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## KRIVIČNA DELA PROTIV ŽIVOTNE SREDINE Krivično zakonodavstvo Srbije i međunarodni pravni standardi – usaglašenost ili ne?\*

**SAŽETAK:** Problematika krivičnih dela protiv životne sredine posmatrano s aspekta krivičnog zakonodavstva Republike Srbije i međunarodnih pravnih standarda – njihove međusobne usaglašenosti u radu je stručno-kritički analizirana kroz sedam grupa pitanja, uvodna razmatranja i zaključne napomene date na kraju teksta. Posmatrano s aspekta aktuelnosti i obima obrade četiri su grupe pitanja kojima se radu poklanja posebna pažnja. To su pitanja koja se tiču: ekologije i zaštite životne sredine uopšte (njenog značaja, univerzalnosti i razloga neophodnosti zaštite; međunarodnih pravnih standarda zaštite životne sredine; pravnog okvira zaštite životne sredine u Republici Srbiji – njenog ustavnog i krivičnog aspekta i analize primene krivičnih odredaba o zaštiti životne sredine u praksi otkrivanja i dokazivanja ovih krivičnih dela na teritoriji Apelacionog suda u Novom Sadu.

Tri su ključna rezultata izvršene stručno-kritičke analize predmetne problematike. *Prvo*, Ustav Republike Srbije prepoznaje pravo na zdravu životnu sredinu kao jedno od osnovnih ljudskih prava i predstavlja dobar pravni okvir za detaljnije zakonsko regulisanje ove tako važne problematike; *drugo*, krivično zakonodavstvo Repu-

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blike Srbije je u velikoj meri usklađeno sa međunarodnim pravnim standardima vezanim za ekološka krivična dela i pruža odličnu osnovu za mnogo bolje rezultate u zaštiti životne sredine; *treće*, kao i u mnogim drugim zakonski regulisanim sferama života i ovde je pravna regulativa ispred primene tih propisa u praksi; *četvrto*, neophodan je multidisciplinarni pristup u rešavanju krivičnih slučajeva ekološkog kriminaliteta i u tom cilju pri višim sudovima treba formirati neke vrste specijalizovanih ekipa sastavljenih od sudija, tužilaca i policijskih službenika i osposobiti ih za adekvatnije postupanje u ovakvim krivičnim slučajevima.

**Ključne reči:** ekologija, životna sredina, Ustav, krivično zakonodavstvo, krivična dela, multidisciplinarni pristup, međunarodni pravni standardi, specijalizovane ekipe, Srbija

## UVODNE NAPOMENE

Aktuelnosti ove teme, pored opšteg usaglašavanja domaćih propisa sa zakonodavstvom Evropske unije, značajno je doprinelo i otvaranje Klastera 4 u pristupnim pregovorima o članstvu u Evropskoj uniji, u decembru 2021. godine. U okviru ovog klastera, koji se odnosi na Zelenu agendu i održivu povezanost, svakako da Poglavlje 27, koje se tiče životne sredine i klimatskih promena predstavlja najzahtevnije i najskuplje poglavlje i istovremeno obuhvata izuzetno obimne propise EU, sa kojima treba uskladiti domaće propise. Kazneno pravo i kaznena politika (i) u ovoj oblasti imaju veliki značaj u pravilnoj i adekvatnoj primeni zaštite životne sredine, kako na lokalnom tako i na globalnom planu.

Za potrebe ovog rada zadržaćemo se samo na tzv. ekološkim krivičnim delima, fokusirajući se pre svega na teža narušavanja i povrede zaštitnog dobra koja su predviđena kao krivična dela, ne umanjujući pri tome značaj prekršaja iz ove oblasti kao posebnog segmenta kaznenog zakonodavstva. Ukratko će biti predočen međunarodno-pravni okvir kao odgovor na značajno povećanje ugrožavanja životne sredine u čitavom svetu.

Pored delimične analize pozitivnopravnih propisa koji predviđaju krivična dela u našoj zemlji sagledaćemo i neka krivičnopravna rešenja drugih država u zaštiti životne sredine. Predstavićemo takođe i rezultate miniistraživanja na teritoriji Apelacionog suda u Novom Sadu u poslednje tri godine (2019, 2020. i 2021) za ekološka krivična dela. Osvrnućemo se i na osnivanje Jedinice za suzbijanje ekološkog kriminaliteta i zaštitu životne sredine pri MUP Republike Srbije.

## **EKOLOGIJA I ZAŠTITA ŽIVOTNE SREDINE**

Iako postoje različiti pristupi u određivanju pojma ekologije, ona se najjednostavnije može posmatrati kao naučna disciplina koja proučava odnose između živih bića prema živoj i neživoj prirodi.

Etimološki posmatrano, naziv ekologija potiče od dve grčke reči: „oikos“ (dom, domaćinstvo) i „logos“ (nauka), a taj termin je prvi put upotrebljen u drugoj polovini XIX veka, mada se smatra da je poznati engleski biolog Čarls Darvin u stvari osnivač ekologije, jer je u svom radu, objašnjavajući pojam borbe za opstanak, navodio splet uzajamnih odnosa između živih bića, kao i između živih bića i okolne nežive sredine.

Čovek, od kada zna za sebe, menja živi svet i prirodu prilagođavajući ih sebi i podređujući ih svojim potrebama. Civilizacija je prešla ogroman put od prvobitne zajednice do savremenog društva. U tom smislu je čovek, menjajući sebe, menjao i svoje životno okruženje, tako da to dugo vremena nije značajno uticalo na prirodu kojom je bio okružen, a posebno ne na nekom širem području.

Premda je povremeno u istoriji bilo, doduše u tragovima, iskazivanja zabrinutosti za životnu sredinu i njeno narušavanje postignutog balansa u nekim segmentima, tek u drugoj polovini XX veka društvo uopšte pokazuje organizovaniji i globalni pristup ovom problemu. Intenzivnija industrijalizacija, drastično povećanje broja stanovnika na zemaljskoj kugli, ogroman broj motornih vozila koja svakodnevno ispuštaju otrovne materije i dramatične klimatske promene su značajno uticali na drugačiji pristup čoveka sredini koja ga okružuje. Tek ulaskom u eru industrijalizacije i kasnije, kroz globalizaciju, počinje da jača svest da se životna sredina mora mnogo pažljivije eksploatisati a da se profiti velikih multinacionalnih kompanija, koje masovno uništavaju resurse na planeti i korišćenjem tzv. prljavih tehnologija, ne smeju staviti ispred budućnosti i perspektive ljudskog roda uopšte. Globalne klimatske promene, izazvane nerazumnim postupcima ljudske vrste, imaju za posledicu velike promene u životu čoveka, te životinjskog i biljnog sveta, dovodeći u pitanje dalju egzistenciju. Čini se da je krajnje vreme da se čitava društvena zajednica uključi u projekte koji imaju za cilj zaštitu sredine u kojoj bivstvujemo.

## KAZNENO ZAKONODAVSTVO U ZAŠTITI ŽIVOTNE SREDINE

Iako se na prvi pogled čini da je kazneno zakonodavstvo samo mali segment neophodnih aktivnosti, ipak je nužno da, kako na globalnom, tako i na lokalnom nivou budu propisana pravila i uslovi za menjanje životne sredine. I dalje, takođe se moraju propisati nedozvoljena ponašanja kojima se ugrožava, odnosno uništava životna sredina uz primenu adekvatnih sankcija. U tom smislu uloga krivičnopravnog inkriminisanja svih onih postupaka koji dovode u opasnost životnu sredinu ili narušavaju uspostavljeni balans između čoveka i prirode, a posebno ako tu životnu sredinu oštećuju ili uništavaju, jeste od izuzetnog značaja za jedno od osnovnih ljudskih prava, na zaštitu prava čoveka na život i razvoj u zdravom okruženju.

Praktično, sve zemlje sveta, bez obzira na velike razlike između njih, u manjoj ili većoj meri propisuju kaznena dela, a pre svega krivična dela, uvođeći ih u svoje zakonodavstvo, onda kada je svest o potrebi zaštite životne sredine na odgovarajućem nivou. Naravno, nisu samo države štitile ovaj zaštitni objekat na svojoj teritoriji, već se u taj proces uključila i međunarodna zajednica usvajajući niz principa i pravila, donoseći odgovarajuće konvencije i druge međunarodno-pravne akte.

Do druge polovine XX veka na međunarodnom planu nije bilo globalnog pristupa ovom problemu, već se uglavnom interesovanje fokusiralo na pojedine segmente životne sredine, kao na primer na ugrožene biljne i životinjske vrste ili na zagađenja mora naftom i dr.

Tek u drugoj polovini XX veka stalne aktivnosti međunarodnih organizacija u oblasti životne sredine rezultirale su stvaranjem institucionalnih okvira i konstituisanjem pravnih normi oličenih u Deklaraciji Konferencije Ujedinjenih nacija o životnoj sredini usvojenoj u Stokholmu 1972. godine. U Deklaraciji se kao osnovni cilj ekološkog razvoja ističe smanjenje rizika u pogledu uslova života i poboljšanje kvaliteta života, a pri tome se posebna pažnja pridaje zaštiti životne sredine. Dve decenije kasnije, 1992. godine u Rio de Žaneiru je održana Konferencija UN o životnoj sredini i razvoju, uz izraženu zabrinutost za pitanja globalnog zagrevanja i gubitka biološke raznovrsnosti. Usvojeni su veoma važni principi koji su opredelili dalje aktivnosti u ovoj oblasti.

Konvencija o dostupnosti informacija, učešću javnosti u donošenju odluka i pristupu pravosuđu u pitanjima životne sredine, koja je direktno povezala oblast zaštite životne sredine i oblast zaštite ljudskih prava, usvojena je 1998. godine u Arhusu.

U moru mnogobrojnih međunarodnih skupova koji su se bavili ovom temom, izdvojili bismo još i Direktivu Evropske unije o odgovornosti u oblasti zaštite životne sredine iz 2004. godine koja je uspostavila princip „zagađivač plaća“, kao pravno sredstvo zaštite životne sredine. Predviđene su mere i postupci koji sprečavaju ili ublažavaju posledice nastale štete. Iako je u praksi bilo dilema i nedorečenosti u primeni i implementaciji ove Direktive u nacionalna zakonodavstva, ona je ipak usmerila pažnju na odgovornost za nanetu štetu životnoj sredini, što je usvojila i naša zemlja.

Različiti pristupi kaznenoj odgovornosti za ekološka krivična dela rezultirali su i nejednakim rešavanjem pitanja odgovornosti pravnih lica za ova krivična dela. Nije bilo dilema, naravno, oko toga da fizičko lice može i treba da odgovara za krivična dela čiji je zaštitni objekat zdrava životna sredina po principu lične odgovornosti. Veći broj država Evrope (Italija, Nemačka, Španija, Portugal i dr.) ne poznaje institut krivične odgovornosti pravnih lica, pa krivično odgovara isključivo fizičko lice na osnovu utvrđenog subjektivnog odnosa između učinioaca i dela. To najbolje ilustruje Ustav Italije koji ističe da je krivična odgovornost lična, a da zaposleni u javnim službama podležu krivičnoj, građansko-pravnoj i administrativnoj odgovornosti za povredu prava. Država, odnosno neki njen organ u slučaju izvršenja nekog krivičnog dela mogu da odgovaraju samo u okviru građansko-pravne odgovornosti. Većina država common law sistema prihvatila je drugačije rešenje, odnosno zauzela stanovište da, pored građana, pred sudom treba krivično da odgovaraju i korporacije i njihovi zaposleni. To rešenje je mnogo životnije, posebno u uslovima usloznjavanja pravnih lica i kompanija i sve manjeg uticaja pojedinaca na poslovno delovanje, a samim tim i na protivzakonito delovanje. Nije novost da pojedine velike korporacije za visoku platu angažuju rukovodioce („direktori za jednokratnu upotrebu“) koji za visoka primanja prihvataju da snose rizik odgovornosti za pravno lice a pre svega za neke nezakonite radnje, pa se time izbegava odgovornost tih korporacija. Ovakva pojava nije nepoznata ni na našim prostorima. U nekim državama, kao npr. u Holandiji, postoji odgovornost pravnih lica duži niz godina, kao i u Francuskoj, čijim krivičnim zakonom je predviđeno da je krivična odgovornost pravnog lica indirektna i proizilazi iz lične odgovornosti fizičkog lica, predstavnika pravnog lica.<sup>1</sup>

U našoj zemlji pravna lica su mogla odgovarati samo prekršajno i za privredne presteupe, a krivično tek od 2008. godine kada je usvojen Zakon o odgovornosti pravnih lica za krivična dela.<sup>2</sup> Prema odredbama tog zakona pravno lice odgovara za krivično delo koje u okviru svojih poslova, odnosno

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<sup>1</sup> Joldžić, V. (2007). *Krivična, disciplinska i materijalna odgovornost*. Beograd: Institut za kriminološka i sociološka istraživanja.

<sup>2</sup> Zakon o krivičnoj odgovornosti pravnih lica, *Službeni glasnik RS*, br. 97/2008

ovlašćenja učini odgovorno lice u nameri da za pravno lice ostvari korist. Takođe je predviđena odgovornost pravnog lica i u situaciji ako odgovorno lice nevršenjem nadzora ili kontrole omogućí izvršenje krivičnog dela u korist pravnog lica od strane fizičkog lica koje deluje pod nadzorom i kontrolom odgovornog lica. Iako se odgovornost pravnog lica zasniva na krivici odgovornog lica, postupak se može voditi, odnosno nastaviti i ako je krivični postupak protiv odgovornog lica obustavljen, ili je optužba odbijena. Kada su sankcije u pitanju, zakonodavac je predvideo da se pravnom licu kao učiniocu krivičnog dela mogu izreći kazne (novčana kazna i prestanak pravnog lica), uslovne osude i mere bezbednosti. Čini se ipak da dobar normativni okvir za odgovornost pravnih lica koji pruža ovaj zakon nije u najboljoj meri iskorišćen, a posebno u oblasti zaštite životne sredine, gde bi mogao u većoj meri da nađe svoju primenu.<sup>3</sup>

## USTAVNA REŠENJA

S obzirom da se ustavi država po pravilu ne menjaju često, ne iznenađuje činjenica da se u velikom broju tih najviših pravnih akata uopšte ne pominje zaštita životne sredine, pa je onda i logično da se u krivičnim zakonodavstvima tih država ne nalaze inkriminacije kojima je osnovni cilj zaštita životne sredine. To, naravno, ne znači da te zemlje nemaju adekvatnu (i) krivičnopravnu zaštitu životne sredine, već se po pravilu pozivanje na ustavnopravnu zaštitu tih elemenata, ostvaruje ekstenzivnim tumačenjem ustavnih normi koje definišu neke druge objekte regulacije. Uočljivo je da takve države većinom, krivičnopravnu represiju ekoloških delikata formiraju u okviru tzv. sporednog krivičnog zakonodavstva. U okviru posebnih zakona koji regulišu pojedine oblasti iz domena ekologije se propisuju određena krivična dela i krivična odgovornost.<sup>4</sup>

Svakako da su ustavi koji su pominjali životnu sredinu kao opšte dobro, značajno uticali na formiranje odgovarajućih krivičnopravnih normi kojima je bio cilj upravo zaštita te životne sredine.

Naša zemlja pripada grupi država koje su, uviđajući značaj životne sredine kao dobra od opšteg interesa, svojim najvišim pravnim aktom – Ustavom, predvidela pravo na zdravu životnu sredinu i pravo na blagovremeno i potpuno obaveštavanje o njenom stanju, opredeljujući da je svako, a naročito

<sup>3</sup> Batrićević, A. (2012). *Ekološka krivična dela i kriminalitet korporacija*. Zbornik „*Ekologija i pravo*“. Beograd.

<sup>4</sup> Joldžić, V. (2007). *Krivična, disciplinska i materijalna odgovornost*. Beograd: Institut za kriminološka i sociološka istraživanja.

država, odgovoran za zaštitu životne sredine, kao i da je svako dužan da je čuva i poboljšava.<sup>5</sup>

Neophodno je ipak istaći da je još Ustav SFRJ iz 1974. godine pominjući zemljište, šume, vode, vodotoke, more i morsku obalu, rudna blaga i druga prirodna bogatstva, odredio da ta dobra od opšteg interesa uživaju posebnu zaštitu i koriste se pod uslovima i na način koji je propisan zakonom, a moraju se koristiti tako da se obezbeđuje njihovo racionalno iskorišćavanje i drugi opšti interesi. Ustanovljeno je pravo na zdravu životnu sredinu, a svako ko iskorišćava zemljište, vodu ili druga prirodna dobra dužan je da to čini na način kojim se obezbeđuju uslovi za rad i život čoveka u zdravoj sredini, dok je svako dužan da čuva prirodu i njena dobra, prirodne znamenitosti i retkosti.

Upravo na primeru ovog Ustava se može uočiti značajan napredak u našem shvatanju važnosti zdrave životne sredine, posebno ako se uzme u obzir da je samo desetak godina ranije, Ustavom iz 1963. godine predviđeno da je samo zemlja dobro od opšteg interesa, a da se zemljište mora koristiti u skladu sa zakonom predviđenim opštim uslovima kojima se obezbeđuje racionalno iskorišćavanje zemljišta i drugi opšti interesi, dok šume i šumsko zemljište uživaju posebnu zaštitu predviđenu zakonom.<sup>6</sup>

Ako se uzme u obzir da je od početka XXI veka došlo do značajnih i kvalitetnih promena u našem kaznenom, a pre svega krivičnom zakonodavstvu, te da se taj trend nastavlja i kroz približavanje EU, čini se da nije nerealan tvrditi da je ova oblast najdinamičnija u čitavom krivičnom pravu Republike Srbije. Važno je pomenuti da su 2004. godine usvojena četiri systemska zakona (Zakon o zaštiti životne sredine, Zakon o strateškoj proceni uticaja na životnu sredinu, Zakon o integrisanom sprečavanju i kontroli zagađivanja životne sredine) a sledeće 2005. godine su krivična dela protiv životne sredine sistematizovana u jednu posebnu glavu Krivičnog zakonika, dok je 2008. godine usvojen Zakon o odgovornosti pravnih lica za krivična dela. Takođe su i narednih godina usvojeni neki tzv. sektorski zakoni koji su regulisali različite aspekte uređenja, unapređenja i zaštite životne sredine, propisujući istovremeno privredne presteupe i prekršaje za one koji se nesavesno odnose prema životnoj sredini.<sup>7</sup>

Jedan od takvih zakona je i Zakon o klimatskim promenama<sup>8</sup> koji bi trebalo da obezbedi uspostavljanje sistema za smanjenje emisija gasova s efektom staklene bašte i obezbedi prilagođavanje izmenjenim klimatskim uslovima uz propisivanje prekršaja i privrednih prestupa za postupanje suprotno

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<sup>5</sup> Ustav Republike Srbije, *Službeni glasnik RS*, br. 98/2006. i 115/2021.

<sup>6</sup> Ustav SFR Jugoslavije, *Službeni list SFRJ*, 1963.

<sup>7</sup> Joksić, I. (2012). *Krivičnopravna zaštita životne sredine u zakonodavstvu i praksi*. Beograd: Institut za uporedno pravo.

<sup>8</sup> Zakon o klimatskim promenama, *Službeni glasnik RS*, br. 26/2021

od ovog zakona. Istovremeno, odredbe ovog zakona su i posledica ratifikacije Pariskog sporazuma, koji je istakao da klimatske promene predstavljaju jedan od najvećih, ako ne i pojedinačno najveći izazov koji trenutno stoji pred celim čovečanstvom. Ovaj zakon je usklađen sa zakonodavstvom EU, jer je implementirao u naše zakonodavstvo odgovarajuće odredbe koje već postoje u pravnom sistemu EU. O značaju i ekonomskim efektima zakonskog regulisanja ove oblasti govore i izračunati finansijski aspekti aktivnosti na ublažavanju klimatskih promena:

„Svaki uloženi dinar u prilagođavanje na klimatske promene je ekvivalentan sa najmanje šest dinara koji su uloženi u rešavanje posledica nečinjenja, odnosno izostanka prilagođavanja na klimatske promene“.<sup>9</sup>

## **ZAŠTITA ŽIVOTNE SREDINE U KRIVIČNOM ZAKONODAVSTVU REPUBLIKE SRBIJE**

Imajući u vidu izuzetno široko polje delovanja i aktivnosti u zaštiti životne sredine, određene kaznene odredbe su u našem zakonodavstvu, pored Krivičnog zakonika i drugih zakona iz ove oblasti, obuhvaćene i u prekršajnom zakonodavstvu a, takođe, i u domenu privrednih prestupa.

Iako je najveći broj tzv. ekoloških krivičnih dela sistematizovan u Glavi XXIV Krivičnog zakonika, jednostavno, nije bilo moguće na jednom mestu obuhvatiti sva protivpravna ponašanja koja imaju elemente krivičnog dela, pa su ona dodatno propisana u posebnim zakonima.

Koliko je ova oblast bogata propisima može da ilustruje podela na opšte propise koji štite ovaj zaštitni objekat pa, pored Ustava, u ovu grupu možemo svrstati još 13 zakona, dok u delu koji se odnosi na zaštitu vazduha, vode, zemljišta, bilja, šuma, geoloških resursa i životinjskog sveta, 17 zakona reguliše pomenute vrednosti, a u grupi koja štiti hranu, piće, vodu za piće i predmete opšte upotrebe ima 4 zakona, u odnosu na zaštitu od jonizujućeg i nejonizujućeg zračenja ima 2 zakona, a u grupi zakona o zaštiti od opasnih i otpadnih materija možemo nabrojati 7 zakona.<sup>10</sup>

Naravno, mnogo je veći broj raznih podzakonskih akata koji preciznije i detaljnije regulišu ovu materiju, a tu je i mnoštvo ratifikovanih međunarodnih konvencija i drugih akata, tako da je to zaista „šuma“ propisa, koji se bave zaštitom životne sredine.

<sup>9</sup> Jovčić, I., Dnevni list „Dnevnik“, Novi Sad, 7. 8. 2022.

<sup>10</sup> Pravni fakultet u Novom Sadu, Pravna klinika – zaštita životne sredine: Važeći zakoni i ostali akti – <http://pravneklinike.pf.uns.ac.rs>



U Krivičnom zakoniku ekološka krivična dela obuhvaćena su u glavi XXIV i to čl. 260–278, kojima su propisana ponašanja i propuštanja koja imaju elemente krivičnih dela čiji zaštitni objekat je zdrava životna sredina u širem smislu. Imajući u vidu mnogobrojnost i raznovrsnost, prihvatljiva je podela na četiri grupe:

- 1) *opšta krivična dela protiv životne sredine* (zagađenje životne sredine, čl. 260. KZS; nepreduzimanje mera zaštite životne sredine, čl. 261. KZS; protivpravna izgradnja i stavljanje u pogon objekata i postrojenja koji zagađuju životnu sredinu, čl. 262. KZS; oštećenje objekata i uređaja za zaštitu životne sredine, čl. 263. KZS; oštećenje životne sredine, čl. 264. KZS; uništenje, oštećenje i iznošenje u inostranstvo zaštićenog prirodnog dobra, čl. 265. KZS; povreda prava na informisanje o stanju životne sredine, čl. 268. KZS)
- 2) *krivična dela u vezi sa opasnim materijama* (unošenje opasnih materija u Srbiju i nedozvoljeno prerađivanje, odlaganje i skladištenje opasnih materija, čl. 266. KZS; nedozvoljena izgradnja nuklearnih postrojenja, čl. 267. KZS)
- 3) *krivična dela protiv biljnog i životinjskog sveta* (ubijanje i mučenje životinja, čl. 269. KZS; prenošenje zaraznih bolesti kod životinja i biljaka, čl. 270. KZS; nesavesno pružanje veterinarske pomoći, čl. 271. KZS; proizvodnja štetnih sredstava za lečenje životinja, čl. 272. KZS; zagađivanje hrane i vode za ishranu, odnosno napajanje životinja, čl. 273. KZS; pustošenje šuma, čl. 274. KZS; šumska krađa, čl. 275. KZS) i
- 4) *krivična dela protivzakonitog lova i ribolova* (nezakonit lov, čl. 276. KZS; nezakonit ribolov, čl. 277. KZS).<sup>11</sup>

Međutim, prema mestu na kojem se nalaze propisi koji predviđaju krivična dela u ovoj oblasti, mogu se klasifikovati u tri kategorije:

- 1) prava ekološka krivična dela koja se nalaze u glavi XXIV KZ Srbije;
- 2) nepravna ekološka krivična dela koja se nalaze u odredbama KZ Srbije, ali u okviru krivičnih dela koja pripadaju drugim grupama i
- 3) sporedna ekološka krivična dela koja se nalaze van KZ Srbije, u odredbama sporednog zakonodavstva. (Zakon o zdravlju bilja – *Službeni glasnik RS* br. 14/2009; Zakon o sredstvima za zaštitu bilja – *Službeni glasnik RS*, br. 41/2009; Zakon o genetički modifikovanim organizmima, *Službeni glasnik RS*, br. 41/2009).<sup>12</sup>

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<sup>11</sup> Lazić, D. et al. (2021). *Krivičnopravna zaštita životne sredine u Republici Srbiji i njeno usklađivanje sa zakonodavstvom Evropske unije*. Beograd: Poslovni i pravni fakultet „MB“.

<sup>12</sup> Jovašević, D. (2011). Ekološki kriminalitet u Srbiji – teorija, zakonodavstvo, praksa. *Zbornik Ekologija i pravo*. Niš.

Ipak, samo uvođenje ekoloških krivičnih dela u krivično zakonodavstvo, ma koliko to bio značajan korak ka kvalitetnijoj zaštiti zdrave životne sredine, samo po sebi ne predstavlja garanciju adekvatne krivičnopravne zaštite. Moraju se obezbediti efikasni mehanizmi i dovoljni kapaciteti za otkrivanje i evidentiranje ovakvih krivičnih dela, mora se pripremiti odgovarajuća stručna procena prikupljenog dokaznog materijala, a svakako je neophodna i dodatna edukacija svih u lancu otkrivanja, dokazivanja i presuđivanja, počev od inspektora na terenu, ljudi koji učestvuju u monitoringu životne sredine, policijskih službenika, javnih tužilaca i sudija. Čini se da u tom segmentu nije došlo do blagovremene reakcije, jer je suviše malo krivičnih prijava iz glave XXIV Krivičnog zakonika bilo do 2014. godine (kada je bilo ukupno 1.996), a taj trend se nastavio i kasnije, sve do 2020. godine (kada je bilo ukupno 2.153 prijave). Kako je od toga ubedljivo najveći broj krivičnih prijava podnošen za krivično delo šumske krađe, zabrinjava činjenica da je npr. u 2020. godini u Republici Srbiji podneto samo 20 prijava za osnovno krivično delo – zagađenje životne sredine (i to samo 13 prijava protiv poznatih izvršilaca). I u ranijem periodu situacija je bila slična, jer je npr. u 2011. godini podneto 1.789 prijava za krivična dela iz ove glave KZ, a od toga je samo 12 prijava bilo za krivično delo zagađenja životne sredine. Te godine bilo je 8 prijava za nepreduzimanje mera zaštite životne sredine, 6 prijava za oštećenje životne sredine, a istovremeno je bilo čak 1.262 prijave za šumsku krađu, 196 prijava za ubijanje i zlostavljanje životinja i 129 prijava za nezakonit lov. U toj istoj 2011. godini za ova krivična dela optuženo je 635 lica, a od toga samo 2 lica za zagađenje životne sredine a 6 za nepreduzimanje mera zaštite životne sredine, dok je za šumsku krađu optuženo 417 lica, a za krivična dela nezakonit lov i nezakonit ribolov 124 lica. Ako bismo sve to stavili i u kontekst osuđenih lica, za ova krivična dela u 2011. godini rezultati bi bili pomalo razočaravajući. Naime, nije bilo osuđenih lica za zagađenje životne sredine (isto je bilo i prethodne, 2010. godine, dok je u 2009. godini osuđeno samo jedno lice) a 4 lica je osuđeno za nepreduzimanje mera zaštite životne sredine (u 2010. godini, 1 lice, a u 2009. godini nijedno). Osuđeno je 287 lica za šumsku krađu, a za nezakonit lov i nezakonit ribolov 93 lica. Kada je kaznena politika u pitanju možemo se i dalje zadržati na 2011. godini u kojoj nije bio osuđen niko za zagađenje životne sredine, dok je za nepreduzimanje mera za zaštitu životne sredine izrečena samo jedna zatvorska kazna, i to u rasponu 3–6 meseci. Istovremeno je za šumsku krađu 112 lica osuđeno na kratkotrajne kazne zatvora do 6 meseci, a jedno lice na kaznu zatvora preko 6 meseci. Kod krivičnih dela nezakonitog lova i ribolova izrečeno je ukupno 9 kratkotrajnih kazni zatvora do 6 meseci i jedna kazna zatvora preko 6 meseci. Najčešće su izricane uslovne osude (opet najčešće za krivična dela šumske krađe i nezakonitog lova i ribolova) a zatim i novčane

kazne i to najčešće u rasponu između 10.000 i 100.000 dinara. Interesantno je da je alternativna krivična sankcija, za koju je bilo očekivano da bi opravdano našla primenu kod ovih krivičnih dela – kazna rada u javnom interesu – zabeležena maltene na nivou statističke greške.<sup>13</sup>

## **ISTRAŽIVANJE NA TERITORIJI APELACIONOG SUDA U NOVOM SADU**

U želji da proverimo kakva je situacija u poslednje tri godine (2019, 2020. i 2021) na teritoriji Apelacionog suda u Novom Sadu kada su u pitanju ekološka krivična dela, zatražili smo od svih šest viših sudova (Novi Sad, Subotica, Sombor, Zrenjanin, Sremska Mitrovica i Šabac) da preko osnovnih sudova na svojoj teritoriji prikupe bazične podatke o ovim krivičnim delima. Cilj je bio da uporedimo ove relativno novije rezultate sa onima koji su objavljeni u prethodnom periodu i da utvrdimo da li postoji sličnost u pogledu brojnosti procesuiranih krivičnih dela iz glave XXIV Krivičnog zakonika, kao i u odnosu na izrečene sankcije.

U novosadskom osnovnom sudu su u posmatranom periodu vođena dva krivična postupka za krivično delo unošenje opasnih materija u Srbiju i nedozvoljeno prerađivanje, odlaganje i skladištenje opasnih materija iz čl. 266 KZ, od kojih je jedan obustavljen a drugi je još u toku. Kada je u pitanju krivično delo ubijanje i zlostavljanje životinja iz čl. 269 KZ, pokrenuto je 5 krivičnih postupaka od koji su 2 još uvek u toku a u preostala 3 predmeta donete su osuđujuće presude. Za krivično delo nezakonitog lova iz čl. 276 KZ vođena su dva postupka: jedan je još u toku, a drugi je završen osuđujućom presudom. Prema očekivanju, najviše je bilo postupaka za šumsku krađu – ukupno 10, od kojih je 9 završeno osuđujućom presudom, a jedan odbijajućom presudom. Nije bilo postupaka za druga krivična dela iz glave XXIV Krivičnog zakonika.

Pred Osnovnim sudom u Subotici vođen je jedan postupak zbog krivičnog dela iz čl. 265 KZ – uništenje, oštećenje, iznošenje u inostranstvo i unošenje u Srbiju zaštićenog prirodnog dobra, koji je završen osuđujućom presudom, a izrečena je jedinstvena kazna zatvora u trajanju od 10 meseci i mera bezbednosti oduzimanje predmeta. Zbog ubijanja i zlostavljanja životinja iz čl. 269 KZ vođena su 2 postupka od kojih je jedan još u toku, dok je drugi završen osuđujućom presudom – novčana kazna 100.000 dinara.

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<sup>13</sup> Joksić, I. (2012). *Krivičnopravna zaštita životne sredine u zakonodavstvu i praksi*. Beograd: Institut za uporedno pravo.

Osnovni sud u Senti je imao 4 krivična postupka za uništenje, oštećenje, iznošenje u inostranstvo i unošenje u Srbiju zaštićenog prirodnog dobra iz čl. 265. KZS, od toga su 3 postupka završena uslovnom osudom uz novčanu kaznu, a jedan postupak još traje. Za ubijanje i zlostavljanje životinja završena su 2 postupka, jedan novčanom kaznom a jedan sudskom opomenom. Šumska krađa iz čl. 275. KZS je bila najzastupljenija sa 26 suđenja koja su u 22 slučaja završena osuđujućim presudama, bile su 2 oslobađajuće presude, a 2 postupka su još u toku. Kod sankcija, sud se opredelio za novčane kazne i uslovne osude, a posebno je interesantno da je sud u Senti za 12 okrivljenih (u 7 krivičnih postupaka) odredio kaznu rada u javnom interesu.

Na području Višeg suda u Somboru, Osnovni sud u tom gradu je vodio 3 postupka za krivično delo ubijanje i zlostavljanje životinja iz čl. 269. KZS od kojih su 2 završena osuđujućim presudama a jedan postupak još nije pravnosnažno završen. U 2 slučaja su izrečene novčane kazne, a u predmetu koji se rešava po žalbi prvostepeno je izrečena uslovna osuda. Šumska krađa iz čl. 275. KZS je bila zastupljena sa 12 postupaka od kojih je 11 završeno a jedan postupak još traje. U jednom slučaju sud je oslobodio okrivljenog. Kod osuđujućih presuda sud je izricao novčane kazne i uslovne osude. U jednom slučaju je izrečena jedinstvena kazna zatvora od pet meseci, a u jednom slučaju i kazna rada u javnom interesu. Bila su samo 2 postupka za nezakonit lov iz čl. 276. KZ od kojih je jedan još u toku, dok je drugi završen uslovnom osudom. U jednom slučaju je pokrenut i postupak za nezakonit ribolov iz čl. 277. KZS, a završen je odbijanjem optužbe.

Na teritoriji Višeg suda u Zrenjaninu, u Osnovnom sudu u Bečeju zabeležen je jedan postupak za ubijanje i zlostavljanje životinja iz čl. 269. KZ, koji je okončan uslovnom osudom za oba izvršioca. Za krivično delo šumske krađe iz čl. 275. KZS vođeno je ukupno 15 postupaka koji su u jednom slučaju završeni odbijajućom presudom, a u 14 osuđujućom presudom u kojima su izrečene uslovne osude (za 7 lica), novčane kazne (za 6 lica) i jedna kazna zatvora. Takođe je okončan i jedan postupak za nezakonit ribolov iz čl. 277. KZS osuđujućom presudom, a izrečena sankcija je bila uslovna osuda.

U Osnovnom sudu u Kikindi vođena su 2 postupka zbog unošenja opasnih materija u Srbiju i nedozvoljeno prerađivanje, odlaganje i skladištenje opasnih materija iz čl. 266. KZS koji su završeni osuđujućim presudama. U jednom slučaju je izrečena uslovna osuda uz novčanu kaznu, a u drugom kućni zatvor u trajanju od 1 godine i novčana kazna od 500.000 dinara. U jednom postupku za krivično delo nezakonitog ribolova iz čl. 277. KZS okrivljeni je osuđen na kaznu zatvora od 5 meseci. I u ovom sudu je bilo najviše postupaka za šumsku krađu iz čl. 275. KZS. U jedanaest osuđujućih presuda okrivljeni su osuđeni na 4 zatvorske kazne (jedna od godinu dana, jedna na pet meseci i dve

na po tri meseca), u jednom slučaju je izrečena kazna kućnog zatvora u trajanju od 1 godine, a uslovne osude su izrečene u 5 slučajeva, dok su novčano kažnjena dva lica.

Na području Osnovnog suda u Sremskoj Mitrovici vođen je samo jedan postupak zbog krivičnog dela unošenje, oštećenje, iznošenje u inostranstvo i unošenje u Srbiju zaštićenog prirodnog dobra iz čl. 265. KZS koji je završen osuđujućom presudom, odnosno izricanjem uslovne osude. Zbog šumske krađe iz čl. 275. KZS vođeno je 7 krivičnih postupaka od kojih je jedan završen obustavom, jedan postupak je još u toku, dok je preostalih 5 završeno osuđujućim presudama. Izrečene su 4 uslovne osude i jedna novčana kazna.

Na teritoriji Višeg suda u Šapcu, Osnovni sud u Šapcu je imao jedan postupak za unošenje opasnih materija u Srbiju i nedozvoljeno prerađivanje, odlaganje i skladištenje opasnih materija iz čl. 266. KZS koji još nije završen. Za ubijanje i zlostavljanje životinja vođena su 3 postupka od kojih su 2 završena osuđujućim presudama, odnosno u jednom slučaju je izrečena uslovna osuda a u drugom novčana kazna. U jednom postupku prvostepeno je okrivljeni oslobođen optužbe, ali je predmet po žalbi u višem sudu. Za krivično delo pustošenje šuma iz čl. 274. KZS vođena su 3 postupka od kojih su u dve osuđujuće presude izrečene uslovne osude, dok je u jednom predmetu po sporazumu o priznanju krivice okrivljenom izrečena novčana kazna. Najbrojniji su prema očekivanju bili postupci za krivično delo šumske krađe iz čl. 275. KZS. Ukupno je bilo 33 postupka pred ovim sudom od kojih je sedam još uvek nerešeno, bilo je 3 predmeta u kojima je optužba odbijena, a 7 postupaka završeno je prihvatanjem sporazuma o priznanju krivice, dok su ostalo bile osuđujuće presude. Kada su sankcije u pitanju opet je bilo najviše uslovnih osuda (izrečene za 11 okrivljenih) a novčanih kazni je bilo 7, dok je jedno lice osuđeno na kaznu zatvora u trajanju od 8 meseci. U ovom sudu su vođena i 4 postupka za nezakonit lov iz čl. 276. KZS koji su završeni sporazumima o priznanju krivice i u sva 4 slučaja su izrečene uslovne osude. I za jedan postupak koji se vodio za nezakonit ribolov iz čl. 277. KZS je sklopljen sporazum o priznanju krivice, a sankcija je bila novčana kazna.

Iako se očekivalo da će pred Osnovnim sudom u Loznici biti dosta predmeta šumske krađe, ipak iznenađuje da gotovo da nije bilo drugih ekoloških krivičnih dela. Dva postupka su vođena zbog nezakonitog lova iz čl. 276. KZS i izrečene su jedna uslovna osuda i jedna novčana kazna. U jednom postupku je okrivljenom za pustošenje šuma iz čl. 274. KZS izrečena uslovna osuda. Istovremeno, vođen je čak 41 krivični postupak za krivično delo šumske krađe iz čl. 275. KZS. U sedam predmeta suđenja nisu još završena. Loznički sud je za 19 lica izrekao uslovne osude, 4 lica su kažnjena novčanim kaznama, dok

su dva okrivljena kažnjena kaznama kućnog zatvora bez elektronskog nadzora i izrečena je i jedna zatvorska kazna.

Kao što se vidi iz ovih podataka, u pogledu krivičnih dela iz glave XXIV Krivičnog zakonika, ni područje Apelacionog suda u Novom Sadu se ne razlikuje mnogo od teritorije čitave Republike Srbije. Iako je period od 3 godine za koji su prikupljeni podaci bio dovoljno dug za relevantnije zaključke, očigledno je da opšta krivična dela protiv životne sredine i dalje nisu u značajnijoj meri zastupljena u našem pravosuđu. Krivična dela protiv biljnog i životinjskog sveta su bila mnogo češće u fokusu pažnje naših tužilaštava i sudova a posebno krivično delo šumske krađe koje, po svojoj brojnosti, i prema ovom istraživanju upadljivo dominira u odnosu na ostala krivična dela iz ove glave. U značajno manjoj meri su bila zastupljena krivična dela nezakonitog lova i ribolova. Kolika je društvena opasnost krivičnih dela, delimično se može zaključiti i na osnovu zaprećene kazne predviđene za konkretno krivično delo, ali takođe i na osnovu izrečenih krivičnih sankcija. I ovo istraživanje je potvrdilo da ekološka krivična dela još ne predstavljaju neku veliku društvenu opasnost, jer je većina krivičnih postupaka završena uslovnim osudama, a novčane kazne su bile sledeće po brojnosti (iznosi novčanih kazni su bili bliže zakonskom minimumu nego maksimumu). Kazna zatvora je vrlo retko bila izricana i to češće kućni zatvor, a izuzetno je izricana i kazna efektivnog zatvora. Uočena je i nedoslednost sudske prakse kada su u pitanju krivične sankcije jer su za ista dela neki sudovi po pravilu izricali i uslovne osude i novčane kazne kao sporedne, dok su drugi sudovi u gotovo identičnim situacijama izricali samo uslovne osude. Za svaku pohvalu je inventivnost Osnovnog suda u Senti koji je jedini u značajnijoj meri koristio alternativnu krivičnu sankciju – kaznu rada u javnom interesu, koju je u posmatranom periodu odredio za 12 okrivljenih a u 7 krivičnih postupaka.

### **PRIMER DOBRE PRAKSE**

Sagledavajući činjenicu da je tamna brojka kod ovog vida kriminaliteta – protiv životne sredine nesumnjivo vrlo visoka i da se u praksi javljaju problemi, pre svega u otkrivanju krivičnih dela iz glave XXIV Krivičnog zakonika a onda i u dokumentovanju i dokazivanju ovih krivičnih dela od kojih su neka specifična i zahtevaju poseban pristup i kriminalističku obradu, čini se da je Ministarstvo unutrašnjih poslova na ove izazove odreagovalo na adekvatan način. Naime, u martu 2022. godine po naredbi ministra, u okviru Direkcije policije, prvi put je u našoj zemlji formirana specijalizovana policijska formacija na nivou čitave Republike Srbije čiji je zadatak isključivo borba protiv

ekološkog kriminaliteta, odnosno svih onih koji uništavaju i zagađuju životnu sredinu. Od Jedinice za suzbijanje ekološkog kriminala i zaštitu životne sredine se očekuje da obezbedi jedinstveno i stručno postupanje u otkrivanju i dokazivanju ove grupe krivičnih dela na taj način što će direktno saradivati sa svim policijskim upravama i pravosudnim organima kako bi se omogućilo blagovremeno i efikasno procesuiranje svih fizičkih i pravnih lica odgovornih za uništavanje ili oštećenje životne sredine na bilo koji način. Iako je za detaljniju ocenu rada nove policijske jedinice neophodno da prođe bar godinu dana od osnivanja, ipak se na osnovu prvih rezultata rada, posle šestomesečnog perioda, može zaključiti da će u budućnosti ova jedinica biti nosilac aktivnosti na polju otkrivanja ekoloških krivičnih dela. Ako uzmemo u obzir da je bilo neophodno izvesno vreme za organizacione pripreme za rad ove potpuno nove policijske formacije u vezi sa statusom pripadnika Jedinice, njihovom odnosu sa drugim pripadnicima policije na čitavoj teritoriji Republike Srbije, uspostavljanje saradnje sa pravosudnim organima i, konačno, građanima – rezultati proistekli iz objektivno tri ili četiri meseca efektivnog rada su zaista ohrabrujući. Nadležnim tužilaštvima podneto je 227 krivičnih prijava zbog izvršenja 233 ekološka krivična dela. Naravno, najveći broj se odnosi na šumske krađe (166 prijava) i ubijanje i zlostavljanje životinja (40 prijava) a podneto je i 18 prijava zbog nezakonitog lova i ribolova. Iako nije bilo mnogo prijava zbog opštih krivičnih dela protiv životne sredine, značajno je da su po dve krivične prijave podnete zbog zagađenja životne sredine, unošenja opasnih materija u Srbiju i uništenja zaštićenog prirodnog dobra. U svakom slučaju ova pozitivna novina bi trebalo da dâ dodatni zamah borbi protiv onih koji zagađuju, oštećuju i uništavaju životnu sredinu i da predstavlja udarnu snagu u obračunu države sa svima koji svoj profit stavljaju ispred opštih i zajedničkih vrednosti, ili se nesavesno odnose prema živom i neživom svetu koji ih okružuje.<sup>14</sup>

## UMESTO ZAKLJUČKA

U poslednjih nekoliko godina svedoci smo značajnih promena koje se dešavaju u našoj zemlji u odnosu na podizanje svesti građana i reakcije države na sve izraženiju potrebu zaštite prirodne sredine. To je vidljivo na svakom koraku, jer se u medijima maltene svakodnevno pominje zdrava životna sredina, potreba za očuvanjem te sredine, javlja se u pojedinačnim slučajevima drastičnih ekoloških incidenata, dok javnost zahteva efikasniju zaštitu životne

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<sup>14</sup> Rezultati specijalizovane jedinice MUP-a posle 6 meseci od osnivanja. Dnevni list „Politika“, 18. 7. 2022. godina.

sredine. Bez obzira i na nesumnjiv uticaj politike, prethodni period su obeležili i masovni javni protesti u više gradova Srbije kojima je povod bio ispitivanje tla i izgradnja novih rudnika litijuma koji svakako nepovoljno utiču na kompletno okruženje oko njih, odnosno na živu i neživu prirodu u blizini.

Naš Ustav prepoznaje pravo na zdravu životnu sredinu kao jedno od osnovnih ljudskih prava i predstavlja dobar pravni okvir za detaljnije zakonsko regulisanje ove veoma važne teme, kako za sve građane naše zemlje, tako i za sve stanovnike ove planete.

Usvojeni su mnogi zakoni koji regulišu ovu oblast, ratifikovani međunarodni ugovori, doneti su brojni podzakonski akti, a mnogi su u pripremi. Već gotovo dve decenije u našem Krivičnom zakoniku je ekološkim krivičnim delima dat odgovarajući značaj, jer su ta dela sistematizovana u posebnu glavu Zakonika. Mnogobrojna ponašanja, koja nemaju elemente krivični dela, sankcionisana su kroz prekršaje i privredne prestupe, a postoji i mogućnost krivičnog odgovaranja pravnih lica. Formirana je posebna, specijalizovana policijska jedinica pri MUP-u Srbije za ekološka krivična dela, koja koordinira rad svih policijskih uprava na teritoriji Republike Srbije u vezi sa krivičnim delima iz glave XXIV Krivičnog zakonika. Naši zakoni su u velikoj meri usklađeni sa međunarodnim pravnim okvirima, pa iako nisu idealni i sveobuhvatni (jer takvi i ne postoje), usudujemo se da tvrdimo da naši pozitivni propisi u ovoj oblasti pružaju odličnu osnovu za mnogo bolje rezultate u zaštiti životne sredine.

Čini se da je, kao i u mnogim drugim zakonski regulisanim sferama života, i ovde pravna regulativa ispred primene tih propisa u praksi. Kada je u pitanju primena odredbi Krivičnog zakonika i drugih zakona koji propisuju krivična dela iz oblasti ekološkog kriminaliteta, neophodno je sačiniti detaljan plan aktivnosti koje treba da omoguće mnogo efikasniju primenu postojećih propisa kao i dalji rad na izmenama i dopunama zakonskih rešenja, a svakako uz harmonizaciju svih propisa sa zakonodavstvom Evropske unije. Puno prostora za kvalitetniji rad i značajan pomak u rezultatima primene krivičnih propisa svakako ima u jačanju kapaciteta u organima uprave, pre svega inspekcije (od kojih se očekuje mnogo veći broj krivičnih prijava za ekološka krivična dela), a svakako policije, tužilaštva i suda. Policija je već napravila pozitivan pomak osnivanjem specijalizovane jedinice, a očekuje se da tužilaštva i sudovi daju svoj doprinos. U potpunosti podržavamo ideju iniciranu pre nekoliko godina od strane OEBS da se na čitavoj teritoriji Srbije, na nivou viših sudova formiraju neka vrsta specijalizovanih ekipa sastavljenih od sudija, tužilaca i policijskih službenika na teritoriji tog višeg suda, koji bi završili odgovarajuće seminare i koji bi koordinirali rad u svojim resorima kada su u pitanju pre svega opšta krivična dela protiv životne sredine. Njima



bi bili dostupni podaci o specijalizovanim ustanovama koje bi u slučaju ekoloških akcidenata mogle da daju osnovne podatke o tome da li je bezbedno da se izvrši uviđaj, koja oprema bi bila neophodna za tu istražnu radnju, kao i na koji način bi se mogli pribaviti i fiksirati tragovi koji će tužilaštvu i sudu omogućiti efikasno vođenje krivičnog postupka. Takođe bi bili dostupni podaci fizičkih i pravnih lica koji bi mogli da budu angažovani kao veštaci sa potrebnim specijalizovanim znanjima iz određenih oblasti.

Pored toga, oseća se potreba da se u pitanju kaznene politike i usaglašavanja sudske prakse u ovu problematiku uključe i Vrhovni kasacioni sud kao i sva četiri apelaciona suda, kako bi se obezbedili jedinstveni pravni stavovi u tumačenju pojedinih instituta i zauzimanje jedinstvenog pravca u kreiranju kaznene politike za ova krivična dela.

Iako su sva krivična dela iz glave XXIV Krivičnog zakonika na svoj način važna za funkcionisanje zaštite životnog okruženja, čini se da je ipak neophodno fokusirati se na već pomenuta opšta krivična dela protiv životne sredine: zagađenje životne sredine, čl. 260. KZS; nepreduzimanje mera zaštite životne sredine, čl. 261. KZS; protivpravna izgradnja i stavljanje u pogon objekata i postrojenja koji zagađuju životnu sredinu, čl. 262. KZS; oštećenje objekata i uređaja za zaštitu životne sredine, čl. 263. KZS; oštećenje životne sredine, čl. 264. KZS; uništenje, oštećenje i iznošenje u inostranstvo zaštićenog prirodnog dobra, čl. 265. KZS; povreda prava na informisanje o stanju životne sredine, čl. 268. KZS. Svakako bi bilo interesantno da i krivična dela u vezi sa opasnim materijama: unošenje opasnih materija u Srbiju i nedozvoljeno prerađivanje, odlaganje i skladištenje opasnih materija, čl. 266. KZS i nedozvoljena izgradnja nuklearnih postrojenja, čl. 267. KZS, budu u toj grupi. Možda bi i pustošenje šuma iz čl. 274. KZ moglo da se nađe u istoj grupi.

Verujemo da bi u situaciji stvaranja timova na teritorijama viših sudova bilo opravdano da upravo ova krivična dela budu obuhvaćena tom povećanom pažnjom, jer zahtevaju timski rad i multidisciplinarni pristup, dok za neka druga krivična dela iz ove glave kao npr. šumska krađa iz čl. 275. KZS, ubijanje i zlostavljanje životinja iz čl. 269. KZS, ili nezakonit lov iz čl. 276. KZS i nezakonit ribolov iz čl. 277. KZS i dr. čini se da nema potrebe za povećanom pažnjom. Na taj način bi se izbeglo nepotrebno opterećivanje ovakvim krivičnim delima koja su ubedljivo najbrojnije zastupljena u statistikama policije i pravosudnih organa, a bilo bi više prostora da se ovi državni organi aktivnije uključe u otkrivanje, evidentiranje, dokazivanje i presuđivanje onih krivičnih dela koja predstavljaju veću društvenu opasnost i mogu da izazovu mnogo teže posledice.

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## CRIMINAL OFFENSES AGAINST THE ENVIRONMENT Criminal legislation of Serbia and International Legal Standards – in Compliance or not?\*

**ABSTRACT:** The issue of criminal offenses against the environment from the aspect of the criminal legislation of the Republic of Serbia and international legal standards – in this paper, their mutual compliance is expertly and critically analyzed through seven groups of questions, introductory considerations, and concluding remarks given at the end of the text. There are four groups of issues that the paper focuses on in terms of topicality and scope of research. These are issues concerning: Ecology and environmental protection in general (its importance, universality, and reasons for the necessity of protection; International legal standards of environmental protection; The legal framework for environmental protection in the Republic of Serbia – its constitutional and criminal law aspect; The analysis of the application of criminal law provisions on environmental protection in the practice of detecting and proving these criminal offenses within the territorial jurisdiction of the Appellate Court in Novi Sad.

The professional and critical analysis of the issue in question has yielded three key results. Firstly, the Constitution of the Repub-

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lic of Serbia recognizes the right to a healthy environment as one of the basic human rights and provides a good legal framework for the detailed regulation of this important issue. Secondly, the criminal legislation of the Republic of Serbia is largely aligned with international legal standards related to environmental crimes and provides an excellent basis for improved environmental protection. Thirdly, as with many other legally regulated spheres of life, the application of regulations in practice lags behind legal regulation. Finally, a multidisciplinary approach is necessary in resolving criminal cases of environmental crime, and specialized teams composed of judges, prosecutors, and police officers should be formed at higher courts and trained to handle such cases more adequately.

**Keywords:** ecology, environment, Constitution, criminal legislation, criminal acts, multidisciplinary approach, international legal standards, specialized teams, Serbia

## INTRODUCTORY REMARKS

The relevance of this topic, in addition to the general harmonization of domestic regulations with the legislation of the European Union, was significantly contributed to by the opening of Cluster 4 in the European Union accession negotiations, in December 2021. This cluster, which focuses on the Green Agenda and sustainable connectivity, includes the demanding and costly Chapter 27 on the environment and climate change. This chapter includes extensive EU regulations that need to be aligned with domestic regulations. Criminal law and criminal policy play a crucial role in ensuring proper and adequate environmental protection, both locally and globally.

This paper will focus on the topic of environmental crimes, specifically severe violations and harm to protected goods that are considered criminal offenses. It is important to note that this does not diminish the importance of other offenses in this area as a special segment of criminal legislation. The international legal framework will be briefly discussed in light of the increasing environmental threats around the world.

In addition to partially analyzing the domestic positive legal regulations in place, the paper will also examine criminal legal solutions in other countries regarding environmental protection. The paper will also present the results of a mini-research on environmental crimes within the territorial jurisdiction of the Appellate Court in Novi Sad over the past 3 years (2019, 2020, and 2021). It will also touch on the establishment of the Unit for the Suppression of Environmental Crime and Environmental Protection within the Ministry of Internal Affairs of the Republic of Serbia.

## **ECOLOGY AND ENVIRONMENTAL PROTECTION**

Although there are different approaches to defining the concept of ecology, it can be viewed most simply as a scientific discipline that studies the relationships between living organisms and their environment, both living and non-living.

Etymologically, the term ecology comes from the Greek words “oikos” meaning home or household, and “logos” meaning science. It was first used in the second half of the 19th century. Charles Darwin, the famous English biologist, is often considered the founder of ecology due to his works’ emphasis on the concept of survival of the fittest and the mutual relationships between living organisms and their environment.

Humans have been changing the living world and nature to suit their needs since the beginning of time. As civilization has progressed, people have adapted and changed their environment, but for a long time, this did not have a significant impact on nature in a wider area. However, as society has become more industrialized and technology has advanced, human activities have begun to have a greater impact on the natural world, often in detrimental ways.

Throughout history, there have been occasional expressions of concern for the environment and the disruption of its balance in some areas, but it was not until the second half of the 20th century that society as a whole began to take a more organized and global approach to this issue. The more intense industrialization, the significant increase in the world’s population, the proliferation of motor vehicles emitting pollutants and the dramatic changes in the climate have all significantly influenced the way humans view their environment. It is only with the advent of industrialization and later globalization that society has become aware that the environment must be treated with greater care and that the profits of large multinational companies, which keep annihilating the planet’s resources using these so-called “dirty technologies”, should not be prioritized over the future and well-being of the human race. Climate change, caused by negligent human activities, is having a major impact on the changes in human, animal, and plant life, bringing our very existence into question. It seems that the time has come for the entire community to get involved in projects aimed at protecting the environment which we all share.

## CRIMINAL LEGISLATION IN ENVIRONMENTAL PROTECTION

While it may seem that criminal legislation is only a small part of the actions needed to address environmental issues, it is still necessary to have rules and regulations in place at both the global and local levels for changing the environment. Additionally, it is important to prescribe illegal behaviors that endanger or destroy the environment, along with appropriate sanctions. In this sense, the role of criminal law in penalizing actions that endanger the environment or disrupt the balance between humans and nature is of extreme importance, particularly if they damage or destroy the environment, as the right to live in a healthy environment is a fundamental human right.

Practically all countries of the world, despite their differences, have to some degree included provisions for misdemeanor and criminal acts related to environmental protection in their legislation, when the awareness of the need for environmental protection was at the right level. Not only individual states but also the international community have taken steps to address this issue by adopting a series of principles and rules, passing conventions, and other international legal acts.

Until the second half of the 20th century, there was no global approach to this problem on the international level. Rather, the focus was primarily on specific segments of the environment, such as endangered plant and animal species, or conventions on oil pollution in the seas, etc.

It was only in the second half of the 20th century that international organizations began to take a more organized approach to addressing environmental issues. This led to the creation of institutional frameworks and the establishment of legal norms embodied in the Declaration of the United Nations Conference on the Human Environment, which was adopted in Stockholm in 1972. The Declaration emphasized risk management for living conditions and the improvement of the quality of life as the main goal of ecological development, with a particular focus on environmental protection. Twenty years later, in 1992, the United Nations Conference on Environment and Development was held in Rio de Janeiro, where global warming and loss of biodiversity were identified as major concerns. Important principles were adopted that would guide future activities in this area.

The Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, which directly linked the field of environmental protection and the field of human rights protection, was adopted in 1998 in Aarhus.

Among a great many international gatherings that have addressed environmental issues, is the European Union Environmental Liability Directive from 2004, which established the “polluter pays” principle as a legal means of environmental protection. This directive sets out measures and procedures to prevent or mitigate the consequences of environmental damage. Although in practice there were dilemmas and vagueness in the application and implementation of this Directive into national legislation, it has still brought attention to taking responsibility for environmental damage, which has been adopted in our country as well.

Different approaches to criminal responsibility for environmental crimes have resulted in an unequal resolution when it comes to holding legal entities accountable for these crimes. While there is no doubt that natural persons can and should be held responsible for criminal acts that threaten the environment, the question of criminal responsibility of legal entities is more complex. Several European countries, such as Italy, Germany, Spain, and Portugal, do not recognize the concept of criminal responsibility for legal entities and only hold natural persons accountable based on the established subjective relationship between the crime and the offender. This is best reflected in the Constitution of Italy, which states that criminal liability is personal and that employees in public services are subject to criminal, civil, and administrative liability for violation of rights. The state, or one of its organs, can only be held responsible within the framework of civil responsibility in the case they have committed a criminal act. Most countries that follow the common law system have adopted a different approach, recognizing that, in addition to individuals, corporations and their employees should also be held criminally liable in court. This solution is far more vital, especially considering the complexity of legal entities and companies and the decreasing influence of individuals on business activity and thus illegal activity. It is not uncommon for large corporations to hire “disposable directors” who are willing to bear the risk of liability for the corporation and its illegal actions, in exchange for high salaries, thus avoiding the responsibility of the corporation. This phenomenon is not unknown to our region. In some countries such as the Netherlands, legal entities have been held liable for criminal acts for many years, while in France, criminal liability of legal entities is indirect and arises from the personal responsibility of a natural person, a representative of the legal entity.<sup>16</sup>

In our country, legal entities could only be held liable for misdemeanors and economic offenses. Only in 2008, when the Law on the Liability of Legal Entities for Criminal Offenses was adopted could they be held liable

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<sup>16</sup> Joldžić, V. (2007). *Krivična, disciplinska i materijalna odgovornost*. Belgrade: Institute of Criminological and Sociological Research.

for criminal offenses.<sup>17</sup> According to the provisions of this law, a legal entity is held liable for a criminal offense committed by a responsible person within the scope of their duties and with the intention of obtaining a benefit for the legal entity. The law also holds the legal entity responsible if the responsible person, by not exercising supervision or control, facilitates the commission of a criminal offense for the benefit of the legal entity by a natural person acting under the supervision and control of the responsible person.

Although the responsibility of the legal entity is based on the guilt of the responsible person, the legal proceedings can continue even if the criminal proceedings against the responsible person have been suspended or the accusation has been rejected. When it comes to sanctions, the legislator has prescribed that penalties (fines and termination of the legal entity), suspended sentences, and security measures can be imposed on a legal person as the perpetrator of a criminal act. However, it seems that the law's provisions for the responsibility of legal entities have not been fully utilized, particularly in the field of environmental protection where it could be applied to a greater extent<sup>18</sup>.

## CONSTITUTIONAL SOLUTIONS

Considering that constitutions are not often changed, it is not surprising that a large number of these most important legal acts do not mention environmental protection at all, which is why it is not surprising that the criminal legislation in those countries doesn't have provisions for criminal acts that are primarily aimed at protecting the environment. However, this does not mean that these countries do not have adequate protection of the environment through criminal law, but that recognizing the constitutional protection of those elements is always achieved through an extensive interpretation of constitutional norms that define other objects of regulation. It is worth noting that such countries mostly include criminal repression of environmental offenses within the framework of so-called secondary criminal legislation. These offenses are regulated by special laws that pertain to certain areas of ecology, and they prescribe specific criminal acts and criminal liability<sup>19</sup>.

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<sup>17</sup> Law on the Liability of Legal Entities for Criminal Offenses, *Official Gazette of RS* no. 97/2008.

<sup>18</sup> Batrićević, A. (2012). *Ekološka krivična dela i kriminalitet korporacija. Zbornik Ekologija i pravo*. Belgrade.

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Certainly, the constitutions that mentioned the environment as a common good had a significant impact on the formation of appropriate criminal norms whose goal was precisely the protection of that environment.

Our country belongs to a group of countries that, realizing the importance of the environment as a general good, in their most important legal act – the Constitution, provided for the right to a healthy environment and the right to timely and complete information about its condition, deciding that everyone, especially the state, is responsible for the protection of the environment, as well as that everyone is obliged to preserve and improve it<sup>20</sup>

However, it is necessary to point out that the Constitution of the SFRY from 1974, mentioning land, forests, waters, watercourses, the sea and the sea coast, mineral treasures, and other natural resources, determined that these goods of general interest enjoy special protection and are used under conditions and in the manner prescribed by law and must be used in such a way as to ensure their rational use and other general interests. The right to a healthy environment was established, and everyone who used land, water, or other natural resources was obliged to do so in a way that ensured the conditions for people to work and live in a healthy environment. Furthermore, everyone was obliged to preserve nature and its goods, natural sights, and rarities.

The preceding Constitution of 1963 provides an example of the progress in understanding the importance of a healthy environment, as it only considered land as an asset of general interest, and that it must be used in accordance with the general conditions established by law, which ensures the rational use of land and other general interests, while forests and forest land enjoyed special protection provided by law<sup>21</sup>.

If it is taken into account that since the beginning of the 21st century, there have been significant and qualitative changes in our penal and criminal legislation and that this trend continues through the approximation to the EU, it seems that it is not unrealistic to claim that this area is the most dynamic in the entirety of criminal law in our country. It is important to mention that four systemic laws were adopted in 2004 (Law on Environmental Protection, Law on Strategic Environmental Impact Assessment, Law on Integrated Prevention and Control of Environmental Pollution), and in 2005, crimes against the environment were systematized into a separate chapter of the Criminal Code. Additionally, in 2008, the Law on the Liability of Legal Entities for Criminal Offenses was adopted. Furthermore, in the following years, some so-called sectoral laws that regulated various aspects of the arrangement, improvement,

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<sup>20</sup> Constitution of the Republic of Serbia, *Official Gazette of RS* no. 98/2006 and 115/2021.

<sup>21</sup> The Constitution of the SFRY from 1963 *Official Gazette of the SFRY*, 1963.

and protection of the environment were also adopted, prescribing economic offenses and misdemeanors for those who behave negligently towards the environment<sup>22</sup>.

One such law is the Law on Climate Change,<sup>23</sup> which should ensure the establishment of a system for reducing greenhouse gas emissions and ensure adaptation to changed climate conditions while prescribing liability for misdemeanors and economic offenses for acting contrary to this law. At the same time, the provisions of this law are also a consequence of the ratification of the Paris Agreement, which emphasized that climate change represents one of the biggest, if not the single biggest, challenge currently facing all of humanity. This law is harmonized with the EU legislation because it has implemented in our legislation the corresponding provisions that already exist in the EU legal system. The importance and economic effects of the legal regulation of this area are also shown by the calculated financial aspects of climate change mitigation activities,

“Each dinar invested in adapting to climate change is equivalent to at least six dinars invested in solving the consequences of inaction, i.e. the absence of adaptation to climate change”.<sup>24</sup>

## ENVIRONMENTAL PROTECTION IN THE CRIMINAL LEGISLATION OF SERBIA

Bearing in mind the extremely broad field of actions and activities in environmental protection, certain penal provisions are included in our legislation, in addition to the Criminal Code and other laws in this area, they are also included in misdemeanor legislation and in the domain of economic offenses.

Although the majority of so-called environmental crimes are systematized in Chapter XXIV of the Criminal Code, it was simply not possible to include all illegal behaviors that have elements of a criminal offense in one place, so they are additionally prescribed in separate laws.

How rich this area is in regulations can be illustrated by the division of this area into general regulations that protect this object of protection, so in addition to the Constitution, there are 13 other laws in this group. In the part related to the protection of air, water, soil, plants, forests, geological resources,

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<sup>22</sup> Joksić, I. (2012) *Krivičnopravna zaštita životne sredine u zakonodavstvu i praksi*. Belgrade: Institute of Comparative Law.

<sup>23</sup> Law on Climate Change, *Official Gazette of RS* no. 26/2021.

<sup>24</sup> Jovčić, I. Daily newspaper Dnevnik, Novi Sad, 7. 8. 2022.

and animal life, 17 laws regulate the mentioned values. In the group that protects food, drink, drinking water, and objects of general use, there are 4 laws. When it comes to protection from ionizing and non-ionizing radiation, there are 2 laws. And in the group of laws that deal with protection against hazardous and waste materials, we can list 7 laws.<sup>25</sup>

Of course, there is a much greater number of various bylaws that regulate this matter more precisely and in more detail, and there is also a multitude of ratified international conventions and other acts. There is truly a “sea” of regulations dealing with environmental protection.

In the Criminal Code, environmental crimes are included in chapter XXIV, in articles 260 to 278, which prescribe acts of commission and omission that have elements of crimes whose object of protection is a healthy environment in the broader sense. Bearing in mind the multitude and variety of these provisions, it is acceptable to divide them into four groups:

- 1) *general criminal acts against the environment* (environmental pollution, Art. 260 CC; failure to take measures to protect the environment, Art. 261 CC; illegal construction and commissioning of facilities and plants that pollute the environment, Art. 262 CC; damage to facilities and devices for environmental protection, Article 263 CC; damage to the environment, Article 264 CC; destruction, damage and export of protected natural goods, Article 265 CC, violation of the right to information about the state of the environment, Article 268 CC)
- 2) *criminal acts related to dangerous substances* (introduction of dangerous substances into Serbia and illegal processing, disposal and storage of dangerous substances, Article 266 CC; illegal construction of nuclear facilities, Article 267 CC)
- 3) *criminal offenses against flora and fauna* (killing and torture of animals, Article 269 CC; transmission of infectious diseases in animals and plants, Article 270 CC; negligent provision of veterinary assistance, Article 271 CC; production of harmful means for treating animals, Article 272 CC; contamination of food and water for consumption, i.e. feeding animals, Article 273 CC; devastation of forests, Article 274 CC; forest theft, Article 275 CC) and
- 4) *criminal acts of illegal hunting and fishing* (illegal hunting, Art. 276 CC; illegal fishing, Art. 277 CC)<sup>26</sup>.

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<sup>25</sup> Faculty of Law in Novi Sad, Legal Clinic – Environmental Protection: Current Laws and Other Acts – <http://pravneklinike.pf.uns.ac.rs>

<sup>26</sup> Lazić, D., et al. (2021) *Krivičnopravna zaštita životne sredine u Republici Srbiji i njeno usklađivanje sa zakonodavstvom Evropske unije*. Beograd: Faculty of business and law “MB”.

However, depending on where some regulations that prosecute criminal offenses are located, they can be classified into three categories:

- 1) true environmental criminal offenses found in Chapter XXIV of the Criminal Code of Serbia;
- 2) other environmental crimes that are found in the provisions of the Criminal Code of Serbia, but within the criminal offenses that belong to other groups and
- 3) secondary environmental crimes that are outside the Criminal Code of Serbia, in the provisions of secondary legislation. (Law on Plant Health – Official Gazette of the RS No. 14/2009; Law on Plant Protection Products – Official Gazette of the RS, No. 41/2009; Law on Genetically Modified Organisms, Official Gazette of the RS, No. 41/2009 )<sup>27</sup>.

However, the mere introduction of environmental crimes into criminal legislation, no matter how significant a step towards better protection of a healthy environment, does not in itself represent a guarantee of adequate protection through criminal law. Effective mechanisms and sufficient capacities for detecting and recording such crimes must be provided, and an appropriate professional assessment of collected evidence must be prepared. Additionally, education for everyone involved in the process of detection, proof, and adjudication must be provided, starting with field inspectors, those involved in monitoring the environment, police officers, public prosecutors, and judges. It seems that there was no timely reaction in that segment because there were too few criminal reports from Chapter XXIV of the Criminal Code until 2014 (when there was a total of 1996 reports), and that trend continued later, until 2020 (when there were a total of 2153 reports). Since by far the largest number of criminal reports were filed for the crime of forest theft, the fact that, for example, in 2020 in the Republic of Serbia, only 20 reports were submitted for the basic criminal offense - environmental pollution (and only 13 reports against known perpetrators). Even in the earlier period, the situation was similar, because, for example, in 2011, 1789 reports were submitted for criminal offenses from this chapter of the CC, and only 12 reports were for the criminal offense of environmental pollution. That year, there were 8 reports for not taking measures to protect the environment, 6 reports for damage to the environment, and at the same time there were as many as 1262 reports for forest theft, 196 reports for killing and abusing animals, and 129 reports for illegal hunting. In the same year, 2011, 635 persons were accused of these crimes, of which only 2 persons were charged with environmental pollution and 6 were

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<sup>27</sup> Jovašević, D. (2011) Ekološki kriminalitet u Srbiji – teorija, zakonodavstvo, praksa. *Zbornik Ekologija i pravo*. Niš.

charged with not taking measures to protect the environment, while 417 persons were charged with forest theft and 124 persons were charged with illegal hunting and illegal fishing. If we were to put all that in the context of persons convicted for these crimes in 2011, the results would be somewhat disappointing. Namely, there were no persons convicted for environmental pollution (the same was the case in the previous year, in 2010, while in 2009 only one person was convicted) and 4 persons were convicted for not taking measures to protect the environment (in 2010, 1 person and 0 in 2009). 287 persons were convicted of forest theft and 93 persons were convicted of illegal hunting and illegal fishing. When it comes to penal policy, we can still focus on the year 2011, in which no one was sentenced for environmental pollution, while only one prison sentence of 3–6 months was imposed for failure to take measures to protect the environment. At the same time, when it comes to forest theft, 112 persons were sentenced to short-term prison sentences of up to 6 months, and one person to a prison sentence of more than 6 months. For crimes of illegal hunting and fishing, a total of 9 short-term prison sentences of up to 6 months and one prison sentence of more than 6 months were imposed. Most often, suspended sentences were imposed (again, most often for the crimes of forest theft and illegal hunting and fishing) and then fines, usually in the range between 10.000 and 100.000 dinars. It is interesting that the alternative criminal sanction, which was expected to be justifiably applied to these criminal acts – the community service sentence, was recorded at the level of a statistical error.<sup>28</sup>

## **RESEARCH ON THE TERRITORIAL JURISDICTION OF THE APPELLATE COURT IN NOVI SAD**

In order to review the situation over the last three years (2019, 2020, and 2021) when it comes to crimes against the environment within the territorial jurisdiction of the Appellate Court in Novi Sad, we asked all six higher courts (Novi Sad, Subotica, Sombor, Zrenjanin, Sremska Mitrovica, and Šabac) to gather data on these crimes through the basic courts in their territorial jurisdiction. The goal was to compare these relatively recent results with those published in previous years and to determine whether there is a similarity in terms of the number of criminal offenses from chapter XXIV of the Criminal Code, as well as the imposed sanctions.

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<sup>28</sup> Joksić, I. (2012) *Krivičnopravna zaštita životne sredine u zakonodavstvu i praksi*. Belgrade: Institute of Comparative Law.

In this period, two criminal proceedings were conducted in the Basic Court in Novi Sad for the criminal offense of bringing dangerous substances into Serbia and Illegal processing, disposal, and storage of dangerous substances from Art. 266 CC, one of which has been discontinued and the other is still ongoing. When it comes to the crime of killing and abusing animals under Art. 269 of the CC, five criminal proceedings were initiated, two of which are still ongoing, and in the remaining three cases, convictions were handed down. For the criminal offense of illegal hunting under Art. 276 of the CC, two proceedings were conducted: one is still ongoing and the other ended with a conviction. As expected, most proceedings were initiated for forest theft - a total of 10, of which nine ended in a guilty verdict and one in an acquittal. There were no proceedings for other criminal offenses under Chapter XXIV of the CC.

One criminal proceeding was conducted before the Basic Court in Subotica for the offense of destruction, damage, export, and import of protected natural goods under Art. 265 of the CC, which ended with a conviction and a sentence of 10 months imprisonment and confiscation of items as a security measure. In regard to the crime of killing and harming animals under Art. 269 of the CC, two proceedings were conducted, one of which is still ongoing and the other ended with a conviction, a fine of 100.000 dinars.

The Basic Court in Senta saw four criminal proceedings for the destruction, damage, export, and import into Serbia of protected natural goods from art. 265 of the CC, of which three cases ended with a suspended sentence with a fine, and one case is still ongoing. Two proceedings were completed for the offense of killing and abusing animals, one with a fine and one with a court warning. Forest theft under Article 275 of the CC was the most common offense with 26 trials, 22 of which ended in convictions, two in acquittals, and two are still ongoing. The court mainly imposed fines and suspended sentences, and it is noteworthy that the court in Senta sentenced 12 defendants (in seven criminal proceedings) to community service.

Within the territorial jurisdiction of the Higher Court in Sombor, the Basic Court in this city conducted three proceedings for the crime of killing and abusing animals under Article 269 of the CC, two of which resulted in convictions and one case is still ongoing. Fines were imposed in two of the cases, and in the case that is currently being appealed, a suspended sentence was imposed in the first instance. Forest theft from Art. There were 12 cases of Forest theft under Article 275 of the CC, 11 of which have been completed, and one procedure is still ongoing. In one case, the court acquitted the defendant. In cases of convictions, the court imposed fines and suspended sentences. A single prison sentence of five months was imposed in one case, and community service was

imposed in another case. There were only two cases of Illegal hunting under Art. 276 of the CC, one of which is still ongoing, while the other ended in a suspended sentence. One case of illegal fishing under Article 277 of the CC was also conducted and ended with the charges being dismissed.

Within the territorial jurisdiction of the Higher Court in Zrenjanin, in the Basic Court in Bečej, one procedure was documented for the killing and abuse of animals under Art. 269 of the CC, which ended in a suspended sentence for both defendants. For the criminal offense of Forest theft under Art. 275 of the CC, a total of 15 proceedings were conducted, with one case ending in an acquittal and 14 in a guilty verdict. The court imposed suspended sentences (for 7 defendants) and fines (for 6 defendants) and one prison sentence in these cases. One case of illegal fishing under Art. 277 of the CC ended in a conviction and the imposed sanction was a suspended sentence.

In the Basic Court in Kikinda, two proceedings were conducted for the criminal offense of introducing dangerous substances into Serbia and Illegal processing, disposal, and storage of dangerous substances under Article 266 of the CC. Both cases ended in convictions, with one resulting in a suspended sentence with a fine and the other in house arrest for one year and a fine of 500.000 dinars. One proceeding for the offense of illegal fishing under Article 277 of the CC resulted in a sentence of five months in prison. The most common offense in this court as well was Forest theft under Article 275 of the CC. Out of 11 convictions, four defendants were sentenced to prison (one for one year, one for five months, and two for three months each), one was sentenced to house arrest for one year, five received suspended sentences, and two were fined.

Within the territorial jurisdiction of the Basic Court in Sremska Mitrovica, only one proceeding was conducted for the criminal offense of destruction, damage, export, and import of protected natural goods under Art. 265 of the CC, The case ended with a conviction and a suspended sentence being imposed. In regards to Forest theft under Art. 275 of the CC, seven criminal proceedings were conducted, with one case ending in a suspended sentence, one case still ongoing, and the remaining five cases ending in convictions. Sentences imposed included four suspended sentences and one fine.

Within the territorial jurisdiction of the Higher Court in Šabac, the Basic Court in Šabac had one procedure for the criminal offense of bringing dangerous substances into Serbia and Illegal processing, disposal, and storage of dangerous substances from Art. 266 of the CC, which is still ongoing. Regarding the crime of killing and abusing animals, three proceedings were conducted, two of which ended in convictions with one suspended sentence and one fine. In one case, the defendant was acquitted in the first instance

but the case is currently on appeal in the higher court. There were three proceedings for the criminal offense of Devastation of forests from Art. 274 of the CC, which resulted in two suspended sentences and one fine. As expected, the most common proceedings were for the crime of Forest theft under Art. 275 of the CC. A total of 33 proceedings were conducted, seven of which are still ongoing, three cases were dismissed, and seven were resolved through plea agreements, while the rest ended in convictions. The majority of the guilty verdicts resulted in suspended sentences (imposed on 11 defendants) and seven fines, while one person was sentenced to 8 months in prison. There were also four proceedings for illegal hunting from Art. 276 of the CC, all of which ended in suspended sentences via plea agreements. One case of illegal fishing from Art. 277 of the Criminal Code was resolved with a fine through a plea agreement.

Although it was expected that there would be a lot of cases of Forest theft before the Basic Court in Loznica, it is still a little surprising that there were almost no other environmental crimes. Two proceedings were conducted for Illegal hunting under Art. 276 of the CC, and one suspended sentence and one fine were imposed. In one procedure, the defendant was charged with Devastation of forests under Art. 274 of the CC and was given a suspended sentence. At the same time, as many as 41 criminal proceedings were conducted for the crime of Forest theft under Art. 275 of the CC. Seven of these cases are still ongoing. The court imposed suspended sentences in 19 cases, fines in four cases, and in two cases, the defendants were sentenced to house arrest without electronic monitoring. One prison sentence was also imposed.

As we can see from these data, in terms of criminal offenses under Chapter XXIV of the Criminal Code, the territorial jurisdiction of the Appellate Court in Novi Sad does not differ significantly from the territorial jurisdiction of the entire Republic of Serbia. Although the three-year period for which data was collected was long enough for more pertinent conclusions, it is clear that general crimes against the environment are still not represented to a significant extent in our judicial system. Crimes against flora and fauna were much more often the focus of attention of our prosecutors and courts, especially the criminal offense of Forest theft, which, according to this research, is conspicuously dominant compared to other criminal offenses under this Chapter. The criminal offenses of Illegal hunting and fishing were represented to a significantly lesser extent. The extent of the social danger of criminal offenses can be partially determined based on the severity of a punishment prescribed for a specific offense, but also based on the imposed criminal sanctions. This research has confirmed that environmental crimes do not yet represent a great social danger because most of the criminal proceedings ended in suspended



sentences, closely followed by fines (the fine amounts were closer to the legal minimum than the maximum). A prison sentence was very rarely imposed, and it was house arrest more often than not. Actual imprisonment was exceptionally imposed. The inconsistency of court practice was also observed when it comes to criminal sanctions, as some courts as a rule imposed suspended sentences and fines for the same crimes, whereas other courts imposed only suspended sentences in almost identical situations. The inventiveness of the Basic Court in Senta is commendable, as it was the only one to significantly rely on an alternative criminal sanction - community service, which it imposed on 12 defendants in the observed period and in seven criminal proceedings.

### **AN EXAMPLE OF GOOD PRACTICE**

Considering the fact that there is usually a high number of underreported crimes in the area of crimes against the environment, and that there are practical challenges in detecting crimes from Chapter XXIV of the Criminal Code, documenting and proving these crimes, which are often specific and require a special approach and criminal processing, it seems that the Ministry of Internal Affairs responded to these challenges in an appropriate manner. In March 2022, by order of the Minister, a specialized police unit was formed within the Directorate of Police at the national level in Serbia, whose sole task is to combat environmental crime, that is, all those who destroy and pollute the environment. The Unit for the Suppression of Environmental Crime and Environmental Protection is expected to provide a unique and professional approach to detecting and proving this group of crimes, in such a way that it will cooperate directly with all police administrations and judicial authorities in order to enable timely and efficient processing of all natural and legal persons responsible for destroying or damaging the environment in any way. Although at least a year is necessary for a more detailed evaluation of the effectiveness of the new police unit after its establishment, based on the first results of a six-month work period it can be concluded that in the future this Unit will take the leading role in the field of detecting environmental crimes. If we take into account that some time was necessary to organize and prepare this completely new police Unit in connection with the status of the members of the Unit, their relationship with other members of the police throughout the territory of the Republic of Serbia, the establishment of cooperation with the judicial authorities and finally, the citizens – the results from the observed three or four months of effective work are certainly encouraging. 227 criminal reports were submitted to the competent prosecutor's offices for 233 committed

environmental crimes. Of course, the largest number refers to forest theft (166 reports) and the killing and abuse of animals (40 reports), and 18 reports were also filed for illegal hunting and fishing. Although there were not many reports for general crimes against the environment, it is significant that two criminal reports were filed each for environmental pollution, import of dangerous substances into Serbia, and destruction of protected natural goods. In any case, this positive news should give additional momentum to the fight against those who pollute, damage, and destroy the environment and represents a striking hammer in the state's retribution against all those who put their profits before general and common values or act negligently towards the living and the non-living world that surrounds them.<sup>29</sup>

### IN LIEU OF A CONCLUSION

In recent years, we have seen significant changes taking place in our country regarding raising citizens' awareness and the state's reaction to the increasing need to protect the natural environment. This is evident in every aspect, as the media frequently discusses the importance of a healthy environment and the need to preserve it, reports on individual cases of severe environmental incidents, and the public demands more effective environmental protection. Despite the undeniable influence of politics, this past period has also been marked by mass public protests in several cities in Serbia, the reason for which was soil testing and the construction of new lithium mines, which certainly have a negative impact on the entire surrounding environment, both living and non-living.

Our Constitution recognizes the right to a healthy environment as a basic human right and represents a good legal framework for the detailed legal regulation of this very important topic for all citizens of our country and for all inhabitants of this planet.

Many laws regulating this field have been adopted, international treaties have been ratified, numerous by-laws have been passed and many are being prepared. For almost two decades in our Criminal Code, environmental crimes have been given due importance, because these crimes have been systematized in a separate chapter of the Code. Numerous behaviors that do not have the elements of a criminal offense are sanctioned by prescribing misdemeanors and economic offenses, and there is also the possibility of criminal liability

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<sup>29</sup> Daily newspaper, "Politika", 18.07.2022. Rezultati specijalizovane jedinice MUP-a posle 6 meseci od osnivanja.

for legal entities. A specialized police unit for environmental crimes has been established within the Ministry of Internal Affairs in Serbia, which coordinates the efforts of all police departments across the country in relation to criminal acts outlined in Chapter XXIV of the Criminal Code. Our laws largely align with international legal frameworks, and while they may not be perfect or comprehensive (because such laws don't exist), we dare to claim that our positive regulations in this area provide an excellent basis for much better results in environmental protection.

It seems that, as in many other legally regulated spheres of life, the application of regulations in practice lags behind legal regulation. When it comes to the application of the provisions of the Criminal Code and other laws that prescribe criminal acts in the field of environmental crime, it is necessary to draw up a detailed plan of activities that should enable a much more efficient application of existing regulations, as well as further work on amendments and additions to legal solutions. Additionally, it is important to ensure that all regulations are in line with the legislation of the European Union. There is certainly room for improvement in the quality of work and significant progress in the results of the application of criminal regulations, particularly in terms of strengthening the capacities of administrative bodies such as inspections, the police, the prosecution, and the courts. The creation of specialized teams on the territory of Serbia, consisting of judges, prosecutors, and police officers at the level of higher courts, is a positive step towards more efficient coordination and collaboration in the fight against environmental crime. We support the idea initiated several years ago by the OSCE, which would provide an opportunity for members of these teams to complete appropriate seminars and work together to address general criminal acts against the environment more effectively. They would have access to information about specialized institutions that, in the event of environmental incidents, could provide basic information about whether it is safe to conduct an investigation, what equipment would be necessary for that investigation, as well as how it could be obtained, and identify clues that will enable the prosecutor's office and the court to conduct criminal proceedings efficiently. Data on natural and legal persons who could be engaged as experts with the necessary specialized knowledge in certain fields would also be available.

In addition, there is a need to involve the Supreme Court of Cassation as well as all four appellate courts in the matter of penal policy and harmonization of judicial practice in order to ensure uniform legal positions in the interpretation of certain institutes and take a uniform direction in the creation of penal policy for these crimes.

Although all criminal offenses from Chapter XXIV of the Criminal Code are important in their own way for the functioning of the protection of the environment, it seems that it is still necessary to focus on the already mentioned general criminal offenses against the environment: environmental pollution, Art. 260 CC; failure to take measures to protect the environment, Art. 261 CC illegal construction and commissioning of facilities and plants that pollute the environment, Art. 262 CC; damage to facilities and devices for environmental protection, Art. 263 CC; damage to the environment, Art. 264 CC; destruction, damage, and export of protected natural goods, Art. 265 CC; violation of the right to information about the state of the environment, Art. 268 CC. It would certainly be interesting for criminal acts related to dangerous substances: bringing dangerous substances into Serbia and illegal processing, disposal, and storage of dangerous substances, Art. 266 CC, and illegal construction of nuclear facilities, Art. 267 CC to be in that group. Perhaps the devastation of forests from Art. 274 CC could be found in the same group.

We believe that in the situation of creating teams within the territorial jurisdiction of the higher courts, it would be justified that these criminal offenses should be covered by increased attention because they require teamwork and a multidisciplinary approach. However, for some other criminal offenses from this category, such as forest theft, killing and abuse of animals, illegal hunting, and illegal fishing, there seems to be no need for increased attention. In this way, the unnecessary burden of such criminal acts, which are by far the most represented in the statistics of the police and judicial authorities, would be avoided. There would be more space for these state authorities to become more actively involved in the detection, recording, proving, and adjudication of those criminal offenses that represent a greater social danger and can cause much more serious consequences.

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