

HARMONISATION OF SERBIAN NATIONAL LEGAL SYSTEM WITH EUROPEAN UNION ACQUIS – THE CASE OF ENVIRONMENT

Uroš Ćemalović¹

Summary

The transformation of Serbian national legislation in the process of country's accession to the European Union (EU) is a complex phenomenon and its scope and depth can significantly vary in different fields. Moreover, the constant and rapid development of European environmental law makes its reception in the internal law even more difficult. The objective of this paper is to provide, using mainly the comparative legal method, a global analysis of Serbian environmental legislation in the light of its harmonisation with EU acquis, without treating the issues of technical standards and questions related to the negotiation framework within the Chapter 27. It will be argued that the progressive transformation of national legal standards under the influence of EU law is significant, but still remains far from reaching its effective implementation.

Key words: EU law, environmental law, Stabilization and Association Treaty, ecological standards, law harmonisation

JEL: K32, Q58

Introduction

One of the crucial economic objectives of the European Union (EU) is the establishment of an internal market, while the sustainable development of Europe should be based on “balanced economic growth” and “a high level of protection and improvement of the quality of the environment” (Art. 3, para. 3, Treaty on European Union, “Official Journal of the European Union” no. C83/13). In the same vein, the coordination of national legal solutions is always very desirable for any globally effective environmental policy, while, within the EU, numerous instruments “are devoted to approximation as an autonomous goal” (Pereira, 2015). On the other hand, the membership in the EU includes an obligation of a future Member State to put its legal system into line

1 Uroš Ćemalović, Ph.D., Associate Professor, University John Naisbitt, Faculty of Law, Public Administration and Security, Bulevar umetnosti no. 29, 11080 Belgrade, Phone: +381 63 203 305, E-mail: uros.cemalovic@gmail.com.

with the EU *acquis*². However, this obligation does not end on the day of accession of this state to the EU, given that all Member States are obliged to transpose into their domestic legal systems the provisions of EU law which do not have a direct effect, but require normative intervention of national legislators. Notwithstanding the fact that approximation is “the single legal term suitable to serve as a basis for the study of the Union’s policy whose aim is to eliminate the inconsistent differences in national legislations” (Čemalović, 2015), the notion of harmonisation is more appropriate for the purposes of a study aiming to assess the legal system of a candidate country in the field of environment. Bearing in mind that the normative system of the Union is also in the process of constant mutation, the harmonisation of national legal provisions with EU law is a perpetual obligation, while the process of negotiations ends by the conclusion of an accession agreement. After presenting some basic characteristics of the process of harmonisation of Serbian national legal system with the EU *acquis* (chapter 1) and once the general legal framework of both EU and Serbia in the field of environment is described (chapter 2), this paper will focus on the alignment of domestic legal standards with EU law in three important fields: air quality (chapter 3), water quality (chapter 4) and protection of the environment by penal law (chapter 5). Given that the EU environmental legislation comprises numerous technical standards, this paper will predominantly treat legal aspects of environmental issues; therefore, the notion of “harmonisation” should be understood as “approximation of general legal standards”. Finally, the limited space imposes the focus on comparative analysis of major legal provisions, without entering in a complex issue of forthcoming negotiations³ between the EU and Serbia in the field of environment.

Methodology, legal and data sources used

Given that the overarching objective of this paper is to investigate the overall level and quality of the alignment of Serbian legal framework with the EU *acquis* in the field of environment, the comparative legal method (national and EU legislation) will be used as the main tool, completed with teleological analysis (for the Article

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- 2 In the legal theory, for decades the French expression *acquis communautaire* was used to indicate the entirety of the legal provisions of the European Communities. However, since December 2009, with the entry into force of the Lisbon Treaty, the term “Community” has ceased to exist; from this moment, the theory tends to use more the terms EU *acquis* or simply EU law.
 - 3 The process of harmonisation of national legislation with EU law and the negotiation process between a candidate country and the EU differ in at least three important elements. *Primo*, harmonisation with EU law is, after the ratification of the Stabilization and Association Agreement, an international legal obligation for Serbia. *Secundo*, the process of law harmonisation is essentially legal, while the negotiation process is predominately political. *Tertio*, in the harmonisation process the legislative branch of power is the key stakeholder, while in the negotiation process the executive plays the crucial role; see: Čemalović, „Proces usklađivanja domaćeog pravnog sistema sa pravom Evropske unije – stanje, problemi, moguća rešenja“, *Kultura polisa* XI/2014, p. 39-52.

72 of the Stabilization and Association Agreement). In the chapter dedicated to the protection of the environment by penal law, some basic quantitative data analysis will be performed. Concerning Serbian national legal sources, the systemic Law on the Protection of the Environment, as well as the Law on the Protection of Air, Law on Water Protection and Penal Code will be taken in account, as referenced in respective chapters. Regarding EU legal sources, due to the limited space, the focus of our study will be on Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. Finally, in the chapter dedicated to the protection of the environment by penal law, the statistical data on the offences against the environment is published in Bulletins of the Statistical Office of the Republic of Serbia, over the period 2009-2013.

Basic characteristics of the process of harmonisation of Serbian national legal system with the EU *acquis*

The Republic of Serbia took the obligation to harmonise its legislation with the EU law by Art. 72 of the Stabilization and Association Agreement (SAA), an act “of the utmost importance” (Stančić, 2002) for every potential EU Member State. Even if it is clear that the degree of alignment of domestic legal standards with EU law is an important element in the negotiations with the EU, the processes of harmonisation and negotiation are different in legal, political and methodological terms. Moreover, it is commonly agreed in theory that “the Treaty on the Functioning of the European Union does not foresee legal harmonisation as a task in itself” (Wilhelmsson, 2014), while “the outcome of EU accession negotiations is very important for an aspiring member state” (Bjarnason, 2010).

Without tackling the complex issue of the distinction between the terms harmonisation and approximation and notwithstanding the fact that Article 72 of the SAA uses the latter, in this paper we will use more general and common notion of harmonisation. Concerning the process of harmonisation of Serbian national legal system with the EU *acquis*, its general framework can be defined by three essential characteristics: graduality, need for proper implementation and dual monitoring mechanism.

For various reasons, the harmonisation of Serbian national legal system with EU *acquis* has to be gradual; in colloquial terms, this characteristics can be explained by the expression “not everything and not immediately”. More precisely, the SAA (Art. 72, para. 1) clearly states that “Serbia shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*”, adding that the same party “shall ensure that existing and future legislation will be properly implemented and enforced”. Teleological interpretation of this provision is particularly facilitated by the latter precision, given that there is a strong logical connection between the graduality of harmonisation, on the one hand, and the proper implementation of this harmonised legislation, on the other. The wording of Article 72,

paragraph 1 unambiguously shows that neither the executive branch of power (when it proposes the legislation or when it adopts bylaws) nor the legislative power (the National Assembly) in the Republic of Serbia has the obligation to ensure that each proposed and adopted legal act or bylaw is inevitably, fully and immediately harmonised with the *acquis* of the Union. Compliance of a domestic legal act with EU law can be partial, or even non-existent, if it is justified by 1) need for gradualness, 2) non-transferability of certain provisions before a deadline or 3) a legitimate interest to harmonise it at a later stage, indicating a clear explanation and the time frame in which the complete compliance will be provided. Of course, none of three aforementioned motives for the adoption of national normative solutions that are incompatible with EU law must not be used fraudulently, or in a way that deliberately avoids the commitments taken under the SAA. In addition, it should always be borne in mind that the harmonisation with EU *acquis* in prevailing number of cases is in the interests of domestic economic operators, consumers and all citizens of Serbia in the most general sense.

Secondly, in the process of law harmonisation it is necessary to ensure the proper implementation of the current and future legislation. As it is already indicated, this requirement is in deep organic connection with the gradualness of the harmonisation. As the cited Article 72, paragraph 1 of the SAA clearly shows, the alignment of national legal provisions with EU law is not an end in itself, it does not represent self-sufficient normative performance. The crucial objective of the harmonisation is proper and full application of the legislation in force. One could even go a step further, arguing that the gradual elaboration and adoption of the new legislation is a prerequisite for its proper implementation. Through its regular reports on the progress of Serbia in the European integration process, the European Commission dedicates a special attention to the problems in the implementation of national legislation.

Thirdly, the ways of monitoring of the harmonisation are jointly defined by institutions of Serbia and the European Commission. Alignment of the national legal system with EU *acquis* is a complex process involving numerous Serbian authorities belonging to all three branches of power. Of course, the National Assembly as a legislator has the final say in the adoption of legislative acts; however, the Government usually appears as a proponent of such acts, while the share of the judiciary, as a guarantor of the rule of law, is of undeniable importance in the process of harmonisation. In the beginning of law harmonisation process (from 2008 to 2012) national operational and strategic act which concerned this issue was the National Program for Integration of the Republic of Serbia into the European Union (NPI). In the next stage (from 2012) the title of this document was more adapted to its contents: the National Program for the Adoption of the *Acquis* (NPAA). In any case, the methods “for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken” which, under Article 72, paragraph 5 of the SAA should be the result of an agreement between Serbia and the European Commission, are taking as a key criterion the success in the implementation of NPI/NPAA.

General legal framework in the field of environment (EU law and Serbian law)

The Constitution of the Republic of Serbia (“Official Journal of the Republic of Serbia” no. 98/2006) declares that a healthy environment is a right, but also an obligation. As it is often underlined in the theory, “a large number of national constitutions contain provisions which can be relevant to the availability of access to environmental justice” (Pain, 2007), while “the influence of EU environmental policy extends beyond the member states” (Selin, Van Deveer, 2015). According to Article 74, paragraph 1 of the Serbian Constitution, “everyone has the right to healthy environment and the right to be informed fully and timely of its condition.” The term “everyone” implies, in principle, any individual (including the foreign citizens during their stay in Serbia). On the other hand, paragraph 2 of the same Article states that “everyone, and especially the Republic of Serbia and its autonomous provinces, is responsible for environmental protection”, while the next paragraph adds that “everyone is obliged to safeguard and improve the environment”. Regardless of the fact that the constitutional provision uses the term “everyone”, its teleological interpretation indicates that the responsibility for environmental protection is particularly weighing on the national and provincial administration, not least because of their ability to organize the monitoring and response in case of environmental danger. In the same vein, “many local authorities have sought to strengthen their representative role, notably through increasing use of neighbourhood fora and similar community-based approaches” (Freeman, 1996).

The right of everyone to be informed on the state of the environment has for its consequence the obligation of national and other authorities to provide the complete and useful information on this subject. As some authors have asserted, in numerous EU member states “local and regional authorities frequently take action in the interests of their residents and in so doing promote environmental protection” (Oliver, 2013), while “detailed implementation measures are generally elaborated by the central administration” (Boiret, 2012). Therefore, it is difficult to understand why, after explicitly invoking the state and its autonomous provinces, the Constitution fails to mention that the municipal authorities are also responsible for the protection of the environment and, consequently, obliged to provide information on its state. This omission is even less understandable if one take into account the fact that, firstly, the principle of subsidiarity and the realities on the ground require the essential involvement of local authorities and, secondly, that the multitude of laws provide that environmental problems must be treated as close to the citizen as possible. The only reason for this undoubted lack of compliance of the Serbian Constitution with EU legislation and best practices might be found in the fact that at the time of the adoption of the supreme act (November 2006) the SAA was not yet signed. Therefore, in terms of environmental protection, the development of Serbian legal system under the influence of EU law concerned only acts of legislative or regulatory nature, while the constitutional reform is expected before the signing of an eventual agreement on the country’s accession to the European Union. Finally, it is important to underline that “reaching compliance with EU environmental legislation is a challenging task, given the complex and dynamic character of EU environmental legislation” (Peeters, Uylenburg, 2014).

In Serbia, the general law on the environment was adopted in 2004, bringing a series of provisions on the global framework of protection, with the objective of ensuring the right to a healthy environment and provide a balance between existing normative solutions and the needs of further industrial development. Even if it is clear that “balancing industrial development and environmental protection encourages a manage-for-results approach” (Shen, 1999), some studies have also shown that “the economic growth and the resolution of ecological problems can both, in principle, be achieved” (Nilsson, 1999). The first substantial changes to the law on environmental protection were conducted in 2009, bringing certain improvements of the existing provisions and introducing, among others, the considerable changes in the categories of sources of pollution, pollutant limit values, evaluation of the environmental impact, monitoring of the ecological situation and information and participation of the public. It is clear that a number of innovative solutions have been adopted under the influence of EU law, especially if one considers that the SAA was signed in April 2008. However, due to the ratification of the SAA by all Member States’ national parliaments, it took more than 5 years for this agreement to enter into force, on the 1st of September 2013. For this particular reason, Article 72 paragraph 2 of the SAA provided that “harmonisation (of the national legislation with the *acquis*) will begin on the date of signature”, allowing to the Serbian Government to elaborate and submit to the National Assembly the proposition of laws largely based on the EU *acquis*.

Regarding the Union’s secondary legislation which has served as a basis for the development of national environmental legislation in Serbia, the acts related to the following questions should be taken into account: air quality (Directives 96/62/EC, 1999/30/EC, 2000/69/EC and 2002/3/EC, replaced by the Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, “Official Journal of the European Union” no. L152); water protection (Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, “Official Journal of the European Communities” no. L327); conservation of natural habitats, wild fauna and flora, as well as the protection of wild fauna and flora by regulating trade therein (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, “Official Journal of the European Communities” no. L206, Council Regulation (EC) 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, “Official Journal of the European Communities” no. L61 and 17 amendments adopted between 26 May 1997 and 29 July 2013); protection against noise (Directive of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, “Official Journal of the European Communities” no L189); waste (Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, “Official Journal of the European Union” no. L114 and Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, “Official Journal of the European Union” no. L 266

and two amendments adopted on March 11, 2008 and November 20, 2013); information and participation of the public (Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, “Official Journal of the European Union” no. L41 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, “Official Journal of the European Union” no. L156); prevention and remedying of environmental damage (Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, “Official Journal of the European Union” no. L143); protection of the environment through criminal law (Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, “Official Journal of the European Union” no. L328) and minimum criteria for environmental inspections (Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, “Official Journal of the European Communities” no. L118). Given the variety and the complexity of aforementioned issues, in the following chapters this paper will focus on the harmonisation of domestic legal standards with EU law in three important fields: air quality, water quality and protection of the environment by penal law. This choice was principally based on legal considerations (number, type and nature of national acts adopted), as well as on the exemplarity of these three issues in terms of implementation (or its absence) of adopted legislation.

Provisions related to air quality

The general provisions dedicated to the protection of air can be found in two Serbian national legal acts. On the one hand, the systemic Law on the Protection of the Environment (“Official Journal of the Republic of Serbia” no. 135/2004) specifies the global pollutant limits, as well as the terms of protection and the control measures; on the another hand, the Law on the Protection of Air (LPA, adopted in 2009, amended and supplemented in 2013, Official Journal of the Republic of Serbia no. 36/2009, 10/2013) introduces some more specific provisions. The changes adopted in 2013 are, in most cases, the result of the harmonisation of national standards with the Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe. One of the crucial modifications concerned the National Programme for the Progressive Reduction of National Emissions Ceilings: instead of 2000, 1990 was taken as a year of reference for the estimation of the effectiveness of mitigation measures. Furthermore, the provisions of Articles 65 to 67 related to the information of public, already present in the text adopted in 2009, were completed and harmonised with Article 26 of the Directive 2008/50/EC. In some elements, the national provisions even go beyond the requirements of the Directive, demanding that any information made available to the public must be timely, clear, understandable and

easily accessible. However, it is globally observed that “although there is a considerable amount of information on air pollution and its effects on organisms and biological systems, much of the information is fragmented” (Barker, Tingey, 1992), while “air pollution in Europe is still a matter of concern, mainly related with impacts on the human health” (Slezakova, Reis, Pereira, Alvim-Ferraz, 2007).

The 2013 amendments to the Serbian LPA have also concerned the treatment of substances harmful to the ozone layer and control of the emission of greenhouse effect gases, as well as the certification of personnel employed in industry sectors using those substances. In general, the law provides that the air protection is mainly achieved by establishment, maintenance and improvement of a unique national system of air quality management. Regarding the realization of this objective, a number of national legislative provisions concern the issues of monitoring, exchange and analysis of information and data, in order to “incorporate the latest health and scientific developments and the experience of the Member States”, as underlined in recital 3 of the Directive 2008/50/EC. It should also be stressed that the justification for the adoption of the aforementioned EU Directive (act by which four Directives and one Decision adopted between 1996 and 2002 were replaced) is in full compliance with the motivation of national legal solutions, specifically concerning the need to adapt the legislation to the progress of technical sciences and medicine. However, in Serbia the realization of this objective depends to a large extent on governmental decrees, ministerial decisions and, partially, on local authorities, as the law on the protection of air remains largely impracticable without a series of acts bringing enforcement measures of the objectives set by the legislation. In support of this conclusion, it is worth mentioning that one of the recent (2014) European Commission’s (EC) Progress Reports (a document by which EC’s services are assessing achievements of each candidate country in the areas covered by the EU legislation and policies) states that “the annual update of the air quality showed that seven of the Serbia’s eight urban agglomerations fall into air quality category III, exceeding the margin tolerance of several pollutants” and that “air quality plans for Belgrade remain to be adopted and planning for the remaining urban agglomerations needs to be accelerated” (Serbia 2014 Progress Report, European Commission). It must therefore be concluded that the undeniable progress that Serbia has made in the harmonisation of its legislation on air quality with EU’s *acquis* was not followed by its proper and complete application, since the adoption of measures related to enforcement, monitoring and planning was largely absent.

Concerning the issues related to the information on air quality and their availability to the public, the provisions of Articles 65 to 67 of the national Law on air protection regarding the public information have been brought in line with Article 26 of the Directive 2008/50/EC. The provisions of Serbian law have gone beyond the EU requirements in two aspects, but, however, have failed to transpose some key provisions. Firstly, the directive merely specifies that “States shall ensure that the public as well as appropriate organisations (...) are informed, adequately and in good time” (Art. 26, para. 1), while Article 78 of the general national law on protection of the environment

provides that any information made available to the public by any administrative body should be “regular, given in good time, detailed and impartial.” Secondly, even if Serbian legal provisions often repeat the formulations of the Directive (in the case of information on the quality of ambient air and on the plans for this quality, Art. 26, para. 1 pts a and d, of the Directive), the national provisions sometimes add some supplementary requirements (for example, the accurate information on “the area where the exceedances occurred” and their “beginning and duration”, Art. 66, para. 2, of the Law on air protection). However, national legal solutions in some significant fields have failed to transpose certain important requirements provided by the Directive, as it is the case of regrettable lack of any reference to “environmental organisations, consumer organisations, organisations representing the interests of sensitive populations, other relevant health-care bodies and (...) relevant industrial federations” (Art. 26, para. 1 of the Directive 2008/50/EC).

Provisions related to water quality

As it is the case concerning air quality, Serbian general national legal framework on water protection is set in the Law on the Protection of the Environment (LPE), in its part dedicated to the conservation of natural assets. In this context, the Law prescribes the appropriate treatment of the waters, which should neither represent the danger to natural processes of qualitative and quantitative water renewal nor reduce the possibility of its multiple use. As for the principles of protection and use of surface and ground waters and reserves, Articles 24 and 107 LPE refer to the comprehensive management and ongoing monitoring of quality, while Article 94 LPE provides for measures to reduce pollution and sewage system. However, following the principle that represents the keystone of the entire Serbian ecological law, the provisions of LPE were completed and detailed by a special Law on Water Protection (LWP, adopted in 2010, amended and supplemented in 2012, “Official Journal of the Republic of Serbia” no. 30/2010, 93/2012). On the basis of this special law, the Government adopted a series of decrees, only some of which transpose the provisions of Articles 16 and 17 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as it is, for example, the case of the Decree of 28 February 2014 on uniform emission limit values for surface waters. Those values are particularly important, notwithstanding the fact that the definition of ‘good’ ecological status is “an ongoing process at EU and state level” (Hendry, 2015).

The other provisions of the LWP transposing Directive 2000/60/EC concerned the protection of the aquatic environment, the prevention of further degradation and the promotion of sustainable water use. While some other Central-European countries were in the preparatory phase for their EU accession, it has been pertinently observed that “meeting the EU water quality legislation is likely to be the most important issue” (Slovak Republic – A Strategy for Growth and European Integration, World Bank Country Study, 1998). Moreover, some authors pointed out that “improvements in water

use efficiency in Europe could effectively reduce overall water use by approximately 40% and agricultural water use by 43%” (Ellison, 2010). The 2012 amendments to the Serbian LWP have also treated the funding issues, expanding the supported actions and creating some new budgetary sources. Nevertheless, the important number of the national standards for water protection still remain generally non-compliant with European legislation. Given the highly technical nature of the measures to be adopted and taking into consideration the legal provisions conferring competence, it is primarily to the governmental authorities to harmonise national provisions with the *acquis* of the Union. Furthermore, the absence of a national strategy for the protection of water and a low level of development of environmental monitoring mechanisms importantly limit the effectiveness of the action of central and local authorities. It must therefore be concluded that, in Serbia, even if the LWP have provided a good normative framework, the Directive 2000/60/EC has been transposed only partially (as it is, for example, the case of emission limit values for surface waters), while in numerous other fields (groundwater, protected areas, economic analysis of water use, environmental impact of human activity) the full implementation of EU legislation will require an intense normative activity.

Protection of the environment by penal law

Considerable modifications of the Serbian Penal Code (SPC) adopted in 2005 have brought some substantial changes in the protection of the environment. On the one hand, the criminal offences in environmental matters previously provided by numerous specific laws have been incorporated in the SPC, in a single chapter (XXIV). On the other hand, those criminal offences are defined in a more precise manner, but also taking into consideration that “if too narrow a view is taken of environmental damage (...) then many cases of significant harm to the environment may not come to be seen as offences” (Megret, 2013). The 2005 modifications of the SPC have brought greater visibility to the intentions to prevent and limit the activities prejudicial to the environment. Although the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law was adopted three years after the reform of the Serbian Criminal Code, there are no significant inconsistencies of national legislation with the requirements of Article 3 of the Directive. However, the most important part of Serbian criminal legislation that still remains generally non-compliant with the provisions of Directive 2008/99/EC concerns the liability of legal persons. Some recent studies have shown that “the structure, contents and underlying rationale for environmental liability in the EU has profoundly changed” (Orlando, 2016), while some EU member states apply a general criminal liability of legal persons “as long as the material and moral element are proven” (Vermeulen, De Bondt, Ryckman, 2012).

All offences under Title XXIV of SPC can be grouped into four categories: 1) general offences against the environment; 2) offences relating to hazardous materials; 3) offences against the flora and fauna and 4) offenses relating to illegal hunting and

fishing. In principle, the penalties for these criminal offences range from six months to five years of imprisonment (from one to eight years for all offenses and up to one, two or three years for negligence), with the possibility to pronounce a fine. Moreover, the total number (18) of offences from all the above four categories is quite high, especially given that the offences against the environment are, by their number, sixth in the Penal Code. It must therefore be concluded that the Serbian criminal law globally meets the requirement of Article 5 of Directive 2008/99/EC to “take the necessary measures to ensure that the offences (...) are punishable by effective, proportionate and dissuasive criminal penalties”. However, in the period 2006-2012, the percentage of persons charged by Serbian authorities for offences against the environment in relation to the number of persons subject to criminal prosecution is about 54%, while the percentage of those convicted in relation to the number of persons charged is about 69% (“Bulletin of the Statistical Office of the Republic of Serbia”, no 502/2009, 514/2010, 529/2010, 546/2011, 558/2012, 576/2013). Additionally, the effectiveness (or rather, lack thereof) of the penal and administrative measures to protect the environment becomes more evident if one observe the percentage (37%) of persons convicted in relation to the number of persons who have been prosecuted. Since the protection of the environment through penal law is doubly dependent on the effectiveness of preventive and repressive actions, statistical data allows the conclusion that, in this field, the satisfactory protection in Serbia is still far from being reached.

Conclusion

After the adoption, in 2004, of the general Law on the Protection of the Environment, the ecological legislation in Serbia has undergone important and profound changes. The two major characteristics of this transformation were, on the one hand, the adoption of numerous special laws and, on the other, the progressive harmonisation of national legislations with EU law. The analysis of the general and special legal provisions on air quality, water quality and protection of the environment by penal law has shown that a global legal framework is generally satisfactory. However, in many areas, the EU law is only partially transposed, especially when the application of legal provisions depends on governmental decrees and/or ministerial decisions. Given the technicity of numerous ecological standards, national legislation often remains practically inapplicable without a series of acts implementing standards globally defined by provisions of general and special legislation. The perspective becomes even more unpromising if one take in consideration the effectiveness of penal and administrative measures aimed at environmental protection: the deterrent effect of criminal sanctions is relatively low, while the number of contraventions uncovered by the inspection is in free fall since 2009. It must, therefore, be concluded that the undeniable evolution of environmental legislation in Serbia is incomplete, while the progressive transformation of national legal standards under the influence of EU law is far from reaching its effective implementation.

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USKLAĐIVANJE PRAVNOG SISTEMA SRBIJE SA PRAVNIM TEKOVINAMA EVROPSKE UNIJE – SLUČAJ ŽIVOTNE SREDINE

Uroš Čemalović⁴

Sažetak

Transformacija nacionalnog zakonodavstva Republike Srbije u procesu njenog približavanja Evropskoj uniji (EU) je složen fenomen, čiji se obim i dubina mogu značajno razlikovati u zavisnosti od oblasti. Pored toga, stalni i brz razvoj evropskog zakonodavstva o životnoj sredini dodatno usložnjava njegovo prenošenje u unutrašnji pravni sistem. Namera ovog članka je da pruži, koristeći pre svega komparativno-pravni metod, globalnu ocenu srpskog ekološkog zakonodavstva u svetlu njegovog usklađivanja sa pravnim tekovinama EU, bez zalaženja u problematiku pregovaračkog okvira za poglavlje 27. Osnovni zaključak članka je da je progresivna transformacija domaćih pravnih standarda pod uticajem prava EU bila značajna, ali da je i dalje daleko od dostizanja pune primene.

Ključne reči: *pravo Evropske unije, pravo životne sredine, Sporazum o stabilizaciji i pridruživanju, ekološki standardi, usklađivanje prava*

4 Vanredni profesor, dr Uroš Čemalović, Univerzitet Džon Nezbit, Fakultet za pravo, javnu upravu i bezednost, Beograd, Bulevar umetnosti br. 29, Telefon: +381 63 203 305, E-mail: uros.cemalovic@gmail.com