LEGAL ASPECTS OF INTEGRATING ENVIRONMENT INTO TRANSPORTATION SYSTEM

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ABSTRACT

Sustainable development refers to the effort to ensure that economic growth takes place in a way that can continue in the future, without exhausting resources or harming any section of society. Today's businesspersons have to deal not only with marketing issues but also with environmental rules. A balance should be struck between economic development and the quality and safety demands made by society in order to develop a modern, sustainable transport system. Future progress depends on reconciling economic, social and environmental considerations, and ensuring that policies in different areas foster the same objectives. The paper gives an outlook on sources of law in the European Union and the challenges of Candidate countries to implement acquis communautaire on transport issue. It analysed the principle that people and their environment can work in partnership, to each other's mutual benefit.

1. FOREWORD

The awareness that environment is a prerequisite for development is all the more present today and therefore the development must be defined within environmental parameters. Namely there are no more dilemmas as to whether to grow but how to grow and the answer has been found in the idea of sustainable development.

Each discipline has its particular view of sustainable development, so that the law deals with relevant law regulation that shall streamline the activities, monitor implementation and penalise non-adherence to particular provisions. Therefore the paper deals with definitions of sustainable development and transport yields the analysis of legal sources of European Union legislation and legislation of the Republic of Croatia, and reviews challenges of accessing states in implementing acquis communautaire in a domain of transport.

2. DEFINING SUSTAINABLE DEVELOPMENT AND SUSTAINABLE TRANSPORT

The policy of sustainable development, respecting the highest environmental standards of any country, makes conditio sine qua non of its present and future. In contemporary globalisation process there is no more exclusivity of regional or national privilege to independent regulation of issues that in their range exceed the delimited area of a particular region or county. In environmental matters, in principle there is really no restricted space dimension because natural space is a common right of usage and obligation for protection of practically the whole world.
Environmental sustainability respects the integrity of various eco-systems, the bearing capacity and protection of natural sources, including biological diversity as well. Therefore, understood as sustainable development are the measures enabling economic development in the way of its continuation in future without exhausting the sources and harming any part of the society.

In 1998 the European Council started a new initiative to implement provisions of the Treaty of the European Community (Art.6) and Treaty of the European Union, particularly Art.2 /9/ in a way that inclusion of environment and sustainable development issues into various fields is required, with energy, transport and agricultural sector having a leading role.

There is no doubt that current transport system has significant influence on many of the present environmental problems. Based on Brundtland Commission definition that development meets the needs of present generation without compromising the ability of future generations to meet their needs, the concept of sustainable transport arises. Such transport must contribute to economic and social well being without exhausting natural sources destroying the environment or harming human health. In 1999 joint group of experts in transport and environment regulated sustainable transport system as a system allowing basic access needs and development of individuals, business and societies in accordance with safety and in a manner consistent with health of people and eco-system, promoting equity among generations. Furthermore, that is a system that is affordable, efficient, offers a choice of transport modes and sustains vibrant economy and regional development and limits the emission and waste pursuant to planet's ability to absorb those, uses renewable sources at or bellow permissible thresholds and uses non-renewable sources bellow the threshold rates of renewable substances and minimises the use of land.

3. LEGAL SOURCES FOR ENVIRONMENTAL POLICY OF THE EUROPEAN COMMUNITY

In the process of creation of the European Union to date and planning its spreading over the entire European territory, the environmental issue is given permanent attention. The role of the European Union is to stimulate concerted and balanced development of the economic activity within the Community in order to render long term, non-inflatory and environmentally sustainable development. Therefore it is possible to define common environmental policy of united Europe, through the guidelines of objectives and principles stated below.

Sustainable development is now a central principle of EU policy. This puts forward a positive, long-term vision of a more prosperous and more just society, and a cleaner, healthier environment. Common objectives of the environmental policy is conservation and protection of the environment and improving its quality, protection of human health, prudent and rational use of natural resources and promotion of measures the international level dealing with regional or global environment problems /9/. Community environmental policy aims to achieve high degree of protection, taking into account different situations in various regions of the Community. It is based on principles of precaution and prevention, giving priority to causation and “the polluter pays”.

The precaution principle means that in cases of scientific uncertainty, provided that prior scientific finding renders basis to concern about potentially detrimental factors for environment and health, although the danger has not been proved, the activity of prevention must be undertaken.
4. THE SIXTH ACTION PROGRAMME OF THE EUROPEAN COMMUNITY

Since 1973, a series of comprehensive environment action plans have guided EU environment policy. In 2001, the Union launched its Sixth environmental Action Programme /1/, identifying the four areas where more action is urgently needed i.e. climate changes, nature protection and biodiversity, health and quality of life, as well as managing natural resources and tackling waste.

Action programme deals not only with legislation, but brings a change of approach, prioritising partnership and joint action with different stakeholders. Local communities are better placed to understand the steps needed to safeguard their specific environment than distant policy-makers. Framework approaches, focusing on achieving realistic objectives, for example by sharing best practices, will be among future policy instruments to improve the environment.

5. EUROPEAN ENVIRONMENT AGENCY

European Environment agency (EEA) was founded in 1993 with headquarters in Copenhagen. The Agency monitors environmental changes and problems, gathers and analyses environmental statistical data on European Union member states and informs public on the state of the environment. Through the European Environment Information and observation Network (EIONET) the EEA develops the key components of international information infrastructure.

The aim of EEA is to establish a seamless environmental information system. This is done in order to assist the Community in its attempts to improve the environment and to move towards sustainability, including EEC efforts to integrate environmental aspects into economic policies. The key areas are quality of air and water, soil protection, natural resources, waste recycling, hazardous substances and protection of the marine environment.

6. HARMONISATION OF THE EUROPEAN UNION REGULATION WITH CANDIDATE COUNTRIES (EXEMPLE OF THE REPUBLIC OF CROATIA)

United Europe, loyal to its original determination of common interests in environment, conditions the procedure of acceptance of new members by adoption and implementation of strict environmental regulations in each country preparing itself for the accession. For that reason the European Union gives special consideration to environmental problems in candidate countries or is in the process of accession. To this end the European Union assigns substantial funds for concrete projects in those countries through which it directly contributes to creation of environmental awareness, education of professionals, institutional training, and adoption and implementation of relevant environmental regulations. Regional environmental centre for countries of central and East Europe with headquarters in Szentendre in Hungary has been established.

At that it very precisely laws down its own norms and sets out standards that each candidate country is to meet in a very complex and lasting process of accession and thereafter the eventual membership. Legal basis consists of about 200 instruments relating to air and water pollution, waste chemical products management, biotechnology, and protection from radioactivity and nature conservation. It is the so-called acquis communautaire of the European Union in environmental field entitled environmental acquis.
Speaking of legal adaptation of our environmental laws to European Union standards, the process must be contemplated dynamically through two stages. In the first, current stage, the adaptation refers to obligations ensuing from 2003 National Programme of the Republic of Croatia for the Accession to the European Union covering 12 sectors; the second one contains obligations for harmonisation in a longer period of accession to the European Union covering about 30 sectors. Concrete harmonisation is elaborated in the context of the Strategy of the Accession of the Republic of Croatia to the European Union in it part dealing with environmental protection.

Through adoption of National Programme and national Programme and Agreement on Stabilisation and Accession, the Republic of Croatia precisely defined, among other sectors, the obligations for harmonisation in the field of environment. Cooperation between the Republic of Croatia and the European Union in the field of environmental protection relates to a wide spectre of nature conservation and upgrading the quality of living environment according to common standards set by European Union. By this Agreement the Republic of Croatia and the European Community pledge to cooperate in the struggle against environment destruction and for promotion of its sustainability. Sets are concept goals of environmental protections encompassing 16 fields of economic activity. Transport as such is not specified, but in it extends overall several sections.

National Environmental Strategy /4/ is a key document for regulation of this major area in legal system of Croatia. Drawing up of Strategy and Action Plan was initiated only in 1999. More thoroughly than in all the documents to date, strategy defines environmental policy, sets the priorities, entities in charge and the method of protection. In this manner initial legal framework for accession of Croatia to the European Union has been set in the field of environment. The Strategy of Environmental protection is defined in thematic areas with corresponding Priority Action plans.

Strategy is the expression of effort to transform growing awareness of the need for environmental protection in the Republic of Croatia into clear, integral and long-term concept. It assumes the indisputable necessity that state of the environment in the Republic of Croatia be upgraded, and the commitment that such goal should be realized by complementing the existing system of environmental protection.

The concept of sustainable development must become a dominant term of reference of the strategy of development of the Republic of Croatia. With it the future of environmental protection is viewed in different and considerably broader context that previously. In the effort to orient itself towards sustainable development, the Republic of Croatia wants to concert environmental goals with long-term national social and economic interests.

Assuming the concept of sustainable development, environmental protection is intended to be incorporated into integral policy and development plans. That means introducing environment as one of the dimensions into all major subjects of economic and social development facing us in 21st century.

7. LEGAL SOURCES OF ENVIRONMENTAL PROTECTION IN THE REPUBLIC OF CROATIA

The issue of sustainable development has until recently to great extent been neglected in Croatia. Although the Republic of Croatia has been confronted with a series of major problems whose resolving was urgent, the Parliament of the Republic of Croatia has already in 1992 adopted the Declaration on Environment. Republic of Croatia became signatory of a number of conventions and ever-growing number of official documents; the wording sustainable development has become widely used. In order to adhere to the criterion of
sustainable development, it is necessary to harmonise three components necessary for
definition of sustainable development, namely: economic, social and environmental
components.
In the Republic of Croatia the issue of environmental pollution is regulated in numerous
documents ranging from Constitution to the various implementation legislation regulating the
area.

7.1. The Constitution and the Environmental Protection Declaration

The Constitution of the Republic of Croatia establishes as one of the basic human rights the
right of healthy life and environment, and at the same time obliges the community to
safeguard conditions for implementation of that right. The citizens, the state, public and
business bodies and associations are bound to, in the context of their competences and
activities, pay special attention protecting to people's health, nature and human environment
/8/. In described manner national legislator expressly introduces the norms of environmental
law in the supreme legal act.
The Environmental Protection Declaration /2/ emphasizes that the state determinate to persist
in developing legal system pursuant to international treaties and standards of the European
and global community which entirely safeguard permanent systematic and effective
protection of environment.

7.2. Environmental acts and other sources of environmental regulation

When we argue about the norms of environmental law, it should be stressed that all branches
of law deal with the subject, so we must differentiate the legislation which represent sources
of environmental laws, such as Nature Protection Act /14/ and lex specialis concerning
protection, like the Air Protection Act /15/.
Moreover, there are numerous so-called individual laws (national parks, natural reserves,
nature parks), and the sources of law are also the legis specialis (the issue of the hazardous
substances, chemicals, waste, protection from noise, radiation). In addition, it is necessary to
point out the significance of other laws with environmental criteria containing common
chapters on the subject (penal and civil codes). It is also necessary to mention the existence
of the so-called pluripurpose laws that normatively do not regulate environmental issues
exclusively but is of importance for the sector (inspections, taxes, administrative procedures).
Regulatory provisions are of significance as implementation legislation adopted by ministers
and directors in the form of ordinances, regulations, and instructions as well as regulatory
provisions. Further types of general normative sources of law are general regulations of the
Government as executive body that issues regulations, decisions and conclusions.

7.2.1. The Nature Protection Act

Pursuant to Nature Protection Act, nature protection is a right and liability of any physical and
legal person, and are in that sense obliged to cooperate in order to avoid and prevent
hazardous activities and occurrence of damages, elimination of and recovery from the
consequences of damage incurred, as well as the restoration of natural conditions existing
prior the damage occurrence /14 Art.4 p.4/. The public has the right to free access to
information concerning the state of nature, the right to be timely informed concerning
damages in nature and concerning the measures undertaken for their elimination, as well as
the right to possibility to participate in decision making concerning nature /14 Art.4 p.5/.
Damage to nature is a state of nature where natural processes have by human activity been
changed to such an extent that natural balance is disrupted or natural assets destroyed. 14 Art. 7 p. 35.

With the aim of nature protection, the associations may request from competent bodies or other certified legal persons the undertaking of appropriate measures within their competence with the purpose of nature protection, initiate appropriate procedures at administrative and judiciary bodies in case of inflicting damage in nature, threat or in any other manner reduction to the natural value. 14 Art. 241.

7.2.2. The Environmental Protection Act

The Environmental Protection Act is the basic law regulating environment protection for the purpose of its conservation, reduction of hazard to life and health of people, safeguarding and improving the quality of living for the well being of present and future generations. 13 Art. 1.

Environment protection makes for integral conservation of the quality of environment, conservation of natural communities, rational use of natural sources and energy in the most advantageous way for the environment, as the basic condition for healthy and sustainable development.

Environmental pollution is defined as alteration of state of the environment as a consequence of harmful effects or absence of necessary action, of emissions, introduction or disposal of hazardous substances, emissions of energy and impacts of other interventions and phenomena adverse for the environment. 13, Art. 5.

7.2.3. The Noise Protection Act

Noise as undesired sound is presently all the more growing problem due to increased use of machinery in industry and transport and due to ever-greater population concentration at particular locations. The Fifth European Union Environmental Programme of 1993 designated noise as one of the major environment problems in urban areas and expressed the need that appropriate measures are taken in respect of various sources.

Basic regulation in the Republic of Croatia for implementation of the protection from noise is The Noise Protection Act 12 that establishes measures of protection from noise on land, water and in the air, as well as controls implementation of the said with the aim of preventing or reducing noise and eliminating the hazard on people's health.

7.3. Legislation in the field of transport and other legislation

Pursuant to Maritime Code 5 the pollution of marine environment consists of the damage that is as a rule made of expenses incurred in combating the damage as well as in eliminating its consequences by restoration, whereby it must be kept in mind that by introducing hazardous substances into marine environment the quality of marine environment is impaired, and that could result in a major financial loss to coastal economy such as tourism or fisheries.

According to the Act on Maritime domain and seaports 10 Art. 1 p. 2, applied to the protection of sea coast and the sea against pollution, besides pollution from vessels and floating objects, are the laws concerning waters and those concerning environmental protection. The funds for management of maritime domain also consists of compensations for damages incurred by polluting maritime domain 10 Art. 12 p. 4.

In the case of marine pollution, seaport authority is obliged to effect an inquest, establish the situation and cause of pollution and, if possible, the degree of damage. Involved damage must be established, if possible, in the presence of pollution originator and if necessary also in the presence of court
expert and witness. Port authority is obliged to inform competent body of the county about marine pollution with the purpose of undertaking appropriate measures for eliminating hazardous substances at sea /10, Art.92/. Physical and legal person using devices, equipment and plants for reception, storage and processing of oil at maritime domain is obliged, on the occasion of discharge, transshipment or loading, to inform a competent body of the county with the purpose of undertaking appropriate measures for removal of hazardous substances from maritime domain /10 Art.93 p.1/. The Act of the Transport of Dangerous Goods /11/ stipulates the obligatory insurance of responsibility for the damage to third persons made by transport of the hazardous substances.

8. CONCLUDING REMARKS

The present day demands is establishing of adequate and practical legal mechanisms with the aim of reinforcing sustainable development and consequently sustainable transport. Statutory regulations concerning the environment are of fundamental significance for the European Community in implementation of environmental goals, and one of the strategic tasks for the future is resolving major failures in implementation of regulations.

When speaking about transport, there stems a need for alternative transport policy and true change of consumer's behaviour. Confronted with major problems of congestions, emissions, air pollution and noise, certain measures must be undertaken directed at abating congestions in road and air transport, at railways modernizations, cleaner urban transport, substituting physical mobility with communications tools, fuel substitutes, as well as other necessary steps. At that it is necessary to keep in mind the fact that over 35% of overall energy use relates to transport while 84% of total CO2 emissions come from road transport.

A challenge to present day environmental problems is reflected in the need of incorporating environmental issue into all arrangements of decision makers, searching for the method of closer linkage between the market and consumers, the demand for change of behaviour and stimulating better planning.

It is necessary to align national regulatory arrangements, keeping in mind that development and related demands for transport must not be hampered, but with protection of people's and environmental health safeguard.

The Convention on Access to information, Public Participation in Decision-making and Access of Justice in Environmental Matters (Aarhus Convention) in its preamble links the protection of environment and human rights and points out the right of public to request information from the authority and obligation of the authority to reply to inquires as well as the right to public participation in decision making process, and regulates the access to justice. Therefore the legislator in Croatia must act on basis of real situation in proposing legislation, while regulations must be integral without excluding particular activities and pollution sources. The Republic of Croatia follows the arrangements of international legal sources and in that sense it is necessary to follow further development, mindful of the feasibility of implementation of these legal arrangements in Croatia and proper interests.

Important for legal norms in general and particularly environmental norms is their implementation. When the authority is not capable to implement those – through enforcement, participation by all stakeholders, education or in other way – environmental law is not inefficient but becomes counterproductive. The principle of good environmental management invokes the need for preventive action and regulated procedure at damage occurrence. In our opinion, independent specialised agencies may contribute positively to imposing the efficiency of implementing sustainable development and sustainable transport.
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