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CRIMINAL AND CIVIL LIABILITY FOR ENVIRONMENTAL DAMAGE

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Summary

Environment is the existential right of man. The protection of the environment, seen in relation to other issues, is almost at the top of the priority, and hence the necessity and urgency to establish a legal regulation is recognized.The issue of environmental liability can be considered from multiple angles, while the focus of this research will be directed to criminal and civil liability.Criminal law enforces the protection of society from crime, so that the most favorable protection of the environment is achieved in this way.Civil law protection of the environment is not regulated directly by specific regulations, but it is foreseen by legislative instruments in the area of compensation of damages, such as the Law on Obligations, the Law on the Basis of Property Relations and others. It is due to the prominent goal of this research through the methodological and theoretical framework to analyze the criminal and civil liability of the environment due to environmental damage. By using the method of analysis we will address the most important issues of relevance to research, while the normative method will be used to illustrate legislation regulating the study of matter at the international level, at the level of the European Union and in the positive legislation of the Republic of Serbia. Comparative method will be used to summarize the results obtained.

Key words: *Criminal liability, civil liability, environmental liability*

JEL: *K14, K15, K32, K33, Q15, Q58.*

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Introduction

It is not necessary to emphasize the significance and importance of environmental protection, although it has not been achieved at the level that we have "somewhere" drawn on the basis of existential and cultural standards and the development of social consciousness.

Legislative prediction of protection in preventive and repressive terms continues to be the default form of establishing an adequate and moderate human behavior.

The protection of the environment, the international community, and therefore the Republic of Serbia, through the ratification of international documents (most importantly, the Council of Europe's Convention on the Protection of the Environment from November 4, 1998), took a number of measures in order to protect it.Under the term of living and working environment we consider everything that surrounds us, such as climate, air, water, land, plant and animal life, housing and industrial areas, as well as direct and indirect links with production and life activities (Bingulac, Matijašević , 2013). The Law on Environmental Protection (Official Gazette of the Republic of Serbia, No. 43/11) defines the environment as "a set of natural and created values whose complex interrelationships make the environment, that is, the space and living conditions".

Environmental protection is the existential right of man and is a necessary condition for the survival of mankind.If this is an "indicator", the Republic of Serbia has primarily within the Constitution (Official Gazette of the Republic of Serbia, No. 98/06) in the second part, which guarantees human and minority rights and freedoms, Article 74, prescribed the right to a healthy environment.It is envisaged that everyone has the right to a healthy environment and to timely and complete notification of its condition, as well as the obligation to protect, preserve and improve the environment.

Criminal law enforces the protection of society from crime, as the most effective measure and measure of ultima ratio in suppressing illicit behavior, so the protection of the environment is best achieved by criminal protection. Depending on whether illegal behavior is t only or predominantly attacking or endangering the environment, in theory, according to individual authors (Jovasevic, 2012 and Joksic, 2012), the following are distinguished:

1. Basic, primary,realor purely ecological crimes or environmental crimes in the narrow sense (the acts prescribed in the twenty-fourth chapter of the Criminal Code (Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 - also, 107/2005 - Isc., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016);

2. Second, secondary, inaccurate or relative environmental crimes or environmental crimes in the broader sense (crimes that are found in other chapters of the Criminal Code, for example, Criminal offenses against human health, acts against general security, etc.)

3. Secondary supplemental environmental crimes that are not prescribed in the Criminal Code, but are prescribed in special, subsidiary, auxiliary or supplementary criminal legislation, that is, in other laws in the field of environmental law.

Civil law protection through sanctions directed against the debtor as a mechanism of coercion against a who causes damage,with the aim of achieving and bringing theproperty or other personal non-material goods to the state in which they were before threat or disturbation (Nikolić, 2007).

There are several qualifications of civil law sanctions.They are grouped on the basis of their function.When it comes to protection of the environment, it is important to divide these sanctions into preventive sanctions, natural restitution and compensatory and reparatory sanctions.The objective of preventive sanctions, which can be assumed, is to eliminate potential hazards, ie to prevent activities that are causing harassment or the danger that harm might occurre (Nikolić, 2007).

Civil law protection of the environment is not regulated directly by concrete regulations, but it is provided for by legislative instruments in the field of compensation of damages, for example, In the Law on Obligations, the property relations, which are foreseen in the The Law on foundations of property Law relationsand other.

In support of the aforementioned, we state that the Law on Obligations (Official Gazette of SFRY, No. 29/78, 39/85, 45/89 - USJ Decision and 57/89, Official Gazette of FRY, No. 31/93 and Official Gazette SCG, No. 1/2003 - Constitutional Charter) stipulates in Article 156 that the elimination of the danger of damage, or in an direct way is legally envisaged as an obligatory legal instrument for environmental protection. Some authors, this legal instrument alaso call ecological lawsuit when viewed in this sense (Petrušić, 2003).

In the aforementioned law and article, the legislator foresaw that in order to eliminate the risk of damage, there must be a "substantial damage" that is assessed separately in each of the specific cases.

According to the same author, when this question is viewed from an environmental point of view, it is of importance the question of liability for damage arising in the performance of a beneficial activitie, or for an activity for which there is a license of the competent authority(Petrušić, 2003).Authors who have dealt more specifically with this specific issue criticize the existing legal solution and emphasizey that they are insufficiently determined and that there are possibilities of abuse in practice, precisely because of the possibility of a very broad interpretation of the definition of a general-purpose activity.Then, the damage caused by the performance of beneficial activitie relates to damage that affects only individuals, and therefore the exercise of the request depends solely on the will of that individual or person.In addition to the above, the same authors submit an opinion about the once-again lack of this provision, which refers to the "reduced efficiency of some legal claims due to insurmountable process barriers ".The reason is that the duty of the plaintiff is to specify the measures in the lawsuit that the defendent should take in order to eliminate or prevent the occurrence of damage, which requires a significant level of expertise and training of prosecutors in the field of environmental protection, which in practice does not usually exist, as a consequence of the possibility of defining these measures (Petrušić, 2003).

On the basis of what has been said so far, one can see the complexity and specificity of criminal and civil liability in terms of environmental damage, which requires that some questions that have already been raised try to provide answers or at least suggestions for overcoming the existing situation, but also to launch another very important issues that are directly related to protection against environmental damage.

The significance of this research is that in a concise manner, with the equal representation of the criminal and civil law aspects of environmental protection, the legal protection of the environment in domestic legislation will be considered, but the almost absolute influence of the international legislative foundation of this protection can not be ignored, which is not only important, but also the necessity for the current process of European integration of Serbia, has more immeasurable significance precisely for the protection of our environment from the perspective of the citizen and man.

Methodology

The aim of the paper is to analyze, through the methodological-theoretical framework, the responsibility for endangering the environment from the criminal-law and civil-law aspect in positive legislation.The method of analysis will explain the concepts related to the environmental responsibility of the environment.Also, using the same method, the basic concepts related to the field of criminal and civil law responsibility for environmental damage will be brought to the fore, and in this way the importance of this issue will be noticed not only from the legal aspect, but also from the existential aspect of the modern man.The normative method will produce an overview of legislation that regulates issues of criminal and civil law liability due to environmental damage at the level of the European Union and the Republic of Serbia.Applying the same method will also point to the most important legal regulations of relevance in this area, as well as the most important legislative provisions that regulate the issue of accountability due to environmental threats from the criminal and civil law aspect, both in Serbia and in the European Union.In addition to the aforementioned methods that we will use, a comparative method is also required. The comparative method will indicate the similarities and differences in the legislative regulations applied in Serbia and the European Union, while the results that they produce will be compared and analyzed, and the same will be done with the positive and negative sides of the various legal solutions.

International and European legislative basis in terms of environmental responsibility.

The member states of the Council of Europe signed the European Convention for the Protection of Human Rights and Freedoms in Rome in 1950.In this document, the right to a healthy environment or the right to life to such an environment is not recognized as a fundamental human right.

By understanding the importance of environmental protection began the gradual

development of this right in the international sense. At its meeting in June 2003, the Assembly of the Council of Europe adopted Recommendation 1614 (Assembly Recommendation 1614-2003).This recommendation urges the Governments of the member states of the Council of Europe to ensure adequate protection of life, health, private and family life, physical integrity and free use of property.Articles 2, 3 and 8 of the European Convention for the Protection of Human Rights and Freedoms, as well as the Protocols thereto, are also binding on this.

By adopting this recommendation, Article 9 stipulates that the governments of the member states of the Council of Europe recognize the "human right to a healthy, sustainable and decent environment" and, therefore, create a legislative basis in domestic legislation, starting with constitutional guarantees.

It is necessary to mention that the term "the right to a healthy environment" was introduced by theStockholm decleration from 1972 (Declaration of the United Nations Conference on the Human Environment).

Of particular importance is the European Court of Human Rights.This court resolves disputes by referring to many conventions that provide for and guarantee human rights and freedoms, in particular those relating to the right to life, the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, the right to a private and family life , the right to freedom of expression, the right to the free enjoyment of property.Then, as defined by the individual slots, the European Court of Human Rights provides protection of the rights to a healthy environment by "establishing a violation of applicable national regulations in the field of environmental protection which violates fundamental human rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Freedom (Drenovak-Ivanović, Đorđević, 2013).

As already mentioned, the European Court of Human Rights refers to many other conventions, therefore it is also necessary to mention the Convention on the Conservation of European Wildlife and Natural Habitats.This Convention was signed in 1979 in the Swiss city of Bern, and is therefore it is more famous as the Bern Convention, and came into force in 1982.At the end of 2007, Serbia passed the Law on the Confirmation of the Convention on the Conservation of Wild Fauna and Flora and Natural Habitats. The aim of the Convention is to establish standards for: conservation of wild plant and animal species and their natural habitats, especially those species and habitats for which conservation requires co-operation between states; enhancing cooperation between the state members of the Convention in the field of nature protection; and special protection of endangered and sensitive plant and animal species.

To a certain extent the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, ETS No. 150, although the clear reason for her mentioning is in her name, especially during this research, her specificity is in a completely different view. The Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environmentwas finalized and signed for in 1993 in

the Swiss city of Lugano, and it is more famouse bt that. Given its commitment and the need to achieve close cooperation among the countries, it is open for signing also for non-member states of the Council of Europe.The Convention has not yet entered into force, because it has not been ratified by the member states of the Council of Europe.

With this Convention, it was planned not only to define certain concepts of interest, but also to ensure that, as a result of the damage which terminologically includes: the violation of people or the loss of human life, the damage to the property of people, with the exclusion of damage caused to the factory or property managed by the holder of life-threatening activities, provide for the compensation of the damage mentioned, as well as the compensation for damage caused by the damage to the quality of the environment and the compensation for the damage directly caused to persons or their property.The convention also provided for compensation for lost profits, but also the costs arising from the taking of measures necessary for preventing the effects of damage and restoring the environment to the state before the damage occurred.

Liability for damage compensation is determined by the rules of objective liability, as foreseen in the Convention itself in Article 10. More precisely, the carrier of activities that can be hazardous to the environment is responsible for the occurrence of the damage, regardless of guilt, because its responsibility arises from its competence to carry out this dangerous activity.The possibility of excluding objective liability is provided for in Article 8, in a way that it will not exist if it is proved that the damage was caused as a result of the activities of a third party intended to inflict damages and which were succeeded in that intention, even though all necessary security measures were in place.

Its auite interesting is the fact that the Convention on the Protection of Environment through Criminal Law, CETS No.172/98had the same destiny asaThe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment.

The Convention on Criminal Law Protection was prepared for ratification in 1998.The Convention aimed to include measures of prevention and measures of an administrative nature in order to prevent the occurrence of environmental damage through the application of criminal law protection.Certain standards have been envisaged: the need to take certain measures and activities at the national level with the obligation to conduct a common criminal policy in order to protect the environment; the need to protect the life and health of people, flora and fauna, as well as natural resources, firmost through measures of prevention, but also by the application of criminal law measures, as the ultimate means of protection; And the necessity to prescribe violation of the principles of environmental protection as a criminal offense subject to appropriate sanctions and to strengthen international cooperation in the field of prosecution and punishment of environmental offenders, as is foreseen in the preamble of this Convention.

So far we have been talking about about the “domain” of the Council of Europe and environmental protection, while the attention to the United Nations domain and environmental protection will be given below.

The United Nations Charter was signed in 1945.The most important documents that have been adopted are the Universal Declaration of Human Rights from 1948, the 1966 Covenant on Civil and Political Rights and the 1966 Pact on Economic, Social and Cultural Rights.

The specificity of these documents is that although they present very important documents in the broadest sense, they do not foresee or define the right to a healthy environment.In other words, based on these documents, United Nations competence on environmental protection is not envisaged.

Decleration, which was the first to handle some of the major environmental issues, is the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment. In addition to the aforementioned importance of this Decleration for the establishment of terms - environmental protection, the principle has been introduced that a person has the fundamental right to freedom, equality and appropriate living conditions in an environment of such quality that enables dignified life and well-being and has a unique responsibility for the protection and promotion Environment for present and future generations.

Following the adoption of the said Decleration and encouraged by it, the United Nations General Assembly adopted Resolution 2997 which established the United Nations Environment Program - UNEP, all in order to encourage developing countries to adopt legislative measures of the importance to protection against climate change, achieving efficient use of resources, reducing the danger to human health from ecological incidents and natural disasters, achieving a comprehensive environmental protection, ie protecting water, soil and air and promoting the conservation and sustainable use of natural values.

The Rio Conference on Environment and Development from 1992 established the basic principles of civil protection of basic ecological values, but also the precautionary principle, all based on the recommendations of the Brundland Commission.The Conference has adopted in addition to the Declaration on Environment and Development, the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, as well as Agenda 21 (Drenovak-Ivanović, Đorđević, 2013).

The declaration stipulates, among other things, that countries that exploit natural resources must respect the environmental policy.The convention has 27 basic principles, and for the needs of conciseness and importance for this research, we will point out only to few of them.

Principle 13 deals with the issue of compensation for damage to victims of environmental damage in a manner that: "Member States should adopt national laws relating to liability and compensation to victims of pollution and other environmental damage. Member States should also cooperate without delay and decisively in the adoption of future international regulations relating to liability and compensation, when activities within their legal competence or control cause environmental effects in areas outside their jurisdiction. "

Principle 15, the Declaration introduces the precautionary principle in environmental protection in such a way that if there is a reasonable scientific suspicion that there may be a threat, measures that prevent the exposure of people and the nature of harmful activities can be taken.

Principle 16, the "polluter pays" principle is introduced, which is now one of the basic principles of environmental protection.This principle obliges the State party that, in the event of damage to the environment, the polluter should bear all the costs that caused the pollution, but without disturbing the interests of international trade.

Some authors who have dealt with this issue point out that the issue of environmental damage at the European Union level has been taken into consideration in the 1970s, within the framework of the issue of waste management and product quality control, but also the responsibility of airline companies in the case accident.These regulations only regulate certain aspects of compensation for damage relating to compensation for damages suffered by a particular person or, possibly, compensation for actual damages, but the general standards of environmental damage compensation aren't regulated by those regulations. (Drenovak-Ivanović, Đorđević,Važić, 2015).

Considering that an unwanted case has to happen in order to encourage any future prevention, there was no other practice here, it was about polluting the Rhine River, bypassing toxic chemicals into the river, which caused water pollution and the flow of the river going through four countries, and the consequences in addition to the aforementioned were also that the fish population was destroyed as well as the flora and fauna that inhabited the banks of the river. In legal terms, criminal proceedings had been taken against the responsible persons in the company, while on the other hand the issue of compensation for damage was imposed.Specificity is that the claims for damages were filed in Switzerland, Germany, France and the Netherlands, but an settlement was reached and hence no judicial position was created, as a legal basis for future similar cases(Drenovak-Ivanović, Đorđević,Važić, 2015).

Based on this legal gap in a certain sense, at the level of the European Union, the European Commission has submitted a proposal for a future policy in addressing similar cases.In its Green Paper on Remedying Environmental Damage, the view is that environmental damage compensation must be regulated in accordance with general principles of civil law, but it is necessary to create a special legal regime due to the complexity of this issue by applying the " polluter pays principle " and the principle of prevention.The European Parliament expressed its opinion on such future legal framework, as evidenced by Directive 2004/35 / EC of the European Council and the European Parliament on liability for environmental damage.

Article 3 of the Directive provides that natural personsand legal entity can not be invoked, on the basis of it, compensation for damage to their life and health or property, caused by environmental damage or imminent danger, while in the Preamble to the Directive provides that individuals affected by or likely to be affected by environmental damage, in accordance with Directive 2004/35 / EC, have the right to request the

competent authority to apply appropriate protection measures.

A particularly important Directive, not only for this research, but also for the environmental protection itself, which should be mentioned is Directive 2008/99 / EZ.This directive has emerged, as some authors point out, as the "answer" of EU Member States to an increase in the number of offenses against the environment, as well as due to the greater consequences of these acts involving the territories of several states. The same authors conclude that based on the analysis of the system of sanctions for these crimes, the ineffectiveness of criminal legislation in the field of environmental protection was noticed (Drenovak-Ivanović, Đorđević,Važić, 2015).As already mentioned, environmental pollution often has consequences for several countries and that the most common offenses are international companies, it is quite reasonable that there is a need for this international environmental protection and in this way.

The Directive does not foresee criminal acts or sanctions.It is left to national legislations to regulate independently. The Directive envisages standards of criminal-law protection of the environment.

More precise review of the frequency of the commited of criminal offenses from this group has shown, as stated by some research, that there are a number of cases where the perpetrators of criminal offenses are legal individuals, most often in the field of illegal trade in protected species, illegal trade in substances that may have a negative Ozone layer impact, trade of rare tropical tree species, illegal waste removal, etc. (Drenovak-Ivanović, Đorđević,Važić, 2015). The Directive hasenvisaged in Article 6 that natural personswill also be prosecuted for criminal offenses related to environmental protection, even for those acts for which the liability of a legal individualhas been established.

Criminal liability due to environmental damage

The criminal liability of environmental damage is based on the Criminal Code of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104 / 2013, 108/2014 and 94/2016). The legislator grouped criminal offenses against environmental threats in a separate chapter of the Criminal Code, Chapter 24, under the same name.

The legislator foresaw 18 criminal offenses. They can be further systematized in the following way (Dragojlović, Bingulac2015):

- the general group of criminal acts against the environment (environmental pollution Article 260 of the CC, non-implementation of environmental protection measures Article 261 of the CC, illegal construction and commissioning of facilities and installations that pollute the environment Article 262 of the CC, Damage to facilities and devices for environmental protection Article 263 of the CC, environmental damage Article 264 of the CC, destruction, damage and removal of protected natural heritage from country of origin Article 265 of the CC, violation of the right to information on the state of the environment Article 268 of the CC),

- criminal acts related to hazardous substances (introduction of hazardous substances into Serbia and unauthorized processing, disposal and storage of hazardous substances, Article 266 of the CC, unauthorized construction of nuclear installations, Article 267 of the CC),

- criminal offenses against plant and animal life (killing and torture of animals Article 269 of the CC, transfer of infectious diseases in animals and plants Article 270 CC, misleading provision of veterinary assistance Article 271 of the CC, production of harmful substances for the treatment of animals Article 272. CC, pollution of food and water for feeding or feeding of animals Article 273 of CC, destruction of forests Article 274 of CC, forest theft Article 275 CC),

- hunting and fishing offenses (illegal hunting Article 276 of the CC, illegal fishing Article 277 of the CC).

A protective object for this group of crimes is precisely the protection of the environment and the right of man to a healthy and preserved environment.The aforementioned protective object for almost all of these criminal offenses stems from the title of the offense, in the sense, they contain the term "environment", while there are those who do not, which undoubtedly implies their indirect protection.

In addition to the criminal offenses so far mentioned, it is necessary to mention several more criminal offenses that may have environmental consequences, although the legislator did not classify them in the aforementioned group, which in no way makes them less significant.They are: pollution of drinking water and food Article 258 of the CC, serious actions against human health Article 259 of the CC, causing a general danger Article 278 of the CC, damage to dams and waterworks facilities Article 282 CC and serious offenses against general security Article 288 of the CC.

It is especially important to point out the following legislator prescribed that a perpetrator could be punished for attempting a criminal offense if this is foreseen by a specific criminal offense in material terms, in principle, Article 30 stipulates that if a person starts the commission of a criminal offense with intent, but fails to complete it, he shall be punished for attempting a criminal offense for which a punishment of imprisonment of five years or more can be imposed by law.

From the group of criminal acts against the environment, in two parts, the legislator foresaw the criminal responsibility for the attempt to destroy, damage, take abroad and bring in Serbia a protected natural asset as well as criminal act of forest theft. For both these acts, a fine and/or imprisonment of up to three years is foreseen, which indicates, having in mind the previously mentioned attempts at material loss, the importance of protecting the environment, as well as the interest of the legislator and the society in combating these crimes and, accordingly, responsibilities of responsible, but of course, preventive character of environmental protection.

At the end of this part of the research, it is necessary to point out that when determining criminal responsibility based on subjective responsibility, the adoption of the Law on

the Liability of legal individuals for criminal offenses (Official Gazette of the Republic of Serbia, No. 97/2008).Domestic criminal legislation stipulates that the liability of a legal individual is based on the guilt of the responsible person, or that the responsible person, by the commission of a criminal offense, bases his own responsibility and responsibility of the legal individual on whose behalf he committed the criminal offense.It follows from this that, as some authors point out, in this way, double criminal responsibility, ie responsibility of the responsible person and legal entity, even though only one has done the work (Rakočević, 2011).On the basis of statistical indicators, the same authors come to the conclusion that the commission of a criminal offense in favor of a legal entity for this criminal act is mainly related to the avoidance of costs related to the construction, installation, regular maintenance and putting into operation of facilities and plants whose function is environmental protection of matter which arise in the process of production or other human activity.In other words, most often these works are carried out with the intention to realize the property gain for a legal entity (Rakočević, 2011).

Civil law liability due to environmental damage

In domestic legislation, the issue of environmental damage is most often regulated through civil law, or as a form of compensation to which the general rules of civil law apply (Drenovak-Ivanović, 2014).

In the introductory review of this research we have pointed out to the constitutional framework for environmental protection in the Republic of Serbia, which has its substantive legal form through the real legal obligatory legal character.Within the framework of civil law regulations, the issue of property protection of the environment is not directly regulated, but this is achieved through other legal instruments, that is, through the instruments of protection of property legal character and obligatory legal character.

The basic law by which the legislator prescribes environmental protection is precisely the Law on Environmental Protection (Official Gazette of RS, No. 135/2004, 36/2009, 36/2009 - other law, 72/2009 - other law, 43/2011 - US Decisions and 14/2016). Law defines the environment as a set of natural and created values whose complex interrelationships make up the environment, that is, the space and living conditions.

When it comes to liability, the Law “keeps the institute “ that the polluter pays, while in the case of civil liability for the consequences of pollution, this issue is regulated by Articles 103 to 108.It is precisely in Article 103 that a polluter thats causes pollution of the environment, by act or doing or not doing enough as provided for in Article 104, is liable for the damage incurred by the principle of strict liability, in an emergency procedure before a court.Then, Article 107 legislator foresaw that anyone who suffered damage as a right to compensation, while in the absence of any persons having the said right, the Republic of Serbia holds that right.When it comes to polluters, the legislator foresaw solidarity in the event that more polluters are responsible for the damage when

their individual shares can not be accurately determined.

The legislator foresaw the proceedings before the court for compensation of damages as an urgent procedure, which sufficiently speaks in itself about the significance of this issue.

It is necessary to point also to Article 108 of the Law on Environmental Protection, which provides for the proper implementation of the law, and in such a way that the issues of liability for damage to the environment are not regulated by the Law on Environmental Protection but by the general rules of the Law on Obligatory Relationships.

Law on Obligations (Official Gazette SFRY, No. 29/78, 39/85, 45/89 - USJ Decision and 57/89, Official Gazette of FRY, No. 31/93 and Official Gazette of SCG, No. 1/2003 - Constitutional Charter) provides for the elimination of the danger of damage in Article 156.

The legislator has foreseen that, on the basis of the said article, anyone may require the other to remove a source of danger from which a substantial damage to him or an unspecified number of persons can occure, and to refrain from the activity resulting in harassment or danger of damage if the occurrence of harassment or damage can not be prevented by appropriate measures.Then, at the request of the interested person, the court will order appropriate measures to prevent the occurrence of damage or harassment, or to eliminate the source of danger, at the expense of the source of danger, if he does not do so.In cases where damages arise in the performance of a commonly used activity for which the license of the competent authority is obtained, only compensation for damages exceeding normal limits may be required, but in this case it may be required to take socially justified measures to prevent the occurrence of damage or to reduce it.

It is also important to point out the Law on the Basis of Ownership Relations (Official Gazette SFRY, No. 6/80 and 36/90, "Official Gazette of FRY", No. 29/96 and "Official Gazette of the Republic of Serbia", No. 115/2005 andother law), which has a bearing on the responsibility of pollution and environmental protection.

The legislature envisaged in Article 5 that the owner of the real estate is obliged to refrain from taking action when using the real estate and to eliminate the causes that stem from his immovable property, which makes it difficult to use other real estate –transmission of smoke, unpleasant smells, heat, soot,tremor, noise, wastewater discharges, etc. - exceeding the measures that are customary in view of the nature and purpose of the immovable property and the occasional circumstances, or which causes significant damage.

As can be seen, the legislator is here "directed" towards one or a smaller number of pollutants, but also to the damage itself and the causes of lesser intensity.

The special significance of this law is by individual authors because it plays a key role in filing an environmental complaint when "environmental risk" has already appeared, which is not a wider effect, and when it comes to more subjects (Salma, 2014).

The realization of civil protection of the environment and determination of responsibility shall be carried out in such a way that the holder of a legal duty, on its own initiative

or on the basis of a request for a title deed, fulfills its duty starting with the removal of sources of pollution, taking preventive measures, etc.In cases of non-compliance with the legal obligation in full or in the foreseen manner, the titular law may protect its subject right before the court.

Conclusion

From the overall research, it can be clearly seen that criminal and civil liability in terms of environmental damage can not be solely and exclusively regarded as a matter or as a problem of only one state.The normative analysis led to the conclusion that the harmonization of national legislation with international and European regulations has been significantly effected, all in order to achieve minimum common standards not only in the field of environmental protection, but also in determining responsibility for the occurrence of pollution.

Compared to where there is a common liability for damages, the multi-step specificity arises from the liability of the pollutant for damage to the environment.It is reflected in legal responsibility, but also in potentially responsible persons and their obligations. Responsibility can be observed through harmful consequences arising from a particular pollution.This liability, in legal terms, coincides with the usual procedural actions for any damages in the area of legal liability, and it is based on criminal or misdemeanor liability, but also on civil liability, because liability is based on guilt.Then, when it comes to damage that has environmental consequences (damage to the environment), then the polluter has responsibility irrespective of his fault, that is, it is about objective liability.Some authors further specify this to indicate that with the objective liability of the pollutant, it is not necessary for the activity or thing that produces pollution to be dangerous, because a legal or physical person who, by his act or omission, leads to environmental pollution,and it there there foreseen that "polluter pays" and not that "pollutant responds"(Stojanović, Zindović, 2015).The issue of criminal and civil liability is not only important for the issues mentioned above. Establishing this responsibility has a much wider impact, and for example, it is necessary to indicate the necessity of determining liability for insurance reasons (Jovičić,Jeremić, i Jovanović, 2017).

Analyzing and studying the legislation related to the issues that have been addressed in this research, it follows that legal regulations related to criminal and civil liability due to environmental damage are conceived on known international legal instruments and legislation of the European Union, in particular Directive 2004/35.

Based on the findings of this research, it can be concluded that since the basic goal of criminal and civil liability is due to environmental damage, in addition to unquestionable repression in preventive character, in terms of protection and in terms of compensation for damage and return of endangered environment to the state before the occurrence of harmful events, it must be emphasized that all of these legal principles are aimed at finding the most effective legal measures in terms of prevention and accountability due to environmental damage.

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KRIVIČNOPRAVNA I GRAĐANSKOPRAVNA ODGOVORNOST USLED UGROŽAVANJA ŽIVOTNE SREDINE

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Summary

Životna sredina je egzistencijalno pravo čoveka. Zaštita životne sredine, posmatrano u odnosu na druga pitanja, od skoro se nalazi na vrhu prioriteta, te stoga je i prepoznata nužnost ali i urgentnost uspostavljanja pravne regulative. Pitanje odgovornosti usled ugrožavanja životne sredine može se posmatrati iz više uglova, dok će fokus ovog istraživanja biti usmeren ka krivičnopravnoj i građanskopravnoj odgovornosti. Krivičnopravnim zakonodavstvom se ostvaruje zaštita društva od kriminaliteta, pa se tako i najsvrishodnija zaštita životne sredine u ovom smislu, ostvaruje upravo na pomenuti način. Građanskopravna zaštita životne *sredine ne reguliše se direktno konkretnim propisima, već se ona predviđa zakonodavnim instrumetima u oblasti naknade* šteta*, kao* što *su Zakon o obligacionim odnosima, Zakonu o osnovama svojinsko pravnih odnosa i dr. Usled istaknutog cilj ovog istraživanja je da se kroz metodološko-teorijski okvir analizira krivičnopravna i građanskopravna odgovornost usled ugrožavanja životne sredine. Metodom analize razmotriće se najznačajnija pitanja za istraživanje, dok će se normativni metod koristiti za prikaz legislativa koje regulišu proučavanu materiju na međunarodnom nivou, na nivou Evropske unije i u pozitivnom zakonodavstvu Republike Srbije. Komparativnim metodom sumiraće se proizašli rezultati.*

Ključne reči: *krivičnopravna odgovornost, građanskopravna odgovornost, odgovornost usled ugrožavanja životne sredine*

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