply regulations in practice.

Keywords: noise, violation, environment, public order and peace

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INTRODUCTION

Environmental protection through misdemeanor law is milder than through criminal law, but it is more efficient and economical, especially when a fine is imposed in a fixed amount, in which case the competent authority issues a misdemeanor order¹. Analyzing environmental protection through misdemeanor law and waste management, some authors conclude that, in certain cases, it is of immeasurable importance and that it is more effective than protection through criminal law due to the speed and smaller scope of the formality of the misdemeanor procedure, as well as due to the more frequent liability of legal entities for misdemeanors compared to the rare liability of legal entities for criminal offenses.²

Tatjana Živković, in her research of economic crimes and misdemeanors reported by the state's inspection bodies during the inspection and supervision of the implementation of the Law on Environmental Protection in the period between 2010 and 2011, indicates that there is a low incidence of misdemeanors compared to the total number of misdemeanors prescribed by the aforementioned law. For this reason, the author cited above concludes that perhaps it was not necessary for the legislator to expand the zone of incrimination through this systemic law, given that there is also protection through criminal law in sector-specific environmental protection laws.³

Environmental protection is regulated through a large number of laws and bylaws, with special emphasis on the implementation of the Law on Environmental Protection as a systemic law in this field. On the other hand, the analysis of the application of sector-specific laws, which regulate specific approaches to environmental protection in more detail, deserves attention precisely because of its specificity and a particular focus on certain forms of violations. Therefore, the focus of this paper is sector-specific protection of the environment against noise and research on how to apply regulations in practice.

¹ Stajić, LJ. (2018) Praksa Prekršajnog suda u Novom Sadu u oblasti zaštite životne sredine. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 52 (4), 1503–1505.

² *Ibid.*, 1516.

³ Živković T. (2013) Primena kaznenog prava prema Zakonu o zaštiti životne sredine. *Strani pravni život*, 57 (3), 330–331. Belgrade.

LEGAL FRAMEWORK FOR THE PROTECTION OF THE ENVIRONMENT AGAINST NOISE IN THE EU

“Sources of EU law in the field of environmental protection and the right to a healthy environment can be divided into two basic groups: primary (basic sources) and secondary (derived sources): directives, decisions, and instructions (group I) and resolutions, recommendations, and opinions (group II). However, it was not until the creation of the Green Book of the European Commission (1996) that noise problems were explicitly defined as an environmental problem.”⁴

The Green Book of the European Commission (1996) states that noise, whether it originates from traffic, industrial, or recreational activities, is one of the main problems of environmental protection at the local level and a growing cause for public concern.⁵

The list of noise-related regulations in the EU includes 13 different types of acts.⁶ EU regulations in the field of noise control from specific sources can be divided into four categories that include noise sources from motor vehicles, aircraft, various devices, and equipment used outdoors. Thus, Council Directive 70/157/EE C of February 6, 1970, on the harmonization of the laws of the Member States regarding the permissible sound level and the exhaust system

⁴ Lazić, M. (2012) Zaštita od buke – komunalna buka i imisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 129–145.

⁵ Commission of the European Communities. (1996) Future noise policy – European Commission Green paper, COM (96) 540 Final, Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51996DC0540&from=PT>, accessed on: September 10, 2022.

⁶ Commission Communication of December 1, 1999 on Air Transport and the Environment, Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0640:FIN:EN:PDF>; Council Directive 70/157/EEC of February 6, 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles, Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31970L0157>; Council Directive 77/311/EEC of March 29, 1977 on the approximation of the laws of the Member States relating to the driver-perceived noise level of wheeled agricultural or forestry tractors, Available at: <https://www.legislation.gov.uk/eudr/1977/311/contents>; Council Directive 80/51/EEC of December 20, 1979 on the limitation of noise emissions from subsonic aircraft Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31980L0051>; Council Directive 92 /61/ EEC of June 30, 1992 relating to the type-approval of two or three-wheel motor vehicles, Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:31992L0061>; Directive 2000/14/EC of the European Parliament and of the Council of May 8, 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0014>), etc.

of motor vehicles, stipulates that these Community rules apply to motor vehicles intended for road travel, which have at least four wheels, whose maximum design speed exceeds 25 km/h, except for railway vehicles, agricultural and forestry tractors, and mobile machines.”⁷

The most important systemic document in the field of the protection of the environment against noise is the Directive on the assessment and management of environmental noise 2002/49/EC of June 25, 2002⁸. It defines the concept of noise, the harmful effects of noise, the established common methods of noise assessment, harmonized indicators for determining limit values of harmful noise emissions, the creation of strategic noise maps, etc. The member states themselves can determine the permissible noise levels in the environment by applying common assessment methods, and they can define the limit value by applying harmonized indicators depending on the area in question. The main common noise indicators are the day-evening-night “Lden” noise indicator as well as the night-time “Lnight” noise indicator.

The Directive defined environmental noise as an unwanted or harmful outdoor sound created by human activities, including noise emitted by means of transport, road traffic, rail traffic, air traffic, and from sites of industrial activity.

Some categories of noise, such as noise emanating from inside a vehicle or noise from daily household chores, do not fall within the scope of protection of this Directive. The same holds true for noise to which the person making the noise is exposed, noise emitted by neighbors, noise at the workplace, etc.

NATIONAL LEGAL FRAMEWORK FOR PROTECTION AGAINST EXCESSIVE NOISE

When examining the national framework for the protection against noise, it is important to first define the object of protection. Legal doctrine separates protection against “noise emissions as harmful effects that refer to harmful effects in relationships between neighbors” and “noise emissions as harmful effects on the environment, which implies the spread of such harmful

⁷ Lazić, M. (2012) Zaštita od buke – komunalna buka i imisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 131.

⁸ European Parliament and Council, *Directive 2002/49/EC relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise*, 2002, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002L0049&from=EN>.

effects beyond one's immediate neighbors".⁹ "The immediate object of protection are two social values – the right to property and the right to life and health as special categories of human rights" which is why there is a dual approach to protection against excessive noise – through civil law and through public law.¹⁰

The Law on Protection against Noise in the Environment¹¹ (2009 Law) was a significant step toward the incorporation of Directive 2002/49/EC into national legislation. It harmonized the issues of the subjects of protection against noise in the environment, the measures and conditions of protection against noise in the environment, environmental noise measurement, access to information about noise, supervision, and other issues of importance for environmental protection and human health (Article 1. paragraph 1). This law's scope of application did not include noise that occurs in the workplace, noise that occurs inside vehicles, noise that originates from military activities on army training grounds and activities related to protection against natural disasters, natural and other accidents, noise from household activities, noise from neighboring households as well as noise that those who make it are exposed to (Article 1, paragraph 2). Thus, certain categories of noise were excluded from the application of the 2009 Law in the same way as in Directive 2002/49/EC.

The Law on Protection against Noise in the Environment¹² (2021 Law) did not change the scope of issues it regulates, but it is important to note that the categories of noise it applies to were specified. Namely, Article 1, Paragraph 2 of the 2021 Law stipulates that the provisions of this law refer to noise in the environment to which people are exposed, especially in urban areas, public parks, or other quiet zones in agglomerations, in quiet zones outside neighborhoods, near schools, hospitals, and other facilities, as well as noise sensitive areas, originating from the noise sources defined in this law. Compared to the 2009 Law, in the current 2021 Law, the range of other noise categories that do not fall within its scope has been expanded. Thus, noise from domestic and wild animals, noise originating from bells or electro-acoustic devices from religious buildings, as well as aircraft noise are outside the scope of this law, to the extent that protection against aircraft noise is regulated by other sector-specific laws and regulations in the field of air traffic (Article 2 of the 2021 Law).

It should be pointed out that the Ordinance on noise indicators, limit values, methods for evaluating noise indicators, disturbance, and harmful

⁹ Lazić, M. (2012) Zaštita od buke – komunalna buka i imisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 131.

¹⁰ *Ibid.*, 130.

¹¹ Law on Protection against Noise in the Environment, *Official Gazette of RS*, no. 36/2009, 88/2010.

¹² Law on Protection against Noise in the Environment, *Official Gazette of RS*, no. 96/2021.

effects of noise in the environment¹³ is also relevant. In addition to the above, in accordance with Article 43, paragraph 3 of the 2021 Law, until the adoption of new bylaws, the following are still in effect: the Regulation on the methodology for determining acoustic zones¹⁴, the Regulation on noise measurement methods, the content and scope of noise measurement reports¹⁵, the Regulation on the methodology for the development of action plans¹⁶, the Regulation on conditions that must be met by an expert organization for noise measurement, as well as documentation submitted with the request for receiving authorization for noise measurement¹⁷, the Regulation on the content and method of creating strategic noise maps and how they are presented to the public¹⁸, the Regulation on noise emitted by equipment used outdoors¹⁹. It is important to note the adoption of the Regulation on the conditions that the communal police should meet in order to be able to measure the noise coming from catering establishments²⁰.

The field of protection against noise is also governed by other regulations such as the Air Transport Law²¹, the Regulation on Machine Safety²², the Regulation on the Division of Motor and Trailers and Technical Conditions for Vehicles in Road Transport.²³

¹³ Ordinance on noise indicators, limit values, methods for evaluating noise indicators, disturbance, and harmful effects of noise in the environment, *Official Gazette of RS* no. 75/10.

¹⁴ Regulation on the methodology for determining acoustic zones, *Official Gazette of RS* no. 72/10.

¹⁵ Regulation on noise measurement methods, the content and scope of noise measurement reports, *Official Gazette of RS* no. 72/10.

¹⁶ Regulation on the methodology for the development of action plans, *Official Gazette of RS* no. 72/10.

¹⁷ Regulation on conditions that must be met by an expert organization for noise measurement, as well as documentation submitted with the request for receiving authorization for noise measurement, *Official Gazette of RS* no. 72/10.

¹⁸ Regulation on the content and method of creating strategic noise maps and how they are presented to the public, *Official Gazette of RS* no. 80/10.

¹⁹ Regulation on noise emitted by equipment used outdoors, *Official Gazette of RS* no. 01/13.

²⁰ Regulation on the conditions that the communal militiaman should meet in order to be able to measure the noise coming from catering establishments, *Official Gazette of RS* no. 132/21.

²¹ Provision of Chapter Nine "Protection against noise and exhaust gas emissions", Art. 200-203 of the Air Transport Law, *Official Gazette of RS*, No. 3/2010, 57/2011, 93/2012, 45/2015, 66/2015, 83/2018 and 9/2020.

²² See 1.5.8. Noise in the Regulation on Machine Safety, *Official Gazette of RS*, no. 58/2016 and 21/2020.

²³ Regulation on the Division of Motor and Trailers and Technical Conditions for Vehicles in Road Transport, *Official Gazette of RS* no. 40/2012, 102/2012, 19/2013,

MISDEMEANORS IN THE FIELD OF THE PROTECTION OF THE ENVIRONMENT AGAINST NOISE

Drenovak-Ivanović points out that

“...damage in the environment cannot be reduced only to the damage suffered by a specific individual (...) but that in some cases it is very difficult or almost impossible to determine who is the source of the pollution, while in other cases the person who has suffered quantifiable damage cannot be identified. Rather, it is a matter of a violation of a predominantly public law character.”²⁴

Therefore, the protection of the environment against noise through misdemeanor law reflects this public law character of violations of regulations on noise protection, according to which quantifiable damage to the environment is not required for determining liability for a misdemeanor. Rather, it is enough that it is a violation of the regulations governing the protection of the environment against noise.

The Law on Protection against Noise in the Environment²⁵ prescribes misdemeanors for legal entities, responsible persons in legal entities, entrepreneurs, and natural persons who act contrary to material provisions regulating the obligations of everyone in the field of environmental protection. In addition, it is important to point out that this law prescribes misdemeanors for responsible persons in a state administrative body, a public authority, i.e. authorized legal entity that does not undertake the obligations prescribed by this law.

Namely, according to Article 36 of the 2021 Law, a fine of 500.000 to 1.000.000 dinars is prescribed for a legal entity that:

- 1) emits noise above prescribed limit values (Article 16, paragraph 1);
- 2) emits noise in an acoustic zone above prescribed limit values (Article 17, paragraph 3);
- 3) does not establish a system for measuring noise or creating a report on the measurement of the noise they emit (Article 18, paragraphs 1 and 2 and Article 23, paragraph 1);
- 4) holds a public gathering and activity without a decision or contrary to the provisions of the decision of the local government (Article 20, paragraph 1).

41/2013, 102/2014, 41/2015, 78/2015, 111/2015, 14/ 2016, 108/2016, 7/2017, 63/2017, 45/2018, 70/2018, 95/2018, 104/2018, 93/2019, 2/2020, 64/2021, 129/2021, 110/2022.

²⁴ Drenovak-Ivanović, M. (2015). *Pravni instrumenti ekološke zaštite – građansko-pravna i krivičnopravna zaštita*. Beograd, 12.

²⁵ Law on Protection against Noise in the Environment, *Official Gazette of RS* no. 96/21.

For violating paragraph 1 of this article, the responsible person in a legal entity will be fined between 25.000 and 50.000 dinars, and an entrepreneur will be fined between 250.000 and 500.000 dinars.

The misdemeanor under paragraph 1 is described as the emission of noise above limit values, but it refers to Article 16, paragraph 1 of the 2021 Law, which stipulates that in case the limit values of noise specified in Article 5, point 1-4 of this law are exceeded, the subjects of this law are obliged to take measures to reduce noise. We are of the opinion that, this way, the very precise norm that prescribes the act of commission of this misdemeanor leads to a vague connection with the duty of the subjects of this law to take measures to reduce noise. We believe that in this particular case, the application of this provision should refer to Article 16, paragraph 2, which stipulates that limit values are expressed by noise indicators in accordance with this law, while paragraph 3 of the cited article stipulates that this issue will be regulated through bylaws. Also, Article 16, paragraph 1 of the 2021 Law refers to the application of Article 5, which defines the subjects of environmental protection (the Republic of Serbia, the Autonomous Province, municipalities, cities, the city of Belgrade, legal entities and entrepreneurs, who in the course of their economic activity emit noise, as well as owners, managers, and concessionaires of noise sources, scientific and professional organizations and other public services, associations, citizens and other legal entities) but not noise limit values.

Determining noise limit values is an essential element of the previously mentioned violation. When evaluating whether this element of the misdemeanor has been met, it is necessary to take into account the Ordinance on noise indicators, limit values, methods for evaluating noise indicators, disturbance, and harmful effects of noise in the environment. Analysis of judicial practice shows that a verdict is incomprehensible if

“...it does not contain the facts and circumstances that characterize the misdemeanor and on which the application of the regulations on the misdemeanor depends, because it is not clear from the verdict how the limit value, which is expressed by noise indicators, is expressed, nor is it clear what the highest allowed value of the noise indicator in a specific case is, and what limit value can be different for different sources of noise, that is, for different acoustic zones”²⁶.

Therefore, it is not enough that the verdict contains only a general description of the elements of this misdemeanor. Rather, it is necessary to specify all the essential elements of the act of commission. Moreover, if the

²⁶ Verdict of the Criminal Appellate Court in Belgrade, 111 PRŽ no. 3662/21 from March 9, 2021.

defendant is a legal entity and a responsible person, the verdict should contain an accurate description of the action of the responsible person in the legal entity acting in the name and on behalf of the legal entity.²⁷ It should be noted that the judge in misdemeanor proceedings cannot independently regulate the disposition of the request for initiating misdemeanor proceedings, but after the proceedings have been initiated, the applicant can do so at the main trial. The analysis of the cases in this area indicated that there is room for improvement in the proceedings in these cases, so that first of all, the applicants, the competent inspection, will submit to the court a request for initiating misdemeanor proceedings with a complete factual description of the misdemeanor describing all the essential features of the special description of the misdemeanor. If this is not the case, the court should, when assessing whether the conditions for the initiation of misdemeanor proceedings have been met, return to the applicant the request that does not contain all the factual and legal elements of this misdemeanor so that it can be corrected. When misdemeanor proceedings are initiated with a request that is not regulated in the manner described, the court cannot specify the dispositive clause in the verdict because that would be contrary to Article 247 of the Law on Misdemeanors, which regulates the objective identity of the request and the judgment.

When it comes to these misdemeanors, the main procedural difficulties of proving the actions of one or more persons who emitted noise, the manner and level of noise emission, as well as isolating the specific object-device that emitted noise from other nearby noise emitters are distinguished. Therefore, in proceedings for the misdemeanor of emitting noise greater than what the law allows, the existence of evidence of the noise level measured by a special device expressed in decibels does not necessarily prove the cause-and-effect relationship between the specific device and the noise level, given that very often there are situations where there are several noise emitters that, at a given time, jointly emitted noise that can lead to the measured value. Such an example is the emission of noise from so-called rafts, i.e. the emission of noise by performing musical content in numerous restaurants on the water which are located next to each other. The measurement of the noise level implies compliance with all technical specifications in terms of the distance from the noise source and other conditions, but the proximity of other noise sources in the vicinity of the controlled object really casts doubt on the correctness of the conclusion that the measured noise really originated only from the controlled object without the contribution of other objects in the immediate vicinity.

²⁷ Delibašić, T. (2012) *Pravni stavovi i odluke Višeg prekršajnog suda 2011. godine*. Beograd: Udruženje sudija prekršajnih sudija RS, 161.

The specificity of so-called environmental misdemeanors is also reflected in the fact that the severity of the misdemeanor, when determining the penalty, should be viewed from the aspect that the act of commission “endangers the living conditions of an unlimited number of people and not just an individual”.²⁸

This misdemeanor of emitting noise contrary to environmental protection regulations should be distinguished from emitting noise which is a misdemeanor prescribed by the Law on Public Order and Peace²⁹. Namely, according to Article 7, paragraph 2 of the Law on Public Order and Peace, whoever violates public order and peace or creates anxiety in the public by performing musical and other forms of content, using musical instruments, radio and TV, and other sound devices, as well as mechanical sources of noise (engines, horns, etc.) - will be fined 5.000 to 30.000 dinars.

Unlike the misdemeanor of noise emission in the field of environmental protection, in this misdemeanor, the object of protection is public order and peace and mutually harmonious relations between citizens. In the case of the latter misdemeanor, the intensity of the emitted noise, the limit value, that is, the noise above the limit value, is not an important element. In that case, it is not necessary to determine the intensity of the noise with technical devices. Rather, it is a matter of sensitivity to noise, which is a relatively individual matter.

For the existence of this misdemeanor, the place of commission is important, and that is a public place. In practice, there is an interesting case where the defendant created noise by banging on a pot in his apartment, not in a public place, and the noise was heard in another apartment of the same building.

“Article 3 paragraph 1 point 2 of the Law on Public Order and Peace clearly defines a public place as a space accessible to an unspecified number of people whose identity is not determined in advance, and in that sense, a private apartment cannot be considered a public place. Therefore, bearing in mind that the accused did not meet all of the important elements of the misdemeanor, the court ruled that it had not been proven that the accused committed the misdemeanor he was charged with, and by applying Article 274 of the Law on Misdemeanors, this court has overruled the appealed decision under point I., and found the defendant not guilty for the misdemeanor under Article 7 paragraph 2 of the Law on Public Order and Peace on the

²⁸ Stajić, L.J., Bugarski, T., Ristivojević, B., Pisarić, M., Milić, I. (2018). Misdemeanor legal environment protection with special reference to practice of Misdemeanor court in Novi Sad. *Zbornik radova Pravnog fakulteta*. Novi Sad, 52(4), 1503–1519. <https://doi.org/10.5937/zrpfns52-19753>.

²⁹ Law on Public Order and Peace, *Official Gazette of RS*, no. 6/2016 and 24/2018.

basis of Article 250 paragraph 1 point 3 of the Law on Misdemeanors.” (From the explanation of the Verdict of the Misdemeanor Appellate Court 5 PRŽ No. 25515/20).

In addition to the above, an important element of this misdemeanor is the consequence, which can be the violation of public order and peace or the disturbance of citizens. The consequence belongs to the optional elements of the special description of the misdemeanor³⁰ and it can be abstract or concrete. The former is an abstract consequence, while the latter represents a concrete consequence that has to be proven in a concrete case.

Therefore, protection against noise through misdemeanor law includes protection according to regulations on environmental protection, but also protection against noise as an immission, which means “influences coming from one immovable property to another, neighboring one, which are of a material nature and can be perceived by the senses”. Therefore, it is necessary to determine excessive noise in proceedings, as it is an illegal act that does not have to be tolerated, unlike “so-called ideal immissions - which must be tolerated in a given environment”.³¹

The misdemeanor under point 2) of the 2021 Law is defined as the emission of noise in acoustic zones above the prescribed limit value, that is, acting contrary to Article 15, paragraph 3 of this law, which stipulates that in acoustic zones and quiet zones in agglomerations and outside settlements, the use of noise is limited or forbidden, and activities that cause noise above prescribed limit values are prohibited.

The misdemeanor under point 3) of the 2021 Law is defined as failure to provide noise measurement and produce reports on noise emissions, in accordance with Article 18, paragraphs 1 and 2, and Article 23, paragraph 1 of this law. The cited material provisions stipulate that the legal entity that is the owner, i.e. the user of the noise source, is obliged to ensure the first noise measurement at a given location before putting the noise source into use, obtain a noise measurement report from an authorized professional organization, bear the costs of those measurements and, if necessary, implement measures of sound protection in accordance with this law. Also, this misdemeanor refers to the obligation of regular periodic measurement of the noise level in the environment, which the owner of the object that emits noise, the user of the noise source, performs once every three years.

³⁰ Delić, N., Bajović, V. (2018). *Praktikum za prekršajno pravo*. Beograd: Službeni glasnik, 137.

³¹ Lazić, M. (2012). Zaštita od buke – komunalna buka i imisija buke. *Zbornik radova Pravnog fakulteta u Nišu*, 62, 136–138.

The 2021 Law introduces special authorization to the communal police to issue a misdemeanor order with a fine of 200.000 dinars to a restaurateur if his emissions exceed the prescribed limit values. A fine of 50.000 dinars is prescribed for the responsible person in a legal entity, and 100.000 dinars for an entrepreneur (Article 37, paragraphs 1-3).

It is the author's opinion that the authority of a communal police officer to impose a fine of 500.000 to 1.000.000 dinars on a repeat offender who emits noise within a year from the issuance of the misdemeanor order is contrary to the Law on Misdemeanors (Article 37, Paragraphs 5-8 of the 2021 Law).

Namely, Article 87 of the Law on Misdemeanors³² stipulates that a misdemeanor sanction can only be imposed by a competent court that conducts misdemeanor proceedings under this law, and that, as an exception to this rule, a misdemeanor sanction can be imposed by an authorized body, i.e. an authorized person with a misdemeanor order in accordance with the law.³³ This exception is further regulated by Article 168, paragraph 1 of the Law on Misdemeanors, which stipulates that a misdemeanor order is issued when the only misdemeanor sanction prescribed by law or other regulation is a fixed fine.

Therefore, the exception to the rule that only the court can impose a misdemeanor sanction exists only in the event that a fine is prescribed in a fixed amount.³⁴ In this particular case, a fixed fine is not prescribed. On the contrary, a rather high range of fines from 500.000 to 1.000.000 dinars for a restaurateur, a fine ranging from 100.000 to 300.000 dinars for a responsible person, and a fine from 250.000 to 500.000 dinars for an entrepreneur.

In addition to the indicated inconsistency of this provision with the Law on Misdemeanors, the elements of the special description of this misdemeanor are vague. Namely, in this case, an offender repeats the misdemeanor of noise emission within a year from the issuance of the misdemeanor order. First of all, the issuance of a misdemeanor order does not equal responsibility for the misdemeanor in every case because the offender can request a trial before a court. In the aforementioned situation, if all the conditions are met, the court will initiate misdemeanor proceedings and undertake all procedural actions in order to determine whether there is responsibility for the misdemeanor. Therefore, it could be the case that two or more misdemeanor orders are issued to

³² Law on Misdemeanors, *Official Gazette of RS*, no. 65/2013, 13/2016, 98/2016, 91/2019, 91/2019, 112/2022.

³³ Spasić, B. (2009). Sistem prekršajnih sankcija u novom Zakonu o prekršajima, u: *Podrška primeni novog Zakona o prekršajima i uvod u rad novoformiranih Prekršajnih sudova*. Kladovo: USAID, 51–76, <https://www.usudprek.org.rs/pub/download/podrška-primeni-novog-zak-prek.pdf>.

³⁴ Tukar, M. (2014). *Priručnik za primenu antidiskriminacionog prekršajnog prava*, 27. Beograd.

one person, that this person submits requests for a trial which initiate misdemeanor proceedings, and according to this provision, they would be deemed a repeat offender, even though their responsibility for the misdemeanor has not been officially established by the court. Even in the event that a decision has been made regarding the request for a trial, the offender can only be deemed a repeat offender if it is a repeated misdemeanor after a legally binding verdict in which their responsibility for the misdemeanor was established. On the other hand, in the case of this misdemeanor, the date of issuance of the misdemeanor order is prescribed as an essential element, although there is a period of 8 days from that date for submitting a request for a trial, after which the misdemeanor order becomes final and enforceable. Therefore, the author believes that the misdemeanor prescribed in this way is inconsistent with the law, that it is imprecise, and that this expansion of the powers of the communal police in the area of the protection of the environment against noise is legally unfounded, perhaps even unconstitutional. This is especially due to the fact that in the theory of misdemeanor law, the majority view is that in addition to regular sentencing within the prescribed limits, there is the institution of sentencing below the prescribed minimum (mitigation of the sentence), as well as the institution of increasing the sentence above the prescribed special maximum only in the case of a misdemeanor of extended duration.³⁵

In addition to the aforementioned objections to such a legal solution, it should be pointed out that for this type of repeat offense, a mandatory protective measure of confiscation of objects (sources of noise) that were used or intended for the commission of a misdemeanor is prescribed. It is completely unclear in what way the communal police were given the authority that only the court has, which is to impose a mandatory protective measure of confiscation of objects and that with a misdemeanor order for which instead of a fixed amount, a fine in a range is prescribed. Article 54 of the Law on Misdemeanors stipulates that the court that issued the verdict will decide whether to confiscate the object that was used or intended for the commission of the misdemeanor. In the judgment in which a protective measure might be used, the court will decide what the object in question is and describe it in detail in the judgment.³⁶

According to the data of the communal police, in the first year of the implementation of the (new) Law on Protection against Noise in the Environment, 31 misdemeanor orders were issued due to excessive noise.³⁷ We

³⁵ Vuković, I. (2015). *Prekršajno pravo*, 95. Faculty of Law, University of Belgrade.

³⁶ Vukčević, B. (2014). *Komentar Zakona o prekršajima, sa obrascima, podzakonskim aktima i registrom pojmova*. Belgrade: Poslovni biro.

³⁷ „N1“, 2022. Komunalna milicija: Za godinu dana izdat 31 prekršajni nalog zbog buke, <https://rs.n1.info.com/vesti/komunalna-milicija-za-godinu-dana-izdat-31-prekršajni-nalog-zbog-buke/>

hope that the legislator will harmonize the provisions on repeat offenders with the Law on Misdemeanors before a misdemeanor order is issued for a repeat offense of noise emission.

In addition to the aforementioned misdemeanors, Article 39 of the 2021 Law prescribes misdemeanors committed by a responsible person in a state administration body, a holder of public authority, or an authorized legal entity.

A fine of 25.000 to 50.000 dinars shall be imposed on a person responsible for a misdemeanor in a state administration body, a holder of public authority, or an authorized legal entity if they:

- 1) do not carry out acoustic zoning, that is, determine acoustic zones and do not make a decision on limiting noise levels (Article 17);
- 2) do not set sound protection measures (Article 20, paragraph 2);
- 3) approve the holding of public gatherings and activities without an act of the local government on established sound protection measures (Article 20, paragraph 4);
- 4) do not prepare strategic noise maps in accordance with the provisions of this law and regulations adopted on the basis of this law (Article 21, paragraphs 2, 3 and 4);
- 5) do not adopt an action plan in accordance with the provisions of this law and regulations adopted on the basis of this law (Article 22, paragraphs 2, 3 and 4);
- 6) do not perform noise monitoring in accordance with the provisions of this law and regulations adopted on the basis of this law (Article 24);
- 7) fail to inform the public about noise (Article 28).

CONCLUSION

Back in 1996, the European Commission explicitly defined noise as one of the main environmental protection issues. In this area, more than ten EU instruments of different legal effects have been adopted, the most significant of which is the systemic legal act - Directive on the assessment and management of environmental noise 2002/49/EC of June 25, 2002. It defines the concept of noise, the harmful effects of noise, the established common methods of noise assessment, the harmonized indicators for determining limit values of harmful noise emissions, the creation of strategic noise maps, etc.

The implementation of the standards of European documents in the field of environmental protection against excessive noise in national legislation was carried out by the adoption of several laws and bylaws. When considering the national framework of protection against noise, it was taken into account that

it is of a dual nature – protection through civil law and public law. In this paper, protection against noise through public law in misdemeanor proceedings is analyzed.

Protection of the environment against noise is regulated by the Law on Protection against Noise in the Environment from 2021. The paper analyzes the penal provisions of this law in relation to the Law on Protection against Noise in the Environment from 2009, which started the implementation of European standards in this field.

The research in question also included an analysis of judicial practice in the case of the offense of emitting noise that violates public order and peace or causes disturbance to citizens. The existence of two different noise emission offenses in separate misdemeanor legislation does not contradict the Directive on the assessment and management of environmental noise 2002/49/EC of June 25, 2002. Namely, the definition of noise for the purposes of applying this directive does not include certain categories of noise such as noise from within a vehicle or noise from doing daily household chores, noise to which the person producing the noise is exposed, the noise emitted by neighbors, noise at the workplace, etc. Therefore, even the misdemeanor from the Law on Protection against Noise in the Environment does not have such an object of protection. It is a matter of protection against noise emission, which does not necessarily have consequences for the environment, but from the public law aspect, it is important for the maintenance of public order and good neighborly relations. Therefore, through the prism of this misdemeanor from the Law on Public Order and Peace, the differences in the essential characteristics and proof of the misdemeanor in relation to the misdemeanor from the Law on Protection against Noise in the Environment are pointed out.

In the analysis of the legal framework of noise protection, the author devoted special attention to the new powers of the communal police to issue misdemeanor orders to restaurateurs for the emission of noise. A particularly worrying legal solution, according to the author, is the introduction of the authority of the communal police to issue a misdemeanor order for repeating the offense of noise emission, for which a fine is not prescribed in a fixed amount but in a range. The author's opinion is that the misdemeanor prescribed in this way is inconsistent with the law, that it is imprecise, and that the expansion of the authority of the communal police in the area of environmental protection against noise is legally unfounded. In addition to the aforementioned objections to such a legal solution, it should be pointed out that for this type of repeat offense, a mandatory protective measure of confiscation of objects (sources of noise) that were used or intended for the commission of a misdemeanor is prescribed. It is completely unclear in what way the communal police were given the authority that only the court has, which is to

impose a mandatory protective measure of confiscation of objects along with a misdemeanor order for which a fine is prescribed in a range instead of a fixed amount.

The author concludes that through liability for a misdemeanor, it is possible to prevent further violations of regulations and possibly causing serious damage in the field of environmental protection, but that the legislator should pay special attention to the constitutional principle of fair trial when prescribing violations and introducing new competencies and powers of administrative bodies.

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