



Horizontal legislation

Overview

During the reporting period there has been no legislative activity to enable further harmonization of Serbian horizontal legislation with EU regulations. Due to the failure to amend the Law on Environmental Impact Assessment²¹ and the Law on Strategic Environmental Impact Assessment²², these procedures, which are essential for the protection of the environment in the Republic of Serbia against the harmful effects of plans and projects, have still not been improved. For this reason, environmental impact assessments and strategic environmental assessments largely remain a formality. Public interest and/or participation remains limited and rarely has any effect or leads to the engagement of the judiciary.

Judicial practice in environmental matters remains under-developed, as evidenced by the extremely low number of charges that have been filed for environmental criminal offences during the reporting period, despite a growing number of complaints.

Numerous recommendations by the Protector of Citizens indicate that citizens' right to a healthy environment is threatened. These recommendations were sent by Protector of Citizens to the competent authorities due to: excessive air pollution; noise and dust; frequent fires at the Vinča landfill; the existence of non-sanitary landfills, as well as other issues.

The Inspection for Environmental Protection still lacks sufficient capacity for the adequate supervision of environment protection. Reasons for this include an insufficient number of personnel working in the sector, lack of technical equipment and know-how about cases that require supervision, as well as poor systematization of roles and responsibilities, with the consequence that environmental inspectors are required to supervise areas that are often unrelated and very different.

21 "Official Gazette of the Republic of Serbia", Nos. 135/2014 and 36/2009.

22 "Official Gazette of the Republic of Serbia", Nos. 135/2004 and 88/2010.

Strategic and legislative framework

The environmental impact assessment, which is one of the most important instruments for ensuring the preservation of the environment during the implementation of plans and projects, has still not been aligned with the EU *acquis*. Although the Republic of Serbia has almost completely harmonized national legislation with the Directive on the assessment of the effects of certain public and private projects on the environment (Directive 2011/92/EU), Directive 2014/52/EU, adopted with the purpose of improving the process of environmental impact assessments, has not yet been transposed. To completely transpose this Directive into national legislation, the Government must adopt amendments to the Law on Environmental Impact Assessment and the Regulation on the amendments to the Regulation on establishing the List of Projects Requiring a Mandatory Impact Assessment (List I) and List of Projects that May Require an Environmental Impact Assessment (List II). According to the National Programme for the Adoption of the *Acquis*, the original deadline for the adoption of the Law on Amendments to the Law on Environmental Impact Assessment was the fourth quarter of 2018, however this deadline was postponed by the Government Work Plan for 2019, and then again to October 2020.^{23,24,25,26} Since the initiation of the process of amending the Law in 2018, the Working Group has not met on a regular basis, Working Group members have been selectively included in certain processes, and communication between Working Group members has been near non-existent. The amendments to the Law were presented to the public during public consultations undertaken in five Serbian cities during 2019.

23 Ministry of European Integration (2018): National Programme for the Adoption of the *Acquis* (NPAA) – third revision.

24 http://www.pregovarackagrupa27.gov.rs/?wpfb_dl=69

25 http://www.gs.gov.rs/doc/PLAN_RADA_VLADE_2019.pdf

26 https://www.srbija.gov.rs/extfile/sr/370541/plan-rada-vlade-srbije-za-2020_cyr.pdf

The adoption of the Law on Amendments to the Law on Strategic Environmental Impact Assessment, required for the full harmonization of national legislation with the Directive on strategic impact assessment (Directive 2011/42/EU), is still being postponed. The process of amending the Law on Strategic Environmental Impact Assessment, conducted simultaneously with amendments to the Law on Environmental Impact Assessment, was supposed to be concluded with the adoption of the Law at the end of 2018; however, this has not yet happened. The Government Work Plan for 2020 stipulates the last quarter of 2020 as a new deadline for its adoption. The public has had the opportunity to review the planned amendments to the Law during public consultations undertaken in Subotica, Kragujevac, Niš, Novi Sad and Belgrade during April 2019. In addition to the aforementioned laws, the Draft Regulation on Public Participation in Respect of the Drawing up of Certain Plans and Programmes Relating to Environmental Protection was also presented to the public.^{27,28,29}

In order to fully transpose the directive governing public participation in the drawing up of certain plans and programmes related to the environment (Directive 2003/35/EC) into national legislation, the final adoption of the Law on Amendments to the Law on Environmental Impact Assessment is also necessary.³⁰

Transposing Directive 2004/35/CE on environmental liability into national legislation has been performed through several laws and bylaws; the full transposition of this Directive requires the adoption of the Law on Liability for Environmental Damage. This law, the drafting of which began in 2015, was supposed to be adopted in the second quarter of 2019; however, it has still not been adopted. In the course of preparing on the Draft, the Ministry of Environmental Protection, in cooperation with the Aarhus Network and OSCE Mission to Serbia, organized public consultations in several Serbian towns during October and November 2019. In addition to the Ministry and the Aarhus

27 <https://www.ekologija.gov.rs/nema-dobrih-zakonskih-resenja-bez-ucesca-civilnog-drustva-i-najsire-javnosti/>

28 <https://www.energetskiportal.rs/javne-konsultacije-o-nacrtime-zakonskih-propisa-u-oblasti-zastite-zivotne-sredine/>

29 <https://terras.org.rs/ako-javnost-ne-izade-na-javnu-raspravu-investitor-dobija-utakmicu/>

30 http://www.pregovarackagrupa27.gov.rs/?wpfb_dl=69

Network representatives, these hearings were attended by representatives of local self-governments and civil society. The development of a methodology for environmental damage assessment is planned for 2020.

There has been no progress on the transposition of Directive 2008/99/EC on the protection of the environment through criminal law. The Directive has still only been partially transposed into national legislation. The planned adoption of the Law on Amendments to the Penal Code, which would enable the full harmonization of the provisions of this Directive with national legislation, has been postponed until the third quarter of 2020.³¹

Directive 2007/2/EC on establishing Infrastructure for Spatial Information in the European Community (INSPIRE) has been transposed into national legislation through the adoption of the Law on the National Spatial Data Infrastructure (NSDI).³² The EAS 3 Project began during the second quarter of 2019, aimed at, among other things, drafting the Directive-Specific Implementation Plan (DSIP) for the INSPIRE Directive.³³

31 Government of the Republic of Serbia: Government Work Plan 2020, available at: https://www.srbija.gov.rs/extfile/sr/370541/plan-rada-vlade-srbije-za-2020_cyr.pdf

32 "Official Gazette of the Republic of Serbia", No. 27/2018.

33 Ministry of European Integration (2019): Report on the implementation of the National Programme for the Adoption of the Acquis (NPAA) for the second quarter of 2019

The implementation of regulations

The quality of environmental impact assessment studies remains low. Public participation in public hearings, which are effectively a formality, is also low due to the limited impact that they exert on the outcome of the process. One example of this that has caught public attention is the environmental impact assessment for the construction of a gondola at the Kalemegdan fortress in Belgrade. The environmental impact assessment was the subject of harsh criticism by expert civil society organizations during the public hearing, especially those parts related to cultural heritage and the ecological network. The hearing was then abruptly stopped in front of a large number of citizens. The project itself has been beset by numerous irregularities. The preparatory works for the project were conducted without a construction permit, which was subsequently issued. The Detailed Regulation Plan for the project was also found not to be in accordance with the Law on Planning and Construction by the Administrative Court in Belgrade, following a complaint by the Renewables and Environmental Regulatory Institute (RERI).^{34,35} The case was also presented before the Supreme Court of Cassation, following an appeal by the Ministry of Construction, Transport and Infrastructure to re-evaluate the decision to stop the works. The Supreme Court of Cassation rejected the appeal to re-evaluate the decision of the Administrative Court because it was not final, stating that the party may contact the Supreme Court of Cassation only in case of a final decision.^{36,37}

A common deficiency in environmental impact assessment studies is that they tend to primarily deal with the assessment of those impacts that the

34 https://www.reri.org.rs/wp-content/uploads/2019/04/RERI_Slucaj-Gondola_Saopstenje.pdf

35 <https://insajder.net/sr/sajt/vazno/14741/>

36 <https://www.vreme.com/cms/view.php?id=1687481>

37 <https://insajder.net/sr/sajt/vazno/15590/>

developer's expert team responsible for drafting the study has the capacity to address, instead of providing a high-quality assessment of all impacts of a specific project. It is often the case that only some environmental impacts are extensively assessed, at the expense of other important impacts that are commonly insufficiently assessed. A typical example is the impact on nature, which is usually a mere formality in impact assessment studies. The standard of assessments is beginning to improve, however generally only in the case of projects in which there is already public interest, such as small hydropower plants. The lack of an Appropriate Assessment also significantly contributes to this situation. The Appropriate Assessment is supposed to be a part of the environmental impact assessment for projects pertaining to ecological networks or those that could impact upon ecological networks. The regulation governing the Appropriate Assessment has not yet been adopted, despite having been in development for years. Another example of the failure of the environmental impact assessment process is the construction of ski-lifts, ski-slopes and winter tourism infrastructure, which has seriously endangered some of the most valuable natural areas in Serbia, such as projects in the Kopaonik National Park, the Golija and Stara Planina Nature Parks, as well as planned projects based on spatial plans, such as plans for the special purpose area of the Vlasina landscapes of exceptional quality, and others.

Considering all of the above, it is particularly worrying that in April 2019, the Law on Amendments to the Law on Ski-lifts for the Transport of Persons entered into the Assembly procedure³⁸ and was adopted under an urgent procedure. Amendments to the Law expanded the mandate of the Ministry of Construction, Transport and Infrastructure at the expense of the Ministry of Agriculture, Forestry and Water Management and the Ministry of Environmental Protection, and the Ministry of Construction will no longer be required to obtain certain types of consent from these two ministries.³⁹

The case of the irregular adoption and implementation of the National Emission Reduction Plan (NERP) culminated at the beginning of 2020, when the Energy

38 "Official Gazette of the Republic of Serbia", No. 31/2019.

39 <https://insajder.net/sr/sajt/vazno/14259/>

Community Secretariat initiated a procedure against the Republic of Serbia⁴⁰ due to the lack of implementation of the Plan. The NERP officially entered into force on January 1st 2018, although it was only presented to the public a year later.⁴¹ The public did not have an opportunity to review the contents of the NERP, as the strategic impact assessment of the Plan has not been performed, despite being legally required. In response to the Energy Community's action, on January 30th 2020 the Serbian Government adopted revised National Emission Reduction Plan.⁴² In the revised Plan the deadlines for certain activities were changed and the timeframe for the Plan's implementation was removed. The public was not consulted during this process.

Pursuant to the Law on the Planning System of the Republic of Serbia⁴³, the Regulation on the Methodology of Public Policy Management, Policy and Regulatory Impact Assessment, and Content of Individual Public Policy Documents (8/2019-79) was adopted in February 2019.⁴⁴ The Regulation provides clear instructions for the inclusion of the public in the early stages of policy-making processes. However, the systematic implementation of the Regulation has not yet begun in the environmental protection sector.

Public access to information of public importance regarding the environment remains at a low level. According to the Report on the Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for the Year 2019, the Commissioner for Information of Public Importance and Personal Data Protection received 5,275 complaints in total, of which 93% pertained to access to information about the endangerment of the environment and environmental protection. The same Report states that 176 applications for access to information were filed with the Ministry of Environmental Protection and its bodies in 2019, and that due to the failure

40 Case ECS-01/20: Serbia / Environment. Energy-community.org, available at: <https://www.energy-community.org/legal/cases/2020/case0120RS.html> Published 2020. Accessed March 13, 2020.

41 <https://www.ekologija.gov.rs/nu-raspravu-o-strateskoj-proceni-uticaja-na-zivotnu-sredinu-za-nacionalni-plan-za-smanjnje-emisija-iz-starih-velikih-postrojenja-za-sagorevanje-nerp/>

42 <https://www.srbija.gov.rs/vest/441255/vlada-srbije-usvojila-medijsku-strategiju.php>

43 "Official Gazette of the Republic of Serbia", No. 30/2018

44 "Official Gazette of the Republic of Serbia", No. 8 of 8 February 2019

of the Ministry to provide the requested information, 13 complaints were filed with the Commissioner.⁴⁵

Respect for citizens' right to a healthy environment, as well as the protection and promotion of rights in this area, are still not at a satisfactory level. According to data on the work of the Protector of Citizens for 2019, a mere 1.22% of the total number of cases received (40 cases) pertained to environmental protection. Citizens' complaints were in response to: construction or planned construction of small hydropower plants, air pollution, and a lack of public participation in the process of drafting legislative and strategic documents. The annual report of the Protector of Citizens for 2019 presents a number of proposals to strengthen the role of citizens in the work of administration bodies, of which 11 pertained to the Ministry of Environmental Protection. The recommendations point to numerous flaws, including the need to financially support local self-governments to manage waste, solve the problem of unpleasant odours, and the need to resolve the harmful effects of small hydropower plant construction. Of the 44 opinions sent to public authorities in 2019, five pertained to the environment (waste management, construction of small hydropower plants, sanitary landfills, etc.).⁴⁶

According to the Report of the Statistical Office of the Republic of Serbia⁴⁷ published at the end of 2019, based on the data from 2018, judicial practice related to criminal liability for environmental violations remains underdeveloped. During 2018, 2,550 charges related to environmental offences were filed, which is the highest number in the last ten years. Of this number, 898 offences were committed by unknown perpetrators, while charges were filed against 567 persons, which is the lowest number in the period 2009 and 2018. 484 persons were convicted of an environmental offence in 2018. Among the environmental offences reported in 2018 and 2017, the most frequent was timber theft (2,058).⁴⁸

45 <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2019/izvestaj-za2019.pdf>

46 The Protector of Citizens (2020): Regular Annual Report of the Protector of Citizens for 2019, available at: <https://ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/6542-2019>

47 Statistical Office of the Republic of Serbia; Newsletter (2019): Adult Perpetrators of Criminal Offences in the Republic of Serbia, 2018

48 Statistical Office of the Republic of Serbia; Newsletter (2019): Adult Perpetrators of Criminal Offences in the Republic of Serbia, 2018

Despite the fact that this type of criminal offence against the environment is the most common, the issue is still far from resolved, as confirmed by the thousands of hectares of forests that disappear in Serbia every year.⁴⁹

As in the previous years, challenges in establishing liability for environmental damage are primarily relate to insufficient capacity to undertake adequate inspection. 11 out of 145 local self-governments in the Republic of Serbia do not have environmental inspectors. In some municipalities environmental inspectors are also responsible for conducting environmental impact assessments, or in parallel “perform the work of utility, construction and transport inspectors, as well as the work of environmental officers, agricultural and construction officers, and other works ordered by their superiors”. A further issue is the uneven implementation of environmental regulations, causing confusion and discontent among citizens.⁵⁰

Last year progress was made in regard to cooperation with the Sector for Environmental Monitoring and Precaution (Inspection), as CSOs were included in the capacity-building programme for environmental inspection. This has opened up the possibility of more intensive involvement of CSOs in issues covered in this sector.⁵¹

49 <https://www.cins.rs/zbog-ilegalne-sece-godisnje-nestane-hiljade-hektara-suma/>

50 Ministry of Environmental Protection (2019): Environmental Inspection Activity Report for 2018

51 <https://www.ekologija.gov.rs/wp-content/uploads/inspekcija/Izvestaj/Izve%C5%Attaj%20Permanentno%20obrazovanje%202019.pdf>

Financing

As stated in the Post-Screening document, and in accordance with the Approximation Strategy for the horizontal sector, costs in this field are primarily related to Strategy implementation. The majority of costs in this sector, approximately €15 million, are expected to arise from the implementation of the INSPIRE Directive in Serbia. It is planned that these expenses will be covered by national sources, as well as bilateral and multilateral support. In the first three quarters of 2019, numerous activities were implemented pertaining to the assessment of current and required institutional capacities of NSDI entities, strengthening inter-institutional cooperation for the purpose of NSDI promotion, and strengthening the administrative capacity of the Republic Geodetic Authority as National Points of Contact for the INSPIRE Directive implementation. All of these activities should promote the implementation of the INSPIRE Directive in Serbia.⁵² Due to the insufficient transparency of reporting on the execution of the budget of the Ministry of Environmental Protection⁵³, the exact amount of funds spent on these purposes is not clear.

52 http://www.pregovarackagrupa27.gov.rs/?wpfb_dl=69

53 <https://www.ekologija.gov.rs/wp-content/uploads/informator/IZVR%C5%A0ENJE%20BUD%C5%BDETA%202019.pdf>

Recommendations



Strategic and legislative framework

- 1.** Improve the Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) quality by adopting the necessary bylaws and planned amendments to the Law on EIA and the Law on SEA.
- 2.** Harmonize List I (projects for which Environmental Impact Assessment is mandatory) and List II (projects for which an Environmental Impact Assessment may be required) with Annexes I and II of Directive 2011/92/EU.
- 3.** Create a list of plans and programmes for which a strategic environmental assessment is mandatory and a list of plans and programmes for which a strategic environmental assessment can be required.



The implementation of regulations

- 4.** Provide transparent and timely information to the public about public hearings through the improved provision of information online, in accordance with the guidelines for the development of the web presentations of state administration bodies, the bodies of autonomous provinces and local self-governments.

- 5.** Fully implement the guidelines set out in the Rulebook on the content of the requests on the need for environmental impact assessment and the content of the request for determining the scope and content of the Environmental Impact Assessment Study⁵⁴, when drafting environmental impact assessment studies.
- 6.** Ensure the inclusion of a cumulative impact assessment in environmental impact assessment studies.
- 7.** Establish quality control of environmental impact assessment studies, as well as a review of studies every five years.
- 8.** In order to achieve greater compliance with Directive 2003/35/EC on public participation, increase the capacity of national institutions and local self-governments to conduct public participation procedures during the preparation and revision of plans and programmes.
- 9.** Increase penalties for environmental pollution.
- 10.** Ensure the full implementation of the Regulation on the Methodology of Public Policy Management, Policy and Regulatory Impact Assessment, and Content of Individual Public Policy Documents (8/2019-79) in the environment sector.
- 11.** Increase and consistently implement penalties for non-compliance with regulations on the environmental impact assessment and strategic environmental assessment procedures.



HORIZONTAL LEGISLATION



December, 2015

The Municipality of Babušnica **issues a construction permit** to the investor.



August, 2013

Contrary to regulations, the Municipality of Babušnica decides that the construction of the "Zvonce" small hydropower plant does not require an environmental impact assessment study.



March, 2016

The Ministry of Mining and Energy confirms the temporary status of preferential energy producer for the investor "Mala hidro-elektrana Zvonce Ltd Beograd – Stari grad".

April, 2019

The Ministry of Environmental Protection **refuses the investor's appeal** on the decisions on the suspension of activities.



January, 2019

In separate decisions, the Inspectorate of the Ministry of Environmental Protection and the Construction Inspectorate of the Municipality of Babušnica **order the investor to immediately stop activities** that are not in accordance with the design and to remediate and restore the land affected by the works to its previous condition.



July, 2019

Installation of the pipeline continues, **despite the previously issued decisions**. RERI, a citizens' association, files a criminal complaint at the Basic Public Prosecutor's Office in Pirot against the investor, due to the reasonable suspicion that the investor has committed the criminal offence of failing to take measures to protect the environment.

September, 2018

The Institute for Nature Conservation of Serbia identifies the presence of a protected and/or strictly protected species in the Rakitska river.

October, 2018

In accordance with reported technical changes to the design, the Municipal Administration of Babušnica **issues a decision** on the alteration of the construction permit **to the investor**, on the basis of which the investor successfully reports on the works before the expiry of the deadline for appeal.



October-November, 2018

The investor starts construction, causing protests by the local population, which on several occasions became violent.

September, 2019

The Municipality of Babušnica **adopts a request** for the completion of works on the "Zvonce" SHPP.

EPILOGUE

During the course of constructing the "Zvonce" SHPP, several misdemeanour and criminal charges were filed against the residents of Zvonce Village, which have been efficiently processed. **None of the criminal charges** filed against the investor have been processed by the court to date.

The construction of the "Zvonce" SHPP **has disturbed the environment** and the derivation pipeline has been set into the riverbed of Rakitska river, which is interrupting the river's natural course. Some of the vegetation on the left bank of the river has been destroyed, while on the right bank, a landslide was caused in the private lots of the residents of Zvonce.

* **Source:** Renewables and Environmental Regulatory Institute (RERI):

Zvonce SHPP Case Study – so many violations of regulations and procedures cannot fit in a headline;
Case Study – Legal aspects of the case of the Zvonce small hydropower plant construction

