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EFFICIENCY OF THE PROTECTION OF THE ENVIRONMENT THROUGH MISDEMEANOR LAW IN BELGRADE FROM 2017 TO 2022***

ABSTRACT: The authors aim to present the mechanism for the protection of the environment through misdemeanor law in Belgrade for the period from 2017 to 2022, analyzing its effectiveness in broad terms. The five-year period covered by this study is determined as a period in which certain trends can be recognized and followed, both in terms of the structure of prohibited behaviors directed against the environment and regarding the activities undertaken by competent administrative authorities and misdemeanor courts as a form of formal response. The study begins with the concept of the environment defined in the Environmental Protection

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Law¹. The study analyzes those misdemeanors whose commission changes and/or can change the states and conditions in the environment. The effectiveness of protection through misdemeanor law is analyzed in three aspects. First, the scope of the prescribed offenses is considered. On the other hand, the complete absence of prescribing certain actions directed against the environment as misdemeanors is observed. Further, the quality of the misdemeanor provisions themselves is considered, especially in terms of their sufficient specificity to ensure their straightforward application by administrative and judicial authorities. Finally, the outcomes of misdemeanor proceedings related to offenses against the environment are analyzed. Aiming to further dispel the myth of "environmental crimes" as victimless crimes, the authors cite and explain the effects of the most common misdemeanors on both the environment and human life and health.

Keywords: misdemeanors, environment, legal protection, harmful consequences

INTRODUCTION

Within the framework of the protection of the environment through penal law in Serbia, the legislator has prescribed criminal and misdemeanor responses, as well as responses through economic offenses. The section – *penal provisions*, found in almost all regulations governing environmental matters, indicates that protection through misdemeanor law is stipulated for the majority of unlawful behaviors/omissions violating environmental protection provisions. Therefore, prescribing and sanctioning misdemeanors, which essentially represent behaviors and omissions that offend the legal order (social danger is noted as the *ratio legis* in the prescription of certain misdemeanors, although this is essentially a characteristic of those offenses prescribed as criminal by the legislator), is the most common form of response through criminal law in the field of environmental protection. In literature, it is noted that protection through misdemeanor law, from a historical perspective, had been the only legal guarantee for environmental protection over a significant period.²

When it comes to environmental protection, as is the case in all areas where protection is provided for fundamental human rights, the legislator

¹ Environmental Protection Law *Official Gazette of RS*, no. 135/2004, 36/2009, 36/2009, 72/2009, 43/2011, 14/2016, 76/2018, 95/2018, and 95/2018

² Joldžić, V., Stanković, V. (2016). O uspostavljanju, te potrebama i mogućnostima daljeg razvoja kaznenopravne zaštite životne sredine. *Journal of the Institute of Criminological and Sociological Research*, 35(3), 55–69.

identifies those offenses which, due to their intensity and territorial scope of consequences, pose the greatest threat to the environment and prescribes them as criminal offenses in a special chapter of the current Criminal Code.³ Protection of the environment through misdemeanor law is generally realized for all other offenses whose characteristics do not require *a priori* response through criminal law, i.e., where individually considered, the consequence has not quantitatively and qualitatively compromised or posed a danger to the environment to such an extent. In accordance with the *ultima ratio* principle in criminal law, provisions in chapter XXIV of the Criminal Code provide protection for specific offenses related to unlawful construction and operation of facilities that pollute the environment, damage to facilities used in environmental protection, unauthorized construction of nuclear facilities, while for other offenses, it is required that the consequence was realized “to a greater extent or over a wider area”. Additionally, the provisions in chapter XXIV of the Criminal Code, as well as provisions of secondary criminal legislation, do not cover harmful behaviors consisting of noise emissions, which is particularly important regarding large cities like Belgrade.

The nature of the protection of socio-economic relations through misdemeanor law, as well as the essential characteristics of misdemeanor proceedings, significantly shape and condition the protection of the environment through misdemeanor law. In this sense, there is a *diffusion* of norms, and thus misdemeanor sanctions, regulating the field of the environment, given that besides the systemic regulation, the Environmental Protection Law, there are a number of sectoral regulations, particularly laws, but for the city of Belgrade, regulations and decisions made by competent city authorities are significant sources of “environmental law” as well. Therefore, for those subject to environmental norms, both natural and legal persons subject to a specific jurisdiction and the authorities responsible for enforcing the regulations, it is sometimes exceptionally challenging to even be aware of the existence of certain norms (obligations, prohibitions, etc.), and even when they are aware, the specificity of the matter often leads to misunderstandings of the rights and obligations imposed by the norms. In this sense, it can be concluded that the majority of misdemeanors in the field of environmental protection fall into the category of *mala prohibita*, although there are views in the doctrine that “environmental offenses” are increasingly taking on the features of the category *mala in se*,⁴ which, considering the pronounced social danger of criminal offenses, primarily refers to the protection of the environment through criminal law.

³ Criminal Code, *Official Gazette of RS*, no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

⁴ Bell, S., McGillivray, D. (2006). *Environmental Law*, Oxford, New York: Oxford University Press, 6th Edition, 281.

Generally, in doctrine, the penal response in the field of misdemeanors is associated with (relative) *dysfunctionality* of proceedings, a characteristic caused by the nature of misdemeanors and their prevalence in the structure of the penal response. As a result, it is often the case that many misdemeanors are never reported, and even if they are, the proceedings are frequently terminated due to the statute of limitations. Contrary to the presented viewpoint, there is also an opinion in doctrine that protection through misdemeanor law, regardless of the field, is milder but more efficient than protection through criminal law, considering the simplified forms of proceedings, such as the possibility of issuing misdemeanor notice, for example.⁵

NORMATIVE PREREQUISITES FOR THE RESPONSE THROUGH MISDEMEANOR LAW IN THE FIELD OF ENVIRONMENTAL PROTECTION IN THE TERRITORY OF THE CITY OF BELGRADE

In domestic literature⁶, it is emphasized that the material basis for prescribing misdemeanors in the field of environmental protection originates from norms that: 1) establish environmental rights; 2) establish environmental values; 3) environmental obligations; 4) environmental responsibilities.⁷

According to the current Law on Misdemeanors⁸ (Article 4, Paragraph 1), they can be prescribed by law or regulation, or by a decision of the assembly of the autonomous province, a municipal assembly, a city assembly, and the Belgrade city assembly.

The systemic law in this area is the Environmental Protection Law. This is because it prescribes: a) guiding principles; b) defines basic terms in the

⁵ Stajić, Lj. (2018) Praksa Prekršajnog suda u Novom Sadu u oblasti zaštite životne sredine. *Collected Papers of the Faculty of Law in Novi Sad*, 52(4), 1503–1505.

⁶ See for example: Joldžić, V. (2014). Ekološki delikti i kazne: stvarno i potrebno. In: Kron, L. (ed.), *Prestup i kazna: de lege lata et de lege ferenda*. Belgrade: Institute for Criminological and Sociological Research, 165-174.

⁷ Bearing in mind the principle of subsidiary liability, according to which state authorities, within their financial capabilities, address the consequences of environmental pollution and mitigate damage in cases where the polluter is unknown, as well as when the damage stems from environmental pollution from sources outside the territory of the Republic of Serbia, as stipulated by Article 9 of the current Environmental Protection Law, it is clear that the concepts of "environmental obligations" and "environmental responsibilities" should not be confused.

⁸ Law on Misdemeanors, *Official Gazette of RS*, no. 65/2013, 13/2016, 98/2016, 91/2019, 91/2019, and 112/2022.

matter of environmental protection; c) gives a general description and specifies the object of protection, i.e., typical harmful activities; d) and finally, in a specific way, provides for the institutes of substantive criminal law.

a) The Environmental Protection Law proclaims 11 principles of environmental protection, of which the principles of *the liability of the polluter and their legal successor and the principle of subsidiary liability* are particularly important for this topic. The first principle is the basic substantive starting point for prescribing misdemeanors since it proclaims the liability of a legal or natural person whose illegal or improper activities lead to environmental pollution. Illegal activities in this context can be interpreted as those against the law, while improper activities should be interpreted as any action or omission that contradicts certain technical rules (rules of procedure of production processes, waste disposal processes, etc.) that are prescribed by some legal act (regulation, decision, ordinance...)⁹

b) Here, the definition of “environment,” as defined in Article 3, paragraph 1, point 1 of the Environmental Protection Law as a set of natural and created values whose complex interrelations make up the environment, i.e., space and conditions for life, is of particular importance.¹⁰ The same article defines what constitutes pollution of the environment, i.e., a series of “operational” terms such as hazardous substances, emissions, waste, etc.

c) Given that the domestic legal system does not have a special part of the substantive legal provisions of the Law on Misdemeanors, where misdemeanors would be classified according to the object of protection, it is clear that, unlike criminal offenses, it is much harder to determine the object of protection in the case of misdemeanors. Therefore, for example, the Misdemeanor Court in Belgrade often categorizes misdemeanor proceedings conducted due to violations of laws or regulations related to the matter of environmental protection under misdemeanors against the economy.¹¹ This circumstance does not have only a technical or theoretical character but can also produce significant

⁹ The term “improper” activities seems insufficiently clear, so it might be better to replace it with “unlawful” if a distinction is desired from those that are illegal, as they are contrary to legal norms. This is because legal liability, in the broadest sense, can only be established in the case of a violation of a legal rule.

¹⁰ In foreign literature, it is stated that the conditions for human life on Earth are determined by the interrelationship of three interpenetrating components: the natural environment, society, and the economy. See more in: Yeremeyev, I., Dychko, A., Remez, N., Kraychuk, S., Ostapchuk, N. (2021). Problems of sustainable development of ecosystems. In *IOP Conference Series: Earth and Environmental Science*, 628(1) 012014. IOP Publishing.

¹¹ See case no. Pr. 93342/2018, Misdemeanor Court in Belgrade.

substantive-procedural consequences concerning, for instance, *the statute of limitations of misdemeanor proceedings*.¹²

The Environmental Protection Law thus in Articles 22–32 practically stipulates that its norms ensure the protection of *soil and land, water, air, forests, biosphere and biodiversity, flora and fauna*, and regulate issues of *trade in specimens of wild flora and fauna, hazardous substances, waste management, protection from noise and vibrations, and protection from radiation*. Additionally, Article 10 of the Environmental Protection Law provides that environmental protection is also offered by other (sectoral) laws and other by-laws.

d) Unlike the Criminal Code, which only provides for strict liability as an exception, Article 103 of the Environmental Protection Law prescribes that a polluter who causes environmental pollution is liable for the resulting damage under the principle of *strict liability*, which is of great importance, especially in terms of those acts where subjective contributions are harder to account for, given the complexity of actions and determination of consequences.

According to the Environmental Protection Law, a natural person, entrepreneur, legal entity, and a responsible person within a legal entity can be held accountable for misdemeanors. Additionally, the legislator has utilized the possibility provided by the Law on Misdemeanors¹³ to also provide for the misdemeanor liability of parents, guardians, or responsible persons in the guardianship authority, if due to the omission of due supervision over a minor, they commit certain misdemeanors prescribed by the Environmental Protection Law.

Article 117 of the Environmental Protection Law prescribes 13 misdemeanors that can be committed by a legal entity, with each being subject to a fine ranging from 500.000 to 1.000.000 dinars, while a responsible person can be fined between 25.000 and 50.000 dinars.¹⁴ The following Article 117a prescribes 17 misdemeanors that can be committed by an entrepreneur, with each being subject to a fine ranging from 250.000 to 500.000 dinars, while according to Article 118 of the Environmental Protection Law, a natural person can commit four misdemeanors subject to a fine ranging from 5.000 to 50.000 dinars or imprisonment up to 30 days. Finally, Article 119 of the Environmental Protection Law explicitly prescribes the misdemeanor liability of responsible persons in administrative bodies, local self-government units, or

¹² Article 84, paragraph 5 of the Law on Misdemeanors.

¹³ Article 72 of the Law on Misdemeanors.

¹⁴ Article 117, paragraph 2 of the Environmental Protection Law stipulates that a fine can be imposed in proportion to the amount of damage caused or the obligation not fulfilled, the value of the goods or other items that are the subject of the offense, but no more than twenty times these values.

organizations exercising public authority, for 17 misdemeanors with a threatened fine ranging from 25.000 to 50.000 dinars.¹⁵

In the case of a legal entity and entrepreneur, a *protective measure of banning the performance of activities for up to three years* can be imposed along with the penalty, while a responsible person in a legal entity, or in an administrative body, local self-government unit, or organization exercising public authority can be subjected to a *protective measure of banning the performance of certain duties for up to one year*.¹⁶ In any case, along with the penalty, a *protective measure of confiscation of items intended or used for the commission of the misdemeanor or obtained by its commission* can be imposed, except in the case of a misdemeanor committed by a responsible person in an administrative body, local self-government unit, or organization exercising public authority.

Reviewing a total of 51 misdemeanors prescribed in the Environmental Protection Law, it is noted that the majority are mainly *administrative* in nature and boil down to failing to provide data to competent authorities. Misdemeanors from the Environmental Protection Law that primarily protect environmental values and can be considered “true environmental misdemeanors”¹⁷ are virtually only those prescribed in Article 118 paragraphs 1 and 2 of the Environmental Protection Law, which can only be committed by a natural person. Sectoral laws in this area, such as the Waste Management Law,¹⁸ the Water Law,¹⁹ or the Air Protection Law,²⁰ also prescribe a larger number of “indirect environmental misdemeanors” by determining the omission to compile certain programs or conduct training as the act of commission.

¹⁵ Compare with e.g. Article 215 of the Water Law, which explicitly provides for the misdemeanor liability of water sanitary and environmental protection inspectors in case they commit a certain offense.

¹⁶ The Water Law provides for *mandatory* imposition of a protective measure on a natural person for the offense from Article 212, paragraph 1, point 22a.

¹⁷ For more about true and indirect environmental crimes, see: Stevanović, A. (2020). Environmental Crime: Criminological Reflections. In: *The Criminal Law Protection of our Common Home: 7th AIDP Symposium for Young Penalists*, 99-112.

¹⁸ Waste Management Law, *Official Gazette of RS*, no. 36/2009, 88/2010, 14/2016, 95/2018, and 35/2023.

¹⁹ Water Law, *Official Gazette of RS*, no. 30/2010, 93/2012, 101/2016, and 95/2018.

²⁰ Air Protection Law, *Official Gazette of RS*, no. 36/2009, 10/2013, and 26/2021.

Regulatory Framework of the City of Belgrade

The Law on the Capital City²¹ establishes the competencies of the City of Belgrade.²² Competencies related to rights and obligations in the field of environmental protection include: activities in the field of disaster risk reduction and emergency management, in accordance with the law governing disaster risk reduction and emergency management; regulation of general conditions for protection, ways of establishing and maintaining, restoration of destroyed public green areas, and keeping records of public green areas; management of municipal waste, i.e., its disposal in the territory of the City of Belgrade, adoption of waste prevention measures for plastic bags, with a plan for its implementation; determining parts of the coast and water area where hydraulic structures can be built, floating objects and boat moorings can be placed, or ship unloading spots, conditions and manner of placing floating objects and boat moorings, including issuing permits for their placement and supervision in the field of water management as well as over the use of places for placing floating objects and boat moorings, in accordance with the law governing the use of water and water traffic.

Article 25 of the Statute of the City of Belgrade²³ specifies the competencies of the City of Belgrade, derived from the Constitution,²⁴ the Law on Local Self-Government²⁵, and the Law on the Capital City. Thus, the City of Belgrade supervises environmental protection, adopts programs for the use and protection of natural values and environmental protection programs, i.e., action and remediation plans for the City's territory, in accordance with strategic documents and its interests and specificities, and determines a special fee for the protection and improvement of the environment; organizes a zoohygienic service for catching and sheltering abandoned animals, harmless removal of dead animal bodies, and their transport to the collection and treatment facility; regulates the use and management of springs, public wells, and fountains; issues water management conditions, consents, and permits for facilities determined by law; regulates and organizes the performance of tasks related to the keeping and protection of domestic and exotic animals. In

²¹ Law on the Capital City, *Official Gazette of RS*, no. 129/2007, 83/2014, 101/2016, 37/2019, and 111/2021.

²² See Article 8 of the Law on the Capital City.

²³ Statute of the City of Belgrade, *Official Gazette of the City of Belgrade*, No. 39/2008.

²⁴ Constitution of the Republic of Serbia, *Official Gazette of RS*, no. 98/2006 and 115/2021.

²⁵ Law on Local Self-Government, *Official Gazette of RS*, no. 129/2007, 83/2014, 101/2016, 47/2018, and 111/2021.

addition, the City of Belgrade prescribes misdemeanors for violations of regulations within its jurisdiction, establishes inspection services, and performs inspection supervision over the implementation of regulations and other general acts within the City's jurisdiction.

The Assembly of the City of Belgrade has adopted several Decisions regulating issues broadly related to environmental protection. For example, the Decision on the Management of Municipal, Internal, and Non-Hazardous Waste has been in effect since 2019.²⁶ The section containing penal provisions of this Decision prescribes 52 misdemeanors, with the same remarks as in the case of the analyzed penal (misdemeanor) provisions of the Environmental Protection Law, with the misdemeanors from the Decision leaning more towards the category of "true environmental offenses". The Decision on the Disposal and Treatment of Atmospheric and Wastewater in the City of Belgrade²⁷ is also significant as it contains 80 misdemeanors.

Organizational Aspect

The judicial authority in the field of misdemeanors in the territory of the City of Belgrade is exercised by the Misdemeanor Court in Belgrade with its branch departments, the Misdemeanor Court in Mladenovac with its branch department, the Misdemeanor Court in Obrenovac, and the Misdemeanor Court in Lazarevac for the territories of the respective municipalities. Acting in accordance with their competencies, they identify and report misdemeanors (submission of requests for initiating misdemeanor proceedings) by national and city bodies, each within its competencies, with particular emphasis on the competencies and activities of the Environmental Protection Agency, as well as national and city competent inspections, which often conduct joint, so-called "combined actions". In March 2022, within the system of the Ministry of Interior, the Unit for Combating Environmental Crime and Environmental Protection was formed, whose role and function in combating environmental offenses, given the relatively short time since its establishment, cannot yet be analyzed.

²⁶ Decision on the Management of Municipal, Internal, and Non-Hazardous Waste, *Official Gazette of the City of Belgrade*, no. 71/2019, 78/2019, and 26/2021.

²⁷ Decision on the Disposal and Treatment of Atmospheric and Wastewater in the City of Belgrade, *Official Gazette of the City of Belgrade*, no. 6/2010 and 29/2014.

Flaws in the Normative Framework and Suggestions for Improving the Current State

The flaws in the normative framework generally refer to both national and city regulations, with the former perhaps more subject to criticism given their legal strength and the scope of the subject matter that the national regulations address.

The primary flaw is the significant gap, or the area not covered by norms, between the domain protected by criminal law and that safeguarded by misdemeanors. On one end, the Criminal Code prohibits and considers as criminal offenses those environmentally harmful activities/omissions where the harmful consequence occurs *on a large scale or over a great area*, while on the other end, which refers to misdemeanor punishment for so-called environmental offenses, there is mainly a prohibition of typically *non-consequential* actions/omissions that are predominantly *administrative* in nature. It is reasonable to question the potential penal response to those consequential offenses where the consequence does not occur *on a large scale or over a great area*, considering that equal, if not more intense, environmental damage can be caused successively by continuous activity whose consequence, when viewed individually, does not occur *on a large scale or over a great area*. It seems necessary, in this regard, to consider as misdemeanors those offenses (true environmental ones) where it is not required that the negative consequence is realized with greater intensity and in a larger scope, thereby “filling” the existing gap in the protection of the environment through misdemeanor law while adhering to the *ultima ratio* principle regarding the function and scope of the response of criminal law. Minor harmful consequences would, in this case, remain outside the scope of penal response, in accordance with the rules on *offenses of minor significance*.

The amount of the prescribed penalty is typically considered in terms of determining the repressiveness of a penal system but also as a preventive factor in deterring offenses. The domestic literature rightly questions whether a criminal offense is, in every specific case, more severe than a misdemeanor.²⁸ For example, it is noted that the Criminal Code allows the court to terminate a measure before the expiration of the time for which it was imposed, while the court in misdemeanor proceedings does not have this option when it comes to the imposed protective measure of prohibition of certain activities. Especially concerning monetary fines in the area of environmental protection, the possibility of imposing a fine *in proportion to the amount of caused damage or unfulfilled obligation, the value of goods or other items that are the subject*

²⁸ For example: Milić, I. (2016). Da li je krivično delo uvek najteže kazneno delo? (I deo), *Collected Papers of the Faculty of Law in Novi Sad*, 3/2016, 937–955.

of the misdemeanor, and up to twenty times these values at most, can clearly far exceed the maximum monetary penalty that can be imposed for a criminal offense. However, courts in the researched period did not utilize this possibility, as it would entail a large number of procedural actions, significant procedural costs, and time.

Regarding the prescribed penalties for misdemeanors focused on in this paper, it is noted that the legislator does not prescribe the penalty of community service for environmental misdemeanors, neither in the Environmental Protection Law nor in sectoral laws, and the same applies to other national by-laws and acts of the city of Belgrade. Although this option cannot apply to legal entities, which are the most common potential perpetrators of environmental misdemeanors, it is considered justified that in the case of so-called true environmental misdemeanors where the perpetrator can be a natural person, the possibility of imposing *community service* as a principal (or at least secondary) penalty should be considered. Community service could certainly improve societal capacities for maintaining the environment (cleaning green areas, water bodies, forests, etc.), and it seems that from the perspective of general and special prevention, it could achieve positive effects in terms of raising *environmental awareness*.

Lastly, although the tendency for a case to “fall into the statute of limitations” and the subsequent termination of proceedings due to the statute of limitations is often highlighted as obstructing the effectiveness of misdemeanor proceedings, the Environmental Protection Law, as well as other significant sectoral laws, do not utilize the possibility given by Article 84, paragraph 5 of the Law on Misdemeanors, which allows for a longer statute of limitations (not exceeding five years) for the area of environmental protection. It is not entirely clear why the legislator did not use this opportunity to allow for all necessary procedural actions to be taken within misdemeanor proceedings without fear of the statute of limitations.

When considering the majority of misdemeanors stipulated both in the Environmental Protection Law and in sectoral laws and other by-laws, the dominant administrative nature of misdemeanors in the field of environmental protection is evident. Although we have previously criticized this, pointing out the ‘gap’ that exists between responses of criminal law and misdemeanor law in this area, it remains unclear why, almost as a rule, monetary fines within a range are prescribed as the sanction for such *administrative-environmental* misdemeanors, given that such a sanction prevents the use of a misdemeanor notice as an ‘instrument’ designed to contribute to the efficiency of proceedings in situations where, for example, the violation of a legal rule is determined by a simple check by the competent authority (missing deadlines to submit a notification, create a plan, etc.).

THE CONTEXT OF THE CITY OF BELGRADE

The area of the City of Belgrade covers 322,268 hectares (the urban area being 35,996 hectares) and is administratively divided into 17 municipalities (Čukarica, Voždovac, Vračar, Novi Beograd, Palilula, Rakovica, Savski Venac, Stari Grad, Zemun, Zvezdara, Barajevo, Grocka, Lazarevac, Obrenovac, Mladenovac, Sopot, Surčin).

The city of Belgrade is a suitable ground for studying various misdemeanors against the environment, considering the scale and dynamics of economic relations within it, the coexistence of a large number of people, internal and external migrations, the availability of various natural resources, and the presence of distinctly urban as well as rural areas.

Tens of thousands of business entities are registered in Belgrade. The largest thermal power plant in Serbia, with six blocks of a total installed capacity of 1.765,5 MW, is located on the right bank of the Sava River near Obrenovac and is the single largest producer of electricity in the Serbian power system, producing more than 8 billion kilowatt-hours annually. Belgrade has eight heating plants and five boiler rooms. The city of Belgrade lies at the confluence of the Sava River into the Danube, two significant rivers within the country. Given these data and considering that economic and industrial factors significantly contribute to environmentally harmful behaviors,²⁹ it is clear that the territory of the City of Belgrade is most exposed to various possibilities of environmental endangerment. Practically, of all misdemeanors in the field of environmental protection that are in force in domestic law, only those related to ensuring the protection of national parks could not be committed on the territory of the City of Belgrade.

Regarding the activities of the Misdemeanor Court in Belgrade during the observed five-year period,³⁰ 17 cases were filed in 2017 for misdemeanors stipulated in the Environmental Protection Law, 13 convictions were issued, one acquittal, and nine decisions to terminate proceedings, while no decisions to dismiss the request were made. In 2018, 17 cases were filed, 10 convictions were issued, two acquittals, and 20 decisions to terminate proceedings, while two cases resulted in a decision to dismiss the request. In 2019, 62 cases were filed, 12 convictions were issued, two acquittals, and nine decisions to terminate proceedings, while 16 cases resulted in a decision to dismiss the request. In 2020, 32 cases were filed, five convictions were issued, no acquittals,

²⁹ See more in: Stevanović, A. (2015). Ekološki kriminalitet, *Kaznena reakcija u Srbiji (V deo)*. Belgrade: University of Belgrade, Faculty of Law, 301-312.

³⁰ Notification from the Misdemeanor Court in Belgrade, no. SU II – 17a 229/2023 -1 from October 10, 2023.

12 decisions to terminate proceedings, and one case resulted in a decision to dismiss the request. In 2021, 7 cases were filed, 11 convictions were issued, no acquittals, 21 decisions to terminate proceedings, and two cases resulted in a decision to dismiss the request. Finally, in 2022, 23 cases were filed, nine convictions were issued, no acquittals, 20 decisions to terminate proceedings, and one case resulted in a decision to dismiss the request.

CRIMINOLOGICAL PERSPECTIVE

Legal entities, particularly business entities, mainly participate in creating negative effects on environmental goods. It is a fact that environmentally harmful activities or omissions of business entities as legal entities, especially those classified under “heavy industry,” generate a higher intensity of endangering, harming, or destroying an environmental good in a shorter time. In the context of today’s dominance of the capitalist cultural and social model over others, it is clear that profit-making can be understood as an imposed goal, which is easier to achieve by disregarding certain regulations, such as those mandating the installation of filters, purifiers, and many other reduction devices.³¹ Reviewing the formulations of domestic positive provisions regulating this matter, which is also the case in almost all legislations, two types of duties can be observed.³² The first is preventive and represents the avoidance, at one’s own expense, of harmful effects by installing filters and similar devices. The second group of duties relates to the mandatory remediation of inflicted damage based on the principle of material liability. In both cases, it is necessary to forego certain material resources or a certain future income, which, of course, is not in the interest of the business entity.

The economic cause of environmental crime can also be discussed from the state’s perspective, not just that of business entities, i.e., the ways in which the state consciously or unconsciously encourages current and potential perpetrators, primarily of environmental crimes and then other offenses. Namely, sanctions for violating imperative environmental regulations are far more likely to be imposed on, besides natural persons, legal entities with economic activities that do not operate with large revenues, do not employ a large number of people, and whose activities are not of vital importance for the functioning of a society. Simply put, frequent and harsh sanctioning of large business entities would jeopardize their operations and thereby the livelihood

³¹ Notification from the Misdemeanor Court in Belgrade, no. SU II – 17a 229/2023 -1 from October 10, 2023

³² *Ibid.*

of a large number of employees in such systems, leading to a higher unemployment rate and opening a whole range of socio-economic issues, which are typically a significant pressure on any state authority.

From the perspective of state authority, it is far more profitable to tolerate sometimes even flagrant violations of relevant regulations protecting an environmental good by large economic systems that contribute significant financial resources to the state budget through tax obligations. The type of activity is very significant in this context, as in some cases, the environmental interest will be suppressed in order to improve the state of the country.³³ Therefore, it can be concluded that larger economic systems, in the previously mentioned sense, and their responsible persons have a sort of *de facto immunity*.³⁴

The participation of individuals, not as responsible persons within legal entities but as natural persons, should also be considered when discussing the economic set of causes for environmental misdemeanors. Although it was previously stated that business entities as legal entities mainly participate in creating negative effects on environmental goods, it does not mean that environmental offenses committed by individuals should be overlooked.

Environmental offenses are typically associated with a significant *dark figure*.³⁵ This can be primarily explained by the large number of prescribed misdemeanors in the field of environmental protection. The situation regarding prescribed criminal offenses in this area is somewhat different since they are typically of a *consequential, temporal, and spatial* nature. This is further complicated by establishing causality between action and consequence, which requires expert knowledge and sometimes a demanding process involving various measurements, etc. On the other hand, most misdemeanors prescribed by the Environmental Protection Law, other sectoral laws and by-laws at both the republic and city levels, are *conduct offenses*, so establishing that an objective misdemeanor wrong has been committed does not require determining the occurrence of a consequence and its causal relationship with the action.

Finally, the doctrine highlights another important perceptual characteristic (a view predominantly held by the general public) of environmental

³³ Let us consider the possibility that while excavating coal, a certain power industry giant violates a penal norm aimed at protecting some environmental value. There is a certain possibility that the *stricto iuris* behavior of the state authorities could jeopardize the operation of that economic system, and thereby the distribution of electricity, which is certainly of vital importance to society.

³⁴ Ignjatović, Đ. (2011). *Kriminologija*. Belgrade: Faculty of Law, University of Belgrade.

³⁵ This assertion is of a conditional nature since it is based on the experiential observation of the author, without reliance on a self-incrimination study, for example, which could validly confirm the existence of this phenomenon from a methodological standpoint, but certainly not its extent.

offenses, that they are so-called *victimless crimes*.³⁶ This essentially means that the consequences of a misdemeanor (though rarely included in the substance of the offense) are removed from the personal and property goods of a person.

Specific Effects of Negative Environmental Consequences on Everyday Human Life

According to the World Health Organization (WHO) data published for the year 2022,³⁷ air pollution is the second largest risk factor for non-communicable diseases and one of the main health risks, causing diseases such as lung cancer, stroke, heart disease, acute and chronic respiratory diseases, including asthma. About 89 % of premature deaths occur in low- and middle-income countries. Considering the Annual Report on the State of Air Quality in the Republic of Serbia for 2020,³⁸ the territory of the city of Belgrade belongs to the third (worst) category of air quality. The annual average concentration of sulfur dioxide above the limit value ($50 \mu\text{g}/\text{m}^3$) in 2020 was not recorded in Belgrade. However, the daily limit value ($125 \mu\text{g}/\text{m}^3$) was exceeded in the capital city (2 days in the center of Obrenovac, Mostar, Vračar, and New Belgrade each for one day). Hourly values (limit value $350 \mu\text{g}/\text{m}^3$) were not exceeded in Belgrade.

According to a study on the impacts of air pollution on human health,³⁹ specific health effects attributed to exposure to ambient PM_{2.5} concentrations above $10 \mu\text{g}/\text{m}^3$ were estimated. Hourly PM_{2.5} concentrations were collected from 13 air pollution monitoring stations in the Belgrade district in June and July of 2021. The average PM_{2.5} concentration for the two-month monitoring from all sampling sites in the city was $14.8 \mu\text{g}/\text{m}^3$, the maximum daily concentration was $55.7 \mu\text{g}/\text{m}^3$, and the maximum hourly concentration was $365 \mu\text{g}/\text{m}^3$. The development of diseases such as stroke, ischemic heart disease (IHD),

³⁶ See more in: Batrićević, A., Paunović, N. (2018). Environmental terrorism-victimological aspects and preventive mechanisms. *Themis*, 21(1), 67–89.

³⁷ WHO (2022). *Ambient (outdoor) air pollution*. Available at: [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health?gclid=EAIaIQobChMImlLL-pebZgQMvluN3Ch10jw5tEAAyASAAEgK3gvD_BwE](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health?gclid=EAIaIQobChMImlLL-pebZgQMvluN3Ch10jw5tEAAyASAAEgK3gvD_BwE), accessed on October 13, 2023.

³⁸ Knežević, J., Jović, B., Marić Tanasković, M., Ljubičić, A., Stamenković, D., Dimić, B. (2021). *Kvalitet vazduha u Republici Srbiji 2020. godine*. SEPA. Available at: http://www.sepa.gov.rs/download/izv/Vazduh_2020.pdf, accessed on October 13, 2023.

³⁹ Čujić, M., Čirović, Ž., Đolić, M., Janković-Mandić, L., Radenković, M., Onjia, A. (2023). Assessment of the burden of disease due to PM_{2.5} air pollution for the Belgrade district. *Thermal Science*, 104-104.

chronic obstructive pulmonary disease (COPD), and lung cancer due to PM_{2.5} pollution was estimated according to the WHO methodology for assessing health risks from air pollution. The model used for this assessment is based on a proportion defined as the part of the health effect related to exposure to air pollution in an at-risk population. The estimated proportion (share) was 19.4 % for stroke, 27.2 % for IHD, 15.3 % for COPD, and 9.0 % for lung cancer. The estimated number of cases attributable to 100,000 people in the at-risk population, due to PM_{2.5} air pollution, for stroke, IHD, COPD, and lung cancer was 28, 34, 15, and 8, respectively. According to research by *The Guardian*⁴⁰ and the accompanying analysis of this research, pollution data for the summer months suggest estimates that fine particles are responsible for every fifth stroke, every fourth case of ischemic heart disease, and one out of 11 cases of lung cancer in Belgrade.

In the city of Belgrade, it is planned that there will be 4,568 hectares of water bodies, or 5.9 % of the total territory, which is an increase compared to 2010 when there were 3,810 hectares of water bodies (4.9 %). The river courses of the Sava and Danube cover a total area of 10,000 hectares, of which 6,700 hectares are riverbanks and about 3,000 hectares are water bodies. About 29 km of embankments and quays have been built along approximately 153 km of coastline. The main recipients on the left bank of the Sava, Danube, and Tamiš are the drainage canals Galovica, Petrac, Vizelj, Kalovita, and Sibnica. On the right bank of the Sava and Danube, there are many torrential streams that are natural recipients of surface waters. Residents of Belgrade are threatened by floods in several ways. The northern part of the city is endangered by the high water levels of the Sava and Danube. About 100 smaller watercourses of torrential nature also pose a threat, causing dangerous floods. The city of Belgrade does not have a facility for treating municipal wastewater, meaning that all wastewater from the sewage system and septic tanks ends up directly in the rivers.⁴¹ About 60 Olympic pools of feces are poured into the Sava and Danube annually.⁴² Wastewater is one of the main pollutants of surface and groundwater, especially industrial wastewater and landfill leachate, which are

⁴⁰ The Guardian (2023). *Belgrade: the city where dirty air is seen as a 'consequence of economic growth'*. Available at: <https://www.theguardian.com/world/2023/sep/22/belgrade-serbia-air-pollution>, accessed on October 13, 2023.

⁴¹ Zdravković, N. (2023). *Da li kroz Srbiju teku dva Dunava i kako je to moguće? Zagađenje utiče na zdravlje ljudi, ali i na ekosisteme*. National Geographic Srbija. Available at: <https://nationalgeographic.rs/zivotna-sredina/a41565/Kakvo-je-stanje-reke-Dunav-u-Srbiji.html>, accessed on October 13, 2023.

⁴² Vasiljević, B. (2021). *Direktno sa slavine voda se pije u Beogradu, Beču i Budimpešti*. Politika. Available at: https://www.bvk.rs/wp-content/uploads/2021/07/Politika_11_07_2021-min-min.pdf, accessed on October 13, 2023.

not treated in Belgrade.⁴³ In Serbia, there is no systematic monitoring of the health consequences of polluted waters, and thus rivers, on people. A more comprehensive picture of the water situation is given by the environmental status, measured by the Environmental Protection Agency, which can provide a clearer insight into the consequences for the health of the population. According to the latest available report on the health safety of surface waters used for water supply and recreation in the Republic of Serbia for 2020, there are 5 controlled public bathing areas (rivers, lakes) in Belgrade, with one deviating from the regulation in terms of physical-chemical, microbiological, and combined aspects. The results of testing surface waters used for water supply in the Republic of Serbia in 2020 show that there are 3 such controlled surface waters in Belgrade, with one of them not meeting the regulatory requirements in terms of microbiology.⁴⁴

According to the latest report on the health safety of drinking water from public waterworks and water facilities in the Republic of Serbia for the year 2021, there were 7 controlled public waterworks in Belgrade, 2 of which had “combined” unsuitability (physical-chemical and microbiological). The most common causes of microbiological unsuitability of drinking water in the Belgrade area and the city itself are the increased presence of aerobic mesophilic bacteria and total coliform bacteria, and the most common causes of physical-chemical unsuitability are increased values of ammonia and so-called turbidity.⁴⁵

Belgrade’s water on the right bank of the Sava, in the old part of Belgrade, belongs to the category of moderately hard waters, while in the municipalities of New Belgrade and Zemun, it belongs to hard waters. It also

⁴³ Đuranović S. (2019). *Izveštaj o kvalitetu otpadnih i površinskih voda (recipijenta) i higijensko-sanitarnom stanju deponija na teritoriji Republike Srbije na osnovu ispitivanja izvršenih u mreži institucija javnog zdravlja u 2018. godini*. Institute of Public Health of Serbia “Dr. Milan Jovanović Batut”. Available at: <https://www.batut.org.rs/download/izvestaji/Izvestaj%20otpadne%20vode%202018.pdf>, accessed on October 13, 2023.

⁴⁴ Jovanović, D., Živadinović, D., Komazec, I. (2021). *Izveštaj o zdravstvenoj ispravnosti površinskih voda koje se zahvataju za vodosnabdevanje i koriste za rekreaciju u Republici Srbiji u 2020. godini*. Institute of Public Health of Serbia “Dr. Milan Jovanović Batut”. Available at: <https://www.batut.org.rs/download/izvestaji/Izvestaj%20povrsinske%20vode%202020.pdf>, accessed on October 13, 2023.

⁴⁵ Knežević, T. (2022). *Izveštaj o zdravstvenoj ispravnosti vode za piće javnih vodovoda i vodnih objekata u Republici Srbiji za 2021. godinu*. Institute of Public Health of Serbia “Dr. Milan Jovanović Batut”. Available at: <https://www.batut.org.rs/download/izvestaji/higijena/Godisnji%20vode%20za%20pice%202021.Pdf>, accessed on October 13, 2023.

contains aluminum, lead, mercury, asbestos, organochlorine compounds due to excessive chlorination, as well as mechanical deposits due to poor pipes.⁴⁶

Numerous diseases arise as a result of consuming unsuitable drinking water. According to the report of the Institute of Public Health of Serbia for the period from 2017 to 2021, a total of three waterborne epidemics were registered with 77 affected individuals. The highest number of affected individuals in relation to the number of waterborne epidemics was registered in 2018.

When planning the creation of green urban areas, a problem is the lack of knowledge and the absence of constant monitoring of the relationship and impact between land use policy, spatial potential, changes in attitudes and needs, and quality of life. In the past few decades in Belgrade, the functions and purposes of space have not been comprehensively considered, resulting in a lack of functional and rational spatial organization of the city. The importance of greenery in cities is multifaceted: it improves climatic conditions in the urban environment; it affects the regulation of air temperature, pressure, and air currents; reduces the level of municipal noise; increases air humidity; prevents soil erosion; protects from excessive sunlight exposure, etc. Besides the ecological-biological function of greenery, the recreational and aesthetic functions are also significant.

FINAL CONSIDERATIONS

The analysis of the fundamental features of protection through misdemeanor law in the field of environmental protection in Belgrade during the observed period points to several issues that deserve critical scrutiny. Firstly, it appears that the legislator, when prescribing misdemeanors in regulations governing environmental protection, insufficiently utilizes the possibilities provided in the Misdemeanor Law, which could contribute to the efficiency of the process. This primarily refers to not prescribing a longer period necessary for the statute of limitations on misdemeanor proceedings, as well as hesitation to prescribe a fixed monetary fine for certain offenses to apply the misdemeanor notice as a means of simplifying the process. It seems necessary to more frequently prescribe community service as a punishment (either principal or secondary) for environmental misdemeanors, with the aim that the convicted agree to it, thus avoiding a monetary fine whose amount should have a corresponding deterrent effect. This approach would strengthen the

⁴⁶ AquaFilter (2023). *Kvalitet vode za piće u Beogradu: Problemi i rešenje*. Available at: <https://aquafiltersrbija.rs/o-vodi/kvalitet-vode-za-pice-u-beogradu/>, accessed on October 13, 2023.

capacity for better environmental maintenance (cleaning actions, afforestation, tree marking, etc.), with the potential for further development of environmental awareness.

The largest flaw in the normative framework of the protection of the environment through misdemeanor law is the significant non-penal zone that exists between environmental offenses subject to the response of criminal law and those prescribed as misdemeanors. In other words, the misdemeanor system in this field lacks true environmental, consequential offenses. By filling the catalog of misdemeanors in the field of environmental protection, situations would be avoided where harmful activities that do not constitute, in a qualitative and quantitative sense, an offense requiring the response of criminal law remain outside any penal response, given that under the current normative state of affairs, it is not possible to react to those acts that simultaneously do not create an environmentally harmful consequence *to a large extent or over a great area* but represent an equal or even greater threat to the environment through the continuous accumulation of consequences they produce. With this in mind, it is necessary to prescribe true environmental criminal offenses from the Criminal Code as misdemeanors, without the objective conditions related to the measure and location of the consequence. This way, the penal response in this area would be gradationally harmonized, making a functional system in which, according to the principle of *ultima ratio*, criminal prosecution would be intended for the most severe environmental offenses, while the response of misdemeanor law in a broader scope would be directed against other environmentally harmful offenses. This is also because, according to the doctrine, which the legislator accepts, misdemeanors form a component of penal, not predominantly administrative law.

The research results related to the representation of misdemeanors from the Environmental Protection Law in the case law of the Misdemeanor Court in Belgrade indicate an unexpectedly small number of cases formed during the observed period, with a total of 60 convictions. Such a state of affairs clearly does not correspond to empirical indicators related to the relatively unfavorable condition of soil, air, and water in Belgrade, as well as other indicators of a healthy environment. In this sense, it can be concluded that the dominant problem is not in the mechanisms of procedural misdemeanor law, although we have pointed out several segments that could further contribute to efficiency, rather that it lies in the *detection of environmental misdemeanors, the capacities of authorities responsible for detecting and preventing environmental misdemeanors*, along with the previously highlighted issue of normative flaws related to the insufficient representation of true environmental offenses in the misdemeanor system, which applies to both national and city regulations that prescribe misdemeanors in the field of environmental protection.

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